

# **MINERALS PROGRAMME FOR PETROLEUM**

(As revised by Order in Council made on 25 January 2012 with effect from 1 February 2012)

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*By*

*Her Excellency the Governor General (6 December 2004)*

*Pursuant to Section 18 of the Crown Minerals Act 1991*

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# I PREAMBLE

1. The Crown Minerals Act 1991 (“the Act”) is the legislation governing the management and allocation of rights in respect of petroleum and other Crown-owned minerals.<sup>1</sup> This legislation provides, at section 5 of the Act, that the Minister of Energy (“the Minister”) shall have the following functions:
  - (a) The preparation of minerals programmes;
  - (b) The grant of minerals permits; and
  - (c) The monitoring of the effect and implementation of minerals programmes and minerals permits.
2. The preparation of minerals programmes is provided for in sections 12 to 15 of the Act. In summary, these sections provide that the Minister must prepare one or more minerals programmes, outlining the policies on which the government must base its management decisions in relation to Crown-owned minerals, and the procedures and provisions that are to be followed in implementing these policies and the requirements of the Act. Minerals programmes are required to set out clearly the principal reasons for and against adopting these policies, procedures and provisions, and also any restrictions on prospecting, exploration and mining for Crown-owned minerals. As provided for in sections 16 to 19 of the Act, minerals programmes are issued following consultation with iwi, interested parties and the community on a draft minerals programme.
3. Management of Crown-owned minerals, through minerals programmes, aims to provide clarity to investors as to the conditions under which permits to prospect, explore or mine for particular minerals may be granted. Minerals programmes detail the operating rules and investment parameters. Within the scope provided for by the Act, this includes rights to subsequent permits and the payment to the Crown of any royalties.
4. Minerals programmes also provide a measure of accountability for those administering the Act. This is achieved, not only by outlining the reasons for and against the policies, procedures and provisions to be applied, but also by providing for iwi, public and industry input into the process, pursuant to sections 15 to 19 of the Act.
5. The Act provides for the management and allocation of rights in respect of all Crown-owned minerals. It requires the preparation of as many minerals programmes as necessary (in respect of minerals for which permits are sought or likely to be sought), to allow for the recognition that the physical characteristics of the different mineral resources and the characteristics of the markets for those resources vary and that, consequently, different policies and procedures may be necessary. This minerals programme concerns the management of petroleum.
6. The Act provides that before any person can prospect, explore or mine for petroleum in New Zealand, that person must have been granted an appropriate permit or licence authorising that activity. Since October 1991, permits have been granted under section 25 of the Act. Prior to 1 October 1991, a number of mining licences were granted under section 12 of the Petroleum Act 1937. As provided for in section 107 of the Act, such licences continue in force, as if the Crown Minerals Act had not been enacted, until their surrender, revocation or expiry.

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<sup>1</sup> *Section 10 of the Crown Minerals Act 1991 provides that all petroleum, gold, silver and uranium existing in its natural condition in land shall be the property of the Crown; and section 11 provides that where land has been alienated from the Crown, the ownership of other minerals shall also be reserved in favour of the Crown.*

7. Section 12 of the Act provides that the purpose of minerals programmes is to establish the policies, procedures and provisions to be applied in respect of the management of any Crown-owned mineral, and section 22 of the Act requires that the Minister of Energy must carry out his or her functions and powers under the Act, in respect of permits and applications for permits, in a manner that is consistent with the policies, procedures and provisions of any relevant minerals programme.
8. An application for any policy, procedure or provision in the Minerals Programme for Petroleum 2005 to apply to a holder's permit or an applicant's application for a permit in place of any policy, procedure, or provision in the Minerals Programme for Petroleum 1995 is prohibited unless such application seeks that all policies, procedures, and provisions in the Minerals Programme for Petroleum 2005 shall apply.
9. The minerals programme that applies to any permit or permit application is the "relevant minerals programme" as defined in section 2 of the Act. On 1 January 1995, the Minerals Programme for Petroleum was issued. In accordance with section 20 of the Crown Minerals Act, the Minister reviewed the programme and a replacement Minerals Programme for Petroleum was issued to take effect from 1 January 2005. Accordingly, this Minerals Programme for Petroleum will apply to all allocation decisions to be made in respect of initial petroleum permit applications received from its effective date of issue (1 January 2005) up to the date that it is modified or replaced, and to the management of all permits granted from such applications. An exception is in respect of petroleum mining permit applications received subsequent to 1 January 2005 in accordance with section 32(3) of the Act where the initial exploration permit was granted prior to 1 January 2005, and to any mining permit granted from such an application. In this case, the Minerals Programme for Petroleum 1995 will apply unless the applicant indicates a desire to be subject to the policies, procedures or provisions of the Minerals Programme for Petroleum 2005.
10. This Minerals Programme for Petroleum does not apply in respect of petroleum permits or licences granted prior to 1 January 1995.
11. The Act and this Minerals Programme for Petroleum do not address environmental and health and safety matters relating to petroleum prospecting, exploration and mining. These matters are provided for in the Resource Management Act 1991 and the Health and Safety in Employment Act 1992 which set the legislative requirements respectively on environmental and health and safety issues. Prior to undertaking prospecting, exploration or mining activities, a permit holder needs to ensure that any necessary consents under the Resource Management Act 1991 or the Health and Safety in Employment Act 1992 and the Maritime Transport Act 1994 (or any relevant regulations made in accordance with these Acts) are obtained. The permit holder must undertake prospecting, exploration or mining in accordance with the provisions of these Acts and the conditions of any consents obtained.
12. As well, prior to undertaking prospecting, exploration or mining, a permit holder is required to have obtained any necessary access arrangements, pursuant to sections 53 to 80 of the Act. (This is discussed more fully in paragraphs 4.11 to 4.17)
13. In this Minerals Programme for Petroleum, terms used have the same meaning as in the Act. In particular, Minister refers to the Minister of Energy and Secretary means the Chief Executive of the Ministry of Economic Development. As provided for in section 6 of the Act, the Minister or Secretary may, from time to time, delegate functions, powers or duties under the Act, in accordance with the State Sector Act 1988.

## **II EXECUTIVE SUMMARY**

### ***INTRODUCTION (Chapter 1)***

1. The purpose of this Minerals Programme for Petroleum (the Minerals Programme) is to establish the policies, procedures and provisions to be applied in respect of the allocation and management of petroleum permits.
2. Petroleum is defined in accordance with the definition given in section 2 of the Crown Minerals Act 1991. The areas of New Zealand which have the potential for petroleum deposits are outlined in chapter 1.

### ***POLICY FRAMEWORK (Chapter 2)***

3. The Minerals Programme has been prepared on the basis that the desired outcome is to promote the responsible discovery and development of New Zealand's petroleum resources.
4. For the purposes of the Minerals Programme, "discovery" means one or more petroleum accumulations that were not previously known to have existed and that have been intersected in the same well and in which, through testing, sampling or logging, there has been established a probability of the existence of mobile petroleum. Discovery includes sub-commercial discoveries and all petroleum within the same structural and/or stratigraphic accumulation or accumulations. The date of discovery is the date on which the accumulation was intersected.
5. The fundamental policy established in brief is "To promote the responsible discovery and development of New Zealand's petroleum resources that contribute substantially to our economy, consistent with: the efficient allocation of permits; the Crown obtaining a fair financial return from the extraction of petroleum; and having due regard to the principles of the Treaty of Waitangi."
6. Other policies established provide: for the Minister to have regard to international considerations; that permits should be obtained by the person most likely to effectively prospect, explore or develop the petroleum resource in accordance with good oilfield practice; that as a result of investment, knowledge of New Zealand's petroleum resource should be increased; that the Crown should obtain a guaranteed minimum royalty payment and benefit in sharing in any substantial profits from the extraction of its petroleum; that the royalty regime should be internationally competitive, clear and easy to comply with and administer; and that the investor should perceive that the allocation and royalty regime has minimum sovereign risk.

### ***REGARD TO THE PRINCIPLES OF THE TREATY OF WAITANGI (Chapter 3)***

7. In accordance with section 4 of the Crown Minerals Act 1991, the Minister and Secretary, in exercising their powers and functions under the Act, shall have regard to the principles of the Treaty of Waitangi. This requires that the Minister and Secretary must be sufficiently informed as to the relevant facts and law before making decisions. The Minister and Secretary, accordingly, are committed to a process of consultation with iwi and hapu on management of Crown-owned petroleum so that they are informed of the Maori perspective.
8. In summary, consultation must occur at three levels:
  - (a) The preparation of the Minerals Programme;



- (b) The preparation of Petroleum Exploration Permit Block Offers; and
- (c) In respect of applications for petroleum permits not made in accordance with a block offer and applications for the extension of area of permits.

#### ***LAND AVAILABLE FOR PETROLEUM PERMITS (Chapter 4)***

9. The following areas are not available for permitting under this Minerals Programme:
  - (a) Mount Taranaki and the Pouakai, Pukeiti and Kaitake Ranges (as defined by the boundaries of the Mount Egmont National Park and to the extent that the land is above sea level). This land is excluded in recognition of Maori values.
  - (b) Land south of latitude 60°S, in recognition of the Protocol on Environmental Protection to the Antarctic Treaty.
10. The Sugar Loaf Islands Marine Protected Area Act 1991 excludes petroleum mining operations and the issue of permits over a defined area which is specified. From time to time, other legislation may also restrict permitting. Otherwise all land to which the Crown Minerals Act 1991 applies is available for allocation under petroleum permits.

#### ***PERMIT ALLOCATION (Chapter 5)***

11. There are three types of petroleum permits: prospecting; exploration; and mining.
  - (a) Petroleum prospecting permits are granted for the purpose of conducting reconnaissance geophysical surveys and/or reconnaissance geochemical surveys and/or general investigative studies or surveys with the purpose of providing information for further petroleum exploration.
  - (b) Petroleum exploration permits are granted for the purpose of undertaking work to identify petroleum deposits and evaluating the feasibility of mining any discoveries made. Exploration activities include geological, geochemical and geophysical surveying, exploration and appraisal drilling and testing of petroleum discoveries.
  - (c) Petroleum mining permits are granted to enable the development of a petroleum field with the purpose of extracting and producing petroleum. In most cases an exploration permit would precede the consideration and grant of a mining permit.
12. Section 23 of the Crown Minerals Act 1991 provides that any person may apply to the Secretary for a petroleum permit. Each application must be considered in a manner which is consistent with the policies, procedures and provisions outlined in this Minerals Programme.

13. *[Deleted]*

#### ***CASH BONUS BIDDING (Section 5.2)***

14. In areas of high prospectivity and where there is strong competitive interest, cash bonus bidding for exclusive exploration permits may be the allocation method used. As with staged work programme bidding, allocation occurs as a result of applications received from an advertised Petroleum Exploration Permit Block Offer. The procedures and provisions associated with this allocation method are detailed in paragraphs 5.2.1 to 5.2.17.

### ***PETROLEUM PROSPECTING PERMITS (Section 5.3)***

15. Applications for prospecting permits may be made at any time and allocation will occur provided the application is in accordance with the evaluation criteria, procedures and provisions outlined in section 5.1. A condition of the grant of these permits will be that the prospecting permit holder will have no right to obtain a subsequent petroleum exploration or petroleum mining permit over part or all of the area of the prospecting permit, pursuant to section 32 of the Crown Minerals Act 1991. Permits may be granted on a non-exclusive basis, which means there may be more than one permit over the extent of the area or some part of it. Petroleum prospecting permits will not be granted over land which is at the time held under a petroleum exploration or mining permit or a petroleum mining licence (granted under the Petroleum Act 1937) and there may be restrictions on their grant over land which is being considered for incorporation into a Petroleum Exploration Permit Block Offer in the near term.

### ***PETROLEUM EXPLORATION PERMITS (Section 5.4)***

16. Most petroleum permit applications are in respect of exploration permits. Staged work programme bidding, for exclusive exploration permits, will be the primary form of allocation for petroleum exploration permits. This is a competitive tender allocation process whereby a Petroleum Exploration Permit Block Offer is advertised and bids are received and evaluated accordingly. The procedures and provisions associated with this allocation method are detailed in paragraphs 5.4.14 to 5.4.38.
17. The location and area of a Petroleum Exploration Permit Block Offer will be determined by the Minister. The number of Petroleum Exploration Permit Block Offers advertised per year will be dependent upon such matters as exploration interest and availability of suitable areas. An Indicative Petroleum Exploration Permit Block Offer Schedule will be advised to explorers periodically, in such publication(s) as considered appropriate. The Indicative Block Offer Schedule will define the area of proposed future block offers but not the actual block or timing of the block offers.
18. Allocation of petroleum exploration permits, as a consequence of a Petroleum Exploration Permit Block Offer, is expected to be the allocation method used in most instances.
19. The acceptance of such applications will be dependent on the fulfilment of specific criteria by the applicant, in particular a commitment to undertake exploration work and expenditure to the minimum standards as set out in paragraphs 5.4.47 or 5.4.48. The procedures and provisions for this allocation method are outlined in detail in paragraphs 5.4.39 to 5.4.58. This allocation method provides the opportunity for explorers to initiate immediate intensive exploration effort without the need to have a permit application considered as part of a block offer.
20. A description and assessment of allocation options for petroleum exploration permits, and the principal reasons for and against adopting these allocation policies, are outlined in Appendix I.

### ***PETROLEUM MINING PERMITS (Section 5.6)***

21. Petroleum mining permit applications are predominantly made by an exploration permit holder, in accordance with both sections 23 and 32 of the Crown Minerals Act 1991, who has discovered a petroleum field within the exploration permit area. Pursuant to section 32 of the Act, the exploration permit holder has the right, on applying under section 23 of the Act before the expiry of the exploration permit, to surrender the permit insofar as it relates to the land in which the discovery exists, and to be granted in exchange a mining permit. This is referred to as a right to a subsequent permit.

22. In evaluating a mining permit application, the Minister needs to be satisfied that a petroleum field has been discovered and that there is a work programme which meets the requirements of good exploration and mining practice.

### ***CONDITIONS OF PERMIT ALLOCATION***

23. In accordance with the general policy framework and the scheme of the Crown Minerals Act 1991, as discussed in chapter 2, petroleum permits are granted to enable permit holders to undertake prospecting, exploration and mining activities. A stated condition of all permits granted will be to the effect that the permit holder must make all reasonable efforts to prospect or explore or mine (as appropriate) the permit, in accordance with good exploration and mining practice.
24. A defined programme of work will also be a condition of petroleum permits. The defined programme of work would either have been specified in a Petroleum Permit Block Offer Notice or provided as part of the permit application by the permit applicant.
25. All petroleum exploration and mining permits will also be granted with conditions detailing the calculation and payment of royalties, which must be in accordance with the provisions detailed in chapter 7.
26. Mining permits will additionally have a condition requiring that production facilities must be properly decommissioned.
27. As provided in section 27 of the Crown Minerals Act 1991, the Minister will grant a permit only where the Minister is satisfied that the applicant will comply with the conditions of, and give proper effect to, the permit. It is expected that any person applying for a permit must intend to either prospect or explore or mine for petroleum, as appropriate. The Act does not provide a mechanism for accepting a bid for a permit from any person where the bidder's intention is to obtain a block in order to prevent prospecting, exploration or mining activities over its extent. Similarly, the Act does not provide for accepting a bid for a permit from any person with the specific intention of obtaining the permit in order to trade it. The Act does, however, provide for the assignment of permit interest by permit holders to allow for risk sharing (for example, "farming out") and for the transfer of permits as part of commercial transactions between companies with such transactions being subject to the consent of the Minister of Energy (refer section 41, Crown Minerals Act 1991).
28. If the Minister agrees to grant a petroleum permit, the Minister will advise the permit applicant accordingly and note that the grant of the permit is subject to the applicant's acceptance of the term and conditions. The term and conditions must be consistent with any block offer advertisement, the application made (particularly the proposed work programme and permit term) and any correspondence concerning the application between the applicant and the Minister or Secretary.

### ***COMPLIANCE WITH CONDITIONS, ACT AND REGULATIONS (Sections 5.11 and 5.12)***

29. All petroleum permit holders are required to comply with the Crown Minerals Act 1991 and relevant regulations. This includes the payment of annual fees and the lodgement of data in accordance with section 90 of the Act and the specific requirements of the relevant regulations. If the Minister has reason to believe that a permit holder is contravening or not making reasonable efforts to comply with the Crown Minerals Act 1991, the relevant regulations or any of the conditions of permit, action will be taken to revoke the permit.

### ***CHANGES TO PERMITS (Sections 5.5 and 5.7)***

30. A permit holder may at any time during the currency of the permit apply in writing to amend the conditions of a permit, or extend the land or minerals to which the permit relates or extend the duration of the permit, in accordance with sections 36 and 37 of the Crown Minerals Act 1991.
31. In accordance with sections 35, 36, 37 and 38 of the Crown Minerals Act 1991, an extension of the duration of an exploration permit may be granted for a second term for such period not exceeding 10 years from the commencement date of the permit. Before a second term of a permit is granted, the permit holder must surrender at least half of the area comprised in the permit at the time of the end of the first term. The second term permit area must be a contiguous block and the land so situated that it will not prevent or seriously hinder the future exploration of that land proposed to be surrendered. Generally, the Minister will not provide for a second term duration which is longer than the first term duration.
32. If a petroleum discovery is made and the discovery cannot be appraised within the duration of the permit (including any extension of permit duration granted under section 37(1) of the Crown Minerals Act 1991), then application may be made for what is referred to, for clarification purposes only, as an “appraisal extension”, pursuant to section 37(2) of the Act.

### ***UNIT DEVELOPMENT OF PETROLEUM PERMITS (Section 5.8)***

33. Section 46 of the Crown Minerals Act 1991 provides that in situations where a petroleum discovery extends over the area or parts of the area of more than one petroleum permit or licence, the Minister may request the unit development of the discovery. This involves the relevant permit and/or licence holders co-operating to achieve a unified development scheme for the working and development of the petroleum discovery.

### ***TRANSFERS AND OTHER DEALINGS (Section 5.9)***

34. Section 41 of the Crown Minerals Act 1991 provides that no petroleum permit holder or any other person shall enter into an agreement transferring the permit or any interest in a permit, or creating any interest in the permit, or imposing any obligations on the permit holder in respect of an interest in the permit which relates to or affects the production or proceeds of a permit (or subsequent permit) without the consent of the Minister.

### ***SURRENDER OF ALL OR PART OF PERMIT AREA (Section 5.10)***

35. The procedures in respect of the surrender of all or part of a permit area are outlined in section 5.10.

### ***FLARING AND VENTING (Section 6.1)***

36. Section 6.1 sets out policies and procedures for the management of flaring and venting.

### ***GOOD EXPLORATION AND MINING PRACTICE (Section 6.2)***

37. A key permit allocation and management standard is that prospecting, exploration and mining operations are in accordance with good exploration and mining practice (also referred to as good oilfield practice). Section 6.2 outlines some of the aspects of good exploration and mining practice that the Minister will have regard to in carrying out and exercising functions and powers under the Crown Minerals Act 1991.

### ***CROWN PARTICIPATION AND PERMIT GRANT (Section 6.3)***

38. The policy under this Minerals Programme is for the Minister not to take an interest in prospecting, exploration or mining permits or under any subsequent permits in terms of section 25(2) of the Crown Minerals Act 1991.

### ***THE ROYALTY REGIME (Chapter 7)***

39. The royalty regime that will apply to petroleum permits issued in accordance with this Minerals Programme will be a hybrid regime comprising an ad valorem royalty component and an accounting profits royalty component.
40. Appendix II outlines the principal reasons for and against adopting the petroleum royalty regime. This includes a summary of alternative royalty options.
41. Terms used in the royalty provisions that are defined are indicated in bold. All defined terms are noted in paragraph 7.50 and definitions provided there, or reference given there to where the term is elsewhere defined.

### ***ROYALTY PAYABLE***

42. In respect of an exploration permit or where a mining permit has never had net sales revenues of more than NZ\$1 million in a reporting period, the permit holder is liable to pay only the ad valorem royalty.
43. For all mining permits to which the above exception does not apply, the permit holder is required to calculate for each period for which a royalty return must be provided both the ad valorem royalty and the accounting profits royalty and pay, whichever is the higher.

### ***AD VALOREM ROYALTY***

44. For any discovery made between 30 June 2004 and 31 December 2009, the ad valorem royalty will be 1 percent of the net sales revenues from any natural gas obtained under the permit and 5 percent of the net sales revenues from any oil obtained under the permit. For any other petroleum production under a permit, including any production arising from a discovery made after 31 December 2009, the ad valorem royalty will be 5 percent of the net sales revenues from a permit.
45. Net sales revenues are the sum of total gross sales of petroleum, plus the value of petroleum not sold but on which royalty is payable, minus any allowable netbacks (or plus any net forwards).

### ***ACCOUNTING PROFITS ROYALTY***

46. For any production under a mining permit arising from a discovery made between 30 June 2004 and 31 December 2009, the accounting profits royalty (APR) will be 15 percent of accounting profits on the first NZ\$750 million (cumulative) gross sales for an offshore discovery or the first NZ\$250 million (cumulative) gross sales for an onshore discovery and 20 percent of accounting profits royalty on any additional petroleum obtained under the mining permit. For any other petroleum production under a mining permit, including any production arising from a discovery made after 31 December 2009, the accounting profits royalty (APR) will be 20 percent of accounting profits from the mining permit. For any period for which a royalty return must be provided, accounting profits are the excess of net sales revenues over the total of allowable APR deductions. Allowable APR deductions are: production costs, capital

costs, indirect costs, decommissioning costs, operating and capital overhead allowance, operating losses and capital costs carried forward, and decommissioning costs carried back. The total of allowable APR deductions is the sum of allowable APR deductions less any capital proceeds.

### ***ROYALTY PAYABLE***

47. Royalties are payable on all petroleum obtained under the permit which is either sold or used in the production process as fuel or is otherwise exchanged or removed from the permit without sale, or remains unsold on the surrender or expiry or revocation of a permit, except as provided below.

### ***ROYALTY NOT PAYABLE***

48. No royalty is payable in respect of:
- (a) Any petroleum that, in the opinion of the Minister, has been unavoidably lost. This includes petroleum which is flared for safety reasons, or flared as part of an approved testing programme; and
  - (b) Any petroleum which has been mined or otherwise recovered from its natural condition, but which has been returned to a natural reservoir within the area of the permit (for example, re-injected gas); and
  - (c) Any petroleum which has been removed from an approved underground petroleum storage facility and upon which a royalty to the Crown has previously been paid by the producer.

### ***ROYALTY RETURNS AND PAYMENT***

49. The permit holder will be required to lodge a royalty return and pay royalties owing within 90 days of the end of each period for which a royalty return must be provided. The royalty return will be prescribed in regulations.
50. For any production under a permit arising from a discovery made between 30 June 2004 and 31 December 2009 and where net sales revenues are greater than NZ\$250,000 for a quarter or lesser period, an interim quarterly royalty payment of 1 percent of net sales revenues from natural gas and 5 percent of the net sales revenues from oil will be required within 30 days of the end of the quarter. For any other petroleum production under a permit, including any production arising from a discovery made after 31 December 2009 and where net sales revenues are greater than NZ\$250,000 for a quarter or lesser period, an interim quarterly royalty payment of 5 percent of net sales revenues will be required within 30 days of the end of the quarter.
51. The collection of royalties will be administered by the Secretary. The Secretary will review every annual royalty return and, if required, may request additional information from the permit holder.

### ***CONCLUDING COMMENTS***

52. The Minerals Programme for Petroleum will remain in effect until a replacement Minerals Programme for Petroleum is issued. From time to time, changes to the Minerals Programme may be made in accordance with sections 14 and 18 of the Crown Minerals Act 1991. Section 20 of the Act requires the Minister to undertake a review within 10 years of the date of issue,

and for a replacement minerals programme to be prepared whether or not any changes are proposed.

# 1. INTRODUCTION

- 1.1. In accordance with the provisions of the Act, in particular sections 12 and 15 of the Act, this Minerals Programme for Petroleum establishes the policies, procedures and provisions to be applied in respect of the management of petroleum.
- 1.2. Petroleum is defined in section 2 of the Act, as:
  - (a) Any naturally occurring hydrocarbon (other than coal) whether in a gaseous, liquid, or solid state; or
  - (b) Any naturally occurring mixture of hydrocarbons (other than coal) whether in a gaseous, liquid, or solid state; or
  - (c) Any naturally occurring mixture of one or more hydrocarbons (other than coal) whether in a gaseous, liquid, or solid state, and one or more of the following, namely hydrogen sulphide, nitrogen, helium, or carbon dioxide.

It includes coal seam gas and petroleum which has been mined or otherwise recovered from its natural condition, or which has been mined or otherwise recovered but which has been returned to a natural reservoir for storage purposes in the same or an adjacent area.

- 1.3. Since 1 January 1938, all petroleum existing in its natural condition on or below the surface of any land within the territory of New Zealand (whether the land has been alienated from the Crown or not) has been owned by the Crown on behalf of all New Zealanders. Land includes land covered by water, the foreshore and seabed to the outer limits of the territorial sea [seabed]\* (section 10, and section 2, definition of “land” under the Act). The Crown also assumes jurisdiction over the petroleum resource in the seabed and subsoil of those submarine areas that extend beyond the territorial limits of New Zealand throughout the natural prolongation of the land territory of New Zealand, to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured (Continental Shelf Act 1964).
- 1.4. Figure 1 outlines the sedimentary basins of New Zealand which have the potential for petroleum deposits. Petroleum exploration in New Zealand has been ongoing since 1866 with the Taranaki Basin being the major focus of exploration.
- 1.5. The Minerals Programme for Petroleum affects the exercise of the Minister’s functions and powers under the Act in respect of petroleum permits and applications for petroleum permits, by virtue of section 22(1) of the Act. This provision requires the Minister to exercise such powers and functions in a manner that is consistent with any relevant minerals programme.
- 1.6. Relevant minerals programme is defined in section 2 of the Act. Whether the Minerals Programme for Petroleum will be the relevant minerals programme in respect of petroleum permits and applications for petroleum permits will depend on a number of factors such as the time the initial permit was granted (refer section 2 of the Act) and whether a permit holder elects at a later time for a policy, procedure or provision of a later minerals programme to apply (refer section 22 of the Act).
- 1.7. No petroleum prospecting, exploration or mining permit application shall be considered and granted other than in accordance with this Minerals Programme, other than mining permit applications made in accordance with section 32(3) of the Act.

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\* *The text would appear to have included in error the additional word “seabed”.*



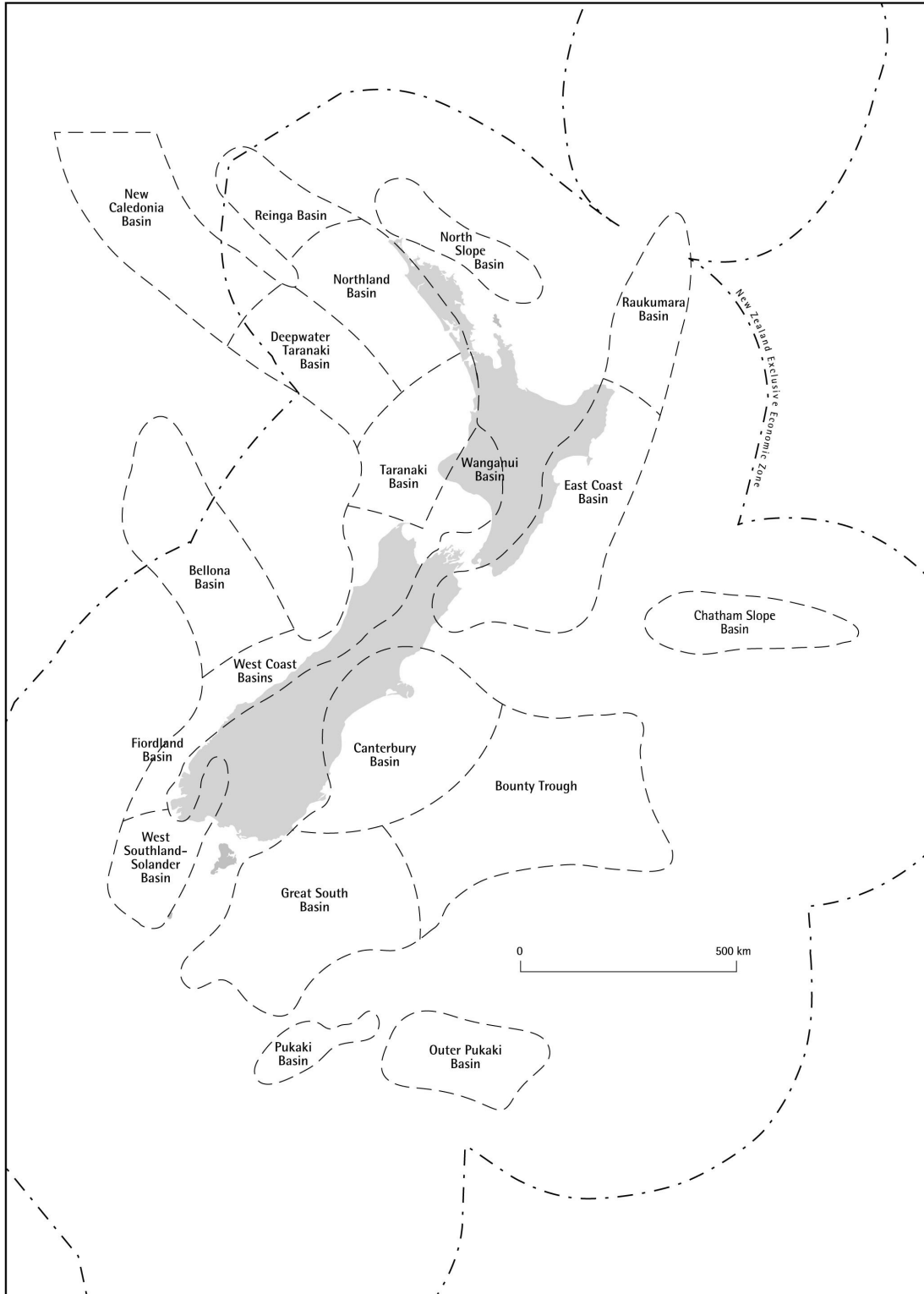


Figure 1: The Sedimentary Basins of New Zealand. This map provides a general indication of the primary sedimentary basins of New Zealand, which have the potential for petroleum deposits. It is not a definitive representation of their extent, boundaries or geology.

