Before the Taranaki VTM Expert Panel

under: the Fast-track Approvals Act 2024 and Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012

in the matter of: an application by Trans-Tasman Resources Limited for marine consents to support a seabed mining operation in the South Taranaki Bight

Legal submissions on behalf of **Taranaki Offshore Partnership**

Dated: 6 October 2025

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LEGAL SUBMISSIONS ON BEHALF OF TARANAKI OFFSHORE PARTNERSHIP

INTRODUCTION

Overview of the case

1 Taranaki Offshore Partnership (*TOP*) opposes Trans-Tasman Resources Limited's (*TTRL*) application for marine consents (*Application*) to support a seabed mining operation in the South Taranaki Bight (*STB*) under the Fast-track Approvals Act 2024 (*FTAA*) and Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (*EEZ Act*).

2 TTRL seeks marine consents to extract 50 million tonnes of seabed material per year, over 20 years, mechanically recover 5 million tonnes of heavy mineral sands concentrates containing iron ore, vanadium and titanium, and return the de-ored material to the seabed (*Proposal*) from an approximately 66km^2 area in the STB (*Mining Area*).

3 TOP is developing an offshore wind farm project, the South Taranaki Windfarm Project (*OWF Project*), in the STB. TOP's area of interest for the OWF Project has been selected based on its environmental characteristics and the quality of the wind resource – being the best in New Zealand. However, TTRL's Mining Area is located in the middle, and entirely within the boundaries of, the OWF Project area.

4 In summary, TOP's case in opposition to the Proposal is that:

4.1 The Proposal will result in significant adverse impacts on the STB environment, both within and outside the Mining Area, and those impacts will persist long after the Proposal has concluded. Those impacts include:

(a) Effects on the geotechnical characteristics of the seabed, including reducing the strength of the seabed, increasing the likelihood of settlement, and increasing susceptibility to liquefaction and slope failure during seismic events;

(b) Effects on seabed morphology, being the creation of pits and mounds (and mounds of much greater magnitude than suggested by TTRL), which will migrate over time, and will not naturally remediate; and

(c) Effects on waves and currents. The non-uniform seabed surface created by the Proposal will adversely influence ocean currents and waves, which may create navigational risks and alter other impacts of the Proposal eg effects on seabed morphology.

4.2 As a result of those adverse environmental impacts, the Proposal will prevent or constrain use and development in the STB, including the use of New Zealand's premier site for offshore wind generation.

4.3 While there are also serious questions about the Proposal's commercial viability, even if it does not proceed, the grant of marine consents on TTRL's proposed conditions (in particular the generous consent lapse period) will have the effect of preventing other uses of the STB – including for offshore wind generation. In the case of wind generation, given the current stage of investigations in New Zealand, it may be enough to permanently foreclose the option of wind generation in the STB.

4.4 TTRL has significantly overstated the economic benefits of the Proposal.

4.5 TTRL has failed to account for the Proposal's significant adverse economic costs (including the opportunity cost of closing down options for the OWF Project), as well as other implications for achieving New Zealand's climate change and energy security policy goals (arising from the Proposal's impacts on offshore wind development).

4.6 TTRL has not presented the "best available information" in the Application. The Application contains uncertain and inadequate information, particularly in relation to the economic benefits of the Proposal and effects of the Proposal on the environment, meaning a number of matters relevant to the Panel's decision-making tests are unknown or difficult to assess.

5 Accordingly, TOP submits that, as currently proposed, the impacts of the Proposal are sufficiently significant to be out of proportion with the benefits, and the Panel should exercise its discretion to decline the Application.

Scope of these submissions

6 These submissions will:

6.1 Introduce TOP and its OWF Project;

6.2 Address the relevant legal framework;

6.3 Discuss the potential benefits of the Proposal;

6.4 Discuss the potential impacts of the Proposal; and

6.5 Address the decision-making tests the Panel will need to determine.

Evidence filed by TOP

7 The following witnesses provide evidence on behalf of TOP:

7.1 Mr Giacomo Caleffi, TOP Development Manager and Director at Copenhagen Offshore Partners. He introduces TOP and its OWF Project, and addresses the offshore wind resource and opportunity in New Zealand and the interaction between the OWF Project and the Proposal. Mr Caleffi highlights the remarkable offshore wind resource in the STB and the significant benefits that development of this resource would deliver to New Zealand. He highlights the extensive work completed by TOP to date to advance its OWF Project, and TOP's ongoing commitment to offshore wind development. He identifies that TTRL's Mining Area is located right in the middle of the STB's premiere wind resource area and TOP's area of interest. He agrees with the evidence of Mr Perry and Mr King on the significant challenges presented by locating the Proposal in the middle of that area, and points to the departure of other offshore wind developers as evidence of the adverse effects of uncertainty created by the Proposal.

7.2 Mr James Perry, Wind Turbine Package Director for Copenhagen Offshore Partners. He addresses the process to develop an offshore windfarm, from planning to construction to operation, and considers the impact that the Proposal would have on each of those stages of development. He considers the impacts of the Proposal on seabed conditions (addressed by Dr McComb and Mr King) will substantially increase the costs of investigating and developing an offshore windfarm, increase technical design risk and create high levels of uncertainty around financial investment. He also addresses issues concerning baseline and ongoing monitoring for two activities, and navigation safety risks associated with accommodating vessels for the two activities. He concludes the co-existence of seabed mining and offshore wind in the same space is not possible, and the challenges and uncertainties created by the activities occurring side-by-side are also so significant that it is unlikely that an offshore windfarm developer would pursue or be able to secure investment or finance.

7.3 Dr Peter McComb, independent ocean scientist from Oceanum Ltd. His evidence assesses the effects of the Proposal on seabed morphology, waves and currents. Dr McComb concludes that TTRL's assessment is based on flawed assumptions, and has therefore underestimated the likely impact of the Proposal on seabed morphology such that the

mounds created by mining are likely to be larger than estimated by TTRL. Dr McComb agrees with TTRL that there is potential for these pits/mounds to migrate over time, but notes that this has not been quantified by TTRL's experts. The impact of the Proposal on seabed morphology has the potential to alter wave patterns and currents, with resulting impacts that TTRL has not fully considered. Finally, Dr McComb considers TTRL's predictions of the pit infilling and mound deflation rates incorrect, and infilling/deflation will take at least five times longer than predicted by TTRL in shallow areas and be ineffective in deeper areas.

7.4 Mr Regan King, independent geotechnical engineer at Tonkin & Taylor Ltd. He addresses the impacts of the Proposal on the geotechnical characteristics of the seabed in the Mining Area and considers the implications of those impacts for development of an offshore wind farm. Mr King highlights the lack of geotechnical information provided by TTRL. Nevertheless, he concludes it is evident the Proposal will significantly reduce the geotechnical strength of the seabed, increase settlement potential, and increase liquefaction susceptibility and soil stability risks. The Proposal will also make existing geotechnical information obsolete and remove the potential to collect new information until mining is completed. Mr King considers these impact will have direct implications for offshore wind development, by adding design risk and complexity and increasing costs. He considers the scale of these impacts will reduce with distance from the Mining Area, but the scale of the impacts at different separation distances is uncertain.

7.5 Mr Fraser Colegrave, independent economic consultant and managing director of Insight Economics. His evidence addresses issues with the economic impact assessment prepared by the New Zealand Institute of Economic Research[1] (*NZIER Report*). He concludes that the NZIER Report uses a methodology that is inappropriate for the Proposal and inflates the Proposal's likely economic benefits. Mr Colegrave considers that addressing just one of the flaws in the NZIER Report would reduce TTLR's claimed economic benefits by 22-29%. He also addresses the opportunity costs associated with the Proposal's impacts on offshore wind development (as evidenced by Mr Perry, Dr McComb and Mr King). He concludes that on a like-for-like basis a 1 GW offshore wind farm is likely to generate comparable or greater economic benefits compared to the Proposal. He considers the failure to take into account this opportunity cost reduces the Proposal's

[1] Application, Attachment 2: "*Economic impact assessment of TTRL's Taranaki VTM Iron Sands Project NZIER report to Trans-Tasman Resources Limited*" 12 March 2025.

benefits further, such that they are unlikely to be either regionally or nationally significant.

INTRODUCTION TO TOP

8 TOP is a joint venture between Guardians of New Zealand Superannuation as manager and administrator of the New Zealand Superannuation Fund (*NZ Super Fund*) and Copenhagen Infrastructure Partners (*CIP*). TOP was formed in 2022 to investigate and pursue offshore wind farm projects in New Zealand.

9 The Panel will be familiar with the NZ Super Fund, however by way of brief comment, the purpose of NZ Super Fund is "*Sustainable investment delivering strong returns for all New Zealanders*".[2] NZ Super Fund is an experienced infrastructure investor and integrates environmental, social and governance factors into its investment process and ownership activities. In partnership with NZX-listed Infratil, NZ Super Fund has funded extensive renewable energy infrastructure developments in North America and Europe.

10 CIP is the world's largest dedicated fund manager within greenfield renewable energy investments and a global leader in offshore wind. The funds managed by CIP focus on investments in offshore and onshore wind, solar PV, biomass and energy-from-waste, transmission and distribution, reserve capacity, storage, advanced bioenergy, and Power-to-X. Copenhagen Offshore Partners (*COP*) is the exclusive global offshore wind development partner to CIP, including for projects in New Zealand. CIP and COP have a proven track record in delivering offshore wind projects worldwide and are currently developing two offshore wind farms in Victoria, Australia.

11 Mr Caleffi provides more information on TOP, NZ Super Fund and CIP/COP in his evidence.

TOP's OWF Project

12 As explained by Mr Caleffi, New Zealand has remarkable offshore wind conditions, with average annual wind speeds in New Zealand's best wind resource areas being amongst the highest in the world.[3]

13 TOP has been undertaking engineering, environmental, and design investigations and due diligence on a number of potential locations for offshore wind development across New Zealand over the past four years. As a result of those investigations, TOP has identified

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[2] New Zealand Superannuation Fund website: <https://nzsuperfund.nz/about-the-guardians/purpose-and-mandate/>.

