set out in section 176A allowing for the territorial authority to request changes to the Outline Plan, and appeal to the Environment Court if those changes are not made. However, the circumstances in which management plans should be submitted as part of this process is not clearly established.

The Board of Inquiry in *Transmission Gully* considered that management plans dealing with a number of different effects (including noise and vibration, traffic and heritage) could be submitted as part of the Outline Plan process. Similarly, in *Villages of NZ (Mt Wellington) Ltd v Auckland City Council* EnvC Auckland A056/09, 21 July 2009 the Construction Effects Management Plan relating to the construction of a sports field was submitted via this process. In *DNZ Property Fund Ltd v Rotorua District Council* [2012] NZEnvC 64 the Court required submission of the Management Plan to the Council, however, specifying that if agreement was not reached between the Council and the requiring authority, the Outline Plan process was to apply so that the Outline Plan would be finalised in accordance with the provisions of the RMA.

Decision-makers in other major projects have however taken a different approach. In the Board of Inquiry decisions in both *Men's Correctional Facility at Wiri* and the *Waterview Connection*, the conditions have required certain management plans to be submitted to the Council prior to the commencement of construction works (*Final Report and Decision of the Board of Inquiry into the Proposed Men's Correctional Facility at Wiri* (Board of Inquiry, EPA 0056, 26 September 2011); *Final Report and Decision of the Board of Inquiry into the New Zealand Transport Agency Waterview Connection Proposal* (Board of Inquiry, EPA 25, 25 March 2011)). Unlike other management plans, these management plans would not be subject to the Outline Plan process.

Overall, management plans provide an important and effective mechanism for enabling and appropriately managing the effects of large developments in the real world. Environment Court and Board of Inquiry decisions have established a set of key requirements for conditions allowing for management plans. These include setting clear, reasonable and certain objectives; quantifiable standards and performance criteria; and review mechanisms. Further consideration by decision-makers would be expected in upcoming years as the popularity of management plans seems likely to continue.

Oil and Gas in the Exclusive Economic Zone

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This article summarises some of the key points in a recent paper prepared by the author for the New Zealand Law Society "Exploration and Development within the EEZ — offshore oil and gas" (John Bay, Robert Makgill, James Willis, NZLS CLE Ltd, March 2014).

The present Government, with a view to New Zealand's long-term economic performance, has encouraged the growth of the offshore Oil and Gas industry within our continental waters. Oil is New Zealand's fourth largest export earner (approx $NZ3 billion per annum). Crown estimates in late 2009 indicated that development of our unexplored offshore basins could be worth $NZ30 billion per annum by 2025.

New Zealand's Exclusive Economic Zone (EEZ) and continental shelf, are vast. The EEZ spans more than 20 times our land area, and is roughly equivalent in size to the European Union, the North Sea and a quarter of the Mediterranean combined (John Bay, NZLS CLE Ltd, March 2014, at 75). However, its size is matched by how little baseline information we have on its various benthic environments and ecology. In practical terms, scientific understanding of our continental waters is limited. Furthermore, although the probability of an occurrence may be low, a major oil spill within our EEZ would have significant environmental and economic consequences. By way of example, the Deepwater Horizon blow-out cost British Petroleum approximately $US41 billion.

The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (the EEZ Act) was enacted to address significant gaps that existed in the environmental regulation of the EEZ. Up until then, the legislative regime was largely concerned with allocation under the Crown Minerals Act (*Greenpeace v Minister of Energy and Resources* [2012] NZHC 1422). The principal exception was the requirement for a discharge management plan (and oil spill contingency planning) under the Maritime Transport Act (the MTA).

The purpose of the EEZ Act is sustainable management (s 10(1)). The Act establishes an effects-based regime for environmental decision-making within the EEZ. The risk of decision-making in the face of limited scientific knowledge concerning the EEZ is managed through the Act's information principles.

Decisions about exploration and development must be based on "best available information". Where information is "uncertain or inadequate", decision-makers must "favour caution and environmental protection". This approach is required by: (a) the Minister when formulating regulations for Oil and Gas (s 34), and; (b) the Environmental Protection Authority (the EPA) when considering applications for marine consent to undertake exploration or development within our deepwater basins (s 61).

Where favouring caution or environmental protection means that an activity might be prohibited under regulation or an application for marine consent refused, the EEZ Act requires that consideration be given to whether taking an "adaptive management approach" might enable the activity to be undertaken. Adaptive management seeks to manage unknown effects, or the risk of potential effects, in a manner that allows the operation of an activity to be adapted as real-time information comes to hand. It requires *inter alia* staging, strong baselines, on-going monitoring and the ability to alter or stop an activity in response to new information (*Crest Energy Kaipara Ltd v Northland Regional Council* EC Auckland A132/09 at [101]). For a detailed discussion of adaptive management and approaches to managing risk see Royden Somerville "Policy Adjudication, Adaptive Management and the Environment Court" (2013) Vol 9 *Resource Management Theory and Practice* 1.

