

Marine Reserves and Local Government Reform – a Changing Playing Field for the Industry?

Helen Atkins & Michaela Stirling

Phillips Fox, 50-64 Customhouse Quay, PO Box 2791, Wellington, New Zealand. DX SP20002 Wgtn. Tel +64 4 472 6289 Fax +64 4 472 7429 www.phillipsfox.com

Introduction

In the 2 years since we presented at the last Petroleum Conference, there has been a flurry of legislative and policy-making activity affecting the offshore area. Within the same timeframe there have also been major changes in local government reform. Both sets of changes have the ability to significantly affect the way the industry operates – creating a potentially new and different playing field in which to work.

At the time the topics for the Conference were set, the Marine Reserves Bill was posing a risk to the industry by promoting an increased number of ‘no-take’ reserves. However, in just a few months the foreshore and seabed legislation has posed new issues of its own. As a result, it has been impossible to focus solely on marine reserves in this paper without considering this broader context.

In this paper we try and take a current snapshot of the common themes arising from the array of offshore changes, highlight some aspects of particular concern to watch for, and try to predict the shape of future amendments. In relation to local government reform we demonstrate how the new, wide-ranging general powers given to local authorities can help the industry gain real traction within the communities it is working with.

Offshore Legislative Reform

The last 2 years have seen a virtual horse race between several significant pieces of legislation and policy processes affecting the offshore area. Those which have broad-ranging effect are the:

- Marine Reserves Bill;
- Oceans policy process; and
- Foreshore and seabed legislation

These processes cover a wide list of objectives - not always complementary – which include increasing biodiversity protection, re-examining the ownership of coastal space, attempting to restate and integrate existing legislation and making specific industry-related changes.

Common Themes

Despite the sometimes competing objectives between these processes, the common themes to note that we see are:

- an increased focus on ownership issues, with management issues being relegated to one side;
- some evidence of smaller decisions being made in advance of larger ones;
- an increased focus on offshore regulation, particularly environmental concerns; and
- some attempts to extend the scope of regulation beyond the 12 nautical mile limit.

Any one of these themes has the potential to significantly affect the regulatory regime the industry is working with. There is also other sector-based reform planned which will affect the industry, such as:

- the Aquaculture Moratorium extension;
- new Maritime Transport rules; and
- the Maritime Security Bill.

Timing and Ownership Issues

At the time this paper is being written, proposed legislation to resolve the foreshore and seabed debate will very soon be tabled in the House. Although the foreshore and seabed issue has had a very quick run from instigation to legislation, political issues may mean this does not occur until after the Conference.

However, the foreshore and seabed debate, and to a lesser extent, the aquaculture moratorium, have highlighted that there is a new focus on claims for ownership, rather than simply management, of coastal resources.¹ As a result, the progress of other Bills and policies which focus on managing and integrating the regulation of the offshore environment has slowed until these ownership issues have been determined. In particular:

¹ Last year the Government also rejected a Waitangi Tribunal recommendation to uphold a claim by iwi for ownership of petroleum resources based on rights arising out of a ‘Treaty interest’ to petroleum.

- The Marine Reserves Bill was originally due to be reported back from Select Committee in April 2003. It has now been put back 3 times and is now not due to be reported back until 30 June 2004.
- Concerns around aquaculture and access to coastal space, which are strongly linked to the foreshore and seabed process, originally resulted in a moratorium which took effect in November 2001. This moratorium, originally due to expire at the end of March 2004, is now being further extended by an amendment Bill currently in Select Committee.
- The timeframe for designing the Oceans policy process has now also been put back, from an initial estimate of mid-2003. The most recent comment from officials is that the next stage, national consultation on a draft policy, will come after the foreshore and seabed legislation is passed and once work on a review of the Ministerial land access reference group has been considered. Given the amount of work that is likely to be involved, this significant stage will be unlikely to happen this year.

We will now highlight the major implications of each of these processes in more detail.

