

# Terms of Reference

Exclusive Economic Zone Board of Inquiry for Tamarind  
Taranaki Limited's notified marine consent applications

# Exclusive Economic Zone Board of Inquiry: Tamarind Taranaki Limited's notified marine consent applications

## **1. Establishment of a Board of Inquiry**

- 1.1. Pursuant to section 52 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (the EEZ Act), the Hon David Parker (Minister for the Environment) is appointing a Board of Inquiry (the Board) to decide on Tamarind Taranaki Limited's (Tamarind) marine consent applications.
- 1.2. The Environmental Protection Authority (EPA) assessed these applications as complete and publicly notified them on 4 May 2018.
- 1.3. The Board comprises:
  - Mr David Hill (Chair)
  - Ms Glenice Paine
  - Dr Dan McClary

## **2. Delegation of notified marine discharge consent from the EPA to the EEZ BOI**

- 2.1. Tamarind has lodged two applications, one for a marine consent and the other, a marine discharge consent.
- 2.2. The EPA Chief Executive has delegated the EPA's powers and functions related to Tamarind's marine discharge consent to this Board under section 44 of the EEZ Act. The full details are outlined in the EPA record of delegation, attached in Appendix One.

## **3. Role and scope of the Board**

- 3.1. The role of the Board is to consider and decide on Tamarind's applications for marine consent and marine discharge consent in accordance with Schedule 4 of the EEZ Act, attached in Appendix Two, and the EPA's record of delegation (in Appendix One).

## **4. Procedures for the Board**

- 4.1. Subject to the EEZ Act and the Terms of Reference, the Board will determine its own procedures.
- 4.2. The Board should carry out its functions, powers, and duties as promptly as is reasonable in the circumstances in accordance with Schedule 4 of the EEZ Act.
- 4.3. The Board should also give regard to carrying out its duties in a timely and cost-effective manner in accordance with Clause 4, Schedule 4 of the EEZ Act. The EPA will endeavour to make the Board aware of processing costs on a regular basis.

## **5. Administrative support to the Board**

- 5.1. The EPA will provide administrative and secretarial services to the Board (such as procurement of advice, agendas, minute taking, and meeting arrangements), and communications to the Board will be via the EPA.
- 5.2. At the request of the Board, the EPA will arrange for work to be done for the Board and for information to be supplied to the Board.

## **6. Health and Safety**

- 6.1. The Board, the Ministry for the Environment and the EPA must consult, co-operate with and co-ordinate with each other to ensure that they meet their duties as persons controlling a business or undertaking under the Health and Safety at Work Act 2015.
- 6.2. What is required to fulfil these duties depends on the capacity of the Board, the Ministry for the Environment and the EPA to influence or control the relevant matter, and on

what is reasonably practicable in the circumstances. It is expected that the Board follow any EPA advice or direction on matters of health and safety.

## **7. Information requests**

7.1. The expectation is that any information or media requests will be dealt with by the EPA.

## **8. Term of Inquiry**

8.1. The inquiry will start from the date of appointment, 5 June 2018, as set out in the letters of appointment. It will run until all functions required of the Board in relation to the decision, including any functions in relation to any appeals, have been completed.

8.2. The Board is required, under Schedule 4 of the EEZ Act to make its final decision, produce a written report, and send the report to the EPA as soon as practicable, but not later than nine months after the EPA publicly notified the applications on 4 May 2018.

**Appendix One: The EPA's Record of Delegation for Tamarind's  
marine discharge consent application to the Board of Inquiry**



Environmental  
Protection Authority  
*Te Mana Rauhi Taiao*

## RECORD OF DELEGATION

### Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 ("EEZ Act")

This document is a record of a delegation made by the Chief Executive of the Environmental Protection Authority ("EPA") on 23<sup>rd</sup> April 2018.

On 23<sup>rd</sup> April 2018, I decided under section 44 of the EEZ Act that Tamarind Taranaki Limited's (Tamarind) applications for marine consent and marine discharge consent (EEZ100016) are related applications that should be heard at the same time and place and decided on the same date.

### Delegation

1. Under section 44 of the EEZ Act, the Chief Executive of the EPA on 23<sup>rd</sup> April 2018, delegated to the Tamarind board of inquiry (to be appointed by the Minister for the Environment) all of the functions and powers of the EPA under sections 50 to 75 of the EEZ Act related to the processing, hearing, and deciding of Tamarind Taranaki Limited's (Tamarind) application for marine discharge consent (EEZ 100016).
2. Paragraph 1 of this delegation will come into effect on the date that written notice of the delegation is given to the members of the Tamarind board of inquiry (to be appointed by the Minister for the Environment).