[3] Statement of Evidence of Mr Giacomo Caleffi dated 3 October 2025 (*SOE Caleffi*), at [13].

part of the STB as the optimal New Zealand location for offshore wind development.

14 The STB has strong and consistent wind speeds, shallow water depths and the presence of an established energy industry and associated infrastructure, making it a valuable offshore wind resource for renewable energy generation in New Zealand.[4] For these reasons, an offshore windfarm in the STB would be the most cost effective and most efficient offshore wind project that New Zealand could achieve.[5]

15 TOP's OWF Project is proposed to consist of up to 70 wind turbines around 260 metres high located in the STB, approximately 25-40km off the coast.[6] It will convey electricity to Transpower's National Grid and is expected to generate up to 1GW of power (which could power over 650,000 homes).[7] As explained in the evidence of Mr Caleffi, TOP is strongly committed to developing the OWF Project.[8]

16 The New Zealand energy system is currently under significant stress due to a shortage of domestic natural gas and periodic 'dry years' (years with lower rainfall than average, meaning hydropower reservoirs across the country generate less electricity than expected).[9] Demand for electricity is only expected to keep growing as electricity becomes a larger part of the overall energy mix as the New Zealand economy continues to decarbonise. TOP's OWF Project would directly address these existing energy security challenges, as well as the need for a significant increase in new renewable generation to support the needs of future generations and climate change mitigation.

17 TOP has invested significant time, resources and efforts into planning for its OWF Project. TOP has an existing feasibility programme underway in the STB. As explained by Mr Caleffi, TOP has invested more than $10M NZD in feasibility studies to date, including wind studies (which have been authorised under permitted activity notices issued under the under the Exclusive Economic Zone and Continental Shelf (Environmental Effects—Permitted Activities) Regulations 2013), seismic studies, and environmental studies.[10] As part of its feasibility programme, TOP has also engaged extensively

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4 SOE Caleffi, at [20] and [41].

5 SOE Caleffi, at [42].

6 SOE Caleffi, at [36]-[38].

7 SOE Caleffi, at [38].

8 SOE Caleffi, at [50]-[57].

9 SOE Caleffi, at [23].

10 SOE Caleffi, at [45].

with key stakeholders, potential partners, mana whenua and the wider community.

Offshore Renewable Energy Bill

18 TOP has engaged extensively with the Ministry of Business Innovation and Employment in relation to the establishment of legislative regime to provide legal interests in the EEZ for offshore renewable energy activities.

19 The Offshore Renewable Energy Bill (*Bill*) will establish a legislative regime for the construction, operation and decommissioning of offshore renewable energy activities. As Mr Caleffi explains, the legislative regime will give investors certainty to invest the large sums of money necessary for offshore wind development to proceed.[11]

20 The Bill is currently in the late stages of the Parliamentary process, with the Transport and Infrastructure Select Committee having reported back on the Bill on 17 June 2025. The Government intends to pass the Bill in the first quarter of 2026, and open the first feasibility permit round shortly thereafter.[12]

21 On 16 September 2025, the Minister of Energy announced the Government will make changes to the Bill to address concerns raised by offshore wind developers during the submission process about the co-existence of offshore wind and other activities, particularly seabed mining. The changes will enable the Government to pause the granting of new seabed mining permits in a designated marine space while offshore renewable energy permits are invited.[13] The Government has indicated that the first designated area is likely to be the STB.

22 TOP anticipates participating in the first feasibility round to advance its OWF Project. If TOP successfully obtains a feasibility permit, it would hold the exclusive ability to apply for a commercial permit in the permit area, as well as the right to apply for any regional and marine consents necessary for the OWF Project.

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11 SOE Caleffi, at [32]-[34].

12 MBIE, '*At a glance: New Zealand's Energy Package*' dated October 2025, page 6. SOE Caleffi, at [25].

13 Beehive press release, '*Clearing the path for offshore wind investment*' dated 16 September 2025.

Government policy support for offshore wind

23 The New Zealand Government has also set a target of doubling renewable energy by 2050.[14] As recently recognised by the Minister of Energy:[15]

> Offshore renewable energy is one of this country's untapped energy sources and has the potential to help us grow an economy where transport and industry are powered by clean energy and to reach net zero greenhouse gas emissions by 2050.

24 Enabling the development of additional renewable electricity generation, including offshore wind, is a key pillar of the Government's 'Electrify NZ' work programme.[16] Through that programme, the Government has recognised that additional renewable electricity generation is necessary because electricity demand projections indicate that demand for renewable electricity will increase by around 70 per cent by 2050, which equates to approximately 12.6GW of new generation capacity.[17] The Government has also noted that the level of additional electricity demand may double or triple to account for estimated demands from the electrification of hard-to-abate sectors, new energy-intensive industries (such as hydrogen or sustainable aviation fuel production), and additional renewable energy export market.[18] Electrify NZ has been and continues to be responsible for a number of initiatives targeted at providing for offshore wind development, including progressing the FTAA through Parliament, advancing amendments to Resource Management Act 1991 (*RMA*) national direction for renewable energy and transmission, and developing the Bill which is expected to be passed into law in the first quarter of 2026 (as discussed above).

25 As explained by Mr Caleffi, New Zealand's energy system is currently under major stress due to a shortage of domestic natural gas and recurring 'dry years'. The lack of security of supply has led to extremely high electricity prices, which in turn is driving higher living costs for consumers and resulted in the closure of several commercial and industrial enterprises.[19]

26 Offshore wind represents a generation source that uniquely meets the scale of this demand and security of supply, in a manner that is

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14 Ministry for the Environment, '*Our journey towards net zero*' New Zealand's Second Emissions Reduction Plan 2026-30, December 2024, page 37.

15 Hon Simeon Brown, (then Minister of Energy), '*Cabinet Paper: Offshore Renewable Energy Regulatory Regime*', 20 December 2024.

16 MBIE, '*At a glance: New Zealand's Energy Package*' dated October 2025, page 3.

17 MBIE '*Offshore Renewable Energy Briefing*', 14 December 2023, at [32].

18 Ibid.

19 SOE Caleffi, at [23].

consistent with both New Zealand's domestic and international greenhouse gas emissions targets.[20]

Interaction between TOP's OWF Project and TTRL's Proposal

27 As shown in **Figure 1** below, TTRL's proposed 66 km^2 Mining Area (in red) is located right in the middle of the STB's premier wind resource area, and TOP's area of interest for its OWF Project (in green).[21] TTRL's Proposal and TOP's OWF Project could therefore overlap to a significant extent – the 66km2 Proposal area alone could be up to ~25% of the area of a windfarm of the scale anticipated by TOP.

28 In fact, the Proposal will have direct impacts over an area much broader than the Mining Area, comprising:

28.1 The Mining Area (~66 km^2);

28.2 TTRL's proposed anchoring buffer zone (Condition 37);

28.3 TTRL's intended safety exclusion zone around its vessels (~1.85km);[22] and

28.4 An uncertain distance over which the effects of the Proposal will extend as identified by Dr McComb and Mr King.

[20] See: section 5Q Climate Change Response Act 2002; and New Zealand's Second Nationally Determined Contribution under the Paris Agreement.

[21] SOE Caleffi, at [46].

[22] Trans-Tasman Resources Ltd, Taranaki VTM Project Fast-Track Act Application, dated 15 April 2025 (*Application*), 5.13.6.4.

Figure 1 – Overlap between TTRL Application Area (in red) and the Area of Interest for offshore wind (in green)

LEGAL FRAMEWORK FOR THE PROPOSAL

29 The Application is the first application for EEZ Act marine consents under the FTAA. The Panel is therefore the first decision-maker tasked with applying the FTAA and EEZ Act together. As recognised by the Panel convenor, the 'first of its kind' nature of the Application adds complexity to the Panel's decision-making task.[23] Together, the FTAA and EEZ Act create a complicated web of legal tests. The Panel's job is made more difficult by the extensive, although incomplete and somewhat disorganised, amount of information that comprises the Application - much of which has been prepared at different times and for different decision-makers. The Panel's job is, to put it mildly, complex.

Legal tests – whether to grant or decline the application

30 The FTAA sets out:

30.1 Legal tests for when a panel must decline an approval,[24] which TOP does not contend are triggered by the Proposal.

[23] Minute of the Panel Convenor dated 12 August 2025, at [21(b)].

[24] FTAA, s85(1) and (2).

30.2 A legal test for when the Panel has a discretion to decline an approval,[25] which TOP contends is triggered and which the Panel should exercise to decline the Application.

31 Section 85(3) FTAA sets the following test for when the Panel has discretion to decline the Application:

> A panel may decline an approval if, in complying with section 81(2), the panel forms the view that –
>
> > (a) there are 1 or more adverse impacts in relation to the approval sought; and
> >
> > (b) those adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits that the panel has considered under section 81(4), even after taking into account –
> >
> > > (i) any conditions that the panel may set in relation to those adverse impacts; and
> > >
> > > (ii) any conditions or modifications that the applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts.

32 In the following sections we address the key components of this 'discretionary decline' test being: "*adverse impacts*", "*regional or national benefits*" and the "*out of proportion*" test.

"adverse impacts"

33 "*Adverse impact*" means "*any matter considered by the panel in complying with section 81(2) that weighs against granting the approval*".[26] "*Adverse impact*" is therefore a broad concept and includes "*essentially any matter properly before the Panel which weighs against the granting of the approval"*.[27] Any *relevant* consideration (under section 81(2)) can give rise to an 'adverse impact' if it weighs against granting the approval.

34 The reference to "*adverse impacts*" plural in section 85(3)(b) confirms that such impacts are to be considered collectively. That is, the "out of proportion" test (discussed below) does not apply to each individual adverse impacts, but all adverse impacts of a project.

35 The "*adverse impacts*" to be considered are those that remain after the conditions that have been proposed/agreed by the applicant and

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25 FTAA, s85(3).

26 FTAA, s85(5).

27 Maitahi Village, FTAA Panel Decision, 18 September 2025 (*Maitahi Village Decision*), paragraph 90.

imposed by the Panel. We address below the legal tests relating to conditions specifically.

