

EXCLUSIVE ECONOMIC ZONE AND CONTINENTAL SHELF (ENVIRONMENTAL EFFECTS) ACT 2012 (the Act)

Trans-Tasman Resources Limited iron sand extraction and processing application

M3 – Minute and direction of the Decision-making Committee – 14 September 2016

1. On 23 August 2016 the applicant Trans-Tasman Resources Limited (TTRL) applied for a direction, under section 158 of the Act, protecting certain sensitive information forming part of its application for marine consents.¹
2. EPA staff sought further information from TTRL about the section 158 application by letter dated 26 August 2016, and TTRL responded in a letter by Atkins Holm Majurey dated 2 September 2016. The Decision-making Committee (DMC) convened on 6 September 2016 to consider the section 158 application, and subsequently issued Minute 2 seeking comment from TTRL on the workability of a potential direction. TTRL's response was provided on 12 September 2016.
3. A copy of TTRL's application dated 22 August 2016, the EPA's letter of 26 August 2016, Atkins Holm Majurey's letter of 2 September 2016, Minute 2 of the DMC, and Atkins Holm Majurey's memorandum of 12 September 2016 will be available on the EPA website.
4. TTRL seeks a direction restricting the publication or communication, other than to persons who enter into a confidentiality agreement with TTRL,² of the following information³:
 - a. Redacted sections of a report by HR Wallingford (2014b), Support to Trans-Tasman Resources: Laboratory Testing of Sediments, DDM7316-RT002-R01-00;
 - b. Redacted sections of a report by HR Wallingford (2015), Support to Trans-Tasman Resources: Source Terms and Sediment Properties for Plume Dispersion Modelling, DDM7316-RT004-R01-00;
 - c. Redacted sections of a memorandum entitled "Contribution to source terms report for TTR" from Matt Pinkerton, NIWA, to Mike Dearnaley, HR Wallingford, dated 4 September 2015;

¹ The application is for both marine consents and marine discharge consents with marine consents being the collective term used in the Act.

² A copy of the confidentiality agreement will also be made available on the EPA website.

³ The section 158 application originally sought protection of the entirety of documents described in paragraph 4 a, b, and c. TTRL subsequently confirmed that those documents could be redacted to protect sensitive information, and has provided redacted versions accordingly.

- d. Tables 2-3, 2-4, and 2-5 in a report by Hadfield, M, and Macdonald, H (2015), Sediment plume modelling, NIWA Client Report No. WLG2015---22;
 - e. Table 5-1 in a report by Pinkerton, M, and Gall, M (2015), Optical effects of proposed iron-sand mining in the south Taranaki Bight region, NIWA Client Report No. WLG2015-26; and
 - f. Table 1, "1. The industry (employment) multipliers generated/applied by Butcher & Partners", and Point 5 – Direct Expenditure forecasts, in a document entitled "Confidential Response to EPA Information Request" dated 28 January 2016.

("the sensitive information")
5. Having considered the section 158 application, the further correspondence received, and the sensitive information, the DMC is satisfied that an order protecting that information is necessary to avoid disclosing a trade secret or to avoid causing unreasonable prejudice to TTRL's commercial position.
 6. In reaching that view, the DMC accepts that the sensitive information described in paragraph 4(a) to (e) above is of considerable value to TTRL and, if analysed, would allow potential competitors to obtain process information without having to incur the significant cost and effort that TTRL has expended in doing so. Further, the DMC accepts that the sensitive information described in paragraph 4(f) above is licensed information which belongs to a third party, and making that information publicly available may cause unreasonable prejudice to that third party (and potentially also to TTRL).
 7. In considering whether the public interest would outweigh the importance of avoiding the disclosure or prejudice, the DMC considers that the publicly available part of TTRL's application for marine consents contains enough information to allow people to understand the nature of the proposed activities and their effects on the environment and existing interests. That said, the DMC is of the view that there will be public interest in making the sensitive information available to interested parties to enable them to properly assess the sensitive information as part of the process of considering TTRL's application for marine consents. The DMC therefore proposed, in Minute 2, various means to ensure that the DMC can test and evaluate the sensitive information, assisted as necessary by relevant experts (a number of whom have already entered into a confidentiality agreement with TTRL in respect of the information⁴) and legal counsel. The outcome of this testing and evaluation should be made available to the public to the extent possible without disclosing the sensitive information.
 8. Atkins Holm Majurey's memorandum of 12 September 2016 confirms that TTRL agrees with the approach proposed by the DMC in Minute 2.

⁴ Relevant experts advising the EPA, the Department of Conservation, Taranaki Regional Council, commercial fishing interests, and the Māori Fishing Forum have entered into a confidentiality agreement with TTRL.

9. The DMC considers that any wider public interest in making the sensitive information more generally available (not addressed by the measures described in the direction below) does not outweigh the importance of avoiding disclosure of a trade secret or prejudice to TTRL's commercial position.
10. Therefore in accordance with section 158(3) of the Act the DMC issues the following direction:
 - a. The publication or communication of the information described in paragraph 4 above is restricted to the DMC, EPA staff dealing with TTRL's application, EPA experts, and persons who enter into a confidentiality agreement with TTRL.
 - b. TTRL shall, as soon as reasonably practicable, advise the EPA in writing of the names of all experts and other individuals who have entered into a confidentiality agreement in respect of the information, and shall continue to advise the EPA in writing when any additional experts or other individuals enter into a confidentiality agreement.
 - c. Relevant expert witnesses who have entered into a confidentiality agreement and considered the information may be asked to conference in accordance with the Environment Court of New Zealand's Practice Note 2014,⁵ at a time to be arranged, and prepare a joint witness statement or statements recording the outcomes of conferencing, including any matters that were agreed, any matters that were not agreed, and reasons why. If appropriate, multiple witness statements covering multiple disciplines or aspects of the information are to be prepared.
 - d. If any content of the statement or statements would disclose the sensitive information then publication or communication of that aspect of the joint witness statement (or statements) will be restricted to TTRL, the DMC, EPA staff dealing with TTRL's application, parties' legal counsel, and persons who enter into a confidentiality agreement with TTRL and are provided with the information that is the subject of the statement. Otherwise, the joint witness statement or statements are to be made publicly available.
 - e. Attendance at any part of the hearing that addresses the sensitive information or the restricted aspects of any joint witness statement (or statements), including through questioning of the signatories to that joint witness statement about the information, will be restricted to TTRL, the DMC, EPA staff dealing with TTRL's application, parties' legal counsel, and persons who enter into a confidentiality agreement with TTRL and are provided with the information that is the subject of the witness statement.
11. In accordance with section 158(5) of the Act, the provisions of the Official Information Act 1982 cease to apply to the information while, and to the extent that, the direction remains in effect.

⁵ Available at <https://environmentcourt.govt.nz/about/practice-note/>

12. Breaching (or permitting a breach of) this direction is an offence under section 134G(1)(c) of the Act.

For the DMC:

A handwritten signature in blue ink, consisting of a large, stylized 'A' followed by a cursive 'Shaw'.

Alick Shaw

Chair TTRL Decision-making Committee

14 September 2016