

**Before the Decision-making Committee appointed by the  
Environmental Protection Authority  
Beach Energy Resources NZ (Holdings) Limited application for  
Marine Discharge Consent (EEZ100019)**

**IN THE MATTER OF**

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

**AND**

**An application by Beach Energy  
Resources NZ (Holdings) Ltd for a  
marine discharge consent  
to discharge trace amounts of  
harmful substances from deck drains  
of a Mobile Offshore Drilling Unit as  
offshore processing drainage**

**Submission by Climate Justice Taranaki Incorporated**

**6 July, 2020**

**[www.climatejusticetaranaki.info](http://www.climatejusticetaranaki.info)**

# The Beach Energy Resources NZ (Holdings) Limited (Beach Energy) Canterbury Basin Exploration & Appraisal (EAD) Programme

## 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 will impact 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.

## Decision sought

- 2) Climate Justice Taranaki submits that the application be declined outright, in consideration of the uncertainty in the application, inadequate information, inability to properly assess cumulative effects, and the risks on marine biodiversity, integrity of marine ecosystems and processes, and New Zealand's international obligations on biodiversity and climate change.

## Uncertainties, Inadequate Information & Caution

- 3) Under its proposed Exploration and Appraisal Drilling (EAD) Programme in the Canterbury Basin starting this year, Beach Energy plans to drill up to 11 exploration or appraisal wells in the permit area PEP 38264 spanning over 14,379 sq.km. The EAD programme to commence in late 2020 may consist of "one or more drilling campaigns, using either, or both, a semi-submersible MODU or a drill ship MODUs" (Beach Energy Marine Discharge Consent Application p.3). International experience has demonstrated that there can be devastating environmental and socio-economic impacts across huge areas from exploratory drilling.
- 4) Beach Energy is seeking consent to discharge 'small (trace) amounts of harmful substances' from the deck drains of the MODU(s) into the sea as offshore processing drainage for its Canterbury Basin EAD programme.
- 5) The Environmental Protection Authority (EPA)'s Completeness Decision Memorandum<sup>1</sup> has recognised the uncertainty in the application relating to the unidentified MODU(s), the unconfirmed nature and unknown volumes of harmful substances, and the "very broad and general" description of the existing environment.
- 6) The Court of Appeal *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board and Others* [2020] NZCCA 86 decided that the DMC had made a number of errors of law in its decision granting the consents, including<sup>2</sup>:

*"The EEZ Act provides that where the information available is uncertain or inadequate, the EPA must favour caution and environmental protection. The information before the DMC about the environmental effects of TTR's proposal was not sufficient to enable the DMC to grant consents on the broad terms it approved. The DMC attempted to fill critical gaps in the information available about likely environmental effects by requiring the necessary information to be gathered after the consents were granted, both before mining commenced and while it was under way. That approach was inconsistent with the EEZ Act."*

- 7) CJT argues that the same applies here. The level of information provided by Beach Energy is far from adequate to allow for a comprehensive assessment of the effects of the proposed activities.
- 8) Based on the information principles under the EEZ Act s 34 and s 61, the Minister must favour caution and environmental protection, and in this case the application must be declined or deferred until adequate information can be provided. The information provided currently cannot be considered best available information.

## **Disjoint processing of related consents & cumulative effects**

- 9) Under the current legislation, although Beach Energy requires multiple consents before it can carry out exploratory drilling, only the discharge activity laid out in the current application is to be publicly notified and subject to public scrutiny. The public has no say in other activities associated with the EAD program such as impacts on the marine environment and threatened species from the drilling and movement of the MODU(s) and from the far greater amounts of associated harmful discharges than what's the subject of the current application.
- 10) Moreover, the disjoint processing of closely related consent applications (notified and non-notified) involved in the EAD program, makes comprehensive assessment of cumulative effects impossible. EEZ Act s 39(1)(d) and 59(2)(a)(i) require proper assessment of cumulative effects on the environment and existing interest.
- 11) As such, the current legislation and processing of consent applications in the EEZ-CS are irrational, undemocratic and fails to achieve the purpose of the EEZ-CS Act s10, notably safeguarding the life-supporting capacity of the environment; and avoiding, remedying, or mitigating any adverse effects of activities on the environment.
- 12) In the High Court decision in *Greenpeace v EPA* [2019] NZHC 3285 in relation to OMV's EAD programme in the Great South Basin (GSB), Ellis J observed that<sup>3</sup>:

*"[116] The one aspect of the matter I do regard as curious is the apparent bifurcation (or trifurcation) of decision-making that appears to have occurred. By that I mean that the EPA was plainly aware from the outset that there would be multiple and mixed (notified and non-notified) consent applications relating to the OMV EAD programme. While (as noted above) the Authority does not have the power to require all related applications to be made at the same time (or to defer consideration of one pending receipt of others) it could, presumably, decide that all related applications should be processed and determined by the same DMC (or at least by Committees whose membership overlaps). Moreover, the fact that the exercise of the s 44 discretion is delegated to an individual, who apparently makes the decision without actual recourse to the relevant Committee or Committees also seems counterintuitive.<sup>56</sup>*

*[117] The EPA's submissions did not directly address the question of the relevant delegations (although I was provided with copies of them) and there was no evidence explaining why the Authority has taken this apparently fractured approach to decision-making. As just noted, in the absence of such explanation it strikes me as unusual."*

- 13) CJT argues that such 'curious' and 'unusual' procedures highlighted by Ellis J be reconciled in the processing of Beach Energy's various consent applications associated with its EAD in the Canterbury

Basin. This would allow the best opportunity for a thorough assessment of all potential impacts, including cumulative effects.

## **Non-notified consenting and Public hearings**

- 14) In various written and oral submissions, CJT has repeatedly highlighted the undemocratic nature of amendments to the EEZ-CS Act that prohibit public scrutiny of applications for exploratory drilling for petroleum (including exploratory and appraisal wells), these being 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. The Ministry for Environment Regulatory Impact Statement<sup>4</sup> 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<sup>5,6</sup>.
- 15) In our previous submission<sup>7</sup> on OMV's discharge application (EEZ100018) associated with its Great South Basin EAD, we pointed out that the EEZ Act s 50(2) enables the EPA to conduct hearings in respect of applications for non-notified activities, 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. We asked EPA to conduct public hearings of OMV's applications for all non-notified activities associated with the programme, in view of the scale of the drilling and discharge activities proposed by OMV and the potential impacts. Our request was declined, another affront to democracy.
- 16) In the High Court decision in *Greenpeace v EPA* [2019] NZHC 3285, Ellis J observed:  
*"[120] In the end, it is difficult not to conclude that Greenpeace's real complaint is that the joint processing decision has deprived it of the opportunity to make submissions on the EAD consent applications.<sup>57</sup> It is the information they would have provided in such submissions which (they say) is both material to, and will wrongly be absent from, the EAD consent process. But for the reasons given earlier, I do not consider that a positive joint processing decision would have permitted Greenpeace to make submissions in any event. As noted above, I do not think that such a decision would have transmogrified the non-notified EAD consent applications into notified ones."*
- 17) Such a conclusion further affirms the deliberate removal of any possible public scrutiny on an industry that is irrevocably destructive to the marine ecosystems and our life-supporting climate. It is self-evident that to be in a position to discharge trace amounts of harmful substances, as this application seeks to do, a significant amount of infrastructure and activities with associated impacts and cumulative effects to the environment must have occurred.

## **Threatened marine species and taonga**

- 18) The Canterbury and Great South Basins and adjacent Otago coastline are of critical importance to marine mammal and seabird conservation<sup>8</sup>, boasting abundant species diversity and providing habitats for endangered, threatened and endemic species. Beach Energy's highly risky exploratory drilling<sup>9</sup> programme threatens all these. 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).

19) The Court of Appeal *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board and Others* [2020] NZCCA 86 Judgement (April 2020)<sup>10</sup> states:

*“[269] The international law framework is relevant to the interpretation of the EEZ Act, as we have explained above. In particular, the EEZ Act can and must be interpreted to give effect to the instruments referred to in s 11: the LOSC, the Biodiversity Convention, MARPOL and the London Convention (including the 1996 Protocol). The approach we have adopted to s 10(1)(b) is informed by these instruments, and is designed to ensure that the EEZ Act will secure compliance with New Zealand’s obligations under those instruments, as s 11 confirms it was intended to do.”*

20) Noting the proposed locations of wells in the application, major incidents could potentially impact on sensitive marine ecosystems of the Chatham Rise, the existing coastal marine mammal sanctuaries and their proposed extensions<sup>11, 12</sup>.

21) CJT is particularly concerned with the impacts of cumulative effects from industrial and extractive activities, combined with rapidly changing physical, chemical and biological oceanography of the region on threatened species in the area, and the receiving environment more generally. Notably ocean acidification<sup>13, 14</sup> and deoxygenation could have irreversible impacts on the already overly stressed marine species and ecosystems.

