

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

Trans-Tasman Resources Limited iron sand extraction and processing application

M37 – Minute of the Decision-Making Committee – 22 March 2017

Timetable for next steps

1. On 15 March 2017 the DMC issued Minute 35 setting out the key steps to be completed before the DMC can close the hearing and inviting comments from parties.
2. A memorandum was received from the applicant with some suggested amendments and these have been considered and accommodated to the extent practicable. Email correspondence was received from Origin, including a memorandum dated 17 March 2017, in respect of availability and this has been accommodated.
3. It was raised in the hearing on 16 March 2017 regarding timing for closing and it was agreed by those present that it was more appropriate to schedule this after the process for development of conditions had run its course, probably in the week beginning 8 May 2017.
4. A memorandum was received from the Fisheries Submitters and Te Runanga o Ngati Ruanui Trust at the end of the day on 16 March 2017 raising concerns about the proposed timetable. The additional time is opposed as it will impose additional costs on participants. It was alleged that the additional time was not justified for 5 reasons set out in the memorandum. In particular, concerns were raised that the additional processes to assess further modelling information would impose an unreasonable cost, effort and time on these parties.
5. The position of Fisheries Submitters and Te Runanga o Ngati Ruanui Trust is that they are not able to participate beyond what was originally envisaged and will not provide expert comment on any new information. A point was also raised in respect of the timing of closing submissions but as noted above this had already been addressed in the hearing and the timetabling reflects this point.
6. A memorandum was received from KASM/Greenpeace on 20 March 2017 confirming their view that relevant experts should have an opportunity to comment on the further modelling information, while sharing the frustration of other submitters regarding increased time and cost. It was also emphasised that closing submissions only be provided after all evidential steps have been completed.
7. The DMC notes in particular the submission of the Fisheries Submitters and Te Runanga o Ngati Ruanui Trust that *"a process that imposes unreasonable time and cost burdens on those who are*

*driven to participate, in order to protect their existing interests, can be as much of a breach of those parties' rights to natural justice as a process which deprives them of a right to be heard at all."*¹

8. The decision to require further modelling at the point it was requested was not taken lightly. The DMC acknowledges the resources needed to participate in a process such as this application can be significant given the complexity of both the proposal and the environment. In proposing an extended timetable, the DMC has taken into account the interests of the parties to the hearing, including the potential additional time and cost implications. However, the DMC is conscious of its obligation under sections 61 and 87E of the Act to base its decision on the best available information.
9. The ability for other experts to have time to comment on the results was at the request of parties but also is a necessary part of the process to ensure natural justice for parties as well as meeting the obligation to obtain the best available information. In the interests of exploring the possibility of reducing additional time and cost, the DMC considers it appropriate to require the sediment plume modelling experts reconvene and provide a joint witness statement about the materiality of the further modelling information before any other expert conferencing is directed. A Minute to this effect will be issued concurrently. If further expert conferencing is required then it will be directed by Minute once the joint witness statement is received. This process does not prevent any party filing further comment by expert witnesses on this information as signaled in the hearing.
10. It is acknowledged that the Fisheries Submitters and Te Runanga o Ngati Ruanui Trust have indicated an inability to participate in further conferencing. However, the invitation will still be open to their experts to attend.
11. A process has been set out to ensure that there is opportunity for proposed conditions to be subject of expert conferencing as well as comment by parties. This is scheduled to occur after all other expert conferencing and requests for information have been completed.
12. Having considered all the responses of the parties, and the points noted above, the DMC have updated the timetable and a revised version is set out in Appendix 1. It is acknowledged that events may require further changes but at this point in time, this revised timetable will give parties as much information about requirements and timing as possible.
13. It is acknowledged that this differs from the version previously proposed so there may be other availability issues that parties should make the EPA aware of as soon as practicable. The changes in timing were necessary for a variety of reasons including accommodating the Easter

¹ At paragraph 28 of the joint memorandum dated 16 March 2017.

break and ANZAC day, and providing a process for the proposed conditions after other evidential steps are completed, that is as enabling of participation as possible.

14. As signaled in the attached timetable, an extension of time will be needed for the duration of the hearing and a further Minute will be issued by the DMC to record this decision.

For the DMC:



Alick Shaw
DMC Chair
22 March 2017

Appendix 1 – Revised Timetable

All dates remain subject to change as events progress

Blue text – already completed

Date	Event
15 March 2017	TTRL provide updated proposed conditions.
16 March 2017	Origin provide updated proposed conditions relating to their interests.
16 March 2017	Receive further modelling information.
17 and 20 March 2017	Planning evidence presented as scheduled, including discussion on planning aspects of adaptive management as provided for in Minute 34. Acknowledge that there may be some witnesses recalled to discuss conditions in week beginning 22 May 2017.
17 and 20 March 2017	Parties who responded to Minute 28 present on legal aspects of adaptive management approach as provided for in Minute 34.
21 March 2017	Final currently scheduled evidence heard and hearing adjourned.
22 March 2017	DMC issue Minute directing sediment plume modelling witnesses to reconvene expert conferencing to discuss materiality of “worst case scenario” modelling information with a joint witness statement required no later than 29 March 2017.
22 March 2017	DMC issue Minute timetabling next steps until close of hearing.
27-28 March 2017	Reconvene sediment plume modelling expert conferencing – dates to be confirmed with participants.
29 March 2017	DMC receive joint witness statement from experts discussing materiality of “worst case scenario” modelling information.
5 April 2017	DMC issue Minute requesting information from any person who appeared at the hearing, if necessary, with responses required no later than 13 April 2017.
5 April 2017	DMC issue Minute directing any expert conferencing to be reconvened and the focus of any such sessions (eg effects on fishing) with joint witness statements required no later than 13 April 2017 (other than conditions conferencing – see below).
5 April 2017	DMC issue Minute directing expert conferencing on proposed conditions to be reconvened at approximately 18/19 April 2017, with report back on proposed conditions by 26 April 2017.
5-11 April 2017	Reconvene any required expert conferencing, other than on proposed conditions – dates to be confirmed with participants.

13 April 2017	DMC receive any requested information and any joint witnesses statements (other than on proposed conditions).
18 April 2017	<i>Optional – TTRL provide updated version of proposed conditions for use at expert conferencing on proposed conditions.</i>
19/20 April 2017	Reconvene expert conferencing for proposed conditions to take into account all additional matters since last conferencing session.
26 April 2017	DMC receive report back from conferencing on proposed conditions.
28 April 2017	TTRL provide updated proposed conditions.
5 May 2017	EPA provide 2 nd conditions report with full analysis of TTRL updated proposed conditions.
5 May 2017 – 19 May 2017	Parties have the chance to comment on updated proposed conditions and 2 nd conditions report. Any further requests for information by DMC made and responded to in this period.
10/11 May 2017	DMC attend site visit (locations to be confirmed).
Week beginning 22 May 2017	Reconvene hearing, recall any required witnesses (eg update on views on conditions after process for parties to consider), hear closing submissions.
By 31 May 2017	DMC close hearing (no additional information to be received) – 20 working days until decision due.