

**BEFORE THE BOARD OF INQUIRY  
TAMARIND DEVELOPMENT DRILLING APPLICATIONS**

**EEZ100016**

**IN THE MATTER**

of the Exclusive Economic Zone and  
Continental Shelf (Environmental  
Effects) Act 2012

**AND**

**IN THE MATTER**

of a Board of Inquiry appointed under  
s52 of the Exclusive Economic Zone  
and Continental Shelf (Environmental  
Effects) Act 2012 to decide on  
Tamarind Taranaki Limited's marine  
consent and marine discharge consent  
applications

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**OPENING LEGAL SUBMISSIONS FOR TAMARIND TARANAKI LIMITED**

**DATED: 6 November 2018**

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## **MAY IT PLEASE THE BOARD**

### **1. INTRODUCTION**

- 1.1 Tamarind Taranaki Limited (“Tamarind”) has been the permit holder and operator of Petroleum Mining Permit 38158 (“PMP 38158”) since 2017.
- 1.2 The Tui Field, which is located entirely within PMP 38158, comprises five lawfully established existing subsea production wells and associated infrastructure, which are connected to the FPSO *Umuroa*, a permanently moored Floating Production Storage and Offloading vessel that is located in the centre of the field.
- 1.3 The Tui Field has produced over 40 million barrels of oil since it first started production in 2007. As at the end of 2016, royalty returns from the Tui Field totalled NZ\$573 million, and an additional NZ\$10.3 million in royalty returns are forecasted up to 2020. The Tui Field has generated significant regional benefits for Taranaki, including through increased GDP, incomes and employment, but also significant ongoing fiscal benefits to Central Government.
- 1.4 Tamarind is applying for marine consent and marine discharge consent for activities that are restricted under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (the “EEZ Act”).
- 1.5 Tamarind’s marine consent application is to enable the drilling of up to five side-track development wells from up to four of its existing wells, including associated logistic and environmental monitoring activities in the Tui Field (the “marine consent application”). The wells will be drilled using a semi-submersible drilling rig. Tamarind’s marine discharge consent application is to enable the discharge of offshore processing drainage from the deck drains of the drilling rig that will be used to drill the side-track development wells (the “marine discharge consent”). The marine consent application and the marine discharge consent application will be referred to collectively as the Applications throughout these submissions, and the proposed activities for which consents are sought will be referred to as the Proposal.

- 1.6 The Applications are sought to enable Tamarind to continue to use and develop the existing infrastructure and the natural resources within the Tui Field in the most efficient and optimal way. The Applications will not result in any new wells being drilled into the seabed or any new structures being installed on the seafloor.
- 1.7 It is submitted that the information provided by Tamarind and its expert evidence will demonstrate that any potential adverse effects associated with the Proposal will be negligible to minor. It is further submitted, that after taking into account the matters listed in sections 59 and 60 of the EEZ Act, there is no valid reason to refuse the Applications and that granting marine consent will accord with the sustainable management purpose of the EEZ Act.

## **2. SCOPE OF LEGAL SUBMISSIONS**

- 2.1 These legal submissions will address the following:
- 2.1.1 Scope of the application;
  - 2.1.2 Tamarind's evidence;
  - 2.1.3 Statutory framework under the EEZ Act, including the purpose and principles of the Act, decision making criteria and information principles;
  - 2.1.4 Potential effects on the environment and existing interests of allowing the Proposal and of other activities in the area;
  - 2.1.5 Potential effects on human health from effects of allowing the Proposal on the environment;
  - 2.1.6 Protection of biological diversity and the integrity of marine species, ecosystems and processes, and of rare and vulnerable ecosystems and habitats;
  - 2.1.7 Economic benefits to New Zealand of allowing the Proposal;

- 2.1.8 Efficient use and development of natural resources;
  - 2.1.9 The nature and effect of other marine management regimes;
  - 2.1.10 Best practice in relation to the industry and sidetrack drilling;
  - 2.1.11 Relevant regulations and other applicable law;
  - 2.1.12 Other relevant matters;
  - 2.1.13 Consent conditions.
- 2.2 I will address each in turn.

### **3. SCOPE OF APPLICATION**

- 3.1 Tamarind's proposed activities which are subject to approval are described in detail in the Impact Assessment, its responses to the Board's Requests for Further Information and in the evidence of Mr McCallum and I do not propose to repeat this information in these submissions.
- 3.2 In summary however, Tamarind is seeking marine consent for the following activities:
- 3.2.1 The temporary installation, operation and removal of semi-submersible drilling rig for the purposes of drilling up to 5 side-track wells at a depth of between 1,400m to 3,600m beneath the seabed from up to four existing wells. These activities trigger the need for consent under sections 20(2) and 20(4) of the EEZ Act as they involve:
    - (a) Construction, placement, alteration and removal of structures on or under the seabed associated with: the installation, anchoring and removal of the drilling rig; re-entry and sectional abandonment of existing wells and the

alteration of these structures; and side track drilling (section 20(2)(a) and 20(4)(a));

- (b) Removal of non-living natural material, namely rock cuttings, during drilling (section 20(2) (d));
- (c) Destruction, damage or disturbance of the seabed and subsoil of the seabed and subsoil associated with: the installation and removal of the drilling rig's anchors, chains and wires; ROV works; the deposit of cementing products, residual amounts of metal fragments, elastomer and sediment associated with drilling (section 20(2)(e) and section 20(2)(g));
- (d) Deposit of structures and sediments in, on or under the seabed associated with: the installation and removal of the drilling rig's anchors, chains and wires; ROV works; the deposit of cementing products, residual amounts of metal fragments, elastomer; the deposit of sediments from the settling of the sediment plume generated from the placement of structures (section 20(2)(f); and
- (e) Vibrations in the sea of the EEZ associated with: the installation, operation and removal of the drilling rig; drill rig dynamic positioning and well-drilling.

3.2.2 Environmental monitoring, including the placement on and removal of sampling and monitoring equipment from the seabed and the removal of non-living natural material for monitoring purposes. The need for consent is potentially triggered under sections 20(2)(a), (d), (e), (f), (g) and 20(4)(a) and (b) of the EEZ Act in the event additional sampling beyond that already required by Tamarind's existing marine consent<sup>1</sup> and approved Environmental Effects Management Plan (EEMP) is required.

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<sup>1</sup> Refer to the Impact Assessment, page 62, paragraph 3.5

- 3.3 Tamarind is also seeking marine discharge consent for the possible discharge of trace amounts of harmful substances in offshore processing drainage from the drilling rig. Consent for this activity is required pursuant to section 20B of the EEZ Act and regulation 16(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects—Discharge and Dumping) Regulations 2015 (the “Discharge and Dumping Regulations”). With respect to this aspect of the Proposal, it is important to note that:
- 3.3.1 The discharge of harmful substances in offshore processing drainage is not a planned activity. The application is made out of an abundance of caution in the event these substances were accidentally released or spilled onto the decks of the drilling rig and after clean up, trace residues end up being washed into the deck drainage system. It is Tamarind’s intention to avoid such events, and as such it may never need to rely on this consent.
- 3.4 Should consent be granted, Tamarind intends to start drilling the side-track development wells in mid-2019 and the total duration of the drilling program is not expected to be longer than 9 months.
- 3.5 At the conclusion of the drilling programme all equipment and structures placed on the seabed (associated with this particular drilling programme) will be removed.
- 3.6 Unplanned events and the effects of such events are also addressed in both the IA and evidence submitted by Tamarind’s expert witnesses. In particular, the unplanned events that could potentially occur include:
- 3.6.1 Accidental spills of hydrocarbons or chemicals,
- 3.6.2 Loss of well control;
- 3.6.3 Dropped objects; and/or
- 3.6.4 Marine vessel incident.

- 3.7 All such unplanned events have been assessed as unlikely or extremely unlikely to occur. While consent is not sought for these activities, it is accepted the potential effects of these activities are relevant and require consideration as part of the overall effects assessment under section 59 of the EEZ Act.
- 3.8 The scope of the Applications defines the activities that are subject to approval, and therefore those which are to be assessed and considered by the Board in accordance with the applicable tests and principles under the EEZ Act. Activities outside the scope of this application are relevant only to the extent (if any) that they provide context for this application and/or as expressly provided for in the EEZ Act. Activities outside the scope of this application include:
- 3.8.1 Activities associated with the drilling programme that may trigger the need for a non-notified marine discharge consent under the Dumping and Discharge Regulations that will be the subject of future separate applications;
- 3.8.2 Activities already approved by other marine consents, including those associated with normal production operations carried out in the Tui Field;
- 3.8.3 Permitted activities;
- 3.8.4 Activities regulated under other marine management regimes for which separate approvals and/or consents are required.

#### **4. TAMARIND'S EVIDENCE**

- 4.1 On behalf of Tamarind, I will be calling the following witnesses, all of whom have filed written statements:

*Non-expert witnesses*

- 4.1.1 **Mr Jason Peacock**, Country Manager New Zealand of Tamarind Resources Pte Limited. Mr Peacock's evidence covers background

information regarding Tamarind, the history of the Tui Field and Tamarind's facilities and operations; background information on the proposed activities; biosecurity risk management; engagement with stakeholders and positive effects associated with the Proposal.

- 4.1.2 **Mr Iain McCallum**, Drilling Manager for Tamarind. Mr McCallum's evidence provides an operational overview of the Proposal and an overview of the Spill Response Plan requirements.

*Expert witnesses*

- 4.1.3 **Dr Brian King**, oceanographer and mathematical modeller at RPS Australia West PTY Limited. Dr King's evidence provides oil spill modelling in the event of an oil spill at the Tui Field, including weathering, environmental risk, likelihood of shoreline stranding and likely dispersion behaviour.

