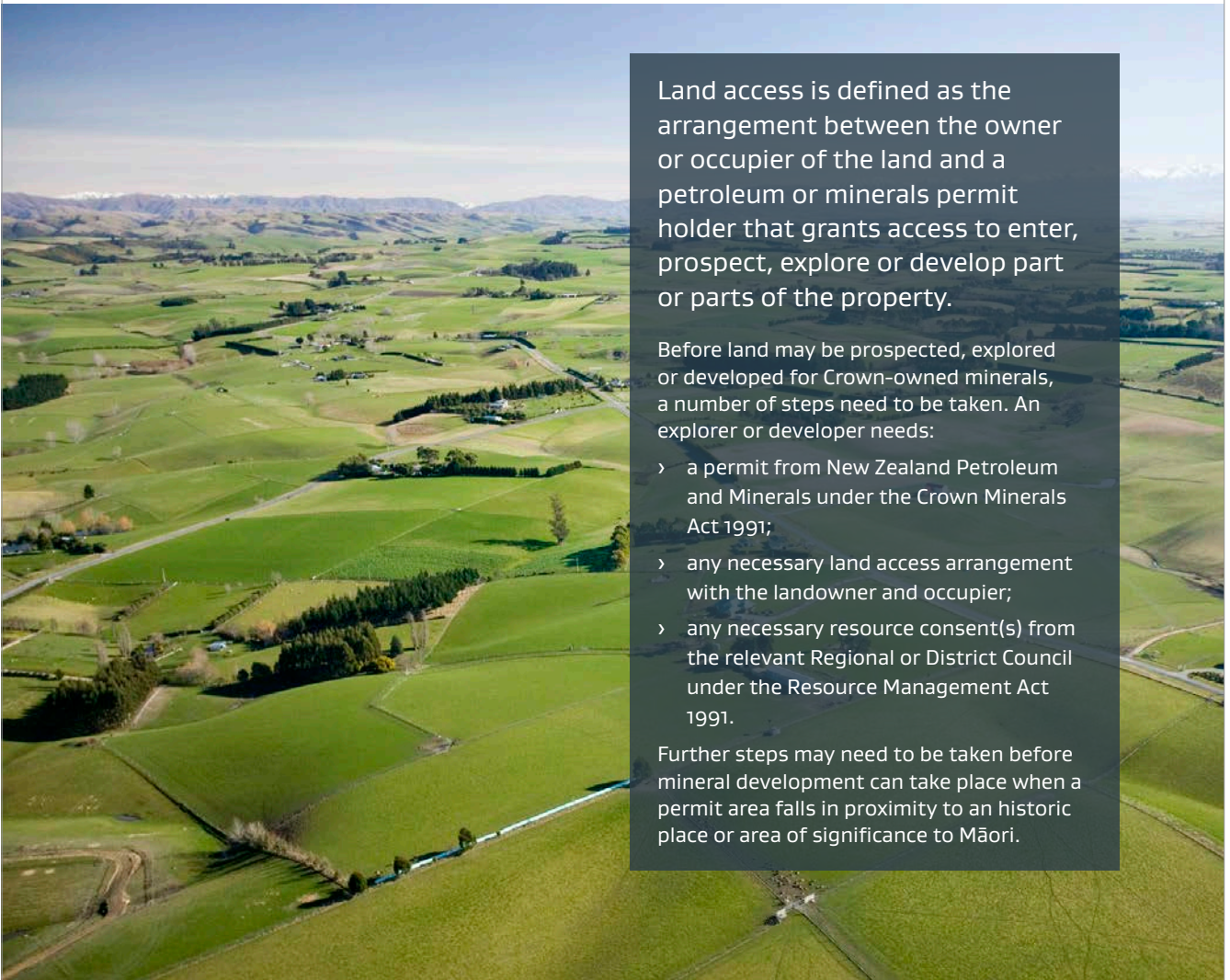




NEW ZEALAND
PETROLEUM & MINERALS



Permits and Land Access in New Zealand



Land access is defined as the arrangement between the owner or occupier of the land and a petroleum or minerals permit holder that grants access to enter, prospect, explore or develop part or parts of the property.

Before land may be prospected, explored or developed for Crown-owned minerals, a number of steps need to be taken. An explorer or developer needs:

- › a permit from New Zealand Petroleum and Minerals under the Crown Minerals Act 1991;
- › any necessary land access arrangement with the landowner and occupier;
- › any necessary resource consent(s) from the relevant Regional or District Council under the Resource Management Act 1991.

