

# A COMPARISON OF THE CONSENTS PROCESS FOR OFFSHORE PETROLEUM EXPLORATION PRE- AND POST THE RESOURCE MANAGEMENT ACT 1991

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## Abstract

The law governing the exploration for hydrocarbons in New Zealand was fundamentally changed on 4 July 1991. This paper compares the process an operator would need to go through under the old and new legislation, once an exploration licence has been obtained. Particularly emphasised is the extent to which new issues have been opened for public involvement under the new Act. A comparison of the matters that now need to be addressed is set out, together with the likely time requirements to obtain the required consents before any activity can commence. An indication of the likely technical requirements for information is set out, and compared against that which was required previously. Finally, a commentary on the main changes of the new legislation and implications to offshore petroleum exploration is provided.

## Introduction

New legislation governing the way in which resources are used and managed was enacted in July 1991, in the form of the Resource Management Act 1991 and Crown Minerals Act. Both pieces of legislation come into effect in October 1991. The Resource Management Act repeals or amends over 50 pieces of legislation relating to planning and environmental management. The Crown Minerals Act 1991 repeals parts of the Petroleum Act 1937, and the Petroleum Regulations 1978. The Crown Minerals Act is primarily concerned with the allocation of Crown-owned mineral resources and the establishment of mineral programmes which deal with the management of these resources. It should be noted that all petroleum resources are deemed to be Crown-owned minerals. Those parts of the Petroleum Act 1937 and the Petroleum Regulations 1978 concerning safety and the technical aspects of petroleum exploration have remained unchanged.

The introduction of the Resource Management Act 1991 has significant implications for offshore petroleum exploration in New Zealand, particularly inside the 12 mile Territorial Sea. This paper compares the process an operator would need to go through under the old and new legislation, once an exploration licence has been obtained. A comparison of the matters that now require to be addressed is provided, along with the likely time components associated with the various steps in the gaining of consents.

## The Previous Situation

Aside from licensing, petroleum activity beyond New Zealand's coastline was previously regulated by both central

government and regional government agencies. The level of control, statutory requirements, and issues that had to be addressed by an operator varied according to the distance away from the coastline. There is a formal administrative boundary which lies either side of the seaward limit of the 12 mile Territorial Sea boundary. This had (and still has) the effect of altering the statutory responsibilities and issues to be addressed. Those that occur within the 12 mile Territorial Sea are set out below:

- (i) The Department of Conservation  
-Entry into the seabed (under Section 29(M) of the Petroleum Act 1937).
- (ii) The relevant regional council  
-The discharge of waste into natural water (under the Water and Soil Conservation Act 1967).
- (iii) Ministry of Transport (under the Marine Pollution Act 1974)  
-Oil Spill Contingency Planning and notices to mariners.
- (iv) Chief Petroleum Inspector (under the Petroleum Regulations 1978)  
-Drilling programme, well plan, well abandonment and disposal plan, Medevac plan.

Beyond the 12 mile Territorial Sea, the Department of Conservation and the relevant regional council did not have jurisdiction. Aside from these differences, the licensing requirements for offshore exploration were the same for activities inside and outside the Territorial Sea.

The statutory requirements of the four agencies noted above under the previous legislation are set out below. Comment is provided on the approach each agency had

towards the administration and control of offshore exploration.

### **Department of Conservation and Entry to the Seabed**

The responsibility for Crown land not allocated to State Owned Enterprises largely rested with the Department of Conservation. This included the seabed out to the 12 mile Territorial Sea boundary. The Department acted as the administering agent for the Crown State. Previously, under Section 29(M) of the Petroleum Act, entry into the Crown Estate was required from the relevant Minister. In this case, it was the Minister of Conservation. A letter requesting entry to the seabed under the appropriate section of the Petroleum Act was filed with the Minister of Conservation. Appended to that letter was a detailed technical statement which provided information on the nature of the activity proposed, and about the possible effects of that activity.