"regional or national benefits"

36 It cannot be assumed that, because a project is listed in Schedule 2 of the FTAA it will deliver significant regional or national benefits.[28] The FTAA expressly requires the Panel to consider "*the extent*" of the Proposal's regional or national benefits.[29] Accordingly, the Panel must enquire into and make a factual finding in relation to the benefits of the Proposal claimed by TTRL.

37 There is no definition of "*regional or national benefits*" in the FTAA. However, section 22(2) of the FTAA provides a non-exhaustive list of criteria to guide consideration of whether a project that is seeking referral to the fast-track process has significant regional or national benefits. In our submission, and as endorsed by the Expert Panel in the *Maitahi Village* decision, this list provides relevant guidance to support assessment of the adequacy of such benefits where that same phrase is used elsewhere in the FTAA.[30] The criteria include whether a project will "*deliver significant economic benefits*",[31] "*support development of natural resources*"[32] and "*support climate change mitigation*".[33] In the *Maitahi Village* decision, the Expert Panel noted the question of whether a project has significant regional or national benefits is an "*intensely factual determination turning on the particular circumstances of the Application*".[34]

38 The FTAA is silent on whether economic benefits are to be assessed on a *gross* or *net* basis for the purposes of this legal test. However, in TOP's submission, an assessment of economic benefits requires consideration not only of the gross economic benefits (i.e. to GDP employment etc), but also of associated economic costs that would reduce those benefits, including for example opportunity costs and displacement effects of a project. Without taking into account the economic costs of a proposal, economic benefits may be overstated, which would distort the "out of proportion" test in section 85(3).

39 This point was directly at issue in the *Delmore* FTAA application where the applicant's expert focused on economic benefits, whereas the council and Panel's experts considered an economic cost benefit

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28 Delmore, FTAA Panel Draft Decision, 29 August 2025, (*Delmore Draft Decision*) paragraph 501.

29 FTAA, s81(4).

30 Maitahi Village Decision, paragraph 515.

31 FTAA, s22(2)(a)(iv).

32 FTAA, s22(2)(a)(vi).

33 FTAA, s22(2)(a)(vii).

34 Maitahi Village Decision, paragraph 515.

analysis was required.[35] The Panel concluded that the applicant's methodology was "*not sufficiently robust to analyse and consequently value benefits*" and found that the benefits in that case had been overstated.[36] Instead, the Panel agreed with the council experts that a cost benefit analysis was more robust and would also identify the opportunity costs of the project.[37]

40 A narrow construction of benefits which focused only on *gross* economic benefits could result in a perverse outcome whereby it could be considered consistent with the FTAA's purpose to grant approvals for a project that would deliver significant *gross* economic benefits, but had more significant economic costs that resulted in the project having insignificant (or even negative) *net* economic benefits. In our submission that outcome would not be consistent with the intent of the FTAA to facilitate the delivery of infrastructure and development projects that offer significant regional or national benefits.[38]

41 Notwithstanding that position, even if a *net* economic benefit approach is not adopted, economic costs of the Proposal will nevertheless be adverse impacts to be assessed and weighed in accordance with the "out of proportion" test.

42 Accordingly, no matter the Panel's interpretation of "regional or national benefits", the Panel will need to carefully consider both economic benefits and costs when deciding whether to exercise its discretion to decline the Application.

"out of proportion"

43 The phrase "*out of proportion*" is not defined in the FTAA and is not used in other environmental legislation. Accordingly, it is necessary to interpret this phase "*from its text and in the light of its purpose and its context*".[39]

44 The word 'proportion' is defined to mean "*the relation of one part to another or to the whole with respect to magnitude, quantity, or degree: ratio*"[40] or to "*be in proportion to; correspond to; equal.*"[41] To be 'out of proportion' is therefore to be different in terms of magnitude, quantity, or degree. On its text, we therefore consider

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35 Delmore Draft Decision, paragraphs 493-499.

36 Delmore Draft Decision, paragraph 500.

37 Delmore Draft Decision, paragraph 498.

38 Final Report of the Environment Committee – Fast-track Approvals Bill, page 3.

39 Legislation Act 2019, s10(1).

40 "Proportion". Merriam-Webster Dictionary: https://www.merriam-webster.com/dictionary/proportion

41 "Proportion". *Shorter Oxford English Dictionary*, 5th ed, Vol 2, Oxford University Press, page 2371.

this test requires a balancing exercise – that is, are the impacts greater in magnitude, quantity or degree than the benefits?

45 When it comes to any weighting within that balancing exercise, TTRL says at one point in its Application that this 'out of proportion' test must be applied in a manner that gives greater weight to the purpose of the FTAA (with its focus on facilitating the delivery of projects with significant regional or national benefits).[42] At another point, somewhat inconsistently, TTRL says the test does not require greater weight to be given to regional and national benefits, and section 85(3) requires an unweighted assessment.[43]

46 In our view, the balancing exercise does need to be informed by the purpose of the FTAA. That is because the section 85(3) 'discretionary decline' test includes an explicit link to section 81(2), which (when traced through to its full extent[44]) requires the Panel to take into account (a) the purpose of the FTAA and (b) relevant provisions in the EEZ Act, and give the greatest weight to the former.

47 Nevertheless, it remains a balancing exercise. The FTAA purpose might tip the balancing exercise slightly in favour of delivering projects with significant regional or national benefits, however, in our submission, it remains necessary to (a) establish the project will, in fact, have such benefits, and (b) prove the impacts of the project are not "*sufficiently significant to be out of proportion*" to those benefits. The FTAA does not establish a 'rubber stamp' process and there will be circumstances in which the discretion to decline should be exercised (as was the result in the Delmore Draft Decision).

48 Finally, we note that the FTAA directs that a panel "*may not form the view that an adverse impact meets the threshold in subsection [85](3)(b) solely on the basis that the adverse impact is inconsistent with or contrary to a provision of a specified Act or any other document*".[45] TTRL says at various points in its Application this direction means that various tests in the EEZ Act (and previous findings on those tests from the Supreme Court) cannot form a basis for declining the marine consents sought.[46] We disagree. The word "solely" is important. In our submission, inconsistency with an

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42 Application, page 327.

43 Application, page 361.

44 Section 81(2)(b) requires a Panel, when deciding to grant or decline an approval, to apply the applicable provisions set out in s81(3). Section 81(3)(l) relates to marine consents and includes an explicit link to clause 6 of Schedule 10 of the FTAA, which in turn directs the Panel to take into account (a) the purpose of the FTAA and (b) relevant provisions in the EEZ Act, giving the greatest weight to the former.

45 FTAA, s85(4).

46 Application, pages 320 and 322.

EEZ Act provision *on its own* cannot justify a view that "*adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits*", however such an inconsistency may be a relevant factor that supports applying the discretion to decline in combination with other factors.

Legal tests – setting conditions to be imposed

49 The 'discretionary decline' test requires the Panel to consider adverse impacts with "*any conditions that the panel may set in relation to those adverse impacts*".[47] Therefore, the Panel will need to actively engage in potential conditions as part of its decision-making process, regardless of whether it decides to grant or decline the Application in its final decision.

50 The Panel must apply the following legal tests when setting marine consent conditions:[48]

50.1 The Panel may grant a marine consent "*on any condition that it considers appropriate to deal with adverse effects of the activity authorised by the consent on the environment or existing interests*".[49]

50.2 The Panel may (but is not limited to) impose conditions requiring the consent holder to provide a bond, maintain public liability insurance, monitor and report on the exercise of the consent and effects of the activity, appoint an observer to monitor the activity and/or make records available for audit.[50]

50.3 The Panel cannot impose a condition that would be inconsistent with the EEZ Act or any regulations[51] or conflict with a measure required by another marine management regime or the Health and Safety at Work Act 2015.[52]

50.4 The Panel may impose conditions that incorporate an adaptive management approach, except that adaptive management conditions cannot be imposed on the marine discharge consent.[53]

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47 FTAA, s85(3)(b)(i).

48 FTAA, sch 10, cl 7.

49 EEZ Act, s63(1).

50 EEZ Act, s63(2)(a). See also ss65-67 of the EEZ Act, which provide more detail in relation to conditions requiring bonds, monitoring and observers.

51 EEZ Act, s63(3).

52 EEZ Act, s63(4).

53 EEZ Act, s64.

50.5 Any conditions set by the Panel must not be "*more onerous than necessary to address the reason for which it is set in accordance with the provision of this Act that confers the discretion*."[54] In our submission, this requirement does not limit the discretion of the Panel to impose conditions that it considers appropriate to address the adverse impacts of a project, it simply requires the Panel to undertake an additional check to ensure they are not "*more onerous than necessary*" to address those impacts.

Legal tests – the marine consent criteria

51 When applying the legal tests relating to whether to grant or decline a marine consent and conditions to impose, the FTAA requires the Panel to apply the following criteria:[55]

> (1) …when considering an application for a marine consent, including conditions in accordance with clause 7, the panel must take into account, giving the greatest weight to paragraph (a) -
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> (a) the purpose of this Act; and
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> (b) sections 10 and 11 of the EEZ Act; and
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> (c) any relevant policy statements issued under the EEZ Act; and
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> (d) sections 59, 60, 61(1)(b) and (c) and (2) to (5), 62(1A) and (2), 63, and 64 to 67 of the EEZ Act.
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> (2) For the purposes of subclause (1)(d), the panel must take into account that section 62(1A) of the EEZ Act would normally require an application to be declined, but must not treat that provision as requiring the panel to decline the approval the panel is considering.

52 We address below the key matters from Clause 6, Schedule 10 being:

52.1 The meaning of the directions to *"take into account"* and give the *"greatest weight"* to the below matters;

52.2 The purpose of the FTAA;

52.3 Section 10 of the EEZ Act (purpose);

52.4 Section 11 of the EEZ Act (international obligations);

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[54] FTAA, s83.

[55] FTAA, sch 10, cl 6.

