

# THE PUBLIC AND THE ENVIRONMENT COPING WITH THE SYSTEM

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Finding and proving oil resources is but part of the challenge for the industry. Equally important is the ability to extract, process and transport the resource.

The paper describes the social, political and administrative factors that are likely to be of increasing importance in the future in obtaining development consents. New Zealand has long been recognised as a nation that has placed a high priority on environmental protection. The greening of Europe, North America and Australia clearly indicate that this priority will, if anything, increase in the future.

The New Zealand consent framework has had to date, a number of key components. There are a sophisticated land and water use planning system, strong third party rights to become involved in land and water use decisions, and an independent, judicial final decision making agency. This system is currently under review, but irrespective of the details flowing from that review, it is clear that development and utilisation of the nation's oil resources will be subject to scrutiny and close control. The challenge for the industry is not to fight the system, but to attempt to firstly ensure that the system itself is realistic and practical and secondly, to work within it to demonstrate environmental responsibility.

The paper summarises the system that has prevailed to date in New Zealand, and comments on the proposed new regime envisaged under the recently completed Resource Law Reform exercise. Based on practical permitting experience, it then highlights the key steps that an operator should take when implementing permitting activities. Finally, it speculates on the future regime, indicating whether it is likely to be an improvement on that currently in place.

## INTRODUCTION

The 1970s saw the emergence of an international environmental consciousness, the first major reflection of this being the Stockholm conference where both political and technical decision makers started to explicitly recognise the fragility of *planet earth*. In New Zealand, development pressures encouraged central government to support and expand the concept of land use planning, primarily through two key pieces of legislation, the Town and Country Planning Act, and the Water and Soil Conservation Act. In the mid 70s an additional technique, that of Environmental Assessment, borrowed from Canada, started to increasingly be used as an evaluative tool.

The late 70s and first half of the 80s saw, both in New Zealand and abroad, a trend of less emphasis on the environment by the politicians and technocrats, but strong efforts by environmental groups to prevent *roll back*. The energy crisis, unemployment and slow economic growth all contributed to a reduction in environmental pressure.

The second half of the current decade has seen a fairly abrupt change. New Zealand was *green* in the political sense in the early 70s (the Values Party being the first formal green party in a democratic system). Suddenly, in the mid 80s, Europe (including the UK), North America and Australia have seen their politicians *grabbing for green* as hard as they can! Certain dramatic events; for example, Chernobyl, the Exxon

Valdez spill, Tasmania Pulp Mills, CFC's, have punctuated the political environment. They have, I believe, been underlain by a steady growth in the awareness and recognition by the public at large of the cumulative effects of badly planned and managed projects on the physical and social environment.

Against this background, I would like to describe the philosophical and administrative framework that exists in New Zealand to guide and control developments to achieve environmental objectives. In my view it is important for the New Zealand oil exploration industry, and for visitors wishing to participate in the development of the country's oil resources, to be familiar with the "system", and to recognise that it is futile to try and avoid or buck it. It exists, it is enshrined in statute, by and large it has broad public, nonpartisan support and, if sensibly worked through, does provide a developer with a reasonably defined consent path. It can be very frustrating; it does take time; it does cost money; but at least at the end of the day there will be a fair, objective, judicial decision-making process for the major consents required.

In the paragraphs below I briefly describe the main consent procedures that are associated with oil development, I identify what I believe to be the key steps that a project promoter needs to take in order to successfully gain consents as efficiently as possible and I conclude with some comments based on my experience with oil related projects, and how I see future environmental controls developing.

## THE PRESENT NEW ZEALAND CONSENT ENVIRONMENT

Two facets of this need to be understood: the statutes that establish the system and the government framework within which they are administered. The key statutes are as follows:

- (a) Mining Legislation, including pipelines: The Petroleum Act.
- (b) Land Use Legislation: The Town and Country Planning Act.
- (c) Water Protection Legislation: The Water and Soil Conservation Act.

The key governmental framework consists of:

- (a) Central government, through the Energy Division of the Ministry of Commerce, which administers and implements the Petroleum Act (as of 1 December 1989).
- (c) Local government, i.e. County Councils, District Councils, Cities and Boroughs, administer the Town and Country Planning Act.
- (d) A form of regional government, the Water Boards or Catchment Boards, administer the Water and Soil Conservation Act.

In addition, a number of central government departments have specific responsibility in specific areas, i.e. the Ministry for the Environment ensures that local authorities act responsibly in their duties relating to the Town and Country Planning Act; the Department of Conservation acts as a conservation watchdog/advocate, becoming involved via submissions and objections to development proposals falling within any one of the three key statutes; the Department of Maori Affairs representing (together with more local tribes and groups) Maori interests through the objection/submission process.

