

REPORT

CONDITIONS REPORT - OMV MARINE DISCHARGE CONSENT APPLICATION

PREPARED FOR THE ENVIRONMENTAL PROTECTION AUTHORITY

August 2018



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Abbreviations

ALARP	As Low As Reasonably Practicable
D&D Regs	Exclusive Economic Zone and Continental Shelf (Environmental Effects—Discharge and Dumping) Regulations 2015
DMC	Decision-making committee
EAD	Exploration and Appraisal Drilling
EEZ Act	Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012
EPA	Environmental Protection Authority
ESRP	Emergency Spill Response Plan
MODU	Mobile Offshore Drilling Unit
MMR	Marine Management Regime
OMV	OMV New Zealand Limited
OWS	Oil Water Separator
RMA	Resource Management Act 1991

Environmental Protection Authority

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- Appendix B Quality Planning Website Material
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1. Introduction

- 1.1 OMV New Zealand Limited (**OMV**) lodged an application for a marine discharge consent under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (**EEZ Act**) with the Environmental Protection Authority (**EPA**) on 27 March 2018. A decision-making committee (**DMC**) has been appointed to hear and decide the application.
- 1.2 OMV's application seeks authorisation to discharge trace amounts of harmful substances, as offshore processing drainage, from the deck drains of one or more Mobile Offshore Drilling Unit(s) (**MODU(s)**). The MODU(s) will be used by OMV as part of its Exploration and Appraisal Drilling (**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.
- 1.3 The application is supported by an Impact Assessment (**IA**)¹ which contains the information required by section 39 of the EEZ Act, including, *inter alia*, a set of proffered (volunteered) conditions².
- 1.4 OMV's application was publicly notified on 25 May 2018 and the submission period closed on 9 July 2018 with 44 submissions received.
- 1.5 The EPA has commissioned me to prepare this report which reviews OMV's proffered conditions and to provide advice to the DMC on:
 - Best-practice in relation to drafting of conditions;
 - The conditions proffered by OMV, including any new conditions and/or changes to the proffered conditions proposed by its experts in their statements of evidence;
 - The conditions requested by submitters; and
 - Recommended conditions that I consider should be imposed and/or changes to OMV's proffered conditions in the event the DMC decides to grant the marine discharge consent.

2. Qualification and Experience

- 2.1 My name is Robert Ewout Loeffering. I have a BSc and an MSc (Hons), both in Earth Sciences, from Massey University, and a PhD, also in Earth Sciences, from the University of Waikato. I am a full member of the New Zealand Planning Institute (NZPI) and an accredited hearings commissioner (with Chair endorsement) under the Resource Management Act 1991 (**RMA**).
- 2.2 I currently work part-time for Stantec New Zealand (**Stantec**) as a Principal Environmental Consultant and a Discipline Lead. I also work privately as an independent hearings commissioner under the RMA. I have been appointed as sole commissioner and been on various hearings panels for a variety of resource consent applications, including for activities within the coastal marine area (CMA). My previous work experience includes holding the position of Consents Manager at the Northland Regional Council and also the Tasman District Council. I have assessed and made decisions on many hundreds of resource consent applications under the RMA.
- 2.3 I prepared the report entitled "Dealing with Uncertainty – OMV Marine Discharge Consent Application" dated July 2018 (**the Uncertainty Report**) for the EPA.
- 2.4 I have worked for the EPA (on contract through Stantec) on previous applications for marine consents and marine discharge consents, as follows:
 - In 2014 I was the decision support writer for two marine consent applications associated with offshore exploratory drilling in the Taranaki Basin;
 - During 2016-17 I was a Technical Advisor for the Trans-Tasman Resources Limited application to mine iron sand within the South Taranaki Bight. I prepared the EPA's Key Issues Report (September 2016) and also the Conditions Report (February 2017) for that application. I took

¹ As required by section 38(2)(c) of the EEZ Act.

² Included in Appendix A of the IA.

part in the Planning and Conditions Expert Conferencing and attended the hearing to present evidence; and

- In 2017 I was the decision support writer for the marine consent and marine discharge consent applications lodged by Shell Taranaki Limited. This application sought authorisation to discharge harmful substances from deck drainage systems of a drilling rig(s) within the Taranaki Basin.

2.5 I have recently completed a project for the EPA which involved reviewing the various conditions that have been imposed on all the marine consents issued since the EEZ Act came into force and to prepare a "Conditions Library". The Conditions Library will be made available for applicants and DMCs for future marine consent applications. Using conditions from the Conditions Library will ensure that those imposed are better standardised and meet the principles of good condition drafting.

3. Code of Conduct

3.1 I confirm that I have read the Code of Conduct for Expert Witnesses as contained in the Environment Court Practice Note dated 1 December 2014. I agree to comply with this Code. The contents of this report are within my area of expertise, except where I state that I am relying upon the specified evidence or information of another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

4. Statutory Considerations

4.1 In the event that the marine discharge consent is granted, the DMC may issue it subject to conditions under section 63 of the EEZ Act, but not under section 63(2)(b) as this section precludes conditions that together amount or contribute to an adaptive management approach being imposed on the marine discharge consents.

4.2 Section 63(1) of the EEZ Act states:

A marine consent authority may grant a marine consent on any condition that it considers appropriate to deal with adverse effects of the activity authorised by the consent on the environment or existing interests.

4.3 While the wording of section 63(1) appears to provide the DMC with a very wide scope in terms of conditions it may impose on marine discharge consents, there are two restrictions specified in sections 63(3) and 63(4) that the DMC needs to be aware of. These sections prohibit:

- the imposition of conditions which are inconsistent with the EEZ Act or any regulations (sections 63(3)); and
- the imposition of a condition to deal with an effect if the condition would conflict with a measure required in relation to the activity by another marine management regime (**MMR**), or the Health and Safety at Work Act 2015 (sections 63(4)).

4.4 Section 63(4) does not prevent the DMC imposing conditions which duplicate requirements in relation to the activity by another MMR where such a condition relates to a matter (including environmental effects or effects on existing interests) that the DMC must take into account under section 59 of the EEZ Act. However, I recommend the imposition of conditions which duplicate other MMR requirements should be avoided provided the DMC has satisfied itself that the processes and approvals under those MMRs are robust and adequately deal with the relevant environmental effects or effects on existing interests. In such situations, requiring the EPA to provide an additional approval/certification is, in my opinion, unnecessary.

4.5 Sections 63(2)(a)(i) and (ii) allows the DMC to impose a condition which requires the consent holder to provide a bond for the performance of any one or more conditions of the consent and to obtain

and maintain public liability insurance of a specified value, respectively. Section 65 provides additional guidance on bond conditions.

