



Environmental
Protection Authority
Te Mana Rauhi Taiao

Ngā Kaihautū Tikanga Taiao Report - EEZ 100016

In accordance with section 56 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

Applications from Tamarind Taranaki Limited for a marine consent and a marine discharge consent for drilling activities in the Tui Field.

1 Purpose

- 1.1 This report has been prepared by Ngā Kaihautū Tikanga Taiao (Ngā Kaihautū) in response to a request from the Board of Inquiry (Board) to provide a high level Māori perspective on the potential impacts of Tamarind's applications lodged by Tamarind Taranaki Limited (Tamarind). Applications relate to a marine consent and a marine discharge consent for drilling activities in the Tui Field, offshore Taranaki.

2 Executive summary

- 2.1 This report represents the views of Ngā Kaihautū in response to the applications lodged by Tamarind with the Environmental Protection Authority (EPA). We have reviewed the Application Documents provided by the EPA.
- 2.2 We believe that these documents are information deficient and lack a level of engagement with hapū and iwi with existing interests that would support the Board to make an appropriate and adequate decision on the effects of the proposed activities on cultural values.
- 2.3 As a result of our review and assessment, we have identified four key issues that the Board should take into account during their consideration of the applications. These are:
- 2.3.1 All existing interests should be included in the applications and impact assessment (refer paragraph 9.3)
 - 2.3.2 Uncertainty of information (refer paragraph 9.16)
 - 2.3.3 A Māori perspective of cumulative effects (refer paragraph 9.26)
 - 2.3.4 Consultation and feedback in relation to the applications and impact assessments (refer paragraph 9.34)
- 2.4 The issues that have arisen have primarily been considered against the four objectives we developed to frame the collective position on what the Māori perspective is for Ngā Kaihautū. These are:
- 2.4.1 Objective 1: Uphold tikanga and the use of mātauranga
 - 2.4.2 Objective 2: Recognise Māori rights and interests under Te Tiriti o Waitangi (The Treaty of Waitangi)

2.4.3 Objective 3: Protect and enhance the natural and built environment and ensure the resilience of ecosystems, people and communities

2.4.4 Objective 4: Acknowledge the role of tangata whenua

- 2.5 The development of these four objectives was not intended to supercede or replace the distinct perspectives of iwi, hapū, marae and/or whānau, but to ensure those perspectives of iwi, hapū, marae and/or whānau have been sought and considered by the EPA, and in this case the Board on the Tamarind applications.
- 2.6 The issues have also been considered against the statutory expectations in the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act) in particular, sections 10 (purpose), 59 (decision making criteria) and 61 (information principles).
- 2.7 We consider that because of the existence of the concerns noted in paragraph 2.3, the Board is not able to give full and proper consideration to the effects that the proposed activities will have on existing interests and the cultural values of hapū and iwi in the Tui Field area.
- 2.8 We have proposed eleven recommendations to the Board for consideration. These recommendations can be found in paragraph 3.

3 Recommendations

3.1 It is recommended that the Board of Inquiry:

3.1.1 **Note** that Ngā Kaihautū has identified four key issues arising from the Tamarind applications and Impact Assessment. These are:

3.1.1.1 All existing interests must be included in the applications and Impact Assessment

3.1.1.2 Uncertainty of information

3.1.1.3 Māori perspective of cumulative effects

3.1.1.4 Consultation and feedback in relation to the applications and the Impact Assessment

All existing interests to be included

3.1.2 **Agree** that Tamarind should identify all hapū and iwi who have existing interests in the area of the Tui Field and that they are given the opportunity to provide feedback on Tamarind's consent applications and its Impact Assessment before the Board makes its decision on the applications.

3.1.3 **Agree** that there is an information gap relevant to existing interests that have not been addressed. Unless this additional information is obtained, we do not consider that the Board is in a position to properly assess the effects of the proposed activities on the existing interests and their associated cultural values.

Uncertainty of information

3.1.4 **Agree** that Tamarind advise the Board when the further information will be provided to enable the Board to determine the timing of making its decision on the applications.

3.1.5 **Agree** that once the further information is available, that Tamarind resource hapū and iwi, who have existing interests, to engage an appropriate resource to prepare a Cultural Impact Assessment which sets out the impacts and effects on their values, mātauranga, whakapapa and kaitiakitanga.

- 3.1.6 **Agree** that as part of the Cultural Impact Assessment, Tamarind works with these hapū and iwi to prepare mitigation strategies to minimise impact.
- 3.1.7 **Agree** that where hapū and iwi have mana whenua agreements which identifies their existing interests, the Board invite them to advise how they consider their interests have been taken into account by Tamarind.
- 3.1.8 **Note** that a level of scrutiny and caution must be applied to Tamarind's existing impact assessment as hapū and iwi (or their nominee) are the appropriate authors and persons to document the impact and effects on their values, mātauranga, whakapapa and kaitiakitanga.