Marine Reserves Bill

Introduction

The Marine Reserves Bill is a major review of the current Marine Reserves Act 1971 – which was enacted to allow marine reserves to be created for scientific research purposes. The new Bill has a much broader purpose – it will allow marine reserves to be created to preserve biodiversity, and extend the reach of the current Act from the limits of the territorial sea to the edge of the EEZ.

The Bill is part of a number of reforms aimed at helping the Government achieve its aim of protecting 10% of New Zealand's marine environment (including the EEZ) by 2010, as part of the New Zealand Biodiversity Strategy. Currently 7% of New Zealand's territorial sea is marine reserves, but this is a tiny percentage of New Zealand's total marine environment (including the EEZ) and 99% of this is in two large reserves around the Kermadec Islands. However, the Government's 10% target is planned to be achieved through a range of methods of marine protection so it will not all be achieved via marine reserves.

The broadened purposes behind creating marine reserves, and the 10% target, pose a risk for the industry as marine reserves are essentially 'no-take' zones. However, the Bill does not prescribe what exploration activity is permitted in marine reserves. Clause 12(3)(d) of the Bill automatically authorises all petroleum industry activity in marine reserves that is 'authorised under the CMA'. The Crown Minerals Act (CMA) then limits activity in marine reserves (in terms of s61(1A) CMA) to minimum impact activity only, for marine reserves that have been declared under the 4th Schedule. Therefore Clause 12(3)(d) should be read down accordingly.

This has caused some concern, particularly about how an increased number of marine reserves may impact on the property rights of existing, and future, permit holders and how these issues of competing space can be resolved.

The issues of most concern

- The ability to create an increased number of marine reserves, effectively limiting industry activity to minimum impact activity in a broader network of no-take areas.
- The lack of integration of this process alongside the broader processes which would allow these competing interests to be properly assessed (concerns about the Bill as a blunt conservation-only instrument created in isolation from the Oceans Policy process, and in isolation from other processes considering the allocation and possible restriction of coastal space)

How the Bill will affect the industry

One of the main issues in the Bill is how it might cut across existing rights. We have advised on this issue and set out the main points below:

- Under the Bill as currently drafted, it will be possible to create a marine reserve in an area containing an existing permit. The only prohibited areas are areas which are subject to existing marine farm leases and licences, and taia pure / mataitai reserves (areas given special status to recognise the customary special significance of the area to iwi or hapu as a traditional fishing ground, food source or for spiritual or cultural reasons.)
- In approving a marine reserve application the Minister of Conservation must believe that under s67 of the Bill there must be no undue adverse effect on economic uses of the ocean after weighing up the public interest involved. However, this is only one of 10 relevant criteria for the Minister to consider – something which could be enhanced with increased local government support of the industry. The Bill also does not indicate how conflicts over this and other points might be resolved, beyond requiring the Minister to consider ways of mitigating adverse effects on existing uses.
- However - even if a marine reserve was created in an area with an existing permit, it would not cut across these existing permit rights. The Bill is not retrospective, and therefore it has not been drafted to cut across rights held under existing legislation.
- In addition, under s32 of the CMA, once a prospecting permit is issued, the permit holder has a right to subsequent (exploration and mining) permits as long as the permit holder complies with the permit's conditions. These conditions cannot be restricted during the life of the permit without the permit holder's consent.

- Therefore, provided the permit holder complies with the permit conditions, and the initial permit is issued before the marine reserve is created, then these rights cannot be constrained without specific legislation.
- Access agreements in a marine reserve are a separate issue. If access has effectively been granted (either through the grant of resource consent or an application to access the seabed beyond 12NM – effected through regulations made under the Continental Shelf Act 1964) this will run with the permit until it expires, or is renegotiated. There is no opportunity for this access agreement to be revoked if a marine reserve is subsequently created in the same area.
- However, if either the access arrangements need to be amended or the permit rights come up to be renegotiated, the fact that there is a marine reserve in the area may act to restrict access in the future.
- The ability to erect structures in a marine reserve under the new Bill provisions is unclear. The Department of Conservation (DOC) material on the Bill indicates that DOC expects that the Minister must give permission for structures to be erected in a marine reserve, probably under the concessions regime. It is also likely that regional coastal plans will refer all decisions on structures in marine reserves to DOC as a Restricted Coastal Activity.
- However, the broad reference in Clause 12(3)(d) of the Bill to ‘activity authorised under the CMA’ could be construed narrowly or broadly – it could be considered to include all aspects of an approved work programme under the CMA, including all necessary structures, or simply as a licence to prospect or explore, with any attendant structures requiring separate consent through a concession or, as a minimum, DOC consent through the resource consent process. It is notable that beyond the 12NM (nautical mile) limit the 4th Schedule of the CMA does not apply.
- In practice, however, if most new reserves are included in the 4th Schedule to the CMA, the restriction to low-impact activity may mean that structures will not be permitted.