52.5 Relevant policy statements issued under the EEZ Act; and

52.6 Other relevant EEZ Act provisions.

"take into account"

53 The direction to "*take into account*" the factors listed above means there is an obligation to consider each of the factors in making a decision, to weigh each factor with other relevant factors and to give each factor whatever weight is appropriate in all the circumstances.[56]

"greatest weight"

54 The marine consent criteria require the "greatest weight" to be given the purpose of the FTAA.

55 The Housing Accords and Special Housing Areas Act 2013 (*HASHAA*) contained a similar provision, which listed various matters to "have regard to" and required "*giving weight to them (greater or lesser) in the order listed*".[57] The purpose of the HASHAA was the first listed matter. The Court of Appeal considered that provision, and held that it required the decision-maker to undertake an "*individual assessment of the listed matters prior to the exercise of weighting them through an overall balancing exercise in accordance with the prescribed hierarchy*".[58]

56 The Expert Panel who issued the first FTAA decision on an application by Port of Auckland for the Bledisloe North Wharf and Fergusson North Berth Extension considered the "greatest weight" test and the Court of Appeal decision on the similar HASHAA provision. It considered the Court of Appeal decision provided helpful guidance and adapted its guidance to apply to the FTAA "greatest weight" test as follows:[59]

a. While the greatest weight is to be placed on the purpose of the FTAA, we must be careful not to rely solely on that purpose at the expense of due consideration of the other matters listed in (b) to (c): *Enterprise Miramar*, at [41].

b. Clause 17 requires us to consider the matters listed in clause 17(1)(a)-(c) on an individual basis, prior to standing back and conducting an overall weighting in

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[56] *Trustees of the Moititi Rohe Moana Trust v Bay of Plenty Regional Council* [2024] NZCA 134, at [15].

[57] HASHAA, s34(1).

[58] *Enterprise Miramar Peninsula Inc v Wellington City Council* [2018] NZCA 541, at [52]-[53].

[59] Bledisloe North Wharf and Fergusson North Berth Extension, FTAA Panel Decision, 21 August 2025 (*Bledisloe Decision*), paragraphs 120-121.

accordance with the specified direction: *Enterprise Miramar*, at [52] – [53].

c. The purpose of the FTAA is not logically relevant to an assessment of environmental effects. Environmental effects do not become less than minor simply because of the purpose of the FTAA. What changes is the weight to be placed on those more than minor effects; they may be outweighed by the purpose of facilitating the delivery of infrastructure and development projects with significant regional or national benefit, or they may not: *Enterprise Miramar*, at [55].

Purpose of the FTAA

57 The Panel must give the "greatest weight" to the purpose of the FTAA, being:[60]

> To facilitate the delivery of infrastructure and development projects with significant regional or national benefits.

58 TTRL's position is that:[61]

> … if the project will have significant regional or national benefits, then facilitating the delivery of the project must be given greater weight than any competing considerations under clause 6. In practice, this means that if one, or even many, of the other matters to be taken into account under paragraphs (b)-(d) of clause 6 count against the grant of approval, then whatever weight is given to that matter or those matters cannot be greater than the weight given to the purpose of the FTA. Whether that may, in all the circumstances, result in a decision to decline approval will depend on the application of the specific and limited tests set out in section 85 of the FTA.

59 This statement from TTRL could be read as suggesting that the matters in paragraphs (b) – (d) cannot lead to a decision to decline approval. Such a position cannot be correct given the discretionary decline test specifically refers to the marine consent criteria. Further, in our submission, the requirement to give greater weight to the purpose of the FTAA, does not mean there will not be circumstances where the matters in paragraph (b) – (d) are sufficiently significant to support exercise of the discretion to decline. This was the case in the *Delmore* FTAA application where the Expert Panel concluded (in its draft decision) that the adverse impacts of that project were sufficiently significant to be out of proportion to the project's regional benefits (even after giving the greatest weight to the purpose of the FTAA).[62]

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60 FTAA, s3 and sch 10, cl 6.

61 Application, page 313.

62 Delmore Draft Decision, paragraph 588.

60 Based on the approach endorsed by the *Delmore* and *Bledisloe* Expert Panels, our view is that the marine consent criteria should each be considered by the Panel individually, prior to the Panel conducting an overall weighting exercise, in which it must give greater weight to the purpose of the FTAA. However, if the other marine consent criteria are significant, they may outweigh the purpose of the FTAA even after it is given greater weight in accordance with the Clause 6 direction.

61 This means, as discussed earlier, the Panel will first need to enquire into and make a factual finding as to whether the regional or national benefits of the Proposal claimed by TTRL are significant, before conducting the weighting exercise in the manner set out above. For the purposes of determining whether regional or national benefits are "significant", the *Maitahi Village* Expert Panel adopted the following meaning: *"sufficiently great or important to be worthy of attention; noteworthy"*.[63] As noted above, this test requires a factual determination based on the evidence before the Panel on this particular Proposal.

Purpose of the EEZ Act

62 The purpose of the EEZ Act is:[64]

> (a) to promote the sustainable management of the natural resources of the exclusive economic zone and the continental shelf; and
>
> (b) in relation to the exclusive economic zone, the continental shelf, and the waters above the continental shelf beyond the outer limits of the exclusive economic zone, to protect the environment from pollution by regulating or prohibiting the discharge of harmful substances and the dumping or incineration of waste or other matter.

63 In the EEZ Act, "sustainable management" means:[65]

> managing the use, development, and protection of natural resources in a way, or at a rate, that enables people to provide for their economic well-being while:
>
> (a) sustaining the potential of natural resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
>
> (b) safeguarding the life-supporting capacity of the environment; and
>
> (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

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63 Maitahi Village Decision, paragraph 516.

64 EEZ Act, s10.

65 EEZ Act, s10.

64 The sustainable management purpose of the EEZ Act is focused on the use, development and protection of "natural resources". "Natural resources" include "*seabed, subsoil, water, air, minerals, and energy, and all forms of organisms"*.[66]

65 In the context of the STB, those natural resources include (inter alia):

65.1 The minerals that TTRL wishes to mine; and

65.2 The seabed and wind conditions that make it the most valuable natural offshore wind resources for renewable energy generation in New Zealand.[67]

66 The sustainable management purpose of the EEZ Act is also concerned with enabling people to provide for their economic wellbeing and sustaining the potential of natural resources to meet the reasonably foreseeable needs of future generations. We explain later in these submissions why the Proposal is not consistent with these elements of the sustainable management purpose due to its impacts on the potential for offshore wind development in the STB.

International obligations

67 Section 11 provides that "*the EEZ Act continues or enables the implementation of New Zealand's obligations"* under various international conventions relating to the marine environment.[68]

68 New Zealand has international obligations relating to climate change (eg the United Nations Framework Convention on Climate Change and Paris Agreement). As noted earlier, offshore wind represents a generation source that would assist New Zealand to achieve its international greenhouse gas emissions targets.[69]

69 We note there are a range of other international obligations relevant to ecological impacts of the Proposal that are likely to be addressed by other submitters.

EEZ Act policy statements

70 No policy statements have been issued under the EEZ Act for the Panel to consider.

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66 EEZ Act, s4.

67 SOE Caleffi, at [20].

68 Including the United Nations Convention on the Law of the Sea 1982, the Convention on Biological Diversity 1992, the International Convention for the Prevention of Pollution from Ships, 1973 and the Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter 1972.

69 See: section 5Q Climate Change Response Act 2002; and New Zealand's Second Nationally Determined Contribution under the Paris Agreement.

EEZ Act provisions

Section 59 – Consideration of marine consent application

71 Section 59 sets out the matters that the Panel must and must not take into account when considering an application for a marine consent. We address the matters relevant to TOP's submission in the following sections, but do not address all matters covered by Section 59.

s59(2)(a) and (b): Any effects on the environment of allowing the activity, and of other activities undertaken in the area covered by the application or in its vicinity

72 "Effect" is widely defined and includes:[70]

> (a) any positive or adverse effect; and
>
> (b) any temporary or permanent effect; and
>
> (c) any past, present, or future effect; and
>
> (d) any cumulative effect that arises over time or in combination with other effects; and
>
> (e) any potential effect of high probability; and
>
> (f) any potential effect of low probability that has a high potential impact.

73 "Environment" means "*the natural environment, including ecosystems and their constituent parts and all natural resources of New Zealand, the EEZ, the continental shelf and the waters beyond the EEZ and above and beyond the continental shelf*".[71]

74 We address in detail below the effects of the Proposal on the aspects of the natural environment that are of particular concern to TOP, being:

74.1 The geotechnical characteristics of the seabed;

74.2 Seabed morphology; and

74.3 Waves and currents.

75 As a result of these effects on the environment, the Proposal will also have an effect on the ability to harness the natural wind resource in the STB, which we address below in relation to impacts on offshore wind development.

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[70] EEZ Act, s6.

[71] EEZ Act, s4.

s59(2)(a) and (b): Any effects on existing interests of allowing the activity, and of other activities undertaken in the area covered by the application or in its vicinity

76 "Existing interest" means "*the interest a person has in any lawfully established activity, whether or not authorised by or under any legislation, including rights of access, navigation and fishing*".[72]

77 TOP has a lawfully established existing activity in the Proposal area, being its feasibility investigations for the OWF Project detailed above.[73] The area of TOP's feasibility investigations overlaps with the Proposal area. TTRL has failed to identify TOP's existing interest in its Application and has not considered the effects that the Proposal will have on TOP's existing interest. We address those effects later in these submissions.

s59(2)(f): The economic benefit to New Zealand of allowing the application

78 While economic benefits are also relevant within the EEZ Act provisions, care should be taken to avoid 'double counting' such benefits under both the relevant EEZ Act provisions and the FTAA purpose.

s59(2)(g): The efficient use and development of natural resources

79 When considering the efficient use and development of natural resources, the Application considers only the Proposal, and how the proposed seabed mining practices will maximise efficiency. TTRL has failed to consider how the Proposal will impact the use and development of other natural resources within the STB, such as offshore wind, and the opportunity cost that may result if the mining consents are approved. TOP submits that this is a significant oversight, and it is addressed in detail later in these submissions.

s59(2)(h): The nature and effect of other marine management regimes

80 "Marine management regimes" are defined as including "*the regulations, rules and policies made and the functions, duties, and powers conferred under an Act that applies to … [the EEZ]*".[74]

81 There are a range of marine management regimes the Panel will need to consider during its decision-making process, including the regime that will be established by the Bill.

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72 EEZ Act, s4.