On receipt of the application, the Department of Conservation carried out a number of procedures. Firstly, a technical review of the material supplied was conducted by officers of the Department, augmented by specialist personnel outside of the Department when required. As part of the review, a public consultation phase was carried out. This included a process of publicly notifying receipt of the document in local and national newspapers, calling public meetings, liaison and discussion by departmental officials with various interest groups, including the Maori community. On completion of this process, the Department invariably provided a draft report to the applicant. This set out the initial findings of the review, and requested points of clarification to be addressed by the applicant. Following receipt of the applicant's response, the Department filed a recommendation to the Minister of Conservation. If the recommendation was for right of entry to be granted, then a set of conditions was usually attached to the Minister's approval.

No formal guidelines were prepared by the Department. Further more, there were no regulations governing how the Department should exercise its jurisdiction over the right of entry into the seabed when considering petroleum activities. Nevertheless, the industry and the Department operated via an informal process which, over the years resulted in consents being granted on a regular basis. No application was ever declined, although there is one outstanding - this concerns the Toka project adjacent to the Sugar Loaf Islands, near New Plymouth City.

### **Regional Councils (previously Regional Water Boards) and Water Rights**

The abstraction of water, and the disposal of waste to natural water, were previously administered under provisions of the Water and Soil Conservation Act, 1967. Formed to provide a national policy in respect of water, the "Water and Soil" Act was administered by territorial local authorities made up of catchment districts. Following the reorganisation of local government, catchment boards were amalgamated into regional councils. For example, the Auckland Regional Council and Taranaki Regional Council now incorporate the previous Auckland Regional Water Board and Taranaki Regional Water Board. The jurisdiction of these regional councils, with respect to water, extended offshore to the 12 mile Territorial Sea boundary.

The Water and Soil Conservation Act 1967 had an explicit statutory procedure that had to be followed. Firstly, an application was made for the discharge of waste into natural water. (No applications were required for the abstraction of salt water, nor for the return of uncontaminated salt water to the marine environment). The application was received by the regional council, and publicised via the local newspapers. A period of 28 days was made available, within which any interested party could file an objection. At the end of that period, the regional council convened a hearing into the matter. Typically, this took place some two to three months after the close of the objection period. The hearing was conducted in accordance with the rules laid down by each regional council.

In essence the hearing was a formal public enquiry, rather than a legal analysis. Even so, regional councils, objectors and applicants almost invariably were represented by legal counsel. The enquiry took place in front of a tribunal which was comprised of between one and three people. On completion of the hearing, the tribunal filed a report recommended either granting or declining the right. A further period of 28 days was then made available, within which any party who was present at the hearing could file notice of appeal. If this occurred, then a second hearing took place of all the matters in front of a Judge from the Planning Tribunal, of the Department of Justice. Again, a report was made, recommending either the grant or decline of the right. A third level of appeal, on legal matters to the High Court, was possible.

Only one Water Right application for offshore oil exploration resulted in an appeal to the Planning Tribunal. This concerned the Toru exploration well. The Planning Tribunal judge struck out this case on the grounds that it was "mischievous". One other exploration well, the "Toka Project", has been appealed to the Planning Tribunal. However, this matter is still in abeyance pending ongoing discussions between the operator, TCPL Resources Ltd., and various interest groups.

No application for a Water Right was declined for the offshore petroleum exploration industry. Those which were granted all contained special conditions. These included restrictions on the type of drilling fluids that could be discharged, onsite or onboard water reticulation and waste segregation, and requirements to report effluent characteristics, flow rates and durations of waste discharge.

### **Ministry of Transport and Oil Spill Contingency Plans**

Under the Petroleum Regulations 1978, the Chief Petroleum Inspector was required to consult with the Ministry of Transport over an Oil Spill Contingency Plan that had to be filed by an operator wishing to carry out petroleum drilling. This was to ensure that the Plan was in accordance with the requirements of the Marine Pollution Act. This Act was administered by the Ministry of Transport. The process recognised the expertise of the Ministry of Transport in Oil Spill Contingency Planning. It is still required under the present legislation.

Plans submitted by applicants were progressively refined on an annual basis. Again, a process evolved for receiving and evaluating plans even though no formal statutory procedure or guidelines were laid down by the Ministry of Transport or Chief Petroleum Inspector.

In practice, a Contingency Plan is submitted to the Nautical Advisory Officer of the Maritime Transport Section of the Ministry of Transport. The application is simply a letter, with attached technical report, advising the Ministry of Transport that approval of the plan is required. The Nautical Advisory Officer reviews the plan and provides recommendations concerning its appropriateness. If approval is granted, then a letter is exchanged between the Maritime Transport Division of the Ministry of Transport, and the applicant. Usually, approval is granted subject to a number of conditions.

