

**BEFORE THE ENVIRONMENTAL PROTECTION AGENCY
AT WELLINGTON**

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

AND

IN THE MATTER of an application for a further extension of time for
public submissions on the applications by Trans-
Tasman Resources Limited for marine and discharge
consents to recover iron sand under sections 20 and
87B of the EEZ Act

BETWEEN **Trans-Tasman Resources Limited**

Applicant

AND **Environmental Protection Authority**

Consent Authority

AND **Royal Forest and Bird Protection Society New Zealand
Incorporated**

Submitter

**MEMORANDUM OF COUNSEL FOR ROYAL FOREST AND BIRD PROTECTION
SOCIETY OF NEW ZEALAND INCORPORATED**

16 JANUARY 2017

MAY IT PLEASE THE DECISION-MAKING COMMITTEE:

1. This memorandum is filed in support of the memorandum dated 28 February 2017, filed on behalf of KASM and Greenpeace regarding the analysis of submissions.
2. The number of submissions through the Forest & Bird website is relatively low when compared to Greenpeace and KASM. One reason for this is that, shortly after becoming operational, technical issues arose. Counsel understands that, as a result of these technical issues, Forest & Bird ceased using its website as a vehicle for lodging submissions and directed prospective submitters to the KASM and/or Greenpeace websites, where submissions could be lodged.
3. Forest & Bird considers that the “high level approach” to submissions lodged through the web portals is not appropriate. Section 59(3) provides that the EPA must have regard to submissions made.

59 Environmental Protection Authority’s consideration of application

(3) The EPA must have regard to—

(a) any submissions made and evidence given in relation to the application; and

(b) any advice, reports, or information it has sought and received in relation to the application; and

(c) any advice received from the Māori Advisory Committee.

4. The submissions lodged through web portals are lawful submissions. While many raise common issues, some include additional comments. This is obvious from the analysis of submissions:¹

MWH is aware that some of the third party web-based submissions

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*include additional comments which may cover specific matters not covered by the 'standard' words of the submission, with some of these additional comments requesting certain conditions be imposed should consent be granted. This Report does not analyse any of these additional comments but **the DMC needs to be aware that such comments may provide important information for its consideration on the applications.***

5. It is submitted that the approach of ignoring what may be important issues in the web portal submissions is an acknowledgement of potentially important issues but a refusal to investigate. It is submitted that this “wilful blindness” is a breach of the requirements of section 59(3).
6. Important issues raised in a submission cannot be ignored simply because there were a large number of other submissions that raised overlapping issues.
7. Forest & Bird considers that this can be remedied if MWH is instructed to review all submissions and identify and analyse the important issues raised in them. The analysis of submissions is incomplete without such an analysis and should be withdrawn.

Dated 3rd March 2017

A handwritten signature in black ink, appearing to read 'P Anderson', is written over a light grey rectangular background.

Peter Anderson
Counsel for Royal Forest and Bird Protection Society of New Zealand
Incorporated