

**BEFORE THE EPA
OMV NEW ZEALAND LIMITED APPLICATION FOR MARINE DISCHARGE
CONSENT TO DISCHARGE OFFSHORE PROCESSING DRAINAGE (HARMFUL
SUBSTANCES FROM DECK DRAINS)**

IN THE MATTER of the Exclusive Economic Zone and Continental Shelf
(Environmental Effects) Act 2012

AND

IN THE MATTER of a Decision-making Committee appointed to consider a
marine discharge consent application made by OMV New
Zealand Limited for the discharge of trace amounts of
harmful substances from deck drains in the
South Taranaki Bight

OPENING LEGAL SUBMISSIONS FOR OMV NEW ZEALAND LIMITED

4 September 2018

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MAY IT PLEASE THE COMMITTEE

Introduction and summary

1. OMV New Zealand Limited (**OMV**) is applying for a Marine Discharge Consent (consent) under section 38 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (**EEZ Act**).
2. The consent is to permit the possible discharge of trace amounts of harmful substances from deck drains, an activity associated with an Exploration and Appraisal Drilling Programme (**EAD Programme**) in the Taranaki Basin.
3. The application is being made out of an abundance of caution. It is OMV's intention that the EAD Programme will take place without any harmful substances being spilled on the decks of a MODU at all. As such, there may not ever be a need to rely on this consent or an event that would result in a discharge.
4. If a spill to deck does occur, it will be cleaned up immediately. After clean up procedures have taken place, trace amounts of the substance may remain on the deck that cannot be detected by the human eye. Those trace elements would ultimately be washed into the deck drainage system, where they would possibly be removed, or otherwise substantially diluted and then discharged into the sea.
5. OMV has conservatively assumed that a maximum volume of harmful substances from a spill, that was then washed into the deck drainage system, would be 250 ml – or a cup.
6. This consent application is unique in that, on a conservative worst case scenario, whereby:
 - (a) a spill to deck of a harmful substance occurs;
 - (b) following clean up procedures, one cup of the harmful substance is left on the deck and then washed into the drainage system; and

- (c) the substances is the most harmful substance that could potentially be used during the EAD Programme;

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

SCOPE OF APPLICATION

7. The scope of the application is important because it defines which activities are subject to consideration and decision, and which activities are not. Although this application is part of the broader EAD Programme that is subject to other marine consent applications, the sole focus of this application is the potential discharge of trace elements from the deck drainage system of a MODU. Activities outside the scope of this application are relevant only to the extent (if any) that they provide context for this application. This approach has been adopted previously by the EPA for other similar applications under the EEZ Act.

Trigger for consent

8. Not all aspects of the EAD Programme require a marine consent.
9. However, under subsection 20B(2)(b) of the Act, the activity that triggers the requirement for a marine consent is the *"discharge [of] a harmful substance into or onto the continental shelf beyond the outer limits of the exclusive economic zone or into the sea above that part of the continental shelf from a structure (other than a New Zealand structure) involved in a mining activity."*
10. Under section 20B(3) *"a person may discharge a harmful substance if the discharge is a permitted activity or authorised by a marine consent or section 21, 22, or 23."*
11. The discharge of harmful substances through deck drainage systems is a discretionary activity under regulation 16(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects – Discharge and Dumping)

Regulations 2015.¹ This requires a notified marine consent for this activity only. This position appears to be anomalous in comparison to other activities which require non-notified marine consents, but it is accepted that the EEZ Act and regulations are clear on the need for consent in this instance.

PURPOSE OF THE EEZ ACT – SECTION 10

12. The purpose of the EEZ Act is fundamental to decision-making under the Act. It guides the interpretation and application of the EEZ Act, including the decision-making sections.² Given its importance, we have set out section 10 in full below:

- (1) The purpose of this Act is to promote the sustainable management of the natural resources of the exclusive economic zone and the continental shelf.
- (2) In this Act, sustainable management means managing the use, development, and protection of natural resources in a way, or at a rate, that enables people to provide for their economic well-being while –
 - (a) sustaining the potential of natural resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
 - (b) safeguarding the life-supporting capacity of the environment; and
 - (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.
- (3) In order to achieve this purpose, decision-makers must-
 - (a) Take into account decision-making criteria specified in relation to particular decisions; and
 - (b) Apply the information principles to the development of regulations and the consideration of applications for marine consent.

