

Decision on marine discharge consent application

OMV New Zealand Limited

EEZ100017

OCTOBER 2018



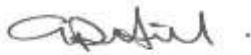
**Environmental
Protection Authority**
Te Mana Rauhi Tāiao

New Zealand Government

MARINE DISCHARGE CONSENT EEZ100017

Pursuant to section 62(1)(a) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, the application for marine discharge consent by OMV New Zealand to undertake a discretionary activity (listed in **Schedule 1**) is **GRANTED** subject to conditions (set out in **Schedule 2**).

Dated this 4 October 2018



Greg Hill

Chair



Nicola Crauford

EPA Board Member and Deputy Chair



Sheena Tepania

DMC Member

SCHEDULE 1: OMV MARINE DISCHARGE CONSENT

EEZ100017 AUTHORISED RESTRICTED ACTIVITIES

This marine consent authorises the following restricted activity, subject to conditions listed in Schedule 2.

Section 20B – No person may discharge a harmful substance from a structure or from a submarine pipeline into the sea or into or onto the seabed of the exclusive economic zone.

- 1) To discharge trace amounts of harmful substances (offshore processing drainage) through the deck drains of Mobile Offshore Drilling Unit(s) (MODU(s)), to the sea, as part of the Exploration and Appraisal Drilling (EAD) Programme.

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SCHEDULE 2: OMV MARINE DISCHARGE CONSENT

EEZ100017 CONDITIONS

DEFINITIONS

Terms used in this Schedule of Conditions shall have the following meanings:

Consent Holder: has the meaning given in section 4 of the EEZ Act.

EEZ Act: means the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, as amended from time to time.

EPA: means the Environmental Protection Authority or any equivalent Authority having an equivalent role under the EEZ Act. Where any condition requires notification, reports, or any other material to be provided to the EPA or where a plan is required to be submitted to the EPA 'for certification' this shall be addressed to the EPA's "General Manager – Climate, Land & Oceans" in the first instance.

IA: means the Impact Assessment (Marine Discharge Consent Application – Deck Drainage, Taranaki Basin) document dated March 2018 prepared by SLR Consulting Limited for OMV New Zealand Limited as part of its marine consent application.

MODU: Mobile Offshore Drilling Unit

1. Subject to compliance with these consent conditions, the activities authorised by this Marine Discharge Consent shall be undertaken in general accordance with the IA and supporting documents submitted as part of the application lodged on 27 March 2018. Where there is any actual or apparent conflict between these documents and any of the conditions of these consents, the conditions shall prevail.
2. This Marine Discharge Consent shall expire on 31 December 2025.
3. Pursuant to section 85 of the EEZ Act, this Marine Discharge Consent shall lapse on 31 December 2024 unless the consents are given effect to prior to that date, or the EPA grants an extension to the date in accordance with section 85(1)(b) of the EEZ Act.
4. The Consent Holder shall ensure that a copy of this Marine Discharge Consent, and any variations of it, are available for inspection by the EPA at the Consent Holder's head office in New Zealand, and on any MODU undertaking activities authorised by this Marine Discharge Consent.

5. The Consent Holder shall ensure all personnel, including any contractors, involved in undertaking any of the activities authorised by this Marine Discharge Consent fully understand and comply with these conditions.
6. The Consent Holder shall keep a record to show that the personnel, including contractors, referred to in Condition 5 have been informed of their obligations under these consents. The Consent Holder shall provide a copy of this record to the EPA upon request.
7. The Consent Holder shall, at least 20 working days prior to first commencing the activities authorised by this Marine Discharge Consent, or any other timeframe agreed to by the EPA, provide to the EPA, in writing, the name and contact details of the person who has delegated responsibility for compliance management, collating information, and reporting in accordance with the requirements of this consent. In the event that the responsible person changes, the Consent Holder shall advise the EPA, in writing, of the name and contact details of the new person within 20 working days of the change.
8. The Consent Holder shall ensure that no harmful substances are stored or handled in non-hazard areas which drain directly to the sea.
9. The Consent Holder shall ensure that any harmful substances that have a reasonable potential for discharge from hazardous and non-hazardous deck drains on-board any MODU are stored within a secondary containment system. For the purposes of this condition a 'secondary containment system' means a system or systems:
 - a) in which pooling substances held in the workplace will be contained if they escape from the container or containers in which they are being held; and
 - b) from which they can, subject to unavoidable wastage, be recovered.
10. All deck drains from hazard areas shall, as a minimum, include the following design requirements:
 - a) full containment of deck drainage runoff directed to a settlement tank(s);
 - b) settlement tanks shall have a minimum combined capacity of at least 5 cubic metres; and
 - c) all deck drainage runoff shall pass through an oil-in-water separator system prior to discharge to the sea.
11. The Consent Holder shall notify the EPA, as soon as reasonably practicable but not later than the end of the following working day, after a spill into the sea of any harmful substances, described in regulation 4(a) of the Discharge and Dumping Regulations, becomes known to the Consent Holder.
12. In the event of a spill of any harmful substances, described in regulation 4(a) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects—Discharge and Dumping) Regulations 2015, into the sea:

- a) the Consent Holder shall liaise with the EPA to determine whether monitoring is necessary and is likely to detect any environmental effects and, if so, agree on appropriate monitoring (if any) and timeframes and whether any other relevant authorities should be notified. Other relevant authorities may include Maritime New Zealand, regional councils, iwi entities, the Ministry for Primary Industries, and/or the Department of Conservation.
 - b) the results of the monitoring shall be provided to the EPA on request and a written summary report shall be provided to the EPA within three months of the Consent Holder receiving the results of testing from the laboratory.
13. The EPA may serve notice on the Consent Holder, in accordance with sections 76 and 77 of the EEZ Act, of its intention to review the duration or conditions of these consents at any of the following times:
- a) during the month(s) of January, April, July, and/or October each year; and/or
 - b) within 20 working days of the receipt of any notification of a spill of harmful substances into the sea under Condition 11.

The review of conditions may be for any of the following purposes:

- a) dealing with any adverse effects on the environment that may arise from the exercise of the consents and which it is appropriate to deal with after the consent(s) have been granted; and/or
- b) to impose discharge quality and/or receiving water quality monitoring requirements if the quantities or frequencies of discharges of harmful substances are shown to be greater than anticipated.

Advice Note 1: The Consent Holder may not operate an offshore installation without an Emergency Spill Response Plan (ESRP) approved by the EPA as required by Regulation 24 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects—Discharge and Dumping) Regulations 2015.

Advice Note 2: The application and Impact Assessment (IA) submitted in support of this Marine Discharge Consent includes a commitment that, where practicable, the Consent Holder will select and use the least harmful (ecotoxic) substance available that is technically capable of performing the specific role for which it is intended.

END OF MARINE DISCHARGE CONSENT DOCUMENT

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EXCLUSIVE ECONOMIC ZONE AND CONTINENTAL SHELF (ENVIRONMENTAL EFFECTS) ACT 2012

OMV New Zealand Limited: EEZ100017

Discharge of harmful substances from deck drains of a MODU

Reasons for decision on application for marine discharge
consent

Executive Summary

- i. Pursuant to section 62(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act), the application for marine discharge consent by OMV New Zealand to undertake a restricted discretionary activity (listed in Schedule 1 of the Marine Discharge Consent) is **GRANTED** subject to conditions (listed in Schedule 2).
- ii. The reasons for granting the marine discharge consent are set out below in accordance with section 69 of the EEZ Act. In making our decision on the application we have acted as an independent decision-making committee under delegated authority from the Environmental Protection Authority (EPA). We have applied the decision-making criteria set out in sections 59 and 60 of the EEZ Act and we have also applied the information principles set out in section 61 of the EEZ Act.
- iii. OMV New Zealand lodged an application for marine discharge consent on 27 March 2018 (reference number EEZ100017). This application seeks authorisation to discharge trace amounts of harmful substances (offshore processing drainage) through the deck drains of Mobile Offshore Drilling Unit(s) (MODU(s)), to the sea, as part of the Exploration and Appraisal Drilling (EAD) Programme.
- iv. After considering all the information and evidence, and taking into account the matters listed in sections 59 and 60, applying the information principles in section 61, and considering the purpose of the EEZ Act, we agree with the Applicant's and the EPA's evidence that the adverse environmental effects and the effects on any existing interests will be de minimis. We consider the suite of conditions imposed by us will ensure that any adverse effects are appropriately avoided, remedied and mitigated.
- v. Overall, it is our finding that granting this marine discharge proposal meets the purpose as set out in section 10 of the Act.
- vi. A number of submitters opposed the grant of consent, and five of those submitters presented at the hearing. We address the submitters' concerns later in this decision report, but find, as set out in the paragraph above, that any adverse effects (including cumulative effects) will be negligible, and that granting consent will meet the purpose of the Act.

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1 Introduction/Background

1.1 The Decision-making Committee

1. The Environmental Protection Authority (EPA) is the consent authority for certain activities that are restricted within New Zealand's exclusive economic zone (EEZ) and in or on the continental shelf. One of the EPA's functions, pursuant to section 13(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act), is to decide applications for marine discharge consent.
2. A Decision-making Committee (DMC) was appointed by the EPA Board on 8 February 2018 to exercise powers and functions under the EEZ Act related to the application for marine discharge consent lodged by OMV New Zealand Limited (OMV New Zealand). The EPA Board delegated all of the functions and powers of the EPA related to the processing, hearing and deciding of the application under the EEZ Act to the DMC. This DMC is Mr Greg Hill (Chair), Dr Nicola Crauford and Ms Sheena Tepania. This is our written decision pursuant to section 69 of the EEZ Act.
3. In considering and deciding the application for marine discharge consent by OMV New Zealand, we have exercised independent judgement within the statutory framework for determining applications for marine discharge consent under the EEZ Act.