To date, only one Oil Spill Contingency Plan has been declined by the Ministry of Transport. The Ministry simply required that this plan be revised, as much of the material contained in it was out of date.

Although the formal requirements for approval of the Oil Spill Contingency Plan lie with the Ministry of Transport, both the Department of Conservation, and the regional councils took an active role in this matter. In the past this has given rise to conflict between the three agencies. Firstly, the Department of Conservation focused on the potential trajectory and dispersion of potential oil plumes arising from activities offshore New Zealand. Further, they explicitly set out conditions in the consents granted to offshore oil exploration companies, and a requirement that they be involved in the event of any hydrocarbon discharge occurring into the sea. The conditions typically specified the role the Department should have in this event, and the responsibilities and liabilities of the operators.

The regional councils, in the process of reviewing applications to discharge waste into the environment, placed considerable importance on contingency and response plans. Water Right hearings and evidence presented at those hearings in part focused on this particular aspect of an applicant's proposal.

The procedure was confusing. Multiple agencies considered the oil spill issue, with the result that an applicant contemplating any petroleum exploration or development offshore New Zealand was uncertain as to the appropriate requirements and who was the relevant control agency. Furthermore, different requirements and standards were being suggested by the agencies. The result was that the final plan had the potential to resemble more of an environmental impact assessment, than a practical working document that could be used in the event of an accident.

### **Technical Issues that were Considered**

The preceding sections of this paper set out the procedures and statutory requirements that existed under the previous legislation. The result was that various statutes required different applications in order to gain all the consents for exploration activity to proceed. Technical documentation was required to support the various statutory applications.

The nett effect is that there has been a variable level of public involvement in consent decisions. The informal process established by the Department of Conservation and Ministry of Transport, and more formal processes under particular statutes like the Water and Soil Conservation Act 1967, provided a forum in which public involvement could be achieved.

Given this background, technical support documents evolved over the years to a point where they could canvas issues beyond the immediate technical aspects of a project.

Typically, a Department of Conservation technical statement, and Water Rights technical support statement were combined in one document.

The types of issues that were considered included details of the proposed activity (for example, a drilling programme), the local oceanography, biological and cultural resources of the area, discharges into the environment (for example, waste waters from a drilling unit), an assessment of the potential environmental effects, discussion of the processes to mitigate impacts and contingency plans. The focus of much of the document was to explain how the actions in the course of a particular activity could impinge on the social, biological, and physical environment, and how these effects could be mitigated.

The issues and matters addressed in an Oil Spill Contingency Plan included an explanation of the preventative measures that could be undertaken, the lines of communication, notification and reporting procedures, equipment resources that were available on site and in various locations in the area, and access and environmental considerations that needed to be taken into account. This included an analysis of potential trajectory and dispersion of hydrocarbons away from a point source discharge. Appended were various schedules setting out telephone numbers, equipment lists and so on.

Both types of documents were usually reviewed by all of the consent granting agencies that had jurisdiction inside the 12 mile Territorial limit. Only the Oil Spill Contingency Plan was prepared in the case of exploration taking place outside the 12 mile Territorial limit. In this case, that plan was reviewed by the Chief Petroleum Inspector and the Ministry of Transport.

### **Performance under the Previous System**

Under the previous statutory system, the time taken to obtain each consent varied according to the location of the activities. Outside the 12 mile Territorial sea, the time required to prepare documents for either an Oil Spill Contingency Plan, or revision of this type of document was between one and nine weeks. Typically the Ministry of Transport responded within a four week period from the time of filing to the time of granting a consent.

Inside the 12 mile limit, the variation in time taken to prepare documents was between four and eight weeks. However, the response times between the consent granting agencies was very long and highly variable. Typically, Water Rights took between 13 and 45 weeks to grant. Similarly, the Department of Conservation took between 10 and 34 weeks to grant consents. During the 1980s only in one case did the Ministry of Transport take longer than a four week period to provide consents for an Oil Spill Contingency Plan.

