
TRANSCRIPT OF PROCEEDINGS

**ENVIRONMENTAL PROTECTION AUTHORITY
HEARING**

**OMV New Zealand
Marine Discharge Consent Application**

**HEARING at
QUALITY HOTEL PLYMOUTH INTERNATIONAL,
CORNER OF COURTENAY AND LEACH STREETS,
NEW PLYMOUTH
on 5 September 2018**

DECISION-MAKING COMMITTEE:

Mr Greg Hill (Chairperson)

Dr Nicki Crauford (EPA Board Representative)

Ms Sheena Tepania (Board Member)

Hearing Proceedings

Day 02 Wednesday 5 September 2018

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[9.00 am]

- MR HILL: Mōrena, everybody. Welcome back to the hearing, second day. We'll reconvene this hearing. Just before we get under way, just a couple of matters that have come up. We got copies of the Minister's letter that was referred to yesterday and we were a bit surprised when we first read it and thought that we had the power to make the decision on the second application, but clearly, looking at it, it talks about -- have you seen that letter?
- MR WINCHESTER: No, sir.
- MR HILL: We can make that available. Ms Cheung clearly wrote to the Minister and talked about section 44 and the Minister responded talking about section 44, understanding it was one application, but then talked about -- I think the wording is something like, "The current marine consent application, whether it's heard in public, will be determined by the Decision-making Committee". When you read it, on its face it appeared to be this DMC but clearly, when we look back, it's referring, we think, to the application that you must have lodged.
- DR CRAUFORD: It says non-notified.
- MR HILL: It says non-notified, so we're assuming it clearly will be that DMC who decides how it's handled. So, we thought we should just clarify that at the beginning. We don't believe and we do not have the power to make a decision on whether that -- we have no control over that application at all, as you would know.
- Commissioner Tepania would like to make some comments.
- MS TEPANIA: I just wanted to correct yesterday in relation to my questioning of Mr Park. I looked again and the "Taiao, Taiora" Taranaki Iwi Management Plan is, Mr Park was perfectly correct, 17 July 2018. It's the Ngati Ruanui that's 2012, so I apologise for my confusion. I just wanted to clarify that for Mr Park.
- MR WINCHESTER: No, that's entirely understood and the whole point of the question, so that's fine. Thank you. That is my understanding, Mr Chair, about the reference to the current application would be the exploratory drilling application, which is separate and distinct and, as you say, it has been lodged. In terms of timing, there is some logic to it even though it wasn't entirely clear.
- MR HILL: Yes. As Dr Crauford pointed out, it does talk about the non-notified application. Of course, this one is not a non-notified application.
- MR WINCHESTER: Yes.

MR HILL: Just before we get under way, Mr Winchester, is there anything that you need to say before we get under way again, anything come up?

5 MR WINCHESTER: No, sir, thank you.

MR HILL: So we're going to move straight on to Frack Free Kapiti. I know Ms Kahui is coming in on Skype, so we just need to bring her in if we can. We can see ourselves, and she'll come up in a minute?

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MS HEWETT: Yes.

MR HILL: Oh, good. Ms Kahui, can you hear me?

15 MS KAHUI: Yes, I can. Good morning.

MR HILL: Oh, good. You're slightly out of sync. We can see your face and your voice is coming in slightly later, so hopefully it'll work well. Welcome to the hearing. Just so that you know, as you'll probably be aware, this is the second day of the hearing. We've heard from the applicant and we've heard from some of the submitters, including Climate Justice Taranaki. We're now going to hear from you. Can you see the three of us on the panel?

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25 MS KAHUI: Yes, I can.

MR HILL: So, to my right is Dr Nicki Crauford and to my left is Ms Sheena Tepania, and my name is Greg Hill, chairing the hearing.

30 So, I'll just hand over to you to speak to us. We've read your submission.

MS KAHUI: Right. Okay, thank you for that. I've made a few notes here, so I thought I'd just make a few comments and then I'd be very happy to answer questions.

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MR HILL: Thank you.

MS KAHUI: You know that I am representing Frack Free Kapiti. We are affected by the activities of OMV, so much so that OMV have had three spills out of the Maari field at least since 2009. Two of those times oil has arrived on Kapiti beaches, so we are very affected by their activities.

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MR HILL: In relation to this application, well, in relation to the EPA, we hold out hope but, frankly, our experience to date shows that the EPA seems to be unable or unwilling to regulate and to monitor the oil industry. What we're hoping is that you'll show us that this is not the case and that the

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Environmental Protection Authority does have the authority to protect our environment.

[9.05 am]

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The reason that I'm submitting from Frack Free Kapiti is that we want the record to show that in 2018 we, the people of New Zealand, were fully aware of the effects that the oil and gas industry is having on our local environment and on the global environment as a whole. We want the future generations to be able to look back through the records and see that we were here, that we do know, we're fully aware that it's time that fossil fuels stopped being mined and that we transition to sustainable energy. We're aware that we need to do that because future generations have the right to a clean environment and to a liveable climate. We want them to know in 2050 that we're here discussing this. We're fully aware of their needs and we are attempting to protect the environment and the climate so that they have what they're entitled to, which is actually to live in a clean and liveable climate. So, that's the reason that we're submitting.

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Obviously, we would like you to decline this application. I did read through the marine discharge application and I, as a layperson, found it seriously lacking. I think the kindest thing that could be said is that it's premature. OMV is applying to discharge unknown harmful substances. They're applying to discharge unknown amounts of harmful substances and they're applying to discharge these unknown harmful substances out of drains of an unknown vessel or structure. They're applying to do this at any time over the next six years and they're applying to do this anywhere in one or 12 locations.

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I've visited Austria. As we all know, OMV is an Austrian company or corporation. I have visited Austria. They are very organised. They're a very regulated society and country, and I think that if OMV even attempted to offer an application such as this in Austria, it wouldn't be worth the paper that it is written on and it would not be considered at all.

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So, I think they're pushing. I think they're pushing the boat here, but they're a corporation. They have no responsibility to New Zealand. They have no responsibility in relation to our environment or our climate. They're a corporation. The only responsibility they have is to create a profit for their shareholders. We all know that, so I don't have any expectation that OMV will do anything other than what they need to do in order to create a profit because that's the nature of the beast. However, I do have a great expectation of the Environmental Protection Authority and you people sitting there have a great responsibility not only to our society today but to all the generations who are going to come after us.

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MR HILL: Ms Kahui, can I just stop you for a minute? Are we able to get the sound better or is it coming from her? You're breaking up a little bit and it's getting harder to understand. I'm just checking whether it's technology from our end or your end. I'll come back to you in just a second.

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[9.10 am]

10 MS HEWETT: We'll just try and revert to audio only, so without seeing her, and see if that makes a difference with the sound quality.

MR HILL: Okay, we'll try it. Ms Kahui, can you hear me?

15 MS KAHUI: Oh, no, it's the same. Sorry, I just tried the earphones but it's the same. There is a noise. I can hear interference. Can you hear me now?