¹ We note in passing that the discharge of the same harmful substances from other aspects of petroleum extraction activities are non-notified activities (see regulations 16(2), 16(3), and 20). OMV's view is that the discharge of trace elements of harmful substances from deck drains should also be a non-notified activity.

² At the present time, no EEZ National Planning Standards have been issued under the EEZ Act.

13. Central to the purpose of the Act is the definition of “sustainable management”. The definition envisages a balancing exercise whereby provision for economic development is balanced against environmental considerations.
14. The definition of “sustainable management” in the EEZ Act is different to the equivalent definition in the RMA. The EEZ Act’s definition of “sustainable management” refers to enabling “*people to provide for their economic wellbeing*” whereas the equivalent definition in the RMA refers to enabling “*people and communities to provide for their **social, economic and cultural** wellbeing and for their health and safety.*”
15. Parliament’s deliberate exclusion of social and cultural wellbeing and health and safety in the EEZ Act definition indicates that “sustainable management” for the purposes of the EEZ Act has a greater economic focus, and that fundamentally the EEZ Act is a resource and economic development statute. It also indicates that the focus of the decision-making process should be on economic and environmental considerations.
16. This discharge consent is a minor component of the EAD Programme. Although there will not be any direct economic benefits from the discharge of trace amounts of harmful substances from the deck drains of a MODU, the overarching EAD Programme will provide substantial economic benefits to New Zealand, and will therefore enable people to provide for their economic wellbeing. Those benefits will be fully assessed in specific detail by an independent economist commissioned as part of the subsequent marine consent applications for the EAD drilling and associated activities.
17. The adverse effects of the potential discharge are relevant under section 10(2) (b) and (c). In summary, the uncontested evidence before you is that the adverse effects, if any occur, will be negligible even if worst-case assumptions are adopted.
18. Section 10(3) lists two mandatory directions to decision-makers, which are expressed to be “in order to” give effect to the purpose of the EEZ Act. It is submitted that a decision-maker cannot simply rely on complying with subsection (3) to give effect to the purpose of the EEZ Act. The decision-making criteria and information principles must be taken into account and

applied, but do not of themselves encapsulate the EEZ Act's purpose. Instead, it is submitted that a decision must reflect the promotion of sustainable management as defined in section 10 of the EEZ Act.

DECISION-MAKING PRINCIPLES

19. Section 59(2A) of the EEZ Act sets out the matters that the EPA must take into account.
20. Section 59(2A) states that the EPA must take into account the matters in subsections 59(2)(a)-(b) and (d)-(m), as well as "*the effects on human health of the discharge of harmful substances if the consent is granted*". The importance of each consideration will vary depending on the facts and evidence relating to each application.
21. For ease of reference, the matters that must be taken into account or had regard to (and those that must not) are set out below.

Matters the EPA must take into account (s 59(2))

- (a) any effects on the environment or existing interests of allowing the activity, including –
 - (i) cumulative effects; and
 - (ii) effects that may occur in New Zealand or in the waters above or beyond the continental shelf beyond the outer limits of the exclusive economic zone; and
- (b) the effects on the environment or existing interests of other activities undertaken in the area covered by the application or in its vicinity, including –
 - (i) the effects of activities that are not regulated under this Act; and
 - (ii) effects that may occur in New Zealand or in the waters above or beyond the continental shelf beyond the outer limits of the exclusive economic zone; and
- (d) the importance of protecting the biological diversity and integrity of marine species, ecosystems, and processes, and

- (e) the importance of protecting rare and vulnerable ecosystems and the habitats of threatened species; and
- (f) the economic benefit to New Zealand of allowing the application; and
- (g) the efficient use and development of natural resources; and
- (h) the nature and effect of other marine management regimes; and
- (i) best practice in relation to an industry or activity; and
- (j) the extent to which imposing conditions under section 63 might avoid, remedy, or mitigate the adverse effects of the activity; and
- (k) relevant regulations (other than EEZ policy statements); and
- (l) any other applicable law (other than EEZ policy statements); and
- (m) any other matter the marine consent authority considers relevant and reasonably necessary to determine the application.