The closer an operation was to shore, the greater the length of time required, and the concomitant difficulty in obtaining consents. The extreme example of this "proximity to shore" effect was an exploration programme within 3 kilometres - the Toka Exploration Well. Two sets of environmental documents were required to be prepared, resulting in a cumulative preparation time of 39 weeks. Although the Water Right was granted by the Council within 27 weeks, it was appealed by several objector groups. The Department of Conservation is still considering the application to drill some 2.5 years after the time of filing to

grant a consent; albeit the delay was partially requested by the company as it gathered more information to assist the Department, and refine the exact spud location. The Ministry of Transport approved the Oil Spill Contingency Plan within 25 weeks. This included an opportunity for detailed audit and consultation with experts outside New Zealand.

## The New Situation

As under the previous legislation, permitting requirements for the drilling of offshore wells are dependent in the first instance on the geographical location of the well. All well locations within the 12 mile Territorial Sea of New Zealand are now subject to the requirements of the Resource Management Act 1991, and the Crown Minerals Act 1991. Another consideration is the date on which the licence block was issued. All blocks issued prior to 1 October 1991 are subject to the current Petroleum Act 1937, whereas those issued after this date are subject to the Crown Minerals Act 1991. Any activities within the Territorial Sea that take place after the 1 October 1991 are subject to the Resource Management Act 1991, whether an existing licence is in force or not.

The Crown Minerals Act 1991 largely continues the statutory machinery included in the former Petroleum Act. There are, however, several major differences under the new legislation, namely:

- (i) Resource consents pursuant to the Resource Management Act 1991 are required (on land and within the 12 mile Territorial Sea);
- (ii) Petroleum exploration companies have a general right of access providing it is by arrangement with the landowner or by arbitration. The exception is Crown Owned land administered by the Department of Conservation including the coast and seabed. Here the Minister has an absolute power of veto. Unallocated Crown land, such as the sea bed, is administered by the Minister of Conservation.
- (iii) The Minister of Energy is required to introduce mineral programmes.

As previously stated, those parts of the Petroleum Act 1937 and the Petroleum Regulations 1978 relating to safety and the technical aspects of an exploration drilling programme have remained unchanged. The process with regard to these components of permitting, as well as those relating to Oil Spill Contingency Planning, are the same as those that have operated previously. The major differences in procedure arise from the Resource Management Act 1991. This is discussed further below.

### Permitting Requirements Outside the Territorial Sea

Outside the Territorial Sea, once an operator has been granted an exploration licence the procedure for gaining approval to carry out activities is no different from those which have operated to date. Consents are required from the Ministry of Commerce (Energy and Resources Division), formerly the Ministry of Energy, and the Ministry of Transport to carry out exploration drilling outside the 12 mile Territorial Sea. All of the consents that are required at present come under the auspices of the Petroleum Regulations 1978, and those others that are summarised below.

### Ministry of Commerce and Health and Safety

Under Regulation 40 of the Petroleum Regulations 1978, a consent to drill wells is required from the Ministry of

Commerce Chief Petroleum Inspector. This application must be submitted in triplicate to the Chief Inspector not less than 30 days before the anticipated date of commencement of well drilling.

Other regulations that are also relevant, and which need to be satisfied as part of the consent to drill package are:

- (i) Regulation 36; Approval of service permits for well-drilling operator.
- (ii) Regulations 71 to 76; Approval of well completion. Full details of the method and equipment to be used are required.
- (iii) Regulation 79; Approval of well identifications.

Collectively these regulations relate to matters of safety and health. They are no different from those which have applied in the past. In this regard nothing has changed from that which has operated to date.

### Ministry of Transport and Oil Spill Contingency Plans

Under the requirements of the Marine Pollution Act 1974, an Oil Spill Contingency Plan for the drilling operation must be prepared by the applicant, and approved by the Maritime Transport Division of the Ministry of Transport. As this Act has not yet been amended, there is no difference in the type and form of information required to date, from that which has been required in the past. However, it should be noted this Act is being reviewed. The likelihood is that considerable change to the legislation, and procedure for obtaining approval of Oil Spill Contingency Plans is likely to occur by 1993.

The Oil Spill Contingency Plan should, as a courtesy, rather than a regulatory requirement, be filed with the appropriate Council and the local office of the Department of Conservation.