- 4.1.4 **Dr Simon Childerhouse**, Senior Research Scientist at Blue Planet Marine NZ Limited. Dr Childerhouse's evidence provides an assessment of marine mammal status, distribution and abundance in the Taranaki region and assesses and addresses the potential impacts from the Proposal on marine mammals.

- 4.1.5 **Ms Nicola Gibbs**, Consultant and Owner of Fathom Consulting Limited. Ms Gibbs' evidence covers commercial fishing interests and the potential effects of planned activities and unplanned events on commercial fishing.

- 4.1.6 **Dr David Thompson**, seabird ecologist for NIWA. Dr Thompson's evidence addresses the existing seabird assemblage in the South Taranaki Bight and the potential effects on seabirds from the Proposal.

- 4.1.7 **Dr Sharon De Luca**, Associate Planner and Senior Ecologist for Boffa Miskell Limited. Dr De Luca's evidence addresses the existing ecological values of and the potential effects on the marine benthic habitat and organisms from the Proposal.

- 4.1.8 **Dr Alison MacDiarmid**, Regional Manager at the Wellington Campus of the National Institute of Water and Atmospheric Research (NIWA). Dr MacDiarmid's evidence addresses the potential impacts of the Proposal on plankton communities, marine fish, shark and reptile species.
- 4.1.9 **Dr Alison Lane**, Technical Director at ERM New Zealand Ltd. Dr Lane's evidence addresses harmful substances within offshore processing drainage; potential impacts resulting from planned discharges of harmful substances from offshore processing drainage and unplanned spills of fuel, oil or chemicals; spill response planning, and environmental monitoring.
- 4.1.10 **Mr Fraser Colgrave**, Managing Director of Insight Economics Limited. Mr Colegrave's evidence addresses the critical importance of the oil and gas sector to the Taranaki region; the economic rational for the proposed activities and the likely regional economic benefits associated with the Proposal.

4.2 Tamarind's witnesses have also addressed and responded to issues raised by the EPA and the Board's experts and by submitters where this is relevant to their evidence and/or area of expertise.

## **5. STATUTORY FRAMEWORK**

5.1 The relevant statutory framework for consideration of these Applications is set out in this section under the following headings:

5.1.1 Purpose and principles of the EEZ Act;

5.1.2 Decision making criteria; and

5.1.3 Information Principles.

## Purpose and principles of the EEZ Act

5.2 Section 10 of the EEZ Act sets out the purpose and principles of the Act, as follows:

### 10 Purpose

- (1) The purpose of the Act is –
  - 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.
- (2) In this Act, **sustainable management** means 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.
- (3) In order to achieve the purpose, decision-makers must—
  - a) take into account decision-making criteria specified in relation to particular decisions; and
  - b) apply the information principles to the development of regulations under section 27, 29A, 29B, or 29E and the consideration of applications for marine consent.

5.3 The promotion of sustainable management is therefore a fundamental aspect of the EEZ Act and it is to be borne in mind at every stage of the consenting process. The definition of sustainable management included in the EEZ Act requires a balancing exercise between the ability to provide for economic wellbeing and the need to sustain and safeguard the environment. In *Taranaki-Whanganui Conservation Board v Environmental Protection Authority* [2018] NZHC 2217 the High Court noted that it was clear that the purpose of the EEZ Act is not to exclude the extraction of some mineral

resources, but requires the use and development of such natural resources while safeguarding the life-supporting capacity of the environment and avoiding, remedying or mitigating any adverse effect of activities on the environment.<sup>2</sup> The Court also indicated that the word “while” in this context, means “at the same time as”<sup>3</sup>.

5.4 It is noted that the definition of sustainable management under the EEZ Act differs to the definition of sustainable management under the Resource Management Act 1991. In particular, the RMA’s definition refers to enabling “people and communities to provide for their social, economic and cultural wellbeing”, whereas the EEZ definition only provides for “people to provide for their economic wellbeing”. The express exclusion of both social and cultural wellbeing from the definition in the EEZ Act indicates the focus of the decision-maker should be on economic and environmental factors. It is submitted that this reflects the fact that people don’t live or commonly recreate in the exclusive economic zone.

5.5 Section 10(3) specifies what a decision maker must do in order to achieve the purpose of the EEZ Act. The two obligations are to:

- (a) take into account decision-making criteria specified in relation to particular decisions; and
- (b) apply the information principles to the development of regulations and the consideration of applications for marine consent.

5.6 This section is informed further by the decision-making criteria and information principles set out in sections 59, 60 and 61 of the EEZ Act.

#### **Decision making criteria**

5.7 Section 59 and 60 of the EEZ Act set out the matters to be considered by a marine consent authority in determining an application for marine consent or marine discharge consent.

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<sup>2</sup> At [94]

<sup>3</sup> At [95]

5.8 Sections 59(2) of the EEZ Act lists the matters which a marine consent authority *must take into account* when considering an application that relates to a section 20 activity, as follows:

- (a) any effects on the environment or existing interests of allowing the activity, including—
  - (i) cumulative effects; and
  - (ii) effects that may occur in New Zealand or in the waters above or beyond the continental shelf beyond the outer limits of the exclusive economic zone; and
- (b) the effects on the environment or existing interests of other activities undertaken in the area covered by the application or in its vicinity, including—
  - (i) the effects of activities that are not regulated under this Act; and
  - (ii) effects that may occur in New Zealand or in the waters above or beyond the continental shelf beyond the outer limits of the exclusive economic zone; and
- (c) the effects on human health that may arise from effects on the environment; and
- (d) the importance of protecting the biological diversity and integrity of marine species, ecosystems, and processes; and
- (e) the importance of protecting rare and vulnerable ecosystems and the habitats of threatened species; and
- (f) the economic benefit to New Zealand of allowing the application; and
- (g) the efficient use and development of natural resources; and
- (h) the nature and effect of other marine management regimes; and
- (i) best practice in relation to an industry or activity; and
- (j) the extent to which imposing conditions under section 63 might avoid, remedy, or mitigate the adverse effects of the activity; and
- (k) relevant regulations (other than EEZ policy statements); and
- (l) any other applicable law (other than EEZ policy statements); and
- (m) any other matter the marine consent authority considers relevant and reasonably necessary to determine the application.

5.9 Sections 59(2A) of the EEZ Act sets out, in relation to a marine discharge consent, matters that *must be taken into account*. These are all the factors set out in section 59(2) above, except for paragraph (c) and the effects on human health of the discharge of harmful substances.

5.10 In addition, section 59(3) of the EEZ Act sets out further matters a marine consent authority *must have regard to*, being:

- (a) EEZ policy statements; and
- (b) any submissions made and evidence given in relation to the application; and
- (c) any advice, reports, or information sought under this Part and received in relation to the application; and
- (d) any advice received from the Māori Advisory Committee.

5.11 Section 59(5) of the EEZ Act, provides that despite subsection (3), the marine consent authority must not have regard to:

- (a) trade competition or the effects of trade competition; or
- (b) the effects on climate change of discharging greenhouse gases into the air; or
- (c) any effects on a person's existing interest if the person has given written approval to the proposed activity.

5.12 It is noted that there is slightly different language used in sections 59(2) and section 59(3), namely the first refers to matters that a marine consent authority "*must take into account*" and the second refers to matters the authority "*must have regard to*".

5.13 The Courts have found there is no practical difference between the two phrases.<sup>4</sup> While both phrases import mandatory consideration, it is submitted that these phrases hold a weaker direction than other comparative directions such as "shall have particular regard to".<sup>5</sup>

5.14 Previous marine consent authorities have noted that the EEZ Act establishes no hierarchy in the matters that must be taken into account and those which the consent authority must have regard to and that the importance of all of the matters listed in all of the subsections depends on the specifics of the proposed project.<sup>6</sup>

#### *The environment*

5.15 In respect of both marine consents and marine discharge consents, the Board is required to take into account any effects on the environment or existing interests of allowing the activity.

5.16 "Environment" is defined in section 4(1) of the EEZ Act as:

- environment** means the natural environment, including ecosystems and their constituent parts and all natural resources, of—
- (a) New Zealand:

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<sup>4</sup> *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991

<sup>5</sup> *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991

<sup>6</sup> *EPA Decision on Marine Consent and Marine Discharge Consent Application by Trans-Tasman Resources Ltd*, EEZ0000011, August 2017, at [125]

- (b) the exclusive economic zone:
- (c) the continental shelf:
- (d) the waters beyond the exclusive economic zone and above and beyond the continental shelf

5.17 As with the definition of “sustainable management”, there is a significant difference between the EEZ Act’s definition of environment and the RMA’s definition. The RMA’s definition includes people and their communities, amenity values and relevant social, aesthetic and cultural conditions. Decisions made under the RMA regarding the assessment of effects of a proposal on the environment may not therefore always be relevant in the EEZ Act context.

5.18 Section 39 of the EEZ Act requires an Impact Assessment to describe the current state of the area where it is proposed that an activity be undertaken and the environment surrounding the area.

5.19 Section 4 of the Impact Assessment, along with the information provided in Tamarind’s Response to the Board’s Further Information Request, dated July 2018 and Tamarind’s expert evidence describes the existing environment around the Tui Field.

