

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

MEMORANDUM ON BEHALF OF FISHERIES SUBMITTERS

Dated: 23rd January 2017

Concerning requirements for filing of evidence under Appendix 1 of Hearing Procedures Direction

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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 (collectively referred to as the **Fisheries Submitters**).
2. This memorandum addresses the following matters:
 - (a) Appendix 1 of the Hearing Procedures Direction of the Decision Making Committee (**DMC**), dated 1 December 2016;
 - (b) The potential confusion some submitters might have in respect of the simultaneous filing requirement; and
 - (c) The Fisheries Submitters' approach to filing electronic and hard copies of their evidence.

APPENDIX 1 OF THE HEARING PROCEDURES DIRECTION

3. Paragraph [1] of Appendix 1 of the DMC's Hearing Procedure Direction, dated 1 December 2016, requires that all witnesses *"must provide 10 hard copies AND an electronic copy of their evidence to the EPA by the dates set out in section 1"* (that is by 12pm 24 January 2017).
4. Paragraph [2] of Appendix 1 then describes how statements of evidence can be sent to the EPA:
 - (a) **"By email to TTRLApplication@epa.govt.nz (if smaller than 10MB); or**
 - (b) **On a disk or portable storage device (e.g. USB stick or CD) if larger than 10MB); or**
 - (c) **Posted to Environmental Protection Authority, Private Bag 63002, Wellington 6140. Attention: TTRL marine consents application; or**
 - (d) **Delivered in person to Environmental Protection Authority, Level 10,**

215 Lambton Quay, Wellington.” (emphasis in original)

5. Paragraph [17] provides that *“[i]f the electronic copy of any document is greater than 10MB, it must be provided to the EPA on a CD, DVD or portable storage device...Any electronic files over 10MB in size may be too large to email and so should be split into multiple parts. ...”*

POTENTIAL FOR CONFUSION

6. Counsel for the Fisheries Submitters notes that there is a slight ambiguity between paragraph [1] and [2] of Appendix 1. Paragraph [1] makes it clear that electronic and hard copies must be provided to the EPA by 12pm 24 January 2017.
7. However, the use of the word “or” under paragraph [2] could leave some submitters with the impression that any one of the alternatives under paragraph [2(a)] to [2(d)] is sufficient to satisfy the filing requirements.

FISHERIES SUBMITTERS’ APPROACH TO FILING

8. The Fisheries Submitters will be filing a number of statements of evidence on 24 January 2017, some of which are likely be larger than 10MB.
9. In order for the Fisheries Submitters to file their evidence electronically, counsel’s instructing solicitors will split the evidence between separate emails. They will, of course, make it clear in which order the files should be reassembled.
10. Counsel understands from his instructing solicitors that is administratively difficult to have all the evidence copied, bundled and provided to the EPA on the same date that electronic copies of the evidence are to be filed. This will especially be the case for lay-submitters and submitters with offices outside of Wellington.
11. The requirement for simultaneous filing of electronic and hard copies of evidence is procedurally unusual in the context litigation. Normally, evidence is electronically filed and then bundled on a later date.

12. Counsel appreciates, however, that the timeframes under the Act are tight and that the direction for simultaneous filing may be intended to enable hard copies of evidence to be circulated to the DMC, EPA staff and the EPA's external advisors as soon as possible.
13. The Fisheries Submitters will have the hard copies of their evidence delivered to the EPA (either by courier or agent) as soon as possible after the evidence has been copied and bundled.
14. Counsel respectfully submits that some leniency should be shown to submitters who make best endeavours to comply with the direction as to simultaneous filing, and those lay-submitters who may not understand directions concerning simultaneous filing.

Dated this 23rd day of January 2017



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