

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

Trans-Tasman Resources Limited iron sand extraction and processing application

M2 – Minute of the Decision-making Committee – 8 September 2016

1. This minute relates to an application by Trans-Tasman Resources Limited (TTRL) for a direction, under section 158 of the Act, protecting certain sensitive information forming part of TTRL's application for marine consents. The section 158 application is set out in a memorandum of counsel on behalf of TTRL dated 22 August 2016, and in additional information provided by Holm Atkins Majurey by letter dated 2 September 2016.
2. TTRL is understood to seek a direction restricting the publication or communication, other than to persons who enter into a confidentiality agreement with TTRL, of the following sensitive information:
 - a. A report by HR Wallingford (2014b), Laboratory Testing of Sediments, DDM7316-RT002-R01-00 (entire report);
 - b. A report by HR Wallingford (2015), Analysis of Source Terms for Plume Dispersion Modelling, DDM7316-RT003-R01-00 (entire report);

Note: documents a and b above are referred to as the HR Wallingford documents.

 - c. A memorandum entitled "Contribution to source terms report for TTR" from Matt Pinkerton, NIWA, to Mike Dearnaley, HR Wallingford, dated 4 September 2015 (entire memorandum);
 - d. Tables 2-3, 2-4, and 2-5 in a report by Hadfield, M, and Macdonald, H (2015), Sediment plume modelling: revised calculations, 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 sediment recovery in the south Taranaki Bight region, NIWA Client Report No. WLG2015-26 rev 2; and
 - f. Table 1, "1. 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.
3. The section 158 application originally sought protection of the entirety of documents described in paragraph 3 a, b, and c above. TTRL has subsequently confirmed, however, that those

documents could be redacted to protect sensitive information (although, from a practical viewpoint, TTRL considers that "the documents would not sensibly stand alone" if that information was redacted¹).

4. The Decision-Making Committee (DMC) convened on 6 September 2016 to consider the section 158 application. The DMC has reached a preliminary view that restricting, in some manner, the publication or communication of the sensitive information is necessary to avoid disclosing a trade secret or to avoid causing unreasonable prejudice to the commercial position of TTRL.
5. However, the DMC also considers it to be in the public interest for the sensitive information to be capable of being tested and evaluated as part of the broader process under the Act of considering TTRL's application for marine consents. The DMC acknowledges that TTRL's section 158 application implicitly provides for testing and evaluation to some degree, by the DMC itself and by persons who have entered into a confidentiality agreement with TTRL, but seeks further comment from TTRL on how that might work in practice.
6. In particular, the DMC invites comments from TTRL on the workability of a potential direction under section 158 that would:
 - a. restrict the publication or communication of the sensitive information to the DMC, EPA administrative staff, and persons who enter into a confidentiality agreement with TTRL;
 - b. allow for relevant expert witnesses who have considered the sensitive information to conference in accordance with the Environment Court's Practice Note 2014 and to prepare a joint witness statement recording the outcomes of conferencing, including any matters that were agreed, any matters that were not agreed, and reasons why;
 - c. restrict the publication or communication of that joint witness statement to the DMC, EPA administrative staff, parties' legal counsel, and persons who enter into a confidentiality agreement with TTRL; and
 - d. provide for part of the hearing, if necessary, to allow questioning of the signatories to that joint witness statement about the sensitive information, at which attendance would be restricted to the DMC, EPA administrative staff, parties' legal counsel, and persons who enter into a confidentiality agreement with TTRL. That is, members of the public who have not entered into a confidentiality agreement with TTRL would be excluded from that part of the hearing.
7. The DMC intends to make its decision on the section 158 application prior to public notification of TTRL's application for marine consents, which is anticipated to take place on 17 September 2016. Any delay in this timeframe below may require a delay to the public notification of the application.

¹ In counsel's letter of 2 September 2016.

8. The DMC therefore directs as follows:

- a. that any comments from TTRL on that potential direction described in paragraph 6 above be provided to the EPA **by 5pm on 13 September 2016**, to enable the DMC to consider those comments in deciding on the section 158 application, and prepare any direction before public notification; and
- b. that TTRL provide the EPA with an electronic copy and 6 hard copies of the documents listed in paragraph 3 above, redacted to protect sensitive information or otherwise in a form that TTRL considers suitable for public notification, **by 5pm on 13 September 2016**; and
- c. That TTRL provide the EPA with the confidentiality agreement proposed to be offered to participants in the proceedings, **by 5pm on 13 September 2016**.

For the DMC:



Alick Shaw
Chair TTRL Decision-Making Committee

8 September 2016