22) Moreover, the potential impacts of Beach Energy’s EAD programme on Māori interest must be thoroughly understood and assessed. Again, we quote from the Court of Appeal *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board and Others* [2020] NZCCA 86 Judgement:

*“[177] There are other routes to the conclusion that kaitiakitanga interests must be taken into account as existing interests under s 59. We consider that it is (or should be) axiomatic that the tikanga Māori that defines and governs the interests of tangata whenua in the taonga protected by the Treaty is an integral strand of the common law of New Zealand...”*

*[178] It follows that the tikanga Māori that governs the relationship between iwi and relevant taonga must be taken into account as an “applicable law” under s 59(2)(1), where it is relevant to an application before the EPA. The need to take tikanga Māori relevant to the natural environment into account in so far as relevant to TTR’s proposal meant that the DMC needed to identify and address the relevant aspects of tikanga, which in the present case included the interrelated concepts of whanaungatanga and kaitiakitanga. That analysis needed to engage with those concepts as they are understood and applied by Māori: that is the only perspective from which tikanga concepts can be meaningfully described and understood...”*

## **Climate Change and ocean health**

23) New Zealand has the obligation to deliver its commitment to the Paris Agreement<sup>15</sup> 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. Still, temperatures have been rising at unprecedented rates<sup>16</sup>, threatening our biodiversity<sup>17</sup>, fisheries, and the life-supporting capacity of our environment as a whole. Temperature anomalies<sup>18</sup> several degrees above average were recorded in the three previous summers from the Tasman Sea to the GSB. The accelerating melting in Greenland and Antarctica is driving sea level rise at greater than initially modelled or expected<sup>19,20</sup>.

24) The costs<sup>21</sup> of climate chaos and major changes in ocean chemistry<sup>22</sup> are far reaching, not to mention the amounts that would be required to mitigate the effects of spills, remediate the coastal and marine environment, compensate for the fisheries and amenity losses, and decommissioning costs<sup>23</sup> at the end of the EAD programme.

- 25) The purpose<sup>24</sup> of the Climate Change Response (Zero Carbon) Amendment Bill 2019 is to *'provide a framework by which New Zealand can develop and implement clear and stable climate change policies that contribute to the global effort under the Paris Agreement to limit the global average temperature increase to 1.5° Celsius above pre-industrial levels...'* The Bill must sit above and have overarching effects on other existing pieces of legislation for it to be implementable.
- 26) On 30<sup>th</sup> June this year, the Resource Management Amendment Bill<sup>25, 26</sup> was passed, allowing authorities to consider the effects of activities on climate change when making decisions under the RMA. Likewise, the EEZ-CS Act must be amended accordingly to include considerations of the effects of emissions on climate change<sup>27</sup>.
- 27) Fossil fuel exploration and mining must end while just transition to more sustainable energy, agriculture, transport and economic systems begins in earnest. It is already happening. Uncertainty over the pace of the transition, coupled with the fall of oil and gas prices resulting from the COVID-19 pandemic, has caused substantial write-down of oil company assets<sup>28</sup>. It would be gross negligence to allow Aotearoa New Zealand to risk further harming our precious environment, taonga and people, for oil companies to continue gambling on fossil fuel exploration in an attempt to delay<sup>29</sup> transition.

## Decision sought

- 28) Considering the uncertainty in the application, inadequate information, inability to properly assess cumulative effects, and the risks on marine biodiversity, integrity of marine ecosystems and processes, and New Zealand's international obligations, Climate Justice Taranaki submits that the application be declined outright.
- 29) Any approval of the current application, and other applications associated with the Beach Energy Canterbury Basin EAD program, would make a mockery of our climate emergency<sup>30, 31</sup> and the government's supposed commitments and just transition to a net zero carbon economy.

## References

<sup>1</sup> [https://www.epa.govt.nz/assets/FileAPI/proposal/EEZ100019/EPA-recommendation/EEZ100019\\_Completeness\\_Memo\\_24\\_April\\_2020.pdf](https://www.epa.govt.nz/assets/FileAPI/proposal/EEZ100019/EPA-recommendation/EEZ100019_Completeness_Memo_24_April_2020.pdf)

<sup>2</sup> <https://www.courtsofz.govt.nz/assets/cases/Media-release-Trans-Tasman-Resources-v-Taranaki-Whanganui-Conservation-Board.pdf>

<sup>3</sup> [https://www.epa.govt.nz/assets/FileAPI/proposal/EEZ100018/Objections-and-appeals/JR\\_decision\\_Greenpeace\\_v\\_Environmental\\_Protection\\_Authority\\_and\\_Anor\\_on\\_s44\\_joint\\_processing.pdf](https://www.epa.govt.nz/assets/FileAPI/proposal/EEZ100018/Objections-and-appeals/JR_decision_Greenpeace_v_Environmental_Protection_Authority_and_Anor_on_s44_joint_processing.pdf)

<sup>4</sup> Ministry for the Environment, Regulatory Impact Statement: Proposal for Marine Legislation Bill Supplementary Order Paper to introduce a non-notified discretionary classification to the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012. <http://www.mfe.govt.nz/more/cabinet-papers-and-related-material-search/regulatory-impact-statements/ris-proposal-marine>

