

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

Trans-Tasman Resources Limited iron sand extraction and processing application

M43 – Minute of the Decision-Making Committee – 9 May 2017

Further timetabling and other directions

1. In Minute 41 the Decision-making Committee (DMC) issued a list of additional questions and requests for information. Primarily these were directed at the applicant but it was signalled at the time that some matters have implications that may benefit from consideration by experts from other parties.
2. The information was provided by the applicant over the past week, with the final information provided on Friday 5 May 2017. During that period, EPA staff have asked parties to advise them of the availability of their relevant expert witnesses to provide comment, or attend expert conferencing, on the further information provided.
3. The DMC has now considered the further information received in terms of determining what issues it might raise and how it may be most efficiently dealt with, particularly given the views of the parties and witness availability. In doing so, the DMC has taken into account the need to address natural justice issues arising from the introduction of new material, and the obligation on the DMC to obtain the best available information without imposing unreasonable cost, or taking up an unreasonable amount of time.
4. A new overarching timetable for the next stage of the process is outlined in Appendix 1.

Expert Conferencing and written comments

5. The DMC acknowledges the views of the parties that it is likely no further gains are available from further expert conferencing on potential effects on marine mammals.
6. Given the stage of the proceedings, the limited availability of witnesses and the limited issues outstanding, the DMC consider there is also only limited value to be gained from expert conferencing on other topics (potential effects on benthic ecology, primary production and fish).
7. However, the DMC invites all parties who wish their expert witnesses to provide written comment on any of the further information provided to the DMC in response to Minute 41, to do so by **2pm 17 May 2017** (as outlined in Appendix 1). In particular, the DMC draws parties' attention to the questions in Appendix 2 of Minute 41 for the experts in the potential effects on benthic ecology, primary production, fish and marine mammals (attached again here for convenience as Appendix 2 of this Minute) as matters of interest to the DMC.

8. It should be noted that this additional written comment is to be limited to review or rebuttal of the further information provided in response to Minute 41¹. The DMC highlight that this is not an opportunity to raise new matters, or address other matters already raised in the hearing.
9. As outlined in the memorandum of 4 May 2017 to the DMC, the Royal Forest and Bird Society of New Zealand has indicated its intention of referring Mr Humpheson's report to Curtin University for review. They do not believe this can be completed until 19 May 2017. The DMC considers hearing this proposed review of the information is necessary.
10. During the hearing, counsel for the Fisheries Submitters filed a memorandum on 1 March 2017, including a list of questions to be put to Dr Robertson, the EPA witness on potential effects on fishing. The questions in the list that related to potential effects on fishing were asked and answered at the hearing. The DMC left open the option of additional expert conferencing on the effects on fishing on the remaining questions. However, given the limited availability of those experts to reconvene, the DMC directs that this expert conferencing on the effects on fishing will not occur. The DMC therefore directs Dr Robertson to address the remaining questions in a written statement by **17 May 2017**. These questions are attached as Appendix 3.
11. Finally, on 3 May 2017 the applicant provided an updated version of the consent conditions. As indicated in the timetable in Minute 37, the EPA planning expert is now preparing a second conditions report based on the updated version. As outlined in Appendix 1 this second conditions report will now be made available to the parties on **17 May 2017**. Originally it was intended for parties to have several weeks to comment, but this was prior to parties indicating their concerns over an extended involvement in the process.
12. In these circumstances, parties will be able to comment on the revised conditions, and second conditions report, when the hearing resumes. The DMC directs that the planning experts attend expert conferencing on the conditions on 23 May 2017, after the substantive witnesses appear, but before the planning experts appear at the hearing to present final comments as outlined in Appendix 1 of this minute. This expert conferencing will be conducted in the same way as the first round of conferencing.

Hearing

13. The reconvened hearing will be held at Clifton's Conference Centre, Level 25, The Majestic Centre, Willis Street, Wellington. A detailed hearing schedule will be provided to parties as soon as it is available. However, a new timetable with indicative timings is set out in Appendix 1 for the interim.

¹ A copy of DMC Minute 41 issued 10 April 2017 can be found on the EPA website here:

http://www.epa.govt.nz/EEZ/EEZ000011/DMC_Minute_41_Request_for_Information_from_Experts.pdf

14. Once the hearing resumes on 22 May 2017, the DMC wish to hear from the following witnesses:
- Mr Humpheson
 - Dr Childerhouse
 - Mr van Helden
 - the additional witness referred to by Royal Forest and Bird, should this evidence be provided by 19 May 2017.
15. The EPA staff will work with parties to accommodate availability and whether an appearance in person or by Skype is possible.
16. If any party has questions for these witnesses, they should advise the EPA staff in advance of the hearing (clearly this will not be possible for the additional witness from Royal Forest and Bird). Otherwise the process for questions will be the same as during the earlier stage of the hearing.
17. If there are any other witnesses who are providing substantive rebuttal comment on the further information as referred to in paragraph 7 above, then parties may seek leave to have these witnesses appear if necessary, or the DMC may request that these witnesses appear.
18. As noted above, the planning experts will be scheduled to appear to present their comments on conditions, after their expert conferencing. Following this, there will be closing submissions from parties eligible to present these, in accordance with the hearing procedures. The EPA staff will confirm timing on all these matters when the hearing schedule is issued.
19. Finally, if there are any outstanding matters that have been raised during the hearing, where witnesses agreed to provide information and that has not yet been provided, it must be provided to the EPA by **2pm 17 May 2017**.

