

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

## Trans-Tasman Resources Limited iron sand extraction and processing application

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M40 – Minute of the Decision-Making Committee – 4 April 2017

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### Request for legal advice from counsel assisting the Decision-making Committee

1. The Decision-making Committee (DMC) has identified a number of legal questions that it wishes to receive legal advice on from counsel assisting the DMC before the hearing resumes. The majority of these matters were raised in opening submissions or the evidence of parties.
2. The questions are set out in Appendix 1 in two parts. The first set relate to conditions with a deadline to ensure this advice is available to all parties prior to conferencing on conditions. The second set are more generally relevant to the decision and the deadline ensures this advice is available to all parties in advance of closing submissions. As the DMC has mentioned before, addressing conditions does not indicate that a conclusion has been reached on the proposal but simply ensures best available information is provided during the hearing process.
3. Parties should note that this is not a request for input from other parties, but other parties are welcome to address these issues in their closing submissions. This in no way restricts or imposes requirements on any legal submissions that parties may wish to provide in closing submissions.

**For the DMC:**



Alick Shaw  
DMC Chair  
4 April 2017

## Appendix 1 – Legal questions for response from counsel assisting the Decision-making Committee

In this Appendix, reference to the Act is a reference to the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

The following legal questions relate closely to potential conditions and a response is required by 13 April 2017, so it is available before further expert conferencing is undertaken on conditions.

1. In what circumstances is the DMC able to consider imposing conditions that overlap with requirements of a mining permit or other marine management regimes ("**MMRs**"), including in respect of health and safety?
2. What is the scope of the DMC's power to impose conditions requiring a consent holder to obtain public liability insurance and how might such conditions address effects on the environment and existing interests?
3. What is the scope of the DMC's power to impose conditions requiring a bond?
4. What is the scope for the DMC to monitor activities associated with the mining activity that are not restricted by the Act?
5. What limitations (if any) are there on the DMC in respect of imposing conditions that require different operational parameters from the description of the activity in the application that was publicly notified?
6. What relevance does the boundary of the mining permit have to the application for marine consents?

The following legal questions are more generally related to the decision and a response is required by 17 May 2017.

7. Provide a description of the inter-relationship between the marine consenting regime and other MMRs, in the context of the requirement in section 59(2)(h) of the Act to take into account "the nature and effect of other marine management regimes".
8. In the context of the inter-relationship between the marine consenting regime and the Resource Management Act 1991 (RMA), and in particular, in light of the proposal's effects on the coastal marine area ("CMA"), what is the relevance to the DMC's decision of instruments made under the RMA relating to the CMA?

9. When determining the duration of a consent, what are the relevant considerations for the DMC to take into account under section 73(2)(c) of the Act in respect of the duration of any other legislative authorisations?
10. What is the relevance to the DMC's decision of New Zealand's international obligations, including in respect of:
  - a) the precautionary principle?
  - b) human rights, including the United Nations Declaration on the Rights of Indigenous Peoples?
11. What legal principles apply to interpreting the scope of section 59(2)(m) of the Act?
12. What is the effect of section 12 of the Act, in the context of the ability for the DMC to take into account the principles of the Treaty of Waitangi/Te Tiriti o Waitangi in its decision (including under section 59(2)(m) of the Act)?
13. Does the definition of "existing interest" or any other aspect of the Act enable the DMC to consider:
  - a) a historical or contemporary claim under the Treaty of Waitangi/Te Tiriti o Waitangi that has not yet been settled?
  - b) a potential future interest (such as a whale-watching venture)?
14. Does the Act enable the DMC to take into account effects of the proposal on cultural/spiritual/metaphysical values?
15. Does section 59(2)(f) (or any other aspect of the Act) differentiate between the relevance to the DMC's decision of the economic benefits of the proposal, at a national, regional, and local level?
16. What is the precedent value (if any) of the following decisions of the Environmental Protection Authority ("EPA"):
  - a) the completeness decision of the EPA for this application?
  - b) previous decisions on marine consent applications (including any conditions imposed) on the decision for this DMC?
  - c) the decision to be made by this DMC for future decisions on marine consent applications?
17. Does the Act enable the DMC to take into account a "permitted baseline" concept?