#### *Existing interests*

5.20 “Existing interest” is defined in the EEZ Act as follows:

**existing interest** means, in relation to New Zealand, the exclusive economic zone, or the continental shelf (as applicable), the interest a person has in—

- (a) any lawfully established existing activity, whether or not authorised by or under any Act or regulations, including rights of access, navigation, and fishing:
- (b) any activity that may be undertaken under the authority of an existing marine consent granted under section 62:
- (c) any activity that may be undertaken under the authority of an existing resource consent granted under the Resource Management Act 1991:
- (d) the settlement of a historical claim under the Treaty of Waitangi Act 1975:

- (e) the 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:
- (f) a protected customary right or customary marine title recognised under the Marine and Coastal Area (Takutai Moana) Act 2011

5.21 Section 39(1)(d) of the EEZ Act requires an Impact Assessment to identify persons whose existing interests are *likely* to be affected by the activity.

5.22 Section 1.3 of the Impact Assessment, along with the information provided in Tamarind's expert evidence and in the submissions identifies persons who potentially have existing interests in relation to the activities in the Tui Field.

5.23 Within the Impact Assessment, the following existing interests were identified by Tamarind:

5.23.1 Navigation of marine vessels;

5.23.2 Commercial fisheries interests, including under the Maori Fisheries Act (2004);

5.23.3 Tangata whenua and kaitiaki roles of Te Kāhui o Taranaki Trust (Taranaki Iwi) and Ngati Tara Hapū;

5.23.4 Customary fishing rights under the Fisheries (Kaimoana Customary Fishing) Regulations 1998.

5.24 The EPA's Key Issues Report on the Applications, dated July 2018 states at paragraph 83 that:

The AOI does not directly overlap with any existing customary fishing areas, or areas designated under historical or contemporary claims settlement under the Treaty of Waitangi.

5.25 In the EPA's decision to grant consent to Trans-Tasman Resources Limited to extract and process seabed material, the DMC recorded that it received advice from its legal counsel regarding existing interests. That advice stated that the concept of existing interests provides a very express means by which recognised Māori interests are to be considered (discussed further below).

Further, that in Counsel's view it is appropriate to read these obligations in light of the principles of the Treaty. These principles include: the duty for the Crown to act reasonably, the duty to make decisions informed by Māori perspectives, and the duty of active protection of Māori interests.<sup>7</sup>

5.26 In *Taranaki-Whanganui Conservation Board v Environmental Protection Authority* [2018] NZHC 2217 the High Court noted that the definition of existing interests sets out five types of specific rights or statutory entitlements which are incorporated within the term "existing interest". In respect of protected customary rights or customary marine titles recognised under the Marine and Coastal Area (Takutai Moana) Act 2011 ("MACA"), the High Court confirmed that regarding a claim made by iwi under MACA as an "existing interest" would do violence to the words of the EEZ Act. It held that the definition of "existing interest"<sup>8</sup>:

"... does not identify a claim under MACA as one of those interests, but only a "protected customary right or customary marine title recognised" under MACA. None of the iwi have that yet."

*Extent of adverse effects on existing interests*

5.27 Section 60 of the EEZ Act sets out the matters that the Board must have regard to when considering the effects of the Proposal on existing interests. These are:

- (a) the area that the activity would have in common with the existing interest; and
- (b) the degree to which both the activity and the existing interest must be carried out to the exclusion of other activities; and
- (c) whether the existing interest can be exercised only in the area to which the application relates; and
- (d) any other relevant matter.

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<sup>7</sup> Environmental Protection Authority, *Trans-Tasman Resources Ltd Marine Consent Decision* EEZ000011, 3 August 2017, at paragraph 628

<sup>8</sup> At paragraphs 230 - 233

### *Climate change*

- 5.28 It is noted that a significant number of submitters raised the issue of climate change in relation to the Applications. However, section 59(5)(b) provides that the Board *must not have regard* to the effects on climate change of discharging greenhouse gases into the air.

### **Information principles**

- 5.29 Section 61 provides that a marine consent authority must base its decision on the *best available information* and take into account any uncertainty or inadequacy in the information available.
- 5.30 For the purposes of this section, best available information means “the best information that, in the particular circumstances, is available without unreasonable cost, effort or time”.<sup>9</sup> Although what constitutes “best available information” will be dependent on the particular circumstances of an application, it is submitted that it is not crucial or necessary that the Board has complete certainty about every aspect of a proposal. It is established that “best available information” is not necessarily “all available information”.<sup>10</sup>
- 5.31 Tamarind have endeavoured to ensure that the Board is provided with the best information available in considering the applications.
- 5.32 Since lodging its application, Tamarind has further progressed the project design and within its response to the Board’s Request For Information and within the evidence of Mr Peacock and Mr McCallum, have confirmed:
- 5.32.1 The type of drill rig to be used – the Hai Yang Shi You 982 (it is noted that in the event of significant delay or other commercial reality that requires use of an alternative rig, a comparable semi-

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<sup>9</sup> Section 61(5) of the EEZ Act

<sup>10</sup> *Marine Consent Decision on Marine Consent Application by Shell Todd Oil Services Limited*, EEZ000010, 4 June 2015, at paragraph [151]

submersible mobile offshore drilling unit will be utilised by Tamarind);

5.32.2 The nature of the harmful substances that have the potential to discharge from the drill rig's drainage system;

5.32.3 That only synthetic based drilling fluids / muds and water based milling fluids will be used in the drilling activities;

5.32.4 The number of anchors to be used to secure the drill rig and blow out preventer in place; and

5.32.5 The area of seabed disturbance per rig installation as well as the total area of disturbance.

5.33 It is submitted that Tamarind has provided the best available information for consideration by the Board and therefore, the Board can be confident that the information provided by Tamarind is sufficiently certain and accurate. It is submitted that there is no outstanding uncertainty in the information provided by Tamarind.

5.34 Section 61 also requires a marine consent authority to make full use of its powers to request information, obtain advice or commission a review or report.

5.35 Where the information available is uncertain or inadequate, the marine consent authority must favour caution and environmental protection.<sup>11</sup> Tamarind has endeavoured to provide the Board with as much certainty regarding the applications as possible and it is submitted that the degree of remaining uncertainty is minimal and therefore, section 61(2) is not applicable to this particular application.

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<sup>11</sup> Section 61(2)

- 5.36 Section 61(3) states that if favouring caution and environmental protection means that an activity is likely to be refused, the marine consent authority must first consider whether taking an adaptive management approach would allow the activity to be undertaken.
- 5.37 Section 61(3) regarding adaptive management approaches does not apply to applications for marine discharge consent.<sup>12</sup> Tamarind confirms that its application for marine consent does not propose an adaptive management approach.

## 6. EFFECTS ON THE ENVIRONMENT AND EXISTING INTERESTS

- 6.1 The Impact Assessment, further information and evidence filed by Tamarind have identified and assessed the potential effects on the environment and existing interests and these are summarised below.

### Effects on the environment of allowing the activities

- 6.2 The activities for which consent is sought will take place within the Tui Field, which is located entirely within PMP 38158 in the South Taranaki Basin. The FPSO Umuroa and five existing wells within the Tui Field are located approximately 50km offshore. PMP 38158 comprises approximately 500km<sup>2</sup> (the “Area of Interest” or “AOI”) and the South Taranaki Basin comprises an area of approximately 330,000km<sup>2</sup>. The seabed within the AOI is at a water depth between 100 and 120 m and it is flat, with occasional mounds and hollows and characterised by soft sediment.<sup>13</sup> The relevant environmental receptors within the AOI were identified as follows:
- a) Sediment quality and associated benthic communities;
  - b) Planktonic communities;
  - c) Fish, sharks and marine reptiles;
  - d) Marine Mammals;
  - e) Seabirds; and
  - f) Water Quality.

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<sup>12</sup> Section 61(4)

<sup>13</sup> Impact assessment, at page ix.

- 6.3 The expert evidence filed on behalf of Tamarind concludes overall that the potential adverse effects of allowing the proposed activities on the environment will be negligible to minor.

Effects on sediment quality and benthic communities

- 6.4 Dr De Luca has assessed the potential adverse effects of the Proposal on benthic habitats and organisms.

- 6.5 Dr De Luca considers that the benthic habitat and organisms within the AOI have a moderate ecological value.<sup>14</sup>

- 6.6 Dr De Luca makes the following conclusions:

6.6.1 The potential effects of the proposed activities all have a low or very low effect on benthic habitat and organisms, with the exception of the temporary occupation and disturbance of the seabed, which Dr De Luca has assessed as having a moderate level of effect in the short-term but a low level of effect in the long-term.<sup>15</sup>

6.6.2 On the basis of the natural recolonization and successful processes that will occur within benthic habitats upon the removal of the structures and the ceasing of activities, Dr De Luca does not consider that any further mitigation is necessary.<sup>16</sup>

Effects on plankton, fish, shark and marine reptile species

- 6.7 Dr MacDiarmid has provided expert evidence regarding the potential impacts of the proposed activities on plankton, fish, shark and marine reptile species. Dr MacDiarmid has made the following key findings:

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<sup>14</sup> Statement of evidence of Sharon De Luca, at paragraph 4.21

<sup>15</sup> Statement of evidence of Sharon De Luca at paragraph 9.1.