## 2. THE POLICY FRAMEWORK

### *THE FUNDAMENTAL POLICY OBJECTIVE*

- 2.1. The Act requires the Minister of Energy to issue a Minerals Programme for Petroleum specifying policies, procedures, and provisions to be applied in the management and allocation of rights to Crown-owned petroleum resources. Before doing so, the Minister must first determine the government's fundamental policy objective; its desired outcome upon which these policies, procedures and provisions will be based.
- 2.2. This Minerals Programme for Petroleum has been prepared on the basis that the desired outcome is to promote the responsible discovery and development of New Zealand's petroleum resources that contribute substantially to our economy.
- 2.3. For the purposes of the Minerals Programme, discovery means one or more petroleum accumulations that were not previously known to have existed and that have been intersected in the same well and in which, through testing, sampling or logging, there has been established a probability of the existence of mobile petroleum. Discovery includes sub-commercial discoveries and/or all petroleum within the same structural and stratigraphic accumulation or accumulations. The date of discovery is the date on which the accumulation was intersected.

### **Principal Reasons For and Against the Outcome of Promoting Responsible Discovery and Development of Petroleum Resources**

- 2.4. Promoting responsible discovery and development of petroleum resources is considered essential given the strategic importance to New Zealand of access to supplies of petroleum. Over the last two decades, some 50 to 65 percent of New Zealand's energy consumption requirements have been met by petroleum in the form of natural gas, oil, condensate or LPG.<sup>2</sup> Indigenous natural gas (and LPG) meets some 15 percent of energy demand from the industrial, commercial and residential sectors, and has allowed choice in fuel use for many enterprises. It also fuels about 20 percent of electricity generation and is strategically critical for electricity generation during peak demand times and at times of low hydro generation capacity. Over the last 15 years natural gas has also been extensively used in petrochemical production.
- 2.5. For the last 20 years New Zealand's petroleum industry has been dominated by the Maui field, accounting for about 75 percent of gas supplied. The Maui Redetermination Report has confirmed that reserves for the Maui field are declining sooner than expected. Active investment in petroleum exploration is needed to identify new sources of supply that are reliable and cost-competitive. To this end, New Zealand's seven prospective sedimentary basins are under-explored and all have excellent potential for discovery of world-class petroleum fields. Promoting exploration and discovery of new oil and gas fields provides for the nation to use its natural geological resources to best advantage.
- 2.6. Indigenous petroleum production is competitively priced and unsubsidised, and contributes significantly to the economy now and can continue to do so. The oil and gas exploration and production industry contributes approximately 1 percent to New Zealand's GDP and is estimated to earn about NZ\$850 million/year. There are clear economic advantages in having a continuing and cost-effective supply of gas available for reticulation to industrial, commercial and domestic consumers and for electricity generation. New gas discoveries will

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<sup>2</sup> *The New Zealand Official Yearbook 2002, Te Pukapuka Houanga Whaimana o Aotearoa 103<sup>rd</sup> Edition.*

maintain a diversity of available energy sources and assist businesses and domestic consumers in obtaining competitively priced energy. Oil and gas discoveries will contribute to national wealth, enabling the government to meet its other social, economic and environmental objectives.

- 2.7. The alternative to promoting responsible discovery and development of petroleum resources is to decline to allocate petroleum permits with the outcome of petroleum remaining in the ground. This approach is not considered in the interests of the economy.
- 2.8. It is not possible for New Zealand to meet its near term future energy demands without using hydrocarbons even with significant new investment in renewables. A proactive objective for indigenous petroleum is not inconsistent with the government's desire to reduce greenhouse gases. Natural gas provides a valuable option to assist as New Zealand advances towards a sustainable energy future.

### **Responsible Discovery and Development**

- 2.9. The discovery and development of petroleum is not at any cost. The Crown Minerals Act land access provisions, Resource Management Act and the Health and Safety in Employment Act ensure that prospecting, exploration and mining are undertaken in a responsible manner with due regard to the interests of land owners, the community and wider environment.

### **Statutory Policy Requirements**

- 2.10. Section 12 of the Act requires that the policies established in minerals programmes are to provide for the "efficient allocation of rights in respect of Crown-owned minerals" and "the obtaining by the Crown of a fair financial return from its minerals". Section 4 of the Act provides that all persons exercising functions and powers under the Act shall have regard to the principles of the Treaty of Waitangi. These policy requirements of the Act are, accordingly, reflected in the fundamental policy objective.

### **Interpretation of "Efficient Allocation of Rights"**

- 2.11. The concept of "efficient allocation of rights" refers to the process of efficiently allocating rights to permit holders, rather than the concept of economically efficient extraction of the resource. An efficient process is one which enables the Minister to allocate permits in accordance with the policies established (refer paragraphs 2.15 to 2.17) and the requirements of the Act, without imposing unreasonable transaction costs. This process includes the obligation on the Minister to be satisfied that the permit applicant will comply with the conditions of, and give proper effect to, any permit granted. Efficient allocation concerns how it is determined who should be the holder of permits, and having policies and procedures which provide for permits to be obtained by the person who will make all reasonable efforts to prospect, explore or mine (as appropriate) effectively and efficiently in accordance with recognised good exploration and mining practice.
- 2.12. Although the concept of efficient allocation of rights is distinct from that of efficient extraction of the resource, it is noted that efficient allocation of rights should lead to an efficient economic outcome.

### **Interpretation of “Fair Financial Return”**

- 2.13. The term “fair financial return” is used in relation to the Crown obtaining a financial return from its petroleum resource. Relevant considerations for determining whether the return is fair include:
- The Crown’s role as owner of the resource;
  - The non-renewable nature of petroleum as a resource;
  - The attractiveness of the petroleum regime to investors;
  - Ensuring access to sufficient supplies of petroleum in New Zealand to support economic and social development; and
  - That any requirements to make payments for any petroleum obtained under a permit apply equitably to all permit holders.
- 2.14. Determining the attractiveness of the petroleum regime requires a balance to be found between royalty payments required by the Crown for extracting its petroleum resource and the regime’s capacity to attract continuing investment. This balancing includes recognising the risks and potential gains to investors from petroleum exploration and mining. A regime which is unduly concessionary will result in the Crown not receiving a fair financial return on its petroleum resource, while an unduly harsh regime is likely to result in declining or no investment.
- 2.15. The obtaining by the Crown of a fair financial return is achieved not only by policies requiring payments by the permit holder for any petroleum obtained under the permit, but also through policies for the allocation and ongoing administration of permits. In particular, the Crown wants to ensure that there will be sound management of petroleum resource extraction, including the avoidance of unnecessary waste.
- 2.16. Given the above considerations, the fundamental policy objective established for the management of petroleum is:

*To promote the responsible discovery and development of New Zealand’s petroleum resources that contribute substantially to our economy, consistent with:*

- The efficient allocation of permits;
  - The Crown obtaining a fair financial return from the extraction of petroleum; and
  - Having due regard to the principles of the Treaty of Waitangi.
- 2.17. In addition, the Minister will take into consideration any international obligations which are relevant in managing the petroleum resource and in exercising the functions and powers prescribed under the Act.

### ***POLICIES FOR THE MANAGEMENT OF THE PETROLEUM RESOURCE***

- 2.18. The following policies which all contribute to achieving the objectives of efficient allocation of rights in respect of petroleum, and the obtaining by the Crown of a fair financial return from its petroleum, are also established:

- *Petroleum prospecting, exploration or mining permits should be obtained by the person who is most likely to effectively and efficiently prospect or explore and develop the petroleum resource;*
- *Permit areas should be prospected, explored or mined in accordance with an appropriate work programme which has the objective, either:*
  - (a) *In respect of prospecting and exploration permits, of assessing the petroleum resource potential of the permit area; or*
  - (b) *In respect of mining permits, of achieving sound management of the petroleum resource through good mining practice, including the avoidance of wastage of petroleum;*
- *The conditions of the petroleum permit should be complied with;*
- *Exploration and mining operations should result in increased knowledge of New Zealand's petroleum resource and petroleum potential;*
- *The Crown, as owner of the petroleum resource, should obtain a guaranteed minimum royalty payment from the extraction of its petroleum;*
- *The Crown, as owner of the petroleum resource, should benefit in sharing in any substantial profits arising from a petroleum development;*
- *The royalty regime in place should be sufficiently internationally competitive to attract mobile and competitively driven investment;*
- *The investor should perceive that sovereign risk is minimised (sovereign risk is defined as the risk that the government may change significant aspects of its policy and investment regime);*
- *The allocation and royalty systems should be clearly outlined and easy to comply with and administer; and*
- *The allocation and royalty systems should not impose unreasonable transaction costs and should not significantly deter investment.*

#### **Principal Reasons for and Against the Policies Established**

- 2.19. The establishment of these policies recognises that petroleum is a valuable, non-renewable resource of strategic importance to the economy as noted in paragraph 2.13. They also recognise that decisions on prospecting, exploration and mining are considered most appropriately made by those prepared to invest and take risks rather than being made by the Crown (subject to investors meeting the standard of good exploration and mining practice). The policies also recognise that New Zealand is competing for international petroleum investment and needs to have an attractive regime to secure continuing investment.
- 2.20. Other policies which would involve the Minister and the Crown directing or favouring who should be involved in investment or the type of investment to be undertaken under petroleum permits have been considered and rejected as not being in the interests of the economy and not likely to achieve the outcome of promoting responsible discovery and development of petroleum resources.

### **3. REGARD TO THE PRINCIPLES OF THE TREATY OF WAITANGI**

- 3.1. Section 4 of the Act provides that all persons exercising functions and powers under the Act shall have regard to the principles of the Treaty of Waitangi (Te Tiriti O Waitangi) (“the Treaty”). This means that Parliament has directed that the principles of the Treaty must be considered and carefully weighed by all those exercising a power of decision under the Act.<sup>3</sup>
- 3.2. The requirement to have regard to the principles of the Treaty gives rise to important obligations that apply to the Crown. The Minister and the Secretary must act in accordance with these principles when exercising powers under the Act. This requirement will be carried out with reference to the following principles:
- The Crown will act reasonably and in utmost good faith to its Treaty partner;
  - The Crown must make informed decisions;
  - The Crown must have regard to whether a decision will impede the prospect of redress of grievances under the Treaty (this will be more relevant where there is an application for a permit in respect of land or resources that is the subject of a claim before the Government or the Waitangi Tribunal); and
  - The Crown has responsibilities in relation to active protection and, as prospecting, exploration or mining may impact upon lands, waters or other properties protected by Article 2 of the Treaty, various mechanisms are available for excluding areas of particular importance to iwi from the operation of the Minerals Programme.
- 3.3. To make an informed decision, that is, one that takes into account all relevant considerations, the Minister and Secretary must be sufficiently informed as to the relevant facts and law, to be able to show that they have had proper regard to the impact of the principles of the Treaty. The Minister and Secretary are, therefore, committed to a process of consultation with iwi and hapu on the management of the petroleum resource so that they are informed of the Maori perspective, including tikanga Maori. Decisions will be made taking into account the considerations raised in the course of that consultation.
- 3.4. In relation to the management of the petroleum resource under the Act, consultation is a process in which the Minister and Secretary are committed to meaningful discussion with iwi and hapu and are receptive to those Maori views and give those views full consideration. This process is seen as operating on three levels. These are:
- (a) The preparation of the Minerals Programme for Petroleum. The consultation process with iwi and hapu on the preparation of this Minerals Programme is discussed in Appendix III;
  - (b) Planning in respect of Petroleum Exploration Permit Block Offers, which are the predominant form of petroleum permit allocation, as discussed in paragraphs 5.4.5 to 5.4.11. The procedures for undertaking consultation with iwi and hapu on block offers are discussed in paragraphs 3.6 to 3.13; and

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<sup>3</sup> As noted in footnote 1 of the Preamble, the Crown Minerals Act 1991 provides that ownership of all petroleum, gold, silver and uranium rests with the Crown. (Refer also to paragraph 1.3)

- (c) Decisions in relation to applications for petroleum permits (where the relevant issues have not already been addressed), and applications for amendments to petroleum permits to extend the land or minerals. The procedures for undertaking consultation on such applications are discussed in paragraph 3.14.

3.5. It is important to note that each decision will be made having regard to the considerations in relation to the principles of the Treaty that are raised as a result of the consultation, taking into account the circumstances of each case. The consultation principles that will be followed in each case, however, are:

- (a) That there is early consultation with iwi and hapu at the onset of the decision making process aimed at informing the Secretary and the Minister of the Treaty implications of particular issues;
- (b) That sufficient information is provided to the consulted party, so that they can make informed decisions and submissions;
- (c) That sufficient time is given for both the participation of the consulted party and the consideration of the advice; and
- (d) That the Secretary and the Minister genuinely consider the advice, and approach the consultation with open minds and a willingness to change.

### ***BLOCK OFFER CONSULTATION***

3.6. Most applications for petroleum permits are for petroleum exploration permits. These are mainly allocated following a Petroleum Exploration Permit Block Offer (refer section 5.2 for further details). Prior to recommending a block offer to the Minister, the Secretary must consult with appropriate hapu and iwi. There will be a period of no less than 20 working days given to iwi and hapu to comment on the proposal to hold a block offer and any of the proposed elements of the block offer. Hapu and iwi may request additional time for making comments. If additional time is required, iwi and hapu may request in writing up to an additional 20 working days for making comment.

3.7. The form of the consultation process is flexible. In all cases, the Secretary will consult with local representatives of iwi and hapu, and outline the proposals for holding a block offer. This process will include writing to iwi and hapu advising the area of the proposed block offer, outlining a map of the blocks defined, and giving an outline of the types of activities that may take place should a petroleum exploration permit be allocated, the timing of the block offer and any proposed conditions of the offer.

3.8. If iwi and hapu and the Crown think it is appropriate, there may be face-to-face (kanohi ki te kanohi) consultation or a hui held. Officials will be available to discuss and provide information on a proposed block offer if iwi and hapu require further information. If iwi and hapu have organisations established to foster consultation processes (for example, a committee which meets to consider permits under the Act and consents under the Resource Management Act 1991 or a governance entity established as part of a Treaty settlement), the Secretary would be pleased to work with these organisations.

3.9. To ensure that there is appropriate consultation, the Secretary will maintain an iwi and hapu contact list for the purposes of consultation and must endeavour to ensure that this list is up to date. Iwi and hapu are encouraged to advise the Secretary of any changes in contact names and addresses in order to facilitate the consultation process.

- 3.10. As part of the consultation process, iwi and hapu may request an amendment to the proposed block offer or that defined areas of land not be included in any permit (block).
- 3.11. In recommending a Petroleum Exploration Permit Block Offer to the Minister, the Secretary will report on iwi and hapu consultation in relation to the block offer and give an assessment of any relevant Treaty claims and settlements that may have implications for the management of the Crown-owned petroleum estate.
- 3.12. Where iwi and hapu have requested an amendment to the proposed block offer or the exclusion of any land from the block offer, the request(s) must be outlined and an evaluation made. In evaluating such requests, matters that the Minister must take into consideration include, but are not limited to, the following:
- What it is about the area that makes it important to the mana of iwi and hapu;
  - Whether the area is a known wahi tapu site;
  - The uniqueness of the area; for example, whether it is one of a number of mahinga kai (food gathering) areas or the only waka tauranga (the landing places of the ancestral canoes);
  - Whether the importance of the area to iwi and hapu has already been demonstrated, for example by Treaty claims and settlements and objections under other legislation;
  - Any Treaty claims which may be relevant and whether granting a permit over the land would impede the prospect of redress of grievances under the Treaty;
  - Any iwi management plans in place in which the area is specifically mentioned as being important and should be excluded from certain activities;
  - The area's landowner status. If the area is one of the special classes of land in section 55, landowner veto rights may protect the area;
  - Whether the area is already protected under other legislation, for example the Resource Management Act 1991, Conservation Act 1987, Historic Places Act 1993; and
  - The size of area and value of the potential resource affected if the area is excluded.
- 3.13. Where iwi or hapu have requested land to be excluded from a block offer or other amendments to the block offer conditions, following the Minister's full consideration of the matter, iwi and hapu must be informed in writing of the Minister's decision. If the request has been declined, an explanation will be provided.

### ***CONSULTATION ON PETROLEUM PERMIT APPLICATIONS OTHER THAN THOSE ARISING FROM A BLOCK OFFER***

- 3.14. Applications for petroleum permits which do not relate to a Petroleum Exploration Permit Block Offer are likely to be less common. Where these do occur, or when there is an application to extend a permit area, a similar procedure of consultation with iwi and hapu as for a Petroleum Exploration Permit Block Offer must be followed. In this case, however, iwi and hapu must be consulted about the specific application area and details of the proposed work to be undertaken. Where iwi and hapu then request that any land be excluded from a permit application, this request must be evaluated taking into consideration the criteria outlined in paragraph 3.12.



## ***ONGOING PROVISION OF INFORMATION TO ASSIST CONSULTATION***

- 3.15. To assist iwi and hapu, the Secretary may, from time to time, publish information brochures on petroleum prospecting, exploration and mining processes and distribute these to iwi and hapu.

## ***OTHER PROVISIONS AVAILABLE TO IWI***

- 3.16. In addition to the provisions of the Act outlined above, iwi and hapu may use the land access provisions of the Act to protect areas of importance. These provisions are discussed in paragraphs 4.11 to 4.17. Also, there are other legislative mechanisms open to iwi and hapu to use to protect areas of importance. The Act is complemented by the Resource Management Act 1991, which promotes the sustainable management of natural and physical resources. The Resource Management Act 1991 requires all decision makers to take into account the principles of the Treaty of Waitangi, to have particular regard of kaitiakitanga, and to recognise and provide for the relationship of Maori with their ancestral lands and wahi tapu as matters of national importance. Where iwi and hapu are concerned that petroleum prospecting, exploration or mining may have an impact on surface land areas or features of significance, the Resource Management Act 1991 provisions could be used to protect taonga and wahi tapu areas. There are also provisions in the Conservation Act 1987 and the Historic Places Act 1993 which may be appropriate to use. (Refer also to paragraphs 4.5 and 4.7.)

## ***PROTOCOLS***

- 3.17. As part of Treaty settlements, the Minister of Energy has entered into protocols with hapu and iwi to assist in creating a constructive relationship between the Ministry of Economic Development and the hapu or iwi. The protocols set out how the Ministry will consult with particular hapu and iwi on a continuing basis on specified matters in its administration of the Act within a geographically defined area of relevance to the hapu or iwi referred to as the protocol area. The Act is also complemented by the Historic Places Act 1993 which promotes the protection of sites associated with pre-1900 human activity. Protection is extended to both known sites and sites that a person should “have reasonable cause” to suspect are archaeological sites. While many sites are also protected by the Resource Management Act 1991 by virtue of their inclusion in district plans, sites not currently protected in this manner still require authorisation from the Historic Places Trust before they may be disturbed.
- 3.18. The Minister of Energy has entered into protocols with: Ngaati Ruanui, an iwi of South Taranaki; Te Uri o Hau, a large hapu of Ngati Whatua located in the Northern Kaipara region; and Ngati Tama, an iwi of Taranaki.
- 3.19. The Secretary maintains a register of protocols entered into between the Minister of Energy and hapu and iwi. The process of negotiating protocols with hapu and iwi is ongoing. As protocols are signed, they will be entered into the Secretary’s register. A list of groups that have entered protocols is available from Crown Minerals.

## **4. LAND AVAILABLE FOR PETROLEUM PERMITS**

- 4.1. Section 15(1)(b) of the Act requires that this Minerals Programme for Petroleum must identify any restrictions on prospecting, exploration and mining of petroleum. This chapter outlines restrictions on land available for permitting.

### ***LAND UNAVAILABLE BECAUSE OF IMPORTANCE TO MAORI***

- 4.2. Areas of land may be unavailable for permitting by policy decision of the Minister in accordance with section 15(3) of the Act. This provides that on the request of an iwi, a minerals programme may provide that defined areas of land of particular importance to its mana are excluded from the operation of the minerals programme or must not be included in any permit.

- 4.3. In accordance with section 15(3) of the Act, Mt Taranaki and the Pouakai, Pukeiti and Kaitake Ranges, as defined by the area of the Mt Egmont National Park, shall be unavailable for inclusion in any petroleum permit where the land (surface and subsurface) is above sea level. The boundaries of the Mount Egmont National Park containing 33,764.7817 hectares, more or less, are:

Pts Sub 2, Subs 1, 3, 4, 5, 9, Pts Subs 7, 8, 10, Pts Secs 49, 170, Pt Sec 189, Lots 1, 2, 3, 4 DP 13397, Lot 1 DP 15932, Blk III Cape SD,

Pt Sec 169 Oakura District, Blks III & VII Cape SD,

Secs 1-3, 11-14, 16-18 Blk V Egmont SD,

Sec 38 Blk VII Egmont SD,

Lot 2 DP 7882, Secs 3, 4, 6, 7, 10, 14, 15, 20, Blk VII Cape SD,

Lot 1 DP 10394, Lot 1 DP 8824, Lot 2 DP 8649, Lot 1 DP 11816 & Secs 8, 14, 16, 18, Blk XI Cape SD,

Pt Sec 3, Blk XV Cape SD,

Lot 1 DP 10401, Blk XII Egmont SD,

Secs 54, 55, 68 & Pt Sec 63, Blk IV Kaupokonui SD,

and Egmont National Park in Blks V, VI, VII, IX, X, XI, XIII, XIV, XV Egmont SD,

Blks XI, XV Cape SD,

Blk IV Opunake SD,

and Blks I, II, III, IV, V, VI, VII Kaupokonui SD,

Section 1 SO 13356 Blk XII Egmont SD,

Pt Sec 134 Omata District Blk VI Egmont SD,

Lot 1 DP 13427 Blk I Egmont SD.

- 4.4. Mt Taranaki and the Pouakai, Pukeiti and Kaitake Ranges are a fundamental source of tribal identity and mana for the iwi of Taranaki. The iwi of Taranaki consider Mt Taranaki and its associated ranges to be a tipuna (ancestor). The area is regarded as a wahi tapu (of special and/or sacred importance).

- 4.5. The Titi Islands, which include all Crown Titi Islands and all Beneficial Islands, shall be unavailable for inclusion in any petroleum permit where the land (surface and subsurface) is above sea level. These islands are a fundamental source of tribal identity and mana for Ngai

Tahu and regarded as wahi tapu, The Titi Islands are located in the Southland Land District and are described as follows:

Beneficial Islands:

*Owen Island or Horomamae Island*, comprising 35.2 hectares, more or less, as shown on SO 10461,

*Wharepuaitaha Island*, comprising 18.2 hectares, more or less, as shown on SO 10461,

*Kaihuka Island*, comprising 10.0 hectares, more or less, as shown on SO 10461,

*Potuatua Island*, comprising 1.3 hectares, more or less, as shown on SO 10461,

*Pomatakiarehua Island*, comprising 2.9 hectares, more or less, as shown on SO 10461,

*Tia Island or Entrance Island*, comprising 20.6 hectares, more or less, as shown on SO 10461,

*Taukihepa Island or Big South Cape Island*, comprising 910.0 hectares, more or less, as shown on SO 10461,

*Rerewhakaupoko Island or Solomon Island*, comprising 27.8 hectares, more or less, as shown on SO 10461,

*Mokonui Island or Big Moggy Island*, comprising 99.5 hectares, more or less, as shown on SO 10461,

*Mokoiti Island or Little Moggy Island*, comprising 10.1 hectares, more or less, as shown on SO 10461,

*Timore Island or Chimneys Island*, comprising 5.7 hectares, more or less, as shown on SO 10461,

*Kaimohu Island*, comprising 10.8 hectares, more or less, as shown on SO 10461,

*Huirapa Island*, comprising 4.4 hectares, more or less, as shown on SO 10461,

*Tamaitemioka Island*, comprising 14.0 hectares, more or less, as shown on SO 10461,

*Pohowaitai Island*, comprising 38.0 hectares, more or less, as shown on SO 10461,

*Herekopare Island or Te Marama Island*, comprising 24.1 hectares, more or less, as shown on SO 10461,

*Pikomamaku Island or Womens Island*, comprising 8.2 hectares, more or less, as shown on SO 10461,

*Poutama Island*, comprising 37.5 hectares, more or less, as shown on SO 10461.

Crown Titi Islands:

*Motonui Island or Edwards Island*, comprising 46.9 hectares, more or less, being Section 15 SO 12215,

*Jacky Lee Island*, comprising 30.7 hectares, more or less, being Section 16 SO 12215,

*Bunker Islets*, comprising 10.7 hectares, more or less, being Section 17 SO 12215,

*Pihore Island*, comprising 1.4 hectares, more or less, being Section 14 SO 12215,

*Weka Island*, comprising 8.1 hectares, more or less, being Section 11 SO 12215,

*Rukawahakura Island*, comprising 23.3 hectares, more or less, being Section 12 SO 12215,

*Takawiwini Island*, comprising 1.5 hectares, more or less, being Section 13 SO 12215,  
*Kopeka Island*, comprising 1.8 hectares, more or less, being Section 10 SO 12215,  
*The Brothers*, comprising 4.6 hectares, more or less, being Section 9 SO 12215,  
*Ernest Island*, comprising 16.7 hectares, more or less, being Section 7 SO 12215,  
*Kaninihi Island*, comprising 2.6 hectares, more or less, being Section 8 SO 12215,  
*Putauhinu Island*, comprising 149.9 hectares, more or less, being Section 5 SO 12215,  
*Pukeweka Island*, comprising 3.2 hectares, more or less, being Section 6 SO 12215,  
*Big Island*, comprising 23.6 hectares, more or less, being Section 4 SO 12215,  
*Betsy Island*, comprising 6.3 hectares, more or less, being Section 2 SO 12215,  
*Kundy or North Island*, comprising 23.0 hectares, more or less, being Section 1 SO 12215,  
*Rat Island*, comprising 13.1 hectares, more or less, being Section 3 SO 12215,  
*Pikomamakau-iti Island or North Island*, comprising 8.3 hectares, more or less, being Section 1 SO 12215.

#### ***OTHER LAND UNAVAILABLE***

- 4.6. The Sugar Loaf Islands Marine Protected Area Act 1991 excludes petroleum mining operations and the issue of permits over all the land and water bounded by a line commencing at 39° 03' 36.0"S and 174° 01' 24.6"E to a point 39° 02' 51.77"S and 174° 01' 51.71"E; then along a line from the navigation light on the lee breakwater of Port Taranaki at 39° 03' 24.15"S and 174° 02' 39.98"E to the breakwater; then in a westerly and south-westerly direction along the line of mean high water mark to the point of commencement; and includes all seabed and subsoil below those waters that extend down to the bedrock or 10 metres below the surface of the seabed, whichever distance is the greater.
- 4.7. In recognition of the Protocol on Environmental Protection to the Antarctic Treaty, all land south of latitude 60°S is unavailable to prospecting, exploration and mining permits.
- 4.8. Where there is a prohibition of any other land to prospecting, exploration or mining petroleum made in accordance with statute, the Minister must consider such land unavailable for allocation by permit in respect of the activity.

#### ***OTHER LAND AVAILABLE***

- 4.9. Other than the land noted in paragraphs 4.3 and 4.5 to 4.7 above, all land to which the Act applies (refer paragraph 1.3) is available for allocation under petroleum permits, in accordance with the policies and procedures outlined in sections 5.1, 5.2 and 5.4 of this Minerals Programme.
- 4.10. Petroleum is a resource which is in a fluid or gaseous and flowing state sub-surface (sometimes referred to as a pool resource). Petroleum exploration and mining permits need to extend over the full area of a prospect or discovery as far as possible, even though access to that discovery may be from just several identifiable drilling sites. Accordingly, the permit needs to fully define the rights of the permit holder to the extent of that discovery.
- 4.11. Petroleum prospecting, exploration and mining can often be undertaken to avoid surface land areas or features of significance. For such areas to be protected from adverse impacts of

petroleum prospecting, exploration or mining activities, the provisions of the Resource Management Act 1991 will apply. Under that Act, Regional Policy Statements, Regional Plans or District Plans may establish such environmental standards in some sensitive areas that they could preclude some petroleum mining operations. As well, an Order in Council under section 62 of the Act may prohibit access to some Crown lands. Such an Order, however, cannot affect any existing access arrangements.

### ***LAND ACCESS***

- 4.12. The granting of a permit under the Act does not confer on the permit holder a right of access to any land (section 47 of the Act refers). Sections 49 to 80 of the Act set out the procedures and provisions for petroleum permit holders obtaining access to land. These are summarised below.
- 4.13. Pursuant to section 55(2) of the Act, the following classes of land cannot be entered without the written agreement of each owner or occupier of the land with the person desiring access (or without an access agreement determined by an arbitrator where this is agreed to by each owner or occupier of the land and the person desiring access):
- (a) Any land held or managed under the Conservation Act 1987 or any other Act specified in the First Schedule of the Conservation Act 1987;
  - (b) Land subject to an open space covenant in terms of the Queen Elizabeth the Second National Trust Act 1977;
  - (c) Land subject to a covenant in terms of the Conservation Act 1987 or the Reserves Act 1977;
  - (d) Land for the time being under crop;
  - (e) Land used as or situated within 30 metres of a yard, stockyard, garden, orchard, vineyard, plant nursery, farm plantation, shelterbelt, airstrip, or indigenous forest;
  - (f) Land which is the site of or situated within 30 metres of any building, cemetery, burial ground, waterworks, race, or dam; and
  - (g) Land having an area of 4.05 hectares or less.

As well, pursuant to section 51(2) of the Act, Maori land cannot be entered for the purpose of carrying out a minimum impact activity where the land is regarded as wahi tapu by the tangata whenua, without the consent of the owners of the land.

- 4.14. Other than the classes of land referred to above, a petroleum permit holder (and employees, agents and contractors of a permit holder authorised for that purpose) may enter land to which the permit relates and carry out minimum impact activity (defined in section 2 of the Act), upon giving at least 10 working days' notice in the appropriate manner outlined in section 49 of the Act. For Maori land, section 51 of the Act provides additionally that reasonable efforts are to be made to consult with those owners of the land able to be identified by the Registrar of the Maori Land Court and that the local iwi authority also be given 10 working days' notice of proposed land entry. As noted in paragraph 4.12, if the Maori land is regarded as wahi tapu by the tangata whenua, no person may enter the land for minimum impact activity without the land owners' consent.

