

**BEFORE THE ENVIRONMENTAL PROTECTION AUTHORITY AT
WELLINGTON**

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

AND

IN THE MATTER of the applications by Trans-Tasman Resources Limited (TTR) for
marine and discharge consents to mine iron sand under sections 20
and 87B of the Act and

BETWEEN **Trans-Tasman Resources Limited**
Applicant

AND **The Environmental Protection Authority**
EPA

AND **Kiwis Against Seabed Mining Incorporated (KASM)**
Submitter

MEMORANDUM FOR KASM AND GREENPEACE

Dated 16 May 2017

Duncan Currie/Ruby Haazen
8 Mt Eden Road
Eden Terrace
AUCKLAND
rghaazen@gmail.com
Ph: 021-144-3457

MAY IT PLEASE THE DECISION-MAKING COMMITTEE

1. This Memorandum responds to Minute 43 of the Decision-making Committee (DMC) and the memorandum filed by the Fisheries Submitters of 12 May 2017. In particular, it responds to the following issues;
 - a. timetabling issues for response on planning evidence,
 - b. timetabling issues in regard to filing of further evidence responding to evidence provided by the applicant on 5 May,
 - c. issues identified by the Fisheries Submitters in regard to the spatial mapping information and confidential information not released to other submitters.

2. In Minute 41, dated 10 April 2017, the DMC requested further information to be provided by the Applicant. The further information was provided in full on 5 May 2017, 4 weeks later. Minute 43 of the DMC released on 9 May required any response from submitters to be supplied by 17 May: this is 5 working days for submitters to review the further evidence and provide written responses. Most experts who will now be preparing written evidence expected to be involved in expert caucusing which was also cancelled on 9 May through Minute 43. As highlighted in the Forest & Bird Memorandum of 4 May, Forest & Bird are supplying further evidence from marine mammals by 19 May, so there is a reasonable expectation from other submitters that experts should at a minimum be allowed to also file evidence on 19 May rather than 17 May. Experts have essentially had to remain on call to engage either in caucusing or to provide further evidence on short notice since 21 March. Some

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simply cannot meet such a short deadline and therefore some accommodation must be given taking into consideration the four weeks that the Applicant had available to them to supply the further evidence requested. **KASM request that a final date for filing evidence is 5pm 19 May.**

3. Updated conditions were supplied on 3 May. Minute 43 requires a response to the updated planning conditions to also be supplied by 17 May. Minute 43 records that “originally it was intended for parties to have several weeks to comment, but this was prior to parties indicating their concerns over an extended involvement in the process.” This misinterprets Submitters’ responses to the further extension of the timetable and further evidence requested in Minute 41. Submitters set out that the further evidence should have been provided as part of the original application. KASM clearly stated that it would continue to engage in the process as far as possible. Rather, the reason for the lack of available time to respond to conditions adequately is as a result of Applicant taking six weeks since the time the hearing was adjourned on 21 March 2017 to supply revised conditions, leaving less than two weeks for submitters to review the evidence and provide responses in time.
4. KASM and Greenpeace note that the date for planning caucusing is 23 May 2017. KASM and Greenpeace are concerned that a caucusing report cannot be produced and reviewed by submitters in time for inclusion in closing submissions which are set down for 24 and 25 May 2017. Furthermore, planning experts are set to give evidence on morning of 24 May. At least half a day must be given in between receiving the outcome of the planning caucus and when closing submissions are presented.

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5. KASM and Greenpeace adopt the points raised in the Fisheries Submitters memorandum of 12 May 2017 at paragraph 25 and 26, namely:

25. The Fisheries Submitters have a number of concerns with the spatial mapping information provided by TTR. In addition to not addressing the aforementioned information, the spatial map:

(a) Does not record depths, navigation warnings, or other key features of hydrographic charts including navigational warnings;

(b) Does not have a complete key that would assist interpretation of the map. For example, assuming the red arrows represent current flows, neither the intensity of the currents nor the time period the currents represent is explained;

(c) Provides no obvious time scale covering the information recorded on the map;

(d) Contains no commercial fishing information, such as trawl tracks, aggregation of surf clams or aggregations of krill are overlaid on the map;

(e) Is cluttered, hard to interpret and requires a feature that allows layers to be toggled on and off; and

(f) Does not assist in ascertaining seasonal shifts in activity

26. Counsel respectfully submits that the spatial mapping as published on the Environmental Protection Authority's website should be revised and updated to accommodate these concerns.

6. At paragraph 27 of the Fisheries Submitters' memorandum, counsel refers to two reports which were released to counsel for Fisheries only. Counsel for KASM and Greenpeace concur with counsel for Fisheries that this is a public process and all information should be made available for all parties. KASM and Greenpeace were shocked to read that TTR apparently thought it could legitimately bind anyone engaged in the process by confidentiality after the

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hearing in 2016 at the environment Court, *KASM v EPA* [2016] NZEnvC 217 where the Court specifically noted:

[66] We refer to the provisions of s 27 of the New Zealand Bill of Rights Act 1990 which requires the observance of the principles of natural justice by various tribunals and authorities. At general level, those principles require that processes such as these applications be conducted in an open and transparent fashion. We appreciate that those general principles do not preclude bodies such as the Committee or the Court making direction for confidentiality, but they emphasize the requirement for openness in judicial processes.

7. TTR has not applied for any confidentiality order for this information but simply restricted it to the Fisheries submitters. TTR has attempted to side-step the application process once again by not sharing the information with the EPA or other submitters.

Respectfully submitted.

DEJ Currie/Ruby Haazen

16/05/2017