Further steps may need to be taken before mineral development can take place when a permit area falls in proximity to an historic place or area of significance to Māori.



ACCESS TO LAND UNDER PERMITS

A petroleum or minerals permit does not give its holder a right to go onto any land (this is different to many international jurisdictions, where the granting of a permit provides a right of access to land).

Before a permit holder is able to do any prospecting, exploration or mining requiring access on to land, an access arrangement with the landowner and the occupier is generally required. This access arrangement will set out the basis on which any access to the land will occur. The general exception where a land access arrangement would not be required is 'minimum impact activities' on all but certain special classes of land.

Where the land is owned by the Crown, the access arrangement is with the appropriate minister (usually the Minister of Conservation). If the land in question is listed in Schedule 4 of the Crown Minerals Act 1991, then activity is limited to certain low impact activities.

An access arrangement is not required for activities conducted under land that do not require access to the land. However, such activities must neither cause any damage to the surface nor have any detrimental effect on the future use and enjoyment of that land (section 57 of the Crowns Mineral Act 1991). An example of this is aerial magnetic surveys which are conducted from low flying aircraft.

SCHEDULE 4 OF THE CROWN MINERALS ACT 1991

Schedule 4 lists public conservation lands where an access arrangement for petroleum and minerals activity can only be entered into for the purpose of:

- › constructing an emergency exit for an underground mining operation;
- › activities that do not result in stripping of vegetation over an area exceeding 16 square metres or create any permanent impact on the profile of the land;
- › minimum impact activities;
- › gold fossicking; or
- › a special-purpose mining activity.

Permission must be sought from the Minister of Conservation before any activity can proceed.





BOURKE FAMILY FARM IN NORTH TARANAKI

North Taranaki dairy farmers Paul and Bernadette Bourke have had a land access arrangement with Todd Energy since 2006. Following successful exploratory drilling, Todd Taranaki Ltd and the Bourke's now have a 20-year lease arrangement.

Mangahewa C is one of four producing well sites over the Mangahewa gas-condensate field.

Todd Energy is leasing land occupied by the well site as well as all necessary roading. Todd brings in its own water.

"We are paid in advance, annually, and the payment follows the milk price. With so much of Taranaki in dairy, a fair price is one that is based on the milk price," Paul said.

"Todd Energy originally drew up an agreement – which we got our lawyers to check over."

Since then Todd Energy has built and maintained additional roading over the farm – which is made of materials friendly to cows, so the Bourke's can move their cows using the roads.

The arrangement includes plans to put the site back to its original state when the company vacates the property. "The company has done some remedial work onsite, which is actually improving drainage of the land," he said.

"I looked at this opportunity from the perspective of how it will impact our lives and the farm business.

"We have family that work in the oil and gas industry – and that have grown up beside the Kapuni gas field. I recommend that landowners talk to others about their experiences with land access."



WANT TO KNOW MORE ABOUT PERMITS AND LAND ACCESS

www.nzpam.govt.nz

PROCESS FOR ACCESS TO PRIVATE LAND

The Crown Minerals Act sets out a process for reaching a land access arrangement. The process starts when a permit holder notifies each landowner and occupier in writing of their intention to seek an access arrangement.

In the first instance the parties involved should try and negotiate a land access arrangement themselves.

They can agree to go to mediation and work through issues or agree to arbitration. An arbitrator holds a hearing and determines the conditions of the land access arrangement.

If agreement cannot be reached and the parties do not agree to appoint an arbitrator, in some cases

an arbitrator can be appointed under the Crown Minerals Act – for example in the case of petroleum, an arbitrator can be appointed by the Chief Executive of the Ministry of Business, Innovation and Employment. Government appointed arbitration is extremely rare.

For more detailed information on land access arrangements and arbitration see the **Information for Landowners and Occupiers** section.

MINIMUM IMPACT ACTIVITIES

Minimum impact activities include geological, geochemical and geophysical surveying, taking samples by hand or hand held methods, aerial surveying, and land surveying.

A permit holder generally doesn't need an access arrangement for minimum impact activities on the land under a permit, except for 'special classes of land'. However, at least 10 working-days' notice of entry must be given to each landowner and occupier (section 49). Written notice should set out the date of entry, type and duration of work to be carried out, and a telephone number of the person who intends to enter the land.

