

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

Trans-Tasman Resources Limited iron sand extraction and processing application

M4 – Minute of the Decision-Making Committee – 28 September 2016

1. In Minute 3¹ the Decision-Making Committee (DMC) made a direction, under section 158 of the Act, protecting certain sensitive information forming part of Trans-Tasman Resources Limited's (TTRL) application for marine consents.
2. The DMC has now received a memorandum of counsel² from Globelaw, on behalf of Kiwis Against Seabed Mining Incorporated (KASM), requesting that the DMC:
 - a. *"release all of the [protected] information as part of the application"*; and/or
 - b. *"reassess its direction and allow for public submissions on the issue of confidentiality of information under s 158"*.
3. The memorandum indicates that, if the issue raised in the memorandum is not adequately addressed, KASM will seek an order from the Environment Court cancelling the DMC's direction. The memorandum indicates that proceedings to that end would be filed in the Court by today's date, Tuesday 27 September 2016.
4. The DMC understands from Environmental Protection Authority (EPA) staff that no submission has yet been received from KASM (the incorporated society, as opposed to individual members) on TTRL's application for marine consents. As such, legal questions may arise as to KASM's standing and whether it is able (at this point in time) to seek an order from the Environment Court.³
5. A further legal question arises as to whether the DMC has the power to revisit its earlier direction, given that the Act contemplates the Environment Court cancelling or varying a direction made by the EPA under section 158 of the Act.
6. The DMC has nonetheless considered the substance of the matters raised in the memorandum for KASM as if KASM had already made a submission on TTRL's application for marine consents,

¹ Dated 14 September 2016.

² Dated 23 September 2016.

³ That is, there is a question as to whether KASM is yet a *"party to any proceedings (...) before the EPA"*, in terms of section 158(6) of the Act.

and assuming that the DMC does have the power to revisit (and if necessary cancel or vary) its earlier direction.

7. Having considered the information provided in the memorandum, however, the DMC does not consider it necessary to cancel or vary its direction made in Minute 3. The DMC remains satisfied that an order protecting the sensitive information is necessary to avoid disclosing a trade secret or to avoid causing unreasonable prejudice to TTRL's commercial position. Further, the DMC has already given careful consideration to whether the public interest in making the information available would outweigh the importance of avoiding that disclosure or prejudice. While the DMC acknowledges the matters raised in the memorandum, the DMC considers that it has put in place, through its direction, appropriate measures to ensure that the DMC will be able to test and evaluate the sensitive information, assisted as necessary by relevant experts and legal counsel.
8. Accordingly, the DMC's direction contained in Minute 3 stands.

For the DMC:



Alick Shaw

DMC Chair

28 September 2016