<sup>16</sup> Statement of evidence of Sharon De Luca at paragraph 9.1

- 6.7.1 The overall impact of turbidity from the proposed activities on planktonic communities, fish and sharks from the proposed activities will be negligible.<sup>17</sup>
- 6.7.2 Overall, the effects of underwater sound produced during operations on fish, shark and marine reptiles will be minor for sensitive rare species and negligible for all others.<sup>18</sup>
- 6.7.3 It is highly unlikely that the artificial lighting on the drilling rig will have any significant ecological impact on fish, shark or marine reptiles.<sup>19</sup>
- 6.7.4 It is highly unlikely that the levels of disturbance or space occupation resulting from the proposed activities will have any significant ecological effect on fish, shark or marine reptile populations.<sup>20</sup>
- 6.7.5 Given Tamarind's intent to capture harmful substances before they enter the deck drains, and the likely rapid dilution rate, the impact of deck drain discharges on plankton, fish or marine reptiles will be negligible and without any significant ecological effect.<sup>21</sup>
- 6.7.6 Dr MacDiarmid concludes overall that the effects of the proposed activities on the populations of these species will be negligible.<sup>22</sup>

#### Effects on commercial fisheries

6.8 Ms Gibbs has examined the effects of the proposed activities on commercial fishing interests, including Māori commercial fishing interests. Ms Gibbs' key findings are:

6.8.1 The only commercial fishery regularly operating in and around the Tui Field is a mid-water trawl fishery targeting jack mackerel<sup>23</sup>. The

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<sup>17</sup> Statement of evidence of Alison MacDiarmid at paragraphs 4.5, 4.12  
<sup>18</sup> Statement of evidence of Alison MacDiarmid at paragraph 4.22  
<sup>19</sup> Statement of evidence of Alison MacDiarmid at paragraph 4.24  
<sup>20</sup> Statement of evidence of Alison MacDiarmid at paragraph 4.27  
<sup>21</sup> Statement of evidence of Alison MacDiarmid at paragraph 5.1  
<sup>22</sup> Statement of evidence of Alison MacDiarmid, at paragraph 9.1  
<sup>23</sup> Statement of evidence of Nicola Gibbs, at paragraph 3.5

jack mackerel stock in the AOI is managed within the JMA 7 management area<sup>24</sup>. Quota allocated under the Maori Fisheries Settlement comprises 9.99% of the JMA 7 shares and is allocated to all iwi<sup>25</sup>.

6.8.2 While there may be some short-term, localised changes to the distribution of commercially harvested fish species as a result of Tamarind's proposed activities, these species are highly mobile and the scale and duration of the changes are such that Ms Gibbs considers that adverse effects on commercial fishing will be negligible.<sup>26</sup>

6.8.3 Any adverse effects from offshore processing drainage on commercially harvested fish species will be negligible<sup>27</sup>.

#### Effects on marine mammals

6.9 Dr Childerhouse has provided expert evidence on the potential effects of the proposed activities on marine mammals. In particular, Dr Childerhouse considered the likely impact of underwater noise and vibration, turbidity, deposition of equipment or material on the seabed, artificial lighting and physical disturbance on marine mammals. Dr Childerhouse notes that overall, the AOI is not thought to represent an important feeding or breeding area for any marine mammal species.<sup>28</sup> The only impacts that Dr Childerhouse identifies as having a potential negative impact on marine mammals are noise and physical disturbance, with both assessed as minor.<sup>29</sup>

6.10 Dr Childerhouse concludes that overall, the likely impact on marine mammals from the proposed activities will be negligible to minor.<sup>30</sup>

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<sup>24</sup> Statement of evidence of Nicola Gibbs, at paragraph 3.9

<sup>25</sup> Statement of evidence of Nicola Gibbs, at paragraph 3.22

<sup>26</sup> Statement of evidence of Nicola Gibbs, at paragraph 8.1

<sup>27</sup> Statement of evidence of Nicola Gibbs, at paragraph 4.36

<sup>28</sup> Statement of evidence of Simon Childerhouse, at paragraph 10.

<sup>29</sup> Statement of evidence of Simon Childerhouse at paragraphs 5.29 and 5.37

<sup>30</sup> Statement of evidence of Simon Childerhouse, at paragraph 9.2

- 6.11 Dr Childerhouse also concludes that the mitigation measures identified by Tamarind are appropriate to reduce the risk of deck drain discharges and potential impacts on marine mammals.<sup>31</sup>

#### Effects on seabirds

- 6.12 Dr Thompson has provided expert evidence on the potential impacts of the proposed activities on the seabird population within the South Taranaki Bight.
- 6.13 Dr Thompson outlines the seabird and shorebird assemblage found within the greater South Taranaki Bight and the adjacent coastline of the North Island.
- 6.14 Dr Thompson's key findings are:
- 6.14.1 All potential effects from the proposed activities on seabirds, other than artificial nocturnal lighting, will be insignificant;<sup>32</sup>
  - 6.14.2 Due to the historical lack of seabird strikes in the Tui Field and the large distance of the Field from the nearest significant seabird breeding colony, artificial lighting presents only a minor risk to seabirds;<sup>33</sup>
  - 6.14.3 Discharges from deck drains will result in only negligible effects on seabirds;<sup>34</sup> and
  - 6.14.4 Overall the likely impact on seabirds or shorebirds from Tamarind's proposed activities are negligible.<sup>35</sup>

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<sup>31</sup> Statement of evidence of Simon Childerhouse at paragraph 5.41

<sup>32</sup> Statement of evidence of David Thompson, at paragraph 1.3.

<sup>33</sup> Statement of evidence of David Thompson at paragraph 1.4

<sup>34</sup> Statement of evidence of David Thompson at paragraph 4.15

<sup>35</sup> Statement of evidence of David Thompson, at paragraph 8.3

## Water Quality

- 6.15 Dr Lane considers that the risk of any impact on marine environmental receptors from potential discharges of harmful substances in deck drainage will be negligible. Dr Lane's conclusion is based on the extensive on-board controls, the limited number of harmful substances that have the potential to be discharged and the dilution of any product that was discharged in deck drainage.<sup>36</sup>
- 6.16 Dr Lane concludes that there would not be any measurable effect on marine fauna or ecosystems as a result of offshore processing drainages<sup>37</sup>.

### **Potential effects on the environment of unplanned events**

- 6.17 In addition to the above assessments of effects arising from the proposed activities, Tamarind has also assessed the potential effects which may arise as a result of an unplanned event occurring during the drilling programme. Potential unplanned events have been identified as accidental spills of chemicals or hydrocarbons; dropped objects; marine vessel incidents, such as a collision or sinking; and a loss of well control event.
- 6.18 The Impact Assessment assesses the residual potential impact from accidental spills, other than a loss of well control, as minor. The Impact Assessment also assesses the overall impact significance from a hydrocarbon release resulting from a loss of well control, dropped objects and vessel collision to be as low as reasonably practicable.
- 6.19 RPS was commissioned by Tamarind to model the results of a loss of well control scenario. Dr King has provided expert evidence regarding the results of the modelling undertaken and the results have been considered by Tamarind's experts where relevant to their area of expertise and assessment of effects.

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<sup>36</sup> Statement of evidence of Alison Lane at paragraph 12.1

<sup>37</sup> Statement of evidence of Alison Lane at paragraph 4.31

- 6.20 Dr Lane has provided expert evidence regarding the potential impacts on the environment and existing interests of unplanned spills of fuel, oil or chemicals associated with the use of the drilling rig. Dr Lanes key conclusions are:
- 6.21 Other than a major spill resulting from loss of bunker fuel from a vessel or a loss of well control, the potential quantities of discharge are relatively small and would be subject to high rates of natural dilution<sup>38</sup>.
- 6.22 There is potential for localised effects from small discharges of chemicals or hydrocarbon products, such as may occur during the transfer of substances or equipment failures.<sup>39</sup>
- 6.23 The most significant risks from a spill would be in the extremely unlikely event of a worst case vessel spill or loss of well control.<sup>40</sup> In such an event, the key risk would be to sensitive planktonic organisms with threats also posed to seabirds or other wildlife that come into direct contact with a surface slick as well as fish that are present in water layers with moderate thresholds of dissolved hydrocarbons.<sup>41</sup>
- 6.24 Human uses, including existing fisheries rights, may be affected due to temporary closure of beaches or fisheries areas while any spill was cleaned up and seafood safety verified.<sup>42</sup>
- 6.25 Tamarind's other expert witnesses have also assessed the effects of unplanned events on the environment where this is relevant to their expertise.
- 6.25.1 Dr De Luca notes that while unplanned activities such as large scale oil spills or collision of vessels could result in significant adverse effects on benthic ecology, with best practice management processes in place, these activities are extremely unlikely to occur.<sup>43</sup>

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38 Statement of evidence of Alison Lane at paragraph 1.4  
39 Statement of evidence of Alison Lane at paragraph 12.2  
40 Statement of evidence of Alison Lane at paragraph 12.3  
41 Statement of evidence of Alison Lane at paragraph 12.3  
42 Statement of evidence of Alison Lane at paragraph 12.4  
43 Statement of evidence of Sharon De Luca at paragraph 9.2

6.25.2 Ms Gibbs concludes that the potential adverse effects on commercial fishing interests from unplanned events will be negligible due to:<sup>44</sup>

- (a) The occurrence of these events being considered unlikely or extremely unlikely;
- (b) Any such incidents are likely to occur in the Protection Zone where no fishing activities occur in any event;
- (c) Ongoing disruption is unlikely, as dropped objects will be recovered and sunken vessels salvaged where practicable, with any significant non-recovered objects reported to Maritime NZ.