Matters the EPA must have regard to (s 59(3))

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

Matters the EPA must not take into account (s 59(5))

- (a) trade competition or the effects of trade competition; or
- (b) the effects on climate change of discharging greenhouse gases into the air; or

- (c) any effects on a person's existing interest if the person has given written approval to the proposed activity.

Information principles

22. The EEZ Act requires a decision to be based on the "best available information" and "*to take into account any uncertainty or inadequacy in the information available*".³ "Best available information" means:⁴

The best information that, **in the particular circumstances**, is available without unreasonable cost, effort, or time. [our emphasis]

23. The individual circumstances of any application in the EEZ are a fundamental consideration in determining what "best available information" is. However, the EEZ Act does not require 100% certainty about every single aspect of a proposal.
24. Under section 61(2), decision-makers are to favour caution and environmental protection where information is uncertain or inadequate. It is submitted that although there is a small degree of uncertainty associated with this application (in relation to the type of MODU, substance and concentration), in the circumstances section 61(2) is not engaged by this application.⁵

ACTUAL AND POTENTIAL ADVERSE EFFECTS

25. Under section 59(2)(a), the effects of the activity need to be considered in the context of the existing environment and existing interests, as those collectively make up the receiving environment for effects. We outline the nature of the existing environment and existing interests below, and then summarise the evidence about the potential effects upon them.
26. In particular, despite the obvious relevance of spills to deck of harmful substances in terms of potential effects, it needs to be emphasised that spills to deck are an unplanned activity. As already noted, OMV actively

³ Sections 61(1)(b) & (c).

⁴ Section 61(1)(5).

⁵ The requirement to consider an adaptive management approach if favouring caution means that an activity is likely to be refused in section 61(3) does not apply to this application because it is an application for a marine discharge consent (section 61(4)).

plans to avoid spills to deck (reducing the already low probability) and plans to minimise the amount of harmful substances entering the deck drainage system through clean up procedures.

Existing environment

27. The context in which OMV's activity would occur includes the existing environment and existing activities in the Taranaki Bight area. The focus in relation to this application should be on the effects that arise due to the potential discharge only, not those that occur as a result of the wider EAD Programme.

Existing interests

28. The definition of "existing interests" in the EEZ Act is set out in full below:

Existing interest means, in relation to New Zealand, the exclusive economic zone, or the continental shelf (as applicable), the interest a person has in-

- (a) any lawfully established existing activity, whether or not authorised by or under any Act or regulations, including rights of access, navigation, and fishing:
- (b) any activity that may be undertaken under the authority of an existing marine consent granted under section 62:
- (c) any activity that may be undertaken under the authority of an existing resource consent granted under the Resource Management Act 1991:
- (d) the settlement of a historical claim under the Treaty of Waitangi Act 1975:
- (e) the settlement of a contemporary claim under the Treaty of Waitangi as provided for in an Act, including the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992:
- (f) a protected customary right or customary marine title recognised under the Marine and Coastal Area (Takutai Moana) Act 2011

29. With the exception of fishing activities, there are no other activities that occur within the direct vicinity of the well locations associated with the application.
30. As such, the IA concludes that the groups that have an existing interest within the zone of influence around each of the wells are the deep-water commercial fishers and iwi that hold customary fishing rights (and the associated quota holders).

Assessment of the activity against the section 59 matters

31. The assessment of the activity against section 59 matters is comprehensively set out in the evidence of Daniel Govier. In summary, it is submitted that:
- (a) The risk of the activity on the environment will be negligible, and the potential effects of any discharge of trace amounts of harmful substances through the deck drainage will also be negligible.⁶
 - (b) Given that the potential risks and effects on the environment from discharge are negligible, the potential effects on existing interests (which are dispersed throughout the Taranaki Basin), including the potential effects on commercial fishing activities, will also be negligible.⁷
 - (c) The potential for cumulative effects from the discharge will also be negligible. Given the large geographic spread between the MODU (5km) and the conservative zone of influence identified, any actual physical effects of the discharge would be limited to the direct vicinity of any one MODU.⁸
 - (d) Given that any adverse effects will be confined to the immediate vicinity of each well location, any effects will be temporary. The proposed operational procedures, mitigation measures and conditions will ensure that the biological diversity of marine

⁶ Govier at [34] – [37] and [91]. Forrest at [75].

⁷ Govier at [38] – [42].