2 The applicant, the application, notification and submissions, procedural matters, the hearing and decision-making process, and who we heard from

2.1 The Applicant

4. OMV New Zealand has been operating in New Zealand since 1999 when it became the operator of the Maari Field following the acquisition of Cultus Petroleum of Australia. The Maari Field is New Zealand's largest oil field, producing crude oil from the Maari, Mangaheha and Manaia reservoirs. Production at the Maari Field commenced in February 2009.

2.2 The Application

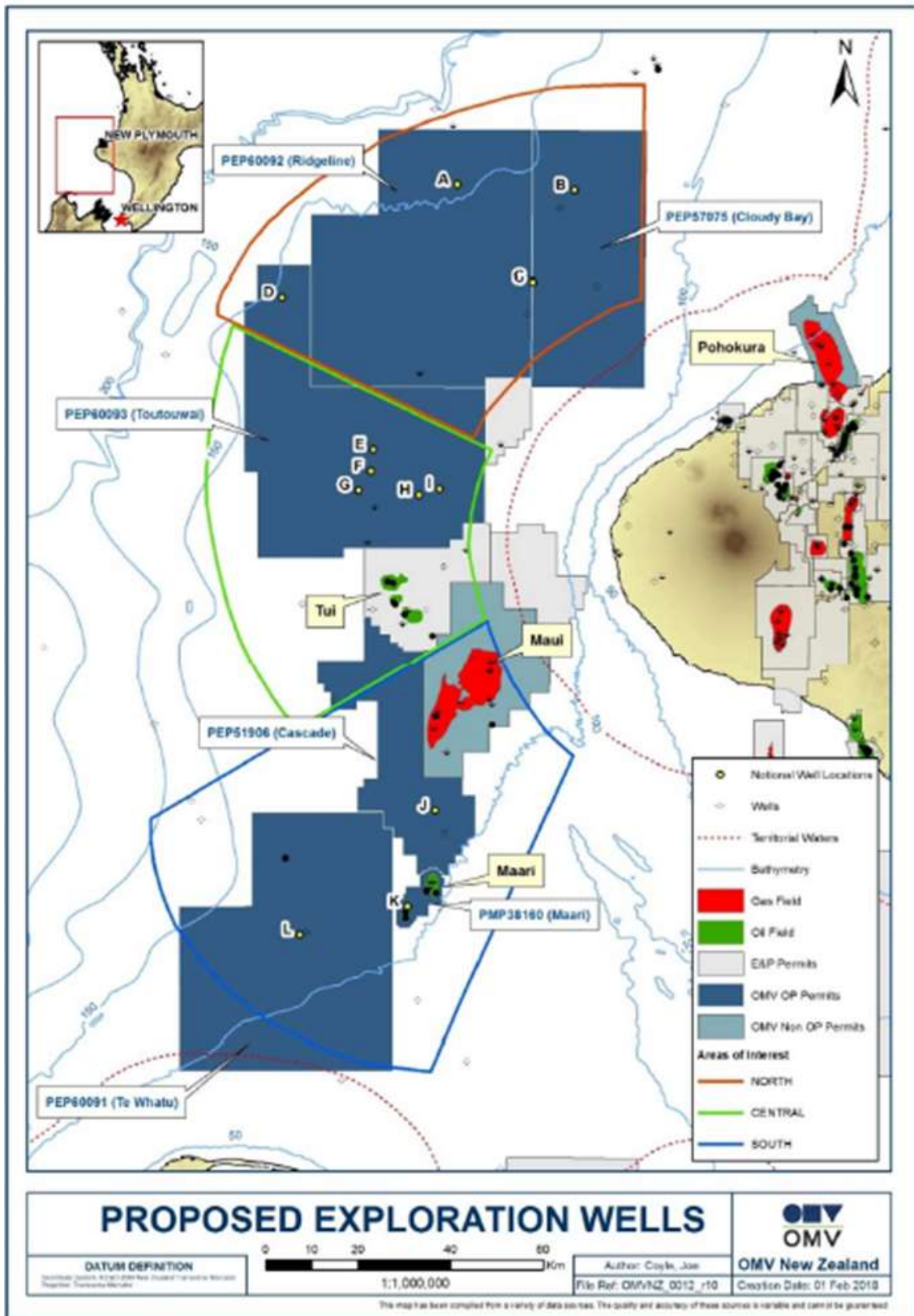
2.2.1 Background

5. OMV New Zealand is proposing to undertake a multi-well Exploration and Appraisal Drilling Programme (EAD Programme) in the Taranaki Basin. This is to determine the presence of hydrocarbons within a number of identified geological structures and to investigate the production potential.
6. The EAD Programme includes drilling of up to nine exploration wells and three appraisal wells within OMV New Zealand permit areas. These wells are located within the Taranaki Basin, in six of the nine

petroleum exploration permit (PEP) areas. The EAD Programme, subject to obtaining all of the required marine consents, is anticipated to commence in 2019 and could continue up to 2025.

7. Three Areas of Interest (AOIs) which encapsulate the proposed well locations (including a northern, central and southern AOI) are shown below in Figure 1.
8. The northern AOI includes PEP60092 (Ridgeline), PEP57075 (Cloudy Bay) and PEP60093 (Toutouwai) and is where OMV New Zealand plans to drill four exploration wells (A to D). The central AOI, which includes PEP60093 (Toutouwai), is where OMV New Zealand plans to drill three exploration wells and two appraisal wells (E to I). The southern AOI, which includes PEP51906 (Cascade), PEP60091 (Te Whatu) and PMP38160 (Maari), is where OMV New Zealand plans to drill two exploration wells and one appraisal well (J to L).

Figure 1: Location of the Areas of Interest (AOIs)



2.2.2 Details of the Application

9. OMV New Zealand lodged application EEZ100017 with the EPA on 27 March 2018.
10. The application is for a marine discharge consent under section 20B(1) of the EEZ Act; seeking to be able to discharge trace amounts of harmful substances (offshore processing drainage) through the deck drains of any Mobile Offshore Drilling Unit (MODU), to the sea as part of the EAD Programme.
11. The proposed discharge, being either oil or substances ecotoxic to aquatic organisms, as offshore processing drainage, is classified as a Discretionary Activity under section 16(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects – Dumping and Discharge) Regulations 2015 (D&D Regulations).
12. Despite various measures and precautions taken during operations, as set out in the application and in OMV New Zealand's legal submissions and evidence, if a loss of containment of harmful substances were to occur, it cannot guarantee the complete absence of trace (residual) amounts of harmful substances that may be entrained within discharge from deck drains, following clean up of any drips and spills.
13. It is possible that more than one MODU would be used under this marine discharge consent during the EAD Programme. As no MODU has been contracted at the time of the hearing, this application is made on the basis of a typical MODU deck drainage system. In this respect OMV New Zealand provided a description of a typical MODU deck drainage system in section 3.2 of their application and the evidence of the Applicant (in particular Mr Hollinger). The deck areas are identified as either 'hazard areas' or 'non-hazard areas'.
14. As set out in the application and evidence, drainage from 'hazard areas' refers to areas where harmful substances are stored and used. Any drainage as a result of rainwater, deluge water or wash water from these areas is collected and directed through a treatment system. These systems typically consist of multi-chambered settlement tanks which then discharge to an oily water separator which is fitted with an inline oil-in-water monitoring system. The oily water separator is configured to allow water which has an oil-in-water concentration of less than 15 parts per million (ppm) to be discharged to the sea.
15. Drainage from 'non-hazard areas' is the remainder of the deck area where harmful substances are not used or stored. Some MODU(s) route drainage from these areas directly to the sea, whereas others direct it to the treatment system used for the 'hazard areas'.
16. The application notes that in some exceptional circumstances (namely deluge and extended periods of torrential rainfall), the deck drainage system may be by-passed and harmful substances could be discharged overboard without treatment. Any direct overboard discharge from the hazard areas would be recorded in the Oil Record Book as required by D&D Regulations.
17. The specific harmful substances that will be on-board the MODU(s) are not yet known. The harmful substances to be stored and used on-board the MODU(s) will be determined by operational requirements of the MODU, the well design, and the geology of the formation being drilled.

18. Any harmful substance intended for use as part of the EAD Programme, or to be stored on-board any MODU, will need to hold an approval under the Hazardous Substances and New Organisms Act 1996 (HSNO Act).
19. Harmful substances are categorised in accordance with the Hazardous Substances (Classification) Notice 2017. The classification most relevant to this application is 9.1, which relates to aquatic ecotoxicity. There are four ecotoxic categories ranging from 9.1A (very ecotoxic in the aquatic environment) to 9.1D (slightly harmful in the aquatic environment or designed for biocidal action). Based on examples of harmful substances used during previous drilling campaigns, the application assesses potential effects of the 'worst case scenario' discharge using a 9.1A category hazardous substance (a product known as 'CI-111').
20. A 200m zone of influence for deck drainage system discharge has been assumed for this Impact Assessment (IA). We accept this is appropriate, but we also accept that this 'zone of influence' is highly conservative as advised by Mr Forrest – where he states:

“Discharge from the deck drainage system is assumed to have a 200m radius zone of influence from the discharge point, but this 200m distance is highly conservative as it was based on modelling of the discharge of produced water from the FPSO Raroa (MSL, 2011) - the consented daily discharge for the FPSO Raroa (10,300m³/day) is over 1300 times greater than the predicted total daily rainwater discharge for this consent application...”¹
21. The application also discussed alternatives to discharge of trace amounts of harmful substances through the deck drains. The only identified alternative was to require that all drainage be captured, stored, and brought to shore for disposal. We were advised this was not practicable and that, based on the evidence, any adverse effects would be de minimis (trivial). We discuss this in more detail later.
22. Other approvals will be required for the EAD Programme. We understand that all other required EEZ Act approvals either will be or have been applied for, and are outside of the scope of this application. However, it is noted that the activity that is the subject of this application cannot commence in the EEZ unless all of the necessary approvals have been obtained.