MR HILL: What's happening is (1) it's starting to break up but (2) there's quite a delay between you speaking and then it coming through the sound system. So what we think we're going to do is just put you on audio, so we won't be able to see you, and we'll see if that works. So, can we try that? Thank you.

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MS KAHUI: Right.

25 MR HILL: So, can you still hear me?

MS TEPANIA: No, you hung up.

30 MS HEWETT: You have to call her back.

MR HILL: Oh, call her back, sorry.

MS TEPANIA: Who hung up? It's end video, not end the call.

35 MS KAHUI: Hello, are you there?

MR HILL: Hello, can you hear us now?

40 MS KAHUI: Yes, I can hear you.

MR HILL: It sounds much better. Do you just want to continue with your presentation?

45 MS KAHUI: Absolutely.

MR HILL: Thank you.

MS KAHUI:

5 Absolutely, I will indeed. In relation to OMV's application, one thing I also noticed is that in their impact assessment whilst they seem to know very little about anything at all in the application, the impact assessment is quite different in that they seem to be putting forward a very strong argument that any and all of their activities will be negligible on our environment. Further down, I saw that they were offering at some time later to provide the EPA with details of the harmful substances, the amounts of the harmful substances and they've left the vessel that they were going to come from. Whereas in fact, I'm pretty sure that these details need to be provided in order for the EPA to consider their application and make a ruling.

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15 Also, I think it's a little bit the tail wagging the dog there. OMV are asking for rather a lot. They're asking for your panel to make a decision with absolutely no information about what you're making a decision on. Also, in their impact assessment they talk a lot about trace amounts. Trace amounts, trace amounts, trace amounts, which sounds really negligible in a huge ocean but I think in the application form, in section 2, the boxes that they've ticked there relate to far more than just trace amounts. So I just want to flag that point.

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25 But again they're a corporation, they have no responsibility to us or to our environment, so of course they're going to put all their weight behind the fact that what they're doing is negligible in our environment. I don't consider that to be the case.

30 For instance, just this last summer gone, my sister was swimming with her grandchildren in Peka Peka, which is on the coast here, just north of Kapiti, and people came along who were testing the waters and they said to her those children should not be swimming in the water. That the harmful substances in this coastal water today is so high that there should be no swimming here. It was really shocking, absolutely shocking for us, to imagine how much harmful substances is in the seawater. It's a huge stretch of coast with the water crashing on to the coast. We were shocked that there would be so much harmful substance in that water that our children are in danger swimming.

[9.15 am]

40 So even though OMV are suggesting, and I do not think it's correct, but even in the suggestion that they are only discharging trace amounts, all of these trace amounts have a really big effect on our environment.

45 Again, I think that's pretty much all I want to draw your attention to, except for just to say that in this day and age we all -- I do understand, sometimes people say the Environmental Protection Authority, their hands are tied by the legislation. But I think we actually have to move past that in this day and age, and we all, as individuals, have to stand

up and speak out for the environment and for the generations that are coming. Thank you for your consideration. I'm happy to answer any questions.

5 MR HILL: Thank you. I'll check with the others if there are questions. Ms Tepania, do you have a question?

10 MS TEPANIA: No. Ms Kahui, it's Commissioner Tepania here, I just want to thank you for your evidence and for the way that you've expressed yourself. The issues you raise are certainly not new to the panel. We heard yesterday from Climate Justice Taranaki, and they raised very similar concerns regarding future generations and the health of our environment for all of us. So thank you very much for adding your korero to that and the way that you've expressed yourself. I'm really grateful for your evidence this morning.

15 MS KAHUI: Thank you very much.

20 MR HILL: Ms Kahui, just really a question. You have clearly read the impact assessment and you've clearly pointed out that the two areas of uncertainty that we've got; one is it's not clear what the mobile floating unit or semisubmersible unit is and we don't know what the harmful substance is. We've heard from the applicant to say the way that the mobile unit operates or essentially contain any harmful substances and anything that is released, and you use the word, will have a minimal effect because of the small amount and because it is a trace amount, and because it's diluted by the sea, from what you have said you don't accept that. Is that correct?

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30 MS KAHUI: That's right. I absolutely do not accept that, and I would be shocked and surprised if the Environmental Protection Authority accepted that or any evidence -- it's actually not evidence, it's opinion, that is given from OMV. They have no responsibility to us or to our environment so if you awarded a consent on the weight of OMV's evidence alone without having an independent impact assessment done I think that would be -- I'm sorry, I can't think of the word.

35 MR HILL: I understand what you're saying.

40 MS KAHUI: You would be acting very irresponsibly toward our environment and our people and our future generations.

45 MR HILL: Understood. Thank you very much for your evidence and your submission.

MS KAHUI: Thank you very much for your time. I really hope that you come to a positive conclusion.

MR HILL: Thank you very much. Thank you for that. The next witness is Mr Urs Signer. Come up into the hot seat. Good morning. Mōrena. I'll just hand over to you.

5 MR SIGNER: (Māori content)

[9.20 am]

10 I'll just start with acknowledging Te Reo Māori. It's not Māori language week yet, I think it's next week. But it's Māori language month called Mahuru Māori.

MR HILL: Every week we think now.

15 MR SIGNER: Indeed, but we've got to start somewhere. It's Mahuru Māori, the Māori September where we try to speak as much Te Reo Māori as we can in our families and in our community.

20 I started with a reference in one of the waiata that I've learnt in the last few years by living in Taranaki. (Māori content) which is a reference to the wind, the strong winds here in Taranaki, and you might have felt it this morning as you got out of bed. We certainly felt it down the coast. So the strength of the wind and the wind is often a symbol in Taranaki waiata for invasion or for struggle, so the wind can be a metaphor for the Crown actions, for example. So a reference in that statement from Waitara to the Pāhua, so Waitara, 17 March 1860, when the first shots were fired to the Pāhua, the destruction of Parihaka in November 1881. So it's a reference to the strength of the wind and the strength of colonial forces that bring misery to indigenous communities here.

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35 So it's within that context as a father of two Māori children that I start this presentation, and I sing a waiata to finish off that first section, the Mihi, and it goes like this.

(Māori content)

40 This is my daughter's favourite song, she's three years old. She's a Te Reo Māori speaker, it's her first language, and it's a reference to tuna, to eels; to wheke, octopus; to pipi; mussels and kutai; to ika, to fish; to kōura, to crayfish; and all the taonga, all the treasures of the sea. It's a song that our kids learn at their Kōhanga Reo here in New Plymouth to strengthen their understanding of kaitiaki taonga and what it means to look after the environment and what it means to live within your means. So that's my waiata.

45 I now talk to the application by OMV, who used to be called ÖMV but I think they dropped their umlaut in 1995 because they wanted to be a

5 global player. They were originally a state-owned company but have been partially privatised since 1987. The state of Austria now has still a 31.5 stake in the company, I believe. They're involved in numerous countries around the world although most of the Upstream activities is in Europe but they've also been involved in Pakistan. I think my colleague, Catherine Cheung, referred to activities of OMV in Pakistan.