⁸ Govier at [43] – [45].

species, ecosystems and processes in the Taranaki Basin are protected.⁹

- (e) This application is for an activity that sits within the wider scope of the EAD Programme. OMV is required to comply with a number of other legislative regimes that relate to health and safety and environmental protection.¹⁰ Although not all of these legislative requirements are relevant to this application, the implementation of these additional measures and approval requirements provide further environmental protections and minimise potential for discharges to the deck and discharges to the environment.
- (f) OMV will follow industry best practice in relation to this application and the wider EAD programme.¹¹
- (g) The set of proposed conditions, included in Appendix A to the IA, will manage the potential effects and risk from the proposed activity.¹²
- (h) The potential pathways for any human health effects to occur from the activity are limited to direct exposure from any discharge of harmful substance, or from the consumption of fish caught that have been exposed to and contaminated by the discharge of a harmful substance. No vessels can enter closer than 500m, limiting the potential for any physical exposure and the distance offshore, with large-scale mixing and dilution, means that any harmful substance discharged is very unlikely to reach the shoreline. There is also a very low risk of any commercially caught fish species being exposed to harmful substances that are at concentrations high enough to have any effects on human health from the consumption of those species.¹³

⁹ Govier at [47] – [50].

¹⁰ See the evidence of Mr Park at [17] – [39] and Mr Govier at [54] – [60].

¹¹ See the evidence of Mr Selischi, Mr Hollinger and Mr Park; See also Govier at [61] – [63].

¹² Govier at [64] – [69].

¹³ Govier at [73] – [76].

INFORMATION AND UNCERTAINTIES

32. It is submitted that there is a considerable amount of information before you, bearing in mind the potential environmental risk associated with the proposed activity. The IA and associated reports are comprehensive and detailed, as is OMV's evidence and its responses to the EPA's requests for further information.
33. Bearing in mind the potential discharge that is the subject of this application, and the comprehensive and detailed information and evidence provided by OMV, it is submitted that OMV has provided the best available information for your decision.
34. As has been acknowledged above, there are two potential sources of uncertainty associated with this application, namely:
- (a) the MODU or MODUs have not been selected yet, so the details of the deck drainage system(s) have not been specified; and
 - (b) the particular harmful substance(s), of which trace amounts may be discharged, are not yet known.
35. It is submitted that in the circumstances of this case, the level of uncertainty relating to the discharge is low. We discuss both matters in turn below.

Final MODU or MODUs

36. As part of its tender process, OMV has defined environmental and operational requirements that any MODU suppliers must comply with.
37. OMV has also proffered condition 7 which sets appropriate requirements for the deck drainage system that will ensure deck drainage runoff, which might include trace amounts of harmful substances, goes into a settling tank with a minimum capacity of 5m³, and passes through an oil-in-water separator before discharge. It is submitted that both of these measures will ensure that the final MODU or MODUs will have appropriate deck drainage systems.

38. We note that Stantec also concluded that not knowing the exact details of the deck drainage system is not critical, and that condition 7 addresses the uncertainty.¹⁴

Harmful substances

39. It is submitted that not knowing the precise harmful substances that will be used does not create an unacceptable or even an unknown risk. The volumes of any discharged substance are so low that, even if the most ecotoxic substances are used and then discharged in very small amounts via the deck drainage system, the adverse effects would be negligible.¹⁵ However, and as part of OMV's usual business practices, it will use the least ecotoxic substances wherever practicable.¹⁶
40. Regardless of which harmful substances are used, OMV will implement systems and procedures to reduce the risk of those substances spilling to deck in the first place.¹⁷
41. In the unlikely event that a harmful substance spill to deck occurs, it will be cleaned up in accordance with systems and procedures specified in the Emergency Spill Response Plan (**ESRP**).¹⁸ The EPA will have an opportunity to review the ESRP before the activity commences.¹⁹

OTHER MARINE MANAGEMENT REGIMES

42. Under section 59(2)(h), decision-makers are required to take into account "*the nature and effect of other marine management regimes*" when considering an application for a marine consent and submissions on the application.
43. 'Marine management regime' is defined in section 7 of the EEZ Act and includes "*the regulations, rules and policies made and the functions, duties and powers conferred under an Act that applies to*" the territorial sea, exclusive economic zone or continental shelf.

¹⁴ Stantec Uncertainty Report, section 6.2.

