

OMV marine discharge consent application

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Te Korowai o Ngaruahine Trust (Louise Tester)

Submitter Type: Not specified

Source: Email

Overall Notes:

Clause

Do you intend to have a spokesperson who will act on your behalf (e.g. a lawyer or professional advisor)?

Position

No

Notes

Clause

Do you wish to speak to your submission at the hearing?

Position

No I/we do not wish to speak to my/our submission at the hearing

Notes

Clause

Do you wish to receive regular updates from the EPA about the progress of this application?

Position

Yes I/we wish to receive all communications relating to this application.

Notes

Clause

What decision do you want the Decision-making Committee to make and why? Provide reasons in the box below.

Position

Refuse

Notes

See attachment for full submission.



Environmental Protection Authority
EPA Office, Level 10,
215 Lambton Quay,
Wellington

Via email: OMV.submission@epa.govt.nz

Rāhina, 02 Hōngongoi, 2018

Submission: OMV New Zealand Ltd. – Application for a marine discharge consent: deck drainage (EEZ100017)

Tēnā koe,

1. On behalf of Te Korowai o Ngāruahine Trust (TKONT), we welcome the opportunity to provide a submission to the Environmental Protection Authority (EPA) on the OMV NZ Application for a marine discharge consent in the Taranaki Basin.

Our Interests

2. TKONT has existing interests in the area subject to the Application, however we are unable to determine the extent to which are interests will be affected because of the lack of certainty about the wells that will be explored and appraised. Using the information supplied in Figure 1, the Ngāruahine rohe is in closest proximity to wells J and K.
3. We also assert TKONT as the post-settlement governance entity for Ngāruahine; however our submissions do not preclude any of the individual hapū of Ngāruahine making their own submissions to this process.
4. Our interests in the area are first and foremost as tangata whenua with a recognised area of interest from the Waingongoro to Taungatara Rivers and extending out from that coastline – the health and wellbeing of our traditional rohe is impacted by the health of its surrounding waters.



5. Additionally, we hold fishing quota within FMA 8 and TKOMT and Ngāruahine hapū currently has proceedings in the High Court and with the Office of Treaty Settlements in relation to the Marine and Coastal Area (Takutui Moana) Act 2011. Alongside the other iwi of Taranaki we are affected by the application.
6. The position of Ngāruahine in relation to oil and gas exploration was established in the Waitangi Tribunal Claim WAI796. We refer the Authority to this report and request that the Committee consider its contents and recommendations when making its own recommendations about this application.
7. In 2000 the Waitangi Tribunal recorded that Māori had legal title to petroleum in their land prior to 1937, and that the petroleum assets should be included in the Treaty negotiations. The Crown failed to honour the findings of the tribunal. A further report was issued in 2011 highlighting how the petroleum regime was in breach of the Treaty of Waitangi. The Tribunal found flaws in the management regime including the lack of protection given to Māori rights and lands. The recommendations of the Tribunal included the establishment of a Ministerial Advisory Committee to address our concerns, the establishment of local / regional representative and decision making bodies and the allocation of Crown resources to enable effective participation in the petroleum management regime in recognition of the resource disparity that exists. Regrettably the findings of the Tribunal have not been effected and we continue to be disadvantaged and prejudiced by the Crown's petroleum regime. TKONT therefore requests that the Authority re-familiarise itself with the reports and seek to implement the findings in recognition of the Crown's obligations as a Treaty partner.

Application



8. TKONT is concerned that the application relates only to the deck drainage discharge and that the extent of the discharge or nature of the discharge is not yet fully known because the Applicant has not yet determined which wells will be drilled and appraised, what mobile drilling unit will be procured and what containments will be released. On the basis of these gaps in information, TKONT suggests that the application is incomplete and should be placed on hold until there is certainty about these additional matters.

