

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

### Trans-Tasman Resources Limited iron sand extraction and processing application

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M24 – Minute of the Decision-Making Committee – 10 February 2017

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### Expert Conferencing

1. On 3 February 2017 the Decision-making Committee (DMC) issued Minute 20, identifying topics and witnesses to attend expert conferencing. The DMC recorded its view that witnesses who are employees of a party may face difficulties in establishing their independence and thus complying with the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014. Consequently these witnesses were not scheduled to attend expert conferencing, but parties were invited to request inclusion of witnesses where they could demonstrate their independence.
2. On 8 February 2017 the DMC received a memorandum from the Royal Forest and Bird Society seeking to have two witnesses added to expert conferencing. On 9 February 2017 the DMC received a memorandum from the Fisheries Submitters seeking to have two witnesses added to expert conferencing, another witness added to another 2 topics, and a further topic added to conferencing.
3. Having considered the points raised in these memoranda, and the potential for the decision on expert conferencing to influence the way evidence is addressed in the hearing, which was not intended, the DMC considers it appropriate to reverse its decision to exclude those witnesses from expert conferencing. The DMC has acknowledged that its focus was on the issue of independence and rather the key point which is to ensure the best information is available.
4. The DMC has requested the EPA to liaise with these witnesses to facilitate their involvement in the relevant conferencing as soon as practicable. The revised list of topics and witnesses involved is set out in the **updated Appendix** to this Minute.
5. The DMC notes that any issues as to independence can and will be dealt with during questioning at the hearing. The DMC also invites witnesses to reconsider whether conferencing is the most appropriate forum for their evidence. The DMC also wishes to thank counsel for raising these points in their memoranda.

6. In respect of the request to add Dr Barbara to two additional topics, being effects on fishing, and effects on benthic ecology, this request is granted for the following reasons. Dr Barbara is already listed in respect of benthic ecology, and in respect of the effects on fishing, the DMC acknowledge this is sufficiently within Dr Barbara's expertise, particularly given the interaction between the session on effects on fish, and effects on fishing. Indeed there may be a need for further conferencing to address this interaction, and that will be considered once joint statements are available and would include consideration of all those witnesses attending each session.
7. In respect of the request for an additional topic for conferencing on coastal stability/ processes, the DMC directs Mr Todd and Dr Hume to participate in expert conferencing, as provided for in the **updated Appendix** to this Minute.
8. All the directions made in Minute 20 continue to apply to the **updated Appendix**.

**For the DMC:**



Alick Shaw  
DMC Chair  
10 February 2017

## Updated Appendix 1: Table of attendees and dates (tentative)

### **Sediment plume modelling**

Day 1 - Monday 13 February 2017 Facilitator: 1

| Experts to attend   | Nominated By                          | Topics Covered                         |
|---|---------------------------------------|--|
| Dr Michael Dearnaley  | TTRL                                  | Sediment plume modelling               |
| Mr Dougal Greer   | KASM and Greenpeace                   | Sediment and Plume Modelling           |
| Dr Greg Barbara   | The Fisheries Submitters              | Sediment Plume Modelling               |
| Mr Joris Jorissen   | The Fisheries Submitters <sup>1</sup> | Laboratory Testing and Plume Modelling |
| Dr Peter Longdill   | DoC (requested by DMC)                |  |
| Dr Alexis Berthot/<br>Dr David Petch<br>(Tele/video Conference) | EPA                                   | Sediment Mobilisation and Transport    |

### **Eco-toxicity effects**

Day 1 – Monday 13 February 2017. Facilitator: 2

| Experts to attend  | Nominated By        | Topics Covered   |
|--------------------|---------------------|------------------|
| Dr Mark James      | TTRL                | Bio-accumulation |
| Dr Ngaire Phillips | KASM and Greenpeace | Eco-toxicity     |
| Dr Tom Cresswell   | EPA                 | Eco-toxicity     |

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<sup>1</sup> The fisheries submitters include: The New Zealand Federation of Commercial Fishermen Inc, Talleys Group Limited, Southern Inshore Fisheries Management Company Limited, Cloudy Bay Clams Limited.