10 They've got stakes in plastic production and I want to make reference to their activities in South Sudan as well, where OMV bought a stake in a block called Block 5A in South Sudan in February 1997 together with a Swedish outfit called Lundin Oil and Petronas from Malaysia. After OMV got a stake in that block it is my understanding that thousands of people were killed and displaced in the area due to the civil war and it's my understanding too, that there's numerous reports and evidence, for example, evidence by the European --

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MR HILL: Mr Signer, I think I need to come in at this point. Only the things that I understand what you're trying to say to us, you're trying to imply that OMV might not be a great corporate citizen, but I suppose for us, we're having to consider this application within the jurisdiction of New Zealand law. We've heard evidence and you may or may not agree with it, about the operating procedures and the health and safety provisions. It actually won't be helpful to us in any decision-making around those sorts of statements. What I think what would be really good is to focus on what you see are the potential effects of this proposal within New Zealand jurisdiction.

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MR SIGNER: Sure. It's your hearing, Chair, you get to decide, but I think the impacts of a cowboy player like OMV operating in these waters here, and their track record in other countries that led to the displacement and killing of numerous people is of relevance to myself, as someone who lives and works in this community. I make that point in that context.

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MR HILL: I accept that and I think that's it. You've made the point so I think we should move on, thank you.

[9.25 am]

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MR SIGNER: Sure. The next points are the behaviour in terms of their track record in Aotearoa so far. I want to emphasise the reference by my colleague Catherine Cheung yesterday and also by Jean Kahui this morning in relation to those spills and cracks. It was CJT in 2016, I believe, who opened that can of worms and asked for investigations and nothing has happened and now we're sitting here with another application by the same company, which is of course distressing to us.

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45 I also want to point out that the process itself for this hearing is extremely frustrating for those of who are involved in these kinds of

5 hearings. I myself have participated, I believe, in all public hearings that the EPA has decided on, from the TTR 1 and 2, to the Chatham Phosphate, to AWE and STOS and whatever else we've had so far, and the upcoming Tamarind application. The fact that OMV launched another application on 31 July, that we believe should be part of this hearing and it's not is extremely frustrating for those of us who care about the coast and those of us who care about the environment and climate change.

10 We talk about streamlining, and our idea of streamlining is that the issues that relate to each other are talked about at the same time and made decision upon by the same table. Now we have another application that -- this is this application. It's that other application that we want to talk about. We don't know to talk about -- I think the reference was it's a cup of toxins, or something. Of course we want to talk about a cup of toxins too, because it's not negligible, it's terrible. But we want to talk about the other application. We urge you to make the decision that you can to take that into account and open it up to public consultation.

20 MR HILL: Just so you know, that was quite a topic of conversation we had with Climate Justice Taranaki. They raised exactly the same issues about their frustration with the way that this process has been done. We understand it's lawful, but understand your concern that you would like all of these done together.

25 MR SIGNER: Yes, it may be lawful. A lot of things have been lawful over the course of history that have been proven to be terrible. It's about what is right. It's not about what's lawful, it's what's right, and that's not right.

30 MR HILL: Yes, I understand.

35 MR SIGNER: I want to talk briefly about cumulative effects. By cumulative effects I mean the effects of all and everyone on the ocean. In Taranaki we deal with the cumulative effects of intensive dairy farms, the intensification of dairy farming, the discharge of urea, which is obviously linked to the fossil fuel industry as well, into waterways, the discharge of poo into the waterways, the discharge of human poo into the waterways at the Waitara Outfall, etc. It's cumulative effects coming from the land and being discharged into the ocean as our dumping ground. I myself work in Zero Waste. We have leaching and discharges from about 80-plus landfills across Taranaki. It's those discharges.

40 We've got the impact of the fishing industry on the ocean; we've got the impact of transport through container ships coming and going from this port. Of course, we've got the impact of the drilling industry, both onshore that discharge into rivers, and offshore with the numerous

5 platforms that you'd be familiar with. So when we talk about cumulative effects on the ocean, that's what we're talking about. Those are the effects that need to be taken into consideration. It's not about a cup of toxins, it's about the fact that we've got a dozen or so companies involved in this kind of activity.

10 We call it salami tactics in Swiss German, the kind of slice-by-slice approach and you never look at the whole salami. I don't know what the English term is for that, but let's call it salami tactics for the purpose of this hearing.

15 As someone who cares deeply about the environment, this is of great concern. Of course, we've got the elephant sitting at the back there and it's called climate change. I know you guys are not even allowed to think about it, but how can we not think and talk and decide upon climate change when it's the biggest task that we have upon us?

20 The biggest issue for our generation is climate change. I know you're going to stop me in a second and tell me I can't talk about it, but I don't care any more. I actually don't care any more. When we have so much carbon in the atmosphere, when we're burning fuel as if climate change was a conspiracy theory, according to Trump, etc, it's absurd. It's actually absurd.

25 Companies like OMV and others keep us addicted to this crap. These guys run 2,000 petrol stations in Europe, I believe, or something like that, according to Wikipedia. That is the reality. Every dollar that goes into this industry is a dollar that could be going somewhere else to do positive change in communities. Meanwhile we keep ourselves
30 addicted and digging our own grave. For what?

[9.30 am]

35 It's like in dairy farming we talk about triple bottom-line farming where we take the economic, the environmental and social impacts of an activity into account. With dairy farming it's clear that all three, with the intensive dairying, are destroying us. Farmers are covered in poo all day killing themselves because life is shit when you're covered in shit all day. Rivers being polluted and the climate going to custard, and
40 that's the same with these guys.

45 I'm not going to be silent, we're not going to be silent any more. This is a crime scene in terms of climate change. That's how we feel about this hearing. It's the frontline of climate change and we've got to act and we've got to speak up. We've got to speak truth to power. It makes me grumpy.

5 Anyway, I finish with a couple of message that I crowdsourced on Facebook this morning from a few friends. Marnie says, "Haere rā, good-bye". Chris says, "The EPA is not equipped to monitor any conditions it places on OMV". My mate Robin says, "The families of the company, and every human and animal life need OMV to stop drilling now. We all live on the same finite planet". My friend Sha says, "Won't someone think of the dolphins".

10 Finally, I want to talk about a message from Emily Bailey, who's also a member of CJT and my partner. She wants me to reference to the use of the word toutouwai on one of the sites. I believe toutouwai is the robin, the threatened native robin of Aotearoa. Emily's message to you is that it's totally inappropriate for a beautiful manu like a toutouwai to be associated with a dirty activity like this. Herself as tangata whenua and as an ecologist is making that statement and wanted me to carry this to this meeting that that name not be used.

20 It's like other companies who use Parihaka, for example. There was a permit called Parihaka, I kid you not, until about five or six years ago. There was a permit called Tohu, named after Tohu Kākahi, one of the leaders of Parihaka. It wasn't until Parihaka sent statements of opposition to drilling that that was changed. It's the same with this. A drilling operation should not be named after a native, endangered manu.

