

# EXPERIENCE OF THE PETROLEUM INDUSTRY UNDER THE RESOURCE MANAGEMENT ACT 1991

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## Abstract

The Resource Management Act provides a comprehensive framework for the assessment of the environmental externalities of oil and gas exploration and development in New Zealand. In the two years that the Resource Management Act has been operative, various trends have emerged.

One of the major advantages of the legislation is the integrated nature of decision making which practically requires all relevant resource consents to be heard and considered together. An additional potential advantage is the "notional" time limits within which decisions of local authorities must be processed.

However, the experience is that there is still scope for significant delay. The wide ranging information requirements of Part II and section 104 of the Act require more comprehensive applications and evidence at any hearings. This involves additional costs, especially during the initial period of "settling in" when the true parameters of the Act's requirements are unclear.

Until there are definitive Superior Court decisions interpreting the Act, there will be no certainty as to what the actual requirements of the legislation are. In the meantime, it appears that many of the features of the Act are successful. However, as there are still a number of aberrant decisions being made under the Act, the overall success or otherwise of the new legislation will need to be closely monitored.

## Introduction

In the period leading up to the passage of the Resource Management Act 1991 ("RMA"), and since its coming into force on 1 October 1991, many commentators, including the author, have written articles on the Act and speculated as to its implications for resource users. While there have been no Court of Appeal decisions providing a substantive interpretation of the purpose and principles of the RMA, there are a number of trends and issues emerging from various cases. In this paper the experience of two oil explorers — one onshore, the other offshore — with the consents process is discussed. The writer is the legal adviser in the cases discussed.

## New Zealand Oil and Gas Ltd: Ngatoro Field, Land Use Consents

### Background

New Zealand Oil and Gas Ltd is a New Zealand incorporated company. The company was formed in 1981 and has been actively involved in exploration in New Zealand, Papua New Guinea, Australia, Canada and the USA.

Petroleum Prospecting Licence No. 38706 (PPL 38706) was granted by the Minister of Energy to a Joint Venture consortium (JV) in 1988. The licence area, which includes the Ngatoro Oil field, is shown in figure 1. New Zealand Oil and Gas Group is represented by Petroleum Resources Ltd, who are operators for the PPL 38706 joint venture. All New Zealand Oil and Gas Group companies are staffed by New Zealand Oil and Gas Services Ltd (NZOG) personnel.

## The proposal

Following extensive analysis and acquisition of information, the JV identified formations of Miocene age as the main target area. These are situated at a depth of less than 2500 m

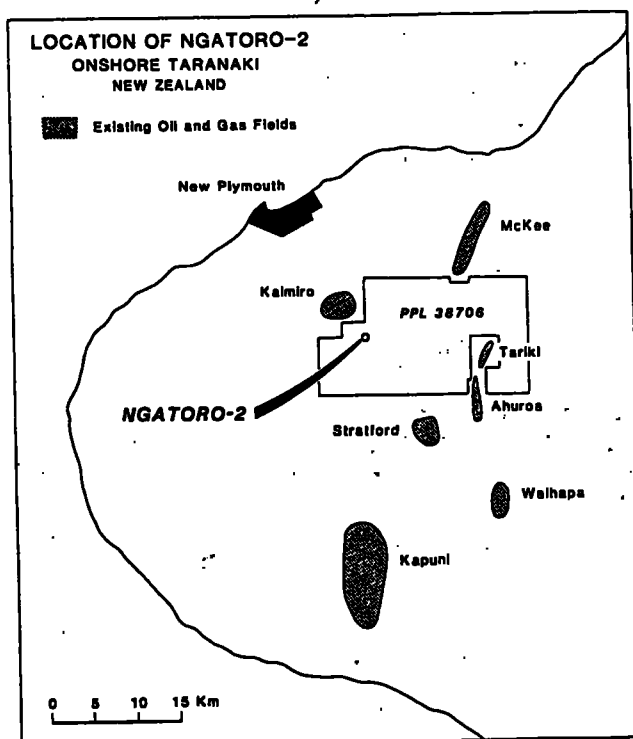


Fig. 1. Location of Ngatoro-2.

below ground level and comprise layers of sandstone interbedded with shales and mudstones. Any oil present is contained in the sandstones whereas shales and mudstones provide the seals which keep the oil in the reservoir.