2.2.3 Activity Subject to Approval

23. Table 1 sets out the details of the activity requiring authorisation under section 20B of the EEZ Act.

Table 1: Marine Discharge Consent Requirement

Consent Category	Proposed Activities
<i>Section 20B(1) EEZ Act – No person may discharge a harmful substance from a structure or from a submarine pipeline into the sea or into or onto the seabed of the exclusive economic zone.</i>	To discharge trace amounts of harmful substances (offshore processing drainage) through the deck drains of any Mobile Offshore Drilling Unit (MODU), to the sea, as part of the EAD Programme.

¹ Mr Forrest's evidence – paragraph 58.

2.3 Notification and Submissions

24. OMV New Zealand lodged its application for marine discharge consent with the EPA on 27 March 2018. The procedural history of the application is set out in detail in Appendix 2.
25. The EPA notified the application on 25 May 2018 and the submission period closed on 9 July 2018. A total of 44 submissions were received, with 18 of these being from within the Taranaki region. The full list of submitters is presented in Appendix 3, including those who appeared at the hearing.
26. Of the 44 submissions received, 39 sought that the application be refused, three sought the application be granted (with conditions), and two were neutral.
27. Common themes raised by submitters included:
 - a) To refuse or defer the decision made on the OMV application and, instead, jointly process this notified application with the planned non-notified application(s);
 - b) The need to consider cumulative impacts of this and all OMV and other activities;
 - c) Climate change;
 - d) Discharged volumes of hazardous substances; and
 - e) Ecotoxicity of the hazardous substances.
28. In relation to the first bullet point, we address this matter later under the heading of 'Statutory Framework'.
29. In relation to climate change, we record our understanding that the effects on climate change of discharging greenhouse gases into the air is explicitly ruled out as a matter that we can have regard to under section 59(5) of the EEZ Act.
30. Given the limitation on considering climate change, we have not addressed this matter further in this decision except to note that we cannot have regard to it.

2.4 Procedural Matters

2.4.1 Requests for Information – Section 54

31. The EPA sought further information from OMV New Zealand on 14 June 2018 in accordance with section 54 of the EEZ Act. Further information was provided by OMV New Zealand on 20 June 2018 in accordance with section 55 of the EEZ Act.

2.4.2 Section 56 Reports

32. The EPA commissioned the following reports for us under section 56(1) of the EEZ Act:
 - a) A technical review from Oil and Gas Solutions. We received this report on 25 May 2018 and as updated on 2 July 2018.
 - b) "Dealing with uncertainty - OMV marine discharge consent application" - from Dr Robert Lieffering, received on 3 July 2018.

- c) The Key Issues Report from the EPA (Ms Tone Carmona-Noklegaard), received on 13 July 2018.
 - d) “Conditions report - OMV marine discharge consent application” from Dr Robert Lieffering, received on 23 August 2018.
33. All the reports commissioned under section 56(1) of the EEZ Act were made available on the EPA website.

2.4.3 Joint Processing

34. A number of submitters raised the issue of the ‘disjointed’ processing of OMV’s applications in relation to the EAD Programme; noting that a non-notified marine consent application for the EAD Programme had subsequently been lodged by OMV with the EPA.
35. The issue raised by the submitters was that not processing all of the applications together “...prevents proper assessment of cumulative effects on the environment and existing interests, as required by the EEZ Act s 39(1)(d) and 59 (2)(a)(i). The cumulative effects of the EAD Programme, which the discharge of harmful substances is only one part, should not be assessed independently of the effects from other activities in the programme”².
36. Section 44(1) and (2) “Joint processing and decision making on related applications” of the EEZ Act states:
- (1) *This section applies if—*
 - (a) *The Environmental Protection Authority receives more than 1 application for a marine consent in relation to the same proposal (related applications); and*
 - (b) *At least 1 of the related applications must be publicly notified under section 46(1)(b)(i); and*
 - (c) *the EPA considers that—*
 - (i) *the related applications should be heard (if more than 1 are to be heard) at the same time and place; or*
 - (ii) *decisions on the related applications should be made on the same date.*
 - (2) *The EPA may extend a time period that applies to the processing of the related applications in order to ensure that—*
 - (a) *they are heard (if more than 1 are to be heard) at the same time and place:*
 - (b) *decisions on the related applications are made on the same date.”*
37. Section 44(1) of the Act therefore provides the EPA with the discretion to decide whether related applications should be heard at the same time and place and if decisions on related applications should be made on the same date. We have been appointed by the EPA to hear and decide OMV’s

² Dr De Vantier’s evidence – paragraph 5

application (EEZ100017) for marine discharge consent only. Mr Winchester advised us at the hearing that OMV had subsequently lodged a non-notified marine consent application with the EPA. That application was received by the EPA on 17 August 2018. At the time of the hearing we were advised that the EPA was determining the completeness of that application under section 40 of the EEZ Act. The EPA has since decided that the related applications should not be heard at the same time or place or decided on the same date.

38. While we acknowledge the concerns raised by submitters on this matter, given what we have set out above, we have not addressed this matter further in this section.

2.5 The Hearing and Decision-making Process

2.5.1 The Hearing

39. The hearing commenced on 4 September 2018. We heard evidence and submissions over two days between 4 and 5 September 2018.
40. The hearing was held in New Plymouth at the Quality Hotel Plymouth International.
41. The hearing was closed on 12 September 2018.

2.5.2 Who we heard from

42. We heard from the Applicant, submitters and the EPA. The following is a brief summary of the legal submissions and evidence and those we heard from.
43. Mr Winchester and Mr Harwood provided legal submissions. They set out, among other matters, a succinct synopsis of the case before us, being:

“The consent is to permit the possible discharge of trace amounts of harmful substances from deck drains, an activity associated with an Exploration and Appraisal Drilling Programme (EAD Programme) in the Taranaki Basin.

The application is being made out of an abundance of caution. It is OMV's intention that the EAD Programme will take place without any harmful substances being spilled on the decks of a MODU at all. As such, there may not ever be a need to rely on this consent or an event that would result in a discharge.

If a spill to deck does occur, it will be cleaned up immediately. After clean up procedures have taken place, trace amounts of the substance may remain on the deck that cannot be detected by the human eye. Those trace elements would ultimately be washed into the deck drainage system, where they would possibly be removed, or otherwise substantially diluted and then discharged into the sea.

OMV has conservatively assumed that a maximum volume of harmful substances from a spill that was then washed into the deck drainage system, would be 250 ml – or a cup.

This consent application is unique in that, on a conservative worst case scenario, whereby:

- (a) *a spill to deck of a harmful substance occurs;*

- (b) *following clean up procedures, one cup of the harmful substance is left on the deck and then washed into the drainage system; and*
- (c) *the substances is the most harmful substance that could potentially be used during the EAD Programme;*

the potential effects on the marine environment from the ultimate discharge would be negligible or de minimis (trivial)³”.

44. The Opening Legal Submissions also included a set of conditions that OMV considered were appropriate if consent were granted. These were a ‘marked up’ version of those originally provided in the IA and in Dr Lieffering’s Conditions Report.
45. Mr Selischi, the Senior Vice President (Australasia) for OMV Exploration & Production GmbH, provided an overview of OMV and its existing New Zealand operations. He also discussed OMV’s Corporate Principles, Code of Conduct and Health, Safety, Security and Environment (HSSE) priorities, and confirmed that OMV New Zealand would comply with these, as they are required to. He also described the EAD Programme and OMV’s obligations under the Crown Minerals Act 1991.
46. Mr Hollinger, OMV’s Well Engineering Manager, described MODU(s) and their drainage systems, how MODU(s) and harmful substances would be selected, among other matters concerning the operation of MODU(s).
47. Mr Park, OMV’s HSSE Manager for Australasia, discussed the HSSE regime and OMV’s approach to HSSE, as well as OMV’s policies and procedures to prevent discharges of harmful substances from deck drains. He also addressed the consultation undertaken as part of this application and the wider EAD Programme.
48. Mr Forrest, an Associate Consultant for SLR Consulting NZ Limited (SLR) provided evidence on the dilution and dispersion of the harmful substances. In summary he set out that ecotoxic substances assessed in the calculations (CI-111) had previously been approved for use in the Maari Field by the EPA in much greater volumes and concentrations than those that will occur from the MODU deck drainage discharge, and that the risk to marine organisms from the larger volumes and concentrations possibly being discharged in the Maari Field were assessed and determined by the EPA as being negligible. Overall, it was his opinion that the risk to marine organisms beyond a zone of reasonable mixing/influence from the MODU was likely to be de minimis.
49. Mr Govier, the Asia-Pacific Technical Discipline Manager–Marine Science at SLR, provided an assessment of the proposed activity against the statutory considerations, including the section 59 matters, and also discussed the proposed conditions. For the reasons set out in his evidence, and the evidence presented by OMV New Zealand’s other expert witnesses, he considered that, subject to the adoption of the proposed conditions and the implementation of the management procedures and mitigation measures identified in the IA, any adverse effects associated with the activity would be negligible or de minimis.

³Open Legal Submissions paragraphs 2 - 6.