To undertake minimum impact activities on Māori land (section 51), the permit holder must first make reasonable efforts to consult with the owners of the land (who can be identified by the registrar of the Māori Land Court), and give 10 working-days' notice of entry to the local iwi authority of the land to be entered.

SPECIAL CLASSES OF LAND

A. There are some classes of land for which landowner and occupier consent is required before minimum impact activities can be undertaken (section 50). These same land areas cannot be the subject of arbitration (section 55(2)):

- › conservation land; land subject to an open space protection, or that is subject to protection under the Conservation Act or the Reserves Act;
- › land that is under crop;
- › land used as or situated within 30 metres of a yard, stockyard, garden, orchard, vineyard, plant nursery, farm plantation, shelterbelt, airstrip, or indigenous forest;

- › land that is the site of or situated within 30 metres of any building, cemetery, burial ground, waterworks, race or dam;
- › land having an area of 4.05 hectares or less.

B. Consent for minimum impact activities must be obtained for Māori lands or land owned by Māori in the name of Pōtatau Te Wherowhero (Waikato-Tainui); Awanuiārangi II (Ngāti Awa); and Wharepakau and Tangiharuru (Ngāti Whare and Ngāti Manawa) (section 51).

C. No person, without the consent of the landowners, may enter Māori lands to undertake minimum impact activities where tangata whenua consider the land to be wāhi tapu.



FREQUENTLY ASKED QUESTIONS

Does a petroleum exploration or mining permit provide a company automatic access to land under a permit?

No – a permit does not give its holder a right to go on to land covered by a permit. Should a permit holder require access to land to explore or develop they must have a land access arrangement in place with the land-owner and land occupiers.

When is land access not required?

The exception is where access is required for minimum impact activities such as surveying on the land under permit – a land access arrangement is generally not required in these circumstances but the landowner and occupier must receive notice of the intention to enter the land at least 10 working days ahead of the minimum impact activity.

A land access arrangement is also not required for activities conducted underground that do not require access to surface of the land. However, such activities must not cause any damage to the surface nor have any detrimental effect on the future use and enjoyment of that land.

Should I seek legal advice if I am approached by someone seeking access to my property?

Land owners and occupiers may wish to seek legal advice on a land access arrangement and know what their rights are.

Will I lose control of the day-to-day management of my property?

No – the details of how day-to-day activities are undertaken and coordinated will be outlined in the land access agreement. It's through the negotiation of the land access agreement that both parties will agree to a mutually agreeable working relationship.

If the requirements of the permitted activities do unduly impact of the landowner's ability to undertake normal activities then the land access agreement should outline appropriate compensation.

What are considered reasonable levels of intrusion?

Reasonable levels are likely to vary depending on the specific circumstances of each case, what and where the activity is, and what the specific land-owner's expectations are.

Level of intrusion and what is reasonable are issues that should be negotiated during the establishment of the land access agreement.

Will my property value fall?

Petroleum or mineral activities operating on a property and causing devaluation is largely subjective. It is dependent on the individual's perception and details of the land access agreement.

What happens if the permit holder breaches the terms of the land access arrangement?

If a permit holder breaches a condition of an access arrangement, the owner or occupier should seek legal advice.

If I choose to sell my property will my agreement with a developer be binding for the new owner?

For access arrangements longer than 6 months to be binding on successors in title to the owner and occupier, the arrangement must be lodged with the Registrar-General of Land in accordance with section 83.

Once it has been lodged, section 56 states that where an owner or occupier has entered into an access arrangement, the arrangement shall be binding on the owner or occupier and, on all successors in title to the owner and occupier.

What happens if the permit holder or a third party working with the permit holder damages my land in ways not provided for in the land access arrangement?

Under section 76, the owner or occupier is entitled to and may claim full compensation against the permit holder for all loss, injury, or damage suffered as a consequence of such activities, regardless of whether or not it is provided for in the land access agreement.



INFORMATION FOR LANDOWNERS AND OCCUPIERS

What to consider when creating a land access arrangement

Arrangements for land access are formal contracts between the landowner and occupier and permit holder. When approached by a permit holder, a landowner and occupier may wish to seek legal advice about what their rights are, liability for environmental effects and to aid in negotiating and drafting a land access arrangement.

Each arrangement will have clauses unique to the landowner or occupier.

