

**BEFORE THE ENVIRONMENTAL PROTECTION AUTHORITY  
AT WELLINGTON**

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

**BETWEEN** **TRANS-TASMAN RESOURCES LIMITED**  
*Applicant*

**AND** **THE ENVIRONMENTAL PROTECTION AUTHORITY**  
*Consent Authority*

**AND** **ROYAL FOREST AND BIRD PROTECTION SOCIETY OF  
NEW ZEALAND INCORPORATED**  
*Submitter*

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

4 May 2017

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**MAY IT PLEASE THE DECISION MAKING COMMITTEE**

1. This memorandum responds to the information prepared by the applicant response to Minute 41 and advises on witness availability as requested by the EPA.

**Additional noise evidence**

2. The second supplementary brief of evidence from Dr Simon Childerhouse includes Appendix 3, a report from Darran Humpheson (the Humpheson Report). This responds to the DMC's request for information in Minute 41.
3. As noted in counsel's memorandum of 20 April 2017, Forest & Bird:
  - a. notes that Minute 41 appears to accord the evidence presented by Anton van Helden;
  - b. considers this information should have been presented far earlier in the process; and
  - c. is concerned that it is given a fair opportunity to respond to any new information, in particular the Humpheson report.
4. The Humpheson Report contains significant new information, which Forest & Bird considers is critical to determining whether consent can be granted, and if so, on what conditions.
5. Mr van Helden has reviewed the Humpheson report and has concerns about its contents.
6. Mr van Helden's expertise is in whales generally and includes some expertise in noise. Mr van Helden's expertise extends to some matters in the Humpheson report but there are elements that are beyond his expertise.
7. As a result Forest & Bird:
  - a. proposes to have the Humpheson Report to be reviewed by expert(s) with the requisite experience from Curtin University in Perth.<sup>1</sup>
  - b. seeks leave to attach the review to a brief of supplementary evidence from Mr van Helden to be filed by 19 May 2017, in the same way as Dr Childerhouse did with the Humpheson report.

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<sup>1</sup> Christine Erbe, Alec Duncan or Rob McCauley

8. Given it is new material on a highly contentious and significant matter, Forest & Bird considers it would be a breach of natural justice if it was not given opportunity to comment on the Humpheson report. It would not be fair to allow the Humpheson report to stand unchallenged in the circumstances.
9. Forest & Bird also considers:
  - a. considers there may be merit reconvening the hearing to hear from the noise modelling experts; and
  - b. there is little merit in the experts caucusing on the Humpheson report, given none of the experts has requisite expertise.

**Witness availability**

10. As noted above, Mr van Helden intends to present further written comments by 19 May 2017.
11. Mr van Helden is generally available between now and 19 May for expert conferencing with the exception of 12 May.
12. Ms Sitarz will not be able to participate further as she will be overseas from 6 May until 6 June.

Dated 4 May 2017

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

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**Peter Anderson**

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