25 That's what I have to say. I'm opposed to this activity and I will be forever and a day, in support of our kids' future, a future that I don't see fossil fuel, a future that we have peace and freedom and justice in our communities, where we're not reliant on the dirty mahi of these companies.

Kia ora, tātou. Nei rā te mea nui ki a tātou, tēnā koutou.

35 MR HILL: Kia ora. Do you have questions? No.

MS TEPANIA: Tēnā koe, Mr Signer, mō tōu kōrero mai i te ata nei, tautoko ana te ngākau pono mai tōu kōrero. Nō reira, tēnā koe. Tēnā koutou hoki ki tōu whānau, ki ōu tamariki hoki.

40 I have a question for you in terms of the stakeholder engagement that's occurred. Have you been at any of the hui and the engagement meetings, etc, that OMV have held regarding this application?

45 MR SIGNER: I haven't. I just want to make it clear I'm not from the iwi, I'm not tangata whenua. My kids are but I'm not, so it's not for me to be involved in those processes. I don't know if they took place or not. I don't know.

MS TEPANIA: I think that answers that and that's where I was going. Kia ora.

MR HILL: Kia ora. Thank you very much for your submission.

5 Those are all the submissions of the submitters -- that's the letter, tabling the letter. Thank you very much. This is a copy of a letter from the Minister in relation to the matter we raised earlier.

10 Dr Lieffering, are you ready to go? Thank you. I think you have a summary statement, which we haven't got yet, but I think it's coming.'

[9.35 am]

15 DR LIEFFERING: By way of introduction, I'm the author of the uncertainty report and the conditions report on behalf of the EPA. I don't work for the EPA, I work for a company called Stantec, which was previously known as MWH but we've been bought out by Stantec, a Canadian company, so we're Stantec New Zealand now.

20 Both my reports are written in the style of statements of evidence. The statement that's being circulated now is a summary which summarises the key points of both reports. I apologise for the issues with formatting. Last night I added to this statement in light of material that was discussed yesterday, so I've added a section towards the end of this
25 statement, which provides some comments on conditions and other matters. I just confirm the code of conduct as well. I've done that in both the reports and in the statement. With your leave, if I could start at paragraph 8.

30 MR HILL: The scope of the evidence is clear. Why don't we go to 9?

DR LIEFFERING: The uncertainty report summary. OMV has applied for a marine discharge consent to discharge trace amounts of harmful substances as
35 offshore processing drainage from the deck drains of one or more mobile offshore drilling units, or MODUs.

40 The MODU will be used by OMV as part of its exploration and appraisal drilling, or EAD programme, which involves drilling up to nine exploration wells and three appraisal wells within six of the permit areas that OMV holds an interest in offshore Taranaki.

45 The discharges of harmful substances that are the subject of this application are not intended discharges. Rather they're discharges of trace or residual amounts of harmful substances that may be entrained within discharges from deck drains, from occasional drips, and other minor spills to deck, even after the clean-up of any spills of such substances.

Harmful substances are stored and used on the MODU during the EAD programme and the selection of which substances will be used is driven by operational requirements of the MODU, the design of the well to be drilled, and the geology of the formation being drilled. Because not all of these are currently known, the application has not specified exactly which harmful substances may be discharged via the deck drainage system.

Further, because the MODU has not yet been contracted, the exact details of the deck drainage system, including its treatment system layout and ability, is not currently known. These two uncertainties have the potential to influence the impacts of the discharges for which a marine discharge consent is sought by OMV. In my opinion, of these two uncertainties it is not knowing the exact harmful substances which poses the greatest environmental uncertainty.

All activities have some level of uncertainty associated with them. Dealing with uncertainty is common place under the Resource Management Act, the RMA, and how uncertainty is dealt with under that Act can, for the most part, be applied to similar considerations under the EEZ Act. In my uncertainty report I set out a recommended approach for the DMC to follow to deal with the uncertainties in the OMV application, summarised as follows. Do you want me to read those out?

MR HILL: No, because they were in your report so I think we can take those as read.

DR LIEFFERING: Thank you. Paragraph 13. I consider that the uncertainty associated with not knowing the exact details of the deck drainage system is not critical as OMV has proffered a condition, condition 7, which outlines minimum requirements which are, in my opinion, appropriate and reflect the typical system on most MODUs and on which the IA is based. I consider proffered condition 7, with minor modification, is sufficient and appropriate to deal with the uncertainty of not knowing the details of the deck drainage system.

In my uncertainty report I provide an analysis of the uncertainty of not knowing which harmful substances may be used and stored on the MODU, using my recommended approach described in paragraph 12 above. My assessment includes a summary of how OMV has assessed the risks associated with a worst-case scenario discharge. In addition, I provide information on the risks associated with a previous application processed by the EPA to deliberately discharge similar harmful substances at the Maari field.

The risks associated with the Maari application were deemed to be negligible even though the volume of that discharge and the

concentration of the harmful substance being orders of magnitude greater than that predicted to be discharged as part of OMV's current application.

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[9.40 am]

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Based on both the information contained in OMV's IA and the information provided to me by EPA staff, for the Maari application I conclude 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 will be limited both spatially and in time.

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I also conclude that the risks associated with the current application are de minimis or trivial at and beyond the zone of reasonable mixing, referred to by OMV as the zone of influence. I conclude that the potential adverse effects of the discharges sought by the current application are not irreversible or significant and, as such, for this application I do not consider that the DMC needs to favour caution and environmental protection, as directed by section 61(2) of the EEZ Act.

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In terms of the conditions report, the summary is as follows. In my conditions report I outlined that conditions that may be imposed in marine consents under section 63 of the EEZ Act and the scope of what conditions can be imposed is very broad. However, section 63(2)(b) of the EEZ Act precludes conditions that together amount or contribute to an adaptive management approach being imposed on marine discharge consents. Such an approach is not proposed by OMV, so this section is not relevant in this case.

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In my conditions report, I provide best practice guidance and principles regarding drafting of conditions, these being based on extensive case law established under the RMA and are equally applicable to conditions imposed on marine consents under the EEZ Act. The DMC will be familiar with these and I do not repeat them here.

40

Submissions. A total of 44 submissions were received during the notification period. Of these, four include reference to conditions including some which request specific conditions be imposed should the marine discharge consent be granted.

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A submission from K Hunt seeks that the consent be granted with conditions. However there is no specific discussion provided in the submission on what conditions the submitter considers should be imposed.

Te Ohu Kaimoana Trustee Limited requests -- and this is a repeat of what was in my report so if you want me to read that I can, otherwise --

5 MR HILL: No, I think we'll go, because, like you said, that's what's been covered and you've got your response in there.

10 DR LIEFFERING: Paragraph 22. Te Korowai o Ngaruahine Trust requests that OMV provide full disclosure of hazardous or harmful substances that will be used along with an assessment of the effects. OMV has explained why it cannot, at this stage, specify which harmful substances will be stored and used; that is the selection of these is driven by operational requirements of the MODU that design the well to be drilled and the geology of the formation to be drilled.

