

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

Trans-Tasman Resources Limited iron sand extraction and processing application

M45 – Minute of the Decision-Making Committee – 18 May 2017

Timeframes and further evidence from parties

1. In Minute 43 the Decision-making Committee (DMC) issued an overarching timetable for the next stage of the process, including the reconvened hearing, and invited 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 Wednesday 17 May 2017**. Minute 43 specified that the additional written comments were to be limited to review or rebuttal of the further information provided in response to Minute 41.

Timing for further statements responding to further information provided in response to Minute 41

2. The DMC wishes to thank parties who were able to provide the additional written comments within the timeframe. In a memorandum of 16 May 2017, counsel on behalf of KASM and Greenpeace requested an extension to filing evidence to **5pm on Friday 19 May 2017**. Despite the lateness of the request, given the further detail provided by email as to the reasons for needing this extension, the DMC accepts the late filing of evidence by KASM and Greenpeace. This is consistent with the deadline for the final expected additional information expected from the Royal Forest and Bird Society Incorporated expert referred to in Minute 43. To assist the EPA staff, the DMC encourages the evidence to be filed earlier than 5pm.

Dr Robertson's response to questions

3. Minute 43 also directed Dr Robertson to address specific questions that arose during the hearing from the Fisheries Submitters as outlined in Appendix 3 of Minute 43, in a written statement. Dr Robertson responded to the questions in writing on 15 May 2017.
4. On 12 May 2017, counsel for the Fisheries Submitters filed a memorandum requesting an opportunity to reply to Dr Robertson's responses. The DMC does not agree to the request from the Fisheries Submitters to file evidence in response to Dr Robertson's written statement because this was not further information provided to the DMC in response to Minute 41. The DMC considers it appropriate that Dr Robertson's responses are addressed in closing submissions, along with any other witnesses' responses to questions asked by parties during the hearing.

Closing Submissions

5. The Fisheries Submitters memorandum noted that Minute 32 on 20 March 2017 allowed the Fisheries Submitters one hour for closing statements to be consistent with the time period that had been allocated to KASM and Greenpeace for their opening submissions. The memorandum requested that this be extended to 1.5 hours for the Fisheries Submitters to make closing statements at the reconvened hearing. The DMC considers that 1 hour would be adequate for closing statements. However, it will allow the Fisheries Submitters 1.5 hours and offers the same time limit to counsel for KASM and Greenpeace for their closing submissions.
6. KASM and Greenpeace have requested in their memorandum dated 16 May 2017 that at least half a day must be given in between receiving the outcome of the planning expert conferencing and when closing submissions are presented. The DMC have directed the EPA staff to accommodate this request to the greatest extent possible in the timing of closing submissions when the hearing schedule is issued.

TTRL Spatial Mapping information

7. The Fisheries Submitters memorandum expressed concerns regarding the spatial mapping information provided by TTRL and the information contained on the maps. The spatial mapping information provided by TTRL was a consolidated presentation of material requested by the DMC and not new evidence.
8. The DMC does not consider the spatial mapping information provided by TTRL should be revised and updated to accommodate the concerns raised in the Fisheries Submitters memorandum.
9. The DMC also notes that the information requested from the Ministry for Primary Industries referred to in the Fisheries Memorandum was provided on 25 January and 10 February 2017. The information is available on the EPA website¹ and parties were notified on 27 February 2017.

Additional Reports from TTRL

10. The memoranda from the Fisheries Submitters and KASM and Greenpeace refer to two reports provided on a confidential basis to the Fisheries Submitters and requests that these reports should be made available to the DMC and all parties if the DMC wish to rely on these reports in support of its application.
11. These reports do not form part of the application and the DMC does not consider it necessary to direct the applicant to provide these reports or rely on them for evidential purposes.

¹ The information provided by Ministry for Primary Industries on 25 January and 10 February 2017 is available on the EPA website at the following link:
<http://www.epa.govt.nz/EEZ/whats-going-on/current-applications/ttr-2016/reports/Pages/Information-and-Advice-sought-by-the-DMC.aspx>

Other Matters

12. The DMC notes the matters raised in the memorandum of counsel for the Fisheries Submitters dated 12 May 2017 relating to expert conferencing regarding potential conditions, the ability to seek further information, and possible perceptions of a predetermined outcome.
13. As the DMC has noted on numerous occasions during the hearing (and in Minute 40), obtaining information about potential measures to avoid, remedy, or mitigate any adverse effects of a proposal through conditions in no way indicates that any conclusion has been reached on the proposal. Rather, this process reflects the DMC fulfilling its obligations under the Act to comply with the information principles, and in particular, to obtain the best available information about such mitigation measures and possible conditions to be considered by the DMC in its decision-making. It is also noted that this is standard practice in consenting processes under the Act (and under the Resource Management Act 1991).
14. The DMC reiterates that point, in case any party or counsel is unclear about the intention of the upcoming conferencing on conditions. Beyond that, it is a matter for parties as to whether experts they have engaged participate in the further conferencing.

For the DMC:



Alick Shaw
DMC Chair
18 May 2017