

**BEFORE THE ENVIRONMENTAL PROTECTION AUTHORITY  
AT WELLINGTON**

**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 New Zealand Limited, New Zealand Federation of Commercial Fishermen Inc, Talley's Group Limited, Southern Inshore Fisheries Management Company Limited and Cloudy Bay Clams Limited**  
Fisheries Submitters

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**MEMORANDUM ON BEHALF OF FISHERIES SUBMITTERS**

**Dated: 29<sup>th</sup> March 2017**

Regarding DMC Minutes 36, 37 and 38

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Counsel Acting  
**ROBERT MAKGILL**  
BARRISTER

Instructing Solicitor  
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**MAY IT PLEASE THE DECISION-MAKING COMMITTEE:**

**INTRODUCTION**

1. Counsel acts for Fisheries Inshore New Zealand Limited, The New Zealand Federation of Commercial Fishermen Inc, Talley's Group Limited, Southern Inshore Fisheries Management Company Limited and Cloudy Bay Clams Limited (**Fisheries Submitters**).
2. This memorandum addresses:
  - (a) The Joint Memorandum filed on behalf of the Fisheries Submitters and Te Runanga o Ngati Ruanui Trust dated 16 March 2017 (**Joint Memorandum**), regarding the Decision Making Committee's (**DMC**) minute on further proposed changes to the hearing schedule (**Minute 35**);
  - (b) The DMC's minute dated 22 March 2017 directing further expert conferencing on the sediment plume modelling, and the subsequent request for expert statements addressing the materiality of further modelling information (**Minute 36**);
  - (c) The DMC's minute dated 22 March 2017 setting out a revised and extended timetable under Appendix 1 (**Minute 37**); and
  - (d) The DMC's minute dated 22 March 2017 extending the hearing timeframe (**Minute 38**).

**MINUTE 36 – FURTHER STATEMENTS OF EVIDENCE**

3. The Fisheries Submitters' sediment plume modelling experts, Dr Greg Barbara and Mr Joris Jorissen, were invited to attend an additional expert conferencing session (scheduled for 29 March 2017) to discuss the *"materiality of the further modelling information in comparison to the modelling information that has previously been provided [by TTR]"*<sup>1</sup>.

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<sup>1</sup> M36, at para [3].

4. It was not possible to reconvene sediment plume modelling conferencing, as some experts were not available on 29 March 2017. The DMC instead requested that experts provide written statements addressing this matter by 29 March 2017.
5. The Joint Memorandum advises at paragraph [29] that the Fisheries Submitters *“after much consideration ... are unable to be meet any additional cost, effort or time in these proceedings over and above those they have already committed to meeting.”* That position has not changed.
6. Notwithstanding, counsel has been instructed to engage the Fisheries Submitters’ experts to provide further written statements addressing the question of *“materiality”* under Minute 36. The expense of doing so is to be addressed through a reallocation of hearing resources. The resources earmarked for attending further expert conferencing on fisheries<sup>2</sup> have been re-allocated for the purposes of preparing further expert statements on sediment plume modelling.
7. Counsel understands that Dr Barbara is presently in the field, and Mr Jorissen is on leave until 4 April 2017. They have not, for that reason, been able to prepare evidence by today. They have advised, however, that by re-arranging pre-existing commitments they could provide further statements by Friday 7 April 2017 latest. Counsel proposes to file those statements either before or on that date.

#### **MINUTES 37 & 38**

8. It is for Trans-Tasman Resources Limited (**TTR**) to prove its application under the Exclusive Economic Zone and Continental Shelf Act 2012 (**EEZ Act** or **Act**).
9. Gaps in information supporting TTR’s application should have been addressed prior to lodgement, or prior to notification under sections 41 or 42 of the Act.

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<sup>2</sup> The Joint Memorandum, at paragraph [31].

10. It is important, in this context, not to lose sight of the fact that the DMC found that TTR's first application was premature and more time should have been taken to understand the proposed operation, its effects on the receiving environment and existing interests. For those reasons the application did not meet the sustainable management purpose of the EEZ Act.<sup>3</sup>
11. It is the Fisheries Submitters' view that Minutes 37 and 38 are contrary to the administration of natural justice in these proceedings. This is because, *inter alia*, those minutes provide significant further time and opportunity for TTR to iteratively address information gaps in its application at the "cost, effort and time" of submitters.
12. It is respectfully submitted that Minutes 37 and 38 place further unreasonable burden on submitters (in addition to the significant cost, effort and time already expended), and do not correctly apply the information principles under sections 61 or 87E of the Act.

#### **EXPERT CONFERENCING & COMMENTS ON PROPOSED CONDITIONS**

13. The extended timetable set out in Appendix 1 to Minute 37 provides that expert conferencing and comment on the proposed conditions will commence on 5 April 2017 and continue until the week beginning 22 May 2017.
14. For the reasons set out in the Joint Memorandum, the Fisheries Submitters cannot commit further resources to participate in an extended conferencing/comment process as proposed by the DMC.
15. Nevertheless, counsel reiterates the Fisheries Submitters' commitment (as set out in the Joint Memorandum at paragraph [30]) to provide comment on a final set of proposed conditions that have been independently reviewed by the Environmental Protection Authority and present closing submissions once the final set of proposed conditions has been assessed by its experts.

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<sup>3</sup> *Trans-Tasman Resources Ltd Marine Consent Decision*, Environmental Protection Authority, dated 17 June 2014, at paragraph [853].

Dated this 29<sup>th</sup> day of March 2017

A handwritten signature in blue ink, appearing to read 'Robert Makgill', written in a cursive style.

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**Robert Makgill / Peter Dawson**  
**Fisheries Inshore New Zealand**  
**Limited, New Zealand Federation**  
**of Commercial Fishermen Inc,**  
**Talley's Group Limited, Southern**  
**Inshore Fisheries Management**  
**Company Limited and Cloudy**  
**Bay Clams Limited**