BEFORE THE ENVIRONMENT COURT
AT WELLINGTON

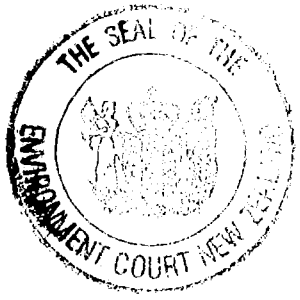
I MUA I TE KŌTI TAIAO O AOTEAROA
KI TE WHANGANUI-A-TARA

Decision No. [2020] NZEnvC 181

IN THE MATTER	of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (**EEZ**)
AND	of an appeal pursuant to s 129 of the EEZ
AND	of Part 11 of the Resource Management Act 1991 (**RMA**)
BETWEEN	BW OFFSHORE SINGAPORE PTE LIMITED
AND	V MAHINDRAN
	(ENV-2020-AKL-025)
	Appellants
AND	ENVIRONMENTAL PROTECTION AUTHORITY
	Respondent

Court:	Judge JA Smith Commissioner IM Buchanan
Hearing:	25-26 August 2020 in Wellington
Appearances:	Mr MG Conway and Ms E Neilson for the Appellants Mr I Carter and Ms M Sampson for the Respondent
Date of Decision:	21 October 2020
Date of Issue:	21 October 2020

DECISION OF THE ENVIRONMENT COURT



A: The appeal of BW Offshore Singapore Pty Limited and V Mahindran (**BW Offshore**) is allowed and the abatement notice is cancelled.

B: Costs are reserved. Any application for costs is to be filed within twenty working days, any reply within a further ten working days, and a final reply, if any, five working days thereafter.

REASONS

Introduction

[1] This is an appeal against abatement notices AN003, AN004, AN005 and AN006 issued by the Environmental Protection Authority (**EPA**) against the appellants, collectively known as **BW Offshore**.

[2] The appellants have been operating a Floating Production Storage Offtake (**FPSO**) installation associated with the Tui oil field operated by Tamarind Taranaki Limited (**TTL**). TTL discontinued operating the oil field in November 2019 following which BW Offshore sought to remove their vessel in accordance with a 2017 Ruling of the EPA.

[3] In early 2020 the EPA advised BW Offshore that they could not rely on the 2017 Ruling. The abatement notices were subsequently issued by an EPA officer against the appellants, and the appeal was filed.

The stay in the Environment Court and proceedings in the High Court

[4] An application to stay the abatement notice was made by BW Offshore and granted in the Environment Court.[1] There was a subsequent appeal, and also a further application for a stay or injunction of the Environment Court decision, filed in the High Court by the EPA.[2] Both proceedings were determined under urgency, in accordance with COVID-19 alert level 4 restrictions in place at the time. These proceeded by way of telephone conference on each occasion, with extensive documentation.

[5] The background to the issues in this case are dealt with in considerable detail in both the Environment Court and the High Court decisions. Those serve as a necessary background to the matters before this Court. It is not our intention to repeat much of the

[1] *BW Offshore Singapore Pte Ltd v Environmental Protection Authority* [2020] NZEnvC 033.

[2] *Environmental Protection Authority v BW Offshore Singapore Pte Ltd* [2020] NZHC 704.

excellent information and descriptions contained in those documents as to the nature of the FPSO and its connection to the Tui field infrastructure. We refer the parties to the various diagrams and information given, particularly in the High Court decision background, paragraphs [3] – [13] inclusive.[3]

The case on this appeal

[6] We must express our dismay at the state of the parties' document bundle presented for this hearing. We were told the previous affidavits for the stay proceedings remained relevant. However, both the Environment Court and High Court criticised these documents. No attempt was made to shorten them. Instead, they were replicated several times in Evidence Folders (4 volumes) and Common Bundle (3 volumes).

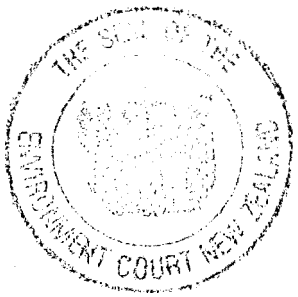
[7] Most documents were included numerous times. All evidence was in both evidence and the common bundle, and documents (rulings and reports) were contained in affidavits and separately. The resulting thousands of pages were uniformly unhelpful and confusing, with numerous references to various copies of the same documents.

Role of the Environment Court on appeal against an abatement notice

[8] Given the decision of the High Court, and the subsequent commentary in the application for leave to appeal, there was initially some doubt as to whether the substantive appeal against the abatement notice would proceed in the Environment Court.[4]

[9] Notwithstanding these concerns, the parties confirmed that they wished to proceed with the appeal, and that this Court had jurisdiction to proceed and determine the appeal.

[10] For our part, we understand this Court must resolve the appeal unless it is withdrawn by the parties. Notwithstanding the comments of the High Court in the leave decision we have concluded that this Court must determine the Appeal if that is what the parties seek. We note that the considerations of this Court in respect of the appeal itself



[3] *Environmental Protection Authority v BW Offshore Singapore Pte Ltd* [2020] NZHC 704 at [3]-[13].

[4] *BW Offshore Singapore Pte Ltd v Environmental Protection Authority* [2020] NZHC 1117 at [16]-[20], [23] and [26]-[27].

are governed not only by the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (**EEZ**) but also by Part 11 of the Resource Management Act 1991 (**RMA**).

[11] As canvassed in previous decisions, the EPA issued these abatement notices under s 125 EEZ, which required immediate compliance. Application for stay was made, and those matters have been dealt with by the appropriate courts. An appeal was filed under s 129 EEZ which, under subsection (3), provides that appeals shall be dealt with under Part 11 of the RMA:

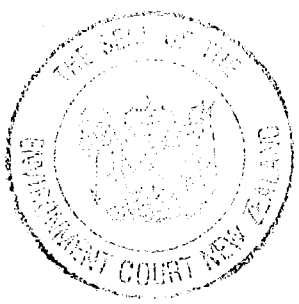
> (3) Part 11 of the Resource Management Act applies as if the appeal were lodged under Part 12 of that Act.

[12] Although there has been some question as to the applicability of Part 12 generally (and in particular s 325), neither party before this Court supported the argument that Part 12 should be applied by this Court. Although we appreciate that the High Court reached a different view, at this stage our understanding is that the parties accept that we should apply Part 11 of the RMA and not Part 12.

[13] Mr Carter acknowledged:

- that this Court has the general powers of the District Court under s 278 RMA;
- this Court has the power to regulate its own procedure under s 279;
- the obligation of the Court to have regard to the decision the subject of the appeal (the EPA abatement notice in this case); and
- the power of the Court to vary any abatement notices to express them in different terms.