6.25.3 Dr MacDiarmid considers that accidental chemical spills, loss of well control and a vessel incident have the potential to affect plankton, fish and marine reptiles.<sup>45</sup> However, Dr MacDiarmid notes that the likelihood of a hydrocarbon release is assessed as extremely unlikely and therefore considers that the overall impact from a hydrocarbon release from a loss of well control is as low as is reasonably practicable.<sup>46</sup>

6.25.4 Dr Thompson agrees that the overall significance from a hydrocarbon release from a loss of well control is as low as reasonably practicable and notes that the mitigation and control measures proposed and the time available to put measures in place, minimises any impacts to coasts and shorebirds.<sup>47</sup> Dr Thompson also considers that the impact on seabirds in the event of a diesel spill or chemical spill will be minor.<sup>48</sup>

6.25.5 Dr Childerhouse agrees with the assessment in the IA that the severity of impact of an unplanned loss of well control event would

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<sup>44</sup> Statement of evidence of Nicola Gibbs at paragraph 4.26  
<sup>45</sup> Statement of evidence of Alison MacDiarmid at paragraph 6.1  
<sup>46</sup> Statement of evidence of Alison MacDiarmid, at paragraph 6.8  
<sup>47</sup> Statement of evidence of David Thompson at paragraph 4.12  
<sup>48</sup> Statement of evidence of David Thompson at paragraphs 4.13 and 4.14

be high, particularly in circumstances where marine mammals would be affected. Dr Childerhouse acknowledged the assessment that the residual impact of accidental spills other than a loss of well control as minor and the overall impact from a loss of well control as low as is reasonably practicable.<sup>49</sup>

6.26 As set out in the evidence of Mr Peacock and Mr McCallum, Tamarind will put in place all appropriate mechanisms to ensure that any effects of a spill are safely and effectively managed and mitigated. These include the Tui Field Spill Contingency Plan approved by Maritime NZ and the EPA, Spill Response Planning, the Well Control Contingency Plan, and Emergency Response Training.

6.27 It is therefore submitted that the potential effects from unplanned activities are as low as reasonably practicable.

### **Cumulative Effects**

6.28 It is noted that “cumulative effects” is not defined by the EEZ Act, although the definition of effect includes “any cumulative effect that arises over time or in combination with other effects”. The concept of cumulative effects is well understood generally and involves a consideration of the significance of any “build-up of consequences overall”.<sup>50</sup>

6.29 The cumulative effects of the Applications have been assessed in the Impact Assessment and by the expert witnesses for Tamarind, where this is relevant to their area of expertise.

6.29.1 Dr Childerhouse considers that given that the maximum length of time for the drilling operation is 9 months, no cumulative impacts on marine mammals are likely after the conclusion of Tamarind’s activity.<sup>51</sup>

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<sup>49</sup> Statement of evidence of Simon Childerhouse at paragraph 5.39  
<sup>50</sup> *Dye v Auckland Regional Council* [2002] 1 NZLR 337 (CA) at [38]  
<sup>51</sup> Statement of evidence of Simon Childerhouse at paragraph 5.44.

- 6.29.2 Dr MacDiarmid notes that there is some limited potential for cumulative effects of noise on noise sensitive fish species. However Dr MacDiarmid considers that due to the small and localised scale of impacts of the proposed activities, the potential for cumulative effects is negligible.<sup>52</sup>
- 6.29.3 Dr Thompson considers any cumulative effects on seabirds to be minor to negligible<sup>53</sup>.
- 6.29.4 Dr De Luca has assessed the cumulative effects of the additional area of occupation and disturbance of benthic habitats and species. Dr De Luca considers that Tamarind's proposal increases the percentage of the area of benthic habitat affected by 0.0004%.<sup>54</sup> Dr De Luca notes that the additional occupation and / or disturbance of the benthic habitat is a relatively small area and is temporary in nature.<sup>55</sup> Dr De Luca concludes that the magnitude of cumulative effect of occupation and disturbance is low.<sup>56</sup>
- 6.29.5 Dr Lane considers that due to the deep ocean environment and the proposed controls regarding the discharge of drainage water, cumulative effects on benthic organisms is unlikely.<sup>57</sup> Dr Lane considers that given the distance of other offshore operators from the proposed activities, cumulative impacts associated with operations outside the Tui Field are unlikely.<sup>58</sup>
- 6.29.6 Ms Gibbs considers that any additional spatial displacement will have negligible impacts on commercial fishing as the non-interference zone in relation to Tamarind's proposed activities would be small in relation to the widely dispersed jack mackerel fishery and any displacement would be limited to the duration of drilling at each well site.<sup>59</sup> Ms Gibbs notes the potential for cumulative contaminant effects from offshore processing discharges at the Tui

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<sup>52</sup> Statement of evidence of Alison MacDiarmid at paragraph 6.9  
<sup>53</sup> Statement of evidence of David Thompson at paragraph 4.16  
<sup>54</sup> Statement of evidence of Sharen De Luca at paragraph 5.9  
<sup>55</sup> Statement of evidence of Sharen De Luca at paragraph 5.10  
<sup>56</sup> Statement of evidence of Sharen De Luca at paragraph 5.12  
<sup>57</sup> Statement of evidence of Alison Lane at paragraph 8.2  
<sup>58</sup> Statement of evidence of Alison Lane at paragraph 8.1  
<sup>59</sup> Statement of evidence of Nicola Gibbs at paragraph 4.6

Field and other sources of discharge, however considers that any overlap between sources of discharges is unlikely.<sup>60</sup>

6.30 The SEAPEN Marine Environmental Services Report, dated 31 August 2018, notes that with the implementation of the proposed mitigation measures, the risk of cumulative impacts is as low as practicable.<sup>61</sup>

6.31 It is therefore submitted that any cumulative effects resulting from the proposed activities will be minor to negligible.

### **Effects of the allowing the activity on Māori environmental values**

6.32 The Impact Assessment identified that Te Kāhui o Taranaki Trust and Ngāti Tara Hapū hold mana moana over the AOI and recognised the kiatiaki role they exercise<sup>62</sup>.

6.33 In section 9 of the Impact Assessment, a number of potential impacts on Maori values were identified, including the impacts on the mauri of:

- a) Ngā taonga koiora – native and important fauna, being marine mammals, fish and benthic species.
- b) Ngā moana - coastal and offshore waters;
- c) Parumoana – seabed;
- d) Ngā taonga tuku iho - traditional Māori values and practices, including customary fishing rights, fishing grounds and mahinga kai, and the cumulative impacts of multiple offshore oil and gas activities;
- e) Taha wairua - spiritual health and well-being obtained through the maintenance of a balance with nature and the protection of mauri;

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<sup>60</sup> Statement of evidence of Nicola Gibbs at paragraph 4.31

<sup>61</sup> Impact Assessment at paragraph 22(e)

<sup>62</sup> Impact Assessment at para 1.31, page 10

- f) Economic development and sustainability – including commercial fishing rights, and iwi’s ongoing capacity and ability to be economically sustainable as a result of the proposed activities and the cumulative impacts associated with multiple offshore oil and gas activities.
- 6.34 To address these potential effects, a number of mitigation measures were proposed.
- 6.35 The submissions received from Te Kāhui o Taranaki Trust, Te Korowai o Ngāruahine Trust and Otaraua Hapū also identified specific effects on Maori environmental values of concern to each iwi/hapū.
- 6.36 Te Kāhui o Taranaki Trust’s submission was to grant the consent, subject to conditions. Its submission also included a Cultural Values Impact Assessment in relation to the Applications. The residual impact on all environmental features or species was assessed as negligible or minor with the exception of the following impacts, which were assessed as moderate:
- a) The impact of degradation during rig re-entry, installations, operation and removal on Taha Wairua;
  - b) The impact of degradation during the placement and removal of structures on Taha Wairua;
  - c) The impact of potential discharge of harmful substances from deck drainage on marine mammals;
  - d) The impact of potential discharge of harmful substances from deck drainage on Taha Wairau; and
  - e) The impact of degradation during placement and removal of structures for logistical activities on Taha Wairua.
- 6.37 In its letter to the Board dated 18 October 2018, Te Kahui o Taranaki confirmed that its submission lodged on the application adequately records its interests and values and how the application may affect those. Te Kahui also confirmed in this letter that the mitigation strategies agreed to by Tamarind minimise the impacts identified by Te Kahui. This letter notes that Te Kahui considers that Tamarind has taken its interests into account and

states that it is satisfied with Tamarind's consultation with Te Kahui in respect of the application.

6.38 Te Korowai o Ngāruahine Trust's submission referred to the iwi's spiritual, cultural, social and historical association with the takutai moana and listed its specific concerns as:

- a) The loss of the marine habitat because of the extended drilling activities;
- b) Contamination because of the toxicity of waste materials;
- c) Seabed disturbance;
- d) Increased turbidity of the water around the operations;
- e) Effects on marine mammals;
- f) Impact on commercial fishing operations;
- g) Impact on customary fishing rights; and
- h) Spills from vessels as a result of drilling.

6.39 Te Korowai also wrote to the Board on 29 October 2018 and confirmed that Tamarind is working with Te Korowai to implement the mitigation measures proposed in its submission and that Te Korowai is satisfied that its relationship with Tamarind is progressing positively.

6.40 Finally, it is also noted that Otaraua Hapū submission indicated its concerns were that the well sites were close enough and in shallow waters to cause harm to the iwi's fisheries, marine mammals and birdlife. The hapū wrote to the Board on 12 October 2018 and confirmed that as a result of the mitigation strategies which Tamarind has agreed to implement it no longer wished to be heard in respect of the Applications and that it appreciated the consultation that had taken place between Tamarind and Otaraua.

6.41 The consultation undertaken by Tamarind with iwi and development of mitigation measures to address concerns raised by iwi are set out further in Mr Peacock's statement of rebuttal evidence. Mr Peacock notes that Tamarind has and continues to invest time and energy into maintaining strong, constructive relationships with iwi and is committed to working with iwi in their role as kaitiaki.<sup>63</sup>

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<sup>63</sup> Statement of rebuttal evidence of Jason Peacock at paragraph 2.5

6.42 It is submitted that Maori environmental values have been properly identified as part of the Application process and that they have been properly taken into account by Tamarind. Further, that the conditions proposed by Tamarind address, to the extent practicable, the potential impacts on those values and provide an opportunity for iwi to exercise kaitiakitanga and for Te Ao Māori to be better integrated into the proposed activities.