50. We had representations from the following submitters:
- a) Climate Justice Taranaki Incorporated,
 - b) Dr Lyndon DeVantier,
 - c) Ms Catherine Cheung,
 - d) Frack Free Kapiti and Beyond, and
 - e) Mr Urs Signer.
51. All of the submitters raised similar matters including: the effects on climate change (which we have addressed above); that this application should be processed and heard at the same time as all the other necessary consents (which we have addressed earlier); that the level of uncertainty due to not knowing the specific MODU or the potential harmful substances is such that the application should be refused; and despite only small amounts of potential harmful substances being discharged that environmental effects, particularly cumulatively, would be significant on the marine environment.
52. Dr Lieffering for the EPA presented an “Expert Summary Statement of Evidence”. This statement summarised the key points of the Uncertainty Report and Conditions Report that he had prepared. He set out that the uncertainty associated with not knowing the exact details of the deck drainage system is not critical as OMV has proffered a condition which outlines minimum requirements which are appropriate and reflect the ‘typical’ system on most MODU(s) and on which the IA is based.
53. Dr Lieffering opined that based on the information contained in OMV’s IA and the information provided by EPA staff⁴ for the Maari application, he concluded that, while some impacts may be possible on some marine organisms in the immediate vicinity of the point of discharge, the impacts of such a small volume discharge containing relatively low concentrations of harmful substances would be limited both spatially and in time. He concluded that the risks associated with the application are de minimis at and beyond the zone of influence.
54. Dr Lieffering also addressed the conditions proffered by OMV (including OMV’s suggested amendments to those recommended by him in his conditions report). He considered the OMV conditions to be generally acceptable and appropriate for the marine discharge consent being sought. He opined that if imposed, the conditions would appropriately deal with the adverse effects of the proposed activities on the environment and on existing interests.
55. Finally, Dr Lieffering addressed, due to a matter raised by the DMC, the extent to which the New Zealand Coastal Policy Statement (NZCPS) was applicable as an “other marine management regime”. We address this matter later, but record that we agree with Dr Lieffering that very little, if any, weight should be placed on the NZCPS.

⁴Contained in Appendix A of the Uncertainty Report.

3 The Existing Environment and Existing Interests

56. Section 39 of the EEZ Act requires the IA to describe, among other things, the existing environment. It also requires the IA to identify persons whose existing interests are likely to be adversely affected by the activity and identify the effects of the activity on existing interests.
57. Section 5 of the IA, some submissions and expert evidence given at the hearing described the existing environment of the application sites, the wider permit area and the broader environment of the South Taranaki Bight. We accept that the existing environment is as set out in those documents.
58. Section 4 of the IA, some submissions and expert evidence given at the hearing identified persons whose existing interests are likely to be affected by the activity and identified the effects of the activity on existing interests. Again, we accept that the existing interests have been identified, and other than the concern noted by Te Kotahitanga o Te Atiawa and Ngā Hapū o Te Atiawa (“Te Atiawa”), as referred to later in this decision, no party raised any issues about other existing interests not otherwise identified.
59. Given that the existing environment and existing interests were fully described as set out above, and that they were not contested at the hearing, we have not repeated them here. We accept those descriptions.

3.1 Biological Environment

3.1.1 Benthic Invertebrates

60. The offshore Taranaki benthic ecosystem is characterised by soft sediment habitats, hard rock habitats and mudstone habitats, with benthic communities that are often characterised by low species abundance and species diversity. The northern, central and southern AOIs consist mostly of class 60, 63 and 64 characteristics under the New Zealand Marine Environment Classification.
61. Section 5.2.1 of the IA has further information on the benthic ecosystems.
62. Primary producers (or ‘plankton’ as they are collectively known) inhabit the pelagic zone (water column) of the world’s oceans. Plankton travel with the ocean currents, and although some plankton can move vertically within the water column, their horizontal distribution is primarily determined by surrounding currents.
63. The number of primary producers in the water column is the result of factors including ocean currents, climate, and bathymetry that cause upwelling and create nutrient-rich waters. When these conditions are present they can be ideal for the growth of plankton, which benefit the plankton-consuming animals.
64. There are no known areas within the AOIs which have a significant or important upwelling or primary productivity; however the southern AOI does have a higher productivity due to the Kahurangi upwelling to the south of the AOI. This upwelling only occurs when the right oceanographic conditions are present which bring the deep, cold, nutrient-rich water to the surface.

65. Section 5.2.8 of the IA has further information on primary producers.

3.1.2 Fish Species

66. The fish populations within the three AOIs are represented by various demersal and pelagic species. The AOIs lie largely within the neritic zone of the ocean, with the fish found in this zone being highly mobile, with no fixed territories and often schooling fish.

67. Section 5.2.6 of the IA has further information on fish populations.

3.1.3 Marine Mammals

68. A total of 48 species of cetaceans (both toothed and baleen whales) have been recorded in New Zealand waters, of which 24 species have been determined to have either 'likely' or 'possible' presence with the three AOIs.

69. Section 5.2.2 and 5.2.3 of the IA describe all the marine mammal species that could potentially be present in the AOIs.

3.1.4 Seabirds

70. New Zealand's marine waters support the most diverse seabird collection worldwide, with over 86 different species present, 84 of which breed here. Foraging seabirds can often use MODU(s) as perching opportunities.

71. Section 5.2.4 of the IA has further information on seabirds.

3.1.5 Marine Reptiles

72. Marine reptiles are only occasional visitors to the south-western coast of the North Island. It is normally during summer months when warmer currents are present. Leatherback turtles and yellow bellied sea snakes have been observed in Taranaki waters, however are rare and are not routinely present as far south as the AOIs.

73. Section 5.2.5 of the IA has further information on marine reptiles.

3.1.6 Cephalopods

74. Octopus and squid are the most commonly found cephalopods around the Taranaki region; however, the proposed well locations are most likely beyond what is considered core octopus habitat (i.e. around reefs). There is the potential that squid could be attracted to the lights from the MODU at night during the summer months.

3.1.7 Sensitive Environments

75. Some sensitive environments (as described in Schedule 6 of the Permitted Activity Regulations 2013) could be present within the three AOIs. These sensitive environments are primarily benthic based.

76. Section 5.3.2 of the IA has further information on sensitive environments.

3.2 Existing Interests

3.2.1 Cultural Interests

77. A number of iwi groups located inshore of the three AOIs hold special interest in this offshore area through their exercise of mana whenua and mana moana. OMV has engaged specifically with these groups. Customary fishing interests in the vicinity of the AOIs are set out in section 5.4 of the IA.
78. Te Rūnanga o Ngāti Ruanui Trust (“Ngāti Ruanui”) submitted that they also have customary fishing quota rights and interests within the AOIs which should be included with this section of the application. The proposed additional rohe moana, the ‘Deepwater Customary Pataka’, as identified in the IA, represents an agreement between 16 iwi groups, Sealords and Te Ohu Kaimoana to facilitate customary fishing in deeper waters of the South Taranaki Bight.
79. Section 4.1 of the IA identifies the interests of Te Kāhui o Taranaki (“Taranaki Iwi”) under the Taranaki Iwi Claims Settlement Act 2016 which gives effect to the Taranaki Iwi Deed of Settlement and includes a number of statutory acknowledgement areas including the Taranaki Iwi Coastal Marine Area. The IA concludes that while these statutory acknowledgements are recognised under the Resource Management Act 1991 (RMA) and the Heritage New Zealand Pouhere Taonga Act, they do not apply as they relate to the Coastal Marine Area (CMA) and not the EEZ. We are not convinced that that conclusion is correct.
80. An interest in a settled historical or contemporary claim under the Treaty of Waitangi is clearly an existing interest under the EEZ. The purpose of any statutory acknowledgment is to acknowledge the association of the relevant iwi/hapū over a particular area. In this case the particular cultural, historical, spiritual, and traditional association of Taranaki Iwi with their coastal marine area is acknowledged by the Crown. To the extent that any potential discharge might have a direct or indirect effect on that association, that existing interest, for the purposes of the Act, must be relevant and taken into account. The same can be said of the statutory acknowledgments of other iwi such as Te Atiawa that exist over the CMA adjoining the AOIs.
81. In their submission, Te Atiawa requested that they be identified alongside Taranaki Iwi. It was noted in the hearing that there was no reference in OMV’s application to their Deed of Settlement and/or the Te Atiawa Claims Settlement Act 2016. In response to questions, Mr Govier confirmed that he had considered the Te Atiawa Deed of Settlement, that not including it in table 9 at section 4 of the IA was an oversight and that it should be included. He also confirmed that Te Atiawa had been considered as an existing interest through the process, that they had been engaged with, and that in his view they were fully informed. He added that he considered Te Atiawa to be one of the key groups that OMV has been working closely with, not only in relation to this application but also in respect of subsequent applications and their ongoing engagement process.
82. There are a number of customary marine title and protected customary rights applications made under the Marine and Coastal Area (Takutai Moana) Act 2011, in the vicinity of the northern, central and southern AOIs. These are set out in section 5.4.2 of the IA.

83. Separate from and in addition to commercial fisheries assets provided under the Māori Fisheries Act 2004, iwi hold customary fishing rights under the Fisheries (Kaimoana Customary Fishing) Regulations 1998.

3.2.2 Fishing Interests

84. Commercial fishers who hold quota and use the area as part of their fishing activity (i.e. deep-water trawlers chasing jack mackerel) have an existing interest in the application.
85. The majority of commercial fishing that is undertaken in the three AOIs is mid-water or demersal trawling; however there is some surface long-lining for species such as tuna and broadbill swordfish, as well as trolling and seining for tuna (albacore and skipjack).
86. Commercial fishing interests in the vicinity of the AOIs are set out in section 5.5.2 of the IA.
87. Under the Māori Fisheries Act 2004, recognised iwi were allocated fisheries assets such as fishing quota. In their submissions Te Korowai o Ngāruahine Trust (“Ngāruahine”), Ngāti Ruanui, Taranaki Iwi and Te Atiawa confirm they own commercial fishing quota within the Fisheries Management Areas surrounding the AOIs. Te Ohu Kaimoana refer to the nature of their existing interests in their submission in relation to the customary commercial rights and interests held by iwi, along with the customary non-commercial rights and interests exercised by iwi and their hapū.
88. The significant distance from shore of the proposed well locations means that the number of recreational fishing vessels that might venture close would be minimal.