### **Effects of sediment plume on primary production**

Day 2 Tuesday 14 February 2017 Facilitator: 1

| Experts to attend                            | Nominated By             | Topics Covered                           |
|--|--------------------------|--|
| Dr Lawrence Cahoon                           | TTRL                     | Primary Productivity and optical effects |
| Dr Mark James                                | TTRL                     | Primary Production                       |
| Dr Greg Barbara                              | The Fisheries Submitters | Primary Production                       |
| Dr Peter Longdill                            | DoC (requested by DMC)   |  |
| Dr Tony Chiffings<br>(Tele/video Conference) | EPA                      | Plankton                                 |

### **Effects on fishing**

Day 2 – Tuesday 14 February 2017. Facilitator: 2

| Experts to attend    | Nominated By                | Topics Covered       |
|----------------------|-----------------------------|----------------------|
| Dr Alison MacDiarmid | TTRL                        | Commercial fisheries |
| Mr Andrew Smith      | The Fisheries Submitters    | Fisheries            |
| Dr Jeremy Helson     | The Fisheries Submitters    | Fisheries management |
| Dr Greg Barbara      | The Fisheries Submitters    | Fisheries            |
| Mr Steve Halley      | MPI (at request of the DMC) | Fisheries            |
| Dr Don Robertson     | EPA (at request of the DMC) | Fisheries            |

### **Effects on benthic ecology in particular sensitive receptor areas**

Day 3 – Wednesday 15 February 2017. Facilitator: 1

| Experts to attend | Nominated By | Topics Covered             |
|-------------------|--------------|----------------------------|
| Dr Mark James     | TTRL         | Overall ecological effects |

| Experts to attend                        | Nominated By             | Topics Covered                     |
|--|--------------------------|------------------------------------|
| Dr Iain MacDonald                        | TTRL                     | Existing Environment               |
| Dr Alison MacDiarmid                     | TTRL                     | Marine effects and benthic ecology |
| Dr Shaw Mead                             | KASM and Greenpeace      | Ecological Effects and Benthic     |
| Dr Ngaire Phillips                       | KASM and Greenpeace      | Eco-toxicity                       |
| Dr Greg Barbara                          | The Fisheries Submitters | Marine Ecology                     |
| Mr Ian Baxter<br>(Tele/video Conference) | EPA                      | Benthic Ecology                    |

### **Effects on fish**

Day 4 – Thursday 16 February 2017. Facilitator: 1

| Experts to attend                            | Nominated By             | Topics Covered  |
|--|--------------------------|-----------------|
| Dr Alison MacDiarmid                         | TTRL                     | Effects on Fish |
| Dr Mark James                                | TTRL                     | Effects on Fish |
| Dr Ngaire Phillips                           | KASM and Greenpeace      | Eco-toxicity    |
| Dr Greg Barbara                              | The Fisheries Submitters | Effects on Fish |
| Dr Tony Chiffings<br>(Tele/video Conference) | EPA                      | Effects on Fish |

### **Effects on seabirds**

Day 4 – Thursday 16 February 2017. Facilitator: 2

| Experts to attend                | Nominated By                | Topics Covered |
|----------------------------------|-----------------------------|----------------|
| Dr David Thompson                | TTRL                        | Seabirds       |
| Dr John Cockrem                  | KASM and Greenpeace         | Seabirds       |
| Relevant expert to be identified | DOC (at request of the DMC) |                |

## **Effects on marine mammals**

Day 5 – Friday 17 February 2017. Facilitator: 1

| Experts to attend                            | Nominated By   | Topics Covered |
|--|--|----------------|
| Dr Simon Childerhouse                        | TTRL   | Marine Mammals |
| Dr Alison MacDiarmid                         | TTRL   | Marine mammals |
| Mr Anton van Helden                          | Royal Forest and Bird Protection Society New Zealand | Marine Mammals |
| Dr Elisabeth Slooten                         | KASM and Greenpeace                                  | Marine Mammals |
| Dr Leigh Torres                              | KASM and Greenpeace                                  | Marine Mammals |
| Dr Greg Barbara                              | The Fisheries Submitters                             | Marine Mammals |
| Relevant expert to be identified             | DOC (at request of the DMC)                          |                |
| Dr Tony Chiffings<br>(Tele/video Conference) | EPA  | Marine Mammals |

