

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

Trans-Tasman Resources Limited iron sand extraction and processing application

M17 – Minute of the Decision-Making Committee in respect of section 87F(4) of the Act– 3 February 2017

1. The Key Issues Report at [125]-[126] records as follows:

"125. *I note that under section 87F(4) of the EEZ Act, if the DMC grants the application for marine discharge consent, it may issue the consent subject to conditions under section 63, 'but not under section 63(2)(b)'. Section 63(2)(b) allows conditions to be imposed on marine consents 'that together amount or contribute to an adaptive management approach'. The impact of section 87F(4) on the ability to impose conditions on the marine discharge consents will need further consideration by the DMC.*

126. *In addition to the conditions which the DMC may impose (should consent be granted), other conditions volunteered by TTRL, including those that may be outside those that the DMC can fairly impose, may also be imposed and become enforceable. Such conditions are often referred to as 'Augier' conditions."*

2. The application is for both marine consents and marine discharge consents.

3. During the course of this process the DMC will be considering the meaning and effect of section 87F(4) and the applicability of the *Augier* principle to this matter,¹ among various other issues including those noted in the Key Issues Report and raised in submissions.

4. Without in any way seeking to limit the matters on which the parties may wish to address the DMC, the DMC invites legal counsel to address their opening submissions at the hearing to:

a. the meaning of section 87F(4) and its effect on the application;

b. the applicability of the *Augier* principle to this matter;

c. the ability of the DMC to separate the marine consent activities from the marine discharge consent activities in respect of applying conditions; and

d. the scope of the definition of adaptive management approach as set out in section 64 of the Act and relevant matters for considering how to identify conditions '*that together amount or contribute to an adaptive management approach*'.

¹ First set out in *Augier v Secretary of State for the Environment* (1979) 38 P. & C.R. 219 (QBD)

5. If the DMC receives legal advice on these issues, it will be made available to parties. These issues may also raise further questions to be put to witnesses at appropriate points during the hearing.

For the DMC:

A handwritten signature in blue ink, appearing to read 'Alick Shaw', written in a cursive style.

Alick Shaw
DMC Chair
3 February 2017