### **Effects on existing interests of allowing the activities**

6.43 As previously noted, the EPA has confirmed that the AOI does not directly overlap with any existing customary fishing areas, or areas designated under historical or contemporary claims settlement under the Treaty of Waitangi. The existing interests that were likely to be affected by the proposed activities were identified in the Impact Assessment as follows:

#### 6.43.1 Navigation of marine vessels –

(a) It is submitted that marine vessels and petroleum industry vessels and activities currently co-exist in the South Taranaki Bight. As the Proposal will not introduce any vessels movements which are outside the current and historical vessel movements in the area, it is submitted that the impact of the Proposal on the navigation of marine vessels will be negligible. Further the non-interference zone and protection zones in place will avoid vessel conflict in the areas where the activities are being undertaken.

#### 6.43.2 Commercial fisheries interests, including under the Maori Fisheries Act (2004) -

(a) Ms Gibb's evidence is that the adverse effects of Tamarind's proposed activities, including deck drain discharges, on all commercial fishing interests will be negligible<sup>64</sup>.

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<sup>64</sup> Statement of evidence of Nicola Gibbs at paragraph 4.16

6.43.3 Customary fishing rights under the Fisheries (Kaimoana Customary Fishing) Regulations 1998 -

- (a) Ms Gibb's evidence is that Maori customary fishing interests are sometimes exercised in deep water using a pātaka system on commercial fishing vessels and that where that occurs customary fishing interests would be affected in the same way as commercial fishing interests. Tamarind is not aware of any pātaka systems applying with respect to deep water species in JMA 7<sup>65</sup>.

6.43.4 Settlement of contemporary and historical Treaty Waitangi Claims and Recognised Māori interests -

- (a) The Impact Assessment identified the interests of Te Kāhui o Taranaki ("Taranaki Iwi") under the Taranaki Iwi Claims Settlement Act 2016, which gives effect to the Taranaki Iwi Deed of Settlement and includes a number of statutory acknowledgement areas including the Taranaki Iwi Coastal Marine Area<sup>66</sup>.
- (b) The particular cultural, historical, spiritual, and traditional association of Taranaki Iwi with their coastal marine area is acknowledged by the Crown. Any potential direct or indirect effects on that association may therefore be relevant. The requirement to take into account the effects of activities on existing interests is also a method by which the principles of the Treaty of Waitangi are given effect to in the EEZ Act<sup>67</sup>. Accordingly, when taking into account effects on existing interests it is open to the Board to read these obligations in light of the principles of the Treaty, which include the duty to make decisions informed by Māori perspectives.

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<sup>65</sup> Statement of evidence of Nicola Gibbs at paragraph 3.3.2 and 3.29

<sup>66</sup> Impact Assessment at paragraph 1.3.5

<sup>67</sup> Section 12 of the EEZ Act

- (c) The Impact Assessment recognises Te Kahui o Taranaki Trust (Taranaki Iwi) and Ngati Tara Hapu hold mana moana over the AOI and that there are lawfully established cultural activities which iwi continue to exercise either separately or in association with iwi fisheries interests and/or Treaty of Waitangi settlements. These include kaitiakitanga, rangatiratanga and the maintenance of mātauranga Māori.
- (d) In its submission, Te Korowai o Ngāuahine Trust also describes its existing interests in the AOI. Its interests are stated as tangata whenua of its rohe extending out from the coastline and as holders of fishing quota within FMA 8. It states that Ngaruahine iwi share an intimate spiritual, cultural, social and historical association with the takutai moana and that it is obliged to exercise kaitiakitanga in respect of the natural environment. At paragraph 31 of the submission Te Korowai list the specific concerns the iwi has in relation to the Applications on its interests.
- (e) As previously discussed, it is submitted that Maori interests have been identified as part of the Application process and that they have been properly taken into account by Tamarind. Further, that the conditions proposed by Tamarind address, to the extent practicable, the potential impacts on those interests.

## **7. EFFECTS ON HUMAN HEALTH**

- 7.1 It is submitted that the proposed activities will not result in any adverse effects on human health.
- 7.2 The Impact Assessment notes that only personnel working on the facilities and vessels directly involved in the project may be exposed to any risks from the proposed activities. The protection of workers and those directly involved in the proposed activities are the subject of the Health and Safety at Work

Act 2015 and related regulations and are managed through Safety Cases developed for all facilities.

7.3 Dr Lane in her statement of evidence makes the following conclusions regarding effects on human health:

7.3.1 Any potential for impacts on human health from the discharge of harmful substances in offshore processing drainage would be dependent on the particular exposure levels. Dr Lane notes that there would be a 500 metre non-interference zone established around the operating drilling rig, meaning that vessels not directly engaged on work in the Tui Field will not be operating near to the discharge activities.<sup>68</sup>

7.3.2 The distance of the proposed activities from the shore means that recreational water users will be located a significant distance from Tamarind's proposed activities, and in conjunction with the expected dilution of any discharge, exposure of people to harmful substances is *extremely unlikely*.<sup>69</sup>

7.3.3 Dr Lane does not consider that there is any risk to human health posed by bioaccumulation of hydrocarbons in seafood following a spill.<sup>70</sup>

## **8. PROTECTION OF BIOLOGICAL DIVERSITY AND INTEGRITY OF MARINE SPECIES, ECOSYSTEMS AND PROCESSES**

8.1 The potential adverse effects on the environment have been identified by the expert witnesses for Tamarind. It is submitted that the applications do not present any threat, or have any further adverse effects on biological diversity and the integrity of marine species, ecosystems and processes, other than those potential adverse effects identified. As such it is submitted, that the Applications will maintain biological diversity and the integrity of marine species, ecosystems and processes.

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<sup>68</sup> Statement of evidence of Alison Lane at paragraph 4.24

<sup>69</sup> Statement of evidence of Alison Lane at paragraph 4.25

<sup>70</sup> Statement of evidence of Alison Lane at paragraph 5.39

## **9. PROTECTION OF RARE AND VULNERABLE ECOSYSTEMS AND THE HABITATS OF THREATENED SPECIES**

9.1 The Impact Assessment and evidence of Tamarind's witnesses do not identify any rare and vulnerable ecosystems or habitat of threatened species that would be adversely affected by the proposed activities.

9.2 It is acknowledged that the second SEAPEN Report notes that residual risk of impacts to threatened marine species should be considered as moderate. However, the report goes on to states that this does not necessitate any further mitigation measures to be implemented. It is therefore submitted that with the proposed mitigation measures and conditions in place, the proposed activities will appropriately recognise the importance of the protection of threatened species.

## **10. ECONOMIC BENEFIT**

10.1 Mr Colgrave's evidence considers the likely economic impact of Tamarind's proposed activities as well as the potential future impacts of increased production if the proposed drilling activity is successful. Mr Colegrave's key findings are:

10.1.1 Oil and gas extraction, as a source of employment, is over 30 times more important to the Taranaki region than the national average.<sup>71</sup>

10.1.2 Exploration and mining support services are nearly 20 times more important, as a source of employment, than the national average.<sup>72</sup>

10.1.3 The future prosperity of the oil and gas sector is of critical importance to the future prosperity of the Taranaki region.<sup>73</sup>

10.1.4 Tamarind's proposed project is expected to result in significant economic benefit to the Taranaki region, with the project expected to increase GDP by \$15.7 million, provide full time employment for

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<sup>71</sup> Statement of evidence of Fraser Colegrave at paragraph 4.5

<sup>72</sup> Statement of evidence of Fraser Colegrave at paragraph 4.6

<sup>73</sup> Statement of evidence of Fraser Colegrave at paragraph 4.6

170 people for one year and generate an additional \$11.9 million in household incomes.<sup>74</sup>

10.1.5 In the event the proposed development work is successful, over the next six years of the consented field life, the future production could boost regional GDP by \$110 million, provide full time employment for 180 people and generate an additional \$80 million in household incomes.<sup>75</sup>

10.2 It is therefore submitted that Tamarind's proposed activities and future production if the development activity is successful, will result in a significant economic benefit to both the Taranaki region and New Zealand.

## **11. EFFICIENT USE AND DEVELOPMENT OF NATURAL RESOURCES**

11.1 It is submitted that Tamarind's activities represent efficient use and development of natural resources:

11.1.1 Tamarind has significant existing infrastructure in place within the Tui Field and the Field has a proven history of successful extraction, as set out in the evidence of Mr Peacock. The Field has produced more than 40.7 million barrels of crude oil since production began in 2007.<sup>76</sup>

11.1.2 If no further activity is undertaken in the Field, it is likely that by the end of 2019, production rates from the field will be uneconomic, and the assets will need to be decommissioned and restored.<sup>77</sup> The development drilling proposed by Tamarind's Applications is intended to extend the life of the field and the existing assets through the drilling of side track wells.<sup>78</sup>

11.1.3 The objective of the sidetrack wells is to access a further 7.5 million barrels of oils reserves that remain undrained from the Field. This

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<sup>74</sup> Statement of evidence of Fraser Colegrave, at paragraph 7.10.

<sup>75</sup> Statement of evidence of Fraser Colegrave, at paragraph 7.13

<sup>76</sup> Statement of evidence of Jason Peacock, at paragraph 5.1

<sup>77</sup> Statement of evidence of Jason Peacock, at paragraph 5.1

<sup>78</sup> Statement of evidence of Jason Peacock, at paragraph 5.2.

undrained oil is within the known structures of the Field but the current wells are not configured in a way that allows these reserves to be effectively drained.<sup>79</sup>

11.1.4 Tamarind is an expert as an operator of late-life oil fields, and the proposed activities will ensure that the additional reserves within the Field are effectively and efficiently extracted. Tamarind considers that a successful outcome of the proposed activities would extend the life of the Field to 2025.<sup>80</sup>

11.1.5 Mr Colegrave notes that in order to maximise the output of the Tui Field and the significant investment in its infrastructure, additional development drilling is required to ensure that all remaining, commercially viable reserves are rightfully extracted.<sup>81</sup>

11.2 It is therefore submitted that the Applications will promote the efficient use and development of natural resources, as it will allow Tamarind to effectively extract the remaining reserves within the Field, extending the life of the Field significantly and maximising the use of the existing infrastructure within the Field.