3.2.3 Other Potential Interests

89. Maritime traffic (including commercial shipping) has not been identified as an existing interest in relation to this specific application, as the discharge will not affect their operations.

4 Statutory Framework

4.1 Introduction

90. This section sets out the statutory framework under the following headings:
- a) Purpose and Principles of the EEZ Act;
 - b) Section 20B – Restrictions on Discharges of Harmful Substances from Structures and Submarine Pipelines;
 - c) Decision-making Criteria; and
 - d) Information Principles.
91. There are regulations and other laws relevant to our decision-making on this application for marine discharge consent, and these must be taken into account under sections 59(2)(k) and (l) of the EEZ Act. A number of regulations and other laws include environmental considerations and are discussed later in this decision.

4.2 Purpose and Principles of the EEZ Act

4.2.1 Purpose

92. Section 10(1) of the EEZ Act states:

“The purpose of this Act is –

- (a) to promote the sustainable management of the natural resources of the exclusive economic zone and the continental shelf; and*
- (b) in relation to the exclusive economic zone, the continental shelf, and the waters above the continental shelf beyond the outer limits of the exclusive economic zone, to protect the environment from pollution by regulating or prohibiting the discharge of harmful substances and the dumping or incineration of waste or other matter.”*

93. ‘Sustainable management’ is defined in section 10(2) as follows:

“In this Act, sustainable management means managing the use, development, and protection of natural resources in a way, or at a rate, that enables people to provide for their economic well-being while—

- (a) sustaining the potential of natural resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) safeguarding the life-supporting capacity of the environment; and*
- (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.”*

94. The resources to be sustainably managed under the EEZ Act are the “*natural resources of the exclusive economic zone and continental shelf*”. Section 4(1) of the EEZ Act defines ‘natural resources’ as:

- “(a) in relation to the exclusive economic zone, includes seabed, subsoil, water, air, minerals, and energy, and all forms of organisms (whether native to New Zealand or introduced); and*
- (b) in relation to the continental shelf, means the mineral and other non-living resources of the seabed and subsoil and sedentary species.”*

95. Section 4(1) of the EEZ Act defines ‘environment’ as:

“the natural environment, including ecosystems and their constituent parts and all natural resources, of—

- (a) New Zealand;*
- (b) the exclusive economic zone;*
- (c) the continental shelf;*
- (d) the waters beyond the exclusive economic zone and above and beyond the continental shelf.”*

96. Section 10(3) of the EEZ Act states:

“In order to achieve the purpose, decision-makers must—

- (a) take into account decision-making criteria specified in relation to particular decisions; and*
- (b) apply the information principles to the development of regulations under section 27, 29A, 29B, or 29E and the consideration of applications for marine consent.”*

97. The decision-making criteria referred to in section 10(3)(a) of the EEZ Act are set out in sections 59 and 60 of the Act. The information principles are found in section 61. These provisions, and our findings, are discussed later in this decision.

4.2.2 International Obligations

98. Section 11 of the EEZ Act states:

“This Act continues or enables the implementation of New Zealand’s obligations under various international conventions relating to the marine environment, including—

- (a) the United Nations Convention on the Law of the Sea 1982 (UNCLOS).*
- (b) the Convention on Biological Diversity 1992.*
- (c) the International Convention for the Prevention of Pollution from Ships 1973 (MARPOL).*
- (d) the Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter, 1972 (the London Convention).*
- (e) International Regulations for the Prevention of Collisions at Sea 1972.”*

99. Section 11 of the Act confirms that New Zealand’s international obligations are implicit in the EEZ Act.

4.2.3 Te Tiriti o Waitangi – Treaty of Waitangi

100. Section 12 of the EEZ Act states:

“In order to recognise and respect the Crown’s responsibility to give effect to the principles of the Treaty of Waitangi for the purposes of this Act,—

- (a) section 18 (which relates to the function of the Māori Advisory Committee) provides for the Māori Advisory Committee to advise the [Environmental Protection Authority] so that decisions made under this Act may be informed by a Māori perspective; and*
- (b) section 32 requires the Minister to establish and use a process that gives iwi adequate time and opportunity to comment on the subject matter of proposed regulations; and*
- (c) sections 33 and 59, respectively, require the Minister and the [Environmental Protection Authority] to take into account the effects of activities on existing interests; and*
- (d) section 46 requires the Environmental Protection Authority to notify iwi authorities, customary marine title groups, and protected customary rights groups directly of consent applications that may affect them.”*

101. We note that section 12 of the Act outlines the specific actions that the EPA (and this DMC) must undertake in order to recognise and respect the Crown's responsibility to give effect to the principles of the Treaty of Waitangi.

4.3 Section 20B – Restrictions on Discharges of Harmful Substances from Structures and Submarine Pipelines

102. As already set out, section 20B of the EEZ Act restricts discharges of harmful substances from structures and submarine pipelines into the sea or into or onto the seabed of the exclusive economic zone unless they are authorised by or under the EEZ Act. OMV is seeking marine discharge consent under this section as set out in its application.

4.4 Decision-making Criteria

103. Sections 59 and 60 of the EEZ Act set out the matters we must consider in coming to a decision on an application for marine discharge consent.

“59 Environmental Protection Authority’s consideration of application

- (1) *This section and sections 60 and 61 apply when the [Environmental Protection Authority] is considering an application for a Marine Consent and submissions on the application.*
- (2) *...[the Environmental Protection Authority] must take into account—*
- (a) *any effects on the environment or existing interests of allowing the activity, including—*
 - (i) *cumulative effects; and*
 - (ii) *effects that may occur in New Zealand or in the waters above or beyond the continental shelf beyond the outer limits of the exclusive economic zone; and*
 - (b) *the effects on the environment or existing interests of other activities undertaken in the area covered by the application or in its vicinity, including—*
 - (i) *the effects of activities that are not regulated under this Act; and*
 - (ii) *effects that may occur in New Zealand or in the waters above or beyond the continental shelf beyond the outer limits of the exclusive economic zone; and*
 - (c) *the effects on human health that may arise from effects on the environment; and*
 - (d) *the importance of protecting the biological diversity and integrity of marine species, ecosystems, and processes; and*
 - (e) *the importance of protecting rare and vulnerable ecosystems and the habitats of threatened species; and*
 - (f) *the economic benefit to New Zealand of allowing the application; and*
 - (g) *the efficient use and development of natural resources; and*
 - (h) *the nature and effect of other marine management regimes; and*

- (i) *best practice in relation to an industry or activity; and*
- (j) *the extent to which imposing conditions under section 63 might avoid, remedy, or mitigate the adverse effects of the activity; and*
- (k) *relevant regulations (other than EEZ policy statements); and*
- (l) *any other applicable law (other than EEZ policy statements); and*
- (m) *any other matter the [Environmental Protection Authority] considers relevant and reasonably necessary to determine the application.*

(2A) *If the application is for a marine discharge consent, the EPA must take into account –*

- (a) *the matters described in subsection (2) except paragraph (c); and*
- (b) *the effects on human health of the discharge of harmful substances if consent is granted.*

...

(3) *The [Environmental Protection Authority] must have regard to—*

- (aa) *EEZ policy statements; and*
- (a) *any submissions made and evidence given in relation to the application; and*
- (b) *any advice, reports, or information sought under this Part and received in relation to the application; and*
- (c) *any advice received from the Māori Advisory Committee.*

...

(5) *Despite subsection (3), the [Environmental Protection Authority] must not have regard to—*

- (a) *trade competition or the effects of trade competition; or*
- (b) *the effects on climate change of discharging greenhouse gases into the air; or*
- (c) *any effects on a person's existing interest if the person has given written approval to the proposed activity.*

(6) *Subsection (5)(c) does not apply if the person has given written approval but the person withdraws the approval by giving written notice to the marine consent authority –*

- (a) *before the date of the hearing, if there is one; or*
- (b) *if there is no hearing, before the marine consent authority decides the application.*

60 Matters to be considered in deciding extent of adverse effects on existing interests

In considering the effects of an activity on existing interests under section 59(2)(a), the [Environmental Protection Authority] must have regard to—

- (a) *the area that the activity would have in common with the existing interest; and*

- (b) *the degree to which both the activity and the existing interest must be carried out to the exclusion of other activities; and*
- (c) *whether the existing interest can be exercised only in the area to which the application relates; and*
- (d) *any other relevant matter.”*

104. There is no hierarchy in the extensive list of matters that must be taken into account under sections 59(2) and 59(2A) of the EEZ Act. The relative importance of these depends on the specifics of the application.
105. The proposed marine discharge activity is taking place in the EEZ, but we are required to take into account effects that may occur from allowing the activity, including those that may occur outside the EEZ. This requirement is important, as some of the potential adverse effects may occur within the Coastal Marine Area (CMA). We address this later in the decision.
106. Section 59(2)(m) of the EEZ Act requires us to consider any other matter we think is relevant and reasonably necessary to determine the application. We consider these ‘other matters’ later in this decision.
107. Sections 59(2) and 59(2A) of the EEZ Act set out matters we “must take into account”, and section 59(3) states we “must have regard to” EEZ policy statements, any submissions or evidence given to us, any advice or reports we have sought and any advice from Ngā Kaihautū Tikanga Taiao (NKTT). We have had regard to these matters in reaching our decision.
108. We note here that there are no relevant EEZ policy statements. We also note that on 6 July 2018 NKTT wrote to the DMC to advise that NKTT considered that a report from it would not provide information on matters of significance to Māori over and above the information that is currently before the DMC. While NKTT further stated it would welcome the opportunity to reconsider this position if new information came to hand that required a reassessment of the situation, we record that no new information came to hand requiring NKTT to reassess the situation.
109. We further note that pursuant to section 59(5) of the EEZ Act, we have not given regard to:
- a) Trade competition or the effects of trade competition; or
 - b) The effects on climate change of discharging greenhouse gases into the air; or
 - c) Any effects on a person’s existing interest if the person has given written approval to the proposed activity.