Māori perspective cumulative effects

- 3.1.9 **Agree** that in order for proper consideration to be given under section 59(2)(a)(i) of the EEZ Act, a holistic assessment of the cumulative effects of the proposed activities is undertaken by Tamarind before a decision to grant consent is made.
- 3.1.10 **Note** that Ngā Kaihautū considers that an holistic assessment starts from the commencement of and continues throughout the activity to determine how these effects collectively will affect the environment in which the activity is being carried out.

Consultation and feedback

- 3.1.11 **Agree** that for full consideration of the applications the Board prior to granting consent:
- 3.1.11.1 Ask Tamarind to provide an Engagement Plan that reflects best industry practice and that details how Tamarind will include those who have an existing interests in the area from the start and during the period of their operations.

4 Board's request for advice

4.1 On 21 June 2018, in accordance with section 56(1) (b) of the EEZ Act, the Board sought the advice of Ngā Kaihautū to provide a high level Māori perspective on the potential impacts of Tamarind's applications lodged by Tamarind Taranaki Limited (Tamarind). In particular, the Board directed that Ngā Kaihautū's advice focus on:

4.1.1 The issues and matters associated with the proposal that Ngā Kaihautū considers the Board may need to address in its decision-making in relation to existing interests.

4.1.2 The report should discuss these issues and matters only in the context of the following relevant statutory considerations of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act):

4.1.2.1 the decision-making criteria (section 59)

4.1.2.2 the information principles (section 61)

4.1.2.3 the purpose of the Act (section 10).

4.1.3 Any additional information/gaps relevant to 'existing interests' that Ngā Kaihautū considers have not been addressed (or adequately addressed) by the applicant and submitters.

4.1.4 Any other advice Ngā Kaihautū considers necessary for the Board's full consideration of Tamarind's applications.

5 Ngā Kaihautū Tikanga Taiao

5.1 Ngā Kaihautū is the statutory Māori Advisory Committee established under Section 18 of the Environmental Protection Authority Act 2011 and provides advice and assistance to the EPA on matters relating to EPA policy, processes and applications. This advice and assistance must be given from a Māori perspective and come within the terms of reference set by the EPA Board.

5.2 Ngā Kaihautū works with the EPA by contributing to, monitoring and evaluating policies, processes, applications and decisions from a Māori perspective. Part of this responsibility includes providing guidance and oversight to the development of organisational and

decision-making approaches that support the effective recognition of the unique relationship of Māori to the New Zealand environment.

- 5.3 He Whetū Mārama provides a framework for the EPA to focus its efforts on ensuring informed decision-making and productive relationships with Māori. This has been reflected in several initiatives including a focus on increasing the cultural confidence and competence of staff across the organisation, as well as the implementation of the “Incorporating Māori Perspective into Decision Making” Protocol (IMP) internally and externally in the application process.
- 5.4 The intention of the IMP is that it be used as a tool to assist with the incorporation of Māori perspectives. It can be used by applicants in approaching their assessment and/or impact statements when considering the effects and impacts their proposal may have on Māori. The desired outcome is where all future applications lodged with the EPA provide substantial evidence that Māori perspectives had been sought after, gathered, and considered within the assessment and/or impact statement.
- 5.5 Ngā Kaihautū acknowledge that there is no one Māori worldview or perspective on resource management matters. Ngā Kaihautū recognises that the Māori perspective varies and differs between different whānau, marae, hapū and iwi. Ngā Kaihautū’s perspective is not intended to supersede or replace those distinct perspectives, but to ensure that those perspective(s) have been sought and considered. As a result, the IMP describes four Ngā Kaihautū objectives to frame the collective position on what the Māori perspective is for Ngā Kaihautū.
- 5.6 In the preparation of this report, Ngā Kaihautū has been guided by these objectives:
 - 5.6.1 Objective 1: Uphold tikanga and the use of mātauranga
 - 5.6.1.1 To give effect to this objective, Ngā Kaihautū provides advice and assistance to the EPA in relation to the involvement of Māori in EPA processes and the use of mātauranga in an appropriate context.
 - 5.6.2 Objective 2: Recognise Māori rights and interests under Te Tiriti o Waitangi (the Treaty of Waitangi)

- 5.6.2.1 To give effect to this objective, Ngā Kaihautū provides advice and assistance to the EPA to ensure Māori rights and interests are given appropriate recognition in the EPA processes, policy and decisions.
- 5.6.3 Objective 3: Protect and enhance the natural and built environment and ensure resilience of ecosystems, people and communities
 - 5.6.3.1 To give effect to this objective, Ngā Kaihautū provides advice and assistance to the EPA about how to support the role of Māori as kaitiaki. It also provides advice and assistance to understand how EPA decisions could have cumulative impacts (positive and/or negative) on the broader ecosystem.
- 5.6.4 Objective 4: Acknowledge the role of tangata whenua
 - 5.6.4.1 To give effect to this objective, Ngā Kaihautū provides advice and assistance to the development, implementation and management of the EPA's policies and processes for engaging with Māori.