[14] However, he states that the Environment Court's powers on appeal do not extend to the power under s 162 to make a ruling, from which there is no right of appeal. The exact focus of this submission was unclear. It may be that Mr Carter was seeking to argue that this hearing on abatement notices, was simply an appeal on administrative grounds as to whether in fact the EPA had followed the right procedure. That, however, is not reflected in Mr Carter's submissions nor in his substantive argument.



[15] Clearly this Court has the power to consider the abatement notice itself and whether it should continue. We do not understand the appellants to be suggesting that we should impose our own ruling under s 162(3). Thus, Mr Carter's submission on its face is curious, as there is no suggestion, we would make any ruling under s 162.

[16] There is no doubt that under Part 11 of the RMA this Court has the powers under s 290 in relation to any appeal:

> (1) The Environment Court has the same power, duty and discretion in respect of a decision appealed against... as the person against whose decision the appeal or inquiry is brought;
> (2) The Environment Court may confirm, amend or cancel a decision to which an appeal relates;
> ...
> (4) Nothing in this section affects any specific power or duty the Environment Court has under this Act, or under any other Act or Regulation.

[17] From this, we conclude:

- in relation to an appeal (as opposed to a stay) we have the same power to decide whether the abatement notice should be made as the EPA;
- we may confirm, cancel or modify that notice;
- that in doing so, we have powers from the RMA, including consideration of the matters under the EEZ, together with the same discretions and powers that the Court would have on a normal appeal.

The terms of the abatement notice

[18] Notwithstanding the powers contained in the EEZ in sections 115 - 124 in relation to enforcement order and interim enforcement orders, the EPA issued abatement notices seeking, essentially, to prevent the FPSO from leaving its connection point.

[19] The abatement notices were signed by Mr Simon Coubrough on 17 March 2020, and Mr Coubrough gave evidence to the Court. Notice AN003 directs BW Offshore Singapore Pte Limited is prohibited from starting the following actions:

> ANOO3 The unauthorised placement and deposit of a structure, submarine pipelines and submarine cables, from the Tui Field, on the sea bed of the Exclusive Economic Zone, which in the opinion of the warranted enforcement officer, contravenes or is likely to contravene, sections 22(a), 22(b), 22(c), 22(f) and 24(a) of the Act due to the lack of any existing lawful authority under the Act, any regulations or a marine consent.

[20] A copy of AN003 is attached (**Attachment A**). Similarly, AN004 requires the company to stop, or prohibits it from starting, unauthorised alteration of structures, submarine pipelines and submarine cables within the TUI Field in the Exclusive Economic Zone, for the same reasons set out on AN003. Equivalent notices were also served upon Mr V Mahindran, Fleet Asset Manager for BW Offshore.

[21] The reasons for the notice can be seen in the **Attachment A**. It is noted that existing oil exploration production activities are mentioned at the third paragraph of the reasons, and it specifically identifies that "new restricted activities commenced after the Act came into force are unlawful unless authorised by either a ruling provided under s 162(2) or a marine consent". It also notes that marine discharge consents have been granted (paragraph 4), authorising certain new activities commenced after the EEZ came into force. It is not specific as to what those consents relate to. It goes on to state that there was a Ruling EEZ 500022, on 1 November 2017, which approved the disconnection and subsequently temporary placement of mooring lines and flow lines from the FPSO Umuroa to allow the vessel to leave New Zealand waters.

[22] The Notice goes on to conclude that the information and assumptions advanced by TTL, on which the 2017 Ruling was based, do not now apply, and the 2017 Ruling does not authorise the restricted activities proposed to be undertaken by BW Offshore. It goes on to describe the sequence of steps from that time, without any further description of the information and assumptions which are considered to not now apply.

[23] It appears to be common ground that the disconnection from anchor cables and the like is permitted, and thus it is only these Notices that prevents the FPSO from disconnecting and sailing away from the Tui Field.

Is this an appeal on substantive merits?

[24] The appellants contended that this was an appeal on the merits, and we had power to consider the facts and reach our own view as to whether or not the abatement notice was justified.

[25] As the Court understood the appellants' position, it was that a ruling was sought and obtained in 2017. This allows the disconnection of the FPSO. Such a ruling, under s 162(2) of the EEZ clearly allows an exception to s 20, and authorises the very activities that the applicant is seeking to undertake. That was the common position with the EPA

until around Christmas 2019. In late January 2020 the EPA appears to have concluded that changes in circumstances made the Ruling no longer applicable. The nature of those changed circumstances and their effect (if any) on the 2017 Ruling is the focus of this appeal hearing.

[26] These changed circumstances appear to be:

- that the pipes were to be flushed before being laid down on the sea bed;
- that the Tui Field was now to be decommissioned;
- that it was unclear who was responsible for decommissioning the Tui Field;
- there was a potential for deterioration of the Tui Field, and therefore potential adverse effects.

[27] The issue of the applicability of the 2017 Ruling was at the heart of the stay decision in the Environment Court and that in the High Court; at least on the tentative basis necessary for the stay proceedings. EPA submitted that there had been a change of circumstances sufficient to argue that the 2017 Ruling no longer applied. At paragraph [40] the High Court held that the EPA had a strong argument to assess the whole of the activity and its background before applying the Ruling.

[28] For our part, the first issue that arises is the basis upon which the EPA has the power to determine the applicability of its 2017 Ruling. As Mr Carter pressed upon this Court, there is no power of appeal from a ruling under s 162(2). Clearly declarations could be sought in the High Court, but, in themselves, there is no power to appeal from the Ruling.

[29] It appears to be the argument of the EPA, as expressed through their General Manager Climate, Land and Oceans, Ms Michelle Ward, that in applying EEZ, and one assumes Rulings, the EPA has the ability to interpret the document. The EPA reached a conclusion (which we conclude is a decision) that the 2017 Ruling did not apply, and the activity was unlawful. That is the basis of the argument to support the abatement notice.

[30] If the EPA can interpret a ruling and its applicability, then this Court must have the same power on appeal. In practical terms, we have concluded that this Court clearly

has authority to determine these issues, given the powers explicit in the EEZ in relation to enforcement matters, interim enforcement matters and the power of the Environment Court in relation to any relevant Act to make declarations.

Is the 2017 ruling in force?

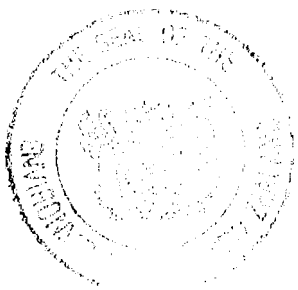
[31] Rather than testing the meaning of the 2017 Ruling in a Court by declaration proceedings the EPA determined to issue an abatement notice. The background to the EPA's conclusion that the 2017 Ruling could not be relied on is particularly obscure. Ms Ward, when asked, said that she had consulted with other members of the EPA and taken legal advice, but none of this has been disclosed to the Court. There was also a reference to a Petrofac Report and expert advice on the wells and the like. These were attached as reports to affidavits of Ms Ward. Notwithstanding that this matter was to be set down for full hearing, no expert witnesses were called for the EPA to support contentions of risk to the oil field, environmental damage because of not flushing the pipes, and the like.