- 4.15. Pursuant to section 53 of the Act for other than minimum impact activities, the holder of a petroleum permit shall not prospect, explore or mine in or on land to which the permit relates otherwise than in accordance with an access arrangement either:
- (a) Agreed in writing between the permit holder and each owner and occupier of the land;  
or
  - (b) Determined by an arbitrator in accordance with the Act.
- 4.16. Desirably, an access arrangement is amicably determined between the permit holder and each owner and occupier of the land. If this does not occur, the permit holder may serve a notice on each owner and occupier requesting agreement to the appointment of an arbitrator. The Act details this procedure and those for conducting hearings (sections 63 to 75 of the Act).
- 4.17. As noted, section 62 of the Act provides for an Order in Council to be issued on the request of Ministers, prohibiting access in respect of any Crown land, such that neither minimum impact activities can be undertaken nor access arrangements entered into in respect of the defined Crown land area.
- 4.18. If an access arrangement is entered into that has a duration longer than six months, it must be lodged by the permit holder with the Registrar General of Land in accordance with section 83 of the Act. Failure to do so can result in the access arrangement not being binding on any successors in title to the owner and occupier.

### ***PETROLEUM PERMITS AND OTHER MINERALS PERMITS***

- 4.19. A petroleum permit may be granted over land where there are other non-petroleum permits. This is highly likely to occur given that petroleum exploration and mining permits often extend over large areas (even though the surface exploration or mining activity may be from only a small number of identifiable sites). In most situations, it is not expected that the overlap of petroleum and non-petroleum permits will be of any consequence.
- 4.20. Where a petroleum permit targeting coal seam gas is in overlap with an existing coal mining permit or licence, the holders of coal mining permits and licences will have incidental right to extract, collect and release coal seam gas, where it is necessary and reasonable to do so, in conjunction with the safe management of coal mining operations within the “three-year coal extraction zone”. This right does not give coal operators a right of ownership of the gas or the right to sell or trade. In instances where a coal permit/licence holder wants to sell or trade gas, including that associated with coal mining, a petroleum mining permit must be applied for.
- 4.21. To avoid potential interference issues between the coal and petroleum activities, coal mining permit and licence holders will be required to provide to the petroleum permit holder a five-year development plan for the existing coalmine showing the location and areal extent of the mining permit/licence area in which mining is proposed for the following five years. This will include a three-year rolling coal extraction zone which will be excluded from any non-minimum impact petroleum activities by the petroleum permit holder without the written consent of the underlying coal mining permit or licence holder.
- 4.22. If a dispute does arise between a petroleum permit holder and a non-petroleum permit holder, for example over potential or actual interference with one another’s mining operations, the matter would need to be dealt with privately by the parties concerned, taking into account access arrangements and possibly resource consents.

- 4.23. If a dispute does arise and a petroleum permit holder is hindered or prevented from fulfilling the work programme conditions of the permit, this may be grounds to seek an amendment to the permit work programme conditions (refer sections 5.5 and 5.7). In considering any such application, the Minister must have regard to the situation causing its request.

## **5. THE PERMITTING REGIME**

### ***INTRODUCTORY SUMMARY***

*There are three types of petroleum permits: prospecting; exploration; and mining. Section 23 of the Act provides that any person may apply to the Secretary for a petroleum permit. Each application must be considered in a manner that is consistent with the policies, procedures and provisions outlined in this Minerals Programme for Petroleum.*

*Prospecting permits are granted to enable reconnaissance and general investigations of an area. The grant of prospecting permits is on the condition that the permit holder has no subsequent right to an exploration permit.*

*Exploration permits are the basis for obtaining petroleum exploration rights and are granted with the right to a subsequent mining permit.*

*There are two competitive methods of allocating permits:*

- (a) Staged work programme bidding, which will be the primary method of allocating exploration permits (refer paragraphs 5.4.14 to 5.4.38);*
- (b) Cash bonus bidding, which shall be used in areas of high prospectivity and where there is strong competitive interest (refer section 5.2); and*
- (c) A subsequent permit right application (in accordance with section 32 of the Act).*

*Staged work programme and cash bonus bidding exploration permit applications are made pursuant to a Petroleum Exploration Permit Block Offer. A block offer is preceded by an Indicative Block Offer Schedule.*

*Petroleum mining permit applications are predominantly made by an exploration permit holder, pursuant to both sections 23 and 32 of the Act, who has discovered a petroleum field within the exploration permit area. They may also be awarded by cash bonus bidding.*

*This chapter discusses the policies, procedures and provisions in respect of the allocation of petroleum permits and changes to granted permits. The criteria used in assessing applications are outlined. Details of how to apply for a permit or a change to a permit may be found in the relevant Crown Minerals regulations.*

### **5.1. [Deleted]**

### **5.2. ALLOCATION BY CASH BONUS BIDDING**

- 5.2.1. In areas of high prospectivity and where there is strong competitive interest, in advertising a Petroleum Exploration Permit Block Offer in the manner outlined in paragraphs 5.4.5 to 5.4.9, the Minister may use cash bonus bidding as the method of exploration and mining permit allocation. For such areas, it is highly likely there exists a good petroleum exploration information database. Applications are required to be made in the manner prescribed in the relevant regulations and in accordance with any detailed instructions specified in the Block Offer Notice. All the conditions to which any permit granted from the block offer will be subject must be prescribed in the Block Offer Notice.
- 5.2.2. With the cash bonus bidding allocation method, there is minimal evaluation of the applications and an exploration permit or mining permit will be awarded to the applicant who has made the highest cash bid for a block, always provided that the applicant is satisfactory to



the Minister (refer paragraphs 5.2.12 and 5.2.13) and has complied with the bidding criteria. This may include bids having to be equal to, or higher than, either a minimum cash amount per square kilometre announced prior to bidding or a reserve price (not disclosed until bidding closes) which may be set by the Minister. If there is a minimum bidding price, or bids are to be measured against an unstated reserve price, this must be advised in the Block Offer Notice.

### ***CONDITIONS OF GRANT***

- 5.2.3. A stated condition of the grant of a petroleum exploration permit (by both cash bonus bidding allocation and other allocation methods) will be along the lines that the permit holder will make all reasonable efforts to explore and delineate the petroleum resource potential of the permit area, in accordance with good exploration and mining practice. Such a condition of grant must be specified precisely in the Petroleum Exploration Permit Block Offer Notice.
- 5.2.4. As well, to ensure that the land under a permit allocated by cash bonus bidding is adequately explored, it will be a condition of the grant of a permit that either at least one exploration well is drilled within the permit area within three years of the commencement date of the permit, or the permit is surrendered. In advertising any block offer, the Minister may also choose to advise that it will be necessary for every permit holder to undertake some other defined work obligations to maintain the permit property right. For example, this could be a permit condition to undertake a minimum level of seismic surveying. As well, petroleum exploration permits will be granted with conditions relating to the calculation and payment of royalties (in accordance with the provisions outlined in chapter 7) and the payment of prescribed fees. There may also be other conditions which are particular to a block offer or part of a block offer, for example related to the Minister's obligations to have regard to the principles of the Treaty of Waitangi. As noted in paragraph 5.4.7(d), the conditions to which any permit granted in accordance with a Petroleum Exploration Permit Block Offer will be subject, will be specified in the Block Offer Notice.

### ***LODGEMENT AND ACCEPTANCE OF BIDS***

- 5.2.5. The Block Offer Notice will clearly specify where cash bonus bids should be forwarded. For a bid to be accepted, it must be accompanied by an overseas bank draft in New Zealand dollars or a certified bank cheque drawn on a New Zealand registered bank of a minimum deposit of 20 percent of the bid proposed and made payable to the Government of New Zealand. If a bid is successful, there will be a maximum period of five working days from the date of the advice to forward any outstanding bid payment owing. Failure to pay the outstanding amount will result in disqualification of the bid and forfeiture of the deposit (which will be paid into the Crown Bank Account together with any interest accrued). This procedure is to ensure bona fide bids. Where a bid is unsuccessful, the deposit will be returned within 15 working days (refer paragraph 5.2.8).
- 5.2.6. Cash bids must be forwarded in sealed envelopes. Where there is more than one permit block on offer and more than one permit block is applied for, bids for each block must be in separate envelopes.
- 5.2.7. At a nominated time, all bids received will be opened. No bids will be opened before this time. The bids will be opened by no fewer than two people, one of whom is a government official designated by the Secretary and one of whom is a Justice of the Peace. Receipt of every bid will be acknowledged promptly. The successful bidder will be formally advised in writing within 10 working days, except as provided for in paragraph 5.2.9.
- 5.2.8. All cash bid deposits (which are received with bids) will be deposited in a trust account in accordance with Part VII of the Public Finance Act 1989. For bids then determined

unsuccessful (or withdrawn), the deposit plus any interest accrued will be returned to the applicant within 15 working days from the opening date of bids. For successful bids, the interest will be paid to the Crown Bank Account.

### ***CONSIDERATION OF EQUAL CASH BIDS***

- 5.2.9. When more than one bidding party submit highest equal bids for a permit block, the Minister will defer a decision on the award of the permit and will request the equal highest bidders to modify their original bids. The Minister will then determine an outcome.

### ***CONDITIONAL BIDS***

- 5.2.10. An applicant may make a permit application bid which is contingent on the success of another of their application bids for another block(s) or part block(s). In such cases, the applications for each of the blocks must be evaluated as though they were standalone. If, after this evaluation, any application is successful and another not, then the Minister must decline all the applications on the basis that they were contingent. The deposit forwarded in respect of the unsuccessful applications will be returned within 15 working days, as outlined in paragraph 5.2.8. The Minister will decline contingent applications from an applicant making more than one application for the same block, such that application “y” for block “a” is considered only if application “x” for block “a” is unsuccessful.
- 5.2.11. To provide for the situation where a party may bid on multiple blocks in the hope of obtaining a certain number and more of the party’s bids are successful than the party is technically or financially able to commit to, a cash bonus bid may be made subject to conditions limiting the applicant’s financial commitment or the number of permits to be granted to the applicant. The bidder may choose to limit the total number of permits obtained by marking that a bid for a block is made conditional upon the non-success of another bid for another block, in other words, that a bid for block “c” is considered only if either of the bids for blocks “a” or “b” is unsuccessful. The bidder may choose to limit the total financial commitment by marking that a bid is made conditional upon the sum total of other bids accepted from the bidder not being in excess of a certain level of expenditure, in other words, that a bid for block “c” is considered only if a bid for block “a” is not successful. Conditional bids which are then not considered must be treated as though they were unsuccessful and the return of the deposit(s) will be made within 15 working days as outlined in paragraph 5.2.8.

### ***EVALUATION OF APPLICATIONS***

- 5.2.12. Before granting a permit to the highest bidder, the Minister must also be satisfied that the applicant will comply with the conditions of, and give proper effect to, the permit (section 27 of the Act). In this respect, the matters that the Minister must take into consideration as relevant include, but are not limited to, the following:
- (a) The applicant’s financial capability to carry out the proposed work programme and to pay prescribed fees;
  - (b) The applicant’s technical capability, which may include proposed use of technical experts; and
  - (c) Other prospecting, exploration or mining activities both in New Zealand and internationally that the applicant has been involved with, to the extent that these activities impact on the applicant’s ability and likelihood to comply with the conditions of the proposed permit.

If the Minister is aware of any factors which could contribute to the view that the applicant may not give proper effect to the permit, for example the applicant (or related companies) has not complied either with work programme conditions or the lodgement of data or the payment of fees associated with previously held petroleum privileges, then the Minister will raise with the applicant the concerns held and advise the applicant of the factor(s) that are considered to be relevant to the grant of the permit. Before deciding on the matter, the Minister will consider any comments that the applicant has to make.

- 5.2.13. If there is insufficient information included with an application to establish whether or not the applicant would be able to give proper effect to a permit, the Minister will give the applicant seven working days to rectify the omission. If this does not occur, and the Minister is not satisfied that the applicant will comply with the conditions of, and give proper effect to the permit, then the Minister may decline the bid. Any cash bid application may also be declined taking into consideration the Government's international obligations, if relevant to the particular permit application in question.

### ***GRANT OF PERMIT AND CONDITIONS OF GRANT***

- 5.2.14. Any person lodging a bid for a block must be deemed to have accepted the conditions of permit grant (refer paragraphs 5.4.56 and 5.4.57) as specified in the Petroleum Exploration Permit Block Offer Notice.
- 5.2.15. Where a petroleum exploration permit is to be granted, the grant of the permit will be subject to the conditions of grant that were advertised in the final notice that the permit area was available for application, unless otherwise modified in agreement with the applicant, provided that the modifications are not substantial. The grant of the permit will occur after the formal acceptance of the conditions of grant by the applicant and the lodgement of the full cash bid (refer paragraph 5.2.5).
- 5.2.16. The exploration permit granted will be in the form of: a preamble with references to the permit holder(s); a first schedule detailing the area of the permit (including a map); and subsequent schedules detailing the conditions of permit grant advised at the time of advertising the Petroleum Exploration Permit Block Offer. This will include conditions as noted in paragraphs 5.2.3 and 5.2.4 and conditions which detail the calculation and payment of royalties.

### ***GRANT OF A MINING PERMIT BY CASH BONUS BIDDING***

- 5.2.17. Most applications for mining permits will be allocated as a subsequent mining permit to the holder of an exploration permit who has made a discovery (sections 23 and 32 of the Act). However, there may be some circumstances under which a mining permit may be allocated via cash bonus bidding, for example where a mining permit is surrendered or revoked and there is strong competitive interest in it. The cash bonus bidding process for the allocation of a mining permit would be similar to those outlined above. The conditions of grant that may apply are outlined in paragraphs 5.6.23 to 5.6.25.

### **5.3. ALLOCATION OF PETROLEUM PROSPECTING PERMITS**

#### ***INTRODUCTION***

- 5.3.1. Petroleum prospecting permits are granted for the purpose of conducting reconnaissance geophysical surveys and/or reconnaissance geochemical surveys and/or general investigative studies or surveys with the purpose of providing information for further petroleum exploration. Prospecting also includes the taking of samples by hand or hand-held methods. Prospecting permits may be granted both offshore and onshore. Work undertaken over the permits is most likely to be minimum impact activity, which is defined in section 2 of the Act. (This is not, however, a requirement of such permits.)
- 5.3.2. Prospecting permits may be taken up by both exploration and mining companies to undertake reconnaissance work over relatively large areas, and data processing and research organisations wishing to undertake reconnaissance studies for sale of the information obtained to potential and existing explorers.
- 5.3.3. The Minister may also reserve an area for prospecting permits prior to advertising the area in a Petroleum Exploration Permit Block Offer (refer paragraphs 5.4.5 to 5.4.9), in order to provide for interested parties to undertake pre-bid prospecting, and to better formulate their bids for an exploration permit(s).
- 5.3.4. Applications for petroleum prospecting permits may be made at any time, over land available for petroleum permitting. Details of how to apply for a prospecting permit are prescribed in the relevant regulations. Permits generally shall be granted for a period of no more than one year. The Minister is unlikely to grant any extension of duration.
- 5.3.5. Petroleum prospecting permits must not be granted over acreage held either in existing petroleum exploration or mining permits, or petroleum prospecting or mining licences (granted under the Petroleum Act 1937), during the currency of these permits or licences. As well, the Minister may choose not to grant prospecting permits over land which is being advertised in a Petroleum Exploration Permit Block Offer within three months of the closing date of exploration permit applications in respect of the Block Offer.

#### ***CONDITIONS OF GRANT***

- 5.3.6. Petroleum prospecting permits must be granted on the condition that a prospecting permit holder will have no subsequent right to obtain petroleum exploration or petroleum mining permits over part or all of the area of the prospecting permit.
- 5.3.7. The Minister may determine at the time of grant that more than one prospecting permit may be issued over the same land, in other words, that the permit does not have an exclusive prospecting right.
- 5.3.8. The grant of a petroleum prospecting permit shall be on the condition that the permit holder must undertake a programme of work with the objective of materially adding to the existing knowledge about the petroleum potential of the permit area. There will also be a condition relating to the payment of prescribed fees and the lodgement of data obtained under the work programme.

## ***EVALUATION OF APPLICATIONS***

- 5.3.9. In evaluating an application for a prospecting permit, the matters that the Minister will take into account as relevant include, but are not limited to, the following:
- The objective of the work programme and work methods proposed, in particular taking into consideration the size of the desired permit and other work in the area, and the duration of the desired permit;
  - Whether the objective of the work programme is to enable the better formulation of an exploration permit application;
  - Whether the prospecting proposed in the application is likely to materially add to the existing knowledge of the petroleum resource in all or part of the land to which the application relates (section 28 of the Act);
  - Other exploration or mining interest in all or part of the land to which the application relates (section 28 of the Act); and
  - The size and location of the desired permit.
- 5.3.10. Having determined that the petroleum prospecting permit application is acceptable following a technical evaluation, then the Minister must also be satisfied that the applicant will comply with the conditions of, and give proper effect to, the permit (section 27 of the Act). In this respect, the matters that the Minister must take into consideration as relevant include, but are not limited to, the following:
- (a) The applicant's financial capability to carry out the proposed work programme and to pay prescribed fees;
  - (b) The applicant's technical capability, which may include proposed use of technical experts; and
  - (c) Other prospecting, exploration or mining activities, both in New Zealand and internationally, that the applicant (or any related company) has been involved with, to the extent that these activities impact on the applicant's ability to comply with the conditions of the proposed permit and pay the prescribed fees.

If the Minister is aware of any factors which could contribute to the view that the applicant may not give proper effect to the permit, for example the applicant (or any related company) has not complied with work programme conditions or the lodgement of data or the payment of fees, then the Minister must raise with the applicant the concerns held and advise the applicant of the factor(s) that are considered to be relevant to the grant of the permit. Before deciding on the matter, the Minister will consider any comments that the applicant has to make.

- 5.3.11. Any application assessment must also take into consideration any international obligations contingent on the government, if relevant to the particular permit application in question.

## ***PROCESSING TIME FOR APPLICATIONS***

- 5.3.12. Where applications are received in relation to the Minister reserving an area for pre-exploration permit bid prospecting, then applications would be expected to be processed within one month of receipt. Otherwise processing should be completed within three months of receipt of an application.

### ***GRANT OF PERMIT***

- 5.3.13. Where the Minister agrees to grant a petroleum prospecting permit, the grant of the permit must be subject to the acceptance of the conditions of grant by the applicant.
- 5.3.14. The permit granted will be in the form of a preamble, a first schedule detailing the area of the permit (including a map) and a second schedule detailing the conditions of permit grant, these being in compliance with a prescribed work programme and/or methods of work, as proposed by the applicant in the application, and those stated in paragraphs 5.3.6 to 5.3.8.

## **5.4 ALLOCATION OF PETROLEUM EXPLORATION PERMITS**

### ***INTRODUCTION***

- 5.4.1. Petroleum exploration permits are granted for the purpose of undertaking work to identify petroleum deposits and evaluating the feasibility of mining any discoveries made. Exploration activities include geological, geochemical and geophysical surveying, exploration and appraisal drilling and testing of petroleum discoveries. The grant of an exploration permit is not a means to produce significant amounts of petroleum instead of obtaining a mining permit.
- 5.4.2. Applications for exploration permits may be made in accordance with a competitive bid Petroleum Exploration Permit Block Offer, which will provide for staged work programme bidding, or cash bonus bidding in areas of high prospectivity and where there is strong competitive interest (refer paragraphs 5.4.5 to 5.4.38).
- 5.4.3. Details of how to apply for an exploration permit are prescribed in the relevant regulations.
- 5.4.4. An exploration permit may be granted for a first term of up to five years. A second term extension of duration of up to a further five years may be granted subject to sections 36, 37 and 38 of the Act. Section 36 provides that the duration of an exploration permit shall not be changed to be more than 10 years from its commencement date. Section 37(1) requires that a minimum of one half of the area of the permit shall be relinquished at the completion of the first term. Section 38 provides for the Minister to decline an extension of duration if the permit holder has not substantially complied with the conditions of the permit. (For more detail refer to paragraphs 5.5.13 to 5.5.16).

### ***PETROLEUM EXPLORATION PERMIT BLOCK OFFER***

- 5.4.5. A Petroleum Exploration Permit Block Offer is a method of allocation by public tender, in general accordance with section 24 of the Act. This competitive allocation method is considered most likely to result in a petroleum exploration permit being obtained by the person or company who is most likely to effectively and efficiently prospect, explore and develop the petroleum resource, and thus is in accordance with the efficient allocation of petroleum exploration rights (refer chapter 2). This is the primary permit allocation method that will be used to allocate exploration permits where there is competitive interest. All acreage onshore and nearshore Taranaki will be allocated using this method. The decision to include other acreage in the Indicative Petroleum Exploration Permit Block Offer Schedule will be based on a case-by-case assessment.
- 5.4.6. From time to time, the Minister of Energy will advertise a Petroleum Exploration Permit Block Offer in an appropriate publication(s). The objective is to advertise the block offer as widely as possible to parties who may be interested in exploration opportunities in New Zealand. The number of Petroleum Exploration Permit Block Offers advertised each year is dependent upon exploration interest and the availability of suitable areas for exploration permit blocks.
- 5.4.7. Every Petroleum Exploration Permit Block Offer will specify:
  - (a) The block(s) available for tender or bid, including the specification of block area(s) in general terms (usually a map) and advice as to where the precise latitude and longitude co-ordinates may be obtained;

- (b) The manner in which bids must be submitted: either by staged work programme bid or by cash bid to be lodged in accordance with the relevant regulations;
  - (c) The time by which bids must be received in order to be valid and the place where bids must be received;
  - (d) The conditions to which any permit granted in accordance with the Petroleum Exploration Permit Block Offer will be subject; and
  - (e) Any application fee to be paid.
- 5.4.8. From the time of advertising a Petroleum Exploration Permit Block Offer to the closing time for bids to be received, there will generally be a period of approximately three to six months allowed for interested parties to formulate and lodge a bid.
- 5.4.9. This time provides for parties to obtain and research available petroleum data relevant to the permit block(s) on offer. It should provide sufficient time for parties to formulate and submit a bid(s).
- 5.4.10. An Indicative Petroleum Exploration Permit Block Offer Schedule will be advised to explorers periodically in an appropriate publication(s). The indicative block offer schedule will define the area of proposed future block offers but not the actual blocks or timing of the block offers.
- 5.4.11. The Indicative Petroleum Exploration Permit Block Offer Schedule has the objective of giving companies advanced notice of what exploration acreage will be advertised for bids, to assist them with forward planning. It allows for prospecting permits to be obtained and general studies to be undertaken, thus enabling companies to be in a position to better formulate any bids in the upcoming block offer.

### ***DETERMINATION OF PETROLEUM EXPLORATION PERMIT BLOCKS***

- 5.4.12. The location and area of any petroleum exploration permit block offered for bid shall be determined by the Minister, who, in prescribing the block, shall take into account relevant considerations such as:
- The geology and likely number and size of hydrocarbon prospects and leads; and
  - The extent of exploration previously undertaken and the amount of information available on the block offer area.
- 5.4.13. There is no fixed size of permits. Generally, the size of a petroleum exploration permit should be such as to extend over known or potential exploration targets.

### ***ALLOCATION BY STAGED WORK PROGRAMME BIDDING***

- 5.4.14. When a Petroleum Exploration Permit Block Offer is advertised by the Minister, staged work programme bidding for exclusive exploration permits shall be used as the method for permit allocation except in areas of high prospectivity and where there is strong competitive interest, where cash bonus bidding will be used (refer paragraphs 5.2.1 to 5.2.17). Details of how to apply for an exploration permit are prescribed in relevant regulations. This includes the requirement that the applicant must forward a statement of proposed work.



- 5.4.15. With allocation by staged work programme bidding, the emphasis of the evaluation process is on the statement of proposed work and any supporting information. The work programme is required to detail the minimum work that is proposed to be undertaken. It must clearly state the stages of work and the timeframe within which the proposed activities will be completed and additional ongoing work commitments made. It should also detail any options proposed for the surrender of the permit and when such options may be exercised. Permit applicants may request the opportunity to present a bid with a supporting technical presentation. This is an opportunity to further explain the bid that has been submitted not to vary the bid.

### ***THE BLOCK OFFER CONDITIONS***

- 5.4.16. The Minister will specify in the Block Offer Notice the conditions to which any permit granted as a result of the block offer process will be subject, including the requirements to:
- (a) Comply with a defined programme of work that specifies options to surrender the permit and when these may be exercised; and
  - (b) Calculate and pay royalties, in accordance with the provisions outlined in chapter 7; and
  - (c) Pay prescribed fees.
- 5.4.17. A work programme for each permit block must provide for at least one exploration well to be committed to and drilled during the first term of a permit, otherwise it will not be acceptable. However, the Minister may choose to advise a minimum work programme condition for the block offer or for particular permit blocks which requires the bids to include a commitment to drill a well within a defined period. For example, the notice may specify that a work programme should include a well drilling commitment within three years. For more prospective areas, well drilling may be required earlier and, for more frontier areas, there may be a case for later well drilling. If the Minister adopts this approach, the minimum work to be included in any bid must be clearly stated in the Petroleum Exploration Permit Block Offer Notice.
- 5.4.18. The Minister may also choose to include a condition requiring the relinquishment of a defined proportion of the area of the permit after a specified period of time. For example, the Minister may consider that this is appropriate because of the size of the application area or because of the extent of existing knowledge of the area. Typically, the condition shall be that at least 50 percent of the area of the permit be relinquished after three years. The area remaining in the permit after this partial relinquishment must be contiguous, and the relinquished land situated so that it will not prevent or seriously hinder the exploration by any future permit holder of this land. Accordingly, any staged work programme bid would need to take this into account. This partial relinquishment of acreage would be in addition to that acreage required to be relinquished prior to the award of a second term of a permit (section 37(1) of the Act).
- 5.4.19. The Minister may specify conditions which are particular to a block offer or permit block, for example related to the Minister's obligations to have regard to the principles of the Treaty of Waitangi.
- 5.4.20. The conditions advertised may not be varied by the Minister after the close of the block offer, unless there is agreement with a successful applicant, and the amendments are not substantial.

## ***EVALUATION OF APPLICATIONS***

5.4.21. An application must be assessed on the basis of the information contained in the written application, any complementary presentation made, and any subsequent information provided by the applicant at the Secretary's request. Evaluation of bids must be undertaken in accordance with the general policy framework as outlined in chapter 2, in particular the policies:

- That the permit should be explored in accordance with an appropriate work programme which has the objective of assessing the petroleum resource potential of the permit area; and
- That exploration operations should result in increased knowledge of New Zealand's petroleum resource and petroleum potential.

The Minister also wants to be satisfied that the permit applicant has, as an objective, to achieve comprehensive exploration over the full permit area.

5.4.22. Where there are competitive bids, in most cases the applicant proposing the best staged work programme will be the successful bidder, but always subject to the best bid being acceptable following technical evaluation and subject to the Minister being satisfied with those matters outlined in paragraph 5.4.32. It should be noted that the Minister is not obliged to accept the highest offer or to accept any offer.

5.4.23. Where there is more than one bid for a block, the applicants' proposed exploration work programmes will be ranked according to the potential of the proposed work to make a petroleum discovery at the earliest time and its information gathering value. Committed work, where there is an upfront obligation to it being undertaken, will generally be favoured ahead of contingent work. The timing and appropriateness of the proposed technical approach to working the area, given existing knowledge of the geology and potential prospects or leads, will also be a major consideration.

5.4.24. As a general indication, exploration programmes are rated according to the work categories listed below. The work categories are listed in decreasing order of petroleum potential information gathering value:

- (a) Well drilling: the number and timing of exploration wells proposed to be drilled and the comprehensiveness of the associated geological evaluation programme;
- (b) Major geophysical surveying: the quantity and coverage of 3 Dimensional (3D) and 2 Dimensional (2D) seismic surveys and the relevance of any proposed programmes;
- (c) Geophysical reprocessing (taking existing seismic data over the permit area and reprocessing it using new or different techniques in order to aid its reinterpretation): the quantity of coverage and objective of reprocessing proposals; and
- (d) Minor geophysical surveys (for example, gravity, magnetic and passive fluorescence), geochemical surveys and general geological studies.

5.4.25. Another evaluation technique that the Minister may choose to use is to rank exploration work programme bids on the basis of proposed expenditure: committed and conditional. If expenditure is to be a major evaluation criteria, this will be advised in the Petroleum Exploration Permit Block Offer Notice.

- 5.4.26. When there is only one application for a block and it is considered that there is not an acceptable work programme, the applicant may be approached to consider modifying the proposed work programme, if it is considered that to do so would generally be in the interest of ensuring continuing petroleum exploration in New Zealand. Otherwise the application will be declined.
- 5.4.27. Where there are competing applications for a block and the content of an application is unclear, the applicant will be asked to clarify meaning and, if appropriate, to provide further information or a technical presentation. However, no party will be given the opportunity to modify or improve a bid. An exception to this provision will be when there are competing applications for a block and none are considered acceptable. The Minister may, in such circumstances, advise all bidders for that block of this position and invite them to re-submit modified bids within a defined time frame, probably of the order of 20 working days. The modified bids must then be considered as though these were the original bids.
- 5.4.28. Competing applications may be received for a block such that there are, for example, two applicants both interested in pursuing distinct exploration programmes over distinct parts of the block. If it is possible to issue two permits and the applicants are agreeable, then the Minister may choose to take this course of action.
- 5.4.29. It is possible for applications to be made for a single permit over adjacent blocks or part blocks. When this option is taken, the applicant must specify the exploration work proposed for each block or part block in order to allow for fair evaluation of competitive bids, which must be undertaken on the basis of the advertised block areas. The work programme for each permit block must satisfy any minimum work programme requirements set out in the Block Offer Notice.
- 5.4.30. An applicant may make a permit application which is contingent on the success of another of their applications for another block(s) or part block(s). In such cases, the applications for each of the blocks must be evaluated on their merits as though they were stand alone. If, after this evaluation, any application is successful and another not, then the Minister must decline all the relevant applications on the basis that they were contingent. The Minister must decline contingent applications from an applicant making more than one application for the same block, such that application “y” for block “a” is considered only if application “x” for block “a” is unsuccessful.
- 5.4.31. To provide for the situation where a party may bid on multiple blocks in the hope of obtaining one or more, and more of the party’s applications are successful than the party is technically or financially able to commit to, an application may be made subject to a stated priority consideration, for example, that a bid for block “c” is considered only if either of the bids for blocks “a” or “b” is unsuccessful.
- 5.4.32. Having determined that the application containing the best staged work programme is acceptable following a technical evaluation, then the Minister must also be satisfied that the applicant will comply with the conditions of, and give proper effect to, the permit (section 27 of the Act). In this respect, the matters that the Minister will take into consideration as relevant include, but are not limited to, the following:
- (a) The applicant’s financial capability to carry out the proposed work programme and to pay prescribed fees;
  - (b) The applicant’s technical capability, which may include proposed use of technical experts; and

- (c) Other prospecting, exploration or mining activities both in New Zealand and internationally that the applicant (or any related company) has been involved with, to the extent that these activities impact on the applicant's ability to comply with the conditions of the proposed permit.