In addition to the contingency plan, and the requirement for the reporting of any oil spills, there is a navigational reporting requirement. This particular issue can be dealt with by the operator contacting the Maritime Transport Division, of the Ministry of Transport.

### Documentation Package and Technical Issues to Consider

The documentation and technical issues to consider are the same as those defined in Section 2.4 of this paper. Documentation will need to contain the following:

- (i) Technical information concerning the drilling programme, Medevac plan and so on as required by the Ministry of Commerce, together with navigation information required by the Ministry of Transport.
- (ii) An Oil Spill Contingency Plan.
- (iii) Information on the environmental implications of the proposed exploration activity.

The usual practise is to provide the Oil Spill Contingency Plan and environmental information as a package that describes the operations that will take place during the drilling programme, and the potential effects of the operation on the environment. This information package, in the form of a report, is submitted along with the relevant applications to the Ministry of Commerce and the Ministry of Transport. The report is also given to the local regional council and office of the Department of Conservation for their information, even though these agencies have no direct statutory requirement to receive this material.

## **Expected Performance**

As exploration activities lie outside the Territorial Sea, and the consents required to be obtained have no requirement for public involvement, then the time required to obtain the consents can be forecast with reasonable accuracy.

It is possible to gain approval of the oil spill contingency plan within a one month period. Preparation of the documentation package generally takes four to six weeks. Notification requirements that must be adhered to are: gaining the relevant approvals for the well plan and other related matters from the Chief Petroleum Inspector at least 30 days before drilling, and informing the Ministry of Transport, Maritime Transport Division of the exact navigational details 21 days prior to the drilling unit arriving onsite.

## **Permitting a Well Inside the Territorial Sea**

All of the consents required beyond the 12 mile limit are required inside the 12 mile Territorial Sea. In addition, a coastal permit under the Resource Management Act 1991 is required also. It is this permit which alters the type of information required to be filed with consent agencies and determines how long it will take to get all the approvals before exploration activity can commence. The content of the application, and the information requirements are discussed in more detail below.

Until the Minister of Conservation releases a National Coastal Policy statement (due by July 1992), it is not known how petroleum exploration (in all its various forms) will be viewed. This is an important matter for the industry to consider, as there are various options ranging from exploration being a "permitted use" (and so requiring little in the way of consent applications) through to it being a "restricted coastal activity" (Clause 68 of the Resource Management Act 1991). Given the way in which exploration drilling has been administered in the past, with the Minister of Conservation retaining the ultimate right to accept or decline an application to drill, then it is reasonable to assume that this is likely to continue in the future. Therefore, petroleum exploration (at least drilling) is likely to be classified as a restricted coastal activity.

## **Regional Councils and the Resource Management Act 1991**

A restricted coastal activity requires a coastal permit to be obtained by an applicant via a delegated authority from the Minister of Conservation to the appropriate regional council. The process of obtaining this consent is a public one, meaning a formal hearing on the matter is required if objections to that activity are received by regional council.

The process of considering a consent application requires the consent authority to have regard to a wide range of matters. These are set out in Section 89 of the Resource Management Act. In brief, the requirement is for the consent authority to consider the effects that issuing a resource consent would have on any plan, in this case the Regional Coastal Plan. Also included are the effects of any discharge of water to the environment. This will require details of the nature of the discharge and the sensitivity of the proposed receiving environment, to any effects which may arise from exercising any resource consent for the disposal of water. It is important to note there is an express requirement to consider alternative methods of discharge, including discharge to any other receiving environment. Expressly set

out is a statement that a consent authority may grant a resource consent for a non-complying activity only if, having considered (various) matters, it is satisfied that any effect on the environment will be minor. This will require the applicant to demonstrate that alternatives have been considered for the discharge of water, and that the effect of any discharge on the environment will be minor. This is an important distinction from that which has applied to the discharge of water under the previous Water and Soil Conservation Act 1967.