5.7 Mātauranga

- 5.8 The IMP defines mātauranga as the Māori system of knowledge and understanding of all things past and present that have been handed down from generation to generation and that is learned from experience and other sources.
- 5.9 As mentioned above, Ngā Kaihautū recognises that there is no one Māori world view or perspective on EPA matters, and that the Māori perspective is different for each whānau, marae, hapū, iwi. A key aspect of the Māori perspective is the recognition of mātauranga. For example, Ngā Kaihautū acknowledged its importance in advice on the Chatham Rock Phosphate Ltd application (EZ000006). It canvassed the importance of whakapapa ensuring the interconnectedness of all living things central to Māori life and the role of kaitiaki. It advised that any activity with an overarching environmental cost in cultural and other matters, impacts directly on this whakapapa relationship and Māori identity. This view was reinforced in the Tikanga Taiao Report (EEZ000011).

5.10 Mātauranga is conventionally viewed as:

“A body knowledge that seeks to explain phenomena by drawing on concepts handed from one generation of Māori to another. Accordingly, mātauranga Māori has no beginning and is without an end. It is constantly being enhanced and refined. Each passing generation of Māori make their own contribution to mātauranga. The theory or collection of theories with associated values and practices has accumulated mai i te Ao Māori/ from Māori beginnings and will continue to accumulate, providing the whakapapa of mātauranga is unbroken”

as noted by Dr Whatarangi Winiata in his address given at Te Herenga Waka Marae, Victoria University in 2001.

5.11 Mātauranga is akin to the pursuit and application of knowledge and understanding of Te Taiao, following a systematic methodology based on evidence, incorporating culture, values and world view (Hikuroa et al., 2011). It is also important to note that mātauranga is not like an archive but rather seen as a tool for thinking, organising information, considering the ethics of knowledge, the appropriateness of it and informing Māori about the world and their place in it (Mead, 2003).

5.12 Māori perspective - existing interests

5.13 In accordance with Section 59(2)(a) of the EEZ Act, the Board must take into account any effects on existing interests of allowing the proposed activities by Tamarind. Section 4 of the EEZ Act relevantly defines existing interests applicable to Māori as:

5.13.1 Customary fishing (a lawful established existing activity)

5.13.2 Settlement of a historical claim under the Treaty of Waitangi Act 1975

5.13.3 Settlement of a contemporary claim under the Treaty of Waitangi, as provided for in an Act, including the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992

5.13.4 A protected customary right or customary marine title recognised under the Marine and Coastal Area (Takutai Moana) Act 2011.

5.14 Ngā Kaihautū has considered existing interests in its advice to Decision Making Committees (DMC's) in previous reports. In its report relating to the Chatham Rock Phosphate Ltd

application (as noted above), it advised the DMC that it consider the principles of the Treaty of Waitangi in particular the principles of partnership, active protection and rangatiratanga. It also considered it important to recognise the unique relationship that Māori have as Treaty partners and the impact of DMC decisions on their ability to continue to be afforded those Treaty rights and practices.

- 5.15 Ngā Kaihautū advises that the principles of partnership describe the relationship between the Crown and Māori with a duty for both parties to act reasonably, honourably and in good faith. It is important to consider the effects presented by applications within the context and spirit of this partnership.
- 5.16 The principle of active protection recognises the obligation to take positive steps to protect and look after Māori interests. Ngā Kaihautū link rangatiratanga to active protection and recognises the rights of Māori to self-determination inherent in the Treaty.

6 The applications

- 6.1 On 9 March 2018, Tamarind lodged applications under the EEZ Act, for a marine consent to undertake side-track development drilling for up to four of its existing wells, including associated logistic and environmental activities in the Tui Field. A total of five side-tracks are proposed should a second side-track be drilled from one of the wells.
- 6.2 The second application relates to a marine discharge consent to enable the discharge of offshore processing drainage from hazardous and non-hazardous deck drains on the drilling rig in Tui Field.
- 6.3 As a drill rig has not been contracted because of the early planning stages of the proposed activities, Tamarind is not able to provide specific information on the semisubmersible drilling rig specifications relating to:
 - 6.3.1 The deck drain system
 - 6.3.2 The suite of harmful substances to be used and discharged
 - 6.3.3 The nature of the drilling muds
 - 6.3.4 The details of anchoring systems and specifications.