If the Minister is aware of any factors which could contribute to the view that the applicant may not give proper effect to the permit, for example the applicant (or related companies) has not complied either with work programme conditions or the lodgement of data or the payment of fees, then the Minister must raise with the applicant the concerns held and advise the applicant of the factor(s) that are considered to be relevant to the grant of the permit. Before deciding on the matter, the Minister will consider any comments that the applicant has to make.

- 5.4.33. In respect of the applicant's financial and technical ability the Minister requires evidence that the applicant has the financial and technical capability to undertake the proposed programme of work up to the completion of at least one exploration well, without needing to attract farm-in partners to finance the activity.

### ***PROCESSING TIME***

- 5.4.34. Processing of staged work programme bid applications should usually be completed within three months of the closing date of applications. Applicants must be advised if processing will take longer than this.

### ***GRANT OF PERMIT AND CONDITIONS OF GRANT***

- 5.4.35. Once the Minister has decided whether or not to grant an exploration permit, all applicants must be advised in writing of the outcome of their applications, as quickly as possible. If there is not an acceptable bid for a block, subject to 5.4.26 the Minister will decline all bids. Any media statements issued, advising the results of a Petroleum Exploration Permit Block Offer, will be timed so that, as far as possible, applicants would already know the outcome of their own applications. Details of unsuccessful applicants and applications will not be advised to the media.
- 5.4.36. Where a petroleum exploration permit is to be granted, the grant of the permit will be subject to the conditions of grant that were advertised in the Block Offer Notice, unless otherwise modified in agreement with the applicant, provided that any modifications are not substantial.
- 5.4.37. The permit granted will be in the form of: a preamble which references the permit holder(s); a first schedule detailing the area of the permit (including a map); and subsequent schedules detailing the conditions of permit grant.

### ***GROUND FOR DECLINE OF PERMIT APPLICATION***

- 5.4.38. A staged work programme bid application may be declined on the grounds that the proposed work programme is not acceptable, taking into account the various evaluation criteria detailed in paragraphs 5.4.21 to 5.4.31 or if, taking into account all relevant considerations, the Minister considers that the applicant would not give proper effect to any permit granted (refer paragraph 5.4.32). An application may also be declined taking into consideration the Government's international obligations, if they are relevant to the particular permit in question.
- 5.4.39. to 5.4.59 [*Deleted*]

### ***COMMENCEMENT DATE OF PERMIT***

- 5.4.60. Every exploration permit will specify a commencement date. This will be determined by the Minister taking into consideration such relevant matters which include, but are not limited to:
- The date of advice to the applicant that the Minister has agreed to the grant of the permit;
  - Any work programme commitments and stages;
  - Avoidance of permit anniversary dates being a day in the period commencing 20 December and ending 15 January (in accordance with section 2 of the Act, definition of “working days”); and
  - Any reasonable requests of the applicant for a particular commencement date.
- 5.4.61. Prior to the formal permit grant, the prospective permit holder cannot do any prospecting or exploration in the land to which the permit relates, for example geophysical or geochemical surveying and any exploration work requiring land access. A prospective permit holder, however, can initiate obtaining necessary land access and resource consents.

## **5.5 . CHANGES TO EXPLORATION PERMITS**

- 5.5.1. The permit holder, at any time during the currency of an exploration permit, may apply in writing to the Secretary to amend the conditions of a permit, or extend the land or minerals to which the permit relates, or extend the duration of the permit (section 36 of the Act). Any application should be made in accordance with the relevant regulations.
- 5.5.2. An application will be assessed on the basis of the information contained in the written application, any complementary presentation made and any subsequent information provided, with evaluation being undertaken in general accordance with the policy framework as outlined in chapter 2 and the provisions of sections 36, 37 and 38 of the Act. Depending on the type of change being requested, various criteria will be taken into consideration in assessing an application. These are discussed by subject in paragraphs 5.5.5 to 5.5.26.
- 5.5.3. When the Minister has decided whether or not to grant an application to change a permit, the permit holder will be advised in writing of the decision as quickly as possible. Where a change is to be made to the permit, a certificate of change to the permit will be forwarded to the permit holder and the permit register noted accordingly.
- 5.5.4. Processing of applications for changes to permits should usually be completed within three months of receipt, except for applications to extend the duration of an exploration permit to appraise a discovery, which should be completed within six months. If processing is likely to take longer than this, the permit holder will be advised of this with reasons.

### ***AMENDING PERMIT WORK PROGRAMME CONDITIONS***

- 5.5.5. Where exploration permits are granted with work programme conditions, compliance with these conditions is a fundamental tenet of the allocation process. Section 36 of the Act provides for amendments to permit work programme conditions. However, the Minister expects to receive applications for such amendments only as a consequence of extenuating circumstances.
- 5.5.6. The Minister will take into account, but is not limited to, any of the following matters in evaluating an application to amend an exploration permit's work programme:
- Exploration work undertaken on the permit up to the time of application and the results of this;
  - Whether the proposed amended work programme will achieve comprehensive exploration over the permit area, enabling the assessment of the petroleum potential of the permit;
  - Whether the proposed amendment will facilitate more effective exploration of the permit area;
  - Whether the proposed amendment will enable an exploration problem to be better addressed;
  - Any previous applications to amend the permit work programme;
  - Whether the proposed amendment would result in an unacceptably reduced level of exploration work to that agreed to between the permit holder and the Minister at the time of permit grant or the grant of a second term of the permit;
  - Whether the permit holder has substantially complied with the permit (section 38 of the Act);

- Whether agreeing to the amendment is necessary to give effect to the Minister's agreement to extend the area or minerals covered by the permit;
- Any force majeure circumstances which may prevent the permit holder progressing exploration work to the timetable outlined in the permit conditions;
- Whether the permit holder is being prevented from progressing exploration work by delays in obtaining consents under the Act or any other Act, and that those delays have not been caused or contributed to by negligence or default on the part of the permit holder and the permit holder is making all reasonable efforts to progress the matter (this is consistent with the principles of section 35(2) of the Act);
- Whether the permit holder is unable to progress work because there is a need for legal agreements to be in place and these have not been finalised, provided that negligence or default on the part of the permit holder has not caused or contributed to these agreements not being finalised and the permit holder is making all reasonable efforts to progress the matter; and
- Whether agreeing to the amendment may be inconsistent with the petroleum permit allocation process.

5.5.7. In particular, the Minister will take into account whether agreeing to an amendment to a permit's work programme conditions would be inconsistent with the petroleum permit allocation process. If the permit was awarded from a Petroleum Exploration Permit Block Offer, on the basis of staged work programme bidding, and there were competitive bids for the permit, the assessment of the application to amend the permit's work programme conditions will involve assessing whether the proposed amended work programme would have been of lower work value than other bids originally received over the same block. If the permit was awarded from a Petroleum Exploration Permit Block Offer on the basis of cash bonus bidding, on the condition of undertaking defined minimum exploration work, the grant of the permit has been made within the general policy that there will be no amendments allowed to the exploration permit minimum work programme (subject to any reasonable request to provide for the timely completion of well drilling which has commenced but is not able to be completed within the stated minimum time frame). The Minister's assessment will take into consideration this general policy.

### ***AMENDING OTHER PERMIT CONDITIONS***

5.5.8. In assessing an application to change permit conditions, other than work programme conditions, the Minister will consider whether the proposed amendment is consistent with the relevant minerals programme, Act and regulations made in accordance with section 105 of the Act; and whether the permit holder desires that a policy, procedure or provision in a replacement minerals programme shall apply to the holder's permit as provided for in section 22(1)(a)(ii) of the Act.

### ***EXTENSION OF MINERALS TO WHICH A PERMIT RELATES***

5.5.9. Although section 35 allows the Minister to extend the minerals to which a permit relates, the Minister cannot extend a petroleum permit to cover non-petroleum minerals because the Crown Minerals Act and associated regulations provide different land access, reporting, fees and royalty requirements for non-petroleum permits. Generally, petroleum exploration permits are over larger areas than other minerals exploration permits and such large areas would usually be difficult to justify for other minerals exploration programmes. There are also considerable variances in work methods used in petroleum exploration and other minerals exploration.

### ***EXTENSION OF LAND COVERED BY PERMIT***

- 5.5.10. A permit holder may apply to extend an exploration permit over land which is not already held under a petroleum permit or licence (granted under the Petroleum Act 1937), in order to facilitate a more rational carrying out of activities under the permit. A permit holder may identify a lead or prospect which extends beyond the boundary of the existing permit and want to include its extent within the permit as far as possible. This may facilitate well drilling. Extensions to a permit land area may also be considered as a means of amalgamating adjoining permits to enable a rationalising of exploration activities. (In this case, there would need to be a contemporaneous application made to surrender the relevant adjoining permit.
- 5.5.11. In evaluating the merits of an application to extend the land area of an exploration permit, matters that the Minister must have regard to include, but are not limited to, the following:
- The geological justification for extending the permit boundary;
  - Any exploration work to be undertaken over the proposed extension to the permit, and how this exploration work relates to that to be undertaken over the existing permit;
  - Any other complementary changes proposed to the permit, in particular partial land surrenders and how these in total may affect the full appraisal of the permit area;
  - Exploration work undertaken on the permit up to the time of the application, the results of this and whether the permit holder has substantially complied with the permit (section 38 of the Act);
  - Whether or not such an extension will facilitate a more rational carrying out of activities under the permit (section 36(2) of the Act);
  - Whether there is a Petroleum Exploration Permit Block Offer being advertised which includes the area which is the subject of the extension application and how agreeing to the extension application would affect the Block Offer; and
  - Whether agreeing to the extension may be inconsistent with the petroleum permit allocation process.
- 5.5.12. As a condition to agreeing to extend the land covered by a permit, the Minister may require an amendment to the permit work programme conditions. The Minister may also agree to extend the land covered by a permit on the condition that there is a complementary partial surrender of the permit's area or the surrender of the area or part of the area of other permits held by the applicant, if relevant to the consideration of the application.

### ***EXTENSION OF DURATION OF A PERMIT***

- 5.5.13. A petroleum exploration permit is granted initially for a term of up to five years. A permit holder, however, may apply to extend the duration of an exploration permit for a second term for such period not exceeding 10 years from the commencement date of the permit (sections 36(4) and 37(1) of the Act). The duration of a second term will be determined by the Minister within this framework. Generally, the Minister will not provide for a second term duration which is longer than the first term duration. In accordance with section 36(5A) of the Act, where a permit holder has applied for an extension of duration, the permit in respect of which the application has been made will continue in force pending the determination of the application, with all accompanying rights and obligations. If an extension of duration is granted, any period of time that the permit continued in force while the application was being considered will be included for the purposes of the maximum permit duration limits specified in section 36(4) of the Act. There are specific requirements to be met before a second term of a permit will be granted (section 37(1) of the Act). These are summarised in paragraph 5.5.14.



- 5.5.14. Before a second term of a permit is granted, the permit holder must relinquish at least half of the area comprised in the permit at the time of the end of the first term. Any relinquishment of part or parts of a permit area, prior to this time, is not taken into consideration in determining whether this requirement has been met. The second term permit area must be a contiguous block and the land so situated that it will not prevent or seriously hinder the future exploration of that land proposed to be surrendered.
- 5.5.15. The permit holder must submit, with the application for a second term, a proposed programme of work to be carried out during the second term, that the Minister considers will provide for comprehensive exploration over the extent of the permit. In considering whether the work programme does meet this objective and whether to extend the duration of an exploration permit, the Minister will have regard to, but is not limited to, the following matters:
- Exploration work undertaken on the permit during the first term;
  - Whether the second term work programme is consistent with any obligations specified in the permit's first term work programme for any subsequent term;
  - Whether the work programme objective is to achieve a comprehensive exploration effort over the permit area, enabling the assessment of the petroleum potential of the permit;
  - The timing and appropriateness of the proposed technical approach to working the area, given existing knowledge of the geology;
  - Proposed expenditure on exploration work; and
  - Whether the permit holder has substantially complied with the conditions of the permit during its first term (section 38 of the Act).
- 5.5.16. The approved work programme will be a condition of the extension of the duration of an exploration permit.

#### ***EXTENSION OF DURATION OF EXPLORATION PERMIT TO APPRAISE A DISCOVERY***

- 5.5.17. If, as a consequence of well drilling, a petroleum discovery is made and an extension of permit duration granted under section 37(1) would be insufficient to enable appraisal of the discovery, either because of the requirement to relinquish 50 percent of the permit area or because the duration cannot extend beyond 10 years, then a permit holder may apply for a special extension of duration of an exploration permit, pursuant to section 37(2) of the Act. For clarification purposes only, a permit which has a term extended in this way is referred to as an "appraisal extension".
- 5.5.18. A petroleum discovery is considered to have been established when there are moveable hydrocarbons present in the drilling column in association with exploration or appraisal well drilling. The moveable hydrocarbons in turn can be related to a sub-surface deposit or occurrence of petroleum, which can be established from engineering, geological, and/or geophysical data derived from the well and other sources, such as seismic surveys.
- 5.5.19. The grant of an appraisal extension is not for the purposes of allowing further general exploration. It is also not a means to produce petroleum instead of obtaining a mining permit.

- 5.5.20. As required by the relevant regulations, an application for an appraisal extension, in brief, should provide a detailed preliminary evaluation of the discovery made and a statement detailing the appraisal work programme proposed to be carried out and the reasons why such a programme is proposed. The Minister will grant an appraisal extension, if satisfied with the technical merits of the application, over that part of the land of the permit which the Minister determines is reasonably adequate to enable the permit holder to carry out the appraisal work for a discovery. In determining this, it is recognised that whilst the general extent of a discovery may be ascertained using geological, geophysical and well drilling data, it is difficult to be precise as to the actual limits of a petroleum field, particularly if there has not been significant appraisal work undertaken (refer paragraph 5.6.1 for a definition of petroleum field). The Minister's objective will be to allow the permit holder a reasonably adequate area of land to enable appraisal and subsequent mining operations to be carried out in respect of the petroleum discovery and to maintain rights to the discovery.
- 5.5.21. The Minister may, as a condition of grant of an appraisal extension, require the permit holder, at a specified time, to justify holding the full land area of an appraisal permit. Such a mechanism may be imposed where the areal extent of a discovery has not been delineated adequately and the Minister allows the permit holder the benefit of better delineating the extent of a discovery but within a restricted time frame.
- 5.5.22. If there is more than one discovery, separate appraisal extensions can be granted, appropriate to each discovery.
- 5.5.23. An appraisal extension will be granted only if the Minister is satisfied that reasonable efforts are being made by the permit holder to carry out the appraisal of a discovery and the appraisal work programme is sufficient to complete this. As a result of appraisal operations, the permit holder will be expected to make a sound assessment of the extent and nature of the petroleum reservoir or field, the subject of the appraisal extension. Such assessment should include an estimation of reserves in place and recoverable oil, gas and other petroleum. The Minister, in considering the proposed work programme to be undertaken during an appraisal extension, will have regard to whether it is likely to achieve these objectives and to the proposed timing of the work.
- 5.5.24. There is no statutory limit on the duration of an appraisal extension. The Minister's general approach will be to not grant an appraisal extension for a duration beyond four years. Where necessary, the Minister may amend the duration of the appraisal extension, if the permit holder satisfies the Minister that the appraisal work programme cannot be completed within the original time frame and that the permit holder is taking all reasonable steps to advance appraisal of the petroleum discovery. In accordance with section 36(5A) of the Act, where a permit holder has applied for an appraisal extension, the permit in respect of which the application has been made will continue in force pending the determination of the application, with all accompanying rights and obligations.
- 5.5.25. If a permit holder wishes to obtain a subsequent mining permit in respect of a discovery appraised under an appraisal extension (as provided for in section 32(3) of the Act, unless the exploration permit currently held provides otherwise), any mining permit application should be forwarded at least six months before the expiry of the duration of the appraisal extension. A decision on the award or decline of a subsequent mining permit is made on or before the end of the appraisal extension. If necessary, the duration of an appraisal extension will be extended for a sufficient period of time to enable due consideration of a mining permit application.

## **5.6. ALLOCATION OF PETROLEUM MINING PERMITS**

### ***INTRODUCTION***

5.6.1. Mining permits are granted to enable the development of a petroleum field with the purpose of extracting and producing petroleum. A petroleum field is defined by the occurrence of a petroleum deposit or accumulation, and can be specified in terms of a geological formation or formations or parts of formations or a specified reservoir or reservoirs or a combination of any of the aforementioned.

5.6.2. Petroleum mining activities include operations relevant to the extraction of petroleum and activities associated with the construction, maintenance and operation of any works or structures, other land improvements associated with the development and any machinery and equipment connected with such operations.

A mining permit also allows the permit holder to undertake prospecting or exploration activities in the area over which the mining permit is held.

5.6.3. An application for a mining permit most commonly is made by an exploration permit holder who has discovered a petroleum field within the exploration permit area. The application is made in accordance with sections 23 and 32(3) and subject to sections 27 and 43 of the Act. It is referred to as a subsequent (mining) permit application. Section 32(3) provides that the holder of an exploration permit has an exclusive right to apply for, and to receive, a mining permit (except where the original permit states otherwise), provided that the exploration permit holder meets all the following requirements:

- Satisfies the Minister that a petroleum field has been discovered as a result of activities authorised by the exploration permit; and
- Applies under section 23 of the Act before the expiry of the exploration permit to surrender the permit insofar as it relates to the land in which the discovery exists; and
- Has a work programme approved, pursuant to section 43(1)(a) of the Act, unless the Minister agrees that a work programme is not required to be approved, pursuant to section 43(1)(b) which so provides; then

The permit holder will be granted a mining permit in exchange for the surrendered exploration permit area.

5.6.4. In limited circumstances, an application for a mining permit may also be made by cash bonus bidding (refer paragraph 5.2.17).

5.6.5. An application for a mining permit should be made in the manner prescribed in the relevant regulations. The basis of the application is the work programme, which has to be approved by the Minister. In summary, the work programme should outline the proposals for extracting and producing petroleum, including reservoir management and, if there are different development or production scenarios dependent upon future information, these should be outlined. To complement the work programme, the permit applicant should provide a detailed evaluation report of the petroleum field intended to be mined. This information will be used to determine whether the proposed work programme is acceptable (refer paragraphs 5.6.8 to 5.6.13). This information also enables an assessment of an appropriate term and the appropriate permit area if the Minister agrees it is in order to grant a mining permit (refer paragraphs 5.6.16 to 5.6.19).

## ***EVALUATION OF AN APPLICATION***

- 5.6.6. A mining permit application will be assessed on the basis of the information contained in the written application, any complementary presentation made, and any subsequent information provided by the applicant. Its evaluation will be undertaken in general accordance with the policy framework outlined in chapter 2. The Minister, in particular, will want to be satisfied that the resource proposed to be mined will be extracted in accordance with good exploration and mining practice and that the Crown will obtain a fair financial return from the extraction of its petroleum resource. With this objective, in deciding on the grant of a mining permit, the Minister must make several distinct but related decisions. These are:
- Whether the permit applicant has identified and delineated a petroleum field that can be effectively mined within technical and economic constraints.
  - Whether or not there is an acceptable work programme that is in accordance with good exploration and mining practice and accordingly will enable sound management of the petroleum field and avoidance of wastage of petroleum;
  - The appropriate area of the mining permit;
  - The appropriate term or duration of the mining permit; and
  - The appropriate points of valuation for royalty purposes, which will be determined in accordance with the overall royalty regime (refer chapter 7, particularly paragraph 7.14).

## ***DELINEATION OF A PETROLEUM FIELD***

- 5.6.7. The first step in evaluating a mining permit application is to determine whether or not there is sufficient evidence of a petroleum field having been discovered, to support the grant of the permit. The applicant needs to satisfy the Minister that a petroleum field has been identified and delineated to such a degree that the proposed work programme and mining development can be supported. The information the Minister needs in order to establish that a petroleum field has been identified and delineated will be set out from time to time in relevant regulations.

## ***APPROVAL OF WORK PROGRAMME***

- 5.6.8. Before a mining permit will be granted, there must be an approved work programme. For subsequent mining permit applications, the work programme will be approved in accordance with section 43(1) of the Act.<sup>4</sup> The approved work programme is the key aspect of a mining permit. It is integral to determining the duration of a mining permit and the land area of a mining permit.
- 5.6.9. The work programme should be designed in accordance with good exploration and mining practice to enable sound management of the petroleum field and the avoidance of waste of petroleum (especially avoidable and unnecessary gas flaring and avoidable non-production of petroleum).
- 5.6.10. The acceptability of the work programme is determined in relation to the circumstances of each application. The Minister must take into account, but not be limited to, the following:

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<sup>4</sup> *Unless the Minister specifically determines otherwise, which is not expected to occur with respect to petroleum mining permits.*

- The geology of the mining permit application area;
- The nature, extent and physical and chemical characteristics of the petroleum to be extracted and produced;
- Estimates of petroleum in place and recoverable petroleum reserves;
- Proposed operations in respect of production and reservoir management;
- Proposed operations in respect of extraction, production, processing and transport facilities, and decommissioning operations;
- The production profile proposed and the proposed commencement date for production;
- The avoidance of waste of the petroleum resource, including avoidable and unnecessary flaring of petroleum;
- Whether proposed mining operations are in accordance with good exploration and mining practice including having regard to matters such as financial viability and technical considerations; and
- Any condition of an initial exploration permit specified to be included in the mining permit (section 32(5) of the Act).

5.6.11. The Minister will consider a work programme which is set out in development stages. For example, this may be appropriate where a petroleum reservoir has been identified but its long-term performance characteristics cannot be established other than by commercial production. The work programme could provide for a first stage of work and then for the permit holder to submit to the Minister a work programme for approval for the remainder of the permit's term or subsequent stage. Where a staged development is proposed, it will be necessary for the applicant to demonstrate that the staged development will not unreasonably prejudice the field's economic recovery. An understanding of how each phase is intended to fit into further possible stages will need to be shown. The Minister may require that there be options to reduce the size of the permit area or to amend the duration of the permit after the first stage, if it is established that the extent of the reservoir or amount of reserves is less than originally prognosed.

5.6.12. The Minister may consider a work programme with mining commencing at some future date several years after the commencement date of the mining permit. In considering this, matters that the Minister will have regard to include, but are not limited to:

- Whether development of the petroleum field is in co-ordination with the development of other mining permits and there is a logical development progression proposed; and
- Whether the permit applicant wishes to develop the petroleum field at a future time to take account of a specific future marketing opportunity.

5.6.13. If the Minister is satisfied that the work programme is in general accordance with the policy framework outlined in chapter 2, the provisions outlined in paragraphs 5.6.9 and 5.6.10 and is in accordance with recognised good exploration and mining practice, then the work programme will be approved. Compliance with the approved mining permit work programme will be a condition of the award of the permit and the work programme will be included as part of the permit.

## ***WITHHOLDING OF APPROVAL OF A WORK PROGRAMME***

- 5.6.14. If, taking into account any of the evaluation criteria outlined in paragraphs 5.6.9 and 5.6.10, the Minister is not satisfied with a proposed work programme submitted for approval with a mining permit application, then the Minister will withhold approval of the work programme. In situations where a petroleum field extends over more than one permit and the Minister has served a notice of unit development, and one exploration permit holder applies for a mining permit prior to a unit development scheme having been determined and approved, then the Minister may withhold approval of the proposed work programme until the Minister has considered the unit development scheme (refer paragraphs 5.8.1 to 5.8.17). The withholding of the approval would be on the grounds that the Minister is not reasonably able to determine whether the proposed work programme will enable sound management of the petroleum field and the avoidance of wastage of petroleum until the work programme can be evaluated in the context of the approved unit development scheme.
- 5.6.15. If the Minister withholds approval of a mining permit application work programme, the permit applicant will be advised of this decision and the grounds on which it was made. For permit applications which are made in accordance with section 32(3) of the Act, sections 43 and 44 outline the formal procedure to be used if the Minister withholds approval of a work programme. (For other mining permit applications made on the basis of priority to the first application received, the Minister may also adopt this procedure, which includes provision for the applicant to submit and have considered a modified work programme.)

## ***PERMIT AREA***

- 5.6.16. The appropriate area of a mining permit, in every case, will be the area that the Minister determines is reasonably adequate to enable the activities authorised by the mining permit to be carried out. This is required by section 32(4) of the Act for subsequent mining permit applications and will also apply to the consideration of any other mining permit application. The Minister's assessment will be made having regard to the applicant's delineation of the petroleum field and the proposed work programme, in particular those matters outlined in paragraph 5.6.10. In making a decision the Minister will recognise that while the general extent of a field can be ascertained using geological, geophysical and engineering data, it can be difficult to clearly define the limits of a petroleum field (refer paragraph 5.5.21).
- 5.6.17. The Minister grants the permit over either the geographical land area of the petroleum field or the specified discovery. It is noted that where the mining permit states that the right to mine only applies to a specified discovery, then sections 30(5) and 30(6) of the Act apply if further discoveries are made as a consequence of mining operations.
- 5.6.18. Where the Minister does not consider that the area of a permit application is fully justified, the Minister will advise the applicant of the concerns held and the grounds for these. The Minister will advise the area that is considered acceptable taking into account the information on the petroleum field and the proposed work programme. The permit applicant will be given the opportunity to amend the application or to comment on the Minister's view, within a reasonable time frame. Before deciding on the matter, the Minister will consider any comments that the applicant has to make.

## ***PERMIT DURATION***

- 5.6.19. The appropriate duration of a mining permit will be determined by the Minister. In making a decision, the Minister will consult with the permit applicant and will take into account such matters as the estimated reserves of the petroleum field to be produced, the planned production programme, any potential for enhanced production (secondary or tertiary

production) and the time required to conclude mining activities and undertake necessary decommissioning of operations and rehabilitation of site(s). Section 35 of the Act provides that a mining permit must not have a duration longer than 40 years, except where an extension of duration is granted in accordance with section 36(5) of the Act.

### ***POINT OF VALUATION***

- 5.6.20. Having determined that there is an acceptable work programme and having determined the permit duration and area, then the Minister will specify the point(s) of valuation for royalty purposes. As noted, these will be determined in accordance with the royalty regime (which is discussed in detail in chapter 7) and also following consultation with the permit applicant. The criteria that the Minister will use to define the point(s) of valuation are outlined in paragraph 7.14. The point(s) of valuation will be stated as a condition of the permit.

### ***ASSESSMENT OF APPLICANT***

- 5.6.21. Finally, before granting a permit, the Minister must also be satisfied that the applicant will comply with the conditions of, and give proper effect to, the permit (section 27 of the Act). In this respect, matters that the Minister will take into consideration as relevant include, but are not limited to, the following:

- (a) The applicant's financial capability to carry out the proposed work programme and to pay monies owed to the Crown;
- (b) The applicant's technical capability, which may include proposed use of technical experts; and
- (c) Other prospecting, exploration or mining activities, both in New Zealand and internationally, that the applicant has been involved with, to the extent that these activities impact on the applicant's ability and likelihood to comply with the conditions of the proposed permit.

If the Minister is aware of any factors which could contribute to the view that the applicant may not give proper effect to the permit, for example, the applicant (or related companies) has not complied either with work programme conditions or the lodgement of data or the payment of fees associated with previously held petroleum privileges, then the Minister will raise with the applicant the concerns held and advise the applicant of the factor(s) that are considered to be relevant to the grant of the permit. Before deciding on the matter, the Minister will consider any comments that the applicant has to make.

### ***PROCESSING TIME***

- 5.6.22. The processing of an application will be completed within six months, except where a longer period is allowed, pursuant to section 43 of the Act. Section 43(3) provides for this process to extend beyond six months, where the Minister withholds approval of a proposed work programme and the applicant chooses to submit a modified work programme to the Minister for consideration.

### ***CONDITIONS OF GRANT OF MINING PERMIT***

- 5.6.23. Once the Minister has decided whether or not to grant a mining permit, the applicant will be advised in writing of the outcome of the application. The Minister may choose to make a public announcement. Any announcement will be timed so that, as far as possible, the permit applicant would already know of the decision.

5.6.24. Petroleum mining permits will be granted on the following conditions set by the Minister in accordance with section 25(1) of the Act:

- (a) A general condition of grant to the effect that the permit holder will make reasonable efforts to undertake the activities authorised by the permit in a systematic and efficient manner in accordance with the approved work programme and any work programme conditions;
- (b) A general condition that the permit holder will undertake mining operations in accordance with good exploration and mining practice (or good oilfield practice);
- (c) In accordance with the provisions outlined in chapter 7, conditions which require the permit holder to calculate and pay royalties to the Crown in respect of any petroleum obtained under the permit, which is either sold or used in the production process as fuel or otherwise exchanged without sale;
- (d) A condition requiring the proper decommissioning of production facilities and permanent abandonment of wells; and
- (e) The payment of prescribed fees.

5.6.25. Additionally, the Minister may decide to set other conditions as considered appropriate, related to the work programme and efficient extraction of petroleum. Where the Minister agrees to grant a petroleum mining permit, the grant of the permit will be subject to the formal acceptance of the conditions of grant by the applicant.