- 4.6 Section 63(2)(a)(iii) and (v) allows the DMC to impose conditions that require a consent holder to undertake monitoring, and to provide information to the EPA for audit, respectively. Section 66 provides additional guidance on monitoring conditions.
- 4.7 Section 63(2)(a)(iv) allows the DMC to impose conditions that require the consent holder to appoint an observer to monitor the activity and the effects on the environment. Section 67 provides additional guidance on observer conditions and requires that any such condition must specify in detail the observer's duties in relation to the activity. Any observer must be 'approved' by the EPA for that purpose and section 67 outlines the circumstances under which such approval must be given by the EPA.
- 4.8 Copies of sections 63 to 67 of the EEZ Act are included in Appendix A.

5. Principles and Best Practice in Relation to Drafting Conditions

- 5.1 There are a number of important principles relevant to drafting conditions. There is an absence of case law in relation to conditions imposed under the EEZ Act, however I consider it appropriate to borrow from the extensive case law established under the RMA in respect to conditions, both in respect of the legal principles and also best practice guidance, given the focus of both statutes on management of natural resources.
- 5.2 A number of key principles must be adhered to when developing consent conditions, including that conditions must:
- Be within the EPA's powers under the EEZ Act;
 - Be for an EEZ Act purpose, particularly to promote sustainable management of the natural resources of the EEZ or protection of the environment from pollution;
 - Be certain so the consent holder, the EPA, and any layperson viewing the consent can be clear about what is required by the conditions and the obligations the consent holder has. It is important conditions are drafted in plain English and can be readily interpreted and understood by EPA officers monitoring the consents, and the consent holder;
 - Fairly and reasonably relate to the subject matter of the consent;
 - Be fair, reasonable, and practical;
 - Be exclusively between the consent holder and the EPA, in that they are capable of compliance by the consent holder without relying on actions of third parties; and
 - Not result in a future reservation of power to the EPA to later approve conditions (secondary approval). Any condition which requires something (e.g. a management plan) to be submitted to the EPA for approval should not result in the EPA fulfilling the role of an arbitrator on any matter.
- 5.3 In addition, other conditions proffered by OMV, including those that may be outside those that the DMC can lawfully and fairly impose, may also be imposed and become enforceable. Such conditions are often referred to as 'Augier' conditions (which are based on the 'Augier Principle') and often reflect undertakings that an applicant is putting forward to address concerns of third parties. The Augier Principle requires the DMC to be satisfied that the following four elements have been established³:
- A clear and unequivocal undertaking is given to the DMC and/or the other parties;
 - Receipt of the grant of consent is reliant on that undertaking;

³ Adapted from *Frasers Papamoa Ltd v Tauranga CC* [2010] 2 NZLR 202 (HC)

- The imposition of a condition on the consent which broadly encompasses the undertaking; and
- Detriment to the other parties if the undertaking is not complied with.

5.4 The Quality Planning website includes a number of best practice recommendations pertaining to conditions and these are presented in Appendix B⁴.

5.5 It is also common practice to place advice notes on consents to provide a useful reminder to consent holders of other standards and/or requirements relating to the activity. Advice notes must be clearly labelled as advice notes to ensure they are not misinterpreted as consent conditions and should therefore not be worded as though they are conditions – that is, they should not use words to the effect that a consent holder “shall” or “must” do something.

6. OMV's Proffered Conditions

6.1 OMV is seeking consent to discharge trace (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. The IA includes, in its Appendix A, a set of proffered conditions. OMV considers its proffered conditions adequately deal with the uncertainties of the application⁵ and, if complied with, the adverse effects on the environment, including effects on existing interests, will be negligible or trivial⁶.

6.2 I provide a detailed assessment and commentary on OMV's proffered conditions in Section 8 of this report, however in the following paragraphs I discuss the key conditions in greater detail, particularly those which deal with the uncertainties of the application.

6.3 In my earlier Uncertainty Report I identified a number of matters within the application for which uncertainty exists, the two main matters being:

- Not knowing the details of the deck drainage system for the MODU(s) that will be used to undertake the EAD programme, namely because the MODU(s) has not yet been contracted; and
- Not knowing which harmful substances will be used/stored on the MODU(s) and there is therefore uncertainty as to the actual harmful substances that may be discharged.

6.4 To address the uncertainty of not knowing the deck drainage system that will be on the MODU(s) that will be used during the EAD programme, OMV has proffered a condition (Condition 7) which specifies minimum requirements of the deck drain system which services any hazard area. Condition 7 states:

7. *Any deck drain from a hazard area shall, as a minimum, including [sic] the following design requirements:*

- Full containment of deck drainage runoff directed to a settlement tank; and*
- Settlement tanks shall have a minimum combined capacity of at least 5 m³; and*
- An oil-in-water separator system prior to discharge; and*
- A mechanism for analysing oil-in-water content prior to discharge from the oil-in-water separator system.*

6.5 I consider proffered Condition 7 is, in part, sufficient and appropriate to deal with the uncertainty of not knowing the details of the deck drainage system. I have recommended some changes to Condition 7 to align with the EPA's preferred drafting style as well as to better deal with this uncertainty. My recommended changes are shown in Table 8-1.

⁴ The material from the Quality Planning website contained in Appendix 2 has been slightly adapted to reference the EPA as the consenting authority.

⁵ Govier, EIC, paragraphs 82 and 94.

⁶ Govier, EIC, paragraph 130.

- 6.6 No conditions are proffered by OMV that directly relate to the uncertainty of not knowing which harmful substances will be used and stored on the MODU(s). The only proffered conditions which have some relevance to knowing which harmful substances will be used are Condition 8, which would require OMV to have an approved Emergency Spill Response Plan (**ESRP**), and Condition 9 which outlines that the ESRP must include specific details on places and systems associated with the storage or transfer of harmful substances.
- 6.7 An ESRP is an emergency spill response plan that is prepared in accordance with Regulation 24 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects—Discharge and Dumping) Regulations 2015 (**D&D Regs**). Regulation 24(1) of the D&D Regs states that the owner of an offshore installation must not operate an offshore installation without an ESRP approved by the EPA. A copy of Regulation 24 is included in Appendix C. An ESRP may be a separate plan or may be a chapter of, or comprise parts of, an operator's oil spill contingency plan (**OSCP**) prepared under the Marine Protection Rules Part 131. The ESRP would cover all the harmful substances⁷ which are the subject of OMV's current application and it needs to include, *inter alia*, the following:
- *emergency spill response procedures for harmful substances that are held on board the offshore installation in volumes exceeding the following:*
 - *20 litres, if the substance is ecotoxic or very ecotoxic in the aquatic environment (as those terms are defined in the table in Schedule 6 of the Hazardous Substances (Classification) Regulations 2001);*
 - *100 litres, for any other harmful substance described in regulation 4(a).*
 - *information about the harmful substances on board the offshore installation, including—*
 - *a list of harmful substances stored on the offshore installation; and*
 - *the maximum volumes of the substances likely to be stored on the offshore installation; and*
 - *a description of the processes and activities that present a risk of a spill of a substance; and*
 - *measures to prevent the occurrence of a spill; and*
 - *information to help personnel at the installation deal with a spill by detailing the actions necessary to stop, minimise, or mitigate the effects of a spill, including procedures for—*
 - *determining what action to take in response to a spill; and*
 - *preventing escalation of the spill; and*
 - *stopping the discharge at its source, if possible; and*
 - *identifying the safety and environmental consequences of any remedial action; and*
 - *determining whether the spill can be contained or cleaned up using the resources available to the owner*
 - *an inventory and the location of response equipment held on the offshore installation*
- 6.8 The ESRP must be submitted to the EPA for approval and, before the ESRP is submitted the owner must consult any person with an interest in the vicinity of the installation that is likely to be affected by a spill into the sea of any harmful substances.
- 6.9 In my view the implementation and compliance with the ESRP required under Regulation 24 of the D&D Regs is the single most important measure for OMV's application to ensure the discharge of harmful substances in the deck drainage system are avoided and/or minimised. However, because an ESRP is a mandatory requirement under Regulation 24 of the D&D Regs I do not consider it necessary to include this requirement as a condition on this marine discharge consent. Accordingly, I have recommended that OMV's proffered Conditions 8 and 9 be deleted and that an advice note be included reminding OMV that it may not operate an offshore installation without an ESRP approved by the EPA. This advice note is included in Table 8-1. As discussed in paragraph 5.5 (above), advice notes are commonly included on consents to remind consent holders of other

