

**BEFORE THE ENVIRONMENTAL PROTECTION AUTHORITY
AT WELLINGTON**

IN THE MATTER of the Exclusive Economic Zone and Continental Shelf
(Environmental Effects) Act 2012

BETWEEN **TRANS-TASMAN RESOURCES LIMITED**
Applicant

AND **THE ENVIRONMENTAL PROTECTION AUTHORITY**
Consent Authority

AND **ROYAL FOREST AND BIRD PROTECTION SOCIETY OF
NEW ZEALAND INCORPORATED**
Submitter

**MEMORANDUM OF COUNSEL FOR THE ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED ON MINUTE 41**

20 April 2017

MAY IT PLEASE THE DECISION MAKING COMMITTEE

1. This memorandum relates to DMC Minute 41, in which the Decision Making Committee (“DMC”) has prepared a list of additional questions and requests for information.
2. The Royal Forest & Bird Protection Society of New Zealand Incorporated (“Forest & Bird”) has concerns with Minute 41.
3. Minute 41 seeks additional for marine acoustic evidence including site and environment-specific modelling which will enable it to better understand the potential effects of the project’s noise on marine mammals. Ultimately, the DMC is requesting evidence that it should have already been submitted.
4. The hearing process has already been extended and the hearing itself has involved the filing and rebuttal of evidence, expert caucusing, and marine mammal experts being called to present evidence and questioned regarding it.
5. Paragraph 6 of Minute 41 states that the DMC understands that the applicant has engaged an acoustics expert to assist Dr Childerhouse in preparing the remaining information requested in Minute 33.
6. The material that is to be provided is effectively new evidence, prepared by someone who has not previously given evidence.
7. Forest & Bird’s starting point is that it is too late in the process for the provision of such critical information. This should have been included in the application and/or evidence presented by the applicant. Forest & Bird understands other parties have concerns about the contents on Minute 41 and support those concerns.
8. However, Forest & Bird acknowledges that Mr van Helden suggested that the effects on whales could not be properly evaluated without modelling of the types sought by the DMC. The DMC request seems to accord with Mr van Helden’s evidence.
9. If the DMC declines to withdraw Minute 41, Forest & Bird considers any further evidence must be presented in accordance with correct procedure and natural justice.
10. We consider that that acoustics expert referred to in paragraph 6 should not simply assist Dr Childerhouse but should in fact prepare the remaining evidence requested

in Minute 41 and present it themselves. Doing it otherwise would be hearsay and not the best available information.

11. Submitters should have the opportunity to call evidence in relation to the new evidence. To do otherwise would be a breach of natural justice. Simply providing for the applicant to report on what the whale caucus said is not enough.

Dated 20 April 2017

A handwritten signature in black ink, appearing to read "P Anderson", is centered on a white rectangular background.

Peter Anderson

Counsel for the Royal Forest and Bird Protection Society of New Zealand Incorporated