### ***GROUNDS FOR DECLINE OF APPLICATION***

5.6.26. An application may be declined by the Minister on the grounds that:

- (a) The Minister is not satisfied that a petroleum field has been discovered or adequately defined to support the grant of a permit (refer paragraph 5.6.7);
- (b) The Minister withholds approval of a work programme or modified work programme and the requirements of sections 43 and 44 of the Act have been met if appropriate (refer paragraphs 5.6.8 to 5.6.15);
- (c) The Minister is not satisfied that the full area of the permit application is justifiable in relation to the petroleum field identified (refer paragraph 5.6.18);
- (d) The Minister considers that the applicant would not comply with the conditions of, and give proper effect to, any permit granted (refer paragraph 5.6.21); and
- (e) The Government has international obligations which would be affected if the permit was granted.

### ***FORM OF A MINING PERMIT***

5.6.27. The mining permit granted will be in the form of: a preamble with references to the permit holder(s), the approved work programme, the permit duration and any related matters considered appropriate to reference; a schedule detailing the area of the permit (including a map); and subsequent schedules detailing conditions of permit grant, other than any specified in the preamble (refer paragraphs 5.6.24 and 5.6.25). Where the Minister approves a work programme, the work programme will be part of the permit and a public document.



- 5.6.28. Other information provided with the permit application, to support and explain the work programme, will not form part of the permit.

***COMMENCEMENT DATE OF PERMIT***

- 5.6.29. The commencement date of a mining permit is specified by the Minister in the permit. In most cases, this will be the date the Minister signs the grant of the mining permit. It should be noted that the Minister may consent to a deferment of the commencement date of the permit where the applicant meets the criteria set out in section 35(2) of the Act. The Minister may also provide for mining operations under a work programme to commence at some future date several years hence, if there are reasonable grounds to support this (refer paragraph 5.6.12).

## **5.7. CHANGES TO MINING PERMITS**

- 5.7.1. A mining permit holder may apply to change the permit, pursuant to section 36 of the Act, in the following ways:
- (a) To amend the mining permit conditions, including modifying the approved work programme;
  - (b) To extend the land area of the mining permit;
  - (c) To extend the types of minerals covered by the permit; and
  - (d) To extend the duration of the permit.
- 5.7.2. Applications should be made in accordance with the relevant regulations. The application will then be assessed on its merits, taking into consideration the information presented in the written application and any subsequent information provided.
- 5.7.3. As with mining permit applications, the evaluation of an application to change a mining permit will be undertaken in general accordance with the policy framework outlined in chapter 2. The Minister, in particular, will want to be satisfied that the extraction of petroleum is in accordance with good exploration and mining practice and provides at all times for the Crown to obtain a fair financial return from the extraction of its petroleum. The evaluation will also be undertaken in terms of the provisions of sections 36 and 38 of the Act.
- 5.7.4. The approved work programme is the basis of a mining permit, as noted in paragraph 5.6.5. In most situations, an application to change a mining permit is likely to involve amendment of, or modification to, the work programme with the permit holder either seeking to amend just this or seeking to extend the land area or types of minerals covered by the permit or the duration of the permit, and the change(s) required necessitate(s) an amendment to the approved work programme.
- 5.7.5. In considering applications to amend a mining permit work programme, or to extend the area or duration of the mining permit, the Minister's evaluation will be undertaken in the same way as for a mining permit application. Accordingly, the Minister will take into consideration any of the matters outlined in paragraphs 5.6.6 to 5.6.13 and 5.6.16 to 5.6.19, as considered relevant.

### ***AMENDING PERMIT WORK PROGRAMME***

- 5.7.6. Matters that the Minister will also take into consideration in considering an application to amend a mining permit work programme include, but are not limited to, the following:
- Mining activities undertaken on the permit up to the time of application;
  - Whether the proposed change will facilitate a more effective carrying out of activities under the permit;
  - Whether the proposed change is due to changes in the planned production scenario;
  - Any previous applications to change the mining permit insofar as they are relevant to the application under consideration;

- Whether agreeing to the amendment is necessary to give effect to the Minister's agreement to extend the area or minerals covered by the permit or the duration of the permit;
- Any force majeure circumstances which may be preventing the permit holder from progressing mining operations in accordance with the approved work programme;
- Whether the permit holder is being prevented from progressing exploration work by delays in obtaining consents under the Act or any other Act, and that those delays have not been caused or contributed to by negligence or default on the part of the permit holder and the permit holder is making all reasonable efforts to progress the matter (this is consistent with the principles of section 35(2) of the Act);
- Whether the permit holder's mining activities have been affected because there is a need for legal agreements to be in place and these have not been finalised, provided that negligence or default on the part of the permit holder has not caused or contributed to these agreements not being finalised and the permit holder is making all reasonable efforts to progress the matter; and
- Whether the permit holder has substantially complied with the permit (section 38 of the Act).

### ***EXTENSION OF LAND COVERED BY PERMIT***

- 5.7.7. With respect to an application to extend the area of a mining permit, in addition to the evaluation criteria outlined in paragraphs 5.6.6 to 5.6.13 and 5.6.16 to 5.6.18, the Minister is required, pursuant to section 36(2) of the Act, to have regard to whether or not such an extension will facilitate a more rational carrying out of activities under the permit. Section 36(1) of the Act also requires that the Minister be satisfied that the permit holder has substantially complied with the permit pursuant to section 38 of the Act. As noted, except where the application concerns minor boundary changes, as a condition to agreeing to extend the land covered by a permit, the Minister is likely to require an amendment to the approved work programme.
- 5.7.8. An application to extend the land covered by a permit is likely to be made either as a result of new geological information pertaining to the petroleum field being mined (obtained during the conducting of mining activities) or the permit holder making a further petroleum discovery on the land to which the permit relates. The Minister is able to consider applications to extend the land covered by a permit only where the proposed extension is not on land which is held under a petroleum permit or licence.
- 5.7.9. The Minister may decline an application to extend the land covered by the permit if the Minister considers that to grant the extension would not be the best means of achieving efficient allocation and the obtaining of a fair financial return by the Crown from its petroleum. The Minister would be likely to decline an application if the extension area applied for was at the time of application subject to a Petroleum Exploration Permit Block Offer.
- 5.7.10. It should be noted that if the permit holder makes a further petroleum discovery on the land to which the permit relates and the permit holder's right to mine does not apply to this discovery, the permit holder may apply for a new permit in relation to the new discovery pursuant to section 30(5) of the Act.

### ***EXTENSION OF DURATION OF A MINING PERMIT***

- 5.7.11. As provided in section 36(5), the duration of a mining permit may not be extended unless the permit holder satisfies the Minister that the discovery to which the permit relates cannot be economically depleted before the permit expiry date, and the Minister approves a new permit work programme unless determined otherwise.
- 5.7.12. In evaluating the application the Minister is required to:
- (a) Either approve a new work programme, which is done as for a mining permit application including allowing for any necessary modifications to the work programme (refer paragraphs 5.6.8 to 5.6.13), or determine that a new work programme is not needed, which is done by assessing the application in terms of the criteria outlined in paragraph 5.6.10; and
  - (b) Consider the extent to which the inability to deplete the discovery during the term of the permit is due to causes or reasons beyond the permit holder's control; and
  - (c) Ensure that any such extension is only for such period as the Minister considers reasonable to enable the permit holder to economically deplete the discovery; and
  - (d) Be satisfied that the permit holder has substantially complied with the conditions of the permit (section 38 of the Act).

### ***AMENDING PERMIT CONDITIONS OTHER THAN THE WORK PROGRAMME***

- 5.7.13. In assessing an application to change permit conditions, other than work programme conditions, the Minister will consider:
- Whether the proposed amendment is consistent with the relevant minerals programme, Act and associated regulations; and
  - Whether the permit holder desires that a policy, procedure or provision in a replacement minerals programme shall apply to the holder's permit as provided for in section 22(1)(a) of the Act.

### ***EXTENSION OF TYPES OF CROWN-OWNED MINERALS COVERED BY THE PERMIT***

- 5.7.14. Although section 35 allows the Minister to extend the minerals to which a permit relates, the Minister cannot extend a petroleum permit to cover non-petroleum minerals, because the Crown Minerals Act and associated regulations provide different land access, reporting, fees and royalty requirements for non-petroleum permits. Generally, petroleum mining permits are over larger areas than mining permits for other minerals and such large areas would usually be difficult to justify for other minerals. There are also considerable variances in work methods used in petroleum mining operations as compared to mining operations used for other minerals.

### ***ADMINISTRATIVE MATTERS***

- 5.7.15. Processing of applications for changes to mining permits should usually be completed within three months of receipt, except for applications which propose significant amendments to the

approved work programme, which should be completed within six months. When the Minister has decided whether or not to grant an application to change a permit, the permit holder will be advised in writing of the decision as quickly as possible. Where a change is to be made to the permit, a certificate of change to the permit will be forwarded to the permit holder and the permit register noted accordingly.

## **5.8. UNIT DEVELOPMENT OF PETROLEUM PERMITS**

- 5.8.1. The grant of a petroleum exploration or mining permit gives the permit holder a right to extract petroleum, in the course of activities authorised by the permit, and to acquire ownership of it. As provided in section 30 of the Act, the right to prospect, explore or mine (depending on the permit type held) is in respect of petroleum in the land specified by the permit held, and subject to the conditions of the grant of the permit.
- 5.8.2. Accordingly, if in the course of petroleum exploration a petroleum discovery is made, the permit holder has the right to mine the petroleum discovery (subject to an approved work programme and a mining permit being granted) but only so far as the discovery lies in the land specified by the permit. If the petroleum discovery extends beyond the boundaries of a permit, the permit holder has no rights to the extent of the discovery outside of the permit.
- 5.8.3. Section 46 of the Act provides that in situations where a petroleum discovery extends over the area or parts of the area of more than one petroleum permit or licence, the Minister may request the unit development of the discovery.
- 5.8.4. The Minister's role in respect of unit development is:
- To prevent waste and secure the maximum ultimate recovery of petroleum;
  - To prevent unnecessary competitive extraction from a petroleum field; and
  - In those situations where the Minister has to prepare a development scheme (section 46(4) of the Act), to ensure there is fair and equitable treatment of all the affected permit and licence holders.

The maximum ultimate recovery of petroleum is dependent on sound petroleum reservoir management, the avoidance of wastage of petroleum, and a production programme which is in accordance with good exploration and mining practice. Due to the fluid and mobile nature of petroleum, it may flow through any permeable strata as a result of extraction from a well bore. As such, it is possible for a permit or licence holder to extract petroleum by mining activities within the boundary of the permit or licence held but that petroleum has migrated or flowed from outside of the boundaries of the permit or licence. Without this extraction being part of an overall petroleum field management or development scheme, there may not be the maximum ultimate recovery of petroleum. For example, this may be due to the non-use of enhanced recovery techniques such as pressure maintenance through gas or water techniques and gas cycling, which would be expected to be otherwise implemented. As well, it is likely that the extraction of migrated petroleum is at the cost of the rights of another permit or licence holder(s) which may lead to unnecessary competitive extraction from a petroleum field, and waste and avoidable non-production of petroleum.

- 5.8.5. Having a unit development scheme for the working and development of a petroleum field which extends over land in more than one permit or licence allows for the preservation of the rights of all parties to a fair and equitable share of production and enables sound management and good exploration and mining practice to be achieved. It is not necessary, however, for the Minister to serve a formal notice of unit development if the Minister considers that the relevant permit and licence holders are co-operating sufficiently to achieve a unified development. For example, this could be achieved by adjacent mining permits and licences having complementary work programmes, determined by mutual co-operation.

### ***INITIATING A UNIT DEVELOPMENT SCHEME***

- 5.8.6. Section 46 of the Act provides that where a petroleum discovery has been made and the petroleum deposit or accumulation (referred to here as a petroleum field) extends over the area or part of the area of more than one petroleum permit or licence, the Minister may, on the request of one or more of the permit or licence holders or of his or her own accord, require all the relevant permit and/or licence holders to co-operate in the preparation of a development scheme for the working and development of the petroleum field as a unit, with the objectives to prevent waste, to avoid unnecessary competitive extraction and to secure the maximum ultimate recovery of petroleum. The Minister will do so by issuing a notice of unit development to all the relevant permit and licence holders. The notice will specify the land in respect of which the Minister requires a development scheme to be submitted and will specify a date by which the development scheme must be forwarded.
- 5.8.7. As noted, either the permit or licence holders may apply to the Minister to issue a notice of unit development or the notice may be initiated by the Minister. There is no prescribed form for a permit or licence holder to request the Minister to consider issuing a notice of unit development. A request is required, however, to be made in writing.

### ***EVALUATION OF A UNIT DEVELOPMENT SCHEME***

- 5.8.8. Where a unit development scheme is prepared for the working and development of a petroleum field which extends over land in more than one permit or licence, this must be submitted to the Minister for approval, pursuant to section 46(1) of the Act. The Minister will assess the development scheme in much the same manner as assessing an application for a mining permit. The evaluation will be undertaken in general accordance with the policy framework outlined in chapter 2, and the Minister, in particular, will want to be satisfied that the petroleum to be mined will be extracted in accordance with good exploration and mining practice and that the Crown will obtain a fair financial return from the extraction of its petroleum.
- 5.8.9. Matters that the Minister will take into consideration include, but are not limited to:
- The geological assessment of the petroleum field;
  - The nature, extent and physical and chemical characteristics of the petroleum field and petroleum to be extracted and produced;
  - Estimates of petroleum in place and recoverable petroleum reserves;
  - Proposed extraction activities and reservoir management;
  - The production profile proposed and the proposed commencement date for production;
  - The avoidance of waste of the petroleum resource, including avoidable and unnecessary flaring of petroleum;
  - Whether proposed mining activities are in accordance with good exploration and mining practice including having regard to matters such as economic (financial) viability and technical considerations;
  - Any approved work programme(s) pursuant to section 43 of the Act, relating to any of the permits which are subject to the notice of unit development, or any work programmes submitted for approval and under consideration;

- Any conditions of the permits or licences which are subject to the notice of unit development; and
  - Proposals or agreements entered into by the relevant permit and licence holders concerning obligations, liabilities and entitlement to production.
- 5.8.10. Where the Minister requires adjoining exploration permit holders to co-operate in the preparation of a unit development scheme, the Minister is likely to require the unit development scheme to be approved before approving a work programme submitted in accordance with a subsequent mining permit application made by any of the affected permit holders. The Minister may require that the evaluation of the unit development scheme and subsequent mining permit applications occurs in tandem (refer also to paragraph 5.6.14).

### ***WITHHOLDING OF APPROVAL OF DEVELOPMENT SCHEME***

- 5.8.11. If the Minister is not satisfied that a proposed unit development scheme will prevent waste, avoid unnecessary competitive extraction, and/or secure the maximum ultimate recovery of petroleum, then the Minister will withhold approval of the proposed scheme and invite the permit and/or licence holders to submit a modified development scheme for the Minister's approval within a reasonable period, which will be specified by a further notice (section 46(3) of the Act).

### ***PREPARATION OF DEVELOPMENT SCHEME BY MINISTER***

- 5.8.12. As provided in section 46(4) of the Act, if a development scheme or modified development scheme is not submitted to the Minister within the period specified in the relevant notice given or any extended period agreed to (and the notice of unit development has not subsequently been cancelled), or if the modified development scheme is not approved, then the Minister will prepare a development scheme that in the opinion of the Minister is fair and equitable to all the permit and licence holders. The permit holders are required to conduct mining activities and perform in accordance with that scheme and to observe the conditions of that scheme.
- 5.8.13. The preparation of a development scheme by the Minister occurs only if the Minister is convinced that the relevant permit and licence holders are not able to co-operate to achieve the scheme amongst themselves. The desirable course is for the permit and/or licence holders to agree to a scheme and for this to be approved by the Minister.
- 5.8.14. If the Minister does have to determine a development scheme, matters that the Minister must address include, but are not limited to, the following:
- Estimating each permit and/or licence holder's production entitlement. This will require a determination of the petroleum in place and moveable and recoverable reserves estimates in each affected permit. Other factors which may be relevant are whether one permit or licence holder has incurred or may incur greater exploration, appraisal and development costs, or will provide more facilities;
  - Reservoir management and the balancing of production from different parts of the field;
  - The production profile for the petroleum field and depletion scenarios, which will be in accordance with good exploration and mining practice;
  - Consideration of alternative development options in terms of technical merits, risks, costs and benefits;



- Each permit and licence holder's liability for the costs of necessary ongoing mining activities;
- Each permit and/or licence holder's obligations in respect of liability under the Act (sections 102 and 103) and the discharging of mining activities; and
- The need for a unit operating agreement. (This may be imposed as a condition of the development scheme, to be determined by the affected permit or licence holders within a defined period).

#### ***APPROVED DEVELOPMENT SCHEME***

- 5.8.15. The approval of a unit development scheme will be given in the form of a permit or licence certificate or endorsement, issued in respect of all the affected permits and/or licences. Compliance with the development scheme will be a condition of the permits and licences and the development scheme will be a part of the permits and licences (which are public documents). If a unit development scheme is prepared simultaneously with a unit operating agreement (similar to a joint venture operating agreement) the Minister's consent to this may be separately required (refer section 5.9) and this document will not be a part of the permits and/or licences.
- 5.8.16. Where the Minister determines a development scheme (rather than giving approval to a scheme), the determined scheme will be registered on the permits or licences by endorsement or certificate.

#### ***COSTS OF DEVELOPING A DEVELOPMENT SCHEME***

- 5.8.17. Where the Minister incurs costs in determining the unit development scheme, for example because of the need to obtain independent expert advice, if the Act and associated regulations require, these costs will be paid by the permit holders and licence holders in proportion to their production entitlements prior to the approval of the unit development scheme.

## 5.9. TRANSFERS AND OTHER DEALINGS WITH PERMITS

5.9.1. A granted permit may be transferred, sold or otherwise dealt with subject to section 41 of the Act. This section requires the Minister's consent to agreements which provide for:

- (a) The transferring of a permit, for example the trading of a permit or an interest in a permit from one party to another party, for example through a deed of assignment; or
- (b) The creation of any interest in or affecting any existing or future permit; or
- (c) The transferring or other dealing, either directly or indirectly, with any interest in or affecting any existing or future permit; or
- (d) The imposition of any obligation on the permit holder which relates to or affects the production or the proceeds of such production.

5.9.2. Where an agreement of the type described in paragraph 5.9.1 is to be made, in accordance with section 41(2) of the Act, this must be entered into subject to the consent of the Minister, and an application for such consent is to be made within three months of entering into the agreement. Details of how to apply for the Minister's consent are prescribed in relevant regulations. Either an original or a true copy of the agreement must be forwarded with the application. The Minister must have complete information about the transactions for which consent is being sought. Consequently, agreements in which large portions of information are deleted or withheld relating to matters such as permit interests and obligations which affect production from the permit and the proceeds of such production, will not be accepted.

5.9.3. The Minister's consent to a transfer or other agreement relating to or affecting permit rights is required in order that the Minister may consider such agreements generally in terms of the policy framework outlined in chapter 2 and whether the proposed new permit holder<sup>5</sup> will comply with the conditions of, and give proper effect to, the permit.

Failure to obtain the Minister's consent means that the transfer or dealing has no effect as between the permit holder and the Crown.

5.9.4. In considering an application to consent to an agreement which will result in a new permit holder (be this by transfer of the permit or creation or transfer of operating interest in the permit), matters the Minister will take into account include, but are not limited to, the following as considered relevant:

- Whether the proposed new permit holder or holder of an operating interest in the permit has the financial and technical capability to comply with the conditions of, and give proper effect to, the permit;
- Other exploration or mining activities both in New Zealand and internationally that the proposed new permit holder or holder of an operating interest in the permit has been involved with to the extent that these activities impact on the proposed permit holder's ability to comply with the conditions of the permit;

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<sup>5</sup> *The permit holder may be one party or more than one party in a joint venture, partnership or otherwise. When there is a transfer of the permit or a change in the interests held in a permit (by transfer or creation), then there is a new permit holder. In other words, the permit holder as an entity has changed.*

- Whether any proposed new permit holder or holder of an operating interest in the permit (or related companies) has complied with work programme conditions, the lodgement of data, the payment of fees associated with previously held petroleum permits or licences;
- International obligations the Government may have which are relevant to the application for consent; and
- Verification of registration and incorporation as a New Zealand or international company and any legislative requirements that need to be met to invest and operate in New Zealand.

5.9.5. In considering an application to consent to an agreement affecting a permit (other than as provided in paragraph 5.9.4), the matters which the Minister has regard to include, but are not limited to, the following:

- Whether the agreement may affect the operations of the permit, bearing in mind the duty of the permit holder to comply with the conditions of, and give proper effect to, the permit;
- Whether the agreement may affect the royalties that will be paid by the permit holder; for example where a permit holder has entered into an agreement to sell production from a permit at a specified price that is less than an arm's length price or that includes costs that are non-allowable costs for the purposes of calculating royalty.
- Whether the permit holder has applied to change the conditions of the permit or to change the granted permit in any other way, in conjunction with seeking the Minister's consent to an agreement affecting the permit; and
- International obligations the Government may have that are relevant to the application for consent.

5.9.6. If there are negative concerns about any of the criteria outlined in paragraphs 5.9.4 and 5.9.5, the Minister must raise with the applicant the concerns held, and advise the applicant of the factor(s) that are considered to be relevant to the giving of the consent. Before deciding on the matter, the Minister will consider any comments that the applicant has to make.

5.9.7. As provided for in section 41(3) of the Act, the Minister may give consent to an agreement subject to such conditions as he or she thinks fit. In most cases, it is unlikely that the Minister will give conditional agreement. If there are conditions attached to a consent, it is likely these will concern such matters as:

- Work programme obligations, including expenditure; and
- Obligations relating to the calculation and payment of royalties.

Any conditions put on the Minister's consent to a transfer or dealing are deemed to be conditions of the permit.

5.9.8. Applications for the consent of the Minister to an agreement in most cases should be processed within 15 working days, provided that all relevant information and documentation have been supplied. More complicated agreements may take up to 40 days to be processed. On consent being given, the applicant will be advised promptly and a permit endorsement forwarded to the permit holder.

- 5.9.9. It is noted that section 91 of the Act requires the Secretary to keep a register of permits in which there are entered brief particulars of all permits, including changes, transfers and leases. Accordingly, following the consent of the Minister to an agreement that results in a change to the permit holder or permit interest holders, brief particulars of the changed permit interest holder(s) will be noted in the register.

## **5.10. SURRENDER OF ALL OR PART OF PERMIT AREA**

- 5.10.1. Section 40 of the Act provides that a permit holder may surrender a permit, or part of the area of a permit, by giving notice to the Secretary. By this means, a permit holder is not obliged to hold acreage in a permit that is no longer wanted and accordingly the permit holder is not obliged to pay annual fees and to make ongoing work commitments. The manner of surrendering permits is outlined in the relevant regulations.

### ***PARTIAL SURRENDERS OF PERMIT AREA***

- 5.10.2. An application to surrender a part of the area of a permit generally is made by either a permit holder seeking to reduce the area of a permit to that of ongoing interest or by a permit holder seeking to redefine a permit's area by means of partial surrender and extension of area. This is more likely to occur in respect of exploration permits than other permit types. The permit holder applies to the Secretary to surrender part of the area of a permit and this will be accepted provided that the remaining land under the permit is an unbroken area and the land being surrendered is so situated that it will not prevent or seriously hinder the exploration by any other permit holder of this land.
- 5.10.3. Often an application to surrender part of the area of a permit is dependent upon achieving other changes to a permit. In this regard, the Secretary is able to consider applications to surrender part of the area of a permit in conjunction with applications to extend the area of a permit (as noted above) or to amend a permit work programme. If the partial surrender application is dependent upon the Minister's approval of another application, the acceptance of the partial surrender may be deferred until the outcome of the other application is known.
- 5.10.4. Following agreement to a surrender of part of the area of a permit, the permit holder is advised promptly, and a permit endorsement forwarded to the permit holder (including a redefined permit map) and the permit register (section 91 of the Act) amended by the Secretary accordingly.

### ***FULL SURRENDER OF PERMIT***

- 5.10.5. Notice of full surrender of a permit may be given by the permit holder at any time to the Secretary. For permits with staged work programmes, there are work commitment or permit surrender options defined in the permit. For such permits, usually any notice of surrender will be received when the permit holder has completed work committed to under the permit and made a decision not to continue.
- 5.10.6. Upon acceptance of a notice of surrender, the Secretary will advise the permit holder promptly and the permit register (section 91 of the Act) will be amended accordingly.
- 5.10.7. Where a permit is surrendered in whole or in part and payments have been made to the Crown in respect of the surrendered area (for example, annual fees which are paid in advance), then the permit holder is entitled to a refund of so much of the payments as have been made in respect of the land surrendered subsequent to the date of surrender (section 40(5) of the Act). Any refunds will be arranged by the Secretary promptly.
- 5.10.8. Section 90(6) of the Act requires that the permit holder, upon surrender or part surrender of a permit area under section 40 of the Act, shall provide certified copies of all reports lodged pursuant to the relevant regulations, showing, separately, details in respect of the area of the land surrendered. Information and reports lodged over the surrendered area are publicly available for reference or copying.

- 5.10.9. It should be noted that, as provided in section 40(6) of the Act, the surrender of a permit does not release the permit holder from any liability in respect of:
- (a) The permit up to the date of surrender; and
  - (b) Any act under the permit up to the date of surrender giving rise to a cause of action.

## **5.11. COMPLIANCE WITH PERMIT AND ACT**

- 5.11.1. At all times, a permit holder is expected to comply with the conditions of the permit held and the Crown Minerals Act and the relevant regulations made in accordance with section 105 of the Act.
- 5.11.2. As outlined in this Minerals Programme, petroleum permits will be granted with general conditions which are along the following lines:
- There will be a condition on all petroleum permits to the effect that the permit holder must undertake a programme of work and make all reasonable efforts to prospect or explore or mine (as appropriate) the permit in accordance with good exploration and mining practice;
  - A defined programme of work will be a condition of petroleum permits, although in unusual circumstances, at the discretion of the Minister, this may not be required;
  - All petroleum exploration and mining permits will be granted with conditions relating to the calculation and payment of royalties to the Crown; and
  - There will be a condition requiring the payment of prescribed fees.
- 5.11.3. Compliance by the permit holder with the Act and the relevant regulations also includes the lodgement of data, in accordance with section 90 of the Act and the specific requirements of the relevant regulations.
- 5.11.4. There is ongoing monitoring of a permit holder's compliance with the permit conditions, the Act and relevant regulations by the Secretary. As required by regulations, a permit holder must regularly report on permit exploration and/or mining activities. Permit work programme commitments are checked against the reports of activity, for compliance monitoring purposes. Similarly, permit royalty returns are verified on an ongoing basis and referenced against production returns.
- 5.11.5. Where the Secretary has reason to believe that the permit holder has not substantially complied with the conditions of the permit held (and has not been exempted or excused from such compliance) or with the Act or relevant regulations, then the Secretary will request an explanation and seek advice on how the matter has or is being rectified. If the Secretary does not receive a satisfactory response, then the Secretary will report to the Minister on the matter and this may initiate permit revocation proceedings (refer section 5.12).
- 5.11.6. The Minister must be satisfied that the permit holder has substantially complied with the conditions of the permit or that the permit holder has been exempted or excused from such compliance, before considering any application to amend the conditions of a permit, extend the minerals or land to which a permit relates or to extend the duration of a permit (refer sections 2(3) and 38(1) of the Act). If the Minister is not satisfied on either of these two counts, then the Minister will decline the application and give written notice to the permit holder, pursuant to section 38(1) of the Act.
- 5.11.7. Prior to doing this, where the Minister proposes to decline an application to change a permit, the Minister will first serve a notice on the applicant (the permit holder) which:
- (a) States that the Minister believes there has been non-compliance with permit conditions;
  - (b) Specifies the respects in which the permit holder has not complied with the conditions; and

- (c) States that the application will be declined within 20 working days of the service of the notice, unless the permit holder shows that there has been substantial compliance with the permit conditions (refer section 38(2) of the Act).
- 5.11.8. Before determining whether to decline an application to change a permit on the grounds of non-compliance, the Minister considers any representations made by the permit holder. If a permit holder has an application to change a permit declined on the grounds of non-compliance, the permit holder may appeal the Minister's decision to the High Court, not later than 20 working days after notification of the Minister's decision (refer sections 38(2) and 38(4) of the Act).
- 5.11.9. Section 100(2) of the Act provides that it is an offence to fail to comply with permit conditions and with the Crown Minerals Act. Pursuant to section 101(2) of the Act, every person who commits an offence against section 100(2) is liable on summary conviction to be fined.
- 5.11.10. If a permit holder foresees not being able to comply with the conditions of their permit, the permit holder should apply for an amendment to the work programme before non-compliance occurs. After non-compliance occurs, an amendment may no longer be possible. In that event, a permit holder will have to apply in writing to the Secretary to be exempted or excused from compliance with permit conditions in accordance with section 2(3).
- 5.11.11. In making an application under section 2(3), the permit holder must specify:
- The condition or conditions that the permit holder has not fully complied with;
  - The reasons for the non-compliance including supporting evidence;
  - Steps the permit holder plans to take to address the non-compliance; and
  - Any other information that the permit holder wants the Secretary to consider.
- 5.11.12. The Minister may excuse or exempt the permit holder from compliance if:
- The permit holder has been duly exempted from compliance with any condition and has substantially complied with all other conditions; or
  - The Minister is satisfied that the failure of the permit holder to comply with the conditions has been due to causes beyond the control of the permit holder, or that for any other reason the failure of the permit holder to comply with the conditions should be excused.
- 5.11.13. If an excuse or exemption is granted, a permit holder who has not fully complied with the conditions of his or her permit will be deemed to have substantially complied with those conditions for the purposes of section 36.