73 SOE Caleffi, at [43]-[45].

74 EEZ Act, s7(1).

82 The Bill will establish a permitting regime for offshore renewable energy developments and is expected to be passed into law in the first quarter of 2026,[75] which is around the same time the decision on the Application is made (due 18 March 2026).[76] Once it has received Royal Assent, the Bill will be a "marine management regime" for the purposes of the EEZ Act that must be considered by the Panel.

83 The Supreme Court in *Trans-Tasman Resources Limited v Environmental Protection Authority* held that a decision-maker is required to consider the key features of each marine management regime – being their objectives and the outcomes sought to be achieved – and consider whether the proposal would produce effects inconsistent with the outcomes sought to be achieved.[77]

84 TTRL has failed to consider the Bill as part of its assessment of marine management regimes in the Application (presumably because it has not yet been passed into law). However, the Bill was introduced to Parliament before TTRL lodged its Application, so it ought to have been anticipated by TTRL as a likely relevant consideration.

85 Once the Bill has become law, TOP submits that the Panel must take into account the nature and effect of the Act – which in essence seeks to give greater certainty for developers to invest in offshore renewable energy developments –and consider whether the Proposal would produce effects inconsistent with that.[78] In our submission there is a clear inconsistency between the outcomes that the Bill seeks to achieve versus the Proposal, as we discuss later in these submissions when addressing the impacts of the Proposal on offshore wind development.

86 Other marine management regimes include the RMA and its subordinate documents such as the New Zealand Coastal Policy Statement 2010 (*NZCPS*). The RMA is particularly relevant to TOP's OWF Project because the export cables will pass through the territorial sea and connect to the National Grid. Importantly, Policy 6(1)(g) of the NZCPS requires, in relation to the coastal environment, that the potential of renewable resources, such as energy from wind, are taken into account to meet the reasonably foreseeable needs of future generations.

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75 MBIE, '*At a glance: New Zealand's Energy Package*' dated October 2025, page 6.

76 Minute of the Panel Convenor dated 15 August 2025, at [4].

77 *Trans-Tasman Resources Limited v Environmental Protection Authority* 2021 NZSC 127, at [181].

78 Offshore Renewable Energy Bill, cl 3.

s59(2)(m): any other matter the Panel considers relevant and reasonably necessary to determine the application

87 The Panel has discretion to consider any other matter that is relevant and reasonably necessary to determining the Application.

*s59(5)(*a): *must not have regard to trade competition or the effects of trade competition.*

88 For the avoidance of doubt, TOP's submission is not raising a trade competition issue as TOP and TTRL are not in commercial competition. TOP's submission is concerned with competition for limited resources, which is not trade competition.[79] Therefore, the Panel is not barred from having regard to, and in fact must consider, under other criteria, the matters raised in TOP's comment.

Section 60 – Existing Interests

89 In considering the effects of an activity on existing interests, the Panel must take into account:[80]

89.1 The area that the activity would have in common with the existing interest; and

89.2 The degree to which both the activity and the existing interest must be carried out to the exclusion of other activities; and

89.3 Whether the existing interest can be exercised only in the area to which the application relates; and

89.4 Any other relevant matter.

90 As discussed above, TOP has an existing interest in the STB – its feasibility activities. Its existing interest has been limited to feasibility activities due to the Bill taking longer than anticipated to progress through Parliament and the then Minister Woods' direction to OWF developers to not seek marine/resource consents until the Bill is passed.[81] However, the effects of the Proposal on the seabed in the STB allow the Panel to consider the effects of the Proposal on the natural wind resource and its future uses, particularly given the

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79 Trade competition exists between two entities when there is a "*competitive activity having a commercial element*": *Bunnings Ltd v Queenstown Lakes District Council* [2018] NZEnvC 135, at [34]. Competition for use of limited resources is not trade competition: *Kuku Mara Partnership (Beatrix Bay East) v Marlborough District Council* ENC Wellington W050/02, 14 November 2002, at [33], endorsed more recently by the Environment Court in *Kapiti Coast Airport Holdings Ltd v Alpha Corporation Ltd* [2016] NZEnvC 137.

80 EEZ Act, s60.

81 MBIE Briefing, '*Offshore renewable energy regulatory settings: Proposed phased development*' dated 7 October 2022; Newsroom article, '*Offshore wind developer to seek consent in Taranaki*' dated 20 June 2023 available here: <https://newsroom.co.nz/2023/06/20/offshore-wind-developer-to-seek-consent-in-taranaki/>.

evidence before the Panel that those future uses are well advanced.[82]

91 In our submission, the matters set out at paragraph 89 provide relevant guidance to the Panel when considering the effects of the Proposal on TOP's OWF Project, and TOP has addressed each of these matters in its evidence on the effects of the Proposal on potential for offshore wind development in the STB.

Section 61 – Information Principles

92 The Panel must take into account the following information principles that the decision-makers considering marine consents are directed to follow:[83]

92.1 Base decisions on the best available information;

92.2 Take into account any uncertainty or inadequacy in the information available;

92.3 The need to favour caution and environmental protection if information available is uncertain or inadequate (which requires consideration of an adaptive management approach before refusing consent, except in relation to a marine discharge consent).

93 We address below where TOP considers that TTRL has not presented the "best available information" or there is uncertain and inadequate information provided in the Application.

Conclusion

94 As noted earlier in these submissions, the FTAA and EEZ Act create a somewhat complicated web of legal tests. The fast-track process is not a 'rubber stamp' exercise - it contains rigorous legal tests that the Panel must carefully apply in light of the factual findings the Panel makes on the evidence presented to it.

BENEFITS OF THE PROPOSAL

95 TTRL claims the Proposal will have significant national and regional benefits, primarily economic benefits, but also benefits relating to climate change and Government Policy.[84] TOP's position is that TTRL has not presented the "*best available information*"[85] on the

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82 SOE Caleffi, at [43]-[45].

83 EEZ Act, s61(1). FTAA, sch 10, cl 6(1)(d) excludes application of s61(1)(a).

84 Application, pages i-vii, and xiii – xiv.

85 EEZ Act, s61(1)(b), which must be taken into account as a result of FTAA, s81(3)(l) and sch 10, cl 6(1)(d).

benefits of the Proposal, and has significantly overstated the benefits of the Proposal.

Economic benefits

Issues with NZIER Report methodology and inputs

96 TOP's economic expert, Mr Colegrave, considers the NZIER report[86] does not provide a robust or reliable analysis of the economic benefits of the Project because the model used by NZIER is not appropriate for this purpose. The NZIER Report relies on an input-output (*I-O*) model, which Mr Colegrave considers to be "*unlikely to be adequate for very large, complex, and first-of-their-kind projects like the Proposal*".[87] As Mr Colegrave explains, an I-O model fails to account for "*constraints and real-world feedback loops that moderate the estimated economic impacts of large-scale projects*". One example of those constraints is that labour is largely fixed, so that projects that draw heavily on a region's workforce will displace activity that would have likely occurred otherwise.[88] More specifically, as the Proposal is predicted to cause a spike in employment demand within very narrow industry categories in a relatively small region, it "*will inevitably have complex labour market dynamics that I-O models do not capture*".[89]

97 Further, NZIER itself has acknowledged the limitations with I-O modelling[90] and has previously undertaken Computable General Equilibrium modelling for an earlier version of the Proposal.[91] Despite that background, NZIER has not provided any justification for why a more simplistic I-O model was used in the current report. Unless this change in opinion can be explained by the authors of the NZIER Report, in our submission, these factors mean the Panel must place limited weight on the NZIER Report.

NZIER's Report significantly overstates the economic benefits of the Proposal

98 Mr Colegrave also considers the NZIER report overstates the economic benefits of the Project because:

98.1 It includes induced economic impacts, being spending of project-related wages in the local economy by people directly or indirectly employed as a result of the Proposal. Mr Colegrave considers much of this spending would have

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86 Application, Attachment 2: "Economic impact assessment of TTRL's Taranaki VTM Iron Sands Project NZIER report to Trans-Tasman Resources Limited" 12 March 2025.

87 Statement of Evidence of Mr Fraser Colegrave dated 3 October 2025 (*SOE Colegrave*), at [31].

88 SOE Colegrave, at [37.1].

89 SOE Colegrave, at [42].

90 SOE Colegrave, at [43].

91 SOE Colegrave, at [44].

occurred anyway, regardless of the Project because those people would be employed elsewhere in the economy.[92]

98.2 It assumes that the required workforce can be absorbed without placing pressure on local wages or displacing workers from other sectors so there is no net gain in employment. Mr Colegrave considers these dynamics have the potential to materially affect both the scale and distribution of economic impacts at the local level, and mean that TTRL's claimed employment benefits are overstated.[93]

98.3 It relies on several highly variable inputs to estimate the Proposal's economic impacts, including iron ore prices, fuel costs, and exchange rates. Mr Colegrave considers this static approach overstates confidence in the forecasted benefits of the Proposal given the historical volatility of commodity markets and the long project duration.[94] Mr Colegrave also refers to a report by Sanofex Group, which concludes that TTRL has overstated likely future revenues and underestimates likely costs, as a result.[95]

98.4 It fails to account for deliverability of the Proposal and the likelihood of the claimed benefits being realised. Mr Colegrave explains that TTRL's financial capacity combined with the billion-dollar investment required to start mining operations means there is uncertainty associated with TTRL's ability to deliver the Proposal.[96]

98.5 It doesn't consider the novel nature of the Proposal with no commercial precedent in New Zealand. Mr Colegrave explains the novel nature of the Proposal means that technical feasibility, meeting environmental thresholds, and social licence factors could lead to underperformance (compared to TTRL's assumptions).[97] He says economic analysis for new or untested activities typically involves applying explicit discount factors or scenario testing to reflect technical, regulatory, and market risk, which NZIER has not done.[98]

99 The consequences of NZIER's approach to analysing the economic benefit of the Proposal are significant. Mr Colegrave explains that *only* removing induced impacts from the economic analysis would

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92 SOE Colegrave, at [53].