6.4 Impact Assessment Report

6.5 An Impact Assessment Report (IA) was included with the applications. It listed a set of cultural values which Tamarind advised were of specific concern to Te Kāhui o Taranaki and Ngāti Tara hapū and related to the degradation of:

6.5.1 Ngā taonga koiora (native and important fauna)

6.5.2 Ngā moana (coastal and offshore waters)

6.5.3 Parumoana (seabed)

6.5.4 Ngā taonga tuku iho (traditional Māori values and practices)

6.5.5 Taha wairua (spiritual health and wellbeing obtained through the maintenance of a balance with nature and the protection of mauri)

6.5.6 Economic development and sustainability

6.6 The IA indicated that hui had been held with Te Kāhui o Taranaki Trust and Ngāti Tara hapū (including one face to face meeting) in relation to the applications. It noted that a draft of the IA was provided to both groups for feedback and additional information relating to cultural values and potential impacts of the applications on these. No written feedback was received.

7 EPA Key Issues Report

7.7 In relation to effects on existing interests of hapū and iwi, the report notes Te Kāhui o Taranaki and Ngāti Tara hapū have not provided written feedback to the draft IA. The Key Issues Report advises the Board, at paragraphs 85 to 88, that:

7.7.1 Without any cultural impact assessment or feedback on the proposal, it is difficult to determine the extent to which relevant hapū and iwi feel their existing interests will be affected

7.7.2 There is not enough information for the Board to assess the effects of Tamarind's proposed activities on existing interests

7.7.3 The Board must be satisfied that the information provided in the IA and other documentation ‘adequately and appropriately’ represents the potential effects on such interests under section 59(2)(a) and (b) of the EEZ Act.

8 Submissions

8.1 From the submissions received by the EPA on these applications, three were from hapū and iwi organisations within the geographical area of the Tui Field:

8.1.1 Otaraua hapū (submission no 34)

8.1.2 Te Korowai o Ngāruahine Trust (submission no 142)

8.1.3 Te Kāhui o Taranaki (submission no 164)

8.2 Otaraua hapū

8.3 Otaraua hapū advises the Board to refuse the applications and that Tamarind should not be allowed to discharge harmful materials into their waters. It indicated that the well sites are in shallow waters to cause harm to fisheries, marine mammals and bird life.

8.4 Otaraua hapū suggests that Tamarind take the harmful material and dispose of it as if it was on land. An option offered is deep well injection and land farming.

8.5 Te Korowai o Ngāruahine Trust

8.6 Te Korowai o Ngāruahine Trust (TKONT) has existing interests in the area subject to Tamarind’s applications – the Tui Field area extends south into the kaitiaki area of Ngāruahine south of Ōpunake. TKONT interests include recognised interests from the Waingonogro to Taungatara Rivers, fishing quota within Fisheries Management Area 8 and proceedings in the High Court in relation to the Marine and Coastal Area (Takutai Moana) Act 2011.

8.7 The submission also identifies a core set of cultural values which TKONT considers to be the basis for decisions relating to the Tamarind application. These values relate to the relationship between Māori and the marine environment with a focus on reciprocity, protection and sustaining and nurturing.

8.8 TKONT considers that Tamarind is not 'wholly clear' about the significance of the marine coastal environment to tangata whenua and notes that limited attention has been given in its IA to recognising the impacts of potential activities to hapū and iwi from the applications. It also indicates that while Tamarind sent the draft IA to Te Kāhui o Taranaki, TKONT did not receive this information even though it 'closely borders' these activities. Given Tamarind's resources and investment into other aspects of the IA, TKONT queries why no such investment was made for a cultural impact assessment.

8.9 The concerns raised by TKONT are:

- 8.9.1 The loss of marine habitat because of the external drilling activities - it is not clear of the cumulative effects of further drilling and exploration on marine habitats and associated species.
- 8.9.2 Contamination because of toxicity of waste materials which could adversely affect the marine ecosystem and result in long term degradation of the marine environment.
- 8.9.3 Seabed disturbance from extended activities which will affect marine organisms.
- 8.9.4 Increased turbidity of the water around the operations resulting in reduced light intensity, impacting on marine life and marine mammals.
- 8.9.5 Effects of noise from operations on marine mammals in terms of their behaviours and/or their life support systems.
- 8.9.6 Effects on marine mammals, especially the impact of operations on endangered species. Reference is made to the TTRL seabed mining application which challenged the view that mining activities would have little effect on marine mammals.
- 8.9.7 Impact on commercial fishing operations – it is not clear the extent to which the activities will affect the abundance and diversity of fish populations.
- 8.9.8 Impact on customary fishing rights with concerns about on-going sustainability of and access to customary fishing grounds.

