

**Before the Board of Inquiry of the
Environmental Protection Authority
OMV New Zealand Ltd 2018 Marine Discharge Consent Application**

IN THE MATTER OF

**the Exclusive Economic Zone and
Continental Shelf (Environmental
Effects) Act 2012**

AND

**An application by OMV New Zealand
Ltd for a marine discharge consent
to discharge harmful substances
from the deck drains of a mobile
offshore drilling unit associated with
an exploration and appraisal drilling
programme**

Hearing statement by Climate Justice Taranaki Incorporated

4 September, 2018

www.climatejusticetaranaki.info

Introduction

- 1) Climate Justice Taranaki Inc. (CJT) is a community group dedicated to environmental sustainability and social justice. This includes issues of inter-generational equity, notably in relation to climate change, which is impacting present and future generations' inalienable rights to safe water, food and shelter, crucial to sustaining livelihoods and quality of life. CJT became an incorporated society on 26 February 2015.

Disjoint processing of related applications

- 2) OMV plans to drill 12 exploratory/appraisal wells across six licensed areas in the Taranaki Basin. International experience has demonstrated that there can be devastating environmental and socio-economic impacts across huge areas from exploratory drilling. Under this Exploration and Appraisal Drilling (EAD) Programme, OMV will also discharge undetermined quantities of un-identified harmful substances at sea.
- 3) On 27th March 2018, OMV lodged a single application with the EPA for the 'discharge of trace amounts of harmful substances, as offshore processing drainage, from the deck drains of one or more Mobile Offshore Drilling Units' to be used for the EAD. This application (EEZ100017) listed 10 related documents 'still to be lodged', three of which to EPA – the Emergency Spill Response Plan and applications for a marine consent and another discharge consent.
- 4) On 25th May, the Environmental Protection Authority (EPA) publicly notified and sought public submissions on this single application.
- 5) CJT strongly objects to such a disjoint processing of closely related applications; i.e. all the marine consent and discharge consent applications (notified and non-notified) that are associated with OMV's EAD programme.
- 6) On 25th June, we requested EPA to defer the current discharge consent application so that it could be jointly processed with other applications associated with the program. EPA replied on 5 July¹: "*Section 44 of the EEZ Act applies if the EPA receives more than one application for a marine consent in relation to the same proposal... The purpose of section 44(2) EEZ Act is to align processing timeframes for applications lodged together, however that is not the situation in this case. There are strict processing timeframes laid out in the EEZ Act, and as such the EPA is unable to delay the processing of a lodged application.*"
- 7) Our interpretation of s 44 was that it's designed to enable joint processing and therefore comprehensive assessment of cumulative effects of related activities. It seems we were wrong. EPA said it's written to "*align processing timeframes*" and applies only when applications are lodged together, despite the fact that OMV had told EPA (26 June) that it intended "*to submit an application for Marine Consent...*" on 31 July.

Cumulative effects

- 8) Such disjoint processing of related applications prevents proper assessment of cumulative effects, as required by the EEZ Act s 39(1)(d) and 59(2)(a)(i). Effects to be assessed must include '*any cumulative effect that arises over time or in combination with other effects*' (s 6(1)(d)). The effects of the current discharge in question should not be assessed independently of the effects from other inseparable activities of the EAD programme.

- 9) The North and South Taranaki Bights are of critical importance to marine mammal conservation, notably the Maui's dolphin, Blue whale² and numerous other cetaceans³, as we have noted in our previous submissions^{4, 5}. The recent unexplained deaths at sea, and subsequent beaching, of 13 male Sperm whales^{6, 7} in the area highlights both the lack of knowledge and perilous status of these threatened species. New Zealand has the international obligation to protect and promote the recovery of threatened species under the UN Convention of Biological Diversity which is enabled by the EEZ s 11(b) and 59(2)(e).
- 10) We are particularly concerned with the impacts of cumulative effects from industrial activities combined with rapidly changing physical, chemical and biological oceanography of the Tasman Sea on these and other threatened species.
- 11) CJT submits that cumulative effects of climate change on the EEZ should be considered, along with the industrial activities. This will be explained in more detail in the presentation by Dr. DeVantier.
- 12) Ocean temperatures have been rising at unprecedented rates⁸, threatening marine ecosystems, fisheries, and the life-supporting capacity of our environment as a whole. Temperature anomalies⁹ as high as 6 degrees Celsius above average have been recorded in the Tasman Sea. Such anomalies have cascading effects on food webs, biodiversity and threatened species, all part of the cumulative effects of human impacts on our oceans.
- 13) In this respect, to be permitting yet more fossil fuel exploration and mining, via this disjointed 'death by a thousand cuts' approach to assessment, at this late stage in the looming climate catastrophe, is clearly not in the best interests of New Zealand.