15 The ESRP, which is the emergency spill response plan, that is required to be submitted and approved by the EPA under regulation 24 of the Discharge and Dumping Regulations, must, amongst other things, include a list of the harmful substances stored on the offshore installation and the maximum volumes of the substances likely to be stored.

25 Te Korowai o Ngaruahine Trust also requests a number of conditions requiring OMV to develop engagement, fund marine mammal and fish population surveys, develop five-year post activity monitoring programmes, invest in environmental actions within Taranaki, commit to ensuring all senior management and staff undertake cultural training. Based on the very minor scale of the activity and the negligible potential effects of the activities that this marine discharge consent relate, I do not consider that the conditions should be imposed to address the matters outlined in paragraph 23(a) to (e).

30 Te Runanga o Ngati Ruanui requests a number of conditions, including that a zero discharge MODU be used, and also a number of conditions which relate to imposing restrictions which reflect assumptions, details, examples, and calculations provided by OMV and its IA.

40 I rely on the evidence of Mr Hollinger for OMV regarding the matter for zero discharge MODUs and whether they are more stable than conventional MODUs.

45 It is my opinion that it is not appropriate to impose specific conditions that restrict OMV to the assumptions, details, examples and calculations presented in its IA. The IA is based on an example MODU, being the largest MODU that responded to the OMV invitation to tender in 2017, and a selection of harmful substances it has used in previous drilling campaigns.

[9.45 am]

5 However the actual MODU that will be used and the exact substances that will be used are not currently known so it's not appropriate or necessary, in my view, to impose conditions which reflect this part of the IA, given the very minor scale of the activity and negligible potential adverse effects.

10 OMV proffered conditions. OMV has proffered a set of conditions included as appendix A of the IA, and in my conditions report I provide an analysis of these. I consider that many of the conditions are appropriate, albeit with minor modifications to reflect EPA preferred drafting. However, I recommend that some of the proffered conditions be deleted, additional or new conditions be imposed, and two advice notes included.

15 I discuss my more significant recommended changes in the following paragraphs. I do not discuss the minor typographical changes, those changes that do not change the intent of OMV's proffered conditions or new conditions, which relate to minor matters. All the changes are shown in table 8-1 of my conditions report. Note that where I consider additional conditions should be included I've inserted them where I think they best fit within OMV's numbering and have given them new condition suffixes, such as 2A, rather than attempting to renumber the entire set of conditions.

25 New condition 6A. I recommend a new condition 6A be included, which requires OMV to 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.

30 MR HILL: Can I just stop you there? This is what you recommended in your report and of course you go to day one of the hearing and talk about the amendments.

35 DR LIEFFERING: Yes, I do.

40 MR HILL: Is it better just to go to that because we've got your report. I understand it. OMV have, in large, accepted what you have said with some modifications. So what I would be most interested in is what your comments are on the modifications.

DR LIEFFERING: Happy to do that. So I'll go to paragraph 35.

45 MR HILL: Thank you.

DR LIEFFERING: In its opening legal submissions OMV provided the DMC with comments regarding the amendments that I have suggested to its

proffered conditions. Those comments are set out in appendix A to the opening legal submissions.

5 Appendix A repeats table A-1 from my conditions report and includes an extra column with OMV's comments. As stated in paragraph 49 of the opening legal submissions, OMV largely accepts my suggested amendments and acknowledges that in places they're an improvement over the proffered set contained in its IA. However, OMV disagrees with some of my suggested amendments, and I discuss those matters in the following paragraphs.

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15 OMV accepts my suggested condition 2A regarding lapsing period but requests that the fixed day be changed to 31 December 2024 instead of my 2023. I agree with this amended date for the reasons stated by OMV.

20 OMV considers that my new condition 5A, which would require OMV to provide the EPA with advanced notice of commencing the activities authorised by the marine discharge consent is unnecessary and that it is better suited for the substantial exploration activities. I agree and consider that condition 5A can be deleted.

25 However, the basis for me recommending this condition was because OMV has made a conscious and deliberate decision to apply separately for the various marine consents and marine discharge consents that it needs for its EAD programme and my new condition 5A was included on that basis. That is this marine discharge consent is being assessed independently of the other consents and it would be normal and appropriate to include an advance notice type condition on a standalone consent that is issued separately from the other authorisations.

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35 OMV disagrees with my suggested amendments to condition 7. I agree with OMV's reasons that new clause (a) and my proposed opening words are not needed and these can be deleted with the text reverting back to the original OMV-proffered text, subject to some changes discussed below.

40 In respect of clause (d) of condition 7, OMV correctly notes that this application is not for the discharge of oil and as such it considers that measuring the oil in water prior to its discharge is not relevant to the proposed activity. The statement seems at odds with OMV's proffered condition on which my suggested changes are based. That is OMV's original proffered condition required a mechanism for analysing oil in water content prior to discharge from the oil and water separator system. My suggested amendment sought to require such analysis to be made on a continuous basis and to define what continuous means, the definition being based on discussions with EPA staff. OMV has

revised its proffered condition 7 and I agree with it but make the following suggested changes to it.

[9.50 am]

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I can go through those if you wish, but they don't really change the intent.

MR HILL:

That's fine, I think we can read this.

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DR LIEFFERING:

Paragraph 41, I just noted a minor error in my amendments to condition 11. It should read "the Ministry for Primary Industries", not "Ministry of Primary Industries".

15

OMV considers that my suggested new condition 11(a) is unnecessary for the proposed activity. I have suggested this condition as it is commonly imposed not only on marine consents but also consents under the RMA. However, having reconsidered this condition further, I agree with OMV that it is not required in this case and can be deleted.

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In respect of OMV's proffered condition 12, which relates to the ability for the EPA to review the conditions and duration of the consent, OMV incorrectly suggests that I consider it should be imposed as a condition of consent with amendment. That is not the case. My underlined text in table A1 makes it very clear that my position is that such a condition is not needed to be imposed and I explain the reasons for that in paragraph 31 above.

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OMV considers no condition or reference in the consent to the EPA's ability to review the duration of consent or its conditions is needed as it duplicates section 76 of the EEZ Act and that the EPA may initiate a review of the duration of the consent or any conditions at any time to deal with any adverse effect on the environment.

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Section 76 of the EEZ Act outlines the circumstances whereby the EPA may review the duration or conditions of consent. I note that reviews under subsections 1(b) to 1(e) can be initiated whenever the circumstances stated in those clauses arise. However, reviews under subsection 1(a) can only be instigated at any time or times specified for that purpose in the consent. While this wording can be interpreted, as OMV has done, as providing the EPA with an open-ended opportunity to review the conditions, the wording is identical to section 128 of the RMA. Case law under that statute confirms that such reviews cannot be open ended.