¹⁵ Govier at [91]; Forrest at [75].

¹⁶ Park at [68].

¹⁷ These systems and procedures are discussed in the evidence of Mr Hollinger and Mr Park.

¹⁸ Hollinger at [46] – [47].

¹⁹ Exclusive Economic Zone and Continental Shelf (Discharge and Dumping) Regulations 2015, regulation 24.

44. The regimes are regulatory in effect, and several of them require the approval of the relevant regulatory body before an activity can proceed. The EPA is entitled to rely on the marine management regimes and the expertise of the bodies that administer them to address the matters covered by those regimes. The regulatory regimes are discussed by Mr Park²⁰ and Mr Govier²¹ and are also set out in section 2.4 of the Impact Assessment.

CONDITIONS

45. The Act provides specific powers to impose marine consent conditions in sections 63 to 67. These sections are set out in Appendix A to Stantec's Conditions Report dated August 2018.
46. In paragraph 5.2 of its report, Stantec has set out principles that it considers must be adhered to when developing consent conditions. OMV broadly agrees that these are useful and appropriate principles.
47. It is submitted that the DMC's principles for conditions in its decision report for OMV's Whio-1 exploratory drilling campaign are also useful and appropriate for this consent application.²² That application concerned a similar exploratory drilling campaign.²³ We have set out the key paragraph below:

219. In reaching our conclusions on a set of 'fit for purpose' conditions, we have taken into account the contextual setting discussed earlier in this decision (section 2.4.5) and the following principles for this decision:
- (a) That OMV will comply with key relevant MMRs (Marine Management Regimes).
 - (b) Reliance on the relevant agencies to manage primary compliance associated with their particular MMR(s) and therefore we are not to impose conditions more appropriately in their immediate domain.
 - (c) That OMV and their rig operator Frigstad are competent and experienced operators who will meet their commitments expressed in the IA and in their responses to requests under section 42 of the EEZ.

²⁰ Park at [17] – [39].

²¹ Govier at [54] – [60].

²² Decision report EEZ0202OMV, at [219].

²³ The application was for all aspects of the drilling campaign, not just the discharge of trace elements of harmful substances.

- (d) To avoid (where possible) imposing conditions that would require EPA approval before an operational activity is started.
- (e) Reliance on OMV undertaking the activities as specified in its IA and further information and then only applying specific conditions where we felt the need to remove doubt or enhance environmental protection.
- (f) Requiring a small number of reporting requirements on the activities of greatest environmental concern to achieve extra assurance that the activities were in fact undertaken as outlined in OMV's IA and further information.

48. It is also submitted that the scale of the proposed discharge and the negligible nature of the potential effects must be kept in mind when drafting conditions for this application.
49. OMV volunteered a set of conditions with its IA, which has been discussed by Mr Govier and reviewed by Stantec. OMV largely accepts the suggestions made by Stantec, and acknowledges that in places they are an improvement.
50. That said, there are several matters in the Stantec amendments that OMV respectfully submits are unnecessary. We have set out OMV's comments in the table at Appendix A to these submissions.

EVIDENCE

51. OMV will call the following witnesses, all of whom have filed written statements:
- (a) **Gabriel Selischi** – Mr Selischi is the Senior Vice President (Australasia) for OMV Exploration & Production GmbH based in Wellington. Mr Selischi's evidence provides an overview of OMV and its existing New Zealand operations. He also discusses OMV's Corporate Principles, Code of Conduct and Health, Safety, Security and Environment (**HSSE**) priorities. He describes the EAD Programme and OMV's obligations under the Crown Minerals Act 1991.
 - (b) **Gerald Hollinger** – Mr Hollinger is OMV's Well Engineering Manager. Mr Hollinger's evidence describes MODUs and their drainage systems, how MODUs and harmful substances will be

selected, amongst other matters concerning the operation of MODUs.

- (c) **Matiu Park** – Mr Park is OMV's HSSE Manager for Australasia. Mr Park discusses the HSSE regime and OMV's approach to HSSE. He also discusses OMV's policies and procedures to prevent discharges of harmful substances from deck drains.
- (d) **Reid Forrest** – Mr Forrest is an Associate Consultant for SLR Consulting NZ Limited (**SLR**). Mr Forrest provides evidence on the dilution and dispersion of the harmful substances.
- (e) **Dan Govier** – Mr Govier is the Asia-Pacific Technical Discipline Manager – Marine Science at SLR. He provides an assessment of the proposed activity against the statutory tests, including the section 59 matters. Mr Govier also discusses the proposed conditions.