⁷ Being those described in Regulation 4(a) of the D&D Regs being those substances that are ecotoxic to aquatic organisms. This excludes oil as it is defined under Regulation 4(b).

standards and/or requirements relating to the proposed activity and I consider this is the appropriate approach in this case.

6.10 OMV has proffered conditions which outline actions that it would follow in the event that there is a spill of any harmful substance into the sea. These actions are outlined in Conditions 10 and 11 which state:

10. The Consent Holder must notify the EPA, as soon as reasonably practicable but not later than the end of the following working day, after a spill into the sea of any harmful substances described in regulation 4(a) of the Discharge and Dumping Regulations becomes known to the Consent Holder.

11. a) In the event of a spill of any harmful substances described in regulation 4(a) of the Discharge and Dumping Regulations into the sea, the Consent Holder must liaise with the EPA to determine whether monitoring is likely to detect any environmental effects and, if so, agree on appropriate monitoring (if any) and timeframes and whether any other relevant authorities should be notified. Other relevant authorities may include Maritime New Zealand, regional councils, iwi entities or the Department of Conservation.

b) The results of the monitoring must be provided to the EPA on request and in a written summary report within three months of the Consent Holders receipt of the results.

6.11 I consider that the actions outlined in Conditions 10 and 11 are appropriate, albeit with some minor changes which I present in Table 8-1.

6.12 I consider that there are some matters not adequately covered in the proffered conditions and I discuss those matters in Section 8 of this report.

7. Submissions

7.1 A total of 44 submissions were received by the EPA during the notification period. Four of the submissions include references to 'conditions', including some which request that specific conditions be imposed should the marine discharge consent be granted.

7.2 Below I discuss the four submissions which include references to conditions, including whether any of the conditions recommended by submitters are considered appropriate to impose.

Submitter: K Hunt

7.3 The submission lodged by 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.

Submitter: Te Ohu Kaimoana Trustee Limited

7.4 The submission of Te Ohu Kaimoana Trustee Limited states, in relation to OMV's proffered conditions:

- *Condition 9, which sets out what should be included in the ESRP, should also be required to specify the hazardous substances that will be used. In addition, maximum discharges should be limited within the parameters specified in the testing carried out for the impact assessment, including toxicity levels, discharge volumes and frequency. Limits set should ensure the worstcase [sic] scenarios modelled are not exceeded.*
- *Condition 11 (a), which includes authorities who should be notified after a spill (including iwi entities) should also include fisheries authorities such as the Ministry for Primary Industries, and also advise fishing industry bodies.*
- *As far as monitoring is concerned, catches from harvesting in the areas to be drilled should be analysed for contaminants in their flesh prior to drilling and again afterwards. We envisage this kind of monitoring would also be necessary to monitor other aspects of the operation and their potential effects on fisheries, although we have yet to fully understand what they will be. Clearly there may be cumulative effects, not only from discharges that may be made as a result of this application, but also from other activities that may be granted as part of the overall operation.*

7.5 I do not consider that Condition 9 needs to explicitly state that the ESRP must specify the harmful substances⁸ that will be used. This is because, as outlined in paragraph 6.7 of this report, an ESRP must include, *inter alia*, information about the harmful substances on board the offshore installation, including a list of harmful substances stored on the offshore installation and the maximum volumes of the substances likely to be stored.

7.6 In terms of the suggestion that "*maximum discharges should be limited within the parameters specified in the testing carried out for the impact assessment, including toxicity levels, discharge volumes and frequency*", I do not consider this is necessary or appropriate given the minor nature of the activity for which consent is being sought. This application seeks to discharge trace (residual) amounts of harmful substances that may be entrained within discharges from deck drains following the clean-up of any spills of such substances. Even if a limit(s) was to be imposed by way of a condition(s), it would be difficult, if not impossible, to accurately measure the rate of discharge or mass of harmful substance discharged given that they will be present in trace quantities. Assessing compliance with such limits would be very difficult.

7.7 The submitter has requested that the Ministry for Primary Industries (**MPI**) be notified of any spill as part of Condition 11 (a). Condition 11 (a), as currently drafted (refer paragraph 6.10 above), includes the provision of notifying 'any other relevant authority' of any spill of harmful substances into the sea (after the EPA is notified as required by Condition 10). Condition 11 (a) includes a list of some of the 'other authorities' which 'may include' Maritime New Zealand, regional councils, iwi entities and/or the Department of Conservation. The decision as to who must be notified is to be decided by OMV following 'liaison' with the EPA but the important point to note is that none of the listed authorities must be notified as a mandatory requirement and the list is not exhaustive as the condition uses the words 'may include' before naming the authorities. I consider that MPI should be added to the list of

⁸ Referred to by the submitter as 'hazardous substances'.

authorities that 'may' be notified and have included this in my recommended changes to conditions as set out in Table 8-1.

- 7.8 Mr Govier, for OMV, states it is not clear what type of spill the submitter is referring to in respect of including MPI as part of the notification process⁹, however the submitter's comments relate to Condition 11(a) which specifically relates to 'a spill of any harmful substances described in regulation 4(a) of the Discharge and Dumping Regulations into the sea' (this being in the first sentence of the condition).
- 7.9 The submitter considers that harvested fish should be analysed for contaminants in their flesh prior to drilling and again afterwards. Given that this application is seeking authorisation to discharge trace (residual) amounts of harmful substances that may be entrained within discharges from deck drains following the clean-up of any spills of such substances, I do not consider that such monitoring is necessary. The IA concludes that the potential effects on fish are negligible¹⁰, I agree and as such no monitoring of fish flesh is, in my opinion, warranted.