[32] It is important to note that there has been no evidence advanced, either in the abatement notices or any time prior or since, that there are any effects from the disconnection that are more than minor, or that the change in circumstances suggested by the EPA vitiate the 2017 Ruling.

[33] At paragraph [18] of the Court's decision on leave to appeal, dated 26 May,[5] the High Court stated:

> The Court has concluded that the EPA will now need to reconsider the disconnection application in the context of the new circumstances, including those relating to the issues concerning the whole Tui Field and irrespective of who owns particular assets. But that does not mean that BWO has responsibility for assets that it does not own. What is in issue is the particular disconnection activities subject to the application under s 162(2) of the Act.

[34] This appears to be a reference to a new application for a ruling, given that it uses the words "subject to the application under s 162(2) of the Act". However, in respect of this abatement notice, and this appeal, questions of materiality of change of circumstances are clearly relevant also. The 2017 Ruling has not expired; the question is whether it currently continues to apply to the FPSO. This turns on whether the circumstances surrounding disconnection of the FPSO and its sailing away are materially different since 2017.



[5] *BW Offshore Singapore Pte Ltd v Environmental Protection Authority* [2020] NZHC 1117.

Evidence relevant to changed circumstances

[35] On an appeal against an abatement notice the time for assessment is the date that the appeal is heard. Clearly, there can be changes between the time at which the abatement notice was issued and the time it was heard before the Court on appeal. In many cases, the parties have complied with or achieved a resource consent, or otherwise achieved compliance to avoid an effect identified in an abatement notice. In the context of the EEZ, the purpose of the abatement notice is to prevent both breaches of the EEZ and adverse effects on the environment. In this case, there will only be a breach of the EEZ if the 2017 Ruling does not apply.

[36] There have been significant changes since the time that the abatement notices were issued that count heavily against the continuation of the abatement notices. These include:

- An assessment by the EPA, set out in the memorandum for the 2020 Ruling request, that the discharge of residual fluids from the risers and lines will have no more than a minor effect;[6]
- MBIE taking responsibility for the Tui Field, including its decommissioning;[7] and
- MBIE identifying that the disconnection of the FPSO should occur in 2020.[8]

Responsibility for the Tui Field

[37] One of the major concerns expressed in documentation, although not the abatement notice, was a concern about deterioration to the Tui field leading to environmental damage. None of this was directly attributed to the FPSO, but there seemed to be a suggestion that the disconnecting of the pipes may remove one element of the fail-safes in the event that other portions of the system failed, for example the well-heads and valves. There seemed to be the concept that if the FPSO was still connected the oil would then flow to the FPSO, if there was a failure and sufficient pressure and oil could be removed.

---

[6] Memorandum as to 2020 Ruling request dated 25th March 2020, (EEZ 500028).

[7] MBIE website as to Tui Field – **Attachment B.**

[8] As above B_2. Supported by information in Cabinet paper 26/6/20 "The Crowns approach to decommissioning the Tui Oil Field in response to Operation Tamarind Liquidation" at [10].

[38] In the decision on the application for leave the High Court discusses change of circumstances within paragraph [18]. The Court noted, in part:

> ... The Court has been advised that the Crown now has responsibility for TTL's undersea assets as a consequence of TTL's insolvency, although no evidence has actually been provided on that issue. If the Crown were to confirm that it is responsible, and will address all environmental issues that may arise, and that the disconnection of BWO's vessel can occur without adverse effects and environmental impacts, then a basis for the EPA to conclude that the adverse effects of the proposed disconnection are likely to be minor or less than minor, under s 162(2), exists.
>
> The two issues of fact addressed in the judgment, which were based on the evidence then before the Court, illustrate this - there was no issue with the pipes attached to the vessel being laid on the sea floor or arising from any need to flush the pipes as part of the disconnection, notwithstanding their damaged state, then disconnection was able to proceed. That was what this Court indicated. The critical point was that this factual analysis was now needed.

[39] In dealing with this appeal, it is the Court's position that we can deal with the factual matters surrounding the abatement notice and the circumstances forming the conclusion by the EPA that the s 162(2) ruling no longer applied.

[40] We make the point that MBIE has now stated on its public website, a copy of which is annexed hereto as **Attachment B**, that it is responsible for the decommissioning of the field and that the disconnection of the FPSO in 2020 is an objective. Accordingly, the uncertainty as to responsibility for the future of the field and its infrastructure is now clarified. It is also clear from the MBIE website that their intention is to decommission the site in the short to medium term, and accordingly questions of potential deterioration in the field can be said to be answered in full by this adoption by MBIE of the Field.

[41] We asked Ms Ward if there was any process under way to allow the disconnection of the FPSO. Although there were preliminary talks, we understand no application for a ruling has been made by MBIE. We also understand that any ruling sought would be for the same activities as those covered by the 2017 Ruling.

What constitutes the 2017 Ruling?

[42] Section 162 EEZ deals with the issuing of a ruling. Section 20 deals with marine consents. It seems to be clear that a marine consent requires a formal decision, which must be in writing and advised to the parties affected by the decision. This is very similar to the Environment Court decision process, and the ability of the EPA to issue a ruling might be regarded as similar to a consent issued by a district or regional authority.

[43] The law has been clear for some time that where the wording of the provision is not clear, or there is room for doubt or clarity, recourse can be had to background information, including particularly the application itself and any supporting documents. We note that the High Court, in discussing the 2017 Ruling, noted the arguments as to the security of the field and any risks to it, and the issues relating to the flushing of flowlines as being matters that might constitute material change.

[44] For our part, we accept that a ruling can be susceptible to a change in circumstances that makes the Ruling no longer properly applicable. In our view there is nothing exceptional in such a possibility although it would be usual for some form of declaration or otherwise to be sought to clarify the position.

