

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

Trans-Tasman Resources Limited iron sand extraction and processing application

M8 – Minute of the Decision-Making Committee – 10 November 2016

Background

1. On 23 August 2016 TTRL lodged its application for marine consents to mine iron sand off the coast of Taranaki. The Decision-Making Committee (DMC) issued Minute 3 (M3) on 14 September restricting certain information on the application by Trans-Tasman Resources Ltd (TTRL) to persons who enter a confidentiality agreement with TTRL (among others).
2. The application was publicly notified on Saturday 17 September 2016. In accordance with section 47 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act) the submission period of 20 working days was due to end on 14 October 2016.
3. On 3 October 2016, Kiwis Against Seabed Mining Inc (KASM) applied to the Environment Court under section 158(6) of the EEZ Act for a Court Order under s 279(3)(a) of the Resource Management Act 1991 (RMA) to cancel the Direction of the DMC in M3.
4. On 5 October 2016, Te Rūnanga o Ngāti Ruanui Trust (Ngāti Ruanui) made a request for an extension of time to the submission period for a further 20 working days after 14 October 2016. This request was supported by a number of other parties. The DMC granted the extension for 20 working days and set the current closing date for submissions of 14 November 2016.
5. A hearing was held in the Environment Court before Judge Dwyer and Commissioner Buchanan on 7 and 8 November 2016. On 8 November, the Court ordered that all the information that had been restricted by the direction in M3 be made publicly available. The EPA made this information available on its website on the afternoon of 9 November 2016.
6. On 9 November 2016 the DMC received a joint memorandum on behalf of KASM, Ngati Ruanui and Talley's Group Limited (Talley's) requesting that the time period for submissions be extended further to allow parties to consider the information made publicly available on 9 November 2016. The joint memorandum requested the submission period be extended for a 20 further working days beyond the current closing date for submissions of 14 November 2016.

7. On 9 November 2016, the 'Fisheries Submitters'¹ also filed a memorandum in support of the joint memorandum noting that some of them wished to make amended submissions based on the information to be made publicly available.
8. On 10 November 2016, Greenpeace also filed a memorandum in support of the joint memorandum.
9. Trans-Tasman Resources Limited (TTRL) advised the DMC on 9 November 2016, that it would not object to the request provided consideration was given to not delaying the start of the hearing longer than necessary. On this basis, TTRL offered to circulate the applicant's evidence on 19 December 2016.

Requirements of the EEZ Act

10. Section 160(2) of the EEZ Act limits any extension of time to no more than twice the period specified in the Act unless the applicant agrees and section 160(3) requires the EPA to notify every person of an extension who "is directly affected by the extension of a time limit". In this instance, TTRL agrees to the extension.
11. It is mandatory for the DMC to take into account the interests of persons considered to be directly affected and the interests of the community in being able to achieve an adequate assessment of the potential effects of a proposal. In making this assessment, the purpose of the Act is relevant, and the purpose is achieved by taking into account the decision making criteria and applying the information principles set out in section 61.
12. There is also a general obligation under section 40 to deal with the application as promptly as is reasonable in the circumstances.

Reasons for decision on request

13. We consider that a further 20 working day extension to the submission period is necessary to ensure there can be adequate assessment of the information provided publicly on 9 November 2016. In making our decision, we have taken into account the relevant considerations set out above, and the grounds for the request, grounds in support of the request, and the views of the applicant.
14. The joint request states that the Environment Court identified that the redacted information is considered of "crucial value" for the assessment of the application and that the public as well as experts should have the opportunity to assess it.
15. We consider that it is in the interests of the community and the interests of potential submitters for full and well considered submissions to be provided to us for our consideration. This provides a sound basis for us to obtain the best available information on which to base our decision.

¹ The Fisheries Submitters are Fisheries Inshore NZ, New Zealand Federation of Commercial Fishermen Inc, Southern Inshore Fisheries Management Co Limited, MacDonald and Brown Ltd, and Cloudy Bay Clams Ltd

16. This information that was previously redacted has only been made publicly available on 9 November 2016 so the closing date for submissions of 14 November would not allow for this assessment.
17. We have given careful consideration to the impact on TTRL. We note this extension may add further fair and reasonable additional costs to the process, particularly when it comes as a second extension of the time period. However, we consider this can be mitigated to some extent by our consideration of how time may be managed during the processes leading up to the start of the hearing. We will give this consideration in light of the offer by the applicant to circulate its evidence on 19 December 2016. The dates for the processes leading up to the start of the hearing will be confirmed when the hearing procedures are finalised in the near future.
18. We also hope that this additional time will assist in refining issues, and preparation of evidence to facilitate the rest of the hearing process.
19. The new date that submissions must be received by is 5pm on Monday 12 December 2016.

For the DMC:



Alick Shaw
DMC Chair
10 November 2016