Signed at Wellington this 23<sup>rd</sup> day of April 2018



Dr Allan Freeth

**Chief Executive**

**Environmental Protection Authority**

**Appendix Two: Schedule 4 of the EEZ Act**

## Schedule 4

# Boards of inquiry for publicly notifiable section 20 activities

s 52(8)

Schedule 4: inserted, on 1 June 2017, by [section 284](#) of the Resource Legislation Amendment Act 2017 (2017 No 15).

### *General*

#### **1 EPA must provide board with necessary information**

(1) The EPA must provide the board of inquiry with each of the following things as soon as is reasonably practicable after the board is appointed and the things are received:

- (a) the application;
- (b) all the information received by the EPA that relates to the application;
- (c) the submissions received by the EPA on the application.

(2) The EPA must also—

(a) prepare or commission a report on the key issues relating to the application and the activity, including—

- (i) any relevant provisions in regulations; and
- (ii) a statement on whether the application covers all aspects of the activity for which a marine consent is required;

(b) provide a copy of the report to—

- (i) the board of inquiry; and
- (ii) the applicant; and
- (iii) every submitter.

#### **2 EPA must provide support to board**

(1) The EPA must provide all reasonable administrative and secretarial services that are necessary to enable a board of inquiry to discharge its functions and responsibilities under this Act.

(2) The EPA may—

(a) make decisions regarding administrative and support matters that are incidental or ancillary to the conduct of an inquiry under this schedule; or

- (b) allow the board of inquiry to make those decisions.
- (3) The EPA must have regard to the purposes of minimising costs and avoiding unnecessary delay when performing its functions under subclause (2)(a) or (b).

### **3 EPA may provide board with advice**

The EPA may provide a board of inquiry with—

- (a) technical advice:
- (b) an estimate of the amount of funding required to process an application.

### **4 How board must carry out duties**

A board of inquiry must—

- (a) carry out its duties in a timely and cost-effective manner:
- (b) conduct its inquiry in accordance with any terms of reference set by the Minister under [section 52\(2\)](#):
- (c) have regard to the most recent estimate provided to the board of inquiry by the EPA under [clause 3\(b\)](#).

## *Hearings*

### **5 Hearings**

- (1) The board of inquiry must conduct a hearing on an application if the applicant or a submitter requests a hearing.
- (2) The board of inquiry may conduct a hearing, even if no applicant or submitter requests one, if the board considers it necessary or desirable.
- (3) The board of inquiry—
  - (a) must keep a full record of any hearings or proceedings:
  - (b) may direct that a conference of a group of experts be held:
  - (c) may direct that a conference be held with—
    - (i) any of the submitters who wish to be heard at a hearing; or
    - (ii) the applicant; or
    - (iii) in the case of a cross-boundary application, any relevant resource consent authority; or
    - (iv) any combination of the persons described in paragraphs (i) to (iii).

### **6 Hearing date and notice**

- (1) If a hearing is to be held, the EPA must—
  - (a) fix the commencement date, time, and place of the hearing; and
  - (b) give 20 working days' notice of the commencement date, time, and place of the hearing to—
    - (i) the applicant; and

(ii) every submitter on the application who stated that he or she wished to be heard and who has not subsequently advised that he or she does not wish to be heard.

(2) The board of inquiry may give directions as to evidence and the general conduct of the hearing.

## **7 Hearings to be public and without unnecessary formality**

(1) A hearing must be held in public unless the Environmental Protection Authority, under [section 158\(3\)\(a\)](#), directs that the whole or part of a hearing is to be held with the public excluded.

(2) The board of inquiry must establish a procedure for a hearing that is appropriate and fair in the circumstances.

(3) In determining an appropriate and fair procedure for a hearing, the board of inquiry must—

(a) avoid unnecessary formality; and

(b) where appropriate, recognise tikanga Māori; and

(c) receive evidence written or spoken in te reo Māori (and the [Māori Language Act 1987](#) applies accordingly to the evidence so received).

(4) No person may question a party or witness unless the board of inquiry gives permission to do so.

## **8 Persons who may be heard at hearings**

(1) At a hearing, the applicant and every submitter who stated that he or she wished to be heard at the hearing may speak (either personally or through a representative) and call evidence.

(2) However, the board of inquiry may, if it considers that excessive repetition is likely, limit the circumstances in which parties having the same interest in a matter may speak or call evidence in support.

(3) The board of inquiry may proceed with a hearing even if the applicant or a submitter who stated that he or she wished to be heard fails to appear at the hearing if the board of inquiry considers it fair and reasonable to do so.