Māori Relationship to the Marine Environment

9. Ngāruahine iwi share an intimate spiritual, cultural, social and historical association with the takutai moana. Many practices in the marine and coastal area represent a challenge for Māori because of the dispersment and displacement of contaminants across the whenua and into the wai. When waste enters the land, it is broken down by natural processes – wind, rain, sunlight. However, waste will follow water as it flows through the whenua. An important role of the whenua is to absorb and filter waste before it reaches waterbodies like streams, lakes and rivers. In this respect, wetlands, forests, the coastal environment and riparian margins etc., function as ‘buffer zones’, to filter out as much harmful material as possible. In this way, the whenua, coastal area and moana work together to protect the integrity of te taiao.
10. Problems arise when the capacity of these life giving systems are compromised. When te taiao is compromised particularly by avoidable human activities, we exacerbate the ability of the environment to effectively buffer all of the contaminants that it is expected to receive. When left unchecked or unmoderated, the outcome is that the wellness and wellbeing of people is compromised, because of the lesser ability of the environment to sustain life.



11. Ngāruahine acknowledges that the well-being of the people is dependent on the efficacy of these natural systems and processes continuing to function, and to that end we seek for the following:

- a. Protection – acknowledgement that the primary right holder of the marine environment is the environment itself.
- b. Reciprocity – understanding that only from a respect for the environment can we expect for the environment to offer us, as a gift, access to its precious resources and properties.
- c. Sustaining and nurturing - in return for the gifts that the environment offers us, we have an obligation to rehabilitate it, remedy adverse effects and make gains for its survival and wellbeing.

12. The ways by which we understand the sanctity of this relationship is set out below.

Mana

13. As part of the Māori creation story, Ranginui (Sky Father) and Papatūānuku (Earth Mother) were separated by their children Tāne Mahuta (Tāne of the Forest) and his many siblings. As a result of this act, ngā roimata a Ranginui (the tears of Ranginui or rain) fell upon the earth, as the eternal expression of his grief and love for Papatūānuku. These feelings were reciprocated by Papatūānuku through the rising emotion back to Ranginui through mists and fog. For this reason, in some accounts, rain is considered tapu (sacred or pure state), only becoming wai Māori once it touches the ground. Te mana o te wai (the mana of water) then, stems largely from its direct association with these archetypal figures of Ranginui and Papatūānuku. However, upon reaching the ground, the tapu and therefore the mana of water changes as it interacts or is affected by other materials, substances or elements. From a Te Ao Māori view, the greater the change of wai Māori and wai moana from



its original tapu state, the more affected its mana, and therefore its efficacy, particularly in maintaining and sustaining a quality of life not just for iwi Māori, but all peoples living in Aotearoa-New Zealand. The chemicals that contaminant our waters therefore affects its efficacy and mauri.

Mauri

14. In some schools of Māori thought, for some “thing” (physical object), one (individual), group (whānau, hapū, iwi, hapori [community]) or system (ecosystem) to have mana, it must, as a pre-requisite, have mauri. Mauri can be understood as the essential quality and vitality of something, one or system. The wiriwiri (quivering hand) for example, often seen performed by members of a rōpū kapa haka Māori (Māori cultural performing group), indicates that one is fully present in the moment - physically, mentally, emotionally and spiritually - for all intents and purpose it is a state of mauri ora, being fully alive. The same phenomena can also be observed for all water. From a te Ao Māori view, the mauri of wai Māori and wai moana can be assessed as follows:

- a) *Sight*: colour and flow of the water, presence of objects, materials, silt, etc., foaming, presence of aquatic and plant and animal life;
- b) *Sound*: sound of crashing waves, water rushing over sand and rocks, hum of insect life, cries and warbling of bird song;
- c) *Taste*: taste and texture of the water;
- d) *Touch*: the viscosity, temperature and strength of water flows; and
- e) *Smell*: the briny, salty odours of the waters and the earthy odours of plankton and seaweed.