## **5.12. REVOCATION OF PERMIT**

- 5.12.1. If the Minister has reason to believe that a permit holder is contravening or not making reasonable efforts to comply with the Act, relevant regulations or any of the conditions of a permit, pursuant to section 39 of the Act, the Minister may initiate permit revocation. Permit revocation is a penalty measure and accordingly is considered a very serious matter. The fact that a person has had a permit revoked may be a consideration against the award of future permits to that person or a related company.
- 5.12.2. Section 39 of the Act outlines in detail the procedures to be followed to revoke a permit. The Secretary is required to report to the Minister on those matters a permit holder is believed to be in contravention of or non-compliance with.
- 5.12.3. The Secretary's report will detail such matters as the following:
- The permit condition(s) the permit holder has not complied with or the section of the Act or the relevant regulations the permit holder has contravened;
  - Correspondence (verbal and written) that has been held between the permit holder and the Secretary concerning the non-compliance or contravention and the views (if known) of the permit holder on the matter;
  - The permit's history, as considered relevant;
  - An evaluation of the non-compliance or contravention having regard to the policy framework as outlined in chapter 2; and
  - An evaluation of the non-compliance or contravention having regard to the permit allocation process or any changes to the permit subsequently approved.
- 5.12.4. If the Minister is satisfied that a permit holder is not complying with the conditions of the permit or the requirements of the Act or the relevant regulations, or is not making reasonable efforts to rectify non-compliance or contravention, then the Minister shall agree to the permit holder being served a notice which:
- (a) Specifies the alleged contravention or non-compliance; and
  - (b) Requires the permit holder within 20 working days after the service of the notice (or such longer time as the Minister specifies) to remedy, or make reasonable efforts to remedy, the contravention or non-compliance, or show reasonable cause for its occurrence, or show that it has not in fact occurred; and
  - (c) States that failure to comply with the requirements of the notice may result in permit revocation.
- 5.12.5. At the end of the 20 working days (or such longer time as the Minister specifies) the Secretary will report again to the Minister and shall recommend that the permit be revoked or that no further action be taken. The Secretary's report will outline, but is not limited to, such matters as:
- Action that the permit holder has taken, or is taking, to put in order the non-compliance or contravention matter(s) the Minister raised with the permit holder;
  - A summary of any views of the permit holder that have been expressed in verbal or written correspondence to the Secretary;

- Any alternative action the permit holder has proposed, for example permit surrender or part surrender or an application to amend a permit work programme;
  - Any evidence presented by the permit holder to prove that the alleged contravention or non-compliance has not occurred; and
  - An evaluation of the alleged contravention or non-compliance having regard to any of the matters above and the policy framework as outlined in chapter 2.
- 5.12.6. If, after having given consideration to the Secretary's report, the Minister is satisfied that a permit holder has failed to comply with the requirements of a notice served (as detailed in paragraph 5.12.4 and section 39(1) of the Act), then the Minister will take action to revoke the permit. The Minister will serve a further written notice on the permit holder, which declares that 20 working days after the date of service of the notice the permit either will be revoked or will become the property of the Minister, subject to the permit holder appealing this decision to the High Court. In the notice, the Minister will specify the reason for the Minister's decision (section 39(2) of the Act).
- 5.12.7. As indicated in paragraph 5.12.6, a permit holder who has been served a notice of revocation may appeal against the Minister's decision to the High Court, not later than 20 working days after the date of service of the notice. Pending the determination of any appeal, the permit in respect of which the appeal is made will for all purposes continue in force unless it sooner expires (or is surrendered). (Refer to sections 39(5) and 39(6) of the Act).
- 5.12.8. Following the revocation of a permit, the permit register (refer section 91 of the Act) will be noted accordingly.
- 5.12.9. The revocation of a permit (or the transfer of a permit to the Minister pursuant to section 39(3) of the Act) will not release the permit holder from any liability in respect of:
- (a) The permit, or any condition of it, up to the date of revocation (or transfer); and
  - (b) Any act under the permit up to the date of revocation (or transfer) giving rise to a cause of action.
- 5.12.10. As noted, the Minister will either revoke a permit or direct that a permit be transferred to the Minister pursuant to section 39 of the Act. For example, the latter course of action may be taken in respect of a mining permit which is operational and the permit holder has breached conditions of the permit. Section 39(3) of the Act provides that the Minister may then sell the permit or any part of it.

## **6. FLARING, VENTING AND GOOD EXPLORATION AND MINING PRACTICE**

### **6.1. FLARING AND VENTING**

6.1.1. Flaring is the act of burning off natural gas as a waste product when it is uneconomic to conserve or in emergency situations when accumulations of gas become a safety concern. A pilot flare, maintained by an amount of gas determined as reasonable for each development or production operation, is used to provide for safe conditions in case of an operational upset. Thence a pilot flare is to maintain a continuous source of safe ignition so, and in particular in emergency situations, actual flaring may be initiated without delay. Venting is the direct release of natural gas into the atmosphere. Venting has typically been used as a low-cost option to manage small quantities of waste natural gas that are not sufficient to be conserved or support combustion in a flare. Flaring can be associated with both exploration and mining activities.

6.1.2. Section 24 of the Crown Minerals (Petroleum) Regulations 1999 provides that a permit holder must avoid the waste of petroleum resources by conducting mining operations in accordance with recognised good exploration and mining practice. The circumstances under which a permit holder may flare petroleum are set out in Section 25 of those regulations, and include:

- (a) As a consequence of effecting an emergency shutdown;
- (b) As a consequence of equipment failure (petroleum flaring not to exceed seven days' duration);
- (c) During initial well testing operations (petroleum flaring not to occur on more than 30 days during initial well testing operations);
- (d) In accordance with a mining permit work programme approved by the Minister; and
- (e) In accordance with the Secretary's written consent.

Applications for the Secretary's consent to flare petroleum may be made at any time in writing, by the holder of an exploration or mining permit.

6.1.3. Natural gas is an important fuel to assist New Zealand in its transition to a sustainable energy future and, even in small volumes, should not be wasted. It is also important for the Crown as recipient of the petroleum royalty stream that all gas should be efficiently produced and marketed to maintain a flow of revenue, in accordance with good oilfield practice. Although the Resource Management Act 1991 controls the environmental effects of flaring and venting, the Minister is mindful of questions about the efficiency of solution gas flaring, the nature of the by-products of incomplete combustion, and the potential of emissions from flares to cause health effects in humans and animals.

6.1.4. On the basis of the fundamental policy objective and the relevant regulations, the following policies are established for the management of flaring and venting:

- To ensure gas flaring and/or venting is minimised to as low as is reasonably practicable in existing and new development and production operations, and to advocate measures taken to maximise the useful and efficient utilisation of gas. Venting is not to be considered an acceptable alternative to flaring;

- To actively encourage reductions in routine solution gas flaring and venting, well test flaring and venting, and routine and/or upset flaring and venting at production and process facilities, while striving towards the eventual elimination of routine gas flaring and venting;
- To encourage that new petroleum installations not be designed and constructed to continuously flare or vent gas for disposal, except for the provision of safety flare systems;
- To recognise and provide for flaring and venting only where:
  - (a) There is no reasonable and economically viable option for the efficient gathering or utilisation of gas, or re-injection, that would avoid the need to waste petroleum; or
  - (b) The Minister or Secretary considers it is necessary to ensure an efficient petroleum production profile over the life of the field/reservoir.

### ***EVALUATION OF APPLICATIONS***

6.1.5. The Secretary or Minister needs to be satisfied as to the matters in paragraph 6.1.4 and that the permit holder will comply with and give proper effect to any flaring consent granted. In evaluating an application the Secretary or Minister will have regard to:

- The legislative requirement to avoid the waste of petroleum resource;
- What constitutes recognised good exploration and mining practice, and the location of the installation including its proximity to any gas gathering systems;
- Whether alternatives for the use of gas are available and economically viable (including the feasibility of re-injection);
- Whether shut-ins may cause damage to equipment and hamper reservoir performance while facilities are installed to avoid wastage of gas;
- The impact of any flaring restriction on the overall net present value of the project; and
- Any other matters the Secretary considers are relevant.

### ***CONDITIONS OF APPROVALS AND FLARING CONSENTS***

6.1.6. The Secretary may grant a permit holder consent in writing to flare petroleum on conditions that may include some or all of the following requirements, which may also apply to any mining permit work programme approved by the Minister:

- (a) To inform the Secretary/ Minister at intervals specified by the Secretary/ Minister in the approval or consent of all measures being taken to reduce or discontinue the flaring. Flare size may be restricted;
- (b) To ensure the operation and maintenance of the installation are such that flaring and venting are minimised;
- (c) To prepare a detailed report on the options available to reduce and minimise flaring. The report must include options for the collection and use of the gas, and the permit holder must implement those options where practicable;
- (d) To implement reservoir management practices (to conserve reservoir energy) to the satisfaction of the Secretary/ Minister;

- (e) To establish maximum annual total gas plant flaring limits for production and process facilities, and restrict the number of flaring events in any six-month period;
- (f) To keep and make available to the Secretary/ Minister on request, accurate records of all flaring and venting, including time, duration and, as far as practicable, volumes of petroleum flared or vented. Daily production testing reports for production testing may be required.
  - i. Accurate records of all flaring and venting, including time, duration and, as far as practicable, volumes of petroleum flared or vented; and
  - ii. Daily production testing reports;
- (g) To restrict the circumstances where flaring or venting may be undertaken as the Secretary/ Minister thinks fits, e.g., there will be no ability to flare gas where sales gas can be taken by the buyer.

6.1.7. The duration of a consent to flare petroleum will be at the discretion of the Secretary.

## **6.2. GOOD EXPLORATION AND MINING PRACTICE**

- 6.2.1. This section outlines some of the aspects of good exploration and mining practice (or what is known in the petroleum industry as “good oilfield practice”) that the Minister must have regard to in carrying out and exercising functions and powers under the Act with respect to petroleum prospecting, exploration and mining permits and applications for permits.
- 6.2.2. Good exploration and mining practice is relevant to all petroleum mining operations (as defined in section 2 of the Act, and includes exploration and prospecting operations). It is a concept implying that a permit holder will act in a technically competent manner and with the degree of diligence and prudence reasonably and ordinarily exercised by experienced operators engaged in a similar activity under similar circumstances and conditions.
- 6.2.3. The Minister has regard to good exploration and mining practice when considering permit applications and applications to amend permit work programmes, to extend the land or minerals covered by a permit and to extend the duration of a permit. The Minister is concerned to ensure that there is sound exploration for, and management of, petroleum resources through good exploration and mining practice including the avoidance of wastage of petroleum. This involves being satisfied with the programme of work and mining operations proposed, as well as being satisfied that a permit holder will act in a technically competent manner and with reasonable diligence and prudence in undertaking the programme of work and mining operations.
- 6.2.4. Good exploration and mining practice (good oilfield practice) cannot be defined. Rather, as noted above, it is a concept. In determining whether a permit application and permit mining operations (including exploration and prospecting) are in accordance with good practice, matters that the Minister must have regard to, as considered relevant to the matter under consideration, include but are not limited to the following:

### ***PERSONNEL AND PROCEDURES***

- The ability of the permit holder to act in a technically competent manner and with a reasonable degree of diligence and prudence in carrying out a proposed programme of work; and
- That the permit holder or permit operator (agent on behalf of the permit holder responsible for permit operations), contractors and their staff must have the skills, training and experience to the required level at all times, to carry out all mining operations in a skilful and effective manner.

### ***FIELD ACTIVITIES***

- That exploration activities, production operations and field development are designed and conducted so as to maximise ultimate petroleum recovery and minimise wastage, within reasonable technical and economic constraints;
- That there is provision made in planning processes and mining operations for unexpected field behaviour;
- That mining operations do not result in the inefficient production of petroleum or the inefficient storage of petroleum whether on the surface or underground; and

- That, to facilitate sound field appraisal and development and production, there is ongoing definition of the hydrocarbon accumulation in terms of volumes in place, recoverable reserves and producibility parameters.

### ***DATA ACQUISITION***

- That mining operations are conducted in such a way as to ensure that a reasonable amount of good quality data is acquired, within reasonable economic and technical constraints.
- 6.2.5. If the Minister has concerns about a permit application with respect to good practice, then the Minister will raise with the applicant the concerns held and advise the applicant of the factors that are considered to be relevant to the grant of the permit or permit change. Before deciding on the matter, the Minister will consider any comments that the applicant has to make. With respect to a mining permit application, the procedures outlined in paragraphs 5.6.14 and 5.6.15 will also be followed as considered necessary.
- 6.2.6. Where the Minister has concerns about a permit holder not undertaking mining operations (including prospecting and exploration) in accordance with good exploration and mining practice, this is a compliance matter and will be dealt with as under the procedures outlined in sections 5.11 and 5.12.

### **6.3 CROWN PARTICIPATION AND PERMIT GRANT**

- 6.3.1. Section 25(2) of the Act provides that the Minister, on granting a permit, may specify as a condition of the permit the terms on which the Minister, or any other person acting on behalf of the Crown, will be entitled to participate in prospecting, exploration or mining under the permit or under any subsequent permit. This provision enables the Minister (or any other person acting on behalf of the Crown) to obtain an interest in a permit and by this means to obtain a fair financial return for the Crown from its petroleum.
- 6.3.2. As discussed in Appendix II (in particular, paragraphs xvii and xviii), this type of royalty provision is not favoured in comparison to other available mechanisms. (Chapter 7 outlines the hybrid royalty that will apply).
- 6.3.3. Accordingly, the policy under this Minerals Programme is for the Minister (or any other person acting on behalf of the Crown) not to take an interest in prospecting, exploration or mining permits or under any subsequent permit in terms of section 25(2) of the Act.
- 6.3.4. If the Minister or any other representative of the Crown wishes to hold a petroleum permit, the Minister may grant a permit to a representative of the Crown as a permit holder under section 25(1) of the Act. In such a case, the Crown's involvement would be subject to the same conditions as any other permit holders. Similarly, a permit can be transferred or sold to the Minister or some other representative of the Crown.



## 7. THE ROYALTY REGIME

### INTRODUCTORY SUMMARY

To provide for the obtaining by the Crown of a fair financial return from its petroleum, all petroleum exploration and mining permits will be granted subject to conditions that require the permit holder to calculate and pay royalties to the Crown. Royalty is payable in respect of any petroleum obtained under the permit, that is either sold or used in the production process as fuel or otherwise exchanged or removed from the permit area without sale.

This section sets out the provisions on which the conditions in a permit related to the payment of royalties and petroleum production will be based.

In summary, for any **discovery** made between 30 June 2004 and 31 December 2009, the royalty regime comprises:

- An **ad valorem royalty** component of 1 percent on **natural gas** and 5 percent on oil; and
- An **accounting profits royalty** component of 15 percent on the first NZ\$750 million (cumulative) **gross sales** for an **offshore discovery** and the first NZ\$250 million (cumulative) **gross sales** for an **onshore discovery** and a 20 percent accounting profits royalty on additional production.

**Prospecting and exploration costs** incurred anywhere in New Zealand<sup>6</sup> between 30 June 2004 and 31 December 2009 will be deductible for the purposes of calculating the **accounting profits royalty**. Nominated **prospecting and exploration costs** incurred prior to the grant of a mining permit may be carried forward for deduction with annual interest at the 10 year **government bond rate** plus 1 percentage point.

For all other petroleum production, including any production from a discovery made after 31 December 2009, the royalty regime comprises:

- A 5 percent **ad valorem royalty** component; and
- A 20 percent **accounting profits royalty** component.

**Prospecting and exploration costs** deductible for the purposes of calculating the **accounting profits royalty** will be limited to the area of the mining permit and preceding exploration permit as described in section 7.16.

An **ad valorem royalty**, in brief, is a royalty payable on the basis of either a sales price received or, where there has been no sale or no **arm's length** sale, the deemed sales price. The **ad valorem royalty** is referred to in abbreviated form as an AVR.

In general terms, an **accounting profits royalty** is a mechanism whereby the resource owner receives a share of profits once all significant costs have been recovered by the producer. It is payable on the net accumulated accounting profit of production from a permit/petroleum field. It takes into account both prices received for products and the costs of extracting, processing and selling those products up to the **point of sale**. The **accounting profits royalty** is referred to in abbreviated form as an APR.

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<sup>6</sup> Refer paragraph 1.3.

*The hybrid royalty regime has been chosen to provide for the Crown to obtain a fair minimum royalty (achieved through the **ad valorem royalty** component) and a fair share of substantial profits arising from a petroleum development, where these occur (achieved through the **accounting profits royalty**). This is in accordance with the policy framework outlined in chapter 2 and provides for the obtaining by the Crown of a fair financial return from its petroleum.*

*The special royalty provisions applying to **discoveries** made and **prospecting and exploration costs** incurred between 30 June 2004 and 31 December 2009 are to encourage increased exploration to identify new gas discoveries given the decline of existing fields.*

*In respect of an exploration permit, the permit holder is liable to pay only the **ad valorem royalty**.*

*Where a mining permit has never had **net sales revenues** of more than NZ\$1 million in a **reporting period**, the permit holder is liable to pay only the **ad valorem royalty**.*

*For all mining permits to which the above exception does not apply, the permit holder is required to calculate for each period for which a **royalty return** must be provided both the **ad valorem royalty** and the **accounting profits royalty** and pay whichever is the higher.*

*For any production under a permit arising from a **discovery** made between 30 June 2004 and 31 December 2009, an interim quarterly royalty payment of 1 percent of **net sales revenues** from **natural gas** and 5 percent of the **net sales revenues** from **oil** will be required where **net sales revenues** are greater than NZ\$250,000 for a quarter. A final royalty payment is due within 90 days of the end of a period for which a **royalty return** must be provided.*

*For any production under a permit arising from a **discovery** made after 31 December 2009, an interim quarterly royalty payment of 5 percent of **net sales revenues** will be required where **net sales revenues** are greater than NZ\$250,000 for a quarter. A final royalty payment is due within 90 days of the end of a period for which a **royalty return** must be provided.*

*The collection of royalties is administered by the Secretary. The Secretary will review every annual **royalty return** and, if required, may request additional information.*

*Appendix II outlines the principal reasons for and against adopting the petroleum royalty regime outlined.*

## ***THE PETROLEUM ROYALTY REGIME***

- 7.1. Where the Minister agrees to the grant of a petroleum exploration or mining permit, the permit will be granted subject to conditions that impose requirements in relation to the calculation and payment of royalties to the Crown by the permit holder. The conditions, which are specified in each permit, will be written in accordance with the provisions outlined in this chapter. In this chapter, any reference to permit or permit holder is a reference to either an exploration or mining permit or an exploration or mining permit holder respectively. These provisions do not apply to prospecting permits.
- 7.2. Terms used in these royalty provisions, that are defined, are indicated in bold. All defined terms are noted in paragraph 7.50 which contains either a definition of the term or a reference to where the term is elsewhere defined. In calculating royalties, the permit holder will be required to use accounting procedures that are in accordance with New Zealand **Generally Accepted Accounting Practice**, except where otherwise indicated.

## ***WHEN IS A ROYALTY PAYABLE?***

- 7.3. It will be a condition of the permit that the permit holder will be liable for the calculation and payment of royalties to the Crown in respect of all petroleum obtained under the permit, that is either sold or used in the production process as fuel or is otherwise exchanged or removed from the permit without sale, or remains unsold on the surrender, expiry or revocation of a permit, except as provided for in paragraph 7.4.
- 7.4. No royalty will be payable in respect of:
- (a) Any petroleum that, in the opinion of the Minister, has been unavoidably lost. This includes petroleum that is flared for safety reasons, or flared as part of an approved testing programme;
  - (b) Any petroleum that has been mined or otherwise recovered from its natural condition, but which has been returned to a natural reservoir within the area of the permit (for example, re-injected gas); and
  - (c) Any petroleum that has been removed from an approved underground petroleum storage facility and upon which a royalty to the Crown has previously been paid by the producer.

## ***THE ROYALTY PAYABLE***

- 7.5. Where an exploration permit is held, it will be a condition of the permit that the permit holder will be liable to pay the **ad valorem royalty** in respect of any period for which a **royalty return** must be provided, in accordance with paragraphs 7.26 to 7.31. The **ad valorem royalty** liability is determined in accordance with paragraphs 7.7 and 7.10 to 7.14.
- 7.6. Where a mining permit is held, it will be a condition of the permit that the permit holder must calculate and be liable to pay the higher of either the **ad valorem royalty** or the **accounting profits royalty** in respect of any period for which a **royalty return** must be provided in accordance with paragraphs 7.26 to 7.31, except where the exemption in paragraph 7.42 applies. In the event that **decommissioning costs** are still to be incurred in respect of the permit, the permit holder will be liable to pay the higher of an **ad valorem royalty** or a **provisional accounting profits royalty**, except where the exemption in paragraph 7.42 applies. The **ad valorem royalty**, the **accounting profits royalty** and the **provisional accounting profits royalty** are determined in accordance with the provisions of paragraphs 7.7 to 7.23.

### ***AD VALOREM ROYALTY***

- 7.7. For any **discovery** made between 30 June 2004 and 31 December 2009, the **ad valorem royalty** will be 1 percent of the **net sales revenues** from any **natural gas** obtained under the permit and 5 percent of the **net sales revenues** from any **oil** obtained under the permit.

For all other petroleum production, including any from a **discovery** made after 31 December 2009, the **ad valorem royalty** will be 5 percent of the net sales revenues from a permit.

The calculation of **net sales revenues** is determined in accordance with the provisions outlined in paragraphs 7.10 to 7.14.

### ***ACCOUNTING PROFITS ROYALTY***

- 7.8. For any production under a mining permit arising from a **discovery** made between 30 June 2004 and 31 December 2009, the **accounting profits royalty (APR)** will be 15 percent of **accounting profits** on the first NZ\$750 million (cumulative) **gross sales** for an **offshore discovery** or the first NZ\$250 million (cumulative) **gross sales** for an **onshore discovery** and 20 percent of **accounting profits royalty** on any additional petroleum obtained under the mining permit.

For any production under a mining permit arising from a **discovery** made after 31 December 2009, the **accounting profits royalty (APR)** will be 20 percent of **accounting profits** from the mining permit.

For any **reporting period**, **accounting profits** are the excess of **net sales revenues** (determined in accordance with paragraphs 7.10 to 7.14) over the total of **allowable APR deductions**. **Allowable APR deductions** are:

**Production Costs;**  
**Capital Costs (prospecting and exploration costs, development costs, permit maintenance and consent costs and feasibility study costs);**  
**Indirect Costs;**  
**Decommissioning Costs;**  
**Operating and Capital Overhead Allowance;**  
**Operating Losses and Capital Costs Carried Forward; and**  
**Decommissioning Costs Carried Back.**

The total of **allowable APR deductions** for any period for which a **royalty return** must be provided is the sum of **allowable APR deductions** less any **capital proceeds**. For the purposes of calculating the **allowable APR deductions**, all costs are to be included as incurred. The **allowable APR deductions** and the total of **allowable APR deductions** are discussed further in paragraphs 7.16 to 7.20. In no case may **non allowable costs** be deducted in calculating **accounting profits** for **accounting profits royalty** purposes and, as provided for in paragraph 7.21, no deduction or allowance can be made more than once in respect of any amount expended.

- 7.9. For any production under a mining permit arising from a **discovery** made between 30 June 2004 and 31 December 2009, the **provisional accounting profits royalty** will be 15 percent of **provisional accounting profits** on the first NZ\$750 million (cumulative) **gross sales** for an **offshore discovery** or the first NZ\$250 million (cumulative) **gross sales** for an **onshore discovery** and 20 percent of **provisional accounting profits** on any additional petroleum obtained under the mining permit. For all other petroleum production under a mining permit, including any arising from a **discovery** made after 31 December 2009, the **provisional accounting profits royalty** will be 20 percent of **provisional accounting profits** from the mining permit. For any period for which a **royalty return** must be provided, **provisional**

**accounting profits** are the excess of **net sales revenues** over the **allowable APR deductions** referred to in paragraph 7.8, other than **decommissioning costs carried back**. When **decommissioning costs carried back** are taken into account in accordance with paragraph 7.16(d), the resulting figures will be the final **accounting profits** figures for such periods, upon which the final **accounting profits royalty** liability is calculated.

### **NET SALES REVENUES**

- 7.10. **Net sales revenues** are the basis of calculating the **ad valorem royalty** or **accounting profits royalty** or **provisional accounting profits royalty** liability in relation to a permit producing petroleum. For each period for which a **royalty return** must be provided, **net sales revenues** are the sum of total **gross sales** of petroleum (G), plus the value of petroleum not sold but on which royalty is payable (P), minus any allowable **netbacks** (or plus any **net forwards**) (N), as defined in paragraphs 7.11 to 7.14 below.

i.e. **Net sales revenues** = (G)+(P)-(N) [or (G)+(P)+(N)]

For the purposes of calculating **net sales revenues**, all revenues are to be included as realised (except where indicated otherwise).

- 7.11. **Gross sales** means the total sales of petroleum from the permit during the period for which a **royalty return** must be provided, determined in accordance with **Generally Accepted Accounting Practice (GAAP)** and excluding goods and services tax (GST), always provided that:
- i Where a **take or pay contract** or a **forward sales contract** applies then the sale of petroleum will be included in **gross sales** at the **date of delivery**, and the sales price will be that received under the default provisions of the **take or pay contract** or under the **forward sales contract**;
  - ii If any of the sale prices have been denominated in a foreign currency, the sales price to be used for calculating **gross sales** will be translated into New Zealand dollars at the sell rate obtained. In the event that sale proceeds are not immediately translated into New Zealand dollars, but are retained in a foreign currency, then the exchange rate to use will be the mid-point between the buy and sell rates for the foreign currency on the **date of sale**, set by a major New Zealand registered bank. Foreign currency gains and losses are **non allowable costs**;
  - iii If any **gross sale** amount has not been determined on a fully **arm's length** basis, for example, pursuant to a contract between **related parties**, then the said quantity will be valued by the permit holder using an **arm's length value**, as approved by the Minister in accordance with paragraph 7.23; and
  - iv Petroleum **futures contracts** used as hedging transactions are irrelevant in determining **gross sales**, and gains and losses arising therefrom are **non allowable costs**. Payments received in respect of the default provisions of a **take or pay contract**, that are not recompensed with delivery of petroleum products at a later date before the expiry of the permit, are irrelevant in determining **gross sales**.
- 7.12. The value of petroleum not sold, but on which royalty is payable (refer paragraphs 7.3 and 7.4) will be determined using an **arm's length value**, as approved by the Minister in accordance with paragraph 7.23. In determining an appropriate price, the Minister will take into consideration that petroleum used as a process fuel, or otherwise exchanged or removed from the permit without sale, may have a lesser value than a similar product being marketed.

- 7.13. **Netbacks (net forwards)** means that portion of the sale price that represents the cost of transporting and/or storing and/or processing the petroleum between the **point of valuation** (refer paragraph 7.15) and the **point of sale**. If the **point of sale** of petroleum is downstream from the **point of valuation**, **netbacks** should be deducted from **gross sales** to arrive at **net sales revenues**. If the **point of sale** of petroleum is upstream of the **point of valuation**, **net forwards** should be added to **gross sales** to arrive at **net sales revenues**. The permit holder may deduct the costs of operating dedicated transportation, storage, loading and processing facilities (including insurance and depreciation of **fixed assets** involved) between the **point of valuation** and the **point of sale**.
- 7.14. If any of the costs of transporting, storing or processing are not considered to have been charged on a fully **arm's length** basis, for example have been determined pursuant to a contract between **related parties**, then the **netbacks (net forwards)** to be used will be calculated by the permit holder using an **arm's length value**, as approved by the Minister in accordance with paragraph 7.23. The amount of **netbacks** may not exceed **gross sales**.

The **capital costs** of any owned transportation, storage or processing assets are **non allowable costs**.

### ***POINT OF VALUATION***

- 7.15. The **point(s) of valuation** for calculating **net sales revenues** will be defined by the Minister, in consultation with the permit holder, at the time of granting a mining permit or in respect of an exploration permit, by written notice given by the Minister to the permit holder within 30 working days, or such other time as will be notified to the permit holder, after the time when production of petroleum under the permit commences. The Minister will endeavour to provide that the **point of valuation** will generally be the same as, or very close to, the **point of sale** for each product stream to an **arm's length** purchaser and, therefore, **netbacks** or **net forwards** will not generally be allowed or will not be significant. When determining the **point of valuation**, the Minister has the objective to obtain an **ad valorem royalty** take per unit of output for similar products that is broadly equitable between permit holders notwithstanding that permit holders may have different delivery and sales arrangements. Separate **points of valuation** may be set for various product streams. Permits will be granted subject to a condition that requires that the point of valuation for calculating net sales revenues may be amended, after consultation with the permit holder, where significant change to the production facilities have resulted in a point of valuation that is not the same as or very close to the point of sale for the product stream.

### ***ALLOWABLE APR DEDUCTIONS***

- 7.16. As noted in paragraph 7.8, the **accounting profits royalty** is payable on the **accounting profits** from a mining permit. For any period for which a **royalty return** must be provided, **accounting profits** are the excess of **net sales revenues** over the total of **allowable APR deductions**. The **allowable APR deductions** are:

(a) **Production Costs**

The eligible costs are outlined in definition (rr), paragraph 7.50.

(b) **Capital Costs**

**Development costs, prospecting and exploration costs, feasibility study costs and permit maintenance and consent costs** are deductible from **net sales revenues** as **capital costs**.

These are more fully described in definitions (o), (ss), (q) and (nn) respectively, paragraph 7.50.

**Development costs** that are deductible from **net sales revenues** are those incurred by the permit holder to enable mining activities in respect of the mining permit up to the **point of valuation**, both before and subsequent to the date that the mining permit was granted and prior to the date the mining permit is relinquished.

**Prospecting and exploration costs** that are deductible from **net sales revenues** are those incurred by the permit holder (provided that the costs have not previously been claimed against another mining permit):

- i In respect only of the area defined in the mining permit, subsequent to the date that the mining permit was granted; and
- ii Within an area defined in the exploration permit from which the mining permit was derived, subsequent to the date that the respective exploration permit was granted and before the mining permit was granted. This includes **exploration costs** within any part of the exploration permit, even if the area had been relinquished in accordance with section 37(1)(a) of the Crown Minerals Act 1991 (refer also paragraphs 7.19 and 7.20); and
- iii Within the area of any extensions of area to the mining permit, prior to their inclusion in the mining permit; and
- iv To purchase the results of a pre-bidding round speculative study or survey carried out by a previous prospecting permit holder that immediately preceded the award of an exploration permit and that includes the area defined in the mining permit; and

Additionally, for any mining permit arising from a **discovery** made between 30 June 2004 and 31 December 2009:

- v The **prospecting and exploration costs** incurred by the permit holder or a party to the permit anywhere in New Zealand between 30 June 2004 and 31 December 2009 and such **prospecting and exploration costs** incurred will be able to be carried forward with annual interest at a rate equal to the 10-year **government bond rate** plus 1 percentage point.