Current Marine Reserve Applications

There are currently 18 marine reserves in New Zealand waters. 2 new reserves were created last year (which have been approved but not yet formally established by Order in Council). One is the second-largest so far – 484,000 hectares (in the Auckland Islands) and the other is 700 hectares at Te Matuku Bay off Waiheke Island. There are also 10 applications for further reserves currently before DOC, and 6 other areas under investigation.

Any incorporated society can suggest a new marine reserve area, which must be approved by the Minister after public consultation. This process is preserved under the new Bill.

Extension into EEZ

Finally, the Bill aims to extend the jurisdiction to create marine reserves beyond the limits of New Zealand’s territorial

sea into the exclusive economic zone (EEZ) – which stretches to 200 NM from shore. One of the DOC objectives in preparing the Bill states ‘in the EEZ beyond 12 NM none of the available legal mechanisms enables the protection of marine communities and ecosystems in a natural state’. This attempt to extend the jurisdiction to create marine reserves into the EEZ caused some issues before Select Committee.

Currently there is little integrated regulation beyond 12 NM. The EEZ is a very different zone than the territorial sea, comprising a hybrid group of rights and responsibilities for not only New Zealand but other nation States in these waters. Most importantly there is a distinction once the 12NM line is crossed – there is no longer an automatic presumption of New Zealand sovereignty over resources but rather a sovereign right – a lesser right – that must be exercised alongside the rights of other States, particularly with regard to fishing but also to navigation.

In particular, the Marine Reserves Bill has been criticised for attempting to create what would be a significant inroad into other States’ rights in the case of a large no-take area in the EEZ. Small no-take areas created for biodiversity principles may not be challenged. Whether these provisions of the Bill are removed, or whether this power is actually exercised once the Bill is passed, will remain to be seen when the Select Committee reports back.

The seabed beyond this 12NM limit is also not, nor can it be, vested in New Zealand. Instead, New Zealand has a sovereign right to exploit it, which again is a lesser right than ownership and which must be exercised with regard to the rights of other States in this area. Despite Maori claims that the Maori world view does not recognise a delimitation of the seabed in terms of a 12 NM limit, it is unlikely that the foreshore and seabed legislation will attempt to vest any more than the seabed out to the territorial sea boundary in ‘the people of New Zealand’.

It is interesting to see both the Oceans Policy process and the Marine Reserves Bill attempt to extend some form of jurisdiction into this area. While New Zealand certainly has rights in this extended area, it would be difficult to try and apply a one-size fits all legislative approach across these two quite different areas at international law.

Foreshore and Seabed Legislation

The foreshore and seabed legislation has come about quickly. Broadly, it is the Government’s response to the perceived uncertainty created by the decision of the Maori Land Court in *Ngati Apa v Attorney-General* (CA173/01) 19 June 2003, last year. The Court determined that it had the jurisdiction to award private title over areas of the foreshore and seabed where an iwi proved it had customary title over that area.

The Government has now announced that it will legislate to remove this jurisdiction. This has the effect of removing any ability for the Maori Land Court to grant private title over the foreshore and seabed, and instead will vest the

foreshore and seabed to be held 'in perpetuity by all New Zealanders'.² However, the Crown will retain the right to regulate this area on their behalf.