The original work programme approved by the Ministry of Energy consisted of a commitment to, at least, drill three wells, acquire 100 km of seismic data, and reprocess 200 km of seismic data. The result of this effort and expenditure has been the discovery of the Ngatoro Oilfield.

#### **Consultation**

As these were the first wells NZOG sought to drill under the Resource Management Act, the company wished to explore the various options for land use permitting. After consultation with the New Plymouth District Council, it was decided to publicly notify the land use consent applications in accordance with section 93 of the Resource Management Act and to also use the method of obtaining consents described in section 94. Accordingly, NZOG sought to obtain the approval of landowners or land occupiers identified as potentially being adversely affected. For the purposes of defining this criteria, the District Council provided a list of people who resided within 1 km of each site. The distance was the same as that selected by the neighbouring Stratford District Council for the permitting of the Cardiff-1 well drilled by Shell Todd Oil Services.

Seeking landowner approval accorded with NZOG's proposal to meet on a one-to-one basis with members of the local community and discuss the work programme the company proposed and any concerns they, as local residents, may have. Of the forty seven owner/occupiers approached in February-March 1992, 44 signed the consent form.

#### **Applications**

On 3 February 1992, NZOG applied, on behalf of the JV, to the New Plymouth District Council for resource consents in respect of the Ngatoro-1, -A, -B and -C wells to undertake "site preparations, drilling and production testing". The applications were notified. No submissions or objections were lodged in respect of the applications for Ngatoro-1 and -C. Several submissions in objection, one "neutral" submission and one submission in support were lodged in respect of the applications for Ngatoro-A and -B.

#### **Hearing and consents**

The New Plymouth District Council heard all the applications and submissions on 1 May 1992. NZOG were represented by counsel and evidence was presented by company personnel and independent experts.

#### **Appeal**

On 15 May 1992 the Council notified its decision granting consent to all the applications. On 5 June 1992 the Council's decisions in respect of Ngatoro-A and -C were appealed by Mr and Mrs Vlooswyk. The Notice of Appeal did not seek refusal of the consents, rather amendments to three of the Council's conditions as follows:

- With respect to condition 1 of each consent, for the proposed noise control to apply to all aspects of the land use proposed including well drilling.
- With respect to condition 3 of each consent, for flaring to be carried out only at times and during weather conditions when neighbouring residences will not be affected by smoke and fumes.
- With respect to condition 9 of each consent, for heavy truck traffic to be prohibited access to well sites between

8am to 9am and 3pm to 4pm during school days and from 10pm to 7am on Monday to Saturdays inclusive and from Saturday noon until the following Monday at 7am and on any public holiday except in the case of emergency.

Because the Planning Tribunal's list of hearings for the week commencing 22 June 1993 were vacated because of adjournments and settlements etc, the Vlooswyk appeal was scheduled for hearing on 23 June 1992. This very unusual occurrence would probably be a record in Planning Tribunal history (2.5 weeks between lodging appeal and hearing).

The project team prepared the following documentation for the appeal:

- legal research and submissions
- statement of evidence from a company manager
- statement of evidence from a company engineer
- statement of evidence from a geophysicist
- statement of evidence from an expert acoustic engineer

In relation to the merits of the appeal, while noise was apparently a valid issue, the grounds of appeal dealing with flaring and the use of public roads were clearly not justiciable as the respondent, the New Plymouth District Council, had no jurisdiction to make decisions in respect of these issues. Possibly in recognition of the lack of merit of the appeal, the case was settled "on the courtroom steps". However, the settlement of the appeal was not reached until nearly the first full day of the scheduled hearing date was consumed by discussions between the parties and with the Planning Tribunal. Thus, the resource consents were confirmed.