**Prospecting and exploration costs** can only be deducted once and therefore at no time can they be applied to more than one mining permit.

The value of any petroleum produced as a result of exploration activities and the value of any government incentive payment related to prospecting or exploration activities must be deducted from **prospecting and exploration costs** when a claim in respect of (i) to (v) above is made.

**(c) Indirect Costs**

Those costs deductible from net sales revenues are outlined in definition (aa), paragraph 7.50.

**(d) Decommissioning Costs**

The eligible costs deductible from **net sales revenues** are outlined in definition (m), paragraph 7.50. In most instances, **decommissioning costs** are incurred when production under the permit has ended. These will be able to be deducted from the surplus of **net sales**

**revenues** over other **allowable APR deductions**, once the actual **decommissioning costs** have been incurred (also refer **decommissioning costs carried back** below).

**(e) Operating and Capital Overhead Allowance**

This is an allowance to reflect **head office costs** attributable to the mining permit. For any period for which a **royalty return** must be provided, the allowance is either 2.5 percent (for **onshore** mining permits) or 1.5 percent (for **offshore** or part **offshore** and **onshore** mining permits) of the total **production costs, capital costs** and **indirect costs** claimed in the period for which a **royalty return** must be provided. This allowance may not be claimed in respect of **decommissioning costs**.

**(f) Operating Losses and Capital Costs Carried Forward**

An operating loss results if the **operating and capital expenses** for the period exceed **net sales revenues** for that period. Where deduction of **operating and capital expenses** from **net sales revenues** results in an operating loss, this loss may be accumulated as **operating losses and capital costs carried forward**. **Operating losses and capital costs carried forward** may then be deducted in subsequent periods for which **royalty returns** must be provided where **net sales revenues** exceed **operating and capital expenses**. **Operating losses and capital costs carried forward** are taken forward to subsequent periods for which **royalty returns** must be provided until fully utilised or until the surrender or expiry of the permit, whichever comes first.

**(g) Decommissioning Costs Carried Back and Recapture of Capital Expenditure Deductions**

**Decommissioning costs** may have been incurred during the duration of the permit and have been unable to be deducted against **net sales revenues** because they have been incurred after production on the permit has significantly declined or has finished. In the permit holder's final **royalty return**, such actual **decommissioning costs** may be included for the purpose of calculating the **decommissioning costs carried back**. **Decommissioning costs carried back** may be claimed as a deduction in respect of any period or periods for which **provisional accounting profit royalties** were paid.

In the **royalty return** in which such **decommissioning costs** are entered, the permit holder will also provide a schedule setting out all land, equipment and other tangible assets that had been included in previous **royalty returns** as **capital costs**. Such a schedule will list:

- i Each land parcel or item of equipment and other tangible asset and its original cost; and
- ii The means by which each such land parcel or item of equipment and other tangible asset has been or will be disposed of, whether by sale, transfer or scrapping; and
- iii The actual or estimated proceeds from such dispositions; and
- iv The **reporting period** in which the land, equipment or other tangible asset that had been sold or transferred had been accounted for as **capital proceeds**.

The **decommissioning costs carried back** is calculated by deducting from the **decommissioning costs** specified in the final **royalty return** the proceeds of the sale of land, equipment or other tangible assets, the cost of which was previously deducted, and/or any income received from land, equipment or other tangible assets including any proceeds from hire, rent or lease of land, equipment or other tangible assets and/or insurance reimbursement resulting from loss or damage to such equipment or other tangible assets, not to exceed the



equipment's or other tangible assets' original cost, except where such proceeds or reimbursement is from land, equipment and other tangible assets previously accounted for as **capital proceeds**.

Except for land, equipment and other tangible assets previously accounted for as **capital proceeds**, if equipment or other tangible assets, either in total or in part, the cost of which was previously deducted, has been transferred to or in respect of another exploration or mining permit without being sold, a sale of such land, equipment or other tangible assets will be deemed to have occurred, with the proceeds of such sale being the **arm's length value** of the land, equipment or other tangible assets or part thereof.

In respect of land, equipment and other tangible assets, the cost of which was previously deducted, that remain unsold at the time of the final **royalty return** will be valued on an **arm's length basis**. A sale of such land, equipment or other tangible assets will be deemed to have occurred with the proceeds of such sale being the **arm's length value** of the land, equipment or other tangible assets or part thereof being included in the final **royalty return**.

For those periods to which **decommissioning costs** are carried back, **accounting profits** will be redetermined in accordance with paragraph 7.8. The final royalties payable for those periods will be redetermined in accordance with paragraph 7.6.

- 7.17. The total of **allowable APR deductions** for any period for which a **royalty return** must be provided, as noted in paragraph 7.8, is the sum of **allowable APR deductions** as outlined in paragraph 7.16(a) to (g) above, less any **capital proceeds** and any gain on the disposal of **fixed assets**. **Capital proceeds** result from the sale of land, equipment or other tangible assets, the cost of which was previously deducted, and/or insurance reimbursement resulting from loss of or damage to such land, equipment or other tangible assets (to the limit of the related equipment's or other tangible assets' original cost). As well, **capital proceeds** result if land, equipment or other tangible assets, either in total or in part, the cost of which was previously deducted, are transferred to or in respect of another exploration permit or mining permit without being sold. In such a case, a sale of said land, equipment or other tangible assets will be deemed to have occurred with the proceeds of the sale being the **arm's length value** of the land, equipment or other tangible assets or part thereof.

For land, in accordance with the provisions concerning **land access costs** (refer paragraph 7.50 (cc)), the original value of the land for royalty purposes will be limited to the lesser of the actual land price or twice the government valuation of that land at the commencement date of the permit or at the date the land was purchased, whichever occurs later.

**Allowable APR deductions** claimed will be reduced by any revenue generated by the permit holder from land, equipment or other tangible assets for which a deduction has already been claimed up to the total deduction claimed for that land, equipment or other tangible asset.

- 7.18. If any of the **production costs, indirect costs, decommissioning costs, prospecting and exploration costs, development costs, permit maintenance and consent costs, feasibility study costs or capital proceeds** have not been determined pursuant to an **arm's length** contract, then the relevant costs to be used will be calculated by the permit holder using an **arm's length value(s)** approved by the Minister in accordance with paragraph 7.23.

### ***CARRYING FORWARD OF PROSPECTING AND EXPLORATION COSTS INCURRED PRIOR TO MINING PERMIT***

- 7.19. As noted in paragraph 7.16(b)(i), (ii), (iii), (iv) and (v), a permit holder may claim a deduction for **prospecting and exploration costs**. If a permit holder wishes to claim a deduction for **prospecting and exploration costs** as described in paragraph 7.16(b)(ii), the

initial amount of these costs must be agreed with the Secretary prior to the filing of the first **royalty return** where **accounting profits royalty** is to be calculated, or, in the case of **prospecting and exploration costs** described in paragraph 7.16(b)(iii), the first **royalty return** filed after the extension is approved. Where the permit holder is a joint venture, partnership or otherwise made up of two or more parties, and any of the parties wishes to claim a deduction for **prospecting and exploration costs** as described in paragraph 7.16(b)(v), the party must identify the permits under which the **prospecting and exploration costs** were incurred. Any such **prospecting and exploration costs** may not be claimed against more than one mining permit. The initial amount of any such costs must be agreed with the Secretary prior to filing the first royalty return where **accounting profits royalty** is to be calculated. Permit holders must keep detailed records of all **prospecting and exploration costs** for each permit and for each **reporting period** in order to make a claim for these costs to the Secretary.

- 7.20. With respect to **prospecting and exploration costs** incurred by the permit holder in an exploration permit preceding the mining permit, paragraphs 7.16(b)(ii) and 7.19 have been written on the general premise that the **prospecting and exploration costs** that are incurred within an exploration permit area will be attributable to a single mining permit, for deduction against **accounting profits royalty** liabilities. However, it is recognised that there may be cases in which the permit holder develops more than one mining permit from an exploration permit area, on the basis of information gained during the term of the exploration permit. In this case, the Minister will accept requests, at the time of the granting of the first mining permit, for the allocation of the total **prospecting and exploration costs** incurred within the exploration permit area prior to the commencement of the first mining permit, between the first mining permit and any additional mining permits envisaged by the permit holder.

#### ***DEDUCTION ALLOWED ONLY ONCE***

- 7.21. Notwithstanding that an amount expended by a permit holder may fall under more than one category of deduction under these royalty provisions, no deduction or allowance will be made more than once in respect of any amount expended.

#### ***ARM'S LENGTH VALUE***

- 7.22. When a person is not or, having been, ceases to be, under the influence or control of another, s/he is said to be "at **arm's length**" with her/him. If such is not the situation, and there are contracts or transactions between the parties, then the contracts or transactions may be deemed to be not at **arm's length**. For example, contracts or transactions between **related parties**.
- 7.23. Where costs, prices and revenues used in determining petroleum royalties liabilities are not the result of **arm's length** transactions between parties, the **arm's length value** of costs, prices and revenues used will be such amount as is agreed between the permit holder and the Minister or, in the absence of agreement within such period as the Minister allows, will be such amount as is determined by the Minister to be the value. Similarly, where **fixed assets** are not acquired or disposed of as a result of **arm's length** transactions, the **arm's length value** of the assets will be such amount as is agreed between the permit holder and the Minister or, in the absence of agreement within such period as the Minister allows, will be the amount as is determined by the Minister to be the value. The Minister, in determining the **arm's length value**, will have regard, but is not limited, to any of the following as relevant:
- The grade of the petroleum produced;
  - The **point of sale** and the **point of valuation**;

- The nature of the market for the petroleum being sold or transferred or the asset or service being purchased or acquired;
- The average price of any petroleum sold at **arm's length** by the permit holder during the **reporting period**;
- The terms of relevant contracts or sales agreements and the quantities specified therein;
- The state of the market at the time the prices in the contracts or sales, purchase, employment, service etc agreements were set;
- The provisions of the contracts or sales agreements relating to the variation or renegotiation of prices;
- Prices paid to producers of similar petroleum products elsewhere in **arm's length** transactions;
- Costs paid for similar assets or services elsewhere in **arm's length** transactions;
- Prices recommended by international associations of governments of countries producing the petroleum product;
- Any provisions in joint venture operating agreements that relate to transactions between **related parties**;
- Declarations made to the Inland Revenue Department for the purposes of fringe benefits tax; and
- Such other matters as the Minister thinks fit.

In determining **arm's length value**, the Minister may seek advice from experts but, in any event, the Minister's decision is final.

### ***REPORTING PERIOD***

- 7.24. Every mining permit will be granted with a condition specifying a 12-monthly **reporting period** as the basis for the calculation and payment of royalties by the permit holder. The **reporting period** will be determined by the Minister in consultation with the mining permit applicant prior to the grant of the permit. The **reporting period** will be either the financial year of the permit holder or some other fiscal year approved by the Minister.
- 7.25. Every exploration permit will include a condition providing that if exploration under the permit results in petroleum production on which a royalty is payable (refer paragraphs 7.3 and 7.4), then the Minister may, after consultation with the permit holder, amend the conditions of the permit in accordance with section 36 of the Act, to specify a 12-monthly **reporting period**, with the initial period for which the **royalty return** must be provided commencing on a specified date. As for mining permits, the **reporting period** will be either the financial year of the permit holder or some other fiscal year approved by the Minister. It would be expected that the **reporting period** specified for an exploration permit would be the same for any subsequent mining permit.

## ***PERIOD FOR WHICH A ROYALTY RETURN MUST BE PROVIDED***

- 7.26. A **reporting period** commences on the first day of the financial year of the permit holder or the fiscal year approved by the Minister, and ends on the last day of the financial year or fiscal year, except as otherwise provided in paragraphs 7.27 and 7.28.
- 7.27. The initial **reporting period** for a permit will usually be a portion of the financial year or fiscal year from the date of the grant of the permit to the date of the financial year end of the permit holder or fiscal year end approved by the Minister. Where a permit or an ownership interest in a permit is transferred to another party, the initial **reporting period** will commence on the date following the date of transfer of the permit.
- 7.28. The final **reporting period** commences on the first day of the financial year of the permit holder or the fiscal year approved by the Minister, and ends on the date of the expiry, surrender or revocation of the permit.
- 7.29. The permit holder must provide to the Secretary a **royalty return** for every **reporting period** within the duration of the permit.
- 7.30. In the case of an exploration permit, the initial period for which a royalty return must be provided will not commence before the initial **reporting period** commencement date specified in the permit (refer paragraph 7.25).
- 7.31. A **royalty return** must be provided within 90 days of the end of the reporting period.

## ***ROYALTY RETURN***

- 7.32. The **royalty return** must be in the form prescribed, from time to time, in relevant regulations. In summary, the permit holder will be required where applicable to provide, on the **royalty return**, the following information:
- (a) A calculation of **gross sales** and **net sales revenues** for the relevant period as determined in accordance with paragraphs 7.26 to 7.30;
  - (b) For the relevant period as determined in accordance with paragraphs 7.26 to 7.30 in total, details of:
    - Production Costs;**
    - Capital Costs;**
    - Indirect Costs;**
    - Decommissioning Costs;**
    - Operating and Capital Overhead Allowance;**
    - Operating Losses and Capital Costs Carried Forward; and**
    - Capital Proceeds;**
  - (c) A calculation of the **provisional accounting profits** for the relevant period as determined in accordance with paragraphs 7.26 to 7.30; and
  - (d) A calculation of **ad valorem royalty** and the **provisional accounting profits royalty** for the relevant period as determined in accordance with paragraphs 7.26 to 7.30.

(All values on which royalties are to be calculated are GST exclusive.)

There will be a special final **royalty return** form for taking into account **decommissioning costs carried back** and recapture of capital expenditure deductions and calculating final **accounting profits royalty** liabilities.

- 7.33. Where the permit holder is a joint venture, partnership or otherwise made up of two or more parties, a **royalty return** may include separate statements from each of the parties detailing each party's share of:

**Gross sales;**  
**Net sales revenues;**  
**Production costs;**  
**Capital costs;**  
**Indirect costs;**  
**Decommissioning costs;**  
**Operating and Capital Overhead Allowance;**  
**Operating Losses and Capital Costs Carried Forward;**  
**Capital Proceeds;** and  
**The royalty liability.**

- 7.34. Every **royalty return** is required to be accompanied by a written statement from an auditor, or in the case of a **royalty return** which includes separate statements from each of the parties comprising a permit holder, a written statement from an **auditor** in respect of each party's statement. This must be in the form prescribed in the relevant regulations. It is expected that the **auditor** making a written statement will be the auditor that the permit holder or party uses in the regular course of business. The audit statement will be paid for by the permit holder or party.

- 7.35. The collection of royalties will be administered by the Secretary. The Secretary will review every **royalty return** and, if required, may request additional information or a detailed explanation of the basis of the **royalty return** from the permit holder who must comply with such request within a reasonable period. The Secretary may also verify **royalty returns** or appoint someone else to do this royalty verification. The Secretary will pay for any such royalty verification.

### ***SALE OR TRANSFER OF ALL OR PART OF PERMIT INTEREST***

- 7.36. Where a permit has been sold or transferred, or an ownership interest in a permit has been sold or transferred, any pro rata balance of **operating losses, and capital costs carried forward** that have not been deducted against **net sales revenues**, will be carried forward and will be available to the new permit holder to the same extent as if no transaction had taken place. Where the previous permit holder or, where the permit holder is a joint venture, partnership or otherwise made up of two or more parties, one of the previous parties has sold or transferred all or part of a permit interest, they cannot use previously claimed costs against any other permit. Any new permit holder or party to a permit can not make any claim for costs already deducted by the previous permit holder or party to the permit.

### ***PAYMENT AND REFUND OF ROYALTIES***

- 7.37. It will be a condition of a permit that the permit holder pay the royalty due for any period for which a **royalty return** must be provided within 90 days of the end of the period. Where the **royalty return** has been provided with separate statements from the parties to a permit (refer paragraph 7.33), the royalty due may be paid by such parties forwarding their share of the royalty due together with a copy of their statement.

- 7.38. Where the royalty due is the **provisional accounting profits royalty**, the royalty will be provisional pending the calculation of total **decommissioning costs** for the duration of the permit (refer paragraph 7.16(g)). Following the calculation of total **decommissioning costs**, the final **accounting profits royalty** will be determined. After the Secretary is satisfied as to the validity of the final **royalty return**, a one-time refund, if any, to the permit holder will be made. A refund will be made to the permit holder filing the final **royalty return** or to the persons and in the manner nominated by such permit holder.

#### **Interim Payments**

- 7.39. It will also be a condition of the permit that for any production under a permit arising from a **discovery** made between 30 June 2004 and 31 December 2009 and where **net sales revenues** are greater than NZ\$250,000 for a quarter or lesser period, an interim quarterly royalty payment of 1 percent of **net sales revenues** from **natural gas** and 5 percent of the **net sales revenues** from **oil** will be required within 30 calendar days after the end of the quarter or lesser period.

It will also be a condition of the permit that for any production under a permit arising from a **discovery** made after 31 December 2009 and where **net sales revenues** are greater than NZ\$250,000 for a quarter or lesser period, an interim quarterly royalty payment of 5 percent of **net sales revenues** will be required within 30 calendar days after the end of the quarter or lesser period.

Where the permit holder is a partnership, joint venture or otherwise made up of two or more parties, the interim payment due may be made by each of the parties paying an agreed share.

- 7.40. If the interim royalties paid in a period vary by more than 20 percent from the previous quarterly payment, the permit holder may be required to provide an explanation of the variance and, if required by the Secretary, copies of underlying accounting/production records.

#### **Final Payment**

- 7.41. If, upon completion of the **royalty return** for a period, there is a balance of royalties payable net of interim payments made in respect of the period, the permit holder will be required to pay the balance within 90 days following the end of the period. If upon completion of the **royalty return**, the total of interim payments exceeds the amount of the royalties due for the period, the overpayment of royalties will be refunded or may, at the request of the permit holder, be applied against future liabilities. Where a refund is to be made and the royalties have been paid by two or more parties, the refund will be divided between the parties in the same proportion as the payments made.

#### ***SPECIAL PROVISION FOR SMALL PRODUCERS***

- 7.42. Until such time as **net sales revenues** exceed NZ\$1 million within a **reporting period** for a mining permit, the permit holder will only be required to calculate and pay the **ad valorem royalty** for any period for which a **royalty return** must be provided, and will be exempt from the **provisional accounting profits royalty** or the **accounting profits royalty**.
- 7.43. Where a mining permit has initial **net sales revenues** below NZ\$1 million within a **reporting period** (and thus the permit holder is exempt from the **provisional accounting profits royalty**), but it is anticipated **net sales revenues** will exceed NZ\$1 million in subsequent reporting periods, the permit holder is strongly recommended to retain comprehensive records of **operating and capital expenses** in order to claim **allowable APR deductions** against any future **accounting profits royalty** liabilities.

- 7.44. Where the Minister considers that the NZ\$1 million threshold for exemption from the **accounting profits royalty** should be raised for all mining permits, the Minister may amend the conditions of mining permits to provide for the new threshold.

### ***BOOKS AND RECORDS***

- 7.45. It will be a condition of the permit that the permit holder will, for the purposes of supporting the **royalty return**, keep in New Zealand for 10 years or until the acceptance of the final **royalty return** for which the permit holder is responsible, whichever occurs first, proper books of account and records maintained in accordance with accepted business practice to support:

- The amount and particulars of each expenditure in each category of deduction, including original invoices (or true copies) received from third parties and affiliates;
- The basis of allocation of all allocated expenditures;
- Details of the petroleum produced from the permit on which royalty is payable, including details of the date, destination, value and basis of valuation of each shipment, transfer or other disposal;
- Details of all equipment and tangible assets including all transfers, sales and disposals of equipment and tangible assets, the costs of which have been previously recorded as allowable APR deductions; and
- The amount and particulars of each transaction included in **gross sales**.

- 7.46. The Secretary may require the permit holder to provide detailed records and supporting information to explain any aspect of the **royalty return**.

### ***FAILURE TO FILE A RETURN AND FAILURE TO PAY ROYALTY***

- 7.47. As noted, the requirement to file a **royalty return** and to pay royalty will be set out as permit conditions. The Act provides that it is an offence to fail to comply with the conditions of a permit. Therefore, every permit holder who fails to comply with a condition requiring the permit holder to file a **royalty return** or fails to pay royalties owed to the Crown commits an offence against section 100(2) and will be liable on summary conviction to a fine not exceeding NZ\$10,000 and, if the offence is a continuing one, to a further fine not exceeding NZ\$1,000 for every day or part of a day during which the offence continues. In addition, section 39 of the Act provides for revocation of a permit if the Minister has reason to believe that any permit holder is contravening or not making reasonable efforts to comply with the Act or any of the conditions of the permit (refer section 5.12).
- 7.48. There will be a strict credit policy applied with regard to overdue returns and payments. Overdue returns and payments will be followed up and, if payment is not received within a reasonable period, then appropriate measures will be implemented to collect the overdue amount as a debt due to the Crown. These measures may include referral of the debt to a collection agency and legal action.
- 7.49. If the Act and associated regulations require, where any sum due and owing by way of royalties due that remain unpaid on the due date, a penalty at the rate of 10 percent of the amount owing will be added to that amount.

## ***DEFINITIONS***

- 7.50. Unless specifically defined, terms and references in these royalty provisions will be interpreted in accordance with generally accepted usage in the International Oil and Gas Industry and specifically with reference to the interpretations set out in Regulation SX 4-10 of the United States Securities and Exchange Commission titled “Financial Reporting for Oil and Gas Producing Activities Pursuant to the Federal Securities Laws and The Energy Policy and Conservation Act of 1975”.
- (a) “Accounting Profits” has the meaning expressed in paragraph 7.8 of these royalty provisions.
  - (b) “Accounting Profits Royalty” means a royalty in respect of **accounting profits** resulting from **petroleum producing activities** determined in accordance with paragraphs 7.8 and 7.10 to 7.23.
  - (c) “Ad Valorem Royalty” means a royalty in respect of **net sales revenues** resulting from **petroleum producing activities** determined in accordance with paragraphs 7.7 and 7.10 to 7.14.
  - (d) “Allowable APR Deductions” has the meaning expressed in paragraphs 7.8 and 7.16.
  - (e) “Arm’s Length” has the meaning expressed in paragraph 7.22.
  - (f) “Arm’s Length Value” means in respect of costs, prices, and revenues those that a willing buyer and a willing seller, who are not **related parties**, would agree are fair in the circumstances. Paragraph 7.23 describes criteria that may be used to determine the arm’s length value of costs, prices and revenues when this situation is not satisfied.
  - (g) “Auditor” means:
    - i A chartered accountant (within the meaning of section 19 of the Institute of Chartered Accountants of New Zealand 1996); or
    - ii A member, fellow, or associate of an association of accountants constituted outside New Zealand that is for the time being approved for the purposes of section 199 of the Companies Act 1993 by the Minister of Justice by notice in the Gazette.
  - (h) “Capital Costs” are development costs, **prospecting and exploration costs**, **feasibility study costs** and **permit maintenance** and **consent costs** as outlined in paragraph 7.16(b).
  - (i) “Capital Proceeds” has the meaning expressed in paragraph 7.17 of these royalty provisions.
  - (j) “Condensate” means a liquid hydrocarbon of high API gravity above 60° (very light crude oil composition) that condenses into a liquid upon production and surface conditions.
  - (k) “Date of Delivery” means the actual date a petroleum product is physically transferred to the purchaser.
  - (l) “Date of Sale” means the date on which a sale is deemed to have occurred in accordance with **GAAP**. In respect of **forward sales contracts** and **take or pay**



**contracts**, notwithstanding the terms of such contracts, date of sale means the date on which ownership is transferred to the purchaser or lender.

- (m) “Decommissioning Costs” means, for any mining permit, the post-production costs of decommissioning and restoring sites and dismantling or demolishing equipment or structures used in **petroleum producing activities** in respect of the mining permit.
- (n) “Decommissioning Costs Carried Back” has the meaning expressed in paragraph 7.16(g) of these royalty provisions.
- (o) “Development Costs” means costs incurred to obtain access to petroleum and to provide facilities for extracting, treating, gathering and storing the petroleum up to the **point of valuation**. More specifically, development costs include, but are not limited to, costs incurred to:
  - i Gain access to and prepare well location sites for drilling, including surveying well locations for the purpose of determining specific development drilling sites, clearing ground, draining, road building, and relocating public roads, gas lines and power lines, to the extent necessary in developing the resource;
  - ii Drill and equip development wells, development type stratigraphic test wells and service wells, including the costs of platforms and of well equipment such as casing, tubing, pumping equipment and the wellhead equipment;
  - iii Design, acquire, construct, install and commission production facilities such as flow lines, separators, treaters, heaters, manifolds, measuring devices and production storage tanks, natural gas cycling and processing plants and central utility and waste disposal systems;
  - iv Provide improved recovery systems;
  - v Acquire through purchase or capitalisable lease equipment otherwise used in production; and
  - vi Acquire, construct and install support facilities to service the development site and the personnel directly involved in development and production.

Development costs do not include **indirect costs, prospecting and exploration costs, decommissioning costs, production costs or nonallowable costs**.

- (p) “Discovery” means one or more petroleum accumulations that were not previously known to have existed and that have been intersected in the same well and in which, through testing, sampling or logging, there has been established a probability of the existence of mobile petroleum. Discovery includes sub-commercial discoveries and all petroleum within the same structural and/or stratigraphic accumulation or accumulations. The date of discovery is the date on which the accumulation was intersected.
- (q) “Feasibility Study Costs” means costs incurred in determining the technical feasibility and commercial viability of an exploration permit or a mining permit. This may include market feasibility studies, surveys of transportation and infrastructure requirements and market negotiations relating to initial petroleum sales contracts.
- (r) “Finance Lease” as defined in **GAAP** is a lease that transfers substantially all the risks and rewards incident to ownership of an asset to the lessee. Title may or may not eventually be transferred. This definition of a finance lease includes contracts for the hire of assets that contain a provision transferring the title to the asset upon the fulfilment of agreed conditions.

- (s) “Fixed Asset” is any asset owned or utilised by the permit holder by virtue of a **finance lease** that is expected to be used during more than one **reporting period** and is expected to benefit future operations. Fixed assets include buildings and equipment.
- (t) “Forward Sales Contract” means a contract to sell production from a permit producing petroleum at a specified price on a fixed future date.
- (u) “Futures Contract” means transactions undertaken for hedging purposes that involve the purchase and sale of contracts to supply petroleum on a recognised futures trading exchange.
- (v) “GAAP” means New Zealand **Generally Accepted Accounting Practice**.
- (w) “Generally Accepted Accounting Practice” is as defined in the Financial Reporting Act 1993.
- (x) “Government Bond Rate” is the rate as notified by the Reserve Bank of New Zealand. The 10-year **government bond rate** to be used for the purposes of calculating **prospecting and exploration costs** to be carried forward for any **reporting period** will be the average monthly bond rate for the year in which the expenditure was incurred.
- (y) “Gross Sales” has the meaning expressed in paragraph 7.11.
- (z) “Head Office Costs” means costs incurred outside of the mining permit operations that, while in some manner may benefit the mining permit, do not qualify as **indirect costs** and are, therefore, **non allowable costs**. An **operating and capital overhead allowance** is permitted in lieu of head office costs.
- (aa) “Indirect Costs” means actual general and administrative costs incurred by the permit holder that are not **capital costs, non allowable costs, production costs or decommissioning costs**, directly related to the **petroleum producing activities**, carried out on or because of the mining permit. Such costs, while not directly relating to production from the mining permit, provide supporting services that are reasonable and necessary to effective and efficient production. **Insurance costs** are included in this definition. Marketing costs incurred up to the **point of sale** that are directly related to petroleum produced from the mining permit are also included in this definition. Indirect costs are those which would normally be allocable by the operator to joint venture parties in a conventional Joint Venture Operating Agreement such as, but not limited to, communications, travel, audit, legal, office expenses, insurance, etc.
- (bb) “Insurance Costs” means costs incurred by the permit holder, in keeping with normal business practices, that provide reasonable and prudent protection against risk of loss of assets, equipment, personnel, etc related to the exploration permit and mining permit, and result from the payment of premiums to an insurance company. Insurance costs include reasonable and prudent co-insurance and deductible amounts.
- (cc) “Land Access Costs” means either:
  - i Payments made to land owners and/or occupiers to gain access to their land to conduct mining; or

- ii Costs of purchasing land to gain access to land to conduct mining, provided that the amount that can be claimed will be the lesser of the actual land purchase price or twice the government valuation of the land at the commencement date of the mining permit. Where land is purchased after the commencement date of the mining permit, the amount that can be claimed will be the lesser of the actual purchase price or twice the government valuation of the land at the date of purchase.
- (dd) “Natural Gas” means:
- i All gaseous hydrocarbons produced from wells including wet gas and residual gas remaining after the extraction of **condensate** from wet gas; and
  - ii Liquid hydrocarbons other than **condensate** extracted from wet gas and sold as natural gas liquids, for example LPG.
- (ee) “Netbacks (Net forwards)” has the meaning expressed in paragraph 7.13. Netbacks or net forwards are amounts either incurred to third parties, or where the permit holder owns its own means of transportation, storage or processing that are the **arm’s length** cost to use those means between the **point of sale** and the **point of valuation**. In this respect, the **capital costs** of any owned transportation, storage or processing assets are therefore **non allowable costs**.
- (ff) “Net Sales Revenues” has the meaning expressed in, and is determined in accordance with, paragraphs 7.10 to 7.14.
- (gg) “Non-allowable Costs” includes the following categories:
- i Depreciation and amortisation;
  - ii Royalties payable to the Crown or any other party from the proceeds of production;
  - iii **Head office costs;**
  - iv Interest costs or cost of equity;
  - v Interest component of finance lease;
  - vi Income taxes and Goods and Services Taxes;
  - vii Costs incurred in purchasing title to an existing exploration permit or mining permit or an ownership interest therein;
  - viii Cash bonus bid payments;
  - ix Foreign exchange gains and losses;
  - x The capital cost of owned transportation, storage and processing assets used by the permit holder between the point of valuation and the point of sale;
  - xi Donations;
  - xii Directors’ fees;

- xiii Any other costs that do not fall into any one of the categories of **allowable APR deduction** (as specified in paragraph 7.16);
  - xiv Other costs not directly associated with the mining permit; and
  - xv Costs not incurred by the permit holder.
- (hh) “Offshore” means any area of the sea out from the landward boundary, as detailed in the “Coastal Marine Area” definition given in the Resource Management Act 1991. If there is any disagreement as to whether a project is offshore, then the Minister will have the right of determination.
- (ii) “Oil” means all petroleum, including **condensate**, except **natural gas**.
- (jj) “Onshore” means any petroleum project inland from the landward boundary, as detailed in the “Coastal Marine Area” definition given in the Resource Management Act 1991. If there is any disagreement as to whether a project is onshore, then the Minister will have the right of determination.
- (kk) “Operating and Capital Expenses” means the sum of **production costs, capital costs, indirect costs, decommissioning costs, and operating and capital overhead allowance** (refer paragraph 7.16(f)).
- (ll) “Operating Losses and Capital Costs Carried Forward” has the meaning expressed in paragraph 7.16(f).
- (mm) “Operating and Capital Overhead Allowance” is an allowance to reflect **head office costs** attributable to the mining permit. For any period for which a **royalty return** must be provided, the allowance is either 2.5 percent for onshore mining permits or 1.5 percent for **offshore** or part **offshore** and **onshore** mining permits, of the total **production costs, capital costs and indirect costs** claimed in the particular period. The operating and capital overhead allowance may not be claimed in respect of **decommissioning costs**. (Refer paragraph 7.16(e)).
- (nn) “Permit Maintenance and Consent Costs” means the payments made to the Crown and other governmental authorities by the permit holder to:
- i Maintain an exploration permit and/or a mining permit, other than cash bonus bidding payments which are **non allowable costs**; and
  - ii Maintain associated resource consents, including costs associated with the preparation of any Environmental Impact Statement(s) that may be required under the Resource Management Act 1991.

