

BEFORE THE ENVIRONMENTAL PROTECTION AUTHORITY

IN THE MATTER of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (**EEZ Act**)

AND

IN THE MATTER of an application for marine consent under section 38 of the EEZ Act by Trans-Tasman Resources Limited to undertake iron ore and processing operations offshore in the South Taranaki Bight

BETWEEN **Trans-Tasman Resources Limited**

Applicant

AND **Environmental Protection Authority**

EPA

AND **Fisheries Inshore NZ, New Zealand Federation of Commercial Fishermen, Talley's Group Limited, The Southern Inshore Fisheries Management Co Limited, and Cloudy Bay Clams Limited**

Fisheries Submitters

REVISED MEMORANDUM ON BEHALF OF FISHERIES SUBMITTERS

Dated: 16th JANUARY 2017

In response to DMC Minute 11 and 13

Counsel Acting

ROBERT MAKGILL
BARRISTER

Instructing Solicitor

PETER DAWSON
DAWSON & ASSOCIATES

P 03 544 1967 F 03 544 1968 E peter@maritimelaw.co.nz
PO Box 3830, Richmond 7050, New Zealand

MAY IT PLEASE THE DECISION-MAKING COMMITTEE:

INTRODUCTION

1. Counsel refers to the memorandum dated 9 January 2017.
2. This revised memorandum is filed on behalf of Fisheries Inshore NZ, The New Zealand Federation of Commercial Fishermen Inc, Talley's Group Limited, Southern Inshore Fisheries Management Co Limited, and Cloudy Bay Clams Limited (collectively referred to as the **Fisheries Submitters**).
3. The revised memorandum addresses:
 - (a) Minute 11 of the Decision Making Committee (**DMC**) dated 15 December 2016, and Minute 13 dated 10 January 2017;
 - (b) The Fisheries Submitters' revised response to the matters set out under Minute 11;
 - (c) Lead counsel's availability during the month of March 2017; and
 - (d) The Environmental Protection Authority's (**EPA**) request for confirmation as to whether Macdonald & Brown Limited filed a submission on the application subject to these proceedings.

DMC MINUTE 11 AND 13

4. Minute 11 of the DMC required the Parties to confirm a number of matters concerning appearances by 12 pm on 11 January 2017.
5. Minute 13 addresses the Fisheries Submitters' request in its memorandum dated 9 January 2017 for the DMC to make the completion and uploading of a list of submissions a priority.
6. Counsel wishes to acknowledge the effort taken to make the list of submissions available, given the size of the administrative task before the DMC and EPA officers in the face of such a large number of public submissions.

7. Counsel is also grateful for the DMC's direction under Minute 13 extending the date for the Parties to confirm the matters with the EPA to 12pm Monday 16 January 2017.

FISHERIES SUBMITTERS' REVISED RESPONSE TO MINUTE 11

8. The Fisheries Submitters have identified that some information provided in their memorandum dated 9 January 2017 needs to be updated. Counsel would be grateful if the DMC could replace its response to Minute 11 under that memorandum with the following response.
9. The Fisheries Submitters wish to speak at the hearing and present opening legal submissions.
10. The Fisheries Submitters intend to present legal submissions and evidence from the following people (but not necessarily in this order):

Legal counsel

- (a) Robert Makgill and Peter Dawson;

Expert witnesses

- (b) Helen Anderson – Environmental Planning;
- (c) Joris Jorissen – Laboratory Testing and Plume Modelling;
- (d) Greg Barbara – Marine Ecology;
- (e) Bruce Clarke – Environmental Risk;
- (f) Derek Todd –Coastal Hazards;

Fisheries witnesses

- (g) Ant Piper – Cloudy Bay Clams Limited;
- (h) Andy Smith – both for APS Fishing Consultancy Limited and for Talley's Group Limited;

- (i) Doug Saunders-Loder – New Zealand Federation of Commercial Fishermen Inc;
 - (j) Dr Jeremy Helson – Fisheries Inshore NZ (FINZ); and
 - (k) Carol Scott – Southern Inshore Fisheries Management Company.
11. As the Fisheries Submitters are preparing their evidence to meet the 12pm, 24 January 2017 deadline for filing of submitters' evidence, they note that other potential witnesses may need to file evidence and that the expert witnesses may cover other areas of the application that are within their areas of expertise.
12. The Fisheries Submitters prefer to present their evidence in Wellington and not in New Plymouth, but it is possible that one of the witnesses may wish to present his evidence via video conference during the Fisheries Submitters' presentation.
13. At this stage, the Fisheries Submitters intend to use Powerpoint and other electronic media for their presentations.
14. The Fisheries Submitters do not need the services of an interpreter.

LEAD COUNSEL'S AVAILABILITY DURING MARCH

15. Mr Makgill has an Environment Court appeal concerning the proposed dumping of the MV Rena on the seabed set down for hearing during all of March 2017.¹ Presently, there are no directions from the Environment Court as to the order of appearances or evidence to be called.
16. It is unlikely that Mr Makgill will be required to be present for the entirety of that hearing, as it is anticipated that counsel for the different iwi appellants will be able to make appearances for one another. Nevertheless, it is possible that there may be clashes in the timetables between the Rena hearing and these proceedings.

¹

ENV-2016-AKL-000042 Ngai Te Hapu Incorporated v Bay of Plenty Regional Council and ENV-2016-AKL-000045 Nga Potiki a Tamapahore Trust v Bay of Plenty Regional Council

17. The Fisheries Submitters respectfully request that EPA staff liaise with counsel for the Fisheries Submitters on appearance dates (to the extent possible) in order to minimise any potential clashes in timetable.

FISHERIES SUBMITTERS' REVISED RESPONSE TO MINUTE 11

18. Macdonald & Brown Limited has been named as a submitter on earlier memoranda filed by counsel for the Fisheries Submitters.
19. An EPA officer contacted counsel for the Fisheries Submitters last week seeking confirmation as to whether Macdonald & Brown Limited had filed a submission in respect of the present application.
20. Counsel has now had an opportunity to seek confirmation on this point from his instructing solicitor who is presently on leave in South Africa. Counsel advises that Macdonald & Brown Limited is a subsidiary of Talley's Group Limited. Macdonald & Brown Limited did not make a submission under its own name, as its concerns are addressed in Talley's Group Limited's submission.
21. Counsel apologises for any confusion that may have been caused by listing Macdonald & Brown Limited as a submitter in earlier memoranda.

Dated this 16th day of January 2017



Robert Makgill
Counsel for Fisheries Inshore NZ, The
New Zealand Federation of Commercial
Fishermen, Southern Inshore Fisheries
Management Co Limited, and Cloudy
Bay Clams Limited