[45] As we have already noted, there is no power for this Court, or the EPA, to declare that the 2017 Ruling is not applicable. Therefore, it is going to be a question of fact in every case whether a ruling can be relied on as authorising the proposed activity in the circumstances that arise. In this regard we note several matters:

i) The 2017 Ruling was intended to apply for some time, given that disconnection could occur at any time up to 2025. This was a period of eight years. It must have been in contemplation at that time that there may be changes which occurred during that period. Therefore, not all changes necessarily undermine the granting of the Ruling.

ii) We conclude the Ruling is to provide certainty. It is clear that s 162(3) is to provide a transitional arrangement where consents have already been obtained and parties have entered into arrangements in reliance on those. In relation to the FPSO, this is a reliance that the owner of the vessel is able to utilise that vessel when it is no longer required for the oil field. The Ruling is to allow the owner of the vessel to remove that vessel where the effects on the environmental are no more than minor. It therefore is intended to create certainty, particularly for investors and ship owners in relationship to these fields.

iii) The flushing of the lines was a matter that was originally raised in the pre-lodgement documents as a possibility. Firstly, we note that the wording was always tentative. We struggled to understand the basis of the argument that a ruling was not required to flush the lines. Although it would be intended that

the lines would be flushed into the FPSO, and therefore processed, there was always the prospect of disconnection occurring incorrectly; end caps not functioning properly and the like. We have concluded that, if it was intended that the lines were to be flushed, this would have been included in the 2017 request for a ruling, at least at the initial stage.

iv) These decisions under s 162(2) have significant consequences in constraining (usually foreign) vessels from activities within the EEZ area. The decision creates a level of certainty for foreign operators in these waters. Such decisions create a legitimate expectation by companies that the decision will endure unless there is a clear reason for departure.

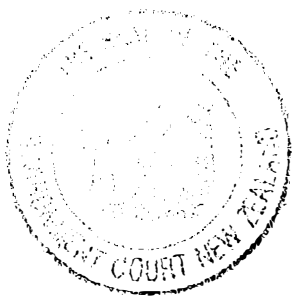
That the Tui oil field was fully operational

[46] Clearly, at the time the FPSO was disconnected, valves would need to be closed and the lines would need to be flushed. BW Offshore argue that any discharge from this activity is covered by the existing marine consent, which allows a discharge of some 113 barrels per month of hydrocarbons.

[47] We acknowledge the EPA's criticism of this argument, that it was clearly intended that those hydrocarbons authorised by the consent relate to the processed hydrocarbons that may go through the FPSO unit, and not to crude oil that may discharge from the flushed lines. Nevertheless, given the EPA's conclusion earlier this year, as set out in the 2020 Ruling decision memorandum that discharge effects would be no more than minor if the lines were unflushed, we consider that this potential material change is no longer an issue.[9]

The status of the Tui Field

[48] There has been a concern about the status of the Tui Field and the deterioration of the various wellheads, risers and the like. In part this was raised after a break in the Tui 2H line that led to the eventual shutdown of the field. It was one of the riser lines which fractured, and it is unclear how great that failure was. There was a release of crude oil at the time although no significant environmental damage ensued.



[9] *BW Offshore BW Offshore Singapore Pte Ltd v Environmental Protection Authority* [2020] NZHC 1117.

[49] There was a concern in the Petrofac Report, relied on by the EPA, that some of the wellhead valves were not sealing against wellhead pressure, and that dual barriers were not in place. This was in March 2020. Further information was supplied to the EPA by BW Offshore in early April but does not appear to have been considered by Petrofac or the Report modified. This information is important. As shown by Mr Distin in his evidence to the Court, and in cross examination, this removes most of the doubt as to the current security of the Field. No witnesses for Petrofac gave evidence.

[50] The evidence for the company given by their managing officer Mr Distin was supported with the network diagram annexed hereto and marked **Attachment C**. In short, his position is that all valves have double-safety. There is a back-up valve if one fails. Although there is one valve which has not been able to be closed because of mechanical modification to it some time ago, this whole system is closed and is double protected in any event.

[51] It was clear that extraction of hydrocarbons was only possible by injecting fluid and gas to create enough pressure to push the hydrocarbons up the fluid pipelines to the surface. This appeared to have been the situation for some time prior to cessation of the activity in November 2019.

[52] We have concluded, on the uncontroverted evidence of BW Offshore experts, that there is at least a dual barrier on all wells and there was unlikely to be any build-up of pressure within the Tui Field in the short to medium term.

[53] Overall, there does not appear to have been any material change to the field itself since 2017. The ownership of the field itself has not changed the risk, simply the prospect of the field being properly decommissioned. Since MBIE has taken over responsibility for the field, that matter has now been clarified and from the Court's point of view we consider the risk of failure to decommission properly is significantly lower than it was under the previous owner.

Conclusion as to 2017 Ruling

[54] In examining its application, we have concluded that the question is a factual one as to whether the 2017 Ruling applies and whether changes in circumstances materially affect the risk of applying that Ruling. A move to s 20 EEZ would depend upon that risk being more than minor and as such require a marine consent. Put another way, the

alleged breach of s 20 of the EEZ in the abatement notice depends upon the Ruling not applying, which in turn means that the effects must be more than minor.

[55] In conclusion, although we accept that material changes could have meant the Ruling could no longer be relied on, no such material changes now affect the 2017 Ruling. The 2017 Ruling can apply, on its terms, in the current circumstances as contemplated at the time of the Ruling.

Are the effects minor or less than minor?

[56] We note that at no time has the EPA concluded that the adverse effects of this activity would be more than minor. As far as we can tell from the thousands of pages of documents produced to us, there has been no overall conclusion by the EPA as to the risk prior to the 2020 Ruling assessment. The only area on which they reached a conclusion was the discharge from the lines on disconnection. On this issue they concluded the effects were no more than minor. For the balance of the issues they conclude there was insufficient evidence to reach a clear conclusion.

[57] As a matter of fact, we have concluded that the effects of disconnecting the FPSO and laying down the risers will be the same or similar to those envisaged in the 2017 Ruling. The activities are the same and the outcomes are the same. The changes that were argued are no longer material. The non-flushing of the lines will have no more than a minor impact on the environment on EPA's own assessment; and the decommissioning of the Field is to be handled by MBIE, a government department having the ability and resources to undertake the task.

[58] We are satisfied, on the evidence before us that and looking at the matter in its broadest terms, there is no more than a minor (or less than minor) impact upon the environment from the disconnection occurring at this time. The purpose of the abatement notice is focussed around adverse effects on the environment or existing interests. If those effects are likely to be minor or less than minor, then the Ruling still applies.

[59] Looking at the matter more deeply, the purpose of the EEZ provisions, particularly s 162(2) and s 20, is to avoid adverse effects on the environment. Given that there is no material change because of MBIE taking over the Field and decommissioning it or the non-flushing of the lines, there is no change to the impact on the environment. For current purposes, we have assumed that, if there were, we would have the power to maintain

the abatement notice notwithstanding the presence of the 2017 Ruling. Our reason for doing so, as we have stated, would be on the basis that the 2017 Ruling would not apply given the facts that now exist.

Temporary nature of lay down

[60] It does not appear to be disputed that the intention of the appellants in this case is that the laydown of the lines be temporary. BW Offshore are not the field operator, and it now appears that, rather than being reconnected to another FPSO, it is the intention of MBIE is to decommission the lines entirely. We are satisfied that the evidence is that the laydown is still temporary, whether it is (a) reconnected to another FPSO, or (b) the field and flow lines are decommissioned. Any uncertainty about that occurring has now been clarified by MBIE public statements.