93 SOE Colegrave, at [85]-[87].

94 SOE Colegrave, at [76].

95 SOE Colegrave, at [84]-[87].

96 SOE Colegrave, at [58]-[71].

97 SOE Colegrave, at [72]-[73].

98 SOE Colegrave, at [74].

result in the economic benefits of the Proposal reducing by 22-29% for the set up phase and for ongoing operations.[99]

100 In our submission, the Panel must reach the view that the economic benefits of the Proposal are *significantly less* than those claimed by TTRL and treat the assessment of economic benefits in the NZIER Report as highly uncertain and, in accordance with section 61(2), utilise the NZIER Report only with considerable caution.

NZIER's Report fails to address any adverse economic impacts of the Proposal

101 In addition to the concerns with the NZIER Report's methodological and input concerns, Mr Colegrave also considers that it is deficient because it only addresses the positive economic impacts of the Proposal and fails to even consider whether the Proposal will have any adverse economic impacts. As well as being relevant to the test of whether to grant or decline the Application, this analysis is also relevant to the Panel's consideration of the marine consent criteria including the purpose of the EEZ Act, the efficient use and development of natural resources and nature and effect of other marine management regimes.

102 Mr Colegrave's evidence identifies that there are a number of potential adverse economic impacts of the Proposal that have not been considered by NZIER, including consequences for other sectors (eg commercial fishing, maritime transport, etc), that he considers feasible and appropriate to assess.[100] We expect other commentors may address those economic impacts in their comments. Nevertheless, in Mr Colegrave's opinion, the lack of consideration of those adverse economic impacts is a material gap in the NZIER report.[101]

103 Given TOP's interests, Mr Colegrave's evidence focuses on the adverse economic impacts of the Proposal on one sector – offshore wind. In his view, based on the TOP evidence addressing the challenges associated with co-existence of seabed mining and offshore wind (covered below), the Proposal represents:[102]

> a genuine opportunity cost; in other words, allowing seabed mining to occur may preclude OWF in the STB for at least the duration of the Proposal's activities, or potentially on a permanent basis if the Proposal creates seabed conditions that are unsuitable for offshore wind development in locations otherwise most suitable for OWF projects.

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99 SOE Colegrave, at [56].

100 SOE Colegrave, at [120].

101 SOE Colegrave, at [119].

102 SOE Colegrave, at [105].

104 In order to assess the scale of that opportunity cost impact, Mr Colegrave compares – at a high level – the potential economic benefits of the Proposal and a 1 GW offshore wind farm in the STB. He acknowledges this comparison is based on I-O modelling of the type not considered appropriate to support an application under the FTAA, although he considers the comparison remains valid because the caveats applying to the results apply to both activities.

105 Mr Colegrave concludes that the comparison shows the offshore windfarm would likely generate more GDP benefit, and more direct employment than the Proposal, but slightly less employment overall (albeit he doubts TTRL's figures in relation to overall employment benefits, as discussed earlier).[103] Accordingly, he concludes therefore that if the Proposal precludes offshore wind in the STB, the Proposal is likely to have an adverse economic opportunity cost impact that is greater than the economic benefits of the Proposal. In addition, given the involvement of the NZ Super Fund, a significant proportion of the economic benefits of TOP's OWF Project would accrue to New Zealanders, rather than an overseas company.

106 Mr Colegrave's expert opinion is that, once opportunity costs are taken into account, the Proposal's overall economic benefits are not regionally or nationally significant.[104]

107 In our submission, the opportunity cost impact of the Proposal on offshore wind must be considered by the Panel in relation to whether to exercise its discretion to grant the marine consents and what conditions to impose if it does grant the marine consents (both informed by the marine consent criteria).

NZIER's Report is not the "best available information" on the economic benefits of the Proposal

108 As discussed above, the Panel must take into account the need to "*base decisions on the best available information*" and "*any uncertainty or inadequacy in the information available*".[105] Given the benefits of the Proposal are critical to the decision-making tests the Panel must apply (including the purpose of the FTAA), it is essential the Panel's determination on the extent of the Proposal's benefits is based on robust and reliable information.

109 In our submission, given the issues identified by Mr Colegrave and summarised above, the Panel cannot rely on the NZIER Report to substantiate the economic benefits claimed by TTRL.

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[103] SOE Colegrave, at [113].

[104] SOE Colegrave, at [115].

[105] EEZ Act, s61(1)(b) and (c). FTAA, sch 10, cl 6(1)(d).

Climate change benefits

110 While the effects of the Proposal on climate change are not relevant considerations under the EEZ Act,[106] they are relevant to the assessment of benefits of the Proposal under the FTAA.[107] Accordingly, in our submission, it is open to the Panel to consider whether the Proposal will support climate change mitigation (ie through the reduction of greenhouse gas emissions) or not.

111 TTRL claim that the Proposal will support climate change mitigation by providing critical minerals for clean energy technologies, and through a mining process that has "*less than half the carbon emissions compared to traditional land-based mining*".[108]

112 TTRL has not substantiated its claims that its mining process will have significantly reduced greenhouse gas emissions, and therefore support climate change mitigation. Mr Colegrave explains that the Proposal will result in significant carbon emissions, including from the use of use 7,000 tonnes of intermediate fuel (IFO380) per month.[109]

113 TTRL has not assessed whether the Proposal will release carbon stored in marine sediments, which might offset any of TTRL's claimed climate change benefits.[110]

114 Further, even if the Proposal may support climate change mitigation to some extent, Mr Colegrave explains that it presents an opportunity cost in terms of the potential for offshore wind to support climate change mitigation.[111] As Mr Caleffi explains in his evidence, offshore wind has low lifecycle emissions, with a short payback time.[112] Over its lifetime, a 1 GW OWF would reduce carbon emissions by 58.5 $MtCO_2$-e.[113] Offshore wind is therefore one of the

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106 EEZ Act, s59(5)(b).

107 FTAA, s22(2)(a)(vii).

108 Application, page vii, says: "*Producing only 62kg CO^2per tonne of concentrate, TTR's operations have less than half the carbon emissions compared to traditional land-based mining (average 120 to 250kg CO^2/t) which is dominated by process driven landside activities*".

109 SOE Colegrave, at Table 2.

110 Research conducted by NIWA for the Parliamentary Commissioner for the Environment indicated that disturbance of marine sediments could have a major impact on the carbon cycle: https://pce.parliament.nz/media/cdoodc0l/niwa-organic-carbon-stocks-and-potential-vulnerability-in-marine-sediments-around-aotearoa-new-zealand.pdf

111 SOE Colegrave, at [116]-[118].

112 SOE Claeffi, at [22].

113 SOE Colegrave, Table 2.

best technologies to help achieve New Zealand's target of net-zero emissions by 2050.[114]

115 Accordingly, in our submission, there is little evidence that the Proposal will provide climate change mitigation benefits, and in fact the Proposal may prevent climate change mitigation benefits being achieved through its potential impacts on offshore wind development.

Government policy benefits

116 Finally, we note that TTRL also claim that the Proposal will align with a range of what it says is Government policy.[115]

117 The FTAA acknowledges that identification "*as a priority project in a central government, local government, or sector plan or strategy … or a central government infrastructure priority list*" may support the significance of the benefits of a project.[116]

118 Many of the documents identified by TTRL cannot not be called Government policy, and simply identify the potential mineral resource.[117] In our submission, those documents are not relevant to the benefits of the Proposal.

119 We agree the Minerals Strategy for New Zealand to 2040[118] could be considered a central government plan or strategy. However, it does not identify the Proposal as a priority project, it simply identifies the potential mineral resource. Accordingly, we submit it is not relevant to the benefits of the Proposal.

120 Further, even if the Proposal may be consistent with some Government policy, it presents an opportunity cost in terms of the potential for other clear Government policy relating to offshore wind (addressed earlier in these submissions) to be realised.

121 In conclusion, we submit that Government policy does not substantiate TTRL's claims that the Proposal will have significant national or regional benefits, particularly given the absence of factual evidence substantiating those benefits (as discussed above).

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114 SOE Caleffi, at [22].

115 Application, page xiii – xv.

116 FTAA, s22(2)(a)(i).

117 For example, the MBIE Briefing to the Minister of Resources and the GNS Report Mineral Potential of New Zealand.

118 MBIE, '*Minerals Strategy for New Zealand to 2040*' January 2025, available here: <https://www.mbie.govt.nz/assets/a-minerals-strategy-for-new-zealand-to-2040.pdf>.

IMPACTS OF THE PROPOSAL

122 In this section of our legal submissions, we address:

122.1 Impacts of the Proposal on the environment; and

122.2 Impacts of the Proposal on the ability to use the natural resource of the STB for offshore wind development.

123 The adverse economic impacts of the Proposal (including opportunity costs) have been covered in the section above.

Impacts on the environment

124 The Proposal will have a number of impacts on the environment (which, as noted above, means the "natural environment" under the EEZ Act). TOP's case is focused on the Proposal's impacts on the geotechnical characteristics of the seabed, seabed morphology and waves and currents. However, TOP acknowledges that other commentors will be addressing a range of other impacts of the Proposal on the environment, which are also relevant to the Panel's decision-making (particularly the collective adverse impacts relevant to the 'discretionary decline' test).

Seabed morphology

125 Seabed morphology refers to the physical shape, texture, and features of the seafloor. In this section, we address:

125.1 The creation of pits and mounds as a result of the Proposal's mining activities, and migration of those pits and mounds over time; and

125.2 The infilling of pits and deflation of mounds by natural processes over time after completion of the Proposal's mining activities.

Creation of pits and mounds

126 TTRL says the Proposal will create remnant mounds (8-9 m high) and pits (9-10 m deep) at the start and end of each mining lane.[119]

127 As explained in Dr McComb's evidence, TTRL's assessment is based on over-simplified assumptions:

127.1 *Bulking and settling:* Dr McComb explains that naturally compacted sediments occupy less volume than

[119] Report 5 – Hume, T., Gorman, R., Green, M., MacDonald, I. '*Coastal stability in the South Taranaki Bight - Phase 2 Potential effects of offshore sand extraction on physical drivers and coastal stability*'. NIWA Client Report No: HAM2013-082, October 2013 (updated November 2015).

processed/dumped sediments, and TTRL has not accounted for this volumetric difference.[120]

127.2 *Recoverable ore percentage:* Dr McComb explains that TTRL has assumed a uniform value of 10% recoverable ore and has not accounted for the likelihood that percentage of recoverable ore will vary across the Mining Area, primarily due to the way that the iron sands were deposited there.[121]

128 Dr McComb considers those over-simplified assumptions mean TTRL has understated the impacts of the Proposal on seabed morphology, such that the mounds created by mining are likely to be larger than estimated by TTRL.[122] As the morphology of the seabed (and certainty regarding that morphology) is an important design input for an offshore wind farm, these impacts will have direct implications for offshore wind development as discussed below.