Submitter: Te Korowai o Ngaruahine Trust

- 7.10 The submission of Te Korowai o Ngaruahine Trust (Louise Tester) requests the following conditions be imposed should the marine discharge consent be granted:
- 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; and*
 - 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.*
- 7.11 In terms of a), OMV has explained why it cannot, at this stage, specify which substances will be stored and used - that is, the selection of these is driven by operational requirements of the MODU, the design of the well to be drilled, and the geology of the formation being drilled. Despite this, the ESRP that is required to be submitted and approved by the EPA will include, *inter alia*, information about the harmful substances on board the offshore installation, including a list of harmful substances stored on the offshore installation and the maximum volumes of the substances likely to be stored.
- 7.12 Based on the very minor scale of the activity and the negligible potential adverse effects of the activities that this marine discharge consent relate, I do not consider that conditions should be imposed to address the matters outlined in b) to f) (above). I note that OMV is not proffering any 'Augier' conditions to deal with these matters, however Mr Govier states that "As part of the wider EAD Programme, OMV New Zealand have committed to ongoing engagement with existing interests, and iwi in particular. Other regulatory applications are currently being prepared and further engagement with existing interests and iwi is also being undertaken through the development of

⁹ Govier, EIC, paragraph 116.

¹⁰ IA, Section 7.2.2.5.

those applications"¹¹. I take this to mean that OMV may be proffering conditions to address all or some of these concerns as part of its non-notified marine consent application for activities associated with its EAD programme. This may be a matter that the DMC wishes to clarify during the hearing.

Submitter: Te Runanga o Ngati Ruanui

7.13 The submission of Te Runanga o Ngati Ruanui (Debbie Ngarewa-Packer) states, in relation to conditions (my emphasis added):

- We recommend that the EPA considers applying a condition requiring a specially designed zero discharge MODU which is more stable to avoid stability risks, if consent is granted. This type of MODU is Ngati Ruanui's preference. Moreover, under exceptional circumstances for example during periods of excessive and continuous rainfall, a consent condition requiring the activity to cease until sea/weather conditions are considered to be safe to commence operation is appropriate.
- Given that the Impact Assessment (IA) is reliant on the above information, we believe that it is appropriate that the EPA apply a condition reflecting the amount/percentage of harmful substances referred to and in accordance to their respective HASNO Classification. Should there be any changes that would increase the volume of substances or utilise increased amount of 'very ecotoxic' substances that would likely to change the calculations and IA, a new consent application should be submitted.
- Given that at this stage the type of MODU to be used is not available and the IA has been based on the above surface area, we consider it appropriate that the EPA apply a condition limiting the deck area to no more than 5,826 m². Further to this the consent, if granted, should be limited to the information provided particularly those references used in volume calculations. Any changes will require a new application to be submitted to the EPA.
- In our view, indicative discharge calculations including rainfall calculations should be modelled according to the Worst-Case Scenario and in this case should be modelled on the 'unlikely scenario' (10-50% of the time) where rainfall calculations are high and would likely to exceed the capability of a typical MODU OWS treatment system (approximately 10 m³ per hour or 240 m³ per day). We recommend that the EPA require further information which reflects the Worst-Case/Unlikely Scenario instead of 90% of the time (lower volume calculations), referred to in the IA. Moreover, if the 90% of the time data calculation is to be adopted, we recommend that the EPA apply a consent condition restricting drilling activities to be undertaken no more than 30 days.
- Given that the discharge of harmful substances is associated with off-shore rainfall, we believe that it is necessary that the EPA applies a condition requiring the installation of a rainfall monitoring and recording equipment and that data be collected prior to commencement of activity to confirm the accuracy of data and IA.

7.14 I rely on the evidence of Mr Hollinger, for OMV, regarding the matter of zero discharge MODUs and whether they are more stable than conventional MODUs¹².

7.15 Based on OMV's IA and expert evidence, I do not consider that imposing '...a condition requiring the activity to cease until sea/weather conditions are considered safe to commence operation...' is necessary on this marine discharge consent. A decision on when the drilling activity is safe or not to undertake due to sea/weather conditions is something that OMV will decide and I do not consider that this affects the potential effects of the activity for which this marine discharge consent is being sought.

7.16 It is not appropriate to impose specific conditions that restrict OMV to the harmful substances that it has based its IA on. The IA is based on a selection of harmful substances it has used in previous drilling campaigns but the exact substances that will be used is not currently known and will depend

¹¹ Govier, EIC, paragraph 125.

¹² Hollinger, EIC, paragraph 63.

on the operational requirements of the MODU, the design of the well to be drilled, and the geology of the formation being drilled.

- 7.17 Likewise, limiting the deck area by way of condition because it was used in the example presented in the IA is not appropriate. Mr Hollinger and Mr Forrest, for OMV, both state that the deck area figure used in the IA to quantify the potential volume of rainwater discharge from a MODU was based on the deck area of the largest MODU that responded to the OMV invitation to tender in 2017¹³. Mr Hollinger states that the invitation to tender has been updated and re-issued and as such it is not practicable for OMV to nominate a maximum deck area – I agree. The size of the deck will affect the rate of dilution that any residual harmful substance will receive on the decks of the MODU – that is, the larger the deck the more potential dilution could occur because the 'catchment' area for incident rainfall is greater. The same amount of residual harmful substance on a smaller deck for any given rainfall event will result in a higher concentration of that substance in the discharge to the sea (assuming no removal within the treatment system). Therefore specifying a maximum deck area is, in my opinion, not necessary.
- 7.18 I do not consider that a limit needs to be placed on the duration of the drilling activity. This application is not for intentional discharges of harmful substances into the sea, it is for trace amounts of such substances that remain on decks (residuals) following the clean-up of any spills. The quantities involved are very small, the likelihood of spills are low (and therefore infrequent), and rates of dilutions are large.
- 7.19 I do not consider it necessary that off-shore rainfall data be collected prior to the activity commencing. The IA presents information on rainfall, albeit based on onshore monitoring stations, but Mr Forrest considers this to be the best available information¹⁴ – I agree. These data were used to estimate possible volumes of rainwater that would be discharged from an example MODU which were, in turn, used to calculate concentrations of harmful substances within the discharge following the spill (and clean up) of some example harmful substances. Obtaining more accurate rainfall data will not reduce the likelihood of a discharge of trace amounts of such substances that remain on decks and will not affect the overall conclusion that the potential adverse effects of the discharges are negligible.

