

2 September 2016

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By email: celia.haden@epa.govt.nz

Dear Celia

TTR – SECTION 158 – PROTECTION OF SENSITIVE INFORMATION

1. Thank you for your letter of 26 August 2016.
2. As discussed with you at our meeting in your Wellington office on 31 August we appreciate the opportunity to provide further information in support of our request. This was not supplied in our earlier memorandum of 22 August 2016 as we were unclear what level of detail was appropriate. Our meeting was very helpful in clarifying matters.
3. As noted the key information our client seeks to protect is information and data in two key technical reports and a memorandum (as specified in para 6 below) and provided to you with the marine consent application. This information has formed part of the detailed technical evaluation of potential environmental effects but in a broader context the information would be of considerable economic benefit and advantage to a commercial competitor of TTR.
4. We particularly note that this information has already been made available to a number of third parties who have signed confidentiality agreements. Thus the scope of confidentiality order TTR is now seeking pursuant to s 158 is distinctly limited solely to members of the general public (including potential commercial competitors of our client) and those who may become party to the marine consent proceedings (and are unwilling to sign a confidentiality agreement with TTR with respect to this specific information TTR seek to be protected). In this context it is relevant to note that the local iwi (Ngati Ruanui) have not been prepared to sign a confidentiality agreement with respect to the information.

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5. Parties who have signed confidentiality agreements include: the Department of Conservation; Taranaki Regional Council; commercial fishing interests; and the Maori Fishing Forum; as well as EPA peer reviewers.
6. The confidentiality order in relation to the information specified in no way limits or restricts the ability of other parties to the marine consent application to fully and reasonably inform themselves of the potential environmental impacts of the TTR project. What it would limit is the ability of a party to undertake detailed technical analysis or technical peer review of the specific data protected. Clearly, to meaningfully undertake such work would require specialist technical expertise.
7. The sensitive information over which an order is sought is outlined in our memorandum of 22 August 2016 (paragraph 3). As noted in our meeting the key reports are:
 - (a) HR Wallingford (2014b). Laboratory Testing of Sediments. DDM7316-RT002-R01-00;
 - (b) HR Wallingford (2015). Analysis of Source Terms for Plume Dispersion Modelling. DDM7316-RT003-R01-00; and
 - (c) *Memorandum Contribution to source terms report for TTR* from Mike Dearnaley, HRW, to Matt Pinkerton, NIWA, dated 4 September 2015.
8. Apart from providing critical input into the design basis for proprietary processing and deposition equipment the technical data for which a confidentiality order is requested forms an essential element in an ongoing MBIE research project (RTVU1404). This project involves collaboration between TTR, Callaghan Innovation and the Robinson Research Institute (University of Victoria, Wellington). This research is aimed at a better technical understanding of the characteristics and commercial potential of the specific iron sands TTR proposes to mine should marine consents be granted. The research project is being undertaken pursuant to the protection of a mutual confidentiality and intellectual property agreement.
9. TTR has spent in excess of \$30 million collecting and processing iron sand samples in a specifically designed trial plant, conducting lab tests and compiling and analysing a considerable amount of technical data. It is essentially this lab test data which would be of major commercial value to a commercial competitor that TTR is seeking a confidentiality order to protect. For such a competitor to be able to freely obtain such economically important data from a public marine consent process would clearly and unreasonably prejudice the commercial interests of TTR.

10. The two reports referred to in para 7 could be protected in their entirety or have sensitive sections redacted. From a practical viewpoint the documents would not sensibly stand alone if the key data referred to was to be redacted. Similar comments apply to the memorandum referred to.
11. It is noted that none of the material which TTR now requests be subject to a confidentiality order was available or formed part of the earlier marine consent proceedings in which TTR was involved.
12. In relation to the memorandum of 22 August 2016 we note that the duration of any confidentiality order made by the DMC would solely be for the duration of the marine consent proceedings. It is accepted that future protection of the confidentiality of the material would be subject to the relevant provisions of the Official Information Act.
13. Given the limited scope of the confidentiality order requested, it is submitted that no credible or valid public interest concerns arise. Full evaluation of the potential environmental impacts of the marine consent application is in no way inhibited or restricted by the confidentiality requested. The sole purpose of the confidential orders requested is to protect TTR from serious commercial prejudice should the data be released to persons who refuse to sign an appropriate confidentiality agreement.
14. Please advise if the EPA, or the DMC, require any further clarification or additional information in support of our client's application.

Yours faithfully

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