



The August 2017 decision on Trans-Tasman
Resources application for sea-bed mining in the
South Taranaki Bight

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In August 2017, approval was given to an application from Trans-Tasman Resources Ltd (TTRL) for sea-bed mining off the South Taranaki coast. This was a second application following an [unsuccessful application in November 2013](#).

The [application submitted to the EPA in August 2016](#) was for marine consents and marine discharge consents to extract and process for export up to 5 million tonnes of iron sand per year for up to 35 years in the South Taranaki Bight.

The marine consent authority, the Decision Making Committee (DMC), appointed by the Board of the EPA to hear the second application, gave consent with conditions and operating constraints to limit the scale, intensity and duration of the discharge effects of residual material to the seabed, known as the sediment plume, as well as impacts on marine mammals.

Significantly, the 4-member DMC had a split vote with Committee Chairman Alick Shaw and Dr Kevin Thompson voting to grant consent and Deputy Chair, Sharon McGarry and Gerry Te Kapa Coates, voting to refuse consent. McGarry and Coates cited concerns over localised adverse environmental effects and tangata whenua existing interests. According to procedures established prior to the hearing, the chair's casting vote was used to determine the outcome of voting.

The 368 page [decision report](#) is in two parts – the first part comprises 8 chapters dealing with the background to the application, the legislation and regulations, the project and context, environmental impacts, social and cultural impacts, existing interests, the committee's integrated assessment, and finally conditions and monitoring. The second part comprises the alternative view of Coates and McGarry who acknowledged that the DMC had worked collaboratively on the agreed factual narrative in the decision report, but had some major differences in interpretation of the evidence. They felt that overall the localised adverse environmental effects on the Patea Shoals and tangata whenua existing interests are unacceptable and not avoided, remedied or mitigated by the conditions imposed. They also had concerns regarding uncertainty, and the adequacy of environmental protection within the coastal marine area (CMA that they consider tangata whenua have statutory acknowledgement over. They were concerned that a large area would be affected by the sediment plume for the duration of the mining, which would significantly impact on the ability of tangata whenua to exercise kaitiakitanga over their rohe and marine resources, and, in the view of tangata whenua, would adversely affect the mauri of the marine environment. They considered the lack of engagement between TTRL and tangata whenua as a serious deficiency.

Critical issues for impact assessment: quality of information and key impacts

Impact assessment necessarily informed the decision to grant consent but the quality of information about the impacts of the activity was a significant point of contestation, especially the lack of baseline data from which to assess impacts.

As noted in an earlier NZAIA newsletter article, concerns about the quality of information about environmental impacts in the application were expressed by several submitters. The Key Issues report, and other EPA-commissioned reports, had also highlighted some critical concerns with the impact assessment information in TTRL's application. TTRL provided a [brief summary](#) of the impacts of the proposed activity (to accompany the full application).

The DMC in its Decision Report identified three key potential impacts (aspects of which were inter-related):

1. The sediment plume, which was expected to have significant adverse effects on benthic life in the near-field (up to 3 km) through reduction in light affecting primary production, and direct effects such as smothering, adversely affecting existing interests in commercial, recreational, and customary fishing.
2. Effects on Marine mammals, not just from the sediment plume but, more significantly, from noise produced by the mining vessels.
3. Human impacts, particularly disruptions to the use of the natural resources of the STB for commercial fishing, personal enjoyment, and customary practices.

The DMC considered that the impact of most effects would be felt at a localised scale. It concluded that the mining operation would not affect fish species at a population level. The DMC report did not accept submitter evidence about the effects on kaimoana, or effects arising from heavy metal accumulation or toxicity.

With regard to the mining site, the DMC report noted:

The mining site itself will suffer direct impacts from the removal and processing of seabed material which will result in a catastrophic destruction of existing benthos on the seabed in the mining site itself. Recovery will take time and the species mix may be different but we accept the evidence that benthos will recolonise the area and it will recover to perform a similar ecological function (Summary of Decision, para 20, p. xiii)

Conditions imposed on the consent holder are designed to limit the intensity of the plume and its effect on the environment. Noise generated by the mining operation was another impact managed by consent conditions.

The DMC emphasised the temporal and spatial variability of impacts in the EEZ and CMA environment:

The physical environment of the STB is challenging, dynamic and complex. It will have a significant influence on how TTRL undertakes its mining operation. It will also have a significant influence on how the project affects the environment, especially the spread and effect of the sediment plume. We consider that TTRL is well aware of the challenges and has incorporated them into its proposed project design (para 931, p.197)

In terms of overall quality of information on which to base its August 2017 decision, the DMC asserted its confidence that it had the best available information in accordance with sections 61(1)(b) and 87E(1)(b) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act). This does not mean 'complete information'. Section 61 sets out information principles. While section 61(2) requires the

DMC to favour environmental protection in addition to caution, if the information available is uncertain or inadequate, the DMC noted that there was no requirement for it to apply the precautionary principle.