## **Economics**

Day 5 – Friday 17 February 2017 Facilitator: 2

| Experts to attend                             | Nominated By        | Topics Covered |
|---|---------------------|----------------|
| Mr Jim Binney                                 | KASM and Greenpeace | Economics      |
| Mr Wennie van Lint<br>(Tele/video Conference) | EPA                 | Economics      |
| Mr Jason Leung-Wai                            | TTRL                | Economics      |

## **Coastal stability/processes**

To be arranged with parties and facilitator

| Experts to attend | Nominated By | Topics Covered    |
|-------------------|--------------|-------------------|
| Dr Terry Hume     | TTRL         | Coastal stability |

| Experts to attend | Nominated By             | Topics Covered  |
|-------------------|--------------------------|-----------------|
| Mr Derek Todd     | The Fisheries Submitters | Coastal Hazards |

### **Conditions and planning**

**At a date during the hearing to be identified.**

| Experts to attend  | Nominated By   | Topics Covered                             |
|--------------------|--|--|
| Dr Philip Mitchell | TTRL   | Planning and Conditions                    |
| Mr Daniel Govier   | TTRL   | Monitoring of effects and management plans |
| Ms Natasha Sitarz  | Royal Forest and Bird Protection Society New Zealand | Planning and Conditions                    |
| Mr Graham Young    | Ngati Ruanui   | Planning                                   |
| Ms Helen Anderson  | The Fisheries Submitters                             | Environmental Planning                     |
| Dr Rob Lieffering  | EPA  | Conditions                                 |

## Appendix 2: Witnesses not proposed to participate in expert conferencing

### Expert witnesses with no topic or peer

| Witness                       | Nominated By                                   | Topic  |
|-------------------------------|--|--|
| Dr Mike Patrick               | TTRL   | Overview of other legislation  |
| Dr Barrie Forrest             | TTRL   | Biosecurity  |
| Mr Buddy Mikaere              | TTRL   | Cultural impacts assessment  |
| Mr Bruce Clarke               | The Fisheries Submitters                       | Environmental Monitoring   |
| Dr Robert Overy<br>(By Skype) | Origin Energy Resources<br>Kupe NZ Ltd (OERKL) | Geotechnical impacts of the application on OERKL's current and future operations |
| Mr Chris Carra<br>(By Skype)  | Origin Energy Resources<br>Kupe NZ Ltd (OERKL) | Impacts of the application on OERKL's current and future operations              |

### Other witnesses

| Witness                    | Nominated By             | Topic  |
|----------------------------|--------------------------|--|
| Mr Alan Eggers             | TTRL                     | Chairman TTRL                                  |
| Mr Matthew Brown           | TTRL                     | Geotechnical                                   |
| Mr Shawn Thompson          | TTRL                     | Operational Description<br>Project Description |
| Mr Tokatumoana<br>Walden   | TTRL                     | Stakeholder Engagement                         |
| Mr Ant Piper               | The Fisheries Submitters | Fisheries                                      |
| Mr Doug Saunders-<br>Loder | The Fisheries Submitters | Fisheries                                      |
| Ms Karen Pratt             | -                        | General  |
| Ms Maria Cashmore          | Ngati Ruanui             | General evidence                               |



|   |  |  |
|---|--|--|
| Ms Catherine Iorns<br>and Mr Dale Scott | Ngaa Rauru Kiihahi                             | Legal                                      |
| Mr Te Huia Bill<br>Hamilton (via Skype) | Ngaa Rauru Kiihahi                             | Human Rights, the Treaty of Waitangi       |
| Turama Hawira                           | Ngaa Rauru Kiihahi                             | Traditional Customary evidence             |
| Dr Andrew Erueti                        | Ngaa Rauru Kiihahi                             | Indigenous rights                          |
| Dr Jacinta<br>Ruru/Sarah Down           | Ngaa Rauru Kiihahi                             | Indigenous rights                          |
| Mr Owen Hobbs                           | Origin Energy Resources<br>Kupe NZ Ltd (OERKL) | Overview Evidence                          |
| Mr Iain Curril                          | Origin Energy Resources<br>Kupe NZ Ltd (OERKL) | Current Operations and Future<br>Expansion |
| Mr Martyn Alyward                       | Origin Energy Resources<br>Kupe NZ Ltd (OERKL) | Operations                                 |
| Ms Kirsty Woods                         | Te Ohu Kaimoana<br>Trustee Ltd                 | Customary fisheries                        |