Independently of the above central government agencies, the Parliamentary Commissioner for the Environment acts as an *environmental ombudsman*, advising Government on the environmental implications of decisions, and ensuring that the appropriate procedures are being adopted by proposed developments.

Two important differences exist between the mining legislation and the other two statutes relating to land and water.

Firstly, the final decision maker in the case of the land and water statutes is the Planning Tribunal, an independent, judicial body with extensive experience in evaluating development projects. In the case of the mining legislation, the decision maker is the Minister of Energy.

Secondly, the land and water legislation has strong third party objection rights, with most development proposals having to be publicly notified, the public being able to object to the local authority initially and then, if unsatisfied with their decision, to the Planning Tribunal (with a subsequent right to seek a judicial review of the Tribunal's decision on a point of law). In contrast, the public's role is less defined in the petroleum mining legislation, with some rights of submission. Furthermore, the land and water statutes have established procedures involving Council hearings and presentation of evidence and cross examination, which do generally not occur under the mining legislation.

Since it is the land and water legislation that primarily brings about the interface between the oil industry and the public, my comments mainly address this legislation.

With the background described above, it is possible to briefly take a theoretical oil project through the system as follows.

### Exploration and prospecting phase

By *tradition*, exploration and prospecting has not, to date, had to gain land use planning consent, the exploration and/or prospecting licence procedures setting environmental conditions. The rationale behind this seems to be that this phase is often of short duration and, to some extent, limited environmental effect. (I use the word *tradition* advisedly; under the Town and Country Planning Act, all uses in a district have to be *permitted*, and if not defined and identified in the District Planning Scheme, a planning application (*specified departure*) should have to be made. In practice this has not occurred.) Apart from the land use aspect, prospecting often has to use or divert *water*, and this requires a *water right*: consent from the Catchment Board (or its equivalent). Thus the first foray into the system might well be an application for a water right to discharge water from a prospecting well, or to divert surface water away from an area to be drilled. These rights, akin to construction water rights, are generally not contentious, do require public advertisement, and are usually granted without strong objections and with a number of practical, sensible conditions (i.e., separation of any oil contamination prior to discharge; establishment of silt traps to contain sediment run-off, etc.). The key aspect from the developer's viewpoint is to ensure good liaison with the landowner and the water authority, and to build appropriate safeguards into the site engineering.

### Development/construction phase

Once exploration, prospecting and feasibility work has confirmed that it is viable to develop the discovered oil resources, the major consent phase follows, and it is this phase that often tends to cause nervousness in the mind of the developer. The main consents that bring the project into the public arena are similar to those just noted, i.e. planning and water rights, frequently with the addition of pipeline consents. The difference between this phase and the previous one is of magnitude and perception, which gives rise to close public scrutiny of proposals, and the need for the development to be far more accurately described and assessed than is readily possible at the outset of engineering design.

In land use terms, the proposed development will need planning consent from the planning authority. District Planning Schemes, essentially a land use zoning document, set out two broad types of *permitted* uses, predominant and conditional. Oil development/processing/use is virtually never given predominant use status; at best, the planning authority, if it thought that there was a likelihood of oil in its patch, may have given it conditional use status.

This means that, whilst the planning scheme recognises in principle the possibility of oil development, each project will need to be defined and described, will need to be advertised as a conditional use planning application (open to public objection), and, in granting consent after objections and hearings, the planning authority will set a number of conditions on the proposal (zoning, size, appearance, noise levels, road access and safety requirements, for example).

Furthermore, the authority is not obliged to grant conditional consent. If the weight of evidence suggests that on balance the development would be contrary to broad social and economic goals (set by the Act as a whole), it can decline the application.

Whilst conditional use status does occur in some schemes, a far more common situation is where oil development is not explicitly permitted (but not explicitly excluded) from a district. In this case, again the developer will need to run through the hoops of a planning application (*specified departure*) or the planning authority will decide to advertise a change to the zoning to allow the project. In practical terms, whichever course is adopted, the basic public rights of objection and appeal are involved.

At this point, it is appropriate to identify what exactly the land use planning system is endeavouring to achieve. In New Zealand, the philosophical framework for land use planning is expressed in two key sections of the Act, Sections 3 and 4, and I quote them below. These provide the yardstick against which a development has to be judged. The *bottom line* is that the land use planning decision maker (be it local Council or Planning Tribunal) has to arrive at a decision that reflects striking a *balance* between society's competing (and often conflicting) social, physical and economic aspirations and values.