4.5 Information Principles

110. Section 61 of the EEZ Act states:

“61 Information principles

- (1) *When considering an application for a Marine Consent, the [Environmental Protection Authority] must—*

- (a) *make full use of its powers to request information from the applicant, obtain advice, and commission a review or a report; and*
 - (b) *base decisions on the best available information; and*
 - (c) *take into account any uncertainty or inadequacy in the information available.*
- (2) *If, in relation to making a decision under this Act, the information available is uncertain or inadequate, the marine consent authority must favour caution and environmental protection.*
- (3) *If favouring caution and environmental protection means that an activity is likely to be refused, the marine consent authority must first consider whether taking an adaptive management approach would allow the activity to be undertaken.*
- (4) *Subsection (3) does not apply to an application for a marine discharge consent or limit section 63 or 64.*
- (5) *In this section, best available information means the best information that, in the particular circumstances, is available without unreasonable cost, effort, or time.”*

4.5.1 Full Use of Powers

111. We are satisfied we have made full use of our powers to request and access information and consider we have met our responsibility under section 61(1)(a) of the EEZ Act.
112. In this case, we have had the benefit of:
- a) The application by OMV New Zealand and the IA (including supporting technical documents);
 - b) The completeness and gap analysis by Dr Richard Mohan, Senior Advisor, EEZ Applications, EPA;
 - c) Additional information supplied by OMV New Zealand at the request of the EPA (refer to Appendix 2);
 - d) A technical review from Oil and Gas Solutions, received on 25 May 2018 and updated on 2 July 2018;
 - e) The report “Dealing with uncertainty - OMV marine discharge consent application” from Dr Robert Lieffering, received on 3 July 2018;
 - f) The Key Issues Report from the EPA (Ms Tone Carmona-Noklegaard), received on 13 July 2018;
 - g) The “Conditions report - OMV marine discharge consent application” from Dr Robert Lieffering, received on 23 August 2018;
 - h) Submissions, including from parties with existing interests that may be affected by the application (refer to Appendix 3);
 - i) Opening and closing legal submissions on behalf of OMV New Zealand;
 - j) Expert evidence, both written and oral and questioning by us;
 - k) Non-expert evidence and representations in support of submissions, and questioning by us.

4.5.2 Best Available Information

113. Pursuant to section 61(1)(b) of the EEZ Act, we must make our decision based on the best available information. “Best available information” is defined in section 61(5) of the EEZ Act. It is important to note that best available information is not necessarily ‘all available information’. We are required to exercise judgement about what information is the best available information for this particular application, having regard to issues of cost, effort and time.
114. We accept there was uncertainty with respect to some of the information in the OMV New Zealand application. It was acknowledged by all parties that there were two key information uncertainties - not knowing the deck drainage system as the MODU(s) had not been contracted, and what harmful substances would be used on the MODU(s). However, the IA, and OMV’s evidence (and that of Dr Lieffering), was based on a typical deck drainage system and a ‘worst case scenario’ discharge of harmful substance use.
115. On the basis of the above, and for the reasons that follow, we are satisfied that we have made our decision based on the best available information in accordance with section 61(1)(b) of the EEZ Act.

4.5.3 Uncertainty or Inadequacy of Information

116. We are satisfied that we have taken into account any uncertainty or inadequacy in the information available in accordance with section 61(1)(c) of the EEZ Act.
117. In accordance with section 61(2) of the EEZ Act, if the information available is uncertain or inadequate, we must “favour caution and environmental protection”. Section 61(3) then states that, if favouring caution and environmental protection means that an activity is likely to be refused, we must first consider whether taking an adaptive management approach would allow the activity to be undertaken. We note that an adaptive management approach is not available for marine discharge consents, as stated in section 64(1AA)(b) of the EEZ Act, and accordingly we have not considered one.
118. As already set out, there are uncertainties in the OMV New Zealand application. In terms of this uncertainty we accept the IA, OMV’s and Dr Lieffering’s evidence which has been based on a typical deck drainage system and the adoption of a ‘worst case scenario’ to any discharge of harmful substance use. In this context we find that the adverse effects from the potential discharge will be negligible.
119. We acknowledge the submission of Te Kotahitanga o Te Atiawa that:

“The potential cultural impacts of this activity and the use of cultural indicators such as mauri, and those that may resonate more with some iwi, can only be assessed by the mana whenua and mana moana who have that connection with atua of the respective environmental domains⁵.”

We note their request that provision be made for mana whenua to make this assessment.

⁵ Section 12 of submission form from Te Kotahitanga o Te Atiawa

120. While we consider a cultural impact assessment by mana whenua is good practice and is highly desirable, it is not a mandatory requirement for applications under the EEZ Act. We have had regard to the submissions made by iwi/hapū in relation to that cultural environment, the documentation accompanying the application and the evidence of the Applicant at the hearing. Taking into account the minor scale of the activity and our overall findings on the likelihood, nature and risk of potential effects, we are satisfied that we have sufficient information to make our decision.
121. On this basis, while there are uncertainties as to the MODU and the discharge, we are satisfied, based on the evidence before us, that there is very little or no uncertainty as to the effects from the proposal. We address the effects below. We find that the provisions of section 61(2) of the Act are satisfied as there is very little or no uncertainty as to the (de minimis) effects on the environment, and that any remaining uncertainties are addressed by the conditions of this consent.

5 Context for Consideration and Evaluation

122. The EEZ Act requires us, in sections 59, 60 and 61, to take into account a number of matters when considering an application for marine discharge consent. We address these below.
123. We also note that section 59(2)(j) of the EEZ Act requires us to take into account “*the extent to which imposing conditions under section 63 might avoid, remedy, or mitigate the adverse effects of the activity*”. We have wide discretion in terms of imposing conditions on this application for marine discharge consent and have carefully considered the conditions proffered by OMV New Zealand which have been reviewed and commented on by Dr Lieffering.

6 Potential Effects on the Marine Environment and Existing Interests

6.1 Introduction

124. Sections 59(2)(a) and (b) of the EEZ Act require us to take into account the effects of allowing the activity on the environment and/or existing interests. This requires us to take into account other activities occurring in the vicinity of the application site, including those not regulated under the EEZ Act, and the likely effects of these on the environment and existing interests.
125. Section 59(3) of the EEZ Act requires us to have regard to submissions and evidence, any advice provided to us in relation to the application and any advice received from NKTT.
126. This section sets out our understanding of the key potential effects of the marine discharge activity on the environment and existing interests based on the IA, submissions, and the expert and non-expert evidence. It also outlines our findings on these potential effects.
127. We have applied the definition of ‘effect’ in section 6 of the EEZ Act and have considered any potential cumulative effects and potential effects of low probability but high potential impact.
128. We have taken into account the effects on the environment or existing interests of allowing the activity that may occur in New Zealand or in the waters above or beyond the continental shelf beyond the

outer limits of the exclusive economic zone in accordance with sections 59(2)(a)(ii) and (b)(ii) and 60 of the EEZ Act.

129. The key potential effects of the potential marine discharge are categorised under the headings that we set out below.

6.2 Marine Environment

6.2.1 Effects and Findings

130. There is potential for harmful substances that are ecotoxic to be discharged into the marine environment. There is also potential for cumulative effects from exposure to ecotoxins if the 200m zone of influence, around any well location, overlaps with any other zone of influence.
131. The sensitive environments in the AOIs are primarily benthic based. Given the water depth of the proposed wells (102m and 158m) any discharge proposed is unlikely to make contact with these habitats in concentrations that would have any measurable influence.
132. We accept that discharges of trace amounts of harmful substances from deck drainage to the marine environment are likely to be intermittent and for a short duration.
133. We agree with the Applicant's evidence that should any trace amounts of harmful substances make it into the deck drainage system, the concentrations of harmful substance within the product will be diluted in the settling tank. Upon discharge to the marine environment, the harmful substance would be further diluted, to the extent that ecotoxicity effects on the marine environment will be negligible. In addition, the discharges of trace amounts of harmful substances will be immeasurable in the receiving water beyond the 200m zone of influence due to the high energy Taranaki marine environment.
134. There will be no overlap between the zone of influence of any well location as set out in section 7.2.6 'Cumulative Effects' of the Application. Therefore cumulative effects on the marine environment arising from the discharge of trace elements of harmful substances from deck drainage will be negligible.

6.3 Existing Interests

6.3.1 Effects and Findings

135. The existing interests within or near the AOIs are discussed within section 3.2 of this decision. These include deep-water commercial fishers, customary fishers and the associated quota holders.
136. The key potential adverse effects on existing interests are:
- a) Exposure of fish and their habitat to harmful substance discharges, causing ecotoxicity.
 - b) Cultural values (including the mauri of the marine environment and the exercise of mana whenua and mana moana).
137. Due to the highly mobile nature of the fish which are targeted by fishers in the AOIs, it is considered that existing interests are not restricted to the areas subject to the application, and that they can occur at the same time as the proposed activity within the wider Taranaki region.