8. Recommended Changes to Conditions

- 8.1 In Section 6 of this report I provided discussion on a number of the key conditions proffered by OMV in its IA. I concluded that those conditions, with a number of modifications, adequately dealt with the uncertainties that I had identified in my earlier Uncertainty Report. However, there are some matters which I consider are not adequately addressed in the proffered conditions. I discuss these matters below.
- 8.2 My earlier Uncertainty Report noted that, despite not having yet contracted a MODU(s), OMV has stated that as part of its selection process it has "...placed *strict environmental and operational requirements which the MODU suppliers must be able to comply with...*"¹⁵. I also noted that this commitment is not reflected in any of OMV's proffered conditions and this is a matter which the DMC may wish to have clarified and which, if appropriate, codified by way of a condition(s). Having considered this matter further, I am of the opinion that imposing a condition to reflect this commitment could be problematic and be difficult for the EPA to check compliance with unless there was some national or international best practice standard against which the proposed MODU could be compared.
- 8.3 The IA includes a commitment that "*Wherever possible the least harmful substance that is technically capable of performing the specific role will be selected*". Mr Govier has clarified that this statement should, in fact, read (my emphasis) "*wherever practicable*"¹⁶. Given Mr Govier's clarification, OMV's commitment, if implemented, will result in the environmental risks being lowered to "As Low As Reasonably Practicable" (**ALARP**) – this being a term used a number of times in the IA in respect to environmental risks. In my Uncertainty Report I noted that no condition had been proffered by OMV to reflect this commitment and suggested that the DMC may wish to explore

¹³ Hollinger, EIC, paragraph 68; and Forrest, EIC, paragraph 47.

¹⁴ Forrest, EIC, paragraph 45.

¹⁵ Section 3.2 of the IA.

¹⁶ Govier, EIC, paragraph 93.

whether it could be codified in the conditions. Having considered this matter further, I do not consider it necessary that this commitment be codified by way of a condition given the scale of the activity being consented (the discharge of trace amounts of harmful substances) and the negligible potential adverse effects of such discharges. I have, instead, recommended that an advice note be included which reinforces OMV's commitment in this regard.

- 8.4 In addition to the two matters discussed, I consider that a number of minor changes should be made to OMV's proffered conditions to ensure consistency with the EPA's preferred drafting style. These changes do not change the intent of the condition. Further, I recommend that some additional conditions be included. My detailed analysis of OMV's proffered conditions, including my recommended changes and additional conditions, are presented in Table 8-1.
- 8.5 The first column of Table 8-1 presents OMV's condition number and the second column presents OMV's proposed wording together with any changes that I am recommending. Deletions are shown as ~~strike throughs~~ and underlines show recommended insertions. In the third column I provide comments regarding the condition and my recommended amendments.
- 8.6 Where I consider additional conditions should be included, I have inserted them where I think they best fit within OMV's numbering and have given the new conditions suffixes (e.g. 2A) rather than attempting to renumber the entire set of conditions.

Table 8-1: Analysis of OMV's Proffered Conditions and Recommended Changes/Additions

OMV Condition Number	OMV Proffered Condition Text and Recommended Amendments	Comments
1	<p>The Consent Holder shall ensure that the Marine Discharge Consent is exercised in general accordance with the application for Marine Discharge Consent dated [insert date] (Report Number [insert report number]), except where modified by the conditions below.</p> <p>Where information contained in the application material and/or supporting documents is contrary to the conditions of this Marine Discharge Consent, the conditions shall prevail.</p> <p><u>Subject to compliance with these consent conditions, the activities authorised by this Marine Discharge Consent shall be undertaken in general accordance with the application document entitled "Marine Discharge Consent Application – Deck Drainage, Taranaki Basin" (dated March 2018) prepared by SLR Consulting Limited and supporting documents submitted as part of the application lodged on 27 March 2018. Where there is any actual or apparent conflict between these documents and any of the conditions of these consents, the conditions shall prevail.</u></p>	Changes reflect EPA preferred drafting – no change in intent of OMV's condition.
2	This Marine Discharge Consent shall expires <u>on</u> 31 December 2025.	Changes reflect EPA preferred drafting – no change in intent of OMV's condition.
2A	<p><u>Pursuant to section 85 of the EEZ Act, this Marine Discharge Consent shall lapse on 31 December 2023 unless the consents are given effect to prior to that date or the EPA grants an extension to the date in accordance with section 85(1)(b) of the EEZ Act.</u></p>	<p>New condition specifying a lapse date. A hard coded date is recommended rather than referencing "the date of commencement".</p> <p>Section 71 of the EEZ Act states that a marine consent commences when the time for lodging an appeal against the grant of the consent expires and no appeal has been lodged or when the High Court determines the appeal or all persons who lodged appeals withdraw their appeals. It can therefore be difficult to ascertain the actual date that a marine consent "commenced", particularly where a decision is appealed to the High Court.</p> <p>To avoid this potential confusion it is recommended that the date be hard coded in the condition.</p>

OMV Condition Number	OMV Proffered Condition Text and Recommended Amendments	Comments
3	<p>The Consent Holder shall ensure that a copy of this Marine Discharge Consent, and any variations <u>of it</u>, are available for inspection by the EPA at the Consent Holder's head office in New Zealand, and on any MODU undertaking activities authorised by this Marine Discharge Consent.</p>	<p>Minor change suggested.</p>
4	<p>The Consent Holder shall ensure that personnel directly involved in the exercise of this Marine Discharge Consent are informed of their obligations and responsibilities in exercising this Marine Discharge Consent.</p> <p><u>The Consent Holder shall ensure all personnel, including any contractors, involved in undertaking any of the activities authorised by this Marine Discharge Consent fully understand and comply with these conditions.</u></p>	<p>Changes reflect EPA preferred drafting – no change in intent of OMV's condition.</p>
4A	<p><u>The Consent Holder shall keep a record to show that the personnel, including contractors, referred to in Condition 4 have been informed of their obligations under these consents. The Consent Holder shall provide a copy of this record to the EPA upon request.</u></p>	<p>New condition to enable the EPA to monitor how Condition 4 has been complied with.</p>
5	<p>a) The Consent Holder shall, within 20 working days of the date of commencement of this Marine Discharge Consent, provide the EPA with the name and contact details of the delegated experienced person(s) responsible for collating and reporting information on compliance management in relation to this Marine Discharge Consent.</p> <p>b) The Consent Holder shall advise the EPA of any changes to the name and contact details of this person(s) within 20 working days of any changes being made.</p> <p><u>The Consent Holder shall, at least 20 working days prior to first commencing the activities authorised by this Marine Discharge Consent, or any other timeframe agreed to by the EPA, provide to the EPA, in writing, the name and contact details of the person who has delegated responsibility for compliance management, collating information, and reporting in accordance with the requirements of this consent. In the event that the responsible person changes, the Consent Holder shall advise the EPA, in writing, of the name and</u></p>	<p>Changes reflect EPA preferred drafting – no change in intent of OMV's condition.</p>