#### **Present position**

To date the JV has drilled five wells in PPL 38706, viz, Durham-1 (which was located in a different "oilfield" within the licence) Ngatoro-2, Ngatoro-3, Ngatoro-4 and Ngatoro-5. The JV also re-entered a sixth, pre-drilled, well, viz Ngatoro-1 which was originally drilled by Petrocorp Ltd in 1983. Over 210 km of new seismic data has been acquired and 700 km of seismic data has been re-processed.

## **New Zealand Oil and Gas Ltd: Ngatoro Field, Air Discharge Permits**

#### **Background**

On 27 May 1992 the Taranaki Regional Council granted air discharge permits to NZOG for a period of one year (expiring 1 June 1993) for the Ngatoro wells discussed above. Because of the need to flare gas and combust emulsion, NZOG required renewals of these consents.

#### **Applications**

On 16 March 1993 applications for air discharge permits were made for the Ngatoro-1, -2, -3, -4 and -5 wells. The applications were notified. Submissions in opposition were made by the Royal Forest and Bird Society and Mr and Mrs Vlooswyk.

#### **Consultation and pre-hearing meeting**

On 22 April 1993, the Taranaki Regional Council advised that it intended "... to hold a pre-hearing meeting in the near future, to facilitate discussion between all parties: If submissions can be resolved through the pre-hearing process it would be expected that the applications would be put to the Consents and Regulatory Committee of the Council on 16 June 1993."

During April 1993, NZOG continued their consultation with both submitters to discuss the concerns raised by them.

On 3 May 1993, the Council advised NZOG that if the submissions were withdrawn, the consents could be granted on 16 June 1993. If, on the other hand, a hearing was required, it would be held on 27–28 May 1993 and the consents would be available by 21 June 1993.

The pre-hearing meeting was held on 6 May 1993. The Forest and Bird Society orally advised that they would withdraw their objection while the Vlooswyks indicated concerns with, among other things, emulsion burning.

#### **“Negotiations”**

NZOG discussed draft conditions with the Council between 7–11 May 1993. On 12 May 1993 the Council advised:

- The hearing must be within 25 working days of submissions closing.
- It was extending the time period for processing the applications to allow a better understanding of the submitters concerns.
- The hearing date was set as Friday, 28 May 1993.
- Consents would be issued on 16 June 1993 if there was no hearing.

Between 17–20 May 1993, NZOG and the Council again discussed draft conditions. On 21 May 1993 Forest and Bird Society, in effect, withdrew its submission in opposition. NZOG met with the Council on 25 May 1993 to further discuss draft conditions. Despite discussions and previous correspondence, the Council postponed the hearing date and formally requested further information under the Resource Management Act. No alternative hearing dates were given.

On 28 May 1993 NZOG provided the relevant information, as requested, to the Council. On 1 June 1993 a second set of further information was sought by the Council to clarify what had already been provided by NZOG. No alternative hearing date was provided by the Council. On 3 June 1993 NZOG supplied the additional details required by the Council. On 10 June 1993 the Council provided information to the Vlooswyks and their lawyer on the progress of discussions between NZOG and the Council. The Vlooswyks and their lawyer were given five working days to consider this information. A decision would then be made on whether a hearing would be required. Ten working days' notice would then be given of a hearing date. On 21 June 1993 NZOG and the Council continued their discussions on draft conditions. On 25 June 1993 the Vlooswyks' lawyer advised the Council that they would withdraw their objection subject to changes being made to the proposed conditions. On 29 June 1993 NZOG advised the Council that the draft conditions were acceptable. On 1 July 1993 the Vlooswyks withdrew their objection.

Notwithstanding the withdrawal of both submissions, in early July 1993 the Council referred the new set of draft conditions back to the Forest and Bird Society for their re-consideration. Between 9–15 July 1993 there were intensive discussions between NZOG and the Council on the duration of consent for gas flaring, the timing of review conditions, and the “best practicable option”.

On 21 July 1993 the Council advised NZOG that:

- the Council was on track to grant the consents by 28 July 1993
- the lawyer for the Vlooswyks and Forest and Bird Society needed to be consulted

NZOG complained to the Council about need to consult with the Vlooswyks and Forest and Bird given their previous

advice concerning withdrawal of their submission. Given a lack of action, on 28 July 1993 NZOG requested a hearing. The Council advised that it would take action to resolve matters.