Pit and mound migration

129 TTRL previously estimated that the pits created by the Proposal may migrate by 10m per year, however that estimate was not based on any analytics evidence and the impact is not analysed in the current Application.[123]

130 As a result, Dr McComb considers there is considerable uncertainty as to the geographical extent of the impacts of the Proposal on the morphology on the seabed, and therefore implications for offshore wind development.

Pit infilling and mound deflation

131 TTRL's assessment (based on NIWA modelling) is that the pits and mounds created by the Proposal will reduce by 90% within 100 years for pits and 20 years for mounds.[124]

132 As explained in Dr McComb's evidence, the NIWA modelling is based on a number of inaccuracies:[125]

132.1 *Density difference between seawater and sediment*: The NIWA modelling is based on a standard quartz sand density, which does not represent the density of heavy mineral sands present in the Proposal area.

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120 Statement of Evidence of Dr Peter McComb dated 3 October 2025 (*SOE McComb*), at [23]-[24].

121 SOE McComb, at [25].

122 SOE McComb, at [26]-[28].

123 SOE McComb, at [29]-[30].

124 Application, at 5.4.2.4.

125 SOE McComb, at [46]-[65] and [70]-[76].

132.2 *Grain size*: The NIWA modelling is based on grain size data from two sites within the Proposal area and one outside the Proposal area. There is no evidence to support the position that such data is representative of the whole 66km^2 Proposal area. Dr McComb considers it is likely the grain size is more variable over the Proposal area.[126]

132.3 *Hydraulic roughness of the seabed*: Hydraulic roughness enhances sediment suspension by the waves and currents. The NIWA modelling is based on ripple height data from two sites within the Proposal area and one outside the Proposal area. The ripple height at one of those sites within the Proposal area (35m depth) was anomalously high, resulting in hydraulic roughness for that depth being overestimated in the modelling.

132.4 *Arbitrary scaling factors*: Arbitrary scaling factors, such as the anomalously high value of 12cm set by NIWA for ripple height, may have been applied to correct for inherent bias.

132.5 *Assumptions without evidence*: It has been assumed, without evidence, that the seabed adjacent to the pits is unconsolidated and provides an unlimited sediment supply.

133 Dr McComb's view is that these inaccuracies in the NIWA modelling means that the Panel can have little confidence in the timeframes for pit infilling and mound deflation provided by TTRL.[127]

134 Dr McComb further explains that TTRL's predictions are not consistent with long term data from the Taranaki area. Indeed, he notes that the mound deflation rates are four times faster than the rates measured at Port Taranaki which is in shallower water, with a slightly less energetic wave climate.[128]

135 Dr McComb concludes that natural remediation of the pits and mounds created by the Proposal will take at least five times longer than asserted by TTRL in shallow parts of the Mining Area, and natural remediation is unlikely to be effective in the deeper parts of the Mining Area. This means the impacts of the Proposal will essentially be permanent. This will in turn have implications for the ability to develop and use the STB, including importantly for offshore wind development, as discussed below.

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[126] SOE McComb, at [59].

[127] SOE McComb, at [65].

[128] SOE McComb, at [73].

Seabed geotechnical characteristics

136 As identified in Mr King's evidence, the Application provides very limited geotechnical information, and no general assessment of geotechnical effects of the Proposal.[129]

137 Nevertheless, even on the limited geotechnical information, Mr King considers it is clear the Proposal will have the following adverse impacts on the geotechnical characteristics of the seabed:

137.1 *Geotechnical data collection*: The Proposal will render all existing geotechnical data for the area obsolete within the upper 11m of the mined seabed. It will mean that new geotechnical investigations to characterise the upper 11m of the seabed cannot be completed until mining is complete.[130]

137.2 *Strength of the seabed*: Mr King explains that the Proposal will deposit a loose slurry of material onto the seabed, and that material will have significantly reduced density, and therefore reduced strength, compared to the undisturbed material.[131] Further, the pits and mounds are likely to have reduced stability.[132]

137.3 *Settlement of the seabed*: Mr King also explains that the material is likely to be more prone to settlement and to non-uniform settlement (creating the potential for large differential settlements over short distances).[133]

137.4 *Susceptibility to liquefaction:* The Application contains no assessment of the current liquefaction risk or the likely liquefaction risk following mining. Nevertheless, given the redeposited material will have a lower density than the removed material, Mr King considers the Proposal will inevitably increase the liquefaction risk in the mined area.[134]

137.5 *Seismic response*: The Application also contains no assessment of how the pits and mounds that would be created by the Proposal would behave under seismic loading. Nevertheless, given the redeposited material will be in a loose composition, Mr King considers the Proposal will increase the

[129] Statement of Evidence of Mr Regan King dated 3 October 2025 (*SOE King*), at [12].

[130] SOE King, at [28].

[131] SOE King, at [31]-[32].

[132] SOE King, at [32.3].

[133] SOE King, at [34] and [38].

[134] SOE King, at [53]-[58].

likelihood of slope failure and settlement under seismic loading.[135]

138 It is clear the Proposal will significantly alter the geotechnical characteristics of the seabed within the Mining Area – reducing strength, increasing the likelihood of settlement, and increasing susceptibility to liquefaction and slope failure/settlement during seismic events. As the geotechnical properties of the seabed are an important design input for an offshore wind farm, these impacts will have direct implications for offshore wind development as discussed below.

Waves and currents

139 As identified in Dr McComb's evidence, TTRL has failed to assess the effects of the Proposal on local waves and currents.[136]

Waves

140 Dr McComb considers TTRL's modelling of impacts on waves is likely to be inaccurate due to issues with its assumptions regarding the size of pits and mounds (addressed above) and the likelihood that the post-mining surface will be non-uniform (as opposed to the uniform assumptions in modelling conducted by TTRL).[137] Dr McComb considers the Proposal has the potential to result in larger coastal wave heights than predicted by TTRL and larger and more confused sea states. These changes to the wave climate have the potential to impact navigational safety in the area.[138]

Currents

141 Dr McComb considers TTRL's modelling is too high resolution to assess the potential impacts of the Proposal on currents.[139] The non-uniform seabed surface post-mining will also influence ocean currents. Dr McComb notes that a mound of 8-9m in height in water of 30-40m depth is expected to result in a localised increase in current speed of 25-35%.[140] This impact has not been considered by TTRL and has the potential to impact conclusions regarding other impacts (eg mound deflation rates).

Conclusion on waves and currents

142 As discussed earlier in these submissions, the Panel must take into account the need to "*base decisions on the best available information*" and "*any uncertainty or inadequacy in the information*

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135 SOE King, at [59]-[60].

136 SOE McComb, at [33].

137 SOE McComb, at [37]-[42].

138 SOE McComb, at [38]-[42].

139 SOE McComb, at [34]-[36].

140 SOE McComb, at [36].

available".[141] Based on Dr McComb's evidence, in our submission, the Application does not represent the best available information and there are significant gaps in information and uncertainty as to the impacts of the Proposal of waves and currents.

143 There is a real potential of significant impacts on navigational safety, which – at the very least – requires further information to assess those impacts. The impacts of the Proposal on waves and currents also have flow-on effects for the ability to use the natural resources of the STB for offshore wind development, which we discuss below.

Geographic extent of impacts on the environment

144 As noted earlier, the Proposal will have direct impacts in an area that is much broader than the Mining Area, comprising:

144.1 The Mining Area (~66 km^2);

144.2 TTRL's proposed anchoring buffer zone (Condition 37); and

144.3 TTRL intended safety exclusion zone around its vessels (~1.85km).[142]

145 Further, the impacts of the Proposal on seabed morphology, geotechnical characteristics and waves and currents are not confined to the Mining Area. As noted above, the pits and mounds are expected to migrate over time, such that the extent of the impacts of the Proposal is unknown. Similarly, although the effects of geotechnical characteristics will reduce with distance, the extent of impacts of the Proposal at different setbacks is unknown.

146 The result is high levels of uncertainty regarding the geographic extent of the impacts of the Proposal on the environment. These uncertainties have direct implications for the development of an offshore wind farm as discussed below.

Duration of impacts on the environment

147 TTRL says the impacts of the Proposal are "*limited to the duration over which the extraction activities occur (plus a short window of recovery following sediment excavation). Put another way, there are no "legacy effects" … meaning that once the activity ceases, the environment will return to normal very quickly*".[143]

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[141] EEZ Act, s61(1)(b) and (c). FTAA, sch 10, cl 6(1)(d).

[142] Application, at 5.13.6.4.

[143] Application, page 328.

148 This view fails to recognise the physical impacts of the Proposal on the seabed morphology and geotechnical characteristics are long-lasting and potentially "legacy effects".

149 Dr McComb's evidence addresses the time period over which the non-uniform seabed surface resulting from mining might naturally remediate and concludes that natural remediation of the pits and mounds created by the Proposal will take much longer than the 100 and 20 years (respectively) asserted by TTRL. In fact, the impacts will be effectively permanent (that is, natural remediation of the pits and mounds will take at least five times longer than asserted by TTRL in shallow parts of the Mining Area, and is unlikely to be effective in the deeper parts of the Mining Area). There is no suggestion that the geotechnical impacts of the Proposal will remediate over any reasonable period either.

150 Accordingly, in our submission, TTRL's position that the Proposal will have no legacy effects is incorrect.

Conclusion on environmental impacts

151 In conclusion, TOP submits that the Proposal will have significant effects on seabed morphology, geotechnical characteristics of the seabed and waves and currents, both within and adjacent to the Proposal area, and these effects are effectively long term or near permanent impacts.