For the DMC:



Alick Shaw
DMC Chair
9 May 2017

Appendix 1 - Revised timetable as at 9 May 2017

Date	Event
9 May 2017	DMC issue Minute 43 setting out further timetabling and other directions
10/11 May 2017	DMC attend site visit.
17 May 2017	<ul style="list-style-type: none"> • Written comments from the parties due on the further information provided by TTRL in response to DMC Minute 41 and questions in Appendix 2 of Minute 41. • Second EPA conditions report available. • Second tranche of EPA legal advice provided, in response to Minute 40. • Written statement to be provided by Dr Robertson in response to questions set out in Appendix 2 of this Minute. • Outstanding information due from witnesses who agreed to provide information during the hearing which has yet to be provided to the DMC.
19 May 2017	Review of additional information from Mr Humpheson by Royal Forest and Bird Protection Society of NZ.
22 - 24 May 2017	<p>Reconvene hearing as follows:</p> <ul style="list-style-type: none"> • 22 May 2017 <ul style="list-style-type: none"> - Mr Humpheson on behalf of TTRL - Dr Simon Childerhouse on behalf of TTRL - Mr Van Helden on behalf of Royal Forest and Bird Protection Society of NZ - Additional witness on behalf of Royal Forest and Bird Protection Society of NZ (TBC) - Any additional experts if needed • 23 May 2017 <ul style="list-style-type: none"> - Planning experts convene expert conferencing on conditions - GIS spatial mapping display from TTRL • 24 May 2017 <ul style="list-style-type: none"> - Planning and Conditions evidence - Closing Statements from parties • 25 May 2017 <ul style="list-style-type: none"> - Remaining closing Statements from parties
23 May 2017	<p>Expert Conferencing</p> <ul style="list-style-type: none"> - Conditions expert conferencing
31 May 2017	DMC close hearing (no additional information to be received) – 20 working days until decision due.

Appendix 2 - Questions for other expert following additional information being provided

Once the revised optical modelling is available, and with regard to updated PSD information provided by the applicant, the following questions will be referred to experts for benthic ecology, primary production, effects on fish and effects on marine mammals.

1. When, where, and to what extent will elevated SSC levels cause environmentally significant changes (for benthos, primary production, fish) arising from light received. Decreased primary production is an example. What comprises a “significant” change should be specifically addressed.
2. When, where, and to what extent will elevated SSC levels cause environmentally significant changes (for benthos, primary production, fish) related to physical effects. Smothering of algae or filter feeders is an example. What comprises a “significant” change should be specifically addressed.
3. What issues of materiality, in terms of ecological effects, do you perceive between the original modelling and the HR Wallingford 17 March 2017 modelling.

Appendix 3 - Questions for Dr Robertson

Question from Dr Barbara

Q5. Does DR agree that TTRL should have gone into more detail as to which species of fish in a fishery were assessed and the potential impacts in regard to each species' biology?

Questions from Dr Jeremy Helson

Q1. You will have noted reference in the Fathom Report to consultation in 2013 by MPI on additional fishing restrictions in Taranaki to protect Maui dolphins.

- a) Do you agree that such management interventions should be part of any analysis of fisheries?
- b) Do you accept that the changes government introduced after the Fathom Report was completed may have influenced fisher behavior and could have changed the conclusions of the Fathom Report?
- c) Do you agree that changes of this nature should be factored in to any analysis of impacts on fisheries?

Q2. Do you agree that the Fathom methodology provides a more specific analysis of the nature of actual **fisheries** in the STB? If so, do you think it would be useful to:

- a) Update that analysis using data up to 30 September 2016 to establish a fisheries baseline, and
- b) Compare that fisheries baseline with the updated plume modelling to estimate the effects on fisheries, and
- c) Assess the subsequent economic ramifications of those effects?

Q4. Do you agree that the aforementioned analyses should be conducted, and the effect of additional spatial closures to protect Maui dolphins considered, before you can reliably state, as you did in paragraph 26, that the conclusions in the Fathom Report are as relevant as if the remaining two years of catch-effort data had been included?

Q5. You state at paragraph 33 that you accept the way the data were presented in Report 18 as they reflect the situation that the FMA7/8 boundary has no biological reality. Further you consider this

analysis provides a more complete picture and does not detract from the conclusions in Report 18. How do you reconcile this statement with the following statement you agreed to in the Joint Expert Witness Statement on Fisheries Effects that acknowledged that analysis in Report 18 was inappropriate?

“All agreed for the species where there is a legal division between stocks in QMA 7 and QMA 8 that the catch and effort data in [sic] cannot be combined for the purposes of evaluating effects in QMA8 as was done in NIWA Report #18.”

Q8. On pages 26 and 27 of Report 17, maps of the predicted probability of catching jack mackerel in the STB are provided. Comparing these maps to Figure 3.4 in Report 18, it is apparent that the predicted probability of catching jack mackerel in an area of large, consistent and documented catch is only 30-60%.

- a) Do you agree that the modelling in Report 17 does a poor job of estimating the probability of catch in the key area of the STB fishery?
- b) If so, do you consider that other conclusions based on Report 17 should be re-evaluated?
- c) Do you agree that the conclusion of the Joint Expert Witness Statement on the Effects on Fish should re-consider its conclusions?

Questions from Douglas Saunders-Loder

Q1. At paragraph 88, you state that you “can appreciate some nervousness about the proposed mining activity”. What is it that leads you to appreciate our nervousness? Do you have you [sic] some misgivings of your own?

Q2. At paragraph 89, you suggest that whilst there may be an impact on HMS stocks caused by the proposed mining, it would be challenging to distinguish what that impact might be. Whilst challenging, do you not think that understanding any impacts from the mining site on the associated environment, including the impact on certain fisheries is important?