When developing a land access arrangement, the landowner may wish to include conditions around:

- › the periods during which the permit holder is to be permitted access to the land;
- › the parts of the land on or in which the permit holder may explore, prospect, or mine and the means by which the permit holder may gain access to those parts of the land;
- › the kinds of prospecting, exploration, or mining operations that may be carried out on or in the land;
- › the conditions to be observed by the permit holder in prospecting, exploring, or mining on or in the land;
- › activities the permit holder needs to undertake in order to protect the environment while having access to the land and prospecting, exploring, or mining on or in the land;
- › the compensation to be paid to any owner or occupier of the land as a consequence of the permit holder prospecting, exploring, or mining on or in the land;

- › the financial arrangements in place to ensure any possible remediation and decommissioning;
- › what should happen if the permit holder should go into liquidation and leave activities incomplete;
- › the manner of resolving any dispute arising in connection with the arrangement; and
- › the manner of varying the arrangement.

Under section 76 of the Crown Minerals Act 1991 (CMA), the landowner and occupier are entitled to compensation for loss or damage suffered, or likely to be suffered.

Compensation may include:

- › reimbursement of all reasonable costs and expenses incurred in respect of the land access negotiations (including legal costs);
- › reimbursement for loss of income;
- › a sum for loss of privacy and amenities; and
- › reimbursement for reasonable costs incurred to comply with and monitor the access arrangement.

An owner or occupier is entitled to and may claim full compensation should they suffer loss, injury or damage as a result of a permit holder's activity.

In many areas of New Zealand, access to land for exploration and development is access to farm land. In the early 1990s, Federated Farmers developed a Land Access Code with the petroleum industry, to guide development of land access arrangements. Contact Federated Farmers for the latest version.

Mediation

Land access arrangements are typically negotiated directly between the land owner or the occupier (possibly with legal support) and the permit holder.

However, in the event that the negotiations are not conclusive, the parties can agree to enter into a process involving mediation.

Mediators are skilled at facilitating discussions between the parties in dispute, helping them to identify their respective issues and interests and working with them on potential solutions. The aim of mediation is for the parties to resolve the matter by agreement. The mediator does not normally provide advice to the parties or make decisions for them.

Arbitration

If an access arrangement cannot be settled between a permit holder and a landowner or occupier within 60 days (and in the case of a geophysical survey, 30 days) of initial notification to seek a land access arrangement, under Sections 53 and 63 of the Crown Minerals Act petroleum permit holders may request that an arbitrator be appointed. In these circumstances the permit holder must serve notice on each owner or occupier of the request to agree to the appointment of an arbitrator.

Arbitration involves an independent person (the arbitrator) making a binding decision (commonly referred to as 'an award') to settle a dispute. This decision is typically made after the arbitrator has held a hearing where the parties in dispute are given the opportunity to present their respective cases. In the case of land access issues, the arbitrator can determine conditions of the land access arrangement.

Government appointed Arbitration

If agreement to appoint an arbitrator cannot be reached by the parties involved, then:

- › In the case of **petroleum**, if the parties are unable to agree on land access arrangements, and if they have followed the process set out in Section 63 of the CMA, either party can apply to the chief executive of the Ministry

of Business, Innovation and Employment to appoint an independent arbitrator. The arbitrator will hold a hearing (see above). As soon as practicable after conducting the hearing, the arbitrator shall make a decision determining the access arrangement for the permit holder on such fair and reasonable conditions as the arbitrator sees fit. The arbitrator will also specify (if any) compensation payable (section 70 of the CMA). In these circumstances the costs of the arbitration are met by the permit holder. Government appointed arbitration of this nature is extremely rare.

- › In the case of **minerals**, the permit holder may seek the agreement of each owner or occupier of the land to appoint an arbitrator. An arbitrator can only be appointed without the agreement of the land owner or occupier by the Governor-General. If a minerals permit holder applies for the appointment of an arbitrator, there is no guarantee that an arbitrator will be appointed. To date this process has never been used and would only occur if there was a public interest in the exploration or mining taking place – for example, a mining project of national significance.

For both petroleum and minerals, there are certain classes of land – listed under section 55(2) of the CMA – over which arbitration can not be imposed (unless the owner agrees). See the Special Classes of Land section above for more detail.

Qualified (both in terms of training and experience) mediators and arbitrators and further information regarding the mediation and arbitral processes can be found through the Arbitrators' and Mediators' Institute of New Zealand Inc. at: www.aminz.org.nz.

It will be up to the parties involved to determine who pays for the costs of the mediation or arbitration. In most instances permit holders cover the costs of the mediation or arbitration.



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