Another matter relates to where significant adverse effects on the environment may occur. In this instance the consent authority may also require an evaluation of alternative options or locations. As well, the authority may commission a report on the application, and request any additional supporting information. In this way the Act introduces the concept of viable alternatives. Under the previous statutes, this has not been a central feature of environmental control. However, under the Resource Management Act 1991, this is now a subject which warrants careful review as justification of the preferred alternative will need to be made, and why other alternatives were not appropriate. In the case of petroleum exploration, the issue of alternatives is not so fundamental as for other types of projects. The selected location is based on the information regarding the geology and the nature of the structure under consideration. The consideration of alternatives would in effect be restricted to the micro-scale, as there is minimal flexibility to change the spatial location of a particular well site.

## **Information to be Provided With the Application**

In essence the documentation packages that are required for consent applications inside the Territorial Sea are similar in content for applications outside of the Territorial Sea. However, the content of this material has to be more comprehensive, and will be subject to public, interest group and additional regulatory agency scrutiny. It is likely that any exploration drilling will be subject to at least one hearing, therefore briefs of evidence must be prepared, and legal counsel would be required. The Oil Spill Contingency Plan must also be approved by the Department of Conservation and the Regional Council, as well as by the Ministry of Transport, Marine Division.

The Resource Management Act 1991 explicitly sets out the type of information that has to be provided when applying for resource consents. In brief, any application will need to specify the following:

- (i) A description of the activity and where that will take place.
- (ii) The actual or potential effects that each activity will have on the surrounding environment, and the ways in which any impacts have been minimised.
- (iii) Cross-reference to the National Coastal Policy Statement and Regional Coastal Plan and the purposes and principles of the Act to show how all these matters have been taken into account, and how they have been addressed.
- (iv) A schedule of all resource consents that may be required, and a schedule setting out when they have been applied for.

All these matters need to be presented in a particular format. This is set out in detail in the Act, in the first section of the Fourth Schedule. In essence, this schedule sets out how information on the effects on the environment should be assessed. Also, it sets out those matters that need to be considered when preparing such a document (section 2 of the Fourth Schedule).

Lastly, given the prominence Maori cultural matters have in the purposes and principles section of the Act, there is a need to ensure these matters are specifically addressed. This is not to say this perspective should be prevalent, and be represented for each issue. Ideally, this should be commissioned from appropriate local Maori representatives.

### Process and Expected Performance

Approvals from the Chief Petroleum Inspector covering matters set out in the Petroleum Regulations will take the

same time frame as before. Similarly, the approval of an Oil Spill Contingency Plan is expected to be no different from previously. It is where a Coastal Permit is required that the time frame will change. The procedures and timetable for obtaining a Coastal Permit under the Resource Management Act are summarised in the Figure 1.

The process of application, consideration, decision-making and appeal under the Resource Management Act 1991 is similar to that which has occurred under the previous Town & Country Planning Act and Water & Soil