OMV Condition Number	OMV Proffered Condition Text and Recommended Amendments	Comments
	<u>contact details of the new person within 20 working days of the change.</u>	
5A	<u>The Consent Holder shall advise the EPA, in writing, of the date that it intends to first undertake the activities authorised by this Marine Discharge Consent at least 20 working days beforehand, or any other timeframe agreed to by the EPA.</u>	New condition which will provide the EPA with advance notice so that it can programme any compliance monitoring visits.
6	The Consent Holder shall ensure that no harmful substances are stored or handled in non-hazard areas which drain directly to the sea.	
6A	<p><u>The Consent Holder shall ensure that any harmful substances that have a reasonable potential for discharge from hazardous and non-hazardous deck drains on-board any MODU are stored within a secondary containment system. For the purposes of this condition a 'secondary containment system' means a system or systems:</u></p> <p><u>(a) in which pooling substances held in the workplace will be contained if they escape from the container or containers in which they are being held; and</u></p> <p><u>(b) from which they can, subject to unavoidable wastage, be recovered.</u></p>	New condition which has been used on other similar marine discharge consents issued by the EPA. Definition of secondary containment is from Regulation 3 (Interpretation) of the Health and Safety at Work (Hazardous Substances) Regulations 2017.
7	<p>Any <u>All deck drain systems on any MODU from which offshore processing drainage may discharge to the sea from a hazard area shall, as a minimum, include the following design requirements:</u></p> <p>a) <u>Both a hazardous and non-hazardous deck drain;</u></p> <p>b) Full containment of <u>hazardous</u> deck drainage runoff directed to a settlement tank; and</p> <p>c) Settlement tanks shall have a minimum combined capacity of at least 5 m³ <u>cubic metres;</u> and</p> <p>c) An oil-in-water separator system prior to discharge <u>from the hazardous deck drains;</u> and</p> <p>d) A mechanism for <u>continuously</u> analysing oil-in-water content prior to discharge from the oil-in-water separator system. <u>For the purposes of this condition "continuously" shall mean analysis at least every 30 seconds.</u></p>	Changes to reflect EPA preferred drafting.
8	The Consent Holder must ensure there is an approved ESRP for any MODU undertaking activities authorised by this Marine Discharge Consent.	Refer new Advice Note 1 (below). Condition not needed because an ESRP is required under Regulation 24 of the D&D Regs.

OMV Condition Number	OMV Proffered Condition Text and Recommended Amendments	Comments
9	<p>The Consent Holder must include in the ESRP up to date and accurate drawings or plans showing the general arrangement of the installation, in particular, the places and systems associated with the storage or transfer of harmful substances, including tank capacity, filling arrangements, isolation valves and drainage systems highlighting the critical isolation points.</p>	<p>Refer new Advice Note 1 (below). Condition not needed because an ESRP is required under Regulation 24 of the D&D Regs and that regulation specifies what needs to be included in the ESRP.</p>
10	<p>The Consent Holder must shall notify the EPA, as soon as reasonably practicable, but not later than the end of the following working day, after a spill into the sea of any harmful substances described in regulation 4(a) of the Discharge and Dumping Regulations becomes known to the Consent Holder.</p>	<p>Changes reflect EPA preferred drafting – no change in intent of OMV's condition.</p>
11	<p>a) In the event of a spill of any harmful substances described in regulation 4(a) of the Discharge and Dumping Regulations into the sea, the Consent Holder must shall liaise with the EPA to determine whether monitoring is likely to detect any environmental effects and, if so, agree on appropriate monitoring (if any) and timeframes and whether any other relevant authorities should be notified. Other relevant authorities may include Maritime New Zealand, regional councils, iwi entities, <u>the Ministry of Primary Industries, and/or</u> the Department of Conservation.</p> <p>b) The results of the monitoring must shall be provided to the EPA on request and in a written summary report shall be provided to the EPA within three months of the Consent Holders receipt of <u>receiving</u> the results <u>of testing from the laboratory</u>.</p>	<p>Changes reflect EPA preferred drafting – no change in intent of OMV's condition.</p> <p>Inclusion of MPI in the list of possible authorities to be notified of any spill of harmful substances into the sea.</p>
11A	<p><u>The Consent Holder shall notify the EPA immediately upon becoming aware of any adverse effects on the environment or existing interests that arise that:</u></p> <p><u>(a) were not anticipated when these consents were granted; or</u></p> <p><u>(b) are of a scale or intensity that were not anticipated when these consents were granted.</u></p> <p><u>Advice Note: In the event that such adverse effects occur the EPA may, pursuant to section 76(1)(c) of the EEZ Act, serve notice on the Consent Holder of its intention to review the duration or conditions of these consents.</u></p>	<p>New condition which has been used on other consents issued by the EPA.</p>

OMV Condition Number	OMV Proffered Condition Text and Recommended Amendments	Comments
12	<p>Pursuant to sections 76 and 77 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, the EPA may serve notice on the Consent Holder of its intention to review the conditions of this Marine Discharge Consent at five yearly intervals from the grant of this consent for the following reasons:</p> <p>a) To deal with any adverse effects on the environment that may arise from the exercise of this consent and which it is appropriate to deal with after the consent has been granted;</p> <p>b) To impose discharge quality and/or receiving water quality monitoring requirements if the quantities or frequencies of discharges of harmful substances are shown to be greater than anticipated; or</p> <p>c) To deal with any practical issues arising from the implementation of the conditions of consent.</p> <p>The EPA may serve notice on the Consent Holder, in accordance with sections 76 and 77 of the EEZ Act, of its intention to review the duration or conditions of these consents at any of the following times:</p> <p>(a) during the month(s) of January, April, July, and/or October each year; and/or</p> <p>(b) within 20 working days of the receipt of any notification of a spill of harmful substances into the sea under Condition 10.</p> <p>The review of conditions may be for any of the following purposes:</p> <p>(a) Dealing with any adverse effects on the environment that may arise from the exercise of the consents and which it is appropriate to deal with after the consent(s) have been granted; and/or</p> <p>(b) To impose discharge quality and/or receiving water quality monitoring requirements if the quantities or frequencies of discharges of harmful substances are shown to be greater than anticipated.</p>	<p>The ability for the EPA to review conditions under sections 76 and 77 of the EEZ Act <u>does not</u> need to be imposed as a numbered condition on the consent. The reason for this is that it is only the EPA that can instigate a review and such reviews are not a condition that a Consent Holder can (or must) comply with. Despite this, in the event that the DMC wishes to specify any purpose(s) for a review then this needs to be specified in the consent – refer to section 76(1)(a) of the EEZ Act. This differs from the matters specified in section 76(1)(b) to (e) which the EPA can initiate a review for at any time it considers necessary.</p> <p>The recommended wording would allow the EPA to review the conditions and duration of the Marine Discharge Consent quarterly or within 20 working days of notification of any spill.</p>
Advice Note 1	<p><u>The Consent Holder may not operate an offshore installation without an Emergency Spill Response Plan (ESRP) approved by the EPA as required by Regulation 24 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects—Discharge and Dumping) Regulations 2015.</u></p>	<p>New Advice Note to remind OMV that it may not operate an offshore installation without an ESRP approved by the EPA as required by Regulation 24 of the D&D Regs. Essentially replaces OMV's proffered Conditions 8 and 9.</p>
Advice Note 2	<p><u>The application and Impact Assessment (IA) submitted in support of this Marine Discharge Consent includes a commitment that the Consent Holder will select and use the least harmful (ecotoxic) substance available that is technically capable of performing the specific role for which it is intended.</u></p>	<p>New Advice Note to reflect OMV's stated commitment to select the least harmful substances available.</p>