With all its frustrations and imperfections, the great strength of the Planning Act is that it cannot be *captured* by any one vested interest. The fact that the Act is often criticised by conservationists and developers alike, convinces me of the appropriateness of the underlying spirit and intent of the legislation.

**"3. Matters of national importance - (1) In the preparation, implementation and administration of regional, district and maritime schemes, and in administering the provisions of Part II of this Act, the following matters which are declared to be of national importance shall in particular be recognised and provided for:**

- (a) *The conservation, protection, and enhancement of the physical, cultural, and social environment*
- (b) *The wise use and management of New Zealand's resources*
- (c) *The preservation of the natural character of the coastal environment and the margins of lakes and rivers and the protection of them from unnecessary subdivision and development*
- (d) *The avoidance of encroachment of urban development on, and the protection of, land having a high actual or potential value for the production of food*
- (e) *The prevention of sporadic subdivision and urban development in rural areas*
- (f) *The avoidance of unnecessary expansion of urban areas into rural areas in or adjoining cities*
- (g) *The relationship of the Maori people and their culture and traditions with their ancestral land.*

**4. Purpose of regional, district, and maritime planning - (1) Subject to section 3 of this Act, regional, district and maritime planning, and the administration of the provisions of Part II of this Act, shall have for their general purposes the wise use and management of the resources, and the direction and control of the development, of a region, district, or area in such a way as will most effectively promote and safeguard**

*the health, safety, convenience, and the economic, cultural, social, and general welfare of the people, and the amenities, or every part of the region, district, or area."*

With regard to the actual procedures involved in the land use planning process, these can be simply stated as follows. Once the oil developer has defined the project to the stage that it can be reasonably well described in terms of site area, type of plant, scale and appearance and performance characteristics (noise levels, for example), (and all of this is often very difficult to define at the outset of project design), a planning application can then be put together. This is then lodged with the local planning authority. If they are satisfied that the application contains adequate information to describe the development proposals, they will advertise it for public objections. In addition, all landowners on and adjacent to the application site, local and central government agencies, and other potentially interested parties (special interest groups, etc.) are sent a copy of the application. Applications are open for objection for one month. After objections have been received, the Council will hold a public hearing, at which all parties can present their point of view, and a decision is made.

This decision is then open to appeal by any of the parties who objected to the application, or by the applicant. The Planning Tribunal then in due course hears the appeal, and arrives at its decision on the basis of the evidence presented. Appeals against the Tribunal decision are only allowed on points of law, and are fairly infrequent.

The water right process is generally similar to the land use planning described above. The project implications on water resources have to be identified and described in detail, and application made to use, divert or discharge water. Again, these applications are open to objection. The Water Authority hears the application, and its decision may be appealed to the Planning Tribunal. Often the Tribunal will hear water right and land use planning appeals that relate to a specific project together, thus ensuring integration of water and land use management.

## KEY ACTIONS IN THE CONSENT PROCESS

The actual successful implementation of a consent strategy is very strongly influenced by the recognition, at the outset, of a number of key stages. These can be described as comprising:

- (a) Defining the project.
- (b) Identifying the issues to be addressed and consent procedures to be followed (*scoping*).
- (c) Setting up baseline studies.
- (d) Communicating and liaising with affected/interested parties.
- (e) Producing a document that is seen to be a correct, accurate assessment of the proposed development which provides the background information for the consents being sought.

I comment briefly on these as follows:

**Defining the project** This is often extremely difficult, since project design is a dynamic process, evolving up to and during actual construction. However, obviously the consent agencies must be given a reasonably clear picture of what they are being asked to approve, and the impacts/effects of the development on the social and physical environment can only be assessed if the assessors are given

appropriately detailed data. The developer, his/her technical advisors, and the person leading the consent activities need to work closely together, and produce a conceptual project description as early as possible. This will undergo many changes, but at least, with something tangible to focus on, the subsequent activities can be given some structure.

**Scoping** This is an important activity, that if well done will ensure that time, effort and expense are minimised. If badly done it will inevitably result in delays and cost penalties. Scoping should not occur until a basic conceptual project description has been agreed on. Essential factors to identify are the areas of land involved, the location of any processing facility, aerial and liquid emissions and water requirements.

Scoping should address two aspects: establishing the agreed consent path, and identifying the issues to be addressed in the evaluation of the project. Regarding the first point, the procedures set out under the Planning and Water legislation largely dictate the consent path, but clarification of this is important. With the plethora of agencies and players likely to want to become involved in the permitting process, it is important that the developer has their combined agreement as to timing, coordination between different agencies, and the linkages between the different applications.

