

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

Trans-Tasman Resources Limited iron sand extraction and processing application

M28 – Further Minute of the Decision-Making Committee in respect of section 87F(4) of the Act– 21 February 2017

1. On 3 February 2017, the DMC issued Minute 17 inviting legal counsel to address their opening submissions at the hearing to:
 - a. the meaning of section 87F(4) of the Act 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*'.
2. The DMC wishes to thank legal counsel for their well thought out submissions on these points. It appears there is agreement on the following points:
 - a. section 87F(4) prohibits the application of conditions that together amount or contribute to an adaptive management approach; and
 - b. the *Augier* principle is not appropriate to override an express statutory prohibition in this sense.
3. It was also generally agreed that separation of the marine consent activities from the marine discharge consent activities in respect of applying conditions would not be practical in this case.
4. However, there remains a lack of agreement or clarity on the final point, and the DMC invites parties to provide further comment by way of legal memorandum on subparagraph "d." above.
5. In particular, the DMC invites parties to comment on the distinction – in a legal and/or practical sense - between conditions '*that together amount or contribute to an adaptive management approach*', and conditions that do not.
6. Some legal counsel have already addressed this but others have not, or may wish to elaborate further. The DMC would also like the EPA legal counsel to provide comment on this point. As such, the DMC requests that the EPA legal counsel provide comment by way of legal memorandum on this point by 5pm on Friday 3 March 2017 and any other parties wishing to provide comment by way of legal

memorandum by 5pm on Friday 10 March 2017. This in no way restricts any legal submissions that parties may wish to provide in closing submissions.

7. Legal memoranda received on these matters will be made available to all parties and put up on the EPA website.

For the DMC:

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

Alick Shaw
DMC Chair
21 February 2017