The Minister for the Environment is empowered to make regulations under the EEZ Act, classifying activities as permitted, non-notified, discretionary or prohibited. The EEZ regulations, in this respect, serve a similar purpose to planning rules under the Resource Management Act (the RMA). The Minister has already made a number of key regulations for petroleum activities under the new Act. In the Oil and Gas exploratory phase, seismic surveying can be undertaken as of right under the Permitted Activity Regulations 2013. However, unlike the RMA, an operator must first satisfy information and consultation requirements (Schedule 1). Exploratory drilling for petroleum is classified as a non-notified discretionary activity under the recently promulgated Non-notified Activities Regulations 2014. Oil and Gas development (or production) remains a full discretionary activity under the EEZ Act by virtue of the fact that it is not expressly permitted, non-notified, discretionary or prohibited under the regulations.

Oil and Gas production (including drilling), as a discretionary activity, will require a publicly-notified resource application. The EPA has 130 working days after a production application is determined as being complete in which to notify, hear and issue a decision in respect of the application. Submissions will be invited upon notification, and hearings held if requested by any party including submitters. The estimated cost of a notified process to the applicant is between $250,000 to $1.5 million. The cost of this process is justified on the basis of the duration of production activities (30 to 40 years) together with the potential for significant adverse effects. Non-notified discretionary activities will still require an application for consent, but will be decided by the EPA without a public process.

The Minister may make regulations classifying an activity as non-notified discretionary if of the opinion that the activity has a low probability of a significant adverse effect, and the activity is routine, exploratory or of brief duration (s 29D(1)). The Ministry for the Environment's (MfE) activity classification discussion document released at the end of last year indicated that exploratory petroleum activities fall within these thresholds. Furthermore, regulatory impact statements raised concerns that making petroleum exploration a full discretionary activity would discourage investment within New Zealand's EEZ. The cost of a non-notified process to the applicant is estimated to be between $100,000 to $450,000.

The EPA is to assume jurisdiction over discharges connected with oil exploration and development under the EEZ Act, while Maritime New Zealand (MNZ) will continue to exercise control over oil spills from maritime shipping under the MTA. The MfE

has released a discussion document that addresses inter alia proposed oil discharge regulations. The MfE anticipates that the discharge regulations will come into effect by the end of June. In the meantime, the approval regime for discharges from offshore installations will remain in place under the MTA's marine protection rules (Part 200). This requires the preparation of a discharge management plan and its approval by the Director of MNZ. It was this plan that was at the centre of dispute under the transitional provisions of the EEZ Act in *Greenpeace v Environmental Protection Authority* [2013] NZHC 3482, [2014] NZRMA 112. Judicial review was declined in this case as the EPA's powers were procedurally limited to determining whether the application was complete, and there was no scope to reconsider the merits of information already considered by MNZ under the MTA.

MNZ will retain jurisdiction over oil-spill contingency planning under the MTA once discharge powers transfer to the EPA. Operators will, therefore, continue to be required to obtain MNZ approval for emergency response measures to be taken in the case of a spill from an offshore installation. Operators of offshore oil installations will also continue to be required to hold at least $NZ25 million of public liability insurance to cover any clean-up or damage costs in the event of an oil spill (s 385H MTA and Part 102 of the marine protection rules).

Non-discharge offences under the EEZ Act, as with the RMA, are subject to strict liability (ie there is no requirement to prove intent). However, the Act does not adopt a strict liability regime for oil pollution offences. This difference of approach may be because the financial penalties for a conviction can include orders to meet the costs of clean-up or repairing any damage. It might be said there is a civil flavour to these penalties, which is also reflected in the defences (eg the damage occurred without negligence).

In terms of civil liability, the *MV Rena* oil spill proved controversial from a public policy perspective insofar as limitation of liability under maritime law reverses the commonly accepted assumption that the polluter should pay. Importantly, there is no limitation of civil liability for oil pollution damage from offshore installations under international law. Accordingly, civil liability for oil pollution from offshore structures is theoretically unlimited under the MTA. However, in practical terms, the ability to recover damages is likely to be to be governed by the financial resources available to those liable.

Insurance cover for clean-up costs and claims up to $US1.25 billion appears to be available in the market ... "Beyond that, the payment of claims will become a question of whether the operator has the financial capacity to self-insure, as was the case with BP in the Deepwater Horizon situation" see Paul David "The Search For Oil in New Zealand Waters: Work to be Done?" (2011) 25(1) Australian and New Zealand Maritime Law Journal 49, at 64. The potential difficulty in recovering damages serves to emphasise the importance of good decision-making under the Act.

The Selwyn Waihora catchment: A triumph for collaborative management?

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The replacement of the elected and politically accountable Canterbury Regional Council (ECan) by central-government-appointed commissioners through the Environment Canterbury Temporary Commissioners and Improved Water Management Act 2010 (ECan Act) provoked an immediate public outcry, and one cannot help wondering if their tenure would have been so easily extended were it not for the subsequent series of seismic events that devastated large parts of Christchurch. However outside the city, the Commissioners have continued to push through the government's agenda for change in water management without the usual local government political challenges. A key component in that change has been adopting a collaborative management approach. The latest products are the Canterbury Land and Water Regional Plan (CLWRP), and now the Selwyn-Waihora Chapter for that plan, known as Variation 1 (SWV) announced in February 2014.