#### **Decision**

The parties eventually agreed to the proposed conditions and the air discharge permits were granted for a period of 5 years, with annual reviews, in August 1993.

## **Amoco New Zealand Exploration Company Ltd: Titihaoa Project**

### **Background**

Amoco New Zealand Exploration Company (“Amoco New Zealand”) is a wholly owned subsidiary of the Amoco Production Company based in Houston, Texas. Amoco Production Company is a wholly owned subsidiary of Amoco Corporation along with Amoco Oil, the refining and development company, and Amoco Chemicals Company. Amoco Production currently has production operations in 10 overseas locations.

Amoco New Zealand currently holds interests in two adjacent offshore petroleum licences: PPL 38318 and PPL 38323 (figure 2)

### **The proposal**

Amoco New Zealand wish to carry out exploration drilling in the area they have referred as the Titihaoa Prospect. The prospect extends into part of both licences. The geology of the prospect area is derived from the accumulation of sand and silt in the New Zealand geosyncline, before and during the break-up of Gondwana 100 million years ago. Tectonic movement and periodic changes in sea level since then have resulted in the buckling of the plate margin and the accumulation of further marine and terrestrial sediments offshore. The proposed drilling area lies on the Turnagain Terrace and the lower slopes of the South Madden Bank one of a series of anticlinal ridges lying parallel to the continent shelf and coastline.

The primary objective of the prospecting programme in the Titihaoa Prospect is the Akitio Sandstone (of Oligocene age), a member of the Weber Formation which comprises sandstones and mudstones laid down between 37 and 25 million years ago, during a period when much of New Zealand was under water. The hydrocarbon source rock is the Paleocene Waipawa Formation micaceous mudstone. To reach this source, the expected depth of any exploration hole in the Titihaoa Prospect area will be in the order of 3300–3500 m.

### **Applications**

On 14 October 1993 Amoco New Zealand made coastal permit applications for the following activities:

- discharge of drill cutting and drilling mud additives
- air discharge from flaring
- placing structures on and disturbing the seabed

The relevant regional councils are the Wellington Regional Council and the Wanganui–Manawatu Regional Council. The boundary between these two councils extends into the territorial sea from just south of the Owahanga River Mouth. Just under half of the prospect area is within the jurisdiction of the Wanganui–Manawatu Council. The first well, Titihaoa-1 is within the Wellington Regional Council area.

Sixteen submissions were made in respect of the applications. Submissions were made by several Maori groups and the Minister of Conservation.