- 8.9.9 Spills from vessels as a result of drilling – depending on the flow of tide and weather patterns there is a high likelihood that the Ngāruahine marine and coastal environment would be affected.
- 8.10 TKONT advises that it would prefer that its seabed and marine environment is not disturbed any further by ‘invasive environmentally damaging operations’. It acknowledges that the wells are already in place and that operations are ongoing and despite its strong position about the adverse effects of off shore gas and oil exploration to their cultural interests and role of kaitiaki, it requests that consent to the applications are conditional. The conditions are noted in the table below at paragraph 8.14.
- 8.11 [Te Kāhui o Taranaki](#)
- 8.12 Te Kāhui o Taranaki (TKT) has existing interests recognised in the Taranaki Deed of Settlement, specifically in the marine coastal area from Ōnukutaipari in the north to Rāwa o Turi stream, and from here to the outermost extent of the EEZ. TKT interests in the area arise as its position as tangata whenua and its role as kaitiaki over the area. It currently holds a fishing quota with Fisheries Management Area 8 and is in pre-application proceedings for customary interests under the Marine and Coastal Area (Takutai Moana) Act 2011.
- 8.13 TKT has assessed Tamarind’s applications by applying the four objectives developed by Ngā Kaihautū (refer to paragraph 5.6). Its response is that:
- 8.13.1 Tamarind should give proper consideration to the Te Ao Māori perspective in their assessment of cumulative and cultural impacts. It notes that whakapapa is the fundamental difference between Te Ao Māori and western science but that both views need to be considered to inform the use and management of natural resources to achieve environmental sustainability.
- 8.13.2 The impacts of the applications for Tamarind’s marine consent and marine discharge consent for development drilling activities in the Tui Field on TKT’s cultural values is described as mauri. Mauri is unable to protect itself against unnatural changes in the environment although it does have the ability to mend and heal given the right conditions and time. TKT’s role as kaitiaki is to ensure that the mauri of the ecosystem and environment is protected and enhanced.

8.13.3 Impacts on the mauri of environmental features or species overlaps with values derived from western science requiring that cultural impacts are articulated.

8.13.4 Activities in the coastal/marine environment are assessed against the set of cultural values identified in the submission.

8.13.5 TKT has undertaken an assessment of its cultural values and proposes mitigation measures for those impacts categorised as having moderate significance (refer to tables 1.1 and 1.2 of the submission). It also proposes that conditions are attached to Tamarind's applications, if granted. The conditions and mitigations are noted in the table below.

8.14 [Conditions and mitigation measures](#)

8.15 The conditions and mitigation measures contained in the table below are found in the substantive submissions made by TKT and TKONT to the EPA. Each organisation has requested that the consents are subject to these conditions and mitigation measures if granted by the Board. They are based on the cultural values outlined in each submission, and seek to lessen the impact of the proposed activities on these cultural values, while requiring the involvement of hapū/iwi, and provide for full information sharing between all parties.

8.16 The conditions and mitigation measures requested in both submissions favour caution and environmental protection, and if imposed on the consents would seek to avoid, remedy or mitigate environmental effects.

8.17 Mitigation measures proposed by Tamarind in the IA have also been included in the table (in italics) to provide a full picture of all conditions and mitigation measures as a point of comparison.

8.18 The table highlights that in two areas there is a common view in relation to technical aspects of the operations. However, for the remainder of the mitigation measures and conditions, some with an emphasis on cultural values, there is limited alignment between the three groups.

Conditions/Mitigation Measures	Te Kāhui o Taranaki	Te Korowai o Ngāruahine Trust	Tamarind
Commitment to the development of environmental indicators, using both a Te Ao Māori perspective and western science, and integrating these into existing operational documents.	✓		
Commitment to cultural training for all staff involved with operations.	✓	✓	
Commitment to holding an AGM with iwi to outline the general scope of the activities to be undertaken under both consents.	✓		✓
Commitment to plug and abandon any wells drilled or re-entered at the end of the consent period.	✓	✓	✓
Commitment to removing all structures that are placed or deposited on the seabed at the end of their use.	✓	✓	✓
Commitment to give preference to the use of substances with low ecotoxicity where ever practicable and to meet with Te Kāhui o Taranaki Trust and Ngāti Tara re unplanned placement structures			✓
Development of an engagement strategy with hapū/iwi.		✓	
Spill management plan is revised.		✓	
Commitment to notify Te Kāhui o Taranaki Trust and Ngāti Tara in unlikley event of a spill			✓
Commitment to providing further information on semi-submersible drilling, rig layout once information is available			✓
Commitment to providing Te Kāhui o Taranaki Trust and Ngāti Tara with the consent conditions that will be proposed by Tamarind for discussion and agreement of conditions relating to mitigation of impacts on cultural values prioir to submissions to EPA			✓
With all future applications, a commitment to holding scoping exercises with iwi to understand a Te Ao Māori perspective and cultural values, and the impacts of activities on these.	✓		