15. Coupled with a body of knowledge built upon centuries of observation, working with, harvesting from, and caring for the sea, assessing the mauri of a natural resource has always been critical to the wellness and well-being of whānau and hapū. Without such



a knowledge based on an intimate understanding of mauri, the survival of whānau, hapū and iwi would always have been in doubt.

16. These criteria combined with a body of knowledge developed over hundreds of years, continues to inform uri, whānau and hapū of the vitality, the health, the mauri of wai Māori and the moana. We offer this knowledge in an effort to build knowledge and understanding about the inextricable links within nature, and how all of our actions have effect and impact.

Whakapapa

17. Whakapapa (genealogy) is the tracing of one's genealogical descent from primordial times to the present. It establishes ones biological and kinship credentials, ones affiliation to others, and ones connection to place, both spiritually and physically. Whakapapa forms an important basis for the organisation, transmission and creation of new knowledge, through a sequential ordering of the creation of the universe. In doing, so whakapapa enables connections and inter-relationships to be made between the physical, social and spiritual spheres, the past, present and future.
18. More importantly however, it is through whakapapa, that iwi Māori understand, acknowledge and share an intimate relationship with wai Māori and the moana. That relationship is based on a body of knowledge, which clearly illustrates how iwi Māori whakapapa to every aspect, manifestation and phenomena of the natural world, including wai Māori and the moana, "Ko au to maona, ko te moana ko au" (I am the sea and the sea is me). It is also on the basis of this relationship that, over the centuries, an environmental ethic unique to Aotearoa has developed that of *Kaitiakitanga*.



Kaitiakitanga

19. Kaitiakitanga is a culturally based environmental ethic, which obliges tangata whenua to protect, use and sustainably manage resources from the natural environment. This approach is informed by centuries of observation, and knowledge and familiarity of the environment around us.
20. This knowledge and experience also informs the *kawa* (protocols), *tikanga* (processes) and *ture* (rules) developed to ensure the mauri of the natural world is maintained. While interrupted by colonisation, and the subsequent impacts of land loss and access to traditional mahinga kai, this body of knowledge and associated traditional practices are still exercised today by Ngāruahine uri.
21. Kaitiakitanga is our way of acknowledging the aroha the whenua, ngā awa and the moana show towards us, through the selfless provision of kai and resources. Kaitiakitanga recognises the gift that we have been offered, and the obligations upon us to care for this gift, this taonga.
22. It is incumbent on all environmental exploiters to understand the significance of the cultural context in which they are working. Each time the Government grants a permit that is environmentally invasive, it lessens our mana, affects the extent to which we can meet our obligations to Tangaroa, undermines our kaitiakitanga, further harms our cultural identity, it reduces the mauri of our environment and impacts its waiora – something which affects us all.
23. Our special relationship with the marine environment cannot be delineated by boundaries between commercial operations or iwi rohe. 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. It is difficult for Māori to protect the māuri of the sea, without our rights being



sufficiently respected, acknowledged and responded to as part of the EPA processes. The Authority is therefore urged to recognise the significance that Māori give to the marine environment as a whole, and to consider the cumulative effects that each single operation has to the integrity of New Zealand's marine environment.

Te Tiriti o Waitangi

24. Māori have a unique relationship enshrined in Te Tiriti o Waitangi, and the decisions and determinations made by the EPA Committee in furtherance of the Act affect, and potentially limit the ability of iwi to have their treaty obligations met. TKONT therefore suggests that it is incumbent on the Authority to undertake the application process in line with Te Tiriti o Waitangi. We do not feel that the obligations of partnership, protection and participation have been sufficiently met.

25. Section 12 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012(the 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 EPA to take into account the effects of activities on existing interests; and

(d) section 45 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.

26. These interests must absolutely and unequivocally represent the cultural and environmental interest of iwi. With the decimation of our economic interests, it is important that equal validity and weight is given to our cultural mātauranga.