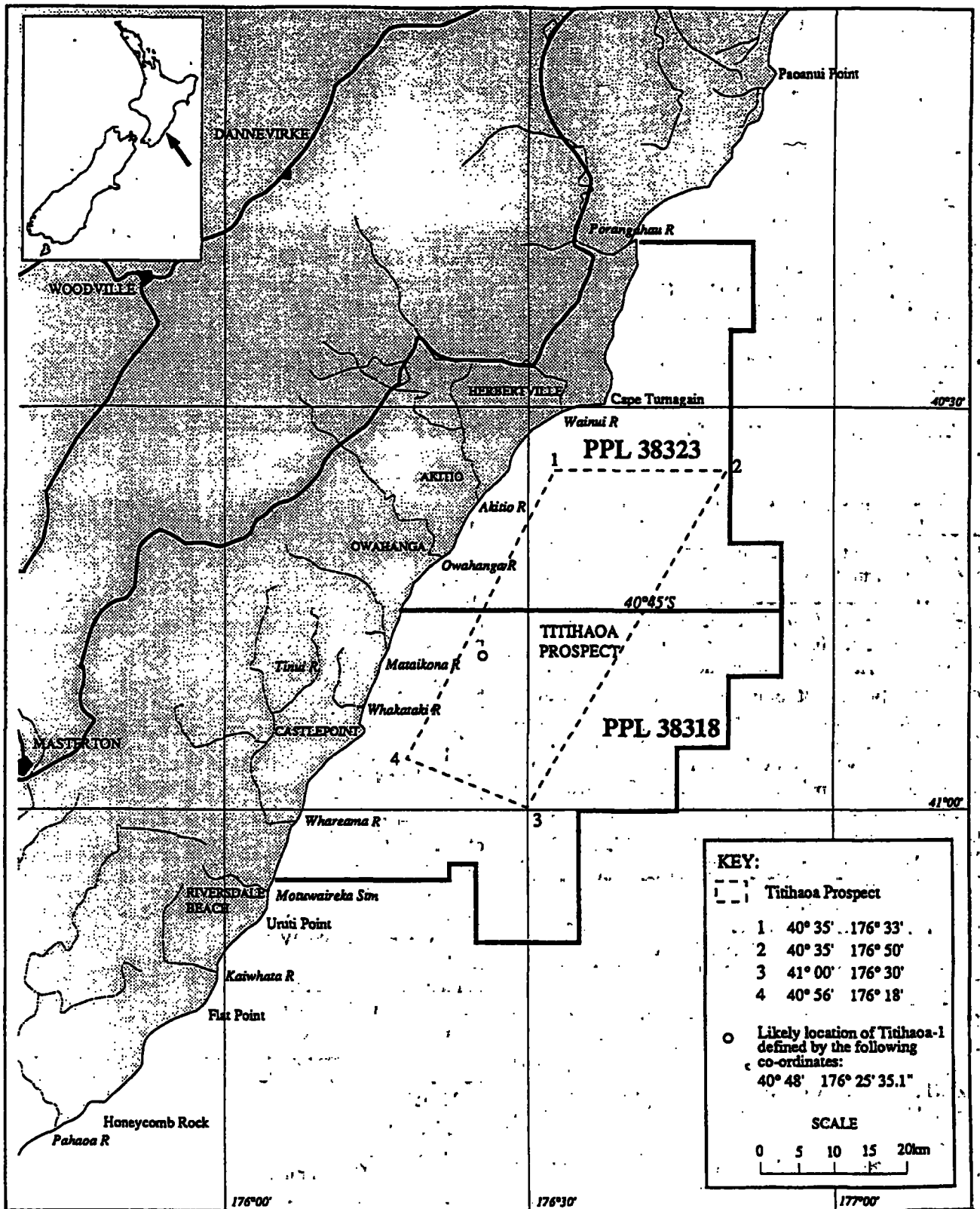


Fig. 2. Location of PPL 38318 and PPL 38323 and the Titihaeo prospect area.

**Consultation**

Amoco New Zealand undertook an active programme of consultation well before making applications. The key elements of consultation were undertaken during the preparation of the environmental evaluation which was built on meetings with regulatory agencies, local Maori and fishing groups. This included meetings with the Department of Conservation (Wellington Conservancy and Head Office),

the Wellington Regional Council (both Wellington and Wairarapa offices), and the Wanganui-Manawatu Regional Council.

Ongoing consultation with Maori has occurred throughout the project. Given the sensitivity of Maori with the coastal environment and the importance of identifying the correct tangata whenua groups, Amoco New Zealand paid special attention to discussing these matters with the regional

councils. On the basis of advice from the councils and discussions with local Maori, comprehensive consultation with Maori was undertaken which involved a number of hui on different marae.

During the submission phase, it became apparent that there were other Maori who considered that they should have been consulted. As soon as these submissions were provided to Amoco New Zealand, the company immediately commenced consultation with those parties.

#### **Pre-hearing meeting**

A pre-hearing meeting was held in the Masterton office of the Wellington Regional Council on 24 November 1993. The submitters who attended included:

- the proprietors of Owahanga Station.
- Department of Conservation (Wellington Conservancy)
- Te Runanganui O Rangitane O Wairarapa Inc
- G N Matthews (also representing nine other submitters)
- Amoco New Zealand and their representatives

Amoco New Zealand gave an overview of the proposed operation. This included descriptions of the prospecting area, drilling process, details of the operation, environmental controls, oil spill plans and the assessed effects of the discharges. Proposed conditions for inclusion in resource consents were presented. Apart from some questions relating to possible seismic effects on the drilling operation and procedures for capping on wells, the parties, including all but one of the Maori group, reached general agreement on the technical issues of the applications.