Conditions/Mitigation Measures	Te Kāhui o Taranaki	Te Korowai o Ngāruahine Trust	Tamarind
Development and implementation of a noise monitoring programme.			
Over the consent period, agree to fund marine mammal and fish population surveys to assess all potential cumulative impacts of the programme on marine species.		✓	
Develop a comprehensive five year post-activity monitoring programme.		✓	
Voluntary condition – agree to invest in environmental action within Taranaki that can support the restoration and improvement to the waiora of the marine and coastal environment.		✓	

9. Ngā Kaihautū advice - key issues

- 9.1 The TKONT and TKT submissions provide substantial information in relation to the potential impacts the associated activities proposed within both consent applications would have on the cultural values of TKONT and TKT. Both submissions have identified numerous issues and concerns in relation to cultural impacts that we also share.
- 9.2 We have considered these submissions, the applications, the IA and the EPA Key Issues Report, and are of the view that there are four issues that the Board may need to address in its decision making in relation to the Tamarind applications. These key issues are:
- 9.2.1 All existing interests are not considered by Tamarind in the Application Documents.
 - 9.2.2 Uncertainty of information
 - 9.2.3 Māori perspective of cumulative effects
 - 9.2.4 Consultation and feedback in relation to the applications and the Impact Assessment.

9.3 All existing interests must be included in the Impact Assessment

Relevant sections EEZ Act: Sections 4, 59 and 61

Relevant Ngā Kaihautū Objectives: Objective 2: Recognise Māori rights and interests under Te Tiriti o Waitangi (the Treaty of Waitangi)

Objective 4: Acknowledge the role of tangata whenua
Supported by:

Objective 1: uphold tikanga and the use of mātauranga

Objective 3: Protect and enhance the natural and built environment and ensure resilience of ecosystems, people and communities

9.4 Tamarind has described TKT and Ngāti Tara hapū as the tangata whenua of the area in which the Tui Field is located and in which they exercise a kaitiaki role.

9.5 The TKONT submission indicates that not all iwi or hapū with existing interests in the Tui Field area did not have the opportunity to provide comment on the IA. This leaves us to wonder whether there are any other such groups that should have also had access to the IA.

9.6 We must also point out that Tamarind determined the impact with limited engagement leading to demonstrable inconsistencies for the decision-making function of the Board. We urge the Board to proceed with caution when considering the impacts.

9.7 In its submission, TKONT expressed surprise at not being given the information provided to TKT. It recognises the mana whenua status of TKT, but given the emphasis placed on cultural impacts within the EEZ legislation and its identified existing interests in the area, TKONT does not consider that it should have been precluded from receiving the same information.

9.8 We are concerned that Tamarind only provided the IA to TKT and Ngāti Tara for comment. We assume that this was done on the basis of the Tui Field Stakeholder 2018-2019 Drilling Campaign Plan, where Tamarind has identified these two groups as high interest/influencers requiring meetings and an email as the primary form of engagement.

TKONT, along with other hapū and iwi, is identified in the general group of stakeholders who were sent an FYI email.

9.9 Existing interests have been clearly defined in the EEZ Act and recognise the relationship that Māori have to the whenua and moana. This relationship created through whakapapa (genealogy) is what ensures the interconnectedness of all living things and is central to Māori life. Further, the extent of this relationship cannot be defined by boundaries between commercial operations, iwi rohe or by consent applicants.

9.10 The definition of existing interest in section 4 of the EEZ Act focuses on existing interests, and not on those that exercise or hold these interests. The definition makes no distinction in this regard nor does it rank types of existing interests. We agree with the concern raised by TKONT, and are of the view that it is not for Tamarind to designate what existing interests are prioritised over others.

9.11 By way of this process, we consider that Tamarind has not sufficiently given consideration to the extent to which relevant hapū and iwi feel their existing interests will be affected, because it does not have the necessary information to do so.¹ Without knowing what other existing interests there are, it then becomes difficult to determine what the effects on these interests are likely to be.