## **12. NATURE AND EFFECT OF OTHER MARINE MANAGEMENT REGIMES**

12.1 Section 59(2)(h) requires decision makers to take into account the nature and effect of other marine management regimes when considering an application.

12.2 The EEZ Act, in combination with other marine management regimes, provides a framework for authorising activities in the EEZ.

12.3 The High Court in *Taranaki-Whanganui Conservation Board v EPA* found that the obligation imported in section 59(2)(h) is not an obligation to implement or give effect to the regimes, but to pay attention to those regimes and to weigh the nature and effect of them in addressing any effects on the

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<sup>79</sup> Statement of evidence of Jason Peacock, at paragraph 5.3.

<sup>80</sup> Statement of evidence of Jason Peacock, at paragraph 5.4

<sup>81</sup> Statemetn of evidence of Fraser Colegrave, at paragraph 5.3

environment or existing interests of allowing the activities for which consent was sought.<sup>82</sup> However, it is important to note that the marine consent authority can only impose conditions under section 63 of the EEZ Act which deal with adverse effects of the activity or activities authorised by the consent.

- 12.4 The other marine management regimes that are applicable to Tamarind's Applications are set out in section 2.4 of the Impact Assessment and I do not propose to repeat those here.

### **13. BEST PRACTICE IN RELATION TO AN INDUSTRY OR ACTIVITY**

- 13.1 Tamarind have endeavoured to ensure that, as far as practicable, all Tamarind's practices have been and will be undertaken in accordance with best practice and in accordance with all regulatory requirements.

- 13.2 As set out in the evidence of Mr McCallum, Tamarind believes the drilling rig that will be used to carry out the drilling activities and the offshore processing drainage management plan that will be put in place will be "best in class". In addition, Tamarind has gone to considerable lengths to obtain information about the chemicals that are to be used in the fluids system, well in advance of when such information is normally available in the rig procurement process.

### **14. RELEVANT REGULATIONS AND OTHER APPLICABLE LAW**

- 14.1 Tamarind's Applications will comply with all relevant regulations made under the EEZ Act as well as all other relevant regulations and legislation.

- 14.2 As set out in the evidence of Mr Peacock, Tamarind is committed to protecting the health and safety of all employees and ensuring that its activities are not harmful to the environment and wider community it operates in.<sup>83</sup> Tamarind's Health, Safety and Environment Management System recognises and ensures compliance with Tamarind's regulatory requirements including regulations associated with the EEZ Act, the Maritime

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<sup>82</sup> [2018] NZHC 2217 at [160]

<sup>83</sup> Statement of evidence of Jason Peacock at paragraph 3.6

Transport Act and Marine Protection Rules, the Health and Safety at Work Act 2015 and associated regulations and the Hazardous Substances and New Organisms Act 1996 and associated regulations.

14.3 Section 11 of the EEZ Act provides:

This Act continues or enables the implementation of New Zealand's obligations under various international conventions relating to the marine environment, including –

- (a) the United Nations Convention on the Law of the Sea 1982;
- (b) the Convention on Biological Diversity 1982;
- (c) the International Convention for the Prevention of Pollution from Ships, 1973 (Marpol);
- (d) the Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter, 1972 (the London Convention).

14.4 Parliament has determined that the way in which New Zealand's relevant international obligations will be applied in marine and discharge consents is to refer to them in section 11, and this indicates that compliance with the Act is the way that the legislature has decided to discharge New Zealand's obligations under the various international conventions.<sup>84</sup>

14.5 In respect of section 59(2)(l), it has been found that the wording of section 11 makes it clear that it is the provisions of the EEZ Act itself and not the wording of the conventions that the consent authority is required to take into account.<sup>85</sup>

14.6 The High Court in *Taranaki-Whanganui Conservation Board v EPA* considered whether tikanga Maori could be said to be such a source of law under section 59(2)(1). The High Court found that although tikanga Maori is a matter to be considered under section 59(2)(m), it is not required to be considered under section 59(2)(l).<sup>86</sup>

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<sup>84</sup> *Taranaki-Whanganui Conservation Board v Environmental Protection Authority* at [171]

<sup>85</sup> *Taranaki-Whanganui Conservation Board v Environmental Protection Authority* at [175]

<sup>86</sup> At [177]

**15. SECTION 59(3) MATTERS**

15.1 Section 59(3) of the EEZ states that the consent authority must have regard to:

15.2 EEZ Policy statements;

15.3 Any submissions made and evidence given in relation to the application;

15.4 Any advice, reports, or information sought and received in relation to the application; and

15.5 Any advice received from the Maori Advisory Committee.

**Submissions**

15.6 The matters raised by submitters have been addressed by Tamarind's experts where it is relevant to their area of expertise and within these legal submissions where relevant. It is noted that no expert evidence has been filed by any of the submitters on the application. This is not to say that the concerns expressed by the submitters are not validly held by them. However, it is submitted that full weight should be placed on the evidence provided by Tamarind's experts and that their evidence addresses the concerns raised by submitters and will support a finding of this Board that marine consent and marine discharge consent be granted.

**Advice, reports, information sought and received**

15.7 The Board has received the following independent reports and reviews:

15.7.1 SEAPEN Reports, dated May 2018 and August 2018;

15.7.2 Oil and Gas Solutions Reports ("OGS Reports"), dated June 2018 and August 2018; and

- 15.7.3 Coffey Services Limited Reports (“Coffey Reports”), dated June 2018 and August 2018
- 15.8 Expert conferencing was held in relation to the matters raised in the OGS Reports and the Coffey Reports and joint witness statements have been filed which record that the outstanding issues have been resolved.
- 15.9 The Board has also received a report from Mitchell Daysh, dated September 2018 regarding the conditions of consent. Informal conferencing regarding conditions has been held prior to this hearing between Mr Faithfull and Dr Lane, and the two experts have resolved the majority of matters raised in the report. The conditions of consent are discussed in further detail later in these submissions.
- 15.10 The Board has also received the following advice and information:
- 15.10.1 EPA information on consented marine discharge consent applications and associated hazardous substances;
- 15.10.2 Department of Conservation advice regarding the implications of the activities on marine mammal sanctuaries, population management plans and conservation management strategies; and
- 15.10.3 Report from DNV-GL regarding discharges on the semi-submersible drilling rig.
- 15.11 The Board has made three Further Information Requests and has received the corresponding responses from Tamarind.

**Advice received from the Maori Advisory Committee**

- 15.12 The Ngā Kaihautū Tikanga Taiao Report (“NKTT Report”) identified four key issues that it recommended the Board should take into account. The four issues and Tamarind’s submissions with respect to them are as follows:
- (a) All hapū and iwi with existing interests must be identified in the Impact Assessment and given the opportunity to provide feedback.

- (i) Section 39(1)(c) of the EEZ Act requires an Impact Assessment to identify persons whose existing interests are *likely* to be adversely affected by the activity. Section 39(3) provides that an Impact Assessment must contain information in such detail as corresponds to the scale and significance of effects.
  - (ii) Mr Peacock’s evidence is that Tamarind undertook the exercise of determining which existing interests were likely to be affected diligently and to the best of its knowledge and ability. As Taranaki iwi hold mana moana of the area that the planned activities are to occur within, Tamarind consulted with Te Kāhui o Taranaki Trust and Ngāti Tara and feedback was sought on the Impact Assessment. Tamarind also identified and notified all iwi and hapū who may be affected by an unplanned activity associated with the Applications and the EPA further notified these entities of the Applications<sup>87</sup>. It is submitted this the approach taken by Tamarind is consistent with the EPA’s directions in its document “*Incorporating Maori Perspectives into Decision Making*”. That document provides that the general principle is that if an application will only have impacts of local significance to Māori, then it will be sufficient to engage with those directly affected (such as iwi and hapū of the area and any relevant Māori industry organisations).
  - (iii) As set out earlier in my submissions, Te Kahui o Taranaki Trust (Taranaki iwi) have confirmed to the Board that it is satisfied with Tamarind’s consultation in respect of the Applications. Te Korowai and Otaraua are also satisfied with the ongoing consultation that has occurred.
- (b) Tamarind should resource iwi and hapu to engage a resource to prepare a cultural impact assessment (“CIA”).