There was discussion regarding the duty of the applicant to consult with all interested and affected parties. Mr G Matthews, of Wanganui was of the opinion that consultation had been with iwi but not with tangata whenua.

#### **Hearing**

The hearing was held before a Joint Committee of the Regional Councils on 8 December 1993. At the hearing, legal submissions and detailed technical evidence were presented on behalf of Amoco New Zealand. All but one of the tangata whenua groups accepted that Amoco New Zealand had undertaken comprehensive consultation with them and agreed with the proposal. Mr Matthews however, took a different position. Indeed, at the commencement of the hearing, Mr Matthews sought to have the hearing postponed because of non-consultation with tangata whenua. The Joint Hearing Committee declined that application.

In relation to consultation, the Councils' decision provides a good summary of the consultation issues:

"Section 6(e) requires the Committee to recognise and provide for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites waahi tapu and other taonga. Under Section 7(a), the Committee shall have regard to Kaitiakitanga and account must be taken of the principles of the Treaty of Waitangi under Section 8.

The relationship of Maori with the sea within the prospect area, and inshore of it, was made clear to the Committee. The report from Te Runanganui O Ngati Kahungunu in the "Assessment of Environmental Effects" referred to the prospect area being with the mana moana of Ngati Kahungunu. Mr H Power told the Committee that the traditional fishing zone extended from the shore out into the prospect area, while other submitters perceived a threat to the seafood of the coast from the proposed

drilling. Mr G N Matthews regarded the sea as a taonga. The Committee accepts these relationships.

The adequacy of consultation was a major issue raised by Maori in submissions, at the pre-hearing meeting and at the hearing. Te Runanganui O Ngati Kahungunu expected that consultative liaison would continue. In initial submissions Te Runanganui O Rangitane O Wairarapa objected to the grant of consents as they had not been properly consulted and the proprietors of Owahanga Station were concerned that there had been inadequate consultation. Mr G N Matthews and Mr D M Matthews submitted that prior consultation had not been full and meaningful.

Mr J Clarke, in his evidence, described the consultation that had taken place.

Ongoing consultation with local Maori occurred throughout the project. The Honourable Ben Couch provided introductions and assisted with the establishment of a consultative process. Successive meetings were held with representatives of Te Runanganui O Ngati Kahungunu. A consultative hui was held in January 1992 to explain the project. A report setting out Maori perspectives with respect to the proposed exploration programme was provided to Ngati Kahungunu. There has also been consultation with representative of the Rangitane. In October 1993 a second hui was held on the Te Ore Ore Marae in Masterton.

Approximately 60 members of the Maori community attended the meeting, including representatives of Rangitane O Wairarapa Inc, Rangitane Tamakinui Orua, and Owahanga Inc. The matters discussed were generally similar to those discussed during the first hui. The overall thrust of discussions can best be summarised by referring to a comment from the floor that, in terms of Maori cultural values, the Wairarapa coast should be viewed as the "pantry" of the people, and its "goods" afforded high protection. The need for stringent pollution protection measures, and the desire by the Maori people to be kept informed as to the progress of the project especially in the event of the drilling proving hydrocarbon resources, was stressed.

Following public notification of the resource consent application, submissions from a number of Maori groups were lodged. As consultant to AMOCO New Zealand he responded to these as soon as they were received, discussing concerns at the pre-hearing meeting and at separate meetings. The proposed conditions were expanded as a consequence of this further consultation. The view expressed to him from representatives of the Rangitane and Owahanga groups was that it was that it was in all parties' interests to ascertain whether oil existed off the Wairarapa coast, and that subject to the imposition of conditions they supported the resource consent application being granted. Despite strong endeavours he was unable to reach a similar position with Mr G N Matthews.

