

**BEFORE THE ENVIRONMENTAL PROTECTION AGENCY
AT WELLINGTON**

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

AND

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

IN THE MATTER of an application for a further extension of time for
public submissions

BETWEEN **Trans-Tasman Resources Limited**

Applicant

AND **The Environmental Protection Authority**

EPA

AND **Kiwis Against Seabed Mining Incorporated**
Te Runanga o Ngati Ruanui Trust
Talley’s Group Limited

Submitters

JOINT MEMORANDUM OF SUBMITTERS REQUESTING EXTENSION

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MAY IT PLEASE THE DECISION-MAKING COMMITTEE:

1. This memorandum is a joint memorandum on behalf of Kiwis Against Seabed Mining, Inc. (KASM), Te Runanga o Ngati Ruanui Trust and Talley's Group Limited (the Submitters). Its purpose is to seek an extension of the time period for submissions on the current application by Trans-Tasman Resources Ltd (TTR) by a further 20 working days.
2. The Decision-Making Committee (DMC) issued Minute "M3" on 14 September restricting certain information on the application by TTR to, *inter alia*, persons who enter a confidentiality agreement with TTR. KASM challenged the directions on 23 September by way of Memorandum, and on 28 September the DMC confirmed the Minute in Minute M4.
3. On 3 October 2016 KASM applied to the Environment Court under section 158(6) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act) for a Court Order under s 279(3)(a) of the Resource Management Act 1991 (RMA) to set aside the Direction of the DMC in M3.
4. A hearing was held in the Environment Court before Judge Dwyer and Commissioner Buchanan on 7 and 8 November 2016. On 8 November, the Court ordered that all the information ordered to be restricted in M3 be made publicly available.
5. Counsel for KASM's notes of the Court's oral decision, which is expected to be published near the end of this week, record *inter alia*, the Court found:
 - a. S 17(1)(b) of the EEZ Act provides that the EPA must keep records and make available information to enable the public and persons undertaking or proposing to undertake activities in the exclusive economic zone or in or on the continental shelf to be better informed of their duties and of the functions, powers, and duties of the EPA and to participate effectively under this Act, and that this provision constitutes an unequivocal statement that the public are entitled to receive information. While section 158 of the EEZ Act overrides this subsection,

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the DMC has discretion under section 158.

- b. Section 61 of the EEZ Act requires the EPA to obtain the best available information.
- c. Section 26 of the New Zealand Bill of Rights Act 1990, at general level require processes such as these applications be conducted in open and transparent fashion.
- d. Some members of the public will assess technical information, as they did in the first TTR application, and furthermore, expert advisers need to access the sensitive information (being the redacted information).
- e. TTR's previous application had failed, as least in part, due to inadequacies in evidence on the plume. TTR has acquired the sensitive information to achieve the new projected plume.
- f. It is clear to the Court that the sensitive information is considered by experts as crucial value for the assessment, and the potential effects of plume was described by Mr Greer as an essential issue and central component of the 2016 application. The model including flocculation dramatically altered plume results. Information on flocculation is required to assess the effects of the plume. Similarly, Dr Todd said that access to the sensitive information is needed for assessing the model outputs. Evaluation of the effects of the plume is central to determining the application itself. The Court cited the evidence of KASM Chair Phil McCabe that the plume and sedimentation are critical aspects of the application, and noting that the DMC in the Decision on the first application said that "Achieving an appropriate particle size distribution and mass flux within the plume is a key environmental performance criteria" (para 136). The Court quoted Mr McCabe's note that "it is precisely these parameters which the Applicant is seeking to redact."

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Currently it has been extended by 20 days. The Court did not disagree with this interpretation.

13. Counsel notes that Section 160(2) of the EEZ Act is in the same terms as s.37A(2)(a) of the RMA. Prior to 2003 amendments, the equivalent provision had been s.37(5) of the RMA, which originally provided:

The extension of a time period under subsection (1) shall not have the effect of more than doubling the maximum time period specified in this Act. [emphasis added]

14. Counsel submits that, while the original wording of s.37(5) of the RMA would have limited any time extension to the same period of the original time period, i.e. in the present case, the original 20 days, plus an additional 20 days. The amended wording in s.37A(2)(a) – and s.160(2) of the EEZ Act – is deliberately different from that wording and clearly allows for an extension to be granted for up to twice the original period, i.e. the original 20 days, plus an additional 40 days. We note that following the first hearing, the DMC said on page 188 of its decision that *“[t]he effective consequence of having two notification periods was that would-be submitters had additional time to consider the application documentation. Given the very short timeframe (20 working days) the EEZ Act allows for submissions, we consider the renotification period has enabled greater participation in the process by the public and has likely assisted in the quality and depth of information that has come before us.”*

15. The current DMC in its Minute M7 of 13 October under which it granted the first extension said that “it is in the interests of the community and the interests of potential submitters for full and well considered submissions to be provided to us for our consideration. This provides a sound basis for us to obtain the best available information on which to base our decision.” (para 14) The DMC also noted that

“20. If the Environment Court were to revoke the direction, for example, a likely outcome would be that the redacted material must be made public as it forms part of the application to be publicly notified.

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21. *Therefore, we consider it is appropriate, for the purposes of this request, to set aside the impact of the Environment Court process for the redacted material. Once the outcome of the Environment Court proceedings is known, we will address the need for further public engagement if necessary. “*

16. It is respectfully submitted that following the Environment Court’s decision, it is beyond question that there is a significant public interest in having the submission timeframe extended for a further 20 working days.

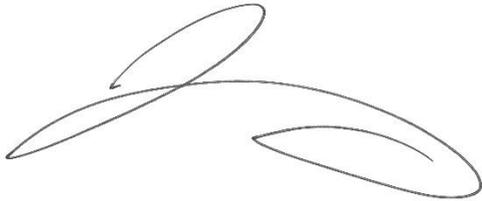
17. The Submitters, therefore, seek that the DMC directs that a further 20 working days is added to the submission timeframe as a matter of urgency.

Dated 9 November 2016



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