Issue identification is important. A developer has two options: a shotgun approach in which every single issue is studied, or a far more focused approach, with effort placed where it is most appropriate. The former will involve massive expenditure, the latter is obviously more efficient, but the key is to ensure that the correct issues have been identified at the outset. There is nothing worse than finding, just before lodging planning applications, that the project site is the habitat of a rare species! On the other side of the coin, red herrings are a very abundant species when the question of issues is raised; everyone considers their concern to be a key issue. Judgement and experience are important in this scoping activity.

**Baseline studies** The issues identified in the scoping will establish the extent and type of baseline studies needed. Briefs for the studies should in fact be outlined as part of the scoping work. The conceptual project description also has an influence in the type of studies to be done. Physical and social environments must be considered. Points to stress regarding baseline work: use experienced personnel who have worked on projects and who, at the end of the day, can provide good solid technical evidence at a hearing; bear in mind that some baseline studies require extended time periods to get proper results (i.e. seasonal variations); and, most importantly, ensure the project designers are made aware of any significant baseline study findings that could impact on the project (for example, unique flora on an oil production station site!). In this way environmental and design considerations generate an iterative process, benefiting both project and environment.

**Communication/liaison** This is to my mind, one of the most important aspects of project planning. Often, opposition to a project is caused simply because people don't know what is being proposed, fear the worst, and start building up on entrenched *anti* attitude. Certainly, there will always be a certain level of opposition, which will be unaffected by improved communication. But, by and large, most agencies

and most people, once they feel that they understand what is being proposed, and the reasons behind decisions, tend to take a more constructive line. My advice to developers is to strike a careful balance. Don't go public until you have a reasonably clear idea of your plans. Once you have gone public, keep the key people, especially landowners and neighbours, in the picture, and as your plans evolve and change, let them know.

**Documentation** This links up with the previous point. Documentation of the development proposal is required as part of the consent applications, and this documentation is an important component of the overall communication process. Applications under mining, water and land use legislation have to include an environmental evaluation of the implications of the development proposed. These evaluations can be presented in a variety of ways: Environmental Impact Reports (being formally audited by the Parliamentary Commissioner for the Environment), Environmental Impact Assessments, Planning Statements, and others. Whatever title is given to the document, the important thing is to ensure that it:

- (a) Is an honest statement of anticipated effects.
- (b) Is technically robust.
- (c) Is focused on the real issues, and is not a geographical exposition of the existing situation.
- (d) Avoids jargon as far as possible, and is understandable by a reasonably intelligent lay reader.

The document must, above all, be seen as a credible statement of the developer's intentions. Whilst consultants will contribute to the content, the developer must participate in the finalisation of the document, and must set out his/her policy stances with regard to environmental mitigation measures. Obviously the developer wants to present the project in the best light; however, an overly positive assessment with a strong sales pitch will only raise suspicion in the mind of the reader. My experience has been that where a developer has faced up to identifying an adverse impact that cannot be mitigated, in the overall content of the project this has not proved to be a major problem, and the advantages in terms of credibility have far outweighed the disadvantages.

## CONCLUSIONS

To date, development of New Zealand's oil resources has been fairly limited and, compared to say gold mining, has not generated strong controversy or opposition. My own impression is that the industry seems to be seen by the public as being environmentally responsible. The track record of developments over the last decade, especially in Taranaki is something that certainly does not give grounds for concern.

However, increased environmental awareness will inevitably affect the industry. The recent Alaskan oil spill disaster, with its graphic television coverage, will ensure that new developments will continue to be closely scrutinised by consent agencies and the public. The first indication of this has been the TCPL water right application, the hearing of which was reported in detail in the media. More recently, the Waihapa project has been made public, and is currently the subject of formal consent applications.

In a professional capacity I have consulted on numerous projects involving hydrocarbon related developments, including Maui A and B, the ammonia urea plant, the Petralgas

methanol plant, the McKee oilfield, and am currently assisting on the Waihapa project. From this experience, I detect a clear direction for the future and greater, not lesser, third party involvement and more sophisticated, technically detailed environmental evaluation. My advice to the industry is therefore very simple: don't fight the system. Accept that

any new project will need to go through the consent process and budget time and cost accordingly. During the process stick to the key issues and avoid the red herrings and, above all, support the retention of a system that provides a formal forum for hearing all points of view with, at the end of the day, objective judicial decision making.