Prior to the hearing Te Runanganui O Rangitane O Wairarapa, by letter, advised that they were now satisfied with the adequacy of consultation. At the hearing Mr J Stevens told the Committee that the Proprietors of Owahanga Station were now satisfied with respect to consultation. Mr G N Matthews told the Committee that tangata whenua had not been properly consulted.

The Committee considers that the applicant took every initiative concerning consultation that it could be reasonably expected to.

Mr J Stevens told the Committee that a claim had been lodged with the Waitangi Tribunal concerning the ownership of the seabed off the Wairarapa coast. Mr G N Matthews referred to that same matter. The Committee accepts the submission of Mr P Majurey that the question of the ownership of the seabed is not a matter that it can consider under the provisions of the Resource Management Act."

#### **Decision**

On 17 January 1994 the Councils granted the consents for a period of 5 years.

#### **Further consultation**

After receiving the consents, which were not appealed, Amoco New Zealand and their representatives undertook further consultation with the parties to discuss the proposed drilling programme.

### **Conclusions**

#### **Costs/certainty**

The wide-ranging informational requirements of Part II and section 104 of the Resource Management Act require more comprehensive applications and evidence at any hearings than was the case under the previous legislation. This involves additional costs, especially during the initial period of "settling in" when the true parameters of the Act's requirements are not certain.

On the other hand, the use of joint hearings does avoid duplication of resources and assists with accelerating the consent process. However, where joint hearings involve both a regional council and a district council, applicants should seek to ensure clear definition of the jurisdictional differences between the councils is maintained. In the writer's experience many hearings have become protracted and confused because district councils wish to be involved in water and air issues.

#### **Resource Management Act timetables**

The consent authority processing timetables stipulated in the Act have been largely met by local authorities. Indeed, there appears to be a real reluctance on the part of many local authorities to exceed these timeframes. However, the approach of the Taranaki Regional Council does not always lend itself to this objective. While the pursuit of avoiding hearings is laudable, it can nonetheless, lead to delay. Moreover, the intensive nature of negotiations on consent conditions between the parties can result in no actual cost or time savings.

Applicants in the Taranaki Region will need to carefully weigh the costs and benefits of a hearing vs a non-hearing approach. In some cases, especially where there are implacable or unreasonable submitters, it may be preferable to have the applications resolved by a hearing.

#### **Consultation**

The onus on applicants to consult has provided a real focus for resolving issues. Consent authorities are insisting on early and full consultation and expect the parties being consulted to reciprocate in the attempt to resolve issues.

The Resource Management Act has significantly strengthened the requirement for consultation with tangata whenua. Given the real possibility of Maori groups claiming proper consultation has not been undertaken, it is imperative for applicants to plan a robust consultation programme. Failure to do so can have adverse consequences as recent Planning Tribunal cases have demonstrated.

#### **Bonds**

There is a growing call for bonds to be imposed in respect of petroleum and mining projects. It will be important for applicants to ensure that if a bond cannot be resisted, the quantum imposed on any bond reflects the "track record" of the company and the actual amounts required to rehabilitate a mining site in the relevant circumstances. Bonds should not be used by Councils as a general "insurance" mechanism by imposing onerous and unduly high amounts in order to provide a "feeling of comfort".

#### **Terms of consents**

It appears that some regional councils are reluctant to grant consents for periods over five years. Unfortunately, these councils have not understood the changes introduced by the Resource Management Act. Under the Water and Soil Conservation Act 1967, there were valid reasons for relatively short terms for consents. However, with the introduction of consent reviews and enforcement/abatement mechanisms, councils should be granting longer terms where sought by the applicant. Some applicants have received the "worst of both worlds" i.e. receiving relatively short terms consents with regular consent review clauses.

#### **General**

Until there are definitive Superior Court decisions interpreting the Act, there will be no certainty as to what are the actual requirements of the legislation. In the meantime, it appears that many of the features of the Act are successful. However, as there are still a number of aberrant decisions being made under the Act, the overall success or otherwise of the new legislation will need to be closely monitored.

#### **Author**

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