<sup>5</sup> Oil: a risky business, 18 Jan 2014. [https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=11188335](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11188335)

<sup>6</sup> Law will hit deep-sea drilling protesters, 17 Feb 2014. <http://www.stuff.co.nz/national/politics/9771417/Law-will-hit-deep-sea-drilling-protesters>

<sup>7</sup> <https://climatejusticetaranaki.files.wordpress.com/2019/06/cjt-submission-on-omv-gsb-discharge-consent-2019-application-eez100018-final.pdf>

<sup>8</sup> 350 Aotearoa, 23 May 2019. Submission: OMV Great South Basin Marine Discharge Consent. <https://350.org.nz/submission-omv-great-south-basin-marine-discharge-consent/>

<sup>9</sup> Navigatus Consulting, Nov 2015. Financial Assurance Review – Integrated Damages Assessment Model. Report prepared for the Ministry of Business, Innovation and Employment and Ministry of Transport.

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- <https://www.transport.govt.nz/assets/Uploads/Sea/Documents/71965e2e5f/2015-11-30-Financial-Assurance-Review-Main-Report.pdf>
- <sup>10</sup> <https://courtsfnz.govt.nz/assets/cases/1CA5732018-PCCivil-v2.pdf>
- <sup>11</sup> <https://gazette.govt.nz/notice/id/2020-go2722>
- <sup>12</sup> <https://gazette.govt.nz/notice/id/2020-go2738>
- <sup>13</sup> [http://archive.stats.govt.nz/browse\\_for\\_stats/environment/environmental-reporting-series/environmental-indicators/Home/Marine/ocean-acidification.aspx](http://archive.stats.govt.nz/browse_for_stats/environment/environmental-reporting-series/environmental-indicators/Home/Marine/ocean-acidification.aspx)
- <sup>14</sup> <https://www.rnz.co.nz/international/pacific-news/408541/acidification-of-pacific-harming-shelled-creatures?fbclid=IwAR30gjqOA4Og5GtO5AAchLk3eRdBZU-AsJp4U0EWf0FqXYArG9RJyZdGJYs>
- <sup>15</sup> UNFCCC website, accessed on 27 June 2018. The Paris Agreement. <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>
- <sup>16</sup> Gibbens, Sarah, 28 January 2018. 2017 was the hottest year yet in the world's ocean. National Geographic. <https://news.nationalgeographic.com/2018/01/hottest-year-record-global-warming-oceans-spd/>
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- <sup>18</sup> Palmer, Scott, 5 December 2017. New Zealand's sea temperature swing largest in world. <https://www.newshub.co.nz/home/new-zealand/2017/12/new-zealand-s-sea-temperature-swing-largest-in-world.html>
- <sup>19</sup> Radio NZ, 30 April 2019. Ross Ice Shelf: part melting ten times faster than the rest. <https://www.rnz.co.nz/news/national/388063/ross-ice-shelf-part-melting-ten-times-faster-than-the-rest>
- <sup>20</sup> Radio NZ, 22 May 2019. Climate change: Global sea level rise could be bigger than expected. <https://www.rnz.co.nz/news/world/389767/climate-change-global-sea-level-rise-could-be-bigger-than-expected>
- <sup>21</sup> <https://treasury.govt.nz/sites/default/files/2018-08/LSF-estimating-financial-cost-of-climate-change-in-nz.pdf>
- <sup>22</sup> <https://www.utas.edu.au/news/2018/7/25/681-the-real-cost-of-ocean-acidification/>
- <sup>23</sup> <https://www.rnz.co.nz/news/national/416939/oil-tanker-off-taranaki-poses-spill-risk-that-could-cost-taxpayers>
- <sup>24</sup> Climate Change Response (Zero Carbon) Amendment Bill, 2019. [http://legislation.govt.nz/bill/government/2019/0136/latest/LMS183742.html?search=sw\\_096be8ed81873608\\_1.5\\_25\\_se&p=1&sr=1](http://legislation.govt.nz/bill/government/2019/0136/latest/LMS183742.html?search=sw_096be8ed81873608_1.5_25_se&p=1&sr=1)
- <sup>25</sup> [https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL\\_91358/resource-management-amendment-bill](https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_91358/resource-management-amendment-bill)
- <sup>26</sup> [http://legislation.govt.nz/bill/government/2019/0180/latest/LMS259082.html?search=sw\\_096be8ed8196bf9e\\_climate\\_25\\_se&p=1#d14633153e6](http://legislation.govt.nz/bill/government/2019/0180/latest/LMS259082.html?search=sw_096be8ed8196bf9e_climate_25_se&p=1#d14633153e6)
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