27. It is not clear what role the Māori Advisory Committee has played to date, in advising the EPA Committee about the Māori cultural perspective as it relates to the



management and protection of these coastal waters, noting the increasing number of applications within Taranaki. Whilst the Māori Advisory Committee works on behalf of the Authority, we propose that the Committee has an obligation to understand the unique Taranaki landscape and to advocate on our behalf as to the cumulative effects that arise from the increasing number of applications in these water. In each application that we receive, there is skirt attention given by the applicants to truly understanding their Treaty obligations and what it means to acknowledge and respond to the cultural issues of concern raised by iwi and hapū.

28. The obligation of the Committee under the Act is to give iwi adequate time and opportunity to comment on the matters set out in the application. The applicant has the luxury of time, a wealth of expertise and skill and an extensive resource to support its development of the application. The same is not true of iwi, thus the process represents an unfair power imbalance towards the applicant. The burden of proof seems to be placed upon us, yet insufficient resourcing or support is given to iwi in furtherance of our concerns.

Effects of the Activity on the Coastal Marine Environment

29. The application is for a discharge of trace amounts of harmful substances from the deck drains from the mobile drilling units.

30. OMV is already operating in our marine environment, thus the activity proposes an extension of their current exploration. Because the operation is already in place there is a presumption that an extension of activity will have no less than a minor effect. Within the application, OMV has set out a number of areas where the proposed activity may have an effect on the environment, although its assessment considers them to be small or negligible.



31. If we are to truly consider the mauri and waiora of the waters, a mātauranga or eco-system based approach must be applied where effects are considered holistically, and this means considering the total effects of the proposed operation. We are concerned that we have only been given the opportunity to respond to the deck drainage application. We assert that the Applicant should be required to submit the application for drilling and exploration at the same time as this discharge application.

32. The specific concerns of TKONT, as they relate to the deck drainage discharges are set out below:

a) *Impact on commercial fishing operations*

It is not clear the extent to which the activities affect the abundance of fish populations and diversity of fish species. TKONT wishes to understand the extent to which the activities could affect the fishing interests and access to the fishery quota derived from the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. More effort needs to be placed into this area, and this is an area of research investment that the applicant could make with and on behalf of iwi.

b) *Impact on customary fishing rights*

We also draw to the attention of the Committee our concerns about the on-going sustainability of and access to customary fishing grounds and mahinga kai and the quality of the kaimoana. We also emphasise that iwi and hapū are reporting that the quality and quantity of kaimoana is decreasing. We cannot continue to ignore the lived experiences of Māori in regards to their cultural and customary rights. Again, the applicant, if they are genuine in their commitment to the environment and the rights of iwi could support us with research in this area.



c) *Effects on marine mammals*

The South Taranaki coastal environment is a habitat for some endangered marine mammals, and all efforts should be made to protect these species. It is not clear what effects the operations will have on these endangered species, and on-going research is required to understand the effects of exploration related activities on marine mammal life.

We take this opportunity to highlight the recent stranding of 12 sperm whales in May 2018, along the Kaupokonui beach area in south Taranaki. Whilst it is too early to unequivocally know what caused the death of these whales, strandings of this scale alert us to the risks that increasing activity is causing to our fish, marine mammals and other marine species. Whilst the scale of this event is rare, strandings around the South Taranaki blight are not uncommon, and we are increasingly questioning how the activities and health of our moana because of invasive practices is affecting our marine mammal species. TKONT, Ngāti Tū and Ngāti Haua are very clear and strong in their assertion that the standing of an unprecedented number of whales was a sign and a call to recognise the negative effects that a summer of seismic testing and climate vulnerability and further impending exploration activities are having on the South Taranaki area. And whilst this application is for a different (but related) activity, we cannot continue to dismiss the effects that our invasive commercial operations in the area are having on our marine environment.

d) *Discharge of contaminated deck fluids*

Whilst TKONT acknowledge that the likelihood of a excessive amounts of contaminated deck fluids discharging into the marine environment may be small, where this does occur there is a potential for adverse effects on marine life and marine habitat. With up to nine wells subject to drilling, there are considerable volumes of discharge that will enter the marine environment. We also do not know,



with any certainty what fluid may be discharged, because the mobile drilling units have not yet been procured.

