

**Before a Decision-Making Committee
Of the Environmental Protection Authority**

EEZ100015

Under the Exclusive Economic Zone and
Continental Shelf (Environmental
Effects) Act 2012

In the matter of an application for a marine dumping
consent to dump dredged material at a
deep-sea site east of Great Barrier
Island

By **Coastal Resources Ltd**

Applicant

**5TH MEMORANDUM OF COUNSEL FOR COASTAL RESOURCES LTD
ON VARIOUS PROCEDURAL MATTERS
13 November 2018**

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MAY IT PLEASE THE COMMITTEE

1. This memorandum raises procedural matters in response to the DMC's Minutes 4 and 5, and in relation to new information on commercial fishing activity.

Timing of Technical Reports to Assist DMC

2. Minute 4 requires the ecology experts to conference on 16 November, and the oceanography/sediment dispersal experts to conference on 20 November.
3. Minute 5 discloses that an addendum report from the DMC's ecology expert will be made available on the same day as the ecology conference; and that the first report from the DMC's expert on oceanography/sediment dispersal will be available one working day prior to the related conference.
4. These present some timing difficulties:
 - (a) Mr West will be unable to discuss the addendum report on ecology in conferencing. At best it appears he may receive the report during the actual conference — with no time for review or consideration.
 - (b) Mr Andrews will have one working day to review and consider the report from the DMC's expert on oceanography/sediment dispersal prior to conferencing. Depending on the complexity of the report, that may be insufficient time for Mr Andrews to be able to fully discuss all matters raised by the report.
5. CRL cannot assess the significance of these impediments until the relevant reports are available and have been reviewed by CRL's advisors. However, it appears likely that a result of this timing is that there will be some matters left outstanding from the conferencing.
6. Minute 5 invites CRL to comment on such outstanding matters by noon on 26 November.

7. CRL respectfully submits that — in place of comments — a more informative approach (both for the DMC and for other parties) would be for the relevant CRL witnesses to address the outstanding matters when they present evidence at the hearing.
8. Irrespective of the specific timing issues outlined above, CRL does not expect all issues to be resolved by conferencing; and it will almost certainly be necessary for relevant witnesses to provide evidence in addition to the contents of their joint witness statements (and in addition to their primary statements) explaining their points of difference.
9. While such evidence might be provided verbally, and recorded in the transcript, CRL respectfully submits that it would be more efficient, and clearer, if CRL's witnesses prepare succinct supplementary statements covering the outstanding matters; and that the witnesses present such statements when they are giving their evidence.
10. In the interests of pre-reading evidence, it would be preferable if such supplementary statements could be filed prior to the hearing, but that is not achievable in the limited time available between conferencing and the hearing.
11. CRL raises these matters, as they have not been anticipated in the Hearing Procedures.

Economic Review

12. Mr Murray's report (dated 1 November 2018) makes a number of recommendations for further economic analysis.
13. The day after receiving Mr Murray's report CRL commissioned Greg Akehurst of Market Economics to assess those recommendations and undertake further analysis to put before the DMC. Mr Akehurst estimates that his work will be complete by the eve of the hearing, but is not likely to be ready sooner.
14. Until Mr Akehurst's further work is available it is difficult to anticipate a suitable course of action, but CRL expects it will seek leave to provide the work to the DMC, and to call Mr Akehurst as a witness

to present an outline of the work and answer any questions. It seems likely to be useful also for Mr Akehurst and Mr Murray to have a conference and produce a joint statement.

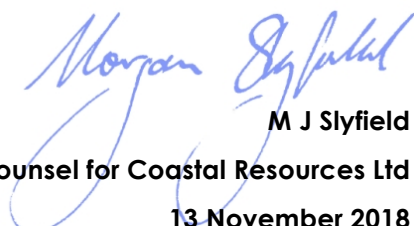
15. CRL anticipates that the procedural difficulties of accommodating this additional evidence so close to the hearing date are likely to be outweighed by the advantages to the DMC in having a response to Mr Murray's recommendations.
16. However, those are matters that can perhaps best be addressed closer to the relevant time; by which time it may be clearer whether there are additional considerations arising out of the addendum that is expected from Mr Murray on 16 November.

Requests to question witnesses

17. CRL first received notice that the DMC has commissioned work from Dr Leduc, Dr Pederson and Ms Clarke (and intends their involvement in expert witness conferencing) on the evening of 7 November. That notice came after the deadline for making requests to question witnesses.
18. On the understanding that Dr Leduc, Dr Pederson and Ms Clarke will be called to give evidence, and pending the outcomes of conferencing (and, in the case of Dr Pederson and Ms Clarke, pending receipt of any assessment they have undertaken), CRL anticipates there may be questions that it wishes to ask those witnesses. In particular, CRL expects it may have questions for them in relation to any matters that are unable to be agreed in conferencing.
19. As the Hearing Procedures make no provision for this, and as the joint witness statements will continue to be finalised up to the end of 26 November, CRL proposes that the most appropriate action would be for CRL to make a formal request to question the relevant witnesses as part of its opening representation.

Information on Commercial Fisheries

20. The submission filed by Fisheries Inshore NZ (**FINZ**) raised a concern about the potential effects of the proposal on its members, who are quota owners and harvesters of wild fish stocks.
21. In light of those concerns, CRL commissioned some analysis from Trident Systems, a seafood-industry owned research provider. CRL received the analysis and provided it to FINZ, and understands that while FINZ maintains its desire for the establishment of a seafood liaison group (as described and supported by Mr Hay in his evidence), it no longer wishes to pursue concerns about potential effects of the proposal on commercial fishing activity.
22. As the information from Trident Systems contains commercially sensitive data, CRL is unable to release it without permission from Fisheries New Zealand.
23. CRL seeks a direction from the DMC whether the DMC desires to receive that information. If so, CRL will seek permission from Fisheries New Zealand, and anticipates that there may need to be directions prior to disclosure to limit publication (under s 158 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012).


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13 November 2018