Appendices



Appendix A Relevant Sections of the EEZ Act Pertaining to Conditions

63 Conditions of marine consents

- (1) A marine consent authority may grant a marine consent on any condition that it considers appropriate to deal with adverse effects of the activity authorised by the consent on the environment or existing interests.
- (2) The conditions that the marine consent authority may impose include, but are not limited to, conditions—
 - (a) requiring the consent holder to—
 - (i) provide a bond for the performance of any 1 or more conditions of the consent:
 - (ii) obtain and maintain public liability insurance of a specified value:
 - (iii) monitor, and report on, the exercise of the consent and the effects of the activity it authorises:
 - (iv) appoint an observer to monitor the activity authorised by the consent and its effects on the environment:
 - (v) make records related to the activity authorised by the consent available for audit:
 - (b) that, if [section 64](#) applies, together amount or contribute to an adaptive management approach.
- (3) However, the marine consent authority must not impose a condition on a consent if the condition would be inconsistent with this Act or any regulations.
- (4) To avoid doubt, the marine consent authority may not impose a condition to deal with an effect if the condition would conflict with a measure required in relation to the activity by another marine management regime or the [Health and Safety at Work Act 2015](#).

65 Bonds

- (1) A bond required under [section 63\(2\)\(a\)\(i\)](#) may be given for the performance of any 1 or more conditions of a marine consent that a marine consent authority considers appropriate and may continue after the expiry of the consent to secure the ongoing performance of conditions relating to long-term effects, including—
 - (a) a condition relating to the alteration, demolition, or removal of structures:
 - (b) a condition relating to remedial, restoration, or maintenance work:
 - (c) a condition providing for ongoing monitoring of long-term effects.
- (2) A condition of a consent that describes the terms of the bond may—
 - (a) require that the bond be given before the consent is exercised or at any other time:
 - (b) provide that the liability of the holder of the consent be not limited to the amount of the bond:
 - (c) require the bond to be given to secure performance of conditions of the consent, including conditions relating to any adverse effects on the environment or existing interests that become apparent during or after the expiry of the consent:
 - (d) require the holder of the consent to provide such security as the marine consent authority thinks fit for the performance of any condition of the bond:
 - (e) require the holder of the consent to provide a guarantor (acceptable to the marine consent authority) to bind itself to pay for the carrying out of a condition in the event of a default by the holder or the occurrence of an adverse environmental effect requiring remedy:
 - (f) provide that the bond may be varied, cancelled, or renewed at any time by agreement between the holder and the marine consent authority.
- (3) If the marine consent authority considers that an adverse effect may continue or arise at any time after the expiration of a marine consent, the marine consent authority may require that a bond continue for a specified period that the marine consent authority thinks fit.

66 Monitoring conditions

- (1) A condition imposed under [section 63\(2\)\(a\)\(iii\)](#) may require the consent holder to do 1 or more of the following:
 - (a) make and record measurements:
 - (b) take and supply samples:
 - (c) carry out analyses, surveys, investigations, inspections, or other specified tests:
 - (d) carry out the procedures in paragraphs (a) to (c) in a specified manner:
 - (e) provide information to the EPA or a person specified by the EPA at a specified time or times:
 - (f) provide information to the EPA or a person specified by the EPA in a specified manner:
 - (g) comply with the condition at the consent holder's expense.
- (2) This section does not limit [section 63\(2\)\(a\)\(iii\)](#).

67 Observers

- (1) A condition imposed under [section 63\(2\)\(a\)\(iv\)](#) that requires the holder of a consent to appoint an observer must specify in detail the observer's duties in relation to the activity.
- (2) The consent holder may appoint a person to be an observer only if the person is approved by the EPA for that purpose.
- (3) The EPA must approve a person to be an observer in relation to a consent if—
 - (a) the person has the appropriate training, skill, and experience to perform the duties; and
 - (b) the EPA is satisfied that the person is able to perform the duties independently of the consent holder.

Appendix B Quality Planning Website Material

- Conditions should use plain English so they can be understood by a lay person
 - o Avoid archaic legal terms.
 - o Avoid using complex or potentially confusing words.
 - o Minimise the use of technical jargon.
 - o Keep sentences and paragraphs as short as possible.
 - o Use numbered not bulleted lists.
 - o Avoid double negatives.
 - o Use the active tense with clear mandatory verbs: “shall” or “must”.
 - o Be careful with punctuation – in particular the use of commas in incorrect places in sentences can completely change the meaning of a condition. Generally words in brackets can be ignored, so care is needed in their use.

- All relevant and appropriate further information including plans approved should be specifically referenced in conditions. Any references to external specifications or methods must only refer to readily available technical publications that meet normal consent condition requirements (ie, the technical document or relevant part must be clearly written as a set of mandatory requirements). Ideally conditions should refer to specific plans and specifications, and have those documents physically attached to the consent. However, if the amount of technical information is too extensive or physically too big to attach to the consent document, then it should be labelled and physically filed with the consent and referred to in a consent condition. If cross references to plans and specifications are so extensive that some aspect of them may have been superseded by other more specific conditions, then compliance certainty should be provided by using a clause such as “The development shall be in accordance with ... except where another condition of this consent must be complied with”.

- Ensure all conditions are able to be complied with. They must be as certain as possible and compliance must physically and technically be able to be achieved. Some terms may need to be defined to ensure there is no doubt about what a condition requires.

- Ensure there are no conditions that require the approval of another person, such as the EPA’s EEZ Compliance Manager, because such ‘secondary approvals’ are not lawful. Instead, either ensure that all requirements are resolved prior to the decision being made, or use a technical certification condition, such as requiring certification by a specifically qualified person that a detailed technical requirement such as a performance or design standard has been met. Such certification should generally be done by a qualified person acting for a consent holder.

- Specify the qualification/experience required for undertaking a critical task such as writing a technical report, supervising critical investigations or monitoring, or for certification. The phrase ‘suitably qualified and experienced person’ should not be used. Instead specific requirements can be defined for example, “any reference to a ‘senior qualified person’ shall mean a person with a post-graduate degree in environmental science, chemistry, biology, geology,(including a Chartered Professional Engineer (CPEng)) or similar field; or sufficient technical experience that is at least equivalent; and at least five years professional experience involving environmental quality investigations”.