[61] Importantly, again we note that the MBIE website states that the first step, in 2020, is to remove the FPSO. It appears this step is a necessary preliminary step to the decommissioning of the field.

Conclusion

[62] We have concluded that the 2017 Ruling, on its face, is intended to apply to this FPSO and its disconnection as envisaged. The activities are the same.

[63] We have considered whether there has been a material change in circumstances which might mean that the 2017 Ruling no longer applies. We have concluded that there has been no material change in circumstances since that ruling considering the more recent evidence given.

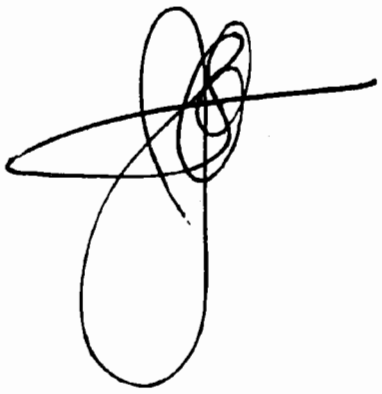
[64] We are unable to find any finding, either from the 2020 Ruling or the Petrofac Report, which concludes there is a serious issue with the integrity of the Tui Field. In fact, the evidence of the witnesses for BW Offshore was that the integrity of the Field was secure and there were unlikely to be any problems, at least in the medium term, due to the lack of pressure in the wells and the unlikelihood that it would rebuild, at least in the short to medium term. We acknowledge that all these witnesses (Mr Mahindran, Mr Distin and Mr Parker) are employed by BW Offshore or contract to them, nevertheless we accept their expertise in this area, which was largely not contested.

Outcome

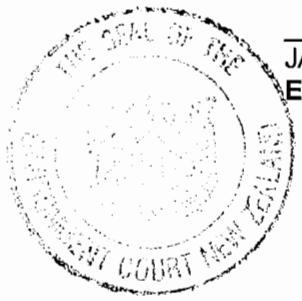
[65] Given our conclusions on the facts, we conclude that the abatement notice should be cancelled. In particular, we note that the disconnection would not constitute a breach of the EEZ pursuant to a ruling under s 162(2). We are satisfied that disconnection can be done with effects that are minor or less than minor, and therefore in general accordance with the principal objectives of the EEZ and the RMA.

[66] Accordingly, the abatement notice is cancelled. Costs are reserved. Any application for costs are to be filed within 20 working days; any reply 10 working days after that and any final reply, if any, 5 working days thereafter.

For the Court:



JA Smith
Environment Judge



Environmental Protection Authority
Te Mana Rauhī Taiao

ABATEMENT NOTICE

Section 125 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (the Act)

Reference number: AN003

To: BW Offshore Singapore Pte. Ltd. ("BWO")

Address: Level 6, 54 Gill Street, New Plymouth, 4310

Activity and Location: "Umuroa" Floating Production Storage and Offtake (FPSO) installation at Tui field.

The Environmental Protection Authority gives notice that you are prohibited from starting the following actions:

The unauthorised placement and deposit of a structure, submarine pipelines and submarine cables, from the Tui Field, on the seabed of the Exclusive Economic Zone, which in the opinion of the warranted enforcement officer, contravenes or is likely to contravene sections 20(2)(a), 20(2)(b), 20(2)(c), 20(2)(f), and 20(4)(a) of the Act due to the lack of any existing lawful authority under the Act, any regulations, or a marine consent.

The location to which this abatement notice applies: Umuroa FPSO and subsea infrastructure at the Tui Field - 173° 14' 12.40"E 39° 25' 39.80"S

You must comply with this abatement notice: Immediately on receipt of the abatement notice having regard to the reasons for it, until such time as there is lawful authority for the actions under the Act, any regulations, or a marine consent.

This notice is issued under: section 125(1)(a) of the Act

The reasons for this notice and the grounds for the enforcement officer's belief and opinion that BWO has contravened or is likely to contravene the Act, regulations or a marine consent are:

The Tui field is situated in the waters of New Zealand's Exclusive Economic Zone, approximately 50 kilometres offshore from Taranaki. BW Offshore Singapore Pte Ltd own the Floating Production Storage and Offtake (FPSO) installation Umuroa and moorings and anchors that connect the installation to the seabed in the Tui area. BWO was contracted to Tamarind Taranaki Limited (TTL) until late 2019. BWO now proposes to disconnect and sail away the Umuroa.

The Umuroa is connected to structures (referred to by BWO as subsea equipment), submarine pipelines (referred to by BWO as production risers and gas lift risers, and the hydraulic umbilical) and submarine cables (namely the electrical umbilical referred to by BWO generically as umbilicals) in the Exclusive Economic Zone.

Existing oil exploration and production activities as at the date the Act came into force on 28 June 2013 continued to have lawful authority without the need for a marine consent by operation of s 162(4) of the Act.

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

New restricted activities commenced after the Act came into force are unlawful unless authorised by either a ruling provided under s 162(2) or a marine consent.

TTL or its predecessors applied for and were granted Marine Discharge Consent EEZ300006, Marine Discharge Consent EEZ300010, Marine Consent & Marine Discharge Consent EEZ100016, authorising certain new activities commenced after the Act came into force.

TTL was provided with a ruling under s 162(2) (EEZ500022) on 1 November 2017 which approved the disconnection and subsequent temporary placement of mooring lines and flowlines from the FPSO Umuroa to allow the vessel to leave NZ waters. The factual information and assumptions advanced by TTL on which the 2017 ruling was based do not now apply and the 2017 ruling does not authorise the restricted activities proposed to be undertaken by BWO.

In the absence of steps initiated by the liquidators and receivers of TTL, BWO requested two rulings under section 162(2) of the Act from the EPA on 15 January 2020 and 17 February 2020. The first ruling request (EEZ500028) seeks authorisation for BWO to disconnect from the mooring lines and ultimately retrieve the associated cables, chains and anchors. The second ruling (EEZ500029) requests authorisation of activities associated with the disconnection of the subsea equipment including structures , umbilicals (submarine pipelines and submarine cables) and production and gas risers (submarine pipelines) from the FPSO and the temporary laydown on the seabed of the subsea assets. At the time of serving this abatement notice, neither ruling has been decided by the EPA but it is anticipated that both will be decided by the end of this month.

BWO provided a work plan to the EPA on 11 March 2020 titled Umuroa Decommissioning with reference "Project: 4XXX Berge Helene" which describes the schedule of works associated with disconnection of structures, submarine pipelines and submarine cables from the FPSO. Tasks to be completed include ID 207 lay down riser in pre-defined lay corridor, ID 208 lay down riser head on seabed and disconnect crane.