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I just have a footnote there. Essentially, if it were to be interpreted as being open ended, the word "anytime" as one word would have been used. The consent must specify the time or times that such reviews can

be instigated. The consent holder must have certainty of when a review might occur. That is why I recommended the wording in table A1 and I remain of the view that it needs to be included in the consent but not as a condition.

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I agree with OMV's suggested amendments to my recommended advice note 2.

10

So, I've taken the liberty of addressing a question that the Chair posed yesterday on the relevance of the NZCPS and the following paragraphs cover that.

MR HILL: Thank you.

15 DR LIEFFERING: I've pre-empted possibly the same question being posed to me, so would you like me to read those?

MR HILL: Yes, please.

20 DR LIEFFERING: Yesterday the Chair of the DMC asked a question of OMV whether the New Zealand Coastal Policy Statement or the NZCPS is of relevance in this case as a marine management regime. The Chair made reference to the recent High Court decision on the Trans-Tasman Resources, or TTRL, appeals. I was involved with the TTRL hearing but not the High Court appeals.

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30 Consideration of the NZCPS falls under section 59(2)(h) of the EEZ Act, which obliges the DMC in addressing the effects on the environment to take into account the nature and effect of marine management regimes, or MMRs. In the case of TTRL's application, it was located immediately adjacent to or seaward of the coastal marine area boundary, but the potential adverse effects included the CMA so the question of the applicability of the NZCPS and how much weight should be given to its provisions as well as section 107 RMA matters was traversed a number of times during the hearing.

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In the TTRL High Court decision, Justice Churchman concluded at paragraph 160:

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[9.55 am]

45 "For the purposes of section 59(2)(h) of the EEZ Act, my conclusion is that the obligation to take into account the nature and effect of other marine management regimes was not an obligation to implement or give effect to those regimes but to pay attention to those regimes and to weigh the nature and effect of them in addressing any effect on the environment or existing interests of allowing the activities for which consent was sought."

You may not know the TTRL decision was a split decision. There was a majority and a minority decision issued. So, in paragraph 50 I've just stated:

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"There was a difference in the weighting that the majority and minority decision gave to both the NZCPS and the RMA, but the High Court decision confirmed that because the majority decision clearly considered, and to that extent took into account, both the RMA and NZCPS, it could not be said that they made an error of law."

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We have to remember that a High Court appeal is only on matters of law.

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In my opinion, the NZCPS is a relevant MMR that the DMC must take into account under section 59(2)(h) of the EEZ and, in particular, the relevant policies of the NZCPS in my view are policy 11, which seeks to protect indigenous biological diversity, in particular avoiding effects on threatened or at risk taxa, and policy 23(1), which is in relation to managing discharges to water, to have particular regard to certain matters, including sensitivity of receiving environment, nature of contaminants, avoiding significant adverse effects on ecosystems and habitats.

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However, in my opinion the weighting to be given to the provisions of the NZCPS and the RMA for that matter - and when I refer to the RMA that includes the relevant coastal plan and the provisions contained in that - 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.

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For OMV's current application, the discharges of trace amounts of harmful substances will occur a large distance from the CMA boundary - and I scaled off figure 1 of OMV's IA that well "I", I think, is the closest to that boundary and it's more than 15 kilometres away from the CMA boundary - and the adverse effects within the CMA will be undetectable. For these reasons, I consider that very little weight, if any, should be given to the NZCPS provisions in this case.

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MR HILL:

Dr Lieffering, thank you for that. There might be some questions, but I might just lead off on the NZCPS. We thank you very much for covering that. Really the reason I asked the question was, as you've pointed out, it is another regime and the High Court did address it. I suppose what I was really looking for is what you've said, and I'm assuming certainly what the applicant or Mr Winchester may cover in closing, is your position is the adverse effects of this are de minimis and it is some way away from the CMA boundary so, therefore, you'd

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need to question, as you have, the extent to which we need to consider the New Zealand Coastal Policy Statement and, in particular, in policy 11, I think, about avoiding adverse effects on biodiversity values, which is a fairly absolute policy.

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DR LIEFFERING: Yes.

MR HILL: So, I understand. Thank you very much. I found that very helpful. Ms Tepania looks like she might not agree. Do you have a question?

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MS TEPANIA: No. I might have a question. It's not really on your evidence because for me when I read your evidence in terms of uncertainty I did wonder. The directive you give to us when you set out the pathway we should follow, I actually really appreciate that and I found that really helpful. You talk about considering potential impacts. There was a question that kept bugging me: how does one determine the value of the environment according to iwi if the cultural values are not necessarily before us from their perspective? You would have heard my questions to Mr Govier yesterday. Did you consider that? Did you have a look at the assessment in terms of the level of certainty and the level of comfort you have regarding the impact on the cultural receptors, for example?

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DR LIEFFERING: Not specifically but given your line of questioning yesterday I guess it comes down to whether or not the EPA consider the IA complete in respect of all the effects that it needed to contain. So, that would probably be a matter of a completeness check test to see what the EPA thought of that or whether or not further information was required on that, but it is a relevant consideration in terms of the effects of this discharge, albeit a very minor discharge and unintended discharge.

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[10.00 am]

MS TEPANIA: I don't want to ask the next question, because that really is a matter for us, so I think I'll leave it at that. Thank you for your clarification.

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DR CRAUFORD: I wanted to ask, I understand from one of your reports that you've recently completed a project for the EPA which involved reviewing the various conditions that had been imposed by a number of different DMCs and marine consents management as well. I wanted to get your opinion as to whether you feel the conditions that we're working on, are they consistent with others proposed by other DMCs and management of the EPA for other consents and, if they differ, why you have chosen that they be different.

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DR LIEFFERING: They do differ. The closest consent to this one is the recent Shell decision, which included exactly this type of discharge as part of a suite of consents, including the marine consents that it required. That was

obviously considered in the round but the conditions for the marine discharge consent in that case are very different to these in respect of controls that that DMC put on the types of chemicals that may be used.

5 The Shell DMC -- I know that decision because I assisted the DMC in writing it. They took the approach that they wanted the least ecotoxic chemicals to be codified in the conditions. They required that the consent holder use what they call CHARM gold, or non-CHARM E substances and, if they wanted to deviate from the use of those, that the consent holder would have to come in for a formal change to the consent. That's quite a difference to this suite of conditions.

10 I obviously was not on that DMC so I didn't give it any technical advice or any advice in the consideration of the drafting of those conditions, but I stick with what I've recommended for this application. I think the risks and what we're talking about are extremely small. You'll be aware that the EEZ Act appears to be a bit of an anomaly in respect of this being a publicly notified activity versus the substantial exploration activities being non-notified marine consents, etc.

15 We're in a bit of a funny situation where this is being considered separately, but I stand by my recommendations that I think the conditions, subject to the changes I've recommended, are appropriate for the level of risk in this case.

20 DR CRAUFORD: I'm not suggesting you should recommend anything different, but it doesn't progress, necessarily, the concept that the EPA was trying to achieve of a library of conditions that were converging, I suppose, or consistent.