9.12 We consider that there is an information gap. Unless this additional information is obtained, we do not consider that the Board is in a position to properly assess the effects of the proposed activities on the existing interests and their associated cultural values.

9.13 In accordance with section 61, we are of the view that the Board does not have the full range, nor the best information available on which to base its decision to approve the applications.

9.14 Recommendation

9.15 Ngā Kaihautū makes the following recommendation:

9.15.1 Tamarind identifies all hapū and iwi who have existing interests in the Tui Field area and that they are given the opportunity to provide feedback on Tamarind's consent

¹This is also reflected in the EPA Key Issues Report at [85].

applications and the Impact Assessment before the Board makes its decision on the applications.

9.16 Uncertainty of information

Relevant sections EEZ Act: Sections 59(2)(a) and (b), 61(2)

Relevant Ngā Kaihautū Objectives:
Objective 1: Uphold tikanga and the use of mātauranga objectives:

Objective 2: Recognise Māori rights and interests under Te Tiriti o Waitangi (the Treaty of Waitangi)

Objective 3: Protect and enhance the natural and built environment and ensure resilience of ecosystems, people and communities

Objective 4: Acknowledge the role of tangata whenua

9.17 Aligned with the above issue, we consider that there are some significant information gaps associated with the Tamarind applications. These gaps are particularly crucial because they do not enable proper consideration of existing interests, the ability for hapū and iwi to identify relevant cultural values or to adequately assess the impact of proposed activities. The information provided by Tamarind leads to uncertainty in these matters.

9.18 The submission made by TKONT raises some important questions concerning the uncertainty of information, in particular:

9.18.1 The cumulative effects of extended drilling on the marine habitat

9.18.2 Effects on seabed disturbance

9.18.3 Effects of noise on marine mammals

9.18.4 Impact on commercial fishing operations

9.18.5 Impact on customary fishing rights

9.18.6 Effects of spills from vessels and as a result of drilling.

9.19 Tamarind's applications also note that it is not able to provide specific information on the drilling rig specifications in relation to the deck drain system, the suite of harmful substances

to be used and discharged, the nature of the drilling muds and the details of the anchoring systems and specifications. In addition, as noted in paragraph 10.3 to 10.13, not all the existing interests have been identified due to limited distribution of the IA for comment.

9.20 This lack of information puts a strain on the ability of hapū and iwi to carry out their kaitiakitanga responsibilities and to give robust feedback on how the proposed activities will affect their cultural values.

9.21 Without the provision of the above information, including the questions raised in the TKONT submission, we are not satisfied that hapū and iwi have enough information to provide feedback on how the proposed activities will affect their cultural values. We note that in the submissions provided by TKONT and TKT a matrix of cultural values have been provided. But due to the uncertainty of information within Tamarind's applications, a proper assessment of the impacts on these values cannot be carried out.

9.22 We are not satisfied that the Board has the best information to assess the effects of the proposed activities on hapū and iwi cultural values. In section 9 of the IA, Tamarind has undertaken a limited assessment of the impacts from its proposed activities on the cultural values it considers to be relevant and suggests strategies to minimise these.

9.23 We believe cultural impact assessments are one of the best ways to note and identify cultural impacts. We consider that both uncertainty of information and the Board having the best available information can be supported by Tamarind providing the additional information and once this has been obtained, for Tamarind to fund hapū and iwi to commission a cultural impact assessment.

9.24 Recommendation

9.25 Ngā Kaihautū recommends:

9.25.1 Tamarind advise the Board when the further information will be provided so that the Board can determine the timing of making its decision on the applications.

9.25.2 Once the further information is available, that Tamarind resource hapū and iwi who have existing interests to engage an appropriate resource to prepare a Cultural Impact Assessment which sets out the impacts and effects on their values, matauranga, whakapapa and kaitiakitanga.

- 9.25.3 Arising from the Cultural Impact Assessment, that Tamarind works with hapū and iwi on mitigation strategies to minimise impact.
- 9.25.4 Where hapū and iwi have mana whenua agreements which identifies their existing interests, the Board invite them to advise how they consider their interests have been taken into account by Tamarind.
- 9.25.5 That a level of scrutiny and caution be applied to Tamarind’s existing impact assessment as hapū and iwi are the appropriate authors and persons to document the impact and effects on their values, matauranga, whakapapa and kaitiakitanga.

