

**Before the Decision-Making Committee of the
Environmental Protection Authority**

**Application for Marine Consent by
Trans-Tasman Resources Ltd**

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

AND

IN THE MATTER OF An application by Trans-Tasman
Resources Ltd for a marine consent
application made to excavate iron sand
from the seabed of the exclusive
economic zone in the South Taranaki
Bight, process that sand to remove iron
particles and return the remaining sand
to the seabed.

Memorandum of KASM and Greenpeace

February 28, 2017

MAY IT PLEASE THE DECISION-MAKING COMMITTEE

1. This Memorandum responds the document “Analysis of Submissions Report: Trans-Tasman Resources Limited Marine Consent Application to Extract and Process Iron Sand” (February 2017) to currently at http://www.epa.govt.nz/EEZ/EEZ000011/TTRL_AOS.pdf
2. Greenpeace and KASM object to the document in the strongest possible terms. The direction of the EPA is set out: “The EPA has directed that this analysis of submissions should not individually analyse these third party web-based but that they be summarised at a high level to reflect the general tenor of their contents.” Yet the report “presents a detailed assessment of the submissions received directly by the EPA.” Therefore it is clear that the EPA directed the report not to analyse any of the “third party web-based” submissions, even though they complied with the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (“the Act”).

Section 46 of the Act provides that:

46 Making of submissions

- (1) Any person may make a submission to the Environmental Protection Authority about an application for a marine consent.
- (2) A submission must be in the prescribed form.
- (3) A submitter must provide a copy of the submission to the applicant as soon as is reasonably practicable after serving it on the EPA.

There is no indication that the 98.5% of the submissions that were not analysed did not comply with section 46.

3. **This approach fails to analyse comments made by submitters through the web portals.** The report correctly notes that “MWH is aware that some of the third party web-based submissions 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.”

4. **This approach arbitrarily separated submissions made to the EPA through third party web based forms from those made directly.** The result was to disregard the vast majority of submissions (98.5%). Lest it be thought that submissions made directly to the EPA website somehow more deserving of analysis because they were individually written, this was not the case: the report notes in footnote 1, “In reviewing the submissions in support of the application it was noted that some contained identical or nearly identical text. Some, but not all, of these submissions have nominated a common spokesperson (Anna Sloboda) to speak on their behalf.”

5. The report is, as is noted, a non-statutory document, but is highly misleading. It appears to be intended to, or at least does, give the impression that there are more submissions for than against the proposal: the Executive Summary stated that “147 submitters (56.1%) support the proposal either in full or in part”. Then this statement is followed by the footnote mentioned before, which discloses that those submissions contained identical or nearly identical text. Yet this is patently not the case, as it disregards 98.5% of submissions.

6. **There is no meaningful distinction between submissions made to the EPA directly or those made through web-based portals.** Both complied with the Act. As noted above, most of those made directly were standard form. Yet the report analyses the latter but not the former. There is no basis for this distinction: the only conclusion that can be drawn is that the report was intended to convey the impression that there is an even number of submitters for and against the proposal. The only way that impression could be conveyed was by discarding 98.5% of submissions.

7. Counsel therefore strongly submits that the report should be withdrawn.

Respectfully submitted

Duncan Currie / Ruby Haazen