Impacts on Offshore Wind Development

152 The Application does not consider impacts of the Proposal on the use of the STB resource for offshore wind development, although it does acknowledge that offshore wind installations are an emerging commercial activity in the STB.[144]

153 While the Application does not acknowledge effects on the offshore wind sector, it does assess the impacts of the Proposal "*for any future deployment and founding of mobile jack-up drill rig platforms used in the oil and gas industry*".[145] It concludes that the Proposal "*will have no influence on the design of the foundations for any fixed platform structures in the future that may be located within the project area"*.[146] While this assessment is directed at the oil and gas industry, it could be read as applying to similar equipment which is used in other sectors, including the offshore wind sector. Mr King explains in his evidence that in fact the Proposal would add additional risks to the use of jack-up vessels in and around the Mining Area[147] and significant impacts on the design of wind turbine

[144] Application, Executive Summary, page v.

[145] Application, at 5.14.4. Report 32: OCEL, 2015. *"Implications of Loose Tailing Seabed Material on Future Jack-Up Deployment in the South Taranaki Bight".*

[146] Application, page 261.

[147] SOE King, at [65].

foundations.[148] Accordingly, in our submission, the Application does not provide the "best available information" on this topic and the Panel should prefer the evidence presented by TOP.

154 In this section we address the impacts of the Proposal on the ability to use the natural resource of the STB for offshore wind development as explained in the TOP evidence.

155 When considering impacts on the development of offshore wind, it is useful to do so utilising the general timeline for development of an offshore windfarm provided by Mr Perry which includes approximately 6-7 years for the planning phase and approximately 3-4 years for construction phase for an OWF of the scale of TOP's OWF Project.[149] Applying that timeline to New Zealand's regulatory context under the Offshore Renewable Energy Bill, the approximate timeline for TOP's OWF Project is:

155.1 Feasibility permit application: early 2026;

155.2 Feasibility investigations under 7-year feasibility permit: ~2026 – 2032;

155.3 Commercial permit application: ~2032; and

155.4 Construction and operational activities under 40-year commercial permit: ~2032 - 2072.

156 If TTRL is granted marine consents in 2026 with a 10 year lapse date (as sought), there will be uncertainty as to whether the Proposal will proceed until 2036 and seabed mining could continue until at least 2056 (if the 20 year mining duration is conditioned). That uncertainty would make it difficult for TOP to continue its feasibility investigations until after 2056, or 2036 if the consent lapsed. In both scenarios, TOP's own feasibility permit would have expired a number of years earlier.

157 It is the combined evidence of Mr Perry, Mr King and Dr McComb that the Proposal will:

157.1 Have effects on the seabed morphology, geotechnical characteristics of the seabed and waves and currents in the Mining Area plus buffer and exclusion zones (see paragraph 138 above) that mean that development of an offshore wind farm will be either technically impracticable or commercially non-viable;

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[148] SOE King, at [68].

[149] Statement of Evidence of Mr James Perry dated 3 October 2025 (*SOE Perry*), at [48].

157.2 Have effects (on the seabed morphology, geotechnical characteristics of the seabed and waves and currents) in a broader area of the STB. The extent and magnitude of those effects is uncertain, but that uncertainty will make development of an offshore wind farm in adjacent areas highly unlikely; and

157.3 Create effects associated with operational mining vessel presence and safety risks that would require careful management if the activities were to occur in adjacent areas.

158 These impacts for offshore wind development arise from:

158.1 *Uncertainty for baseline investigations*: Given the Proposal would completely alter the geotechnical characteristics of the seabed, it would not be possible to undertake the geotechnical investigations necessary to inform the design of an offshore wind farm until after mining works have been completed.[150] Similarly, it would be difficult to undertake baseline environmental assessment to inform consent applications, and environmental monitoring during the operational phase, in such a changing environment.[151]

158.2 *Design and cost implications*: The Proposal's impacts on the environment will have significant impacts on the design and cost of almost all aspects of an offshore wind farm: wind turbine foundations, scour protection for foundations, the J-tubes or I-tubes that support the cable running down the side of the foundation, and both the interarray cables (between wind turbines and the offshore substation) and the export cables (between the offshore substation and land).[152] There will also be impacts on the procurement of the vessels used for installation because of uncertainty over the site conditions.[153]

158.3 *Maritime coordination:* During construction, the high number of vessels and large distances required between vessels would create challenges for efficient construction and managing navigation safety risks.[154] During operation, setbacks would also need to be maintained between vessels

[150] SOE King, at [28].

[151] SOE Perry, at [29].

[152] SOE Perry, at [30]-[36] and [41]-[46].

[153] SOE Perry, at [37]-[40].

[154] SOE Perry, at [52]-[55].

to ensure efficient and safe operation.[155] A joint industry coordination function would be required.

158.4 *Protection from damage:* During operation on an offshore wind farm, there would be a risk of damage to foundations and cables from seabed mining activities. A setback distance would need to be maintained to prevent this risk.[156]

159 With these effects and uncertainties, it is the evidence of Mr Perry that it would not be feasible for an offshore wind farm to be developed in the Mining Area plus buffer and exclusion zones (see paragraph 138 above). Even outside of that area, significant uncertainties and risks remain, such that it is highly unlikely that an offshore wind farm would secure investment or funding if the Proposal is approved.

160 This risk is not fanciful. As Mr Caleffi explains, a number of offshore wind developers have already left the New Zealand market because of ongoing uncertainties, including BlueFloat who cited the overlap of seabed mining and offshore wind interests as a reason for its departure.[157]

Conclusion on the impact of the Proposal on offshore wind development potential

161 The offshore wind sector in New Zealand is at a critical juncture – with investors having already left New Zealand due to uncertainty regarding investment conditions. The Proposal represents a serious risk to the ability to progress offshore wind as a key tool in New Zealand's climate change, energy security and other policy goals. The STB provides the best resource for development of an offshore wind farm in New Zealand. The evidence from TOP is clear. The impacts of the Proposal are significant, with a real likelihood that the Proposal would preclude offshore wind development, with nationally significant adverse economic effects and the potential for multi-generational consequences in terms of New Zealand security of energy supply and ability to meet our climate change targets.

[155] SOE Perry, at [58]-[61].

[156] SOE Perry, at [62]-[66].

[157] SOE Caleffi, at [60].

ABILITY FOR CONDITIONS TO MANAGE ADVERSE IMPACTS

162 TOP considers the following changes to TTRL's proposed conditions of consent might assist with reducing some of the opportunity cost impact of the Proposal outlined above, although the Proposal would still represent a significant risk to offshore wind development in the STB:

162.1 *Lapse date*: Reduce the 10-year lapse date sought by TTRL to two years. This amendment to the conditions may help to mitigate the opportunity cost impact of the Proposal on offshore wind by ensuring there is certainty as to whether the Proposal will be proceeding (or not) as soon as possible. TTRL has indicated in its Application that it will make its final investment decision over the first year, with the following 2-3 year period for pre-commencement environmental monitoring, commissioning, recruitment and construction.[158] If this lapse date is imposed, it would also be prudent to include an advice note or other direction with the conditions that ensures there is clarity regarding the nature of activities that are capable of amounting to having 'given effect' to the consent, so as to avoid a speculative consent for the Proposal cauterising a large section of the STB from use. For a two year lapse period, that advice note would require implementation of pre-commencement conditions.

162.2 *Project duration and area*: Add conditions that explicitly confine the scope of the activity to the extent that TTRL has suggested in its Application, but not reflected in its proposed conditions. The conditions would confine the mining activity to a 20 year period[159] and a 66 km^2 area of the STB[160] defined accurately by coordinates. This condition would partially mitigate the opportunity cost impact of the Proposal on offshore wind by ensuring there is certainty as to the duration and geographical extent of the impacts of the Proposal.

163 TOP's experts have also considered what changes to TTRL's proposed conditions of consent would reduce the magnitude of the adverse impacts outlined above, and some potential conditions have been outlined in their statements of evidence. However, at this time, TOP has been unable to identify conditions that would manage the impacts of the Proposal to the extent the impacts would no longer be significant.

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158 Application, page iii.

159 Application, page iii.

160 Application, page 363.

OVERALL CONCLUSION ON APPLICATION OF THE LEGAL TESTS

164 In conclusion, based on the material currently before the Panel, we submit the Panel must consider the marine consent criteria in its decision-making as follows:

164.1 Information principles (s61, EEZ Act): The Panel does not have the best available information on the benefits or impacts of the Proposal, and will need to take into that uncertainty in its decision-making.

164.2 Existing interests (s59(2)(a) and (b) and s60, EEZ Act): The Panel must take into account impacts on TOP's existing feasibility studies in the STB. The Panel must take into account the geographical overlap between the Proposal and TOP's OWF Project, the degree to which the activities cannot co-exist as set out in TOP's evidence, and the evidence that the STB is the best location in New Zealand for an offshore wind farm.

164.3 Other marine management regimes (s59(2)(h), EEZ Act): The Panel must take into account the regime that will be established by the Offshore Renewable Energy Bill, and the Government's intent to provide certainty for offshore wind farm development.

164.4 Efficient use and development of natural resources (s59(2)(g), EEZ Act): The Panel must consider whether enabling the Proposal now would preclude more efficient development in the future.

164.5 Effects on the environment (s59(2)(a) and (b), EEZ Act): The panel must take into account the significant and long-term effects of the Proposal on seabed morphology, geotechnical characteristics of the seabed, and waves and currents covered in the evidence for TOP.

164.6 Purpose of the EEZ Act (s10): In our submission, the Proposal is not consistent with the purpose of the EEZ Act as it does not "*manag[e] the use… of natural resources in a way… that enables people to provide for their economic wellbeing*" or "*sustain[n] the potential of natural resources (excluding minerals) to meet the reasonably foreseeable needs of future generations".*

164.7 Purpose of the FTAA (s3): In our submission, the Proposal is not consistent with the purpose of the FTAA and the Proposal does not have "*significant national or regional benefits*" when the evidence for TOP (including on the opportunity cost for offshore wind development) is considered.

165 In terms of the ultimate question before the Panel – whether to grant or decline the Application for marine consents – in our submission, TTRL has overstated the benefits of the Proposal and has understated relevant impacts of the Proposal, such that the adverse impacts of the Proposal are sufficiently significant to be out of proportion to the Proposal's benefits. Accordingly, TOP submits that, as currently proposed, the Panel should exercise its discretion to decline the Application.

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6 October 2025