- Where it is necessary to include a condition requiring a future management plan, the purpose of such a condition must only be to provide more information on how the consent holder will comply with other conditions of a resource consent. The outcome sought by a management plan should be specified. Before such a condition is used there should be a very high degree of confidence that compliance is achievable. A management plan should not be a substitute for clear performance or environmental standards.
- Monitoring and reporting conditions must specify exactly what must be done, how, and by when. Critical information requirements will usually have the greatest level of specificity and assurance. Matters may include:
 - exact location details (GPS)
 - time of day
 - number of replicates
 - compositing of samples
 - chain of custody requirements
 - laboratory accreditation
 - detection/accuracy limits
 - sample bottle standards
 - methodology (for example, dissolved or total metal)
 - minimum training or qualification requirements for the person who is collecting the samples or undertaking the measurements
 - interpretation of results by a specifically qualified and experienced
- It may be appropriate for a technical standard for monitoring methodology to be incorporated into a condition and be referenced or attached to the consent as appropriate. Amalgamating reporting requirements into a regular report (such as an annual report) can have significant benefits for both the consent holder and the EPA. The information from that monitoring can be essential to assess the extent of any such adverse effects.
- Time frames should be specified for compliance with other conditions where appropriate. There must not be any 'gaps' in the sequence of requirements (eg, requiring monitoring to be undertaken at a specific time, the results to be interpreted by a specifically qualified person, and those results provided to the council after a specified time).
- It is appropriate to refer to an appropriate EPA job title in a condition rather than just the EPA or the chief executive. For example, "The monitoring report specified in condition X shall be provided to the EPA, Attention: Environmental Compliance Manager by 31 August each year." Contact details can be useful in an advice note to highlight who to contact if the consent holder has any queries. However, unless a consent is for a very short term, it is not generally appropriate to provide any more specific individual contact information because of staff and organisational changes that can occur over the long term.
- Use advice notes if necessary to explain conditions or to highlight other important legal requirements.

- Ensure that conditions requiring a consent holder to “use all practicable methods to...” are only used for minor issues and only where more certain conditions (for example, a requirement to implement specific procedures, technical standards or plans) are not reasonable or appropriate.
- A condition must not affect the consent holder’s legal rights to apply for future consents or a change of conditions.
- When specifying environmental quality standards, if possible, use a numerical (eg, less than 50 milligrams per litre total suspended solids), rather than a narrative standard (eg, no conspicuous suspended solids) as these can create potential for debate about exactly what is required by a narrative environmental quality standard.
- If a condition refers to a third party, such as providing a copy of a report to a third party, ensure sufficient information is provided in the consent condition to ensure it provides certainty for the duration of the consent about the contact details.

Appendix C Regulation 24 of the Discharge and Dumping Regulations

Emergency spill response procedures

24 ESRP for spills of harmful substances described in regulation 4(a)

- (1) The owner of an offshore installation must not operate the offshore installation without an ESRP approved by the EPA.
- (2) The owner of an offshore installation must ensure that there is an appropriate ESRP for the offshore installation and that the ESRP is—
 - (a) in the working language of the crew and in English; and
 - (b) approved by the EPA and, if changed, re-approved by the EPA; and
 - (c) kept up to date; and
 - (d) kept on board the offshore installation, except in the case of an unmanned offshore installation; and
 - (e) kept in a place where it is readily available for inspection at all reasonable times.
- (3) The ESRP must contain emergency spill response procedures for harmful substances described in regulation 4(a) that are held on board the offshore installation in volumes exceeding the following:
 - (a) 20 litres, if the substance is ecotoxic or very ecotoxic in the aquatic environment (as those terms are defined in the table in [Schedule 6](#) of the Hazardous Substances (Classification) Regulations 2001);
 - (b) 100 litres, for any other harmful substance described in [regulation 4\(a\)](#).
- (4) Emergency spill response procedures must include—
 - (a) information about the harmful substances on board the offshore installation, including—
 - (i) a list of harmful substances stored on the offshore installation; and
 - (ii) the maximum volumes of the substances likely to be stored on the offshore installation; and
 - (iii) a description of the processes and activities that present a risk of a spill of a substance; and
 - (b) guidance to ensure the safety of personnel; and
 - (c) measures to prevent the occurrence of a spill; and
 - (d) information to help personnel at the installation deal with a spill by detailing the actions necessary to stop, minimise, or mitigate the effects of a spill, including procedures for—
 - (i) determining what action to take in response to a spill; and
 - (ii) preventing escalation of the spill; and
 - (iii) stopping the discharge at its source, if possible; and
 - (iv) identifying the safety and environmental consequences of any remedial action; and
 - (v) determining whether the spill can be contained or cleaned up using the resources available to the owner or any other person responsible for implementing the emergency spill response procedures; and
 - (e) details of the response options available for the offshore installation; and
 - (f) the procedure by which any pollution incident involving a harmful substance described in [regulation 4\(a\)](#) is to be reported in accordance with [regulation 25](#); and
 - (g) the organisational emergency response structure for the offshore installation, including the duties of all personnel responsible for dealing with spills; and
 - (h) an inventory and the location of response equipment held on the offshore installation; and
 - (i) a list of 24-hour contact information, including that of—
 - (i) the owner or the owner's representative; and
 - (ii) the EPA; and
 - (iii) any organisation contracted to respond to spills at the offshore installation; and
 - (iv) the person responsible for implementing the plan; and
 - (v) the person co-ordinating response activities; and
 - (vi) off-duty personnel with responsibilities for dealing with spills; and
 - (vii) persons with existing interests that are likely to be affected by a spill from the offshore installation; and
 - (j) personnel responsibilities for the deployment, survey, and maintenance of the equipment referred to in paragraph (h).

- (5) The ESRP must be submitted to the EPA for approval,—
 - (a) if the ESRP is being approved for the first time, at least 2 months before the date on which operations are due to begin; or
 - (b) if the ESRP is to replace an ESRP that is due to expire, at least 2 months before the date of expiry of the ESRP that is being replaced.
- (6) Before an ESRP is submitted for approval, the owner of an offshore installation must consult any person with an interest in the vicinity of the installation that is likely to be affected by a spill into the sea of any harmful substances described in [regulation 4\(a\)](#) from the installation.
- (7) If the EPA is satisfied that the ESRP complies with the requirements of this regulation, the EPA may approve the ESRP for a period not exceeding 3 years.
- (8) All changes to the approved ESRP must be submitted to the EPA for re-approval, except changes to the information required by subclause (4)(i) and (j). Any changes to the information required by subclause (4)(i) and (j) must instead be notified to the EPA.

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