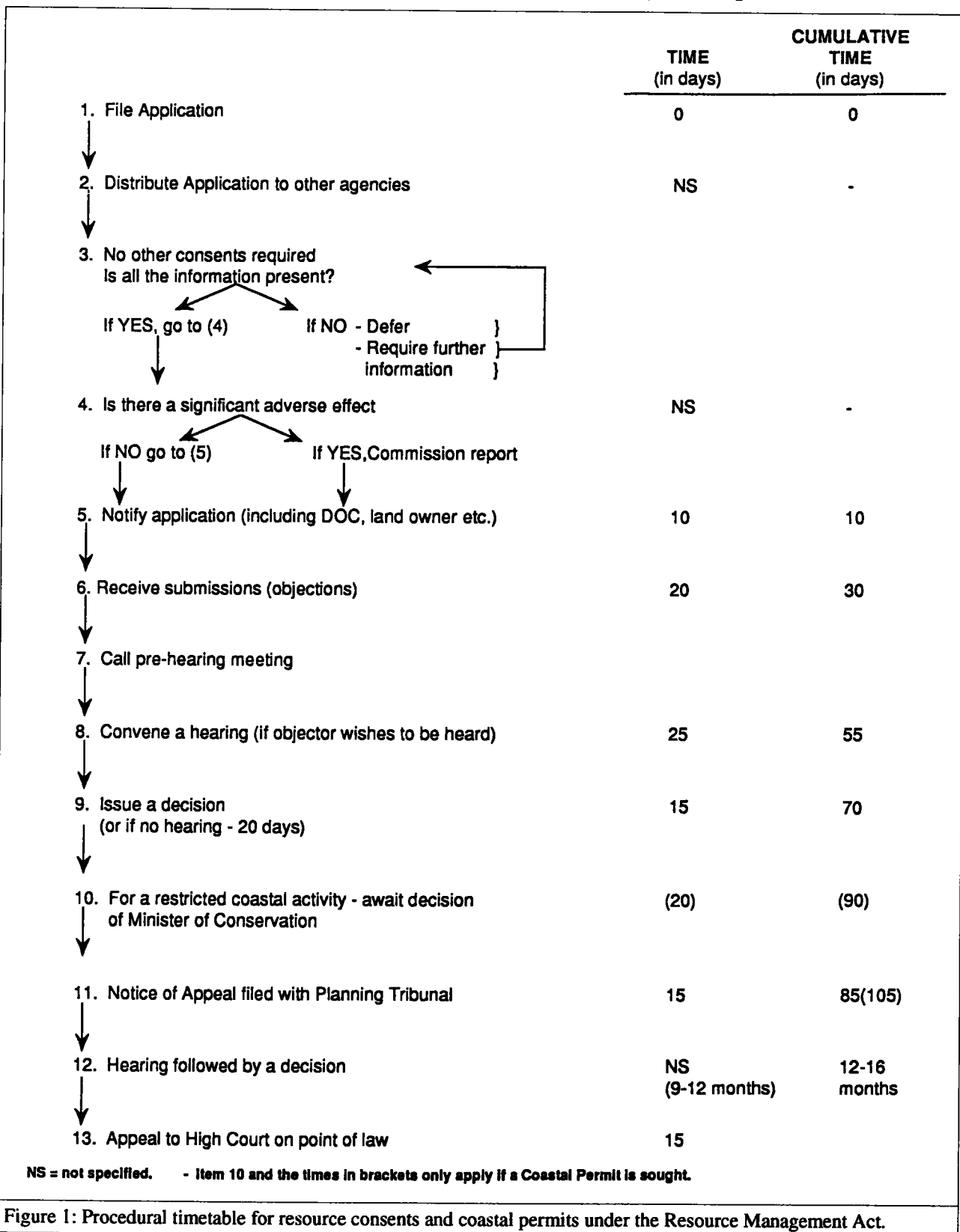


Figure 1: Procedural timetable for resource consents and coastal permits under the Resource Management Act.

Conservation Act. So, in general procedural terms there is not a lot of difference. However, a number of key differences do exist. The application is made to the regional council, who must forward a copy of it without delay to the Minister of Conservation. A hearing committee hears the application in a similar manner to that which occurred under the previous Water and Soil Conservation Act 1967.

The recommendation of the hearing committee must be in writing and state the reasons for the recommendation. A copy of its recommendation is served on the Minister of Conservation, the applicant, and every person who made a submission within 15 working days after the conclusion of the hearing; or where no hearing is held, not later than 15 working days after the closing date for submissions or after all submissions were withdrawn. The Minister of Conservation then has a further 20 days to make a decision concerning the matter.

Appeal provisions apply to this decision. Essentially the appeal results in a hearing de novo. This is in front of a judge from the Planning Tribunal, with similar provisions and processes that applied previously (as described earlier). However, for Coastal Permits, it is only an "enquiry" with the Tribunal restricted to solely making its finding and recommendations to the Minister of Conservation. The Minister has the final decision making role.

Two matters need to be kept to the fore:

(i) Although strict timetables are set out in the Act, there is provision for the consent authority to call for further information. This provides an ideal basis whereby an extension of time can occur. Such an extension can be issued by the consent authority without any time limits being specified.

(ii) The importance of pre-hearing meetings is stressed. Introduction of this concept to the Act, during the early stages of its formulation, arose from the view that issues can be resolved between various parties via a process of mediation.

The overall elapse time to the point where the period of Notice of Appeal expires with the Planning Tribunal is 70 days. This is for those consents which do not require a decision from the Minister of Conservation. A further 20 days will elapse after that period for applications requiring a Coastal Resource Permit (all offshore petroleum exploration activities within the Territorial Sea). In essence, a period of approximately 90 days will be required to process an application. This assumes that all information is present, and although there may be significant adverse effects, these can be evaluated by the consent authority while the administrative matters continue to proceed along the required timetables.