## **9 Provisions relating to hearings**

(1) The following provisions of the [Commissions of Inquiry Act 1908](#) apply to every hearing:

(a) [section 4](#) (which gives powers to maintain order):

(b) [section 4B](#) (which relates to evidence):

(c) [section 4D](#) (which gives power to summon witnesses):

(d) [section 5](#) (which relates to the service of a summons):

(e) [section 6](#) (which relates to the protection of witnesses):

(f) [section 7](#) (which relates to allowances for witnesses).

(2) Every summons to a witness to appear at a hearing must be in the prescribed form and be signed on behalf of the board of inquiry or by the chairperson of the committee that is to conduct the hearing.

(3) All allowances for a witness must be paid by the party on whose behalf the witness is called.

(4) At a hearing, the following persons must give to the board of inquiry any information and advice that is relevant and reasonably necessary to decide the application if the board of inquiry asks for it:

- (a) a person who reviewed the impact assessment or provided advice under [section 41](#) or [56](#);
- (b) a person who is heard or represented at the hearing.

## **10 Control of hearings**

A board of inquiry may exercise a power under [clause 11](#) or [12](#) after considering whether the scale and significance of the hearing make the exercise of the power appropriate.

## **11 Directions to provide evidence within time limits**

- (1) A board of inquiry may direct the applicant to provide briefs of evidence to the board before the hearing.
- (2) The applicant must provide its briefs of evidence at least 15 working days before the hearing.
- (3) The board of inquiry may direct a submitter who intends to call expert evidence to provide briefs of the evidence to the board before the hearing.
- (4) The submitter must provide the briefs of evidence at least 10 working days before the hearing.
- (5) The board of inquiry must, as soon as practicable after the board receives the briefs of evidence, give—
  - (a) a copy of the applicant’s brief of evidence to every submitter; and
  - (b) a copy of a submitter’s briefs of evidence to the applicant.

## **12 Directions before or at hearings**

- (1) Before or at the hearing, the board of inquiry may do 1 or more of the following:
  - (a) specify the order of business at the hearing, including the order in which evidence and submissions are presented;
  - (b) direct that evidence and submissions be—
    - (i) recorded; or
    - (ii) taken as read; or
    - (iii) limited to matters in dispute;
  - (c) direct the applicant, when presenting evidence or a submission, to present it within a time limit;
  - (d) direct a submitter, when presenting evidence or a submission, to present it within a time limit.
- (2) At the hearing, the board of inquiry may seek advice on an application or the activity to which the application relates under [section 56\(1\)](#), if the applicant agrees.
- (3) The board of inquiry must provide copies of the advice to the applicant and submitters.
- (4) At the hearing, the board of inquiry may direct a person presenting a submission not to present—
  - (a) the whole submission, if none of it is relevant or in dispute; or
  - (b) any part of the submission that is not relevant or not in dispute.
- (5) Before or at the hearing, the board of inquiry may direct that a submission or a part of a submission be struck out if the board considers that—
  - (a) the submission, or the part, is frivolous or vexatious; or

- (b) the submission, or the part, discloses no reasonable or relevant case; or
  - (c) it would be an abuse of the hearing process to allow the whole submission, or the part, to be taken further.
- (6) If the board of inquiry gives a direction under subclause (5), it must record the reasons for the direction and give a copy of the reasons to the submitter whose submission is affected by the direction.

### **13 Board to produce report**

- (1) As soon as practicable after the board of inquiry has completed its inquiry on a matter, but not later than 9 months after the relevant application was publicly notified, the board of inquiry must—
- (a) make its decision; and
  - (b) produce a written report; and
  - (c) send its report to the EPA.
- (2) The report must—
- (a) state the board's decision; and
  - (b) give reasons for the decision; and
  - (c) include a statement of the principal issues that were in contention; and
  - (d) include the main findings on the principal issues that were in contention.
- (3) For the purposes of subclause (1), the 9-month period excludes the period starting on 20 December in any year and ending on 10 January in the following year.

### *Remuneration*

### **14 Remuneration, allowances, and expenses**

- (1) The [Fees and Travelling Allowances Act 1951](#) (the *1951 Act*) applies to a board of inquiry appointed under [section 52](#) as if the board were a statutory board within the meaning of the 1951 Act.
- (2) The Minister may direct that a member of a board of inquiry be paid the following out of money appropriated by Parliament for the purpose:
- (a) remuneration by way of fees, salary, or allowances under the 1951 Act; and
  - (b) travelling allowances and travelling expenses under the 1951 Act for time spent travelling in the service of the board.