138. On the basis that a 500m non-interference zone is likely to be established around the MODU(s) while in New Zealand waters, no recreational or commercial fishers will be in close contact with the MODU or any discharge that may potentially occur. The ecotoxicity risk to fish will be negligible for the reasons set out earlier.
139. The IA identified the cultural environment around the AOs and recognised the special interests and values held by iwi groups through their exercise of mana whenua and mana moana. It states that:
- “Even though under the EEZ Act some of these iwi groups are not considered by definition as holding an existing interest for the location of the proposed wells, OMV has still engaged specifically with these groups as if they were considered as an existing interest.” (7.2.4, p. 119)*
140. We heard evidence from the Applicant describing the engagement that occurred with iwi and hapū, particularly since the award of exploration and appraisal permits, with both senior and environmental staff of OMV meeting with iwi and hapū groups. Mr Park advised that the focus for OMV was on building meaningful relationships, that consultation was ongoing and that he accepted a lot of the engagement that had occurred was actually within the context of OMV’s wider EAD Programme. He stated that OMV had assured those iwi and hapū groups that any questions, comments or concerns they had would be raised through their (subsequent) application with the EPA by a different means.
141. We were told by Mr Govier that there is an intention to engage with other iwi and hapū groups such as Ngāti Kinohaku moving forward and that as OMV goes through the next phases of the application process, the engagement process effectively widens. He highlighted plans to engage further afield with subsequent applications including in relation to the development of the oil-spill contingency plan and emergency-spill response plan.
142. To that extent, Mr Winchester confirmed there is a commitment in the applications for marine consent for the subsequent programme to continue engagement with existing interests.
143. In terms of the IA undertaken, the scope of consideration of the effects on the cultural values and the existing interests of particular iwi and hapū focused primarily on physical and biological matters and the cultural perspective of those effects particularly in terms of mauri and the criteria for assessing potential consequence levels. That being said, there is little analysis of the cultural, spiritual and metaphysical aspects.
144. We acknowledge the submission by Taranaki Iwi and their request that proper consideration be given to the Te Ao Māori perspective in the assessment of effects including reference to the Taranaki Iwi Environmental Management Plan, Taiao Taiora. According to Taiao Taiora, Taranaki Iwi state that they will oppose any activity which degrades the natural balance present in the living ecosystem and environment of Tangaroa-i-te-tai.
145. However, we note that Taranaki Iwi have taken a neutral position in relation to this application. We note further their submission is more concerned with the substantial application(s) to follow and that they will respond thoroughly to the subsequent application on cultural matters and mitigation measures to prevent the degradation of the mauri (mauri) of Tangaroa-ki-tai.

146. We acknowledge the submission of Ngāruahine that their special relationship with the marine environment cannot be delineated by boundaries between commercial operations or iwi rohe and that the ocean is a cultural site of significance for iwi, it is a taonga and Māori take seriously their role as kaitiaki of the sea.
147. We note the criticism made by Te Atiawa regarding the finding that any potential effects on the cultural environment are considered to be negligible.
148. We recognise the significance that Māori give to the marine environment as a whole and we are mindful that that cultural perspective may give rise to a different interpretation and assessment of the “likely zone of influence”, the extent to which mauri may be influenced and the associated impact on kaitiakitanga and other cultural values.
149. That being said we are also mindful of the findings of the High Court, in terms of section 59 of the EEZ Act, that the obligation to take such matters into account “involves considering these matters but does not go as far as having to adopt them or expressly incorporate them into the decision”.⁶
150. Notwithstanding, in the context of this application, which is essentially for a ‘potential’ minor and unintended discharge that may never occur, we find that the risk from any actual effect is unlikely and the potential impact low such that it can be concluded that any potential effects on the cultural environment and existing interests are de minimis, and further will be avoided or mitigated through the conditions attached to this consent.
151. We were persuaded by the evidence of OMV at the hearing that there is a clear intention to continue to engage with iwi throughout the wider EAD Programme. We were also persuaded that OMV is committed to ongoing engagement with existing interests and will provide a meaningful opportunity for those iwi and hapū to participate in a proper assessment of future processes as they relate to the wider EAD Programme.
152. We accept that we cannot take claims under the Marine and Coastal Area (Takutai Moana) Act 2011 into account in respect of OMV’s application, as this would be a pre-emption of decisions yet to be made. These claims are not existing interests under section 59(2)(a), and we have decided that they are not exceptional matters we should take into account under section 59(2)(m).

7 Effects on Human Health of Discharge of Harmful Substances

153. Section 59(2A)(b) of the EEZ Act requires us to take into account the effects on human health of the discharge of harmful substances. The key potential effects on human health related to the application are:

⁶CIV - 2017-485 -704 [2018] NZHC 2217 - paragraph 226.

- a) Direct exposure to the discharge; and
 - b) Consumption of fish caught that have been exposed and contaminated by the discharge.
154. The potential for direct exposure to the discharge of deck drainage by humans is remote given the distance offshore between the well locations and the shoreline. The closest well is 38km from shore. With a 200m zone of influence around the MODU(s) and the low concentrations of any harmful substance discharge, the potential that any harmful substances would make their way to the shoreline is very remote.
155. The Crown Minerals Act 1991 provides the Chief Executive of the Ministry of Business, Employment and Innovation (MBIE) the ability to specify a 500m non-interference zone by way of a Notice to Mariners. If such a notice is published, this will further ensure no human contact would be made with the 200m zone of influence.
156. The main commercial fish species in the AOIs is the jack mackerel, which is mobile and migratory. If the fish were to enter the zone of influence during a discharge from the deck drains, they would only experience brief and low level exposure. Furthermore, no commercial fishing will take place in close proximity to the MODU(s) due to the non-interference zone.
157. The health of workers on-board is subject to the requirements of the Health and Safety at Work Act 2015, which is administered by WorkSafe New Zealand.
158. We find that the potential adverse effects on human health arising from the discharge of trace amounts of harmful substances from deck drainage are negligible.

8 The Protection of Biological Diversity and Integrity of Marine Species, Ecosystems and Processes

159. Section 59(2)(d) of the EEZ Act requires us to take into account the importance of protecting the biological diversity and integrity of marine species, ecosystems and processes. The potential adverse effects have been addressed above.
160. As already set out, we agree with the evidence of OMV's witnesses and that of Dr Lieffering for the EPA that any adverse effects, including cumulative effects, from the discharge of harmful substances would be de minimis. On this basis, the potential adverse effects on biological diversity and integrity of marine species, ecosystems and processes arising from the discharge of trace amounts of harmful substances from deck drainage are negligible.

9 The Protection of Rare and Vulnerable Ecosystems and Habitats of Threatened Species

161. Section 59(2)(e) of the EEZ Act requires us to take into account the importance of protecting rare and vulnerable ecosystems and the habitats of threatened species. The potential adverse effects have been addressed above.

162. As already set out, we agree with the evidence of OMV's witnesses and that of Dr Lieffering for the EPA that any adverse effects, including cumulative effects, from the discharge of potentially harmful substances would be de minimis. On this basis, the potential adverse effects on rare and vulnerable ecosystems and the habitats of threatened species arising from the discharge of trace amounts of harmful substances from deck drainage are negligible.

10 The Economic Benefit to New Zealand

163. Section 59(2)(f) of the EEZ Act requires us to take into account the economic benefit to New Zealand of allowing the application.
164. The proposed discharge activity is one component of the total activities proposed for the EAD Programme. However, as the Applicant has sought this marine consent separately from the other marine consents it needs to be able to undertake the EAD Programme, we find there is little or no economic benefit to New Zealand from this consent itself.

11 The Efficient Use and Development of Natural Resources

165. Section 59(2)(g) of the EEZ Act requires us to take into account the efficient use and development of natural resources.
166. As already set out, we agree with the evidence of OMV's witnesses and that of Dr Lieffering for the EPA that any adverse effects, including cumulative effects, from the discharge of potentially harmful substances would be de minimis. On this basis, the use of the natural resource (in this case mainly the sea) would be efficient.

12 The Nature and Effect of Other Marine Management Regimes

167. Section 59(2)(h) of the EEZ Act requires us to take into account the nature and effect of other marine management regimes (MMR). Section 7 of the EEZ Act defines what a marine management regime is. These are listed in section 14 of this decision and section 2.4 of the IA.
168. The RMA regime, namely the provisions of the NZCPS, was raised by the DMC at the hearing as a relevant MMR that we must take into account under the EEZ Act. In our view the weighting to be given to the provisions of the NZCPS (and the RMA) comes down to the potential effects that an activity may have within CMA waters. Such effects will normally decrease with increasing distance from the EEZ/CMA boundary and also the nature and scale of the activity.
169. For OMV's current application, the discharges of trace amounts of harmful substances will occur a significant distance from the CMA boundary (the closest being Well I which is more than 15 km from

the CMA boundary⁷) and the adverse effects within the CMA will be undetectable. For these reasons we find that very little weight, if any, should be given to the NZCPS provisions in this case.

170. OMV New Zealand must comply with relevant provisions of these marine management regimes which will provide additional measures for avoiding, remedying or mitigating adverse effects from the proposed discharge activity on the environment and existing interests.

13 Best Practice

171. Section 59(2)(i) of the EEZ Act requires us to take into account best practice in relation to an industry or activity.
172. OMV New Zealand has set out in its evidence (mainly from its corporate witnesses) that it will follow industry best practice and undertake the requirements set out in the “Environmental Best Practice Guidelines for the Offshore Petroleum Industry” (Ministry for the Environment, 2006). This is accepted by the DMC.

14 Relevant Regulations and Other Applicable Law

14.1 Relevant Regulations

173. Section 59(2)(k) of the EEZ Act requires us to take into account relevant regulations. Regulations are defined in section 4 of the EEZ Act to mean regulations made under the EEZ Act.
174. We have taken into account the Discharge and Dumping Regulations 2015, particularly regulation 16(1) which defines the discharge of harmful substances from offshore processing drainage as a discretionary activity.
175. We have taken into account regulation 24 of the Discharge and Dumping Regulations 2015:
- “The owner of an offshore installation must not operate the offshore installation without an ESRP (Emergency Spill Response Plan) approved by the EPA.”*
176. As noted earlier, we have also taken the Permitted Activity Regulations 2013 into account in terms of determining sensitive environments that could be present within the three AOIs.