## The Overall Change

What does this mean for the exploration industry in New Zealand? Clearly there are a number of key differences between the previous regime and that which will apply in the future. In brief these are:

(i) There has been a split between the licensing functions and regulatory function of Government. This has been achieved by separating the licensing functions into the Crown Minerals Act 1991, and retaining the safety and health aspects of petroleum exploration and development in the old Petroleum Act 1937, and associated Petroleum Regulations 1978. In essence this means that the information

that needed to be provided on the nature of the exploration activity to the Chief Petroleum Inspector has not changed. (ii) Access to land for petroleum related activities, is by an access arrangement with the landowner or by arbitration. In the case of petroleum exploration, arbitration is compulsory if agreement cannot be reached with the landowner. The one exception is special classes of land controlled by the Minister of Conservation. The seabed, offshore New Zealand within the 12 mile Territorial Sea is administered by the Minister of lands, not the Minister of Conservation as was the case in the past.

(iii) The main change concerns activities within the Territorial Sea. Exploration conducted outside the 12 mile Territorial Sea is subject to the same regulations and procedures as before. They are not onerous, and involve a planning horizon of only eight to twelve weeks from the decision to explore to the granting of consents. Exploration inside the 12 mile Territorial Sea is likely to require the same permits as well as a Coastal Permit under the Resource Management Act 1991. This process may take up to six to nine months. In our opinion a planning horizon of six to nine months is required to provide a sufficient buffer of time to gain consents for activities within this area. The public participation process, at several stages in the procedure, is the main cause for such a long time frame. Also, issues that must be considered under this legislation are now much wider than those which were under the purview of the Water and Soil Conservation Act. Collectively, this means the transaction costs of exploration within the Territorial Sea will be much higher.

(iv) Within the Territorial Sea the Minister of Conservation has a key role in the decision making process. The Minister has the ultimate right to decide whether applications for Coastal Permits relating to restricted activities shall proceed or not. Ultimately this Minister will decide whether petroleum activity in all its various forms, will take place.

At first glance minimal changes appear to have been made where drilling takes place outside the Territorial Sea. Inside the Territorial Sea it may appear to have created a more time consuming and difficult process to gain approval for exploration. However, this need not be the case. Certainly, prior to this legislation, the opportunity for third party involvement in exploration activities was limited. The industry had operated under a statute which specifically encouraged the exploration and development of the nation's petroleum resources. This was administered by a central government agency under regulations that generally only required an appointed official to review the technical aspects of an exploration programme.

For individual operators there are a number of steps that can be taken to ensure unplanned delays do not arise.

When considering bidding for a particular licence block any potential environmental hurdle should be identified. This should include an evaluation of the potential length of time needed to obtain resource consents for different areas of the block. These times and associated costs, should be factored into the work programme as part of the bid.

Once an exploration licence has been granted, it will be crucial to plan the consents process at an early stage. At least an 18 month period should be allocated to obtain resource consents where exploration programmes cover the Territorial Sea, or any land administered as part of the Crown Estate or by the Department of Conservation.

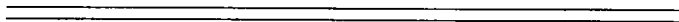
Consent applications should be carefully planned in order to ensure that maximum operating flexibility is attained. As much of the licence block as possible should be covered by any resource consent applications, as well as a range of exploration activities and different operating regimes.

The key to success will be early planning. Scheduled at the commencement of a licence period, consent applications should not prove to be a constraint on exploration programmes. Left too late, it is likely that only part of a work programme could be completed within a licence period.

For the industry as a whole the challenge will be to establish its own guidelines and performance standards. These should set out appropriate exploration practices that are internationally acceptable, and that give clear, practical

guidance to operators and regulators. By taking this approach, and ensuring that it is adopted by each regional government area, a consistent approach to exploration can be achieved throughout the country. The alternative is a fragmented system that could differ from area to area, with resulting confusion as different standards and requirements become established throughout New Zealand.

In our opinion, it is incumbent on regulatory agencies not to be unduly restrictive or pedantic, and to recognise that in a highly specialised industry such as petroleum exploration, the expertise lies with the industry itself. The track record in New Zealand has been exemplary. The industry should build on this record and take every opportunity to advise the new regulatory officials of the correct way in which exploration can be conducted.



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