Key stakeholders' perspectives of impacts

The EPA received nearly 14,000 submissions on the 2016 application, the majority of which were submitted by a third-party website (such as Kiwis Against Seabed Mining or Greenpeace). Overwhelmingly, they opposed the application. Just over 260 submissions were made directly to the EPA. Of these submissions, according to the submissions analysis undertaken for the EPA, approximately 56% supported the proposal in full or in part, and nearly 42% were opposed to the proposed activity because of the concerns related to the three broad areas highlighted above.

South Taranaki iwi and hapu were strongly opposed to the application and are among those groups that have appealed the decision. Among the key stakeholders are recreational and commercial fishing interests, and recreational diving groups.

What happens now?

After the decision was released in August, appeals were lodged by Forest and Bird, Taranaki-Whanganui Conservation Board, Te Kaahui o Rauru, Te Runanga o Ngati Ruanui Trust, a group of commercial fishing interests, Kiwis Against Sea-bed Mining and Greenpeace, and Te Ohu Kaimoana. The timing of a High Court hearing is as yet unknown.

After appeals have been resolved, the consents can commence. Before commencement of mining a monitoring plan must collect two years' worth of baseline data. This and subsequent monitoring data during the operations, will further inform management plans and operational decisions, as required by the consent conditions.

Issues for impact assessment highlighted by this decision

The TTRL decision highlights weaknesses in New Zealand's policy and statutory framework for impact assessment. These range from specific gaps such as the lack of requirement on the DMC to take into account the principles of the Treaty when making decisions on applications, to more generic concerns about the nature of consultation. Iwi representatives were extremely dissatisfied with TTRL's approach to consultation. Ngāti Ruanui (acknowledged as holding mana whenua) declined to engage with TTRL on its terms or to prepare a cultural impact report. The Board noted:

A cultural impact assessment by tangata whenua is good practice for applications such as this and is highly desirable, but it is not a statutory requirement for applications under the Act. The absence of such an assessment in the documentation accompanying the application is not a fatal flaw (para 691, p.152)

The Board noted that participation of iwi was necessary for some conditions attached to the consents. This places iwi in an invidious position.

Despite a recommendation from the EPA's own Māori Advisory Committee, Ngā Kaihautū Tikanga Taiao (NKTT) that TTRL include educational and/or training activities to be delivered by tangata whenua, so as to improve TTRL awareness and understanding of tangata whenua perspectives, values, history, interests, tikanga and kawa, the DMC said it could not impose this as a consent condition.

Another more generic concern with the policy and statutory framework is the different definition of the term "environment" in the EEZ Act as "the natural environment, including ecosystems and their constituent parts and all natural resources of New Zealand and its waters". Legal counsel for the DMC made it clear that:

Unlike under the RMA, effects on people and communities, amenity values, and social, economic, aesthetic, and cultural conditions are not effects on matters that make up the "environment" for the purposes of the Act.

In our view, however, the DMC should take into account any evidence or information before it about relevant cultural perspectives of effects on the natural environment, alongside scientific or technical information. This would include information about the values that Māori hold in the natural environment, such as values in taonga species or in the mauri of land, water, or other elements of environment." (Memorandum of Counsel Assisting the Decision-Making Committee – Further Response to Minute 40, 17 May 2017, page 20, paragraph 90)

Ideally, this needs to be made much clearer in the legislation.

Another issue is the statutory requirement for the marine consent authority to consider existing interests. This means that future interests cannot be considered. This was a concern for submitters who wanted possible future whale-watching activity to be considered in the DMC's decision about the economic impact of the proposed sea-bed mining. Consideration of future interests is needed to ensure that short-term economic gain does not outweigh much greater future long-term economic gain.

No cost-benefit analysis was undertaken which some submitters thought would provide a more robust assessment of economic benefit. Instead, the DMC was influenced by MBIE's view that the proposed activity that would contribute positively to the country's broader economic development strategy. More guidance is perhaps needed on how economic benefits should be assessed.

For further information on impact assessment and marine consent applications see:

Cheyne, C. M. (2016). [Trans-Tasman Resources Limited application for seabed mining consent](#). In *New Zealand Association of Impact Assessment Newsletter* (Issue. 2)