14.2 Other Applicable Law

177. Section 59(2)(l) of the EEZ Act requires us to take into account any other applicable law. We have taken into account the following relevant statutes and the regulations, rules and policies made under them:
- a) Biosecurity Act 1993
 - b) Fisheries Act 1996
 - c) Māori Fisheries Act 2004

⁷Scaled off Figure 1 of OMV’s IA.

- d) Health and Safety at Work Act 2015
- e) Marine and Coastal Area (Takutai Moana) Act 2011
- f) Marine Mammals Protection Act 1978
- g) Maritime Transport Act 1994
- h) Resource Management Act 1991
- i) Wildlife Act 1953
- j) Continental Shelf Act 1964
- k) Crown Minerals Act 1991
- l) Hazardous Substances and New Organisms Act 1996.

178. We have considered the need to avoid duplicating regulations and conditions that will be imposed by other regulators under other marine management regimes. To the extent relevant, these laws have been discussed in earlier sections of this decision.

15 Other Relevant Matters

179. Section 59(2)(m) of the EEZ Act requires us to take into account any other matter that we consider relevant and reasonably necessary to determine the application for marine discharge consent.

180. Section 59(2)(m) of the EEZ Act does not provide us with unlimited scope. We cannot expand on (or take a different approach to) a specific requirement that Parliament has chosen to confine or regulate in a particular way. We have therefore considered this section in the context of the specific matters required to be taken into account by section 59(2) of the EEZ Act, and related matters which have a bearing on our decision. Importantly, we have been careful to consider whether a matter has been expressly addressed by another section of the EEZ Act before it could be capable of consideration under section 59(2)(m). We do not consider there are any other relevant matters that have not been otherwise addressed in this decision.

16 Purpose of the EEZ Act and Overall Findings

181. Pursuant to section 10(3) of the EEZ Act, we have taken into account decision-making criteria in section 59, 60 and 61 of the EEZ Act and have turned our minds to whether granting or refusing consent best achieves the purpose of the EEZ Act, as set out earlier in this decision.

182. Overall, we find that the assessment of the activity against section 59 matters was comprehensively set out in the Applicant's IA and evidence, namely that provided by Mr Govier and Dr Lieffering. In summary, we find:

- a) The potential adverse effects on the environment, including cumulative effects, of any discharge of trace amounts of harmful substances through the deck drainage will be negligible.

- b) The potential adverse effects on existing interests (which are dispersed throughout the Taranaki Basin), including the potential effects on commercial fishing activities, will also be de minimis.
- c) As any adverse effects will be confined to the immediate vicinity of each well location, any adverse effects will be temporary. The proposed operational procedures, mitigation measures and conditions will ensure that the biological diversity of marine species, ecosystems and processes in the Taranaki Basin will be protected.
- d) While it is acknowledged that this application is for an activity that sits within the wider scope of the EAD Programme, OMV is required to comply with a number of other legislative regimes that relate to health and safety and environmental protection. While we acknowledge that not all of these legislative requirements are relevant to this application, these additional measures and approval requirements provide further environmental protections and minimise potential for discharges to the deck and discharges to the environment.
- e) OMV has set out in evidence that it will follow industry best practice in relation to this application and the wider EAD Programme. Conditions of consent will assist in ensuring this occurs.

183. After considering all the information and evidence, and taking into account the matters listed in sections 59, 60 and 61 of the EEZ Act, we find that subject to the conditions of consent we have imposed, granting a marine discharge consent for this activity meets the purpose of the Act.

17 Conditions

184. Section 62(3) of the EEZ Act states that a marine discharge consent may be issued subject to conditions. The ability to impose conditions on a marine discharge consent is governed primarily by sections 63 to 67 (noting that section 64 does not apply to marine discharge consents).

185. We have considered whether conditions can avoid, remedy, or mitigate the adverse effects of the activity. We considered the evidence about effects, and the conditions proffered by OMV New Zealand to address those effects.

186. We have not imposed any condition that would be inconsistent with the EEZ Act or any regulations or which would conflict with a measure required in relation to the activity by another marine management regime or the Health and Safety at Work Act 2015.

187. We find that that conditions we have imposed will avoid, remedy, or mitigate adverse effects to the extent required to achieve the EEZ Act purpose. Schedule 2 (at the front of this decision report) sets out the conditions.

18 Duration of Consent

188. Section 73 of the EEZ Act sets out matters relevant to determining the duration of the consent. It states:

“(1A) The duration of a marine discharge consent is—

(a) the term specified in the consent, which must not be more than 35 years; or

(b) if no term is specified, 5 years after the date of the granting of the consent.

(2) When determining the duration of the consent, the [Environmental Protection Authority] must—

(a) comply with sections 59 and 61; and

(b) take into account the duration sought by the applicant; and

(c) take into account the duration of any other legislative authorisations granted or required for the activity that is the subject of the application for consent.”

189. Pursuant to section 73(2)(b) in determining the duration of the marine discharge consent, we have taken into account the marine discharge consent expiry at 31 December 2025, as sought by OMV New Zealand, the duration of the nine Petroleum Exploration Permits that OMV New Zealand holds interests in, and the effects of the proposal under sections 59, 60 and 61. We find this period is appropriate given the scale of the activity and its effects, as we have already addressed.

END

APPENDIX 1: ABBREVIATIONS, ACRONYMS AND TERMS USED IN THIS DECISION

AOIs	Areas of Interest as described in the IA and shown in Figure 1
CMA	Coastal Marine Area
DMC	Decision-making Committee
D & D Regulations 2015	Exclusive Economic Zone and Continental Shelf (Environmental Effects – Discharge and Dumping) Regulations 2015
EAD	Exploration and Appraisal Drilling
EEZ	exclusive economic zone
EEZ Act	Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012
EPA	Environmental Protection Authority
ESRP	Emergency Spill Response Plan
HSSE	Health, Safety, Security and Environment
IA	means the Impact Assessment (Marine Discharge Consent Application – Deck Drainage, Taranaki Basin) document dated March 2018 prepared by SLR Consulting Limited for OMV New Zealand Limited as part of its marine consent application
km	kilometre
m	metre
m ²	square metre
m ³	cubic metre
mm	millimetre
Marine Environment	includes benthic invertebrates, marine mammals, seabirds, marine reptiles, fish, cephalopods, primary producers, water quality and sediment quality
MBIE	Ministry of Business, Innovation and Employment
MMR	Marine Management Regime
MNZ	Maritime New Zealand
MODU(s)	Mobile Offshore Drilling Unit
MPI	Ministry for Primary Industries
NKTT	Ngā Kaihautū Tikanga Taiao
nm	nautical mile
NZCPS	New Zealand Coastal Policy Statement
ppm	parts per million
PEP	Petroleum Exploration Permit

Permitted Activity

Regulations 2013

Exclusive Economic Zone and Continental Shelf (Environmental Effects—Permitted Activities) Regulations 2013

PMP

Petroleum mining permit

RMA

Resource Management Act 1991

APPENDIX 2: PROCEDURAL HISTORY

Timeline for Application

8 February 2018	EPA appointed DMC including delegating decision-making powers to it.
27 March 2018	Application for marine discharge consent lodged with the EPA by OMV New Zealand.
27 April 2018	EPA completeness of application check completed.
25 May 2018	Submissions open.
25 May 2018	Technical review from Oil and Gas Solutions was received.
15 June 2018	Letter sent to OMV requesting further information (EPA staff request #1).
20 June 2018	OMV response received to part of EPA staff request #1.
3 July 2018	Advice from a planning expert from Stantec on uncertainty of information.
9 July 2018	Submissions closed.
13 July 2018	A Key Issues Report.
4 September 2018	Hearing opened.
5 September 2018	Hearing adjourned.
12 September 2018	Closure of hearing.

APPENDIX 3: LIST OF SUBMITTERS AND THOSE WHO APPEARED AT THE HEARING

The following tables provide a list of submitters.

Organisation	First Name	Last Name	Appeared (yes)
Te Rūnanga o Ngāti Ruanui	Debbie	Ngarewa-Packer	
	Hunter George Bliss	Connon	
HNZ New Zealand Ltd	Anthony	Carino	
Tungsten Works Ltd	Kate	Parker	
	Jonathan	Oosterman	
	Gareth	Bellamy	
Whanganui Positive Activists	David	Pate	
Greenpeace	Luke Timothy	Boyd	
	Jessica	Weeks	
	Joanna	Santa Barbara	
	Kim	Hunt	
Oil Free Wellington	Frances	Mountier	
	Donna Bryner	Mummery	
	Jack	Barbara	
	Lyneke	Onderwater	
	Melanie	Vautier	
	Joanna	Piekarski	

	Kate	Cole	
	Sonia Ann	Corbett	
	Helen	Tulett	
Surfers' Environmental Alliance	Jim	Littleifield	
	Jackie	Cockeram	
	Lyn	Hoffman	
	Kieran	Martin	
	Dr Terrence	Loomis	
	Sarah	Web	
	Peter	Watson	
	Chris	Fuller	
	Merania	Karauria	
	April	Glenday	
Te Korowai o Ngāruahine Trust	Louise	Tester	
	Fran	Davey	
Te Kāhui o Taranaki	Wharehoka	Wano	
	Margaret Anne	Smith	
	Jennifer	Kerr	
Te Ohu Kaimoana Trustee Ltd			
Greenpeace of New Zealand, Inc.			
Climate Justice Taranaki Incorporated			Yes

Personal submission	Catherine	Cheung	Yes
	Urs	Signer	Yes
Frack Free Kapiti and Beyond	Jean	Kahui	Yes
	Elaine	Elaine	
Lyndon DeVantier	Lyndon	DeVantier	Yes
Te Kotahitanga o Te Atiawa Trust and Ngā Hapū o Te Atiawa	Sera	Gibson	



**Environmental
Protection Authority**
Te Mana Rauhi Tairā