Decision sought

- 14) The impact assessment (IA), being confined to discharges from deck drains on the drilling unit/units, does not provide sufficient detail to enable EPA and persons whose existing interests are or may be affected, to understand the nature of the activities and their effects on the environment (including cumulative effects) and existing interests. The level of details provided in the IA fails to correspond to the scale and significance of the effects, as required under the EEZ Act s 39(3)(a) & (b).
- 15) The information provided is uncertain, inadequate, and not the 'best available information' as defined in the EEZ Act s 61(5). The consent authority must make full use of its powers to request information from the applicant and favour caution and environmental protection (EEZ s 61(1) & (2)).
- 16) Considering the scale of the EAD programme, the inadequacy of information, lack of proper cumulative effects assessment, and the risks on marine biodiversity, ecosystems and processes, and New Zealand's international obligation to protect threatened species, CJT submit that the application be declined outright or deferred till all related applications are tabled and assessed jointly.
- 17) If EPA or the Decision-Making Committee insists that s 44 only applies if it receives at the same time more than one application concerning the same proposal, then it would appear to present an easy loophole for applicants to submit related applications separately to avoid joint processing and hearings (s 44 (1)(c)(i)).

Hearing in Public of Non-notified activities

- 18) We are well aware that exploratory drilling for petroleum (including exploratory and appraisal wells) is classified a non-notified activity under the EEZ-CS (Environmental Effects-Non-notified activities) Regulations 2014. The regulations arose following the EEZ Amendment Act 2013 which was rushed through by way of a Supplementary Order Paper, thereby avoiding the select committee process and public submissions.
- 19) The Ministry for Environment Regulatory Impact Statement¹⁰ argued that the amendment would reduce costs to businesses and improve incentives to invest – a classic demonstration of how business interest trumps public interest and democracy^{11,12}.
- 20) This amendment, remarkably, occurred only three years after the 2010 Deepwater Horizon exploratory drilling catastrophe in the Gulf of Mexico. That single incident cost 11 lives, billions of dollars in damages, and generational impacts to biodiversity and human health.
- 21) It is widely accepted that exploratory drilling poses much greater immediate risks than most other fossil fuel activities, at least at local to regional scale. These risks are amplified in the storm-lashed Tasman Sea, and further amplified by New Zealand's lack of rapid response equipment.
- 22) The EEZ Act s 50(2) enables the EPA to conduct hearings on non-notified applications, even if the applicant does not request one, if the EPA considers it necessary or desirable. Schedule 2(2) allows EPA to hold a hearing for a marine consent for a non-notified activity in public or in private.
- 23) So in our letters to the EPA and the Minister for the Environment, we also requested that public hearings be held on all the non-notified applications associated with OMV's EAD programme. On this, the Minister replied (29 Aug 18)¹³ that, "*for OMV's current marine consent application, the decision-making committee appointed by the EPA will determine whether a hearing is necessary or desirable*".
- 24) We reiterate here that OMV's proposed EAD programme is unprecedented: 12 exploratory/appraisals wells are to be drilled across six licensed areas spanning almost 9,000 sq km, not just one or two wells within a single licensed area as in previous applications. Except for one well in the producing Maari field, all the others are to be drilled in unknown, undrilled territories. Surely it requires in depth assessment of the risks and impacts and thorough questioning through a hearing process. A hearing in public would at least provide some transparency even though the EEZ Act does not allow public submissions on non-notified applications.

'Fiddling while our planet burns'

- 25) CJT is also well aware of the legislative restrictions placed on EPA by the EEZ-CS Act and its subsequent amendments in respect of greenhouse gas emissions and climate change. Those restrictions stymie any effective action to address the major existential threat to our civilization and indeed Earth's biosphere more generally.
- 26) OMV is a major part of that threat, being in the top 100 'Carbon Majors' globally¹⁴.
- 27) CJT, along with other progressive, future-focused organizations and individuals, remain confident that future amendments to the Act will redress these deliberate gaps. The EEZ Act must be amended to include considerations of the effects of emissions on climate change and be brought in line with the forthcoming Zero Carbon Act, as indeed is required for the RMA and CMA as well¹⁵.

- 28) New Zealand has the obligation to deliver its commitment to the Paris Agreement¹⁶ under the UNFCCC – keep a global temperature rise this century well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius.
- 29) At the nub of the issue is the over-riding question: What is the point of more exploratory drilling, given that there are already four times more known fossil fuel reserves globally that can be combusted¹⁷ if we are to have any hope of avoiding catastrophic changes to earth's climate?
- 30) With multiple positive feedbacks on the climate system already in play, and more greenhouse gases pumped into the atmosphere last year than ever before, it is increasingly unlikely that targets set in the Paris Agreement will be met.
- 31) This will result in trillions of dollars in economic losses and massive disruptions to weather patterns, coastlines, biodiversity, agriculture, human health, and civilization more generally. In this respect, the much-heralded royalty dollars and employment arising from this industry pale to insignificance. Its costs simply far outweigh its benefits.
- 32) The present economics of fossil fuels are false. So-called economic benefits fail to account for 'externalities'. These are all the unaccounted issues that arise directly or indirectly as a consequence of fossil fuels that have an actual cost either now or in the future. These are not properly accounted for, if at all, in the sale and use of fossil-fuel derived energy (Stern, 2007¹⁸ and 2014¹⁹).
- 33) Fossil fuel exploration and mining must end while just transition to more sustainable energy, agriculture, transport and economic systems begins in earnest. In this respect, industry spin re natural gas being a 'bridge fuel' to a low carbon economy is more hot air²⁰, it is a bridge to nowhere!

References

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