Dated 4 September 2018



J G A Winchester / H P Harwood
Counsel for the applicant

Appendix A

NUMBER	OMV PROFFERED CONDITION TEXT AND STANTEC RECOMMENDED AMENDMENTS	STANTEC'S COMMENTS	OMV'S SUBMISSIONS
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>	<p>Changes reflect EPA preferred drafting – no change in intent of OMV's condition.</p>	<p>OMV is content to defer to the EPA's stylistic preferences where there is no change in meaning or new ambiguity. OMV is content with this amendment.</p>

NUMBER	OMV PROFFERED CONDITION TEXT AND STANTEC RECOMMENDED AMENDMENTS	STANTEC'S COMMENTS	OMV'S SUBMISSIONS
2	This Marine Discharge Consent <u>shall</u> expires <u>on</u> 31 December 2025.	Changes reflect EPA preferred drafting – no change in intent of OMV's condition.	As above.
<u>2A</u>	<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>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>	OMV is content with statutory wording, however it is also content to include the proposed condition 2A, but would prefer the lapse date to be 31 December 2024. This would allow a year for any High Court appeals to be resolved.

NUMBER	OMV PROFFERED CONDITION TEXT AND STANTEC RECOMMENDED AMENDMENTS	STANTEC'S COMMENTS	OMV'S SUBMISSIONS
		To avoid this potential confusion it is recommended that the date be hard coded in the condition.	
3	The Consent Holder shall ensure that a copy of this Marine Discharge Consent, and any variations of it, are available for inspection by the EPA at the Consent Holder's head office in New Zealand, and on any MODU undertaking activities authorised by this Marine Discharge Consent.	Minor change suggested.	OMV has no concern with this change.
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>	Changes reflect EPA preferred drafting – no change in intent of OMV's condition.	As per condition 1.
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>	New condition to enable the EPA to monitor how Condition 4 has been complied with.	OMV will accept this condition.

NUMBER	OMV PROFFERED CONDITION TEXT AND STANTEC RECOMMENDED AMENDMENTS	STANTEC'S COMMENTS	OMV'S SUBMISSIONS
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 contact details of the new person within 20 working days of the change.</u></p>	<p>Changes reflect EPA preferred drafting – no change in intent of OMV's condition.</p>	<p>As per condition 1.</p>

NUMBER	OMV PROFFERED CONDITION TEXT AND STANTEC RECOMMENDED AMENDMENTS	STANTEC'S COMMENTS	OMV'S SUBMISSIONS
5A	<p><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></p>	<p>New condition which will provide the EPA with advance notice so that it can programme any compliance monitoring visits.</p>	<p>It is submitted that proposed condition 5A is not necessary or practicable, and is a condition better suited to a subsequent marine consent for the "substantial" exploration activities.</p> <p>Compliance monitoring visits for this aspect of the EAD Programme are unlikely to be necessary for two reasons. First, there would only be a discharge if a spill to deck occurs, which OMV will endeavour to avoid. Also, on a conservative worst case scenario, the potential adverse effects are <i>de minimis</i>.</p> <p>The EPA will also have an opportunity to review and approve the clean-up procedures in the ESRP before the activity can commence.</p> <p>Such a condition may be appropriate for the marine consent application that covers the broader EAD Programme.</p>
6	<p>The Consent Holder shall ensure that no harmful substances are stored or</p>		

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	<p>handled in non-hazard areas which drain directly to the sea.</p>		
<p>6A</p>	<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>	<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.</p>	<p>The proposed condition is consistent with OMV's business as usual approach and the IA. Accordingly, the content of this condition is already addressed by condition 1 and would appear to be unnecessary. However, OMV is content for a separate condition as well, if the DMC prefers.</p>
<p>7</p>	<p><u>Any 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, includeing the following design requirements:</u></p> <p>a) <u>Both a hazardous and non-hazardous deck drain;</u></p> <p>b) <u>Full containment of hazardous deck drainage runoff directed to a settlement tank; and</u></p> <p>c) <u>Settlement tanks shall have a minimum combined capacity of at least 5 m³ cubic metres; and</u></p>	<p>Changes to reflect EPA preferred drafting.</p>	<p>It is submitted that new clause (a) and the associated changes to the opening words unnecessary lengthens the condition without providing a benefit in terms of clarity or substance.</p> <p>Clause (d) of condition 7, as amended by Stantec, does not relate to an effect from the proposed activity. The proposed activity assumes, on a worst case scenario, that all trace elements of hazardous substances will pass through the oil-in-</p>

