

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

Trans-Tasman Resources Limited iron sand extraction and processing application

M7 – Minute of the Decision-making Committee – 13 October 2016

Background

1. The Decision-making Committee (DMC) received a memorandum of counsel on behalf of Te Rūnanga o Ngāti Ruanui dated 5 October 2016, which requested that the time period for submissions be extended for a period of 20 further working days, beyond the current closing date for submissions of Friday 14 October 2016.
2. The DMC then invited, in DMC Minute 5, Trans-Tasman Resources Limited and any other person who considers that he or she may be directly affected by such an extension to comment on this request, by 1pm on Tuesday 11 October 2016.
3. The DMC received comments from Kiwis Against Seabed Mining Inc (KASM), the Royal Forest and Bird Protection Society of New Zealand Inc (Forest and Bird), the Fisheries Submitters¹, and Te Ohu Kai Moana Trustee Limited (Te Ohu) in support of the Te Rūnanga o Ngāti Ruanui request.
4. At this time the EPA also received an email from Paul Veltman stating that a link in a pdf document on the EPA website was not working and requesting an extension of the submission period.
5. TTRL wrote to the DMC stating that it would not object to the Te Rūnanga o Ngāti Ruanui request, provided the extension was limited to Te Rūnanga o Ngāti Ruanui only and subject to it engaging with TTRL before lodging its submission.
6. On 12 October 2016, Te Rūnanga o Ngāti Ruanui filed a memorandum (and a supporting letter) in response to the letter to the DMC from TTRL to clarify matters raised in the TTRL letter.
7. All of the responses to DMC Minute 5 are provided on the EPA website alongside this Minute.

Relevant considerations

8. It is mandatory for the DMC to take into account the interests of persons considered to be directly affected and the interests of the community in being able to achieve an adequate assessment of the potential effects of a proposal. In making this assessment, the purpose of the Act is relevant, and the

¹ The Fisheries Submitters are Fisheries Inshore NZ, New Zealand Federation of Commercial Fishermen Inc, Talley's Group Limited, McDonald and Brown Ltd, and Cloudy Bay Clams Ltd

purpose is achieved by taking into account the decision making criteria and applying the information principles set out in section 61.

9. There is also a general obligation under section 40 to deal with the application as promptly as is reasonable in the circumstances.
10. This request is for an extension that would equal twice the period specified in the Act, so it does not require the agreement of the applicant. It is also open to the DMC to extend the period by a shorter time than has been requested.
11. The options to consider are whether to grant any extension at all, and if any extension is justified then should it just be for Te Rūnanga o Ngāti Ruanui, or an extension for all submitters. Further, if any extension is justified then should it be for 20 working days or a shorter period.
12. If a 20 working day extension is approved this would result in the submission period closing on 14 November 2016. The latest date that a hearing could then commence would be 40 working days following this, on 31 January 2017. However, an earlier hearing date could be set provided the EPA gives at least 20 working days' notice of the commencement date, and this could be done at any time, bearing in mind the need for processing of submissions, evidence exchange and expert conferencing.

Reasons for decision on request

13. In making this decision, we have taken into account the relevant considerations set out above, and the grounds for the request, grounds in support of the request, and the views of the applicant, as set out in the comments provided to us.
14. The Act sets a 20 working day timeframe for receipt of submissions for all marine consent applications that are publicly notified. We consider that the extent of information needed to be considered by submitters in this particular application to be significant. While generic submissions may be prepared within the statutory timeframe, it is in the interests of the community and the interests of potential submitters for full and well considered submissions to be provided to us for our consideration. This provides a sound basis for us to obtain the best available information on which to base our decision.
15. We consider it appropriate to grant an extension of time for all submissions, not just for Te Rūnanga o Ngāti Ruanui. This is because it was clear from the comments received in support that other potential submitters were experiencing similar difficulties preparing their submissions in the timeframe. Further, the impact of limiting it to just the requestor may be a number of further requests on similar grounds, as well as a potential negative impact on others who were not able to use the additional time to prepare their submissions.
16. We have given careful consideration to the impact on TTRL. We appreciate this extension, particularly as it applies beyond the requestor, may add fair and reasonable additional costs to the process. However, we do not consider this outweighs the potential impact on submitters and the interests of the community if the extension were not granted. We also hope that this additional time will assist in refining issues, and enable less generic submissions to be filed. On this point, we note that TTRL has chosen to invest time in its preparation of the application, including over a year in pre-



lodgement discussions with the EPA. We consider this illustrates the value of time to refine issues in order to ensure the best available information is used which is in the interests of all parties.

17. We are also hopeful that Te Rūnanga o Ngāti Ruanui and TTRL may find the opportunity to continue to engage, with the potential for this to result in some substantive input into the process which will also assist us with obtaining the best available information. We note this will require effort and good faith from both parties.
18. We are also mindful of the impact on parties of an extension of time as we approach the Christmas and New Year period. In general where hearings are held in this period there are real issues with availability of witnesses for any party. On this basis, we have therefore considered that a 20 working day extension is more appropriate than a shorter time, such as 10 working days. As noted above, we would envisage a hearing commencing no later than 31 January 2017.

Impact of the Environment Court proceedings

19. The original request does not mention the Environment Court proceedings relating to the redacted material subject to the direction of the DMC. However, KASM has raised this as a further consideration. That matter is expected to be heard by the Environment Court in early November 2016. This does not directly affect Te Rūnanga o Ngāti Ruanui, as its legal counsel have signed a confidentiality agreement with TTRL and have access to the redacted material.
20. It is not possible for us to predict with certainty the outcome of the Environment Court process or its impacts (if any) on TTRL's application process. If the Environment Court were to revoke the direction, for example, a likely outcome would be that the redacted material must be made public as it forms part of the application to be publicly notified.
21. Therefore, we consider it is appropriate, for the purposes of this request, to set aside the impact of the Environment Court process for the redacted material. Once the outcome of the Environment Court proceedings is known, we will address the need for further public engagement if necessary.

Other matters

22. TTRL has suggested that any extension be granted only on the condition that Te Rūnanga o Ngāti Ruanui meet with TTRL. We do not consider there is a power under section 159 or 160 to require such a meeting, and in particular we would not be able to rescind the extension if the condition were not fulfilled.
23. We note there are powers under section 49 to separately ask the EPA to facilitate a meeting between Te Rūnanga o Ngāti Ruanui and TTRL. However, this would only arise after Te Rūnanga o Ngāti Ruanui make a submission. This would be a separate matter to this request so we do not take it further at this point.

Decision on request

24. We therefore decide that the time period for submissions to be received is extended by an additional period of 20 working days. The deadline for submissions to be received will now be **5pm on Monday 14 November 2016**.

For the DMC:



Alick Shaw
DMC Chair
13 October 2016