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<sup>87</sup>

- (i) Tamarind have offered to resource iwi to prepare a CIA in respect of the Applications.
  - (ii) In the letter to the Board from Te Kāhui o Taranaki dated 18 October 2018, Te Kāhui confirms that Tamarind offered to resource Te Kāhui to prepare a cultural impact assessment in relation to the Applications. Te Korowai also confirm in their letter to the Board that discussions have occurred regarding Tamarind resourcing Te Korowai to prepare a CIA.
  - (iii) In any event, Te Kahui's submission includes a Cultural Values Impact Assessment and in its letter of 18 October 2018, Te Kahui confirms that its submission adequately records its interests and values and how the Applications may affect those. Te Korowai's submission also identified potential impacts on their values and interests.
  - (iv) It is therefore submitted that the Board has sufficient information to adequately assess the cultural impact of the proposed activities.
  - (v) In *Taranaki-Whanganui Conservation Board v Environmental Protection Authority* [2018] NZHC 2217 the High Court noted that obtaining of a cultural impact assessment from tangata whenua is not a mandatory requirement flowing from section 39(1) and (2) and section 12. Further, that there is no reference at all in section 39 to a cultural impact assessment prepared by tangata whenua<sup>88</sup>.
- (c) Tamarind should undertake a holistic assessment of cumulative effects, including Maori perspective.
- (i) Section 10 of the Impact Assessment and the expert evidence of Tamarind's witnesses assess cumulative

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<sup>88</sup>

At paragraph 215

effects. It is submitted that Tamarind has undertaken a thorough and detailed assessment of cumulative effects, and that there is sufficient information before the Board to enable an assessment of cumulative effects, including from a Maori perspective

- (ii) With respect to this recommendation, it is noted that Te Kāhui o Taranaki's letter to the Board encouraged the EPA as a matter of urgency to work with iwi to develop a best practice framework to enable all iwi to prepare cultural impact assessments and to undertake a holistic assessment of cumulative effects in a consistent and meaningful way.
- (d) Tamarind should prepare an Engagement Plan detailing how those with existing interests should be included from the beginning and during operations.
- (i) As set out in the rebuttal evidence of Mr Peacock, Tamarind has a standing Relationship Agreement with Te Kahui which provides for engagement protocol between both parties. Tamarind is in the process of finalising a Relationship Agreement with Te Korowai.
  - (ii) Tamarind has recently held a hui with Te Kāhui to commence to process of developing protocol for consideration of Te Ao Māori perspectives.
  - (iii) Tamarind have also committed to holding a hui in January 2019 to provide cultural training for all staff involved with operations. Tamarind understands that both Te Kāhui and Te Korowai will be involved in this training.
  - (iv) Tamarind has confirmed its commitment to holding an annual meeting with iwi to outline the general scope of activities to be undertaken under the consents. Tamarind's Relationship Agreement with Te Kāhui includes a clause

requiring an annual meeting and Tamarind proposed Relationship Agreement with TKONT includes the requirement for an annual meeting.

- 15.13 With respect to the recommendations of Ngā Kaihautū, it is submitted that while the Board is obliged to have regard to these, it is not obliged to adopt or expressly incorporate the recommendations in its decision<sup>89</sup>.

## **16. PURPOSE OF THE EEZ ACT**

- 16.1 It is submitted that the grant of consent to the Applications will achieve the purpose of the EEZ Act in that it will promote the sustainable management of natural resources of the EEZ:

16.1.1 It will enable people to provide for their economic wellbeing;

16.1.2 It will allow for the efficient use and development of the remaining reserves in the Tui Field; and

16.1.3 The Applicant has demonstrated that adverse effects on the environment will be avoided, remedied and mitigated.

## **17. DURATION OF CONSENT**

- 17.1 The Applicant has sought a term of consent of 5 years.

17.2 It is anticipated that the proposed activities should be completed within a 9 month timeframe, however the proposed term is sought to allow for any operational delays outside of Tamarind's control.

- 17.3 It is therefore submitted that a term of 5 years is appropriate.

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<sup>89</sup> *Taranaki-Whanganui Conservation Board v Environmental Protection Authority* [2018] NZHC 2217 at paragraphs 226 - 227

## 18. CONDITIONS

- 18.1 The Board is required to take into account the extent to which imposing conditions under section 63 of the EEZ Act might avoid, remedy or mitigate the adverse effects of the activity.<sup>90</sup>
- 18.2 Section 63 provides that the Board may grant a marine consent on any condition that it considers appropriate to deal with adverse effects of the activity on the environment or existing interests.
- 18.3 The key difference between conditions for marine consents and marine discharge consents is that conditions that amount to or contribute to an adaptive management approach cannot be imposed in a marine discharge consent.
- 18.4 The Board must not impose a condition on a consent if the condition would be inconsistent with the EEZ Act or any regulations.<sup>91</sup> Further, the Board must not impose a condition on a consent if the condition would conflict with a measure required in relation to the activity by another marine management regime or the Health and Safety at Work Act 2015.<sup>92</sup>
- 18.5 Tamarind largely concurs with the principles relating to conditions set out in the Mitchell Daysh report. The well-established principles regarding conditions in the context of the RMA are also noted. To be valid at law a condition must:<sup>93</sup>
- 18.5.1 Be for a valid purpose, not for an ulterior one;
  - 18.5.2 Fairly and reasonably relate to the development authorised by the consent to which the condition is attached; and

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<sup>90</sup> Section 59(2)(j) EEZ Act

<sup>91</sup> Section 63(3)

<sup>92</sup> Section 63(4)

<sup>93</sup> *Newbury District Council v Secretary of State for the Environment* [1981] AC 578

- 18.5.3 Not be so unreasonable that a reasonable planning authority, duly appreciating its statutory duties, could not have approved it.
- 18.6 It is also noted that a condition cannot be imposed that would nullify the grant of a consent.<sup>94</sup> If the Board determines that consent ought to be granted, it is submitted that particular care needs to be taken to ensure that such conditions do not render the consent impossible to implement from a practical perspective.
- 18.7 Tamarind proffered conditions for both the marine consent and marine discharge consent which have been reviewed by Mitchell Daysh. Tamarind largely accepts the suggestions and amendments made by Mitchell Daysh. Prior to this hearing, Dr Lane and Mr Faithfull conferenced and were able to reach agreement on the majority of conditions, as set out in their memorandum, which was provided to the Board on 5 November 2018.
- 18.8 There are only four outstanding matters in respect of conditions, as set out in Attachment 2 to the memorandum:

*Marine consent*

- (a) Condition 7 – Mr Faithfull has recommended that Tamarind be required to consult with Te Korowai o Ngāruahine Trust in relation to the development of a monitoring programme. However, Te Korowai did not request that Tamarind consult with them on the development of a monitoring programme in its submission and this is not something that has been agreed to as between Te Korowai and Tamarind. It is not therefore considered appropriate that this be imposed as a consent condition. Tamarind's preference is that the original proposed wording of the condition be adopted.
- (b) Condition 12 – Mr Faithfull has recommended a condition that Tamarind shall ensure only synthetic based drilling fluids are used in the drilling activities. Tamarind considers the condition is unduly restrictive and unnecessary. The proposal is to use synthetic based

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<sup>94</sup> *Lyttleton Port Company Ltd v Canterbury Regional Council* NZEnvC Christchurch C8/2001, 26 January 2001

fluids only for drilling the wells, but milling fluids will also be used and these are water-based. They may be considered to be “drilling fluids” in a technical sense and the condition would prevent their use.

*Marine discharge consent*

- (c) Condition 7- Mr Faithfull has recommended a condition which requires the drainage system to constantly monitor, by the use of an oil in water analyser that is calibrated and maintained in accordance with the manufacturer's specifications, hazardous and non-hazardous deck drainage to ensure that discharges do not have an oil content in exceedance of 15ppm. Tamarind considers this condition is unworkable and unnecessary.
- (d) Condition 8 – Mr Faithfull has recommended that Tamarind ensure all harmful substances that may potentially discharge into the hazardous deck drains be restricted to six specified chemicals. Tamarind considers this condition is unworkable and unduly restrictive. In practice, other substances have the potential to enter the deck drains if they are accidentally spilled or splashed onto the decks. Additionally, it is possible that other more appropriate and less ecotoxic chemicals may be identified and used in the programme. It is submitted it is not appropriate or necessary to impose a condition specifying exact chemicals, given the very minor scale of the activity and negligible potential adverse effects.

18.9 Dr Lane and Mr McCallum are available to speak further to the outstanding matters in respect of conditions.

18.10 Tamarind submits that the conditions with Tamarind's proposed amendments will appropriately avoid, remedy or mitigate the adverse effects of the planned activities and any unplanned events. It is also submitted that the amendments proposed by Tamarind ensure that the conditions are reasonable and can be practically implemented.

## 19. CONCLUSION

- 19.1 It is submitted that consideration of Tamarind's Applications against the decision making criteria in the EEZ Act should direct the Board to make a decision to grant Tamarind's Applications for the following reasons:
- 19.1.1 The adverse effects of Tamarind's proposed activities on the environment and existing interests will be negligible to minor;
  - 19.1.2 The proposed activities will not result in any adverse effects on human health;
  - 19.1.3 Tamarind's Applications recognise the importance of protecting the biological diversity, the integrity of marine species, ecosystems and processes, rare and vulnerable ecosystems and the habitats of threatened species;
  - 19.1.4 Granting the marine consent and marine discharge consent will provide for significant economic benefit within the region and for New Zealand;
  - 19.1.5 Granting the marine consent and marine discharge consent will provide for and ensure the efficient use and development of natural resources;
  - 19.1.6 Other marine management regimes address Tamarind's activities;
  - 19.1.7 Tamarind's proposed activities and the way it intends to undertake those activities represent best industry practice;
  - 19.1.8 The proposed conditions appropriately avoid, remedy or mitigate any potential adverse effects of its proposed activities;
  - 19.1.9 Tamarind's Applications complies with all relevant regulations and all other applicable law.

19.2 Based on the evidence presented by the expert witnesses for Tamarind, it is submitted that the purpose of the EEZ Act will be achieved and the actual and potential adverse effects of the proposed activity will be appropriately avoided, remedied or mitigated. It is therefore submitted that, in accordance with the EEZ Act, the Board may grant Tamarind's application for marine consent and marine discharge consent.

**DATED** 6 November 2018

A handwritten signature in blue ink, appearing to read 'L P Wallace / R E Eaton', written over a horizontal line.

**L P Wallace / R E Eaton**  
**Counsel for the Applicant**