25 DR LIEFFERING: The Shell suite of conditions were thrown in the mix as part of the conditions project and we had two, maybe three, workshops with EPA staff to talk about all the various conditions that had been imposed by various DMCs. For this type of activity, they were comfortable with not including in the conditions library the Shell DMC restrictions on chemicals type of conditions.

30 You'll notice that some of the changes I've recommended is I've talked about EPA styling. We tried to standardise the wording and that was part of that project. There was certainly a conscious debate -- we had quite an extensive debate on whether or not there should be, for these types of consents, restriction type of conditions on the chemicals, and the consensus was, given the risks, it was not needed.

35 [10.05 am]

I think you can assume that my recommended conditions, without having those restrictions, reflect EPA staff view as well, including compliance.

5 DR CRAUFORD: Thank you for that. My next question relates to the MMR requirements. You say that you don't recommend the imposition of conditions which are duplicated in other MMR requirements, provided that the DMC is satisfied that the approvals under the other MMR regimes are robust and appropriate. At the end of the day, how do we
10 get the assurance that that is the case?

DR LIEFFERING: You have the ability to request information from those agencies who undertake any approvals under their jurisdiction, to satisfy yourselves that their processes are robust with an environmental lens over it. But
15 from my understanding, EPA staff have reasonable confidence that those other MMR approvals are robust.

DR CRAUFORD: That's all the questions, thank you.

20 MR HILL: I've got one other, and maybe we're getting into semantics, really. This is in paragraph 16 of the summary statement, where you conclude that we don't need to favour caution and environmental protection. Mr Winchester had a similar issue but subtly different, I think. I want
25 to check, because when I read that section, it says:

"In relation to making a decision, if the information available is uncertain or inadequate, you must favour caution."

30 What you're saying is even though we don't know what the mobile unit is and we don't know what the hazardous substances are, notwithstanding that, you're convinced that the adverse effects of that are de minimis. I wonder if that's the way that you see the Act is framed, because what the submitters have all said is it is all incredibly
35 uncertain, we don't know any of these things. Therefore, in favouring environmental protection, they are saying this application should be declined.

40 If we are to favour caution and environmental protection - if we didn't accept what you have said there - what would your position be? That we can work through that level of uncertainty? This is coming back to the black-box view that Mr Winchester covered off and said while we can accept that we don't know these things, we do know what the realm of any effect is. The applicant is saying and you are saying that they're
45 de minimis and it is therefore by implication that caution is already favoured and the environment is protected. How do you interpret that?

DR LIEFFERING: Yes, that's partially correct. It stems back from what I put in my conditions report, where I provided a pathway, or a suggested pathway,

to deal with uncertainty. In this case OMV, for the reasons it set out, has said it cannot provide that detail but, notwithstanding that, they'd done an IA.

5 I say all applications have uncertainty. This one has clear uncertainties, but when you go through that pathway, there's been no evidence to suggest that the effects are of concern, significant or irreversible. Therefore, I don't think it invokes a requirement to favour caution.

10 MR HILL: I understand that, thank you. Mr Winchester, you might want to cover that in your closing. Again, it might not be of significant moment but certainly it's a significant platform in this piece of legislation that I think we'll need to work our way through pretty carefully.

15 Thank you for that, that was very helpful. Anything else for Dr Lieffering? No, thank you. I found both your reports very helpful, thank you. They were excellent.

DR LIEFFERING: Thank you.

20 MR HILL: Mr Winchester, that comes to your reply. I wonder whether we should take a break for morning tea. I know we haven't scheduled any but we're going to take one anyway to give you some time just to -- I don't know whether you want 15 or 20 minutes just to frame up anything. You don't want to? Okay, we'll just keep going, then.

MR WINCHESTER: Unless you're desperate for a coffee or a break, I'm happy to respond and wrap this up. I won't take long.

30 MR HILL: All right.

[10.10 am]

35 MR WINCHESTER: I suppose the first point I want to make is that in terms of the opening submissions on behalf of OMV and the evidence that was produced, none of that is resiled from. It's confirmed. Nothing during the course of the hearing has resulted in any need for material change in terms of that position. That's the starting point.

40 I think it's also appropriate to acknowledge the submitter views and evidence which has been tendered to the DMC in this hearing. The views were entirely genuine and they were incredibly articulately expressed. It was helpful to get that information and I want to acknowledge that. OMV understands the frustration of the submitters about the process. As I indicated in opening submissions, that
45 frustration is, to an extent, shared by OMV.

5 What I would say, notwithstanding my comments acknowledging the submitter evidence, in terms of strict relevance to the issues for you to determine, much of it was, in my submission, not legally relevant. It is obviously part of the context and it's acknowledged that really what people want to get into is the suite of applications for drilling, exploratory drilling, but that is not the application before you. I think a number of the submitters also acknowledged that the information they were giving to you was not strictly relevant to this application.

10 I don't wish to make this next point in a self-serving way, but you asked a question of Dr DeVantier yesterday about whether he accepted the fundamental accuracy of the information you had been given by OMV and its experts. I think his acknowledgement was that he did accept the position was fundamentally correct, with the caveat if all things go well or go appropriately and there are no undue issues. I think that acknowledgement is significant.

20 Picking up on the uncertainty issues that you've asked Dr Lieffering about, I largely adopt the position he has advanced to you. I think there are two ways of looking at section 61(2), and I think they're both correct and they both lead you to the same answer. There's Dr Lieffering's interpretation, which is that section 61(2) is not triggered because of the level of effects. The other way of approaching it is that to the extent there is uncertainty or inadequacy -- this is what section 61(2) says:

25 "The marine consent authority must favour caution and environmental protection."

30 My submission about that is largely in line with what I advanced to you yesterday, which is that there is uncertainty about the specific rig, or MODU or MODUs, that will be employed and there is as yet uncertainty about the specific harmful substances. But because a worst-case approach has been adopted, there is no uncertainty about the effects. That means that the information before you is not uncertain or inadequate, in my submission.

40 Dr Crauford, you asked a question of Dr Lieffering about other marine management regimes and statutory approvals. I think, to the extent that there may be uncertainty or you may have an impression of lingering uncertainty - and I say I'm not accepting that that is the case - you can, in my submission, place some reliance on those statutory approvals and those other statutory processes which involve engagement with highly qualified regulatory agencies, who are experts in those areas, about the detail. The detail will be covered and it will be covered with some degree of certainty and thoroughness. In my submission, you should take some confidence from that.

[10.15 am]

5 I am jumping around a little bit. In fact, I'll come back to those points
around conditions at the end. Probably the next thing I want to cover
is section 44 of the EEZ Act and the interpretation that has been
adopted by the EPA in this instance around joint processing and
decision-making. I do put on the record that the position in terms of
this application is anomalous and that this particular aspect of the
programme that requires a notified application and hearing is of
concern to OMV. It has engaged with the EPA for some time and there
10 is correspondence on the record about how the processes could be
combined or harmonised. Ultimately, it was the EPA's call.