On 11 March and 12 March 2020 Giles Distin (BWO HSSE Superintendent) confirmed verbally that the Umuroa Decommissioning work plan was current.

On 12 March 2020 EPA wrote to BWO seeking written assurance of compliant activity and advised BWO's response would inform EPA's enforcement approach.

On 13 March 2020 BWO wrote to the EPA indicating the EPA should authorise the disconnection works by 13 March 2020 at 12pm, or BWO will leave the FPSO in place and remove their crew solely for safety reasons.

On 13 March 2020 the EPA wrote to BWO requesting BWO to confirm in writing by 4.30pm Friday 13 March 2020 that the planned disconnection works will not be carried out until BWO have authorisation under the EEZ Act.

On Friday 13 March 2020 at 2222 hours the EPA received an email from Vijay Mahindran, (BWO Fleet Asset Manager) stating:

> *... Umbilicals have been flushed with hydraulic fluid. All umbilical connections have been severed from the FPSO. There is no communication with subsea assets. Flushing of any of the lines is no longer possible. We had planned to lower all the lines listed below on an immediate basis. We are currently uncertain as to their integrity if we have to stop disconnection work for an unspecified length of time.*
>
> *The umbilicals have been flushed and are currently displaced with hydraulic fluid (Transaqua). They have been capped. We are requesting permission to laydown these 4 lines at present.*

Gaslift risers have been depressurised, purged with N2 and capped. If permissible, we would prefer to lay down these lines as well.

On Monday 16 March 2020 11:22 hours Vijay Mahindran (BWO Fleet Asset Manager) emailed the EPA stating "I also need to record that BWO presently considers that the overall circumstances, in particular the weather and safety issues noted above, are of sufficient gravity that instead of de-manning as signalled last week, it may be necessary to commence the disconnection immediately in reliance on the 2017 ruling. That remains a real prospect in the short term in light of the delays in the processing of the ruling application."

On Monday 16 March 2020 at 1206 hours, Vijay Mahindran emailed the EPA, stating "It's best to commence the disconnection of the risers, umbilical and moorings as soon as possible. Taking the current status into consideration, view from OIM, NPUW, BWO's Insurance, BWO inhouse expertise it is imperative to disconnect and lay down the risers, umbilicals and moorings."

On the basis of the communications from BWO summarised above, the enforcement officer believes that BWO is likely to contravene the Act, any regulations, or a marine consent by placing on the seabed structures, submarine pipelines and submarine cables associated with the Tui 2H, Tui 3H, Pateke and Amokura subsea wells in the Tui field, on the seabed in contravention of 20(2)(a), 20(2)(b), 20(2)(c), 20(2)(f), and 20(4)(a) of the Act. Section 20 of Act states:

(1) No person may undertake an activity described in subsection (2) in the exclusive economic zone or in or on the continental shelf unless the activity is a permitted activity or authorised by a marine consent or section 21, 22, or 23.

(2) The activities referred to in subsection (1) are—

(a) the construction, placement, alteration, extension, removal, or demolition of a structure on or under the seabed:

(b) the construction, placement, alteration, extension, removal, or demolition of a submarine pipeline on or under the seabed:

(ba) the abandonment of a submarine pipeline that is on or under the seabed:

(c) the placement, alteration, extension, or removal of a submarine cable on or from the seabed:

(d) the removal of non-living natural material from the seabed or subsoil:

(e) the disturbance of the seabed or subsoil in a manner that is likely to have an adverse effect on the seabed or subsoil:

(f) the deposit of any thing or organism in, on, or under the seabed:

(g) the destruction, damage, or disturbance of the seabed or subsoil in a manner that is likely to have an adverse effect on marine species or their habitat.

(3) No person may undertake an activity described in subsection (4) in the sea of the exclusive economic zone unless the activity is a permitted activity or authorised by a marine consent or section 21, 22, or 23.

(4) The activities referred to in subsection (3) are—

(a) the construction, mooring or anchoring long-term, placement, alteration, extension, removal, or demolition of a structure, part of a structure, or a ship used in connection with a structure:

(b) the causing of vibrations (other than vibrations caused by the propulsion of a ship) in a manner that is likely to have an adverse effect on marine life:

(c) the causing of an explosion.

(5) However, this section does not apply to—

(a) the discharge of harmful substances; or

(b) the dumping of waste or other matter; or

(c) lawful fishing for wild fish under the Fisheries Act 1996.

The restricted activities that require authorisation under the Act include:

1. The placement on the seabed (temporary) of submarine pipelines, including production risers and gas injection risers (pipelines) and hydraulic fluid umbilicals which is restricted under section 20(2)(b) of the Act;

2. The placement on the seabed (temporary) of a structure including subsea equipment and sandbags which is restricted under section 20(2)(a) and 20(4)(a) of the Act;

3. Placement on the seabed of submarine cables including electrical umbilicals which is restricted under section 20(2)(c) of the Act; and

4. The deposit of any thing on the seabed including a structure, submarine pipeline and submarine cable is restricted under section 20(2)(f) of the Act,

as they are not permitted activities, authorised by a marine consent or section 21, 22 or 23 of the Act.

The Environmental Protection Authority authorised the enforcement officer who issued this notice. Its address is:

Environmental Protection Authority,

Level 10, Grant Thorndon House, 215 Lambton Quay

Wellington 6011, New Zealand

The enforcement officer is acting under the following authorisation: A warrant of authority issued by the Environmental Protection Authority, pursuant to section 138 of the Act, authorising the officer to carry out all or any of the functions and powers as an enforcement officer under the Act.

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

	Simon Coubrough	17 March 2020
Enforcement officer	**Officer's name:**	**Date**

Note 1: Costs and expenses

Under section 126(b) of the Act, you must pay all costs and expenses of complying with this notice.

Note 2: Non-compliance with this notice

If you do not comply with this notice, you may be prosecuted under section 134F of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

Note 3: Appeals

You have the right to appeal the whole or any part of this notice to the Environment Court under section 129 of the Act. If you wish to appeal, you must lodge a notice of appeal in the prescribed form with the Environment Court and serve the notice of appeal on the Environmental Protection Authority (EPA) within 15 working days after service of this abatement notice.

Note 4: Cancellations

You may also apply in writing to the EPA to change or cancel this abatement notice under section 128 of the Act. The application should include reasons why the notice should be changed or cancelled.

B1

CB 000458

Appendix 1 B

NEW ZEALAND PETROLEUM & MINERALS

Tui Project: decommissioning the Tui oil field

The NZ Government has commenced work to manage the Tui oil field assets and plan for decommissioning of its wells in the wake of the financial problems affecting the permit operator Tamarind Taranaki Ltd.