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	<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>		<p>water separator, even though in practice some may be caught by the system, depending on the particular substance's density.²⁴</p> <p>Accordingly, while OMV accepts there is a justification to include a requirement that the discharge passes through an oil-in-water system, OMV submits that the requirements of clause (d) are unnecessary and unrelated to the discharge of harmful substances. The application is not for the discharge of oil. Consequently, measuring the oil-in-water content prior to discharge is not relevant to the proposed activity.</p> <p>Additionally, the requirement to analyse oil-in-water at least every 30 seconds is inconsistent with regulation 18 of the Exclusive Economic Zone and Continental Shelf (Discharge and Dumping) Regulations 2015, which permits the discharge of seawater used for operation purposes that is contaminated with oil. The permitted activity standards in regulation 18 are:</p>

²⁴ Hollinger at [29].

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- (a) the discharge processed by oil filtering equipment that has international oil pollution prevention certification; and
- (b) the oil content of the discharge, without dilution, does not exceed 15 parts per million; and
- (c) an oil record book is kept in accordance with regulation 23 and a copy submitted [sic] to the EPA within 15 working days after the end of month in which it was completed.

OMV's revised proposed condition 7 is:

Any deck drain from a hazard area shall, as a minimum, include the following design requirements:

- (a) Full containment of deck drainage runoff directed to a settlement tank; and
- (b) Settlement tanks shall have a minimum combined capacity of at least 5 m³; and
- (c) An oil-in-water separator system prior to discharge.

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8	<p>The Consent Holder must ensure there is an approved ESRP for any MODU undertaking activities authorised by this Marine Discharge Consent.</p>	<p>Refer new Advice Note 1 (below). Condition not needed because an ESRP is required under Regulation 24 of the D&D Regs.</p>	<p>OMV agrees that shifting this condition to an advice note is appropriate.</p>
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>	<p>As above.</p>
10	<p>The Consent Holder must <u>shall</u> 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>	<p>As per condition 1.</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 <u>shall</u> 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</p>	<p>Changes reflect EPA preferred drafting – no change in intent of OMV's condition.</p>	<p>OMV agrees with the inclusion of MPI in the list of persons to be notified in condition 11(a).</p>

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	<p>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 the Department of Conservation.</u></p> <p>b) The results of the monitoring must <u>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 receiving the results of testing from the laboratory.</u></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>	<p>It is submitted that this condition is unnecessary for the proposed activity, which on a worst case basis, would only produce trivial effects. OMV notes that is does not consider it necessary or appropriate for it to carry out monitoring of an activity that does not produce any effects, other than trivial effects.</p>

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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</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>	<p>On further reflection, it is submitted that condition 12, either as originally proposed by OMV or as amended by Stantec is not necessary because it duplicates section 76.</p> <p>Under section 76(1)(a), the EPA may initial a review of the duration of consent or any conditions at any time to deal with any adverse effect on the environment.</p> <p>The proposed condition replicates that power in a condition, which is unnecessary.</p>

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substances into the sea under Condition 10.
 The review of conditions may be for any of the following purposes:
 (a) Dealing with any adverse effects on the environment that may arise from the exercise of the consents and which it is appropriate to deal with after the consent(s) have been granted; and/or
 (b) To impose discharge quality and/or receiving water quality monitoring requirements if the quantities or frequencies of discharges of harmful substances are shown to be greater than anticipated.

<u>Advice Note 1</u>	<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>	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.	OMV will accept this advice note.
<u>Advice Note 2</u>	<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</u>	New Advice Note to reflect OMV's stated commitment to select the least harmful substances available.	OMV agrees that it is appropriate to move the text from condition 8 to an advice note. However, OMV submits that the words "where practicable" need to be inserted into the advice note as shown below in order to accurately reflect the IA:

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performing the specific role for which it is intended.

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