The proposed legislation also provides for any Maori customary title that is upheld by the Maori Land Court to be recognised on the title to the land, and to be 'recognised and provided for' in several ways.

The extent of these powers has been uncertain, and will be uncertain until the proposed legislation is unveiled. At the time of writing this paper the following issues are clear:

Process – how will rights be determined?

- A new form of customary title will be created (where it can be proven) which will be registrable against the title to areas of foreshore and seabed that are to be vested in the people of New Zealand. This will extinguish any customary title at common law.
- For customary title to be proven it must be shown that an iwi/hapu/whanau (for ease of reference we will refer to possible claimants as **iwi**) has had a continuous relationship with the foreshore and seabed in an area, over which they have exercised customary rights in an uninterrupted way since the presumption of Crown ownership in the mid-1800s.
- A new statutory commission will be set up to investigate the claims of iwi for customary title over areas of foreshore and seabed. The commission will make recommendations to the Maori Land Court which will award customary title where it can be proven and state the extent and nature of the rights which attach to it.
- While this will not amount to a grant of private title that will give an iwi a right to exclude individuals and commercial operators from a foreshore or seabed area, it will give them enhanced decision-making and participation rights.
- These decision-making rights will be exercised through 16 new regional decision-making bodies, formed along regional/unitary council boundaries. Agreements on how this participatory process will operate will be enforceable, be promulgated as Orders in Council and the process will be able to be judicially reviewed.

What is the extent of a customary right?

- Customary rights (by their nature) attach to the relationship between an iwi and a place. Therefore, they cannot be transferred or traded.
- Examples of customary rights that may take precedence over, or affect, a later (conflicting) resource consent application may include:
 - Extraction of sand, shingle, and other minerals
 - Use of coastal space for customary activities – ie: waka launching
 - Fishing (consider any effects of seismic on customary fish stocks)

- Access to foreshore and seabed area and the ability to limit that access on certain occasions (ie: rahui, urupa or sacred areas. (consider impact of offshore pipelines coming ashore)

How will these rights affect other existing or future rights?

- The Government's proposed policy framework states that the rights will not cut across an existing resource consent.
- However, while a grant of customary title will not cut across the rights of *existing* permit holders - like the Marine Reserves Bill provisions - this will change when the term of that permit ends. Terence Arnold, Solicitor-General, commented in February at the Waitangi Tribunal hearing into the proposal that:

When the resource consent for an activity in an existing consent comes to an end, then the customary right holders' interests become paramount

- It is worth noting at this point that, unlike resource consents, customary rights are unlimited and do not have a fixed term. Therefore, once these rights are established and an existing, conflicting consent comes to an end, iwi effectively have a veto over future consents that would significantly impact on their right.
- This is obviously also the case where there is no existing resource consent. Once a customary right has been established, iwi have a right of veto in the same circumstances. Again, Terence Arnold has commented that:

If we assume there is no activity on the beach at all and we then have a declaration of customary rights, the customary rights holders take precedence - in the sense that nobody can then get a resource consent which will interfere with the way those customary rights holders exercise their right.

- This may lead to an iwi's ability to block and affect coastal proposals and potentially poses problems for operators in newly prospective areas, particularly where iwi in those areas may have a strong claim to be granted customary title. The framework makes it clear that an iwi must be served with any consent application that affects their right. This right applies from the point that the iwi has an application lodged with the Maori Land Court, not just from the point that any claim is determined.
- In a reciprocal move, a resource consent holder has a right to appear at a Maori Land Court hearing when a claim is being considered that affects the area in which they exercise their consent. However, while the consent holder has this right of appearance, it is unlikely that the (relatively temporary) commercial interests of a consent holder will be given much weight in the Maori Land Court's determination of the existence of a

² However in recent days the Government has indicated that this may revert to being vested in the Crown in order to gain sufficient political support to enable the Bill to be passed.

customary title. Any lobbying will be most effective at local government level, in terms of the way the rights are integrated into the RMA and exercised in practice.

Customary rights and the RMA

- The Government framework is clear that customary rights