As the Authority and Applicant is aware TKONT is concerned about the on-going degradation of our marine environment and the lack of investment, commitment and effort that is being placed into its restoration. With every activity the risk to our marine environment grows and the resilience of the habitats and species is further tested. We acknowledge the mitigations proposed by the applicant and propose that extensive monitoring is required to measure the contaminants that are entering the sea and the effect on all marine life.

Applicant's obligations as an environmental exploiter

33. New Zealand's regulatory systems recognises that some commercial exploitation of natural resources may occur but this is not a carte blanche and as part of the social contracts with other New Zealand residents, corporates who undertake these activities must accept some accompanying obligations and restrictions on operations.
34. Section 59(2)(d) of the Act requires the EPA to consider "the importance of protecting the biological diversity and integrity of marine species, ecosystems, and processes" and at (e) "the importance of protecting rare and vulnerable ecosystems and the habitats of threatened species." It is not the obligation of the Applicant alone to carry the weight of this obligation, but it does have a role to play.
35. The māuri and waiora of the water is complex, and the cumulative effects of each aspect of the operations negatively affect the marine species and the associated ecosystems – whilst each activity when considered in isolation may be defined as 'minor' or 'negligible', we need to take a big picture approach and consider the total effects of our human actions.



36. Operators and the EPA need to be more cognisant and responsive to this as they conduct their commercial operations. Moreover, if they wish to take their environmental responsibilities seriously, they would be encouraged to go beyond the bottom line required by the legislations, and consider actions and investments that can restore the environment. OMV needs to address the way in which it currently meets its social contract obligations with the Taranaki community, Taranaki Iwi and in particular the Taranaki eco-system.

Conclusion

37. TKONT is opposed to the granting of this consent because it only deals with deck drainage discharge, and yet does not provide us with all of the necessary information, including the fluids and contaminants that may be discharged nor the Spill Management details. TKONT has raised this matter with the applicant and said that Iwi and other existing interests must be able to consider the activity in its entirety. Whilst we have concerns regarding the discharge of the deck fluids (because of the paucity of information), we are more concerned about the Applicant's proposal to drill up to nine wells. It is therefore not reasonable or proper for the Authority to grant this permit without considering the impact and relationship to the future drilling applications that will be made to the Authority. TKONT proposes that this application be placed on hold pending the submission of the further applications and the supply of additional details.

Conditions

38. Notwithstanding our comments about placing the application on hold, should the consent be granted at a later date, we propose the following conditions, in addition to those already proposed by the Applicant:

- a) OMV provide full disclosure of the hazardous substances that will be used, along with an assessment of the effects.



- b) OMV develop an Engagement Agreement with Ngāruahine iwi and hapū who identify as having an interest in the areas subject to OMV permits and activities. The engagement agreement to include communication protocols in respect of the activity and the event of spills and other adverse activities.
- c) The consent holder agree to fund, over the course of the consent period, marine mammal and fish population surveys to robustly assess the direct, indirect and cumulative impacts of the activity on potentially affected marine species.
- d) The consent holder shall develop and introduce a comprehensive 5 year post-activity monitoring programme, in addition to baseline monitoring that should be required prior to the commencement of any activity (with details supplied to iwi).
- e) The applicant, as a voluntary condition, agrees to invest in environmental action within Taranaki that can support the restoration and improvement to the waiora of the marine and coastal environment.
- f) The Applicant makes a commitment that all of its senior management team and all staff involved in operations to undertake cultural training to develop an understanding of a Te Āo Māori viewpoint as it relates to the marine and coastal environment and be able to demonstrate to iwi how this is embedded into operations.

39. TKONT does not wish to speak to this submission.

Naku iti noa, nā

Louise Tester (PhD)

Kairangahau Matua



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