15 In terms of the interpretation of section 44 that has been adopted by the
EPA, they gave a clear and definitive response and interpretation about
how it worked. As a matter of law, that interpretation, in my
submission, is reasonable. The underlying position in terms of how the
Act and the regulations treat the different activities is not reasonable,
but that doesn't make the application of section 44 incorrect in this
instance.

20 In essence, we're bound by the EPA's decision about processing. I
understand it is a consistent position that has been adopted with regard
to other proposals around section 44. It's really not OMV's position to
direct or insist on a different process. It has to live with the call that
the EPA made and it accepts that and accepts that it was open to it in
25 terms of a correct interpretation of section 44. That is probably not that
helpful to you in terms of a definitive answer, but the key point is that
I think the EPA's decision was a reasonable interpretation.

30 MR HILL: I think it's helpful to the extent that what you say and what I've said is
the approach that has been taken is a lawful one. I know others don't
like it and think it should have been dealt with differently. For the
purpose of our decision-making, we accept, I think, that it is a lawful
approach that has been taken and we are here hearing this application
35 on its own.

MR WINCHESTER: Yes. I think in the end that's entirely appropriate. I agree with your
view and I don't have anything to add to that.

40 There are a couple of points that need to be responded to in terms of
issues raised by submitters. It's really just to go on the record. You
heard from Ms Kahui this morning. She said several times that OMV
had no responsibility to New Zealand or the environment. I reject that
assertion. OMV does have a responsibility to New Zealand in terms of
45 its need to comply with the laws of New Zealand, and is doing so. As
part of that, it says it has a responsibility to deal with and properly
address New Zealand's environment. It's not immune from the law, it's
not shying away from anything. You did hear evidence yesterday from

5 Mr Selischi and Mr Park and Mr Hollinger in particular around how seriously OMV takes its environmental responsibilities and about the deeply ingrained nature of its internal code of conduct in terms of the way it does business. Yes, there is history around particular events, but OMV fronts up to that and it has appeared here and given you evidence in good faith.

[10.20 am]

10 Ms Kahui also made a comment or expressed a concern that the EPA shouldn't be making decisions on this particular application without an independent impact assessment. You've had Dr Lieffering's very thorough assessment and, in my submission, that responds to that point.

15 The final matters I want to deal with relate to detail of conditions. If you have the opening submissions available and Dr Lieffering's very helpful summary in response that he produced this morning, the first matter I want to deal with is with regard to condition 11. That's on page 25. I think there was an exchange yesterday between Ms Tepania and
20 was it Mr Govier or Mr Park? It might have been both.

MS TEPANIA: It was Mr Harwood, I think.

25 MR WINCHESTER: Oh, Mr Harwood. Mr Harwood is not a witness, but anyway. In terms of the exchange, I think a useful point was raised around the trigger for monitoring and the purpose of the monitoring. My suggestion there, and it's one that OMV is happy to adopt, is that in the sixth line of the condition, where it says, "Shall liaise with the EPA to determine whether monitoring is likely", I think the words "is necessary and"
30 could be inserted in there usefully.

MR HILL: Just to be clear, delete "likely" and include "necessary"?

35 MR WINCHESTER: No, just include the words, between "monitoring" and "is", "Is necessary and". So it would read:

"Shall liaise with the EPA to determine whether monitoring is necessary and is likely to detect any environmental effects."

40 MS TEPANIA: I think that's consistent with my suggestion and it makes sense and it is a condition precedent -- a decision precedent there, really.

MR WINCHESTER: Indeed, so that's an improvement.

45 The second and final matter I want to go through is with regard to the review condition, condition 12. Whether it's a condition or not probably doesn't matter. Dr Lieffering has made some sound points about that. OMV won't die in the ditch in terms of your choice. It is

content to live with the recommendation that Dr Lieffering has made about specific triggers being included in the consent. I think in terms of his interpretation of how section 76(1) of this Act works, it is absolutely consistent with the RMA.

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Really the issue is in terms of section 76(1)(a). That is where the consent identifies triggers or bases for review. The issue is whether you'd need to include that. The submission I would make about that is that there is probably ample opportunity under section 76(1)(b), (c), (d) and (e) to address any unanticipated issues or effects, but if you want the additional security of an express trigger for review you can include it. I don't think it makes an awful lot of difference. It also doesn't matter from a legal perspective, whether it's expressed as a condition or just a general statement about review. It probably makes more sense if it's a condition because then it's definitely part of the consent and having it expressed in the consent.

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That's the right of reply. I'm happy to answer any questions.

20 MR HILL:

Do you have any follow-up questions for legal counsel?

[10.25 am]

25 MS TEPANIA:

No, I think that's helpful. I think you've addressed some of the matters in my line of questioning yesterday with Mr Govier and Mr Park.

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The obligation of 59 to take into account Māori interests really does rely on the extent of those existing interests, doesn't it, and where they're legally recognised, I guess. So in this case am I correct in that it really is around the extent to which they have recognised Treaty settlements in this space? Whether or not that reaches into the AOI and whether or not its affected by the physical and biological effects basically, which the evidence says is *de minimis*. So I think that's where that leaves us in terms of that. Other than that I'm thinking that the only other legal interest really is around customary fisheries and those matters. Is that correct?

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40 MR WINCHESTER:

Yes, it is. I suppose, if you think about how the process plays out, both the applicant and the EPA are required to address these matters to the best of their knowledge and ability in the application and in a completeness check. This application is then publicly notified and there's the opportunity for those people with existing interests or who think that their existing interests have not been properly identified or acknowledged to participate and provide that additional information. That has not come forward in this process.

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I certainly accept that there may be a doubt in your mind as to whether you have the full picture but that's not something that OMV can fill in.

The expectation, I suppose, and I would say a reasonable expectation from OMV's perspective, is that if there was something missing people would come forward to identify it in the normal course of events.

5 MS TEPANIA: In other words, you're saying we make a decision on the evidence that's before us and this is the evidence before us?

MR WINCHESTER: I do say that, yes.

10 MS TEPANIA: Business as usual.

MR WINCHESTER: Yes.

15 MS TEPANIA: I accept that.

MR HILL: Dr Crauford?

DR CRAUFORD: No, nothing from me, thank you.

20 MR HILL: Nothing from me either. So that concludes your case, so thank you very much to you and your team for legal submissions and your evidence. I see the submitters were here and gone. I was going to thank them too for being here, but I'll say it for the record and for presenting their views. It's always more difficult, I think, for submitters to front up with submissions and evidence, so I really want to acknowledge and thank them too. Thank you to the EPA staff for handling the hearing.

25
30 We're going to adjourn the hearing and consider our position, and then we'll close with our --

MS TEPANIA: Kaumātua.

35 MR HILL: So I'm happy to hand over now.

[10.28 am]

40 MR TE RUKI: Good morning, everyone. I'll try not to keep you waiting. You'll all be wanting to get home.

(Māori content)

CLOSING

45 MR HILL: Thank you very much.

MATTER CLOSED AT 10.44 AM