The Crown is committed to ensuring that the field is decommissioned in the right way, in accordance with the law and good industry practice.

The Crown is committed to comply with all environmental protection standards and other regulatory requirements in its management of the Tui oil field. The Crown is working closely with the various regulatory agencies to ensure that the assets are being managed appropriately.

There is regulation in place to ensure that offshore decommissioning is completed in an appropriate way. This occurs across a number of regulators and government, including the Ministry of Business, Innovation and Employment, the Environmental Protection Authority, Maritime New Zealand and WorkSafe New Zealand.

Environmental and safety regulation is administered by the Environmental Protection Authority, Maritime New Zealand and WorkSafe while MBIE is taking the lead on dealing with the Tui assets, and keeping the Minister of Energy and Resources closely informed of developments.

MBIE is engaging closely with Te Kāhui o Taranaki (Taranaki Iwi) to review details of the decommissioning plan as it develops, and is keeping other iwi groups informed.

This page will be regularly updated to ensure the latest information on the Tui Project is available.

Current status

(As at 29 May 2020)

The liquidators of the Tamarind companies have disclaimed the Tui assets to the Crown and the Crown has commenced work to manage the assets and plan for decommissioning.

MBIE has contracted Petrofac, a company that specialises in the operation and decommissioning of petroleum facilities, to establish the current condition of the Tui wells and to determine options to demobilise the floating production and storage vessel Umuroa.

Once that work is available, MBIE expects to work with BW Offshore, owners of the FPSO Umuroa, to determine the best way forward.

B2

The FPSO Umuroa is currently moored over the Tui oil field and connected to its wells via flowlines as shown below.

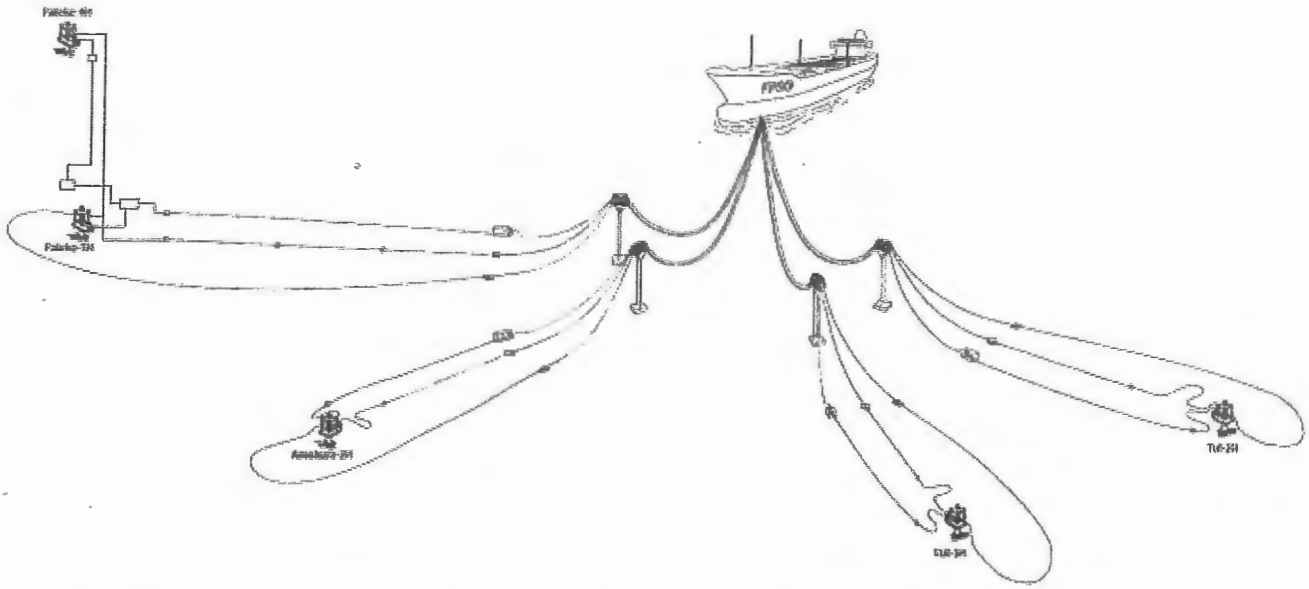


Diagram of the FPSO Umuroa connected to Tui oil field wells via four main flowlines.

The decommissioning process

The decommissioning of the Tui field is expected to be conducted in two phases; the demobilisation of the FPSO Umuroa coupled withworks to ensure that the subsea assets are left safe and secure, followed by longer-term plugging and abandonment of the wells and permanent removal of the subsea infrastructure.

It is expected that the demobilisation phase of decommissioning will commence in 2020.

The second phase of work requires detailed planning and environmental approvals. It will also likely require an appropriate drill rig (or Light Well Intervention vessel) to be located in New Zealand. It is anticipated the decommissioning phase will take several years.

The total cost of the decommissioning work will depend on a number of factors, and MBIE needs to obtain a range of advice from technical specialists to determine this. Until that information has been received it is premature to assess, with any confidence, the costs associated with decommissioning but best estimates available currently assess Tui Oil field decommissioning costs at approximately NZ$155 million.

Tamarind Taranaki Ltd (in receivership and liquidation)

Tamarind Taranaki Ltd – permit operator of the Tui oil field – was placed in receivership and liquidation in December 2019.

Its parent company, Tamarind Resources Private Limited (Singapore) went into receivership in March 2020 and into liquidation in April 2020.

B3

The Crown is an unsecured creditor in respect of Tamarind Taranaki Ltd (TTL).

The liquidators of the Tamarind companies have disclaimed the Tui assets to the Crown, but the petroleum mining permit currently remains with the liquidators.

Treaty partners and stakeholders

The Crown is committed to continued meaningful engagement and consultation with Te Kāhui o Taranaki (Taranaki Iwi) and other Treaty partners throughout the entire decommissioning process.

The ultimate decommissioning of the Tui oilfield will entail the removal of the subsea infrastructure, with the challenges arising from details of how this is best achieved. In the short-term, efforts are also underway to enable the FPSOUmuroa to demobilise and depart New Zealand. Te Kāhui o Taranaki (Taranaki Iwi) are aware of the complexities of the demobilisation and decommissioning and are actively contributing to ensure the infrastructure is safely removed and in a timely manner.

Stakeholders, including the oil and gas industry, service companies, local government, non-government organisations and other interested parties will be kept informed of developments and consulted where applicable.

Tui project contracts

MBIE does not have staff who are specialists in the decommissioning of offshore petroleum assets so it needs to procure external technical advice to perform this role.

The decommissioning will involve multiple stages, from monitoring, demobilisation, through to decommissioning. The work will be subject to a tender process and will be procured using the usual tender mechanisms for NZ Government contracts. It is likely that a number of tenders will be offered during the multiple phases of the decommissioning project.