Also included herein are **land access costs**.

Permit maintenance and consent costs do not include any costs incurred to:

- a. Purchase title to an existing permit or an ownership interest therein;
- b. Buy back into a “sole risk venture”; or
- c. Increase equity in a permit in which the permit holder already has a permit or ownership interest;

which are **non allowable costs**.

- (oo) “Petroleum Producing Activities” include:
- i The search for petroleum in its natural state and original location; and
  - ii Construction, drilling and production activities necessary to retrieve petroleum from its natural reservoirs and the acquisition, construction, installation and maintenance of field gathering and storage systems, including lifting the petroleum to the surface and gathering, treating, field processing (as in the case of processing gas to extract liquid hydrocarbons) and field storage. For the purposes of this definition, the petroleum producing activities will normally be regarded as terminating at the **point of valuation**.
- (pp) “Point of Sale” means the point at which the sale of petroleum is deemed to have occurred in accordance with **GAAP**.
- (qq) “Point of Valuation” has the meaning expressed in, and is determined in accordance with, paragraph 7.15.
- (rr) “Production Costs” means:
- i Costs incurred to operate and maintain wells and related equipment and facilities up to the **point of valuation**, including capital and applicable operating costs of support facilities, charged to production activities in the form of a day rate or similar allocation mechanism, and other costs incurred to maintain and operate those wells and related facilities. Examples of production costs are:
    - Costs of labour to operate the wells and related equipment and facilities; labour costs may include remuneration elements such as wages and salaries, and reasonable fringe benefits as provided for in employment contracts such as housing, education, health care and recreation;
    - Repairs and maintenance of equipment and facilities used in production;
    - Materials, supplies and purchased fuel consumed and supplies used in operating the wells and related equipment and facilities;
    - Site maintenance costs during production; and
    - Costs for leasing or hiring of **fixed assets**. Leases of **fixed assets** will be accounted for in accordance with GAAP, except that the interest component of **finance leases** is a **non-allowable cost**.
  - ii Some support equipment or facilities may serve **petroleum producing activities** on two or more mining permits or licences and may also serve transportation, refining and marketing activities beyond the **point of valuation**. To the extent that support equipment and facilities are used in respect of two or more mining permits and/or in more than one facet of **petroleum producing activities**, the Secretary will reach agreement with the permit holder, prior to the filing of the first **royalty return** concerning the allocation of all common production costs between the permits/licences and/or between different facets of a permit holder’s business. In no

circumstance may the total of such allocated costs exceed the total cost to be allocated.

- iii Where a third party utilises a permit holder's production facilities or any other **fixed assets** and the permit holder generates revenue, that revenue will be deducted from any claims for production costs up to the total deduction claimed for those production costs.

Production costs do not **include prospecting and exploration costs, development costs, indirect costs, decommissioning costs or non allowable costs.**

- (ss) "Prospecting and Exploration Costs" are those costs incurred in identifying areas that may warrant examination and in examining and appraising specific areas that are considered to have prospects of containing petroleum reserves, including costs of purchasing the results of a pre-bidding round speculative study or surveys, drilling exploratory wells and exploratory type stratigraphic test wells. Principal types of prospecting and exploration costs, which include capital and applicable operating costs of support facilities charged through day rates or other allocation mechanisms and other costs of exploration activities, are:

- i Costs of topographical, geological and geophysical studies, rights of access to properties to conduct those studies and salaries and other expenses of geologists, geophysical crews and others conducting those studies. Collectively these costs are sometimes referred to as Geological and Geophysical or "G&G" Costs. These costs may be incurred directly by the permit holder, on behalf of the permit holder pursuant to a contract, or in the form of a payment to a third party to purchase the results of Geological and Geophysical studies carried out by that third party;
- ii Costs of drilling and equipping exploratory and appraisal wells;
- iii Costs of seismic work undertaken outside the exploration permit area to facilitate bridging to pre-existing survey tie lines; and
- iv Costs associated with testing operations of any discovery made.

Prospecting and Exploration costs do not include **development costs, production costs, indirect costs, decommissioning costs or non allowable costs.**

- (tt) "Provisional Accounting Profits" has the meaning expressed in paragraph 7.9.
- (uu) "Provisional Accounting Profits Royalty" has the meaning expressed in, and is determined in accordance with, paragraph 7.9.
- (vv) "Related Parties" refers to:
  - i Entities that directly, or through one or more intermediaries, exercise control, or are controlled by, or are under common control with the permit holder; and similarly the corresponding set of entities when the relationship is based on significant influence. (Included are holding companies, subsidiaries and associates and fellow subsidiaries and associates, joint ventures and other contractual arrangements);
  - ii Individuals and their close family members or controlled trusts owning, directly or indirectly, an interest in the voting power of the permit holder that gives them significant influence over that entity. (Close members of the

family of an individual are those that may be expected to influence or be influenced by that person in their dealings with an entity);

- iii Key management personnel, that is those persons having authority and responsibility for planning, directing and controlling the activities of the permit holder including directors and officers of companies and close members of the families of such individuals; and
- iv Entities in which a substantial interest in the voting power is owned, directly or indirectly, by any person described in (ii) or (iii) over which such a person is able to exercise significant influence. This includes entities owned by directors or major shareholders of the permit holder and entities that have a member of key management in common with the permit holder.

(ww) “Reporting Period” means the financial year of the permit holder or fiscal year (not exceeding 12 months) defined in the permit as the reporting period for the permit. (Refer also to paragraphs 7.24 and 7.25.)

(xx) “Royalty Return” means a detailed statement of the permit holder’s **petroleum producing activities** in the form prescribed, from time to time, in regulations (refer paragraph 7.32).

(yy) “Take or Pay Contract” means a contract between a producer and a purchaser whereby a purchaser agrees to take or pay for a minimum quantity of product per year whether or not the purchaser takes delivery of the product. Usually, any product paid for but not taken in a particular period may be taken at some later time subject to limitations.

## **8. CONCLUDING COMMENTS**

- 8.1. The preparation of the Minerals Programme for Petroleum was undertaken in accordance with sections 13 to 17 of the Act. It was preceded by a Draft Minerals Programme for Petroleum. In accordance with section 16 of the Act, on 26 June 2004, public notice was given of the Draft Programme and that submissions would be received. Notice was also given to all iwi and the Draft Programme was made available for inspection and purchase.
- 8.2. Submissions were then received and considered by the Secretary in accordance with section 17 of the Act, and a report with recommendations on the submissions was made by the Secretary to the Minister. Following the consideration of this report, the Minister prepared a revised Draft Minerals Programme for Petroleum that was publicly notified.
- 8.3. The Minerals Programme for Petroleum will remain effective until a replacement Minerals Programme for Petroleum is issued. From time to time, changes to the Minerals Programme may be made in accordance with sections 14 and 18 of the Act. Section 20 of the Act requires the Minister to undertake a review within 10 years of the date of issue, and for a replacement minerals programme to be prepared whether or not any changes are proposed.



## ***APPENDIX I***

### **A DETAILED SUMMARY OF THE REASONS FOR AND AGAINST ADOPTING THE ALLOCATION FRAMEWORK**

- i. The petroleum permit allocation framework the Minister shall use was summarised in the Introductory Summary to chapter 5, with the detailed allocation procedures outlined in chapter 5, sections 5.3, 5.4 and 5.6. In accordance with section 15(1)(e) of the Act, this appendix summarises the reasons for and against adopting the allocation policies, procedures and provisions. The permit allocation options are described and the advantages and disadvantages of these options are summarised.
- ii. A principal policy objective guiding the determination of the policies, procedures and provisions of this minerals programme has been to provide for the efficient allocation of rights in respect of petroleum. Allocation is the process of matching prospecting, exploration and mining opportunities with those who wish to take advantage of these opportunities. The basic approach to allocation is to have a mechanism whereby defined exploration acreage is advertised and different parties can compete for the same opportunity by some sort of bidding process, with the most competitive bid being successful.
- iii. In general, competitive bidding allocation methods are favoured. These are considered efficient in that this allocation approach will result in a permit being allocated to the company that most values the exploration and development of the petroleum resource of the area and accordingly is most likely to diligently work the permit area.
- iv. Cash bidding, cash bonus bidding, work programme bidding and staged work programme bidding are examples of competitive bidding allocation methods.
- v. In respect of petroleum, most allocation decisions concern exploration permits or prospecting permits. Mining permits tend to be allocated as subsequent permits following from an exploration permit.

#### **A *WORK PROGRAMME BIDDING***

- vi. Work programme bidding involves making a bid in a competitive situation on the basis of committing to exploration work over the duration of a permit term. A variation of work programme bidding is staged work programme bidding which involves committing to a work programme for an initial period and having, at defined stages, the right to commit to further work or to surrender the permit. Staged work programme bidding is considered a more effective variant, in that progressive commitments to work are made in the light of additional information on which to progress investment decisions. A criticism of work programme bidding, without commitment stages, is that it locks a company into investing in a programme of work that, with time, may not be appropriate and/or efficient.
- vii. The successful work programme bidder is the person considered to be most prepared to commit to investing in working a permit area in accordance with established criteria and determining the permit area's potential. Since January 1995, approximately 40 percent of exploration permits have been awarded on the basis of staged work programme bids. This proportion is expected to rise with increased competitive interest in acreage.

- viii. There is a concern that allocation by work programme bidding results in companies proposing unnecessary work or inefficient work schedules in order to be the successful bidder. Providing for staged work programme commitments with companies having, at regular stages, surrender options, and allowing modifications to work programmes where there are good reasons, reduces the likelihood of inefficient work schedules. The potential for inappropriate work proposals, especially in areas of high competition and good information, however, is recognised. As well, if there is a propensity to request modifications to work programmes, this raises questions about the effectiveness of allocation by work programme bidding.
- ix. Allocation of a permit on the basis of a work programme guarantees to the resource owner that it will obtain some further information about its mineral estate as a consequence of the holding and working of the permit. In comparison, with allocation by a cash bidding method, the resource owner may have less control on the working of a permit (unless there is a minimum specified work required) and thus the obtaining of information. There is an argument that any extra exploration that may be induced by work programme bidding can be seen as a benefit to the resource owner in the form of additional resource information.
- x. The petroleum industry favours staged work programme bidding particularly because it allows explorers to make progressive investment decisions. Staged work programme bidding recognises the considerable uncertainty of petroleum exploration and provides an appropriate mechanism for explorers to indicate a potential programme of work but not to be locked into this. The petroleum industry also favours staged work programme bidding because it allows all funds allocated to exploration to all be spent on exploration work rather than being partially dissipated on cash bids. Allocation on the basis of work commitments is well understood and, as noted, is a widely used allocation mechanism internationally.
- xi. Work programme bidding is potentially complex to administer as it involves the assessment of bids by officials. It may involve officials having to define a minimum accepted level of work before allocation takes place. Where there is strong competition for a permit, it can be difficult to identify the best bid. The nature of such assessments can be made more transparent and easy to administer by clearly outlining the evaluation criteria and process.
- xii. There are also ongoing administrative costs involved in monitoring compliance with work obligations and attending to programme modification requests.
- xiii. Work programme bidding will be the primary allocation mechanism where there is a competitive interest in acreage. All acreage onshore and nearshore Taranaki will be allocated using this method on the basis that there is always likely to be competitive interest in this acreage. The decision to include other acreage in the Indicative Exploration Permit Block Offer Schedule will be based on a case-by-case assessment. On the basis of experiences using this allocation method since 1995, it has been concluded that staged work programme bidding remains an attractive allocation option because it results both in permits being explored (and thus there is increased knowledge of New Zealand's resources) and it provides for competitive allocation such that the party that most wants to explore and potentially mine an area is allocated the permit.

**B** *[Deleted]*

**C** *CASH BIDDING AND CASH BONUS BIDDING*

- xiv. Cash bidding (also referred to as pure cash bidding) involves an interested party making a cash offer or bid for a defined block or permit, in a competitive tendering procedure. The cash bid is used as the allocation tool and also incorporates a share of economic rent or the equivalent of a one-off royalty payment. There may be some basic prescribed conditions to be met if a permit is purchased, for example a requirement to drill a well in a defined period, and there may be a floor price required to be met before allocation occurs.
- xv. Cash bonus bidding involves an interested party making a cash offer or bid as with cash bidding. With cash bonus bidding, however, the permit holder is required to pay a royalty to the Crown on any petroleum production as well as the cash paid with the original purchase. Cash bonus bidding, by requiring royalty payments on any production, is considered to be more likely to meet the requirements of the Act for a fair financial return to the Crown than cash bidding, since bids for unexplored acreage are likely to be very heavily discounted.
- xvi. There are various ways the cash allocation payment can be made. These include an upfront cash payment, or an instalment payment commitment made over a defined period, or a commitment payment discounted with successive exploration work, as well as variations on these approaches.
- xvii. Cash bonus bidding allocation resembles cash purchasing at an auction. This allocation method has the advantage of being very transparent and easy to understand.
- xviii. With cash bonus bidding allocation, the resource owner may have minimal control on the extent or type of exploration work that will be undertaken on a permit. If this is a concern, a condition of holding a permit could be a minimal work obligation to be met for a permit to continue to be held after a defined period.
- xix. Exploration companies suggest that any type of cash bidding diverts funds away from exploration work in that a set amount of funds will be allocated to a project. If these have to be shared between a cash bid and exploration work, this increases the cost of exploration per unit of exploration effort.
- xx. Where cash bidding or cash bonus bidding is used internationally, it tends to be on a selective basis generally involving highly prospective acreage. Work programme bidding is generally the more accepted petroleum permit allocation method. Any decision that New Zealand uses cash bonus bidding allocation needs to recognise that it could reduce our international competitiveness for petroleum exploration and mining. Cash bonus bidding allocation could raise the entry costs of exploration in New Zealand, and assuming the same level of exploration, would raise the average cost of exploration. This would be a disincentive to exploration in New Zealand.
- xxi. Cash bonus bidding may not be simple to administer if the system adopted involves the Minister in determining a floor price. This would likely involve some subjective judgement based on investment criteria (for example oil prices), geological interpretation and risk assessment.
- xxii. Since 1995, cash bonus bidding has never been used to allocate a permit. However, it has been retained on the basis that in areas of high prospectivity and in certain circumstances where a mining permit has been surrendered or revoked and there is strong competitive interest in the acreage, cash bonus bidding may be the most effective mechanism for efficiently allocating the petroleum permit.

### ***EXCLUSIVE OR NON-EXCLUSIVE PERMITS***

- xxiii. In determining the most efficient allocation system to use, not only do different allocation methods have to be considered but also whether or not it is appropriate for the permits allocated to be exclusive or non-exclusive.
- xxiv. An exclusive permit gives to the permit holder exclusive rights to prospect and/or explore and/or mine the permit. In other words, no other party may enter on the land covered by the permit for these purposes without the specific agreement of the permit holder. Typically, an exclusive permit would be granted on the basis that the permit holder retains the right to a subsequent permit (for example, as provided under section 32 of the Act). This means that, if the holder of an exploration permit makes a discovery and wishes to mine it, provided the exploration permit is still valid, only the permit holder has the right to apply for and be granted a permit to mine the discovery.
- xxv. With non-exclusive permits, more than one party may have rights to prospect or explore for petroleum over the same area. It is not appropriate for a non-exclusive permit holder to have subsequent permit rights. Non-exclusive permits are only possible for prospecting and exploration and are not relevant for mining. With respect to non-exclusive permits, allocation is usually on an on-demand basis.
- xxvi. Exclusive permits, with subsequent permit rights, are most common. They allow for a permit holder to invest in prospecting, exploration or mining as appropriate with the certainty that the permit holder can benefit solely from this investment. Non-exclusive permits are appropriate when the purpose of the permit is to obtain reconnaissance data or information.

## ***APPENDIX II***

### **A DETAILED SUMMARY OF THE REASONS FOR AND AGAINST ADOPTING THE ROYALTY REGIME**

- i. In accordance with section 15(1)(e) of the Act, this appendix summarises the reasons for and against adopting the royalty regime policies, procedures and provisions. The petroleum royalty regime to apply was outlined in chapter 7. In brief it is a hybrid regime comprising an ad valorem royalty and an accounting profits royalty.
- ii. The royalty regime is substantially similar to that applying in the Minerals Programme for Petroleum (1995). The adoption of this royalty regime followed a detailed assessment of the advantages and disadvantages of royalty alternatives. The Minerals Programme for Petroleum (1995) at Appendix II summarised these alternatives and why the hybrid ad valorem royalty and accounting profits royalty regime was adopted. A more detailed assessment was also set out in the publication “Crown Minerals Act 1991: Evaluation of Allocation and Pricing Regimes”, Ministry of Commerce (1992). This Appendix does not repeat this analysis but summarises the reasons for and against the adoption of a substantially similar regime.
- iii. It sets out the objectives of the royalty regime, briefly reviews the reasons that the royalty regime has been adopted, outlines other alternative approaches and the advantages and disadvantages of these and summarises the work undertaken on the assessment and choice of the form of royalty and the royalty rates adopted.

#### ***OBJECTIVES OF THE ROYALTY REGIME***

- iv. Royalties are payments to the owner of a resource for extraction or use rights and may be payable whether the owner is the government or a private individual. In respect of petroleum, the Act provides the legal basis for the imposition of royalties by the Crown. A private resource owner would use a contract to achieve the same end. Royalties are not taxes.
- v. The Act specifies, at section 12, that policies, procedures and provisions to be applied in respect of the management of the petroleum resource should provide for the obtaining by the Crown of a fair financial return from its minerals. At section 34 the Act provides that the Minister may include in any permit a condition requiring payments to the Crown by the permit holder for the rights given by the permit and any minerals obtained by the permit holder under the permit.
- vi. Chapter 2 noted the following relevant considerations for determining whether there is a fair financial return:
  - The Crown’s role as owner of the resource;
  - The non-renewable nature of petroleum as a resource;
  - The attractiveness of the petroleum regime to investors;
  - Ensuring access to sufficient supplies of petroleum in New Zealand to support economic and social development; and

- That any requirements to make payments for any petroleum obtained under a permit apply equitably to all permit holders.

Policies then defined for the Crown to obtain a fair financial return from petroleum include:

- The Crown, as owner of the petroleum resource, obtaining a guaranteed minimum payment from the extraction of its petroleum;
- The Crown, as owner of the petroleum resource, benefitting in sharing in any substantial profits arising from a petroleum development;
- The royalty regime being sufficiently internationally competitive to attract mobile and competitively driven investment;
- The investor's perception being that sovereign risk is minimised (sovereign risk is defined as the risk that the government may change significant aspects of its policy and investment regime); and
- The royalty regime being clear and easy to comply with and administer and not to impose unreasonable transaction costs.

#### **Evaluation of Ad Valorem/Accounting Profits Hybrid Royalty**

- vii. A first step to determining the appropriate royalty regime to consider for this minerals programme was to review the 5 percent ad valorem and 20 percent accounting profits hybrid petroleum royalty regime that has applied to permits granted from 1 January 1995 against the policy framework summarised in paragraph vi. Petroleum exploration is internationally mobile and for New Zealand to attract investment it needs to have an internationally competitive regime.
- viii. In September 2003, the Ministry of Economic Development contracted Scotland-based company Wood Mackenzie to carry out an economic analysis of New Zealand's fiscal terms compared with those of seven competitor countries (Australia, UK, Norway, Argentina, Alaska, Egypt and Indonesia) for various-sized gas and gas/condensate fields. As part of the study, Wood Mackenzie also investigated the effect on the return on investment to petroleum companies of a change in the prevailing upstream gas price in New Zealand versus a reduction in the ad valorem royalty.
- ix. Using real cost and production field data, Wood Mackenzie modelled the company returns from each field under their home fiscal regime (including royalties and taxation) and then under the New Zealand fiscal regime to compare company returns on investment in each. The key findings to emerge were:
  - Twenty-one of the 28 fields modelled, including fields in Alaska, Argentina, Australia, Egypt, Indonesia and Norway, showed increased net present values under the New Zealand fiscal regime. The United Kingdom fields had reduced net present values under the New Zealand fiscal regime. Two Australian fields (Harriet and Dongara) and one Norwegian field (Huldra) demonstrated reduced net present values under the New Zealand fiscal regime;
  - The current UK regime, based on a corporate tax rate of 30 percent and supplementary tax rate of 10 percent with no royalty or additional payments, is more competitive than New Zealand's. Royalties have been waived to encourage investment as several mature fields decline;
  - The two Australian fields modelled that produced higher total net present value results under their home regime than that of New Zealand's fiscal terms are based on State onshore royalty regimes comprising royalty rates of between 10

percent and 12.5 percent and corporate tax of 30 percent. We compare favourably with the Australian offshore regime; and

- The comparisons for each field, run under the New Zealand regime at four different gas prices (Maui (NZ\$2GJ, \$4GJ, \$6GJ, \$8GJ) showed how an increasing gas price adds value to the net present value of the gas fields and how low the Maui gas price actually is when benchmarked on a global basis. Wood Mackenzie indicated it anticipates that the gas price in New Zealand will increase significantly in the short to medium term. As a result, fields that are currently not being developed due to poor project economics under the current Maui gas price will become more attractive for development as the gas price increases. An increase in gas price will also stimulate future exploration as demand for dwindling gas reserves increases.
- x. Overall, the results of the Wood Mackenzie study showed that the 5 percent ad valorem and 20 percent accounting profits hybrid petroleum royalty regime is internationally competitive. It confirmed using real field examples what has also been found by the IHS Energy PEPS Ratings and Rankings Index, which is that explorers rank New Zealand the 17th most attractive investment destination in the world and 24th for our fiscal terms, out of 107 countries.
- xi. In summary, the 5 percent ad valorem and 20 percent accounting profits hybrid petroleum royalty regime as determined in the Minerals Programme for Petroleum (1995) provides for the Crown to meet the multiple objectives of safeguarding the resource owner's right to a guaranteed minimum return and reserving the right to share in substantial profits. The rates at which the royalty have been set are at a competitive level to attract internationally mobile investment.
- xii. Other royalty options available have not changed from those set out in the Minerals Programme for Petroleum (1995). For the same reasons as set out in that Minerals Programme, the other royalty options are not considered appropriate for obtaining a fair financial return to the Crown and the other objectives set out in paragraph vi.

#### **Evaluation of Lower Royalty Rates to Increase Exploration Attractiveness**

- xiii. As the Maui field declines there is concern about future gas supplies, particularly for electricity generation. Indigenous natural gas (and LPG) meets some 15 percent of energy demand from the industrial, commercial and residential sectors, and has allowed choice in fuel use for many enterprises. It fuels about 20 percent of electricity generation and is strategically critical for electricity generation during peak demand times and at times of low hydro generation capacity.
- xiv. Supply-side alternatives to gas-fired electricity generation are new hydro, wind, geothermal or coal-fired plant. Imported liquefied natural gas (LNG) is also a possibility. These options are likely to be more expensive or will emit more carbon than gas-fired electricity generation. Improvements to the efficiency with which electricity is used can substitute for new supply, but the rate and level of efficiency improvement is uncertain.
- xv. The speed and extent of the energy market to respond to the changing gas supply conditions is an uncertainty affecting the energy market. Increasing the level of gas exploration over the next few years could reduce much of this uncertainty.
- xvi. To increase exploration and the likelihood of new gas discoveries a competitive royalty regime is not enough. Additional incentives in the short term will improve

New Zealand's exploration attractiveness. Providing a more attractive royalty rate is one form of exploration incentive. Another royalty incentive is to provide for greater reduction of prospecting and exploration costs against accounting profits in determining accounting profits royalty liability.

### **Lower Royalty Rate Options**

#### *Zero or reduced ad valorem royalty*

- xvii. An ad valorem rate of zero could result in no royalty payable on petroleum production from a permit. This outcome would be inconsistent with the objective of the Crown obtaining a guaranteed minimum payment from the extraction of its petroleum. It would also mean increased regime complexity for production under exploration permits and for small producers. A 1 percent ad valorem royalty on gas and a 5 percent royalty on oil provides for the Crown to continue to obtain a minimum royalty but provides a small incentive to encourage the earlier development of gas discoveries.

#### *Reduced accounting profits royalty*

- xviii. Reducing the accounting profits royalty on just gas production would be administratively complex as it is not straightforward to distinguish between oil and gas accounting profits. This outcome would be inconsistent with the objective of the royalty regime being clear and easy to comply with and administer. Possible alternative accounting profits royalty rates considered were 10 percent and 15 percent. A 10 percent rate that applies to oil and gas could mean the Crown did not fairly share in any substantial profits from a petroleum development, especially if taken into consideration alongside increased deductions allowed for prospecting and exploration expenditure. A 15 percent rate would provide an incentive to overall exploration but could still expose the Crown to a significant loss of royalty for a large gas or oil find. Limiting the incentive to a defined level of profits allows for the Crown to fairly share in any substantial profits from a petroleum development.

#### *Increased allowance for deducting prospecting and exploration costs*

- xix. Prospecting and exploration costs are allowable deductions for the purposes of determining accounting profits. These are costs incurred that led to the development of the discovery and mining permit on which royalty is payable. Those prospecting and exploration costs incurred in the exploration permit preceding a mining permit are easily attributable as costs that have helped lead to the discovery being made. It can be argued that exploration undertaken more widely over a geological basin or even within New Zealand helped contribute to finding the discovery. The ability to deduct prospecting and exploration costs can make a significant difference to calculating accounting profit.
- xx. In Australia, prospecting and exploration costs can be carried forward for deduction against royalty with interest. The addition of interest makes these deductions even more attractive.
- xxi. Allowing costs to be carried forward with interest reduces the bias against projects with long lead times between exploration and production. Any interest rate greater than zero will reduce the effective royalty rate, but the rate should not exceed the level at which a permit holder would have an incentive to defer production. An interest rate equal to the prevailing 10-year government bond rate plus a margin of 1



percent should provide the appropriate incentive without the possible downside of deferred production.

### ***MODELLING OF ROYALTY RATE CHANGES***

- xxii. Quantitative modelling of simulated fields with marginal economic characteristics yields information that can be used to assess the relative incentive effects of the royalty change options described above. Simulations for a range of typical marginal fields, undertaken by Ernst and Young, indicated that an ad valorem rate reduction to 1 percent on gas and 5 percent on oil on its own would have a limited effect, but materially improves internal rates of return when applied in combination with allowing the deduction of prospecting and exploration costs from throughout New Zealand and reduction of the accounting profits royalty rate to 15 percent. The simulated internal rate of return improves by around 2 percent for onshore projects, and by around 1 percent for offshore projects. A more detailed analysis of the effect of different royalty incentives can be obtained from the reports “Incentive Options for Gas Exploration in New Zealand” and “Gas Exploration in New Zealand, Supplementary Report”, both prepared for the Ministry of Economic Development by Ernst and Young, May 2004.

### ***APPENDIX III***

## **CONSULTATION WITH MAORI ON THE PREPARATION OF THE MINERALS PROGRAMME FOR PETROLEUM**

- i. As noted in chapter 3, the Minister and Secretary are committed to a process of consultation with Maori on the management of the petroleum resource. In respect of the allocation and management of petroleum permits under the Act, consultation involves a process in which the Minister and Secretary are committed to a dialogue with hapu and iwi and are receptive to Maori views and give those views full consideration. An example of the operation of this process was consultation on the preparation of this Minerals Programme for Petroleum. This appendix summarises this process.
- ii. Prior to conducting public consultation on the draft replacement minerals programme, a series of meetings was held with key Maori organisations and iwi in Whangarei, Christchurch, Hastings and New Plymouth. The kaupapa (purpose) of the consultation process was to listen to Maori experience under the Minerals Programme (1995, to discuss what new approaches may be appropriate going forward to 2015 and to discuss the processes for protecting areas of land important to the mana of iwi.
- iii. The views expressed at these meetings were incorporated into the replacement draft and further consultation with iwi was undertaken during July 2004 in accordance with section 17 of the Act, including regional hui held (and to be completed) in 2004. The purposes of the hui were to provide a briefing on the Draft Replacement Minerals Programme, and to receive the views of Maori on the issues raised and to invite further submissions.