9.26 Māori perspective cumulative effects

Relevant sections EEZ Act: Sections 59 (2)(a)(i) and 6

Relevant Ngā Kaihautū Objectives: Objective 2: Recognise Māori rights and interests under Te Tiriti o Waitangi (the Treaty of Waitangi)

Objective 3: Protect and enhance the natural and built environment and ensure resilience of ecosystems, people and communities

Supported by:

Objective 1: Uphold tikanga and the use of mātauranga

Objective 4: Acknowledge the role of tangata whenua

- 9.27 We are not satisfied that the applicant has provided enough information for the Board to give proper consideration to ‘cumulative effects’ under section 59(2)(a)(i).
- 9.28 We agree with the TKONT submission that the statement in section 10 of the IA does not sufficiently address the cumulative effects that may arise as a result of the past, current and future activities undertaken in the area . We also agree that the cumulative effects of each activity should not be viewed in isolation from each other as Tamarind have done under section 10 of their IA.

9.29 From a Te Ao Māori perspective, proper consideration of cumulative effects requires a holistic assessment starting from the commencement of the activity to the effects of on-going activity, and then address how all the effects will affect the environment in which the activity is being carried out. This view, we believe, is also supported by section 6 of the EEZ Act. As we understand, ‘cumulative effects’ encompass the concept of “*Effects arising in combination with other effects which can lead to greater effects.*”

9.30 We consider it is important that Tamarind and the Board understand that for Māori; their kaitiakitanga responsibility to manage the balance of natural resources within the moana is for the benefit of future generations and requires Māori to take a long-term view. This view is inclusive of considering the cumulative effects of an activity holistically, to ensure the protection of our taonga.

9.31 We note that in the EPA Key Issues report ‘cumulative effects’ was determined as a key issue associated with the proposed activities of Tamarind’s application. While the author only considered one of the six potential cumulative effects that could arise from the exercise of the proposal as having the potential to be temporally prolonged, the author did not engage in a holistic assessment of the effects.

9.32 Recommendation

9.33 Ngā Kaihautū recommends:

9.33.1 In order to give proper consideration under section 59(2)(a)(i), a holistic assessment of the cumulative effects of the proposed activities needs to be undertaken by Tamarind before a decision to grant consent is made.

9.33.2 That an holistic assessment of effects starts from the commencement of and continues throughout the activity to determine how these effects collectively will affect the environment in which the activity is being carried out.

9.34 Consultation and Feedback

Best practice

Not a legislative requirement

Relevant Ngā Kaihautū objectives:

Objective 2: Recognise Māori rights and interests under Te Tiriti o Waitangi (the Treaty of Waitangi)

Objective 4: Acknowledge the role of tangata whenua

Supported by:

Objective 1: Uphold tikanga and the use of mātauranga

Objective 3: Protect and enhance the natural and built environment and ensure resilience of ecosystems, people and communities

- 9.35 We consider the level of engagement that Tamarind have had with hapū and iwi as problematic.
- 9.36 Tamarind only actively engaged with one iwi and one hapū (TKT and Ngāti Tara) that have existing interests. The extent of this engagement was primarily email communication, although meetings did occur. Tamarind supplied the impact assessment to TKT and Ngāti Tara to ask for feedback/comments and only provided a 28 day timeframe for consideration.
- 9.37 We share the view with TKNOT that the information should have been shared with all existing interests, that email communication does not amount to sufficient consultation, and 28 days is not an adequate timeframe for hapū and iwi to be able to successfully digest and understand several hundreds of pages of documents to provide a robust and substantive response.
- 9.38 We note the comments made in the EPA Key Issues Report at paragraphs 85-88. We understand that no feedback was given to Tamarind at the time of their submission and want to re-emphasise that there is too little information to provide a sound basis for the Board to assess the effects of the proposed activities on iwi existing interests.

9.39 We want to take those comments further and emphasise that:

9.39.1 A lack of feedback does not mean endorsement of the impact assessment.

9.39.2 Although there were subsequent submissions made commenting on the potential cultural impacts, it is our opinion that this is still too little information to appropriately assess the effects of the proposed activities on hapū and iwi existing interests, because there was insufficient consultation.

9.40 **Recommendation**

9.41 Ngā Kaihautū recommends that for full consideration of the applications the Board prior to granting consent:

9.41.1 Ask Tamarind, as best practice, to provide an Engagement Plan that details how Tamarind will include those who have an existing interest in the area from the start and during the period of their operations.

Signed by Ngā Kaihautū Tikanga Taiao on 13/08/2018

Lisa te Heuheu, Tumuaki



Dr Daniel Hikuroa



Kelly May



Keita Kohere



References

Hikuroa, D., Slade, A., & Gravley, D (2011). 'Implementing Māori indigenous knowledge (mātauranga) in a scientific paradigm: Restoring the mauri to Te Kete Poutama.' *Mai Review*, 3.

Mead, H. M (2003). *Tikanga Māori: living by Māori values*. Huia Publishers.