An initial contract has been awarded by MBIE to assess the options for demobilising the FPSO and procurement is underway for specialist consenting/planning advice and legal support to assist with Tui oil field demobilisation activity.

Applications have closed for a health and safety compliance manager for the Tui assets.

A lot of high quality and detailed decommissioning planning work has already been conducted by the previous owners of the Tui field.

MBIE expects that the eventual decommissioning of the Tui assets will be fully outsourced by way of a transparent open market procurement process, and the successful contractor will then be responsible for delivering the finished product.

When it is available, details of tenders related to the Tui decommissioning work will be available here:

NZ Government Electronic Tender Service (GETS) [https://www.gets.govt.nz/]

Procurement information will be updated on this page as new opportunities are offered.

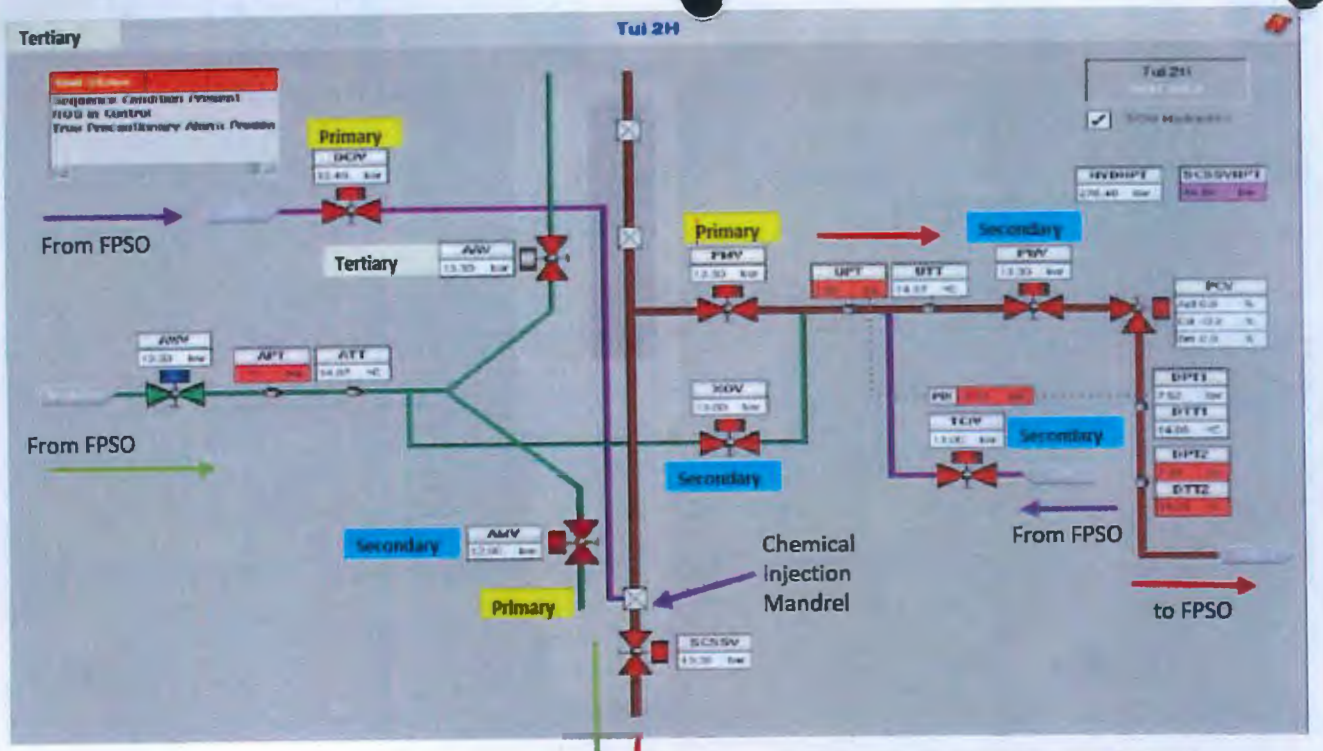
Contact

B 4

CB 000461

For more information on the Tui decommissioning process please email decommissioning@mbie.govt.nz [mailto:decommissioning@mbie.govt.nz]

Last updated: 29 May 2020



Key	
Green Line	= Annulus
Purple Line	= Chemical Injection
Brown Line	= Production line

AWV	Annulus Wing Valve	AAV	Annulus Access Valve
AMV	Annulus Master Valve	APT	Annulus Pressure Transmitter
ATT	Annulus Temperature Transmitter	XOV	Crossover Valve
DCIV	Down Hole Chemical Injection Valve	Chemical Injection Mandrel (above the SCSSV)	
TCIV	Top hole Chemical Injection Valve		
SCSSV	Surface Controlled Subsea Safety Valve	PMV	Production Master Valve
UPT	Upper Pressure Transmitter	UTT	Upper Temp Transmitter
PWV	Production Wing Valve	PCV	Production Choke Valve
DPT1&2	Downstream Pressure Transmitter	DTT1&2	Downstream Temp Transmitter
HYDHPT	Pressure Transmitter. Indicates the pressure available to operate the valves hydraulically.		
SCSSVHPT	Pressure Transmitter. Indicates the pressure available to operate the SCSSV hydraulically.		

Tui 2H valve status diagram – with key and annotations

- The SCSSV is 600m below the surface (a depth where temp prevent hydrates). The SCSSV has not been credited as a primary barrier but is closed.
- The gas lift mandrel is 2.8km below surface. The gas lift mandrel is an industry approved check valve and so considered a primary barrier to flow.
- The DCIV has also been credited as a primary barrier to flow. Therefore there are 2 barriers to flow.
- The TCIV is closed and considered a secondary barrier to flow.
- Compressed gas from the FPSO is pumped down the annulus in to the reservoir via the gas lift mandrel. This is to provide artificial gas lift, essentially providing pressure in the well so that fluids may flow via the production flow line. The annulus wing valve is locked open by a tool (LAOT) and has not been credited as a primary barrier.
- The Annulus Master valve is closed and is a primary barrier to flow.
- The annulus access valve is to facilitate well intervention. This valve is closed and credited as a secondary barrier to flow. There are 2 barriers to flow on the annulus. Additionally the cross over valve between the production line and annulus is closed.
- The production master and production wing valves are both closed and provide a primary and secondary barrier to flow on the production line therefore there are 2 barriers on this line.
- All valves with the exception of the AWV are closed. The closed position is their fail safe position
- To operate these valves a hydraulic pressure of 250bar is required to be applied to the actuator.
- As shown in the screen shot, each valve currently has only @13bar hydraulic oil pressure therefore they cannot open.

C2

Vertical Subsea Christmas Tree – examples