



16 February 2017

Mr Richard Johnson
Manager EEZ Applications
Environmental Protection Authority
Private Bag 63002
Wellington 6140

Dear Richard

The Ministry of Business, Innovation and Employment's response to the Decision-Making Committee's request for advice under Section 44 of the EEZ Act

On 26 January 2017, the Decision-Making Committee (DMC) for Trans-Tasman Resources Limited's (TTR) marine consent applications (EEZ000011) wrote to the chief executive of the Ministry of Business, Innovation and Employment (MBIE) seeking advice. That request is copied below:

"The DMC is requesting the following advice and information from the Ministry of Business, Innovation and Employment (MBIE) under section 44 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (the EEZ Act) to help it understand the nature and effect of other marine management regimes that may be involved in managing the effects of TTRL's proposed project:

1. Advice on MBIE's position with respect to the issues raised in the Origin Energy Resources Kupe NZ Ltd (OERKL) submission about the effects arising from the overlap in permit areas. A copy of the submission submitted by OERKL is attached to this letter.
2. Advice on any conditions being imposed by MBIE on, or duties required of, either permit holder (TTRL or OERKL) to manage the operational, risk, or liability issues.
3. Advice on any reporting requirements imposed on TTRL with respect to the exercise of its minerals permit."

This response addresses each of those three questions in turn below.

MBIE is pleased to be able to assist with this request and is scheduled to appear before the DMC on 24 February to discuss this.



Firstly, the DMC asked for “Advice on MBIE’s position with respect to the issues raised in the Origin Energy Resources Kupe NZ Ltd (OERKL) submission about the effects arising from the overlap in permit areas.”

MBIE’s response

Under the Crown Minerals Act 1991, the Minister of Energy and Resources may grant mineral permits over areas already subject to a petroleum permit (or vice versa). Such a decision is consistent with the purpose of the CMA which is to efficiently allocate mineral rights for the benefit of New Zealand.

TTR’s Mining Permit MP 55581 and OERKL’s Petroleum Mining Licence PML 38146 overlap each other. We note the producing Kupe Wellhead Platform and pipeline are not overlapped by TTR’s permit but that the TTR permit does overlap one plugged and abandoned well (Kupe-South 4).

MBIE regards the issues raised in the OERKL submission on TTR’s marine consent application to be, in general terms, in line with the concerns expressed by OERKL to MBIE when TTR applied for its Mining Permit in 2013 and which was granted in May 2014. These issues were subject to considerable analysis and consideration by MBIE.

OERKL requested a number of conditions be imposed on TTR’s Mining Permit, and MBIE notes that OERKL now seeks more conditions be imposed on the marine consent (if granted). We also note OERKL now seeks a 1.5km exclusion zone around the Kupe Wellhead Platform compared to the 1.24km exclusion zone it originally sought in its submission on TTR’s Mining Permit application.

MBIE remains satisfied that the existing conditions it imposed in the TTR mining permit (MP55581) meet the needs and protect the rights, of both OERKL and TTR within the terms and constraints of the CMA.

MBIE does not consider that the conditions proposed by OERKL in its submission on TTR’s marine consent application would fundamentally conflict with the conditions and work programme already set out in TTR’s mining permit. However, MBIE is concerned that some of the conditions would affect TTR’s ability to efficiently mine the iron sand resource. These concerns are set out below.

1. The imposition of 500m exclusion zones around the plugged and abandoned wellheads and a 1.5km exclusion zone around other infrastructure (as requested by OERKL) would effectively sterilise portions of the iron sand resource. Only a single wellhead is located within the TTR mining permit. Other wellheads are outside the permit area. MBIE considers mining proximate to the abandoned wellhead to be an operational issue, which can be managed by communication between both parties regarding a suitably selective mining method and precisely locating the wellhead prior to mining.

Mining can only be conducted within the Mining Permit area. This means that it should be straightforward for TTR’s operations to avoid infrastructure outside the permit area (the Momoho wellhead is 370m and the Kupe Platform 1.14km at their closest distance from the permit area). MBIE notes that in previous correspondence, OERKL proposed a 1.24km exclusion zone but now seeks a 1.5km exclusion zone (neither of



which MBIE considers to be necessary). The permit areas, infrastructure and proposed exclusion zones are shown in Appendix I.

2. OERKL, in its submission on the marine consent application, is seeking a number of conditions that would assert its primacy in the permit area, e.g. "OERKL operations should be given precedence for all operations conducted in the PML #38416" (condition xlvi in Section 6 of the AMOG report provided with the OERKL submission and submitted as a necessary condition).

Both TTR and OERKL legitimately hold a Mining Permit and Mining Licence respectively and MBIE considers conditions should not give particular preference to one operation.

Any activity conducted by OERKL within its permit area regarding further exploration and possible development would require significant planning and indeed marine consents, which should provide opportunity for OERKL to communicate those plans to TTR with adequate time for mutually acceptable arrangements to be made.

As stated, MBIE considers that sufficient conditions are already in place in TTR's mining permit to protect OERKL's interests. Where there are conflicting interests MBIE would expect both parties to negotiate to resolve any issues and in the event of no resolution there is provision under the TTR's mining permit for arbitration.

MBIE has maintained the position from the start that the two parties should negotiate a 'Cooperation Agreement' in regard to operational matters, in mutual good faith. Such a co-operation agreement negates the need to insert specific conditions in either the mining permit or marine consent.

In accordance with both the CMA and the Minerals Programme, MBIE would expect both OERKL and TTR to act in a manner that is in accordance with good industry practice, maximises the depletion of minerals and provides a fair financial return to the Crown.

On 6th September 2016, MBIE explained key imperatives of the CMA and Minerals Programme in a response to a previous section 44 request. This is copied below with emphasis added on key points:

1. The Crown Mineral Act 1991 (CMA) provides for:
 - a. the **efficient allocation of rights** to prospect for, explore for, and mine Crown owned minerals; and
 - b. the effective management and regulation of the exercise of those rights; and
 - c. **the carrying out, in accordance with good industry practice, of activities in respect of those rights;** and
 - d. a fair financial return to the Crown for its minerals.
2. The Minerals Programme for Minerals (Excluding Petroleum) 2013 states:
 - a. The Crown's test to assess a mining permit application includes whether the permit applicant will "***economically deplete the mineable mineral resource or deposit to the maximum extent practicable in accordance with good industry practice***" (Clause 10.1(3)(c)); and
 - b. An operational aspect of good industry practice is defined as "*Exploration and appraisal activities, mine development and mining operations are designed and conducted to **maximise economic recovery and minimise sterilisation and***



waste, within reasonable technical and economic constraints" (Clause 1.03(10)).

Secondly, the DMC asked for "Advice on any conditions being imposed by MBIE on, or duties required of, either permit holder (TTRL or OERKL) to manage the operational, risk or liability issues."

MBIE's response

When TTR applied for its Mining Permit, OERKL expressed concerns in a submission and, to address these concerns, TTR and MBIE agreed on conditions to be included in the permit. Specifically, conditions 13 to 17 were included in Schedule 1 of the permit and two items were added to the work programme in Schedule 3. These conditions and items were amended in line with the requirements and intent of the CMA and the Minerals Programme.

The conditions imposed in Schedule 1 under 'Conduct of Activities in the Permit Area' address OERKL's concerns in general terms, if not with the specificity OERKL sought. For your reference, these conditions are:

"CONDUCT OF ACTIVITIES IN THE PERMIT AREA

11. *While conducting activities under the permit, the permit holder must not:*
 - a. *unreasonably interfere with or endanger operations under any existing licence or permit issued or maintained under the Continental Shelf Act 1964, Petroleum Act 1937 or Crown Minerals Act 1991;*
 - b. *cause serious damage to any mineral, which is the subject of a licence or permit held by another person in the permit area;*
 - c. *claim any mineral that the permit holder may discover while conducting operations under the permit, other than the minerals covered by the permit.*
12. *While conducting activities under the permit, the permit holder must consult and coordinate its activities with other users of the area for navigation and safety purposes.*
13. *Where the area of the permit overlaps with petroleum mining licence 38146 (PML 38146), the permit holder shall conduct its operations (including timing and location) in a manner that will reasonably enable the licensee of PML 38146 to undertake any activities authorised under PML 38146.*
14. *If given reasonable notice by the licensee of PML 38146, the permit holder shall conduct its operations (including timing and location) in a manner that will reasonably avoid, or minimise, any impact on visual clarity within the waters close to any infrastructure associated with PML 38146 so as to enable visual inspection of that infrastructure by the licensee of PML 38146.*
15. *The permit holder shall undertake regular monitoring, as appropriate, after the commencement of mining operations, to enable assessment of any adverse effect of mining on the infrastructure associated with PML 38146.*
16. *The permit holder shall, to the satisfaction of the Chief Executive, report annually on the monitoring undertaken in accordance with clause 15. The permit holder shall, if requested by the licensee of PML 38146, provide the licensee with copies of any monitoring report within a reasonable timeframe.*
17. *If a dispute arises in respect of conditions 11-16 then either the permit holder or the licensee of PML 38146 may refer the dispute to arbitration, as follows:*



- a. *The arbitrator shall be appointed by the permit holder and the licensee of PML 38146. If the permit holder and the licensee of PML 38146 are unable to agree on the appointment of an arbitrator within 5 working days of the referral of the dispute, either party may request that an arbitrator be appointed by the President of the New Zealand Law Society (or his or her nominee);*
- b. *The arbitration shall be conducted in accordance with the Arbitration Act 1996. The decision of the arbitrator shall be final and binding on both parties to the arbitration.*
- c. *The place of arbitration shall be in Wellington, New Zealand."*

MBIE considers specific operational and risk matters can be appropriately addressed in a 'Cooperation Agreement' negotiated between OERKL and TTR. After considering OERKL's submission on the mining permit application, MBIE did not consider it appropriate to include a specific condition requiring TTR to indemnify OERKL. This is because MBIE was satisfied that TTR intends to obtain and maintain public liability insurance in keeping with international best practice.

No comparable conditions are imposed on the OERKL permit (PML 38146), granted 31st of January 1996, outside the need to:

1. submit a written statement assessing the potential environmental impact of the proposed mining development programme (condition 5); and
2. comply with the requirements of any other Act or Regulation that may affect or apply to any operations carried out under this mining licence (condition 9).

Thirdly, the DMC asked for "Advice on any reporting requirements imposed on TTR with respect to the exercise of its mineral permit."

MBIE's response

TTR's mining permit specifies that three reports must be prepared by TTR. These are set out below.

1. The first obligation is set in condition 18 of Schedule 1 of the permit. This requires TTR to report annually, to the satisfaction of the Chief Executive of MBIE, on the monitoring undertaken in accordance with condition 15 where regular monitoring is required after commencement of mining to enable assessment of any adverse effect of mining on the infrastructure associated with PML 38146. This report is to be available on request to OERKL within a reasonable timeframe;
2. The second and third reports are required under 1(b) and 2(b) of the Minimum Work Programme (Schedule 3);
 - a. The 1(b) report is required within 24 months of the commencement date of the permit, to the satisfaction of the Chief Executive, and must report on the effects that mining operations may have on seabed stability in the area of the permit that overlaps PML 38146. That report is to be provided to the licensee of PML 38146.
 - b. The 2(b) report is required within 48 months of the commencement date of the permit, to the satisfaction of the Chief Executive, and requires



development and submission of a model on any adverse effect of mining on the infrastructure associated with PML 38146. That report is to be provided to the license of PML 38146.

In terms of the 1(b) report, MBIE is in receipt of a report by OCEL Consultants NZ Limited titled 'Implications of Loose Tailings Seabed Material on Future Jack-Up Deployment in the South Taranaki Bight', which is understood to have been provided to OERKL.

As no mining has commenced no annual report on monitoring of any adverse effect of mining has been received.

These reporting conditions are in addition to the normal reporting requirements relevant to a mining permit. These reporting conditions have been made available to the DMC in information supplied under a previous section 44 request on the 6th September 2016 (Overview of the Crown Minerals Regime and TTR's permit portfolio).

Yours Sincerely

Dr Marcos Pelenur

Acting National Minerals Manager

Energy Resources and Markets

Ministry of Business, Innovation and Employment



Appendix One. Map of Mining Permit 55581, Petroleum Mining Licence 38146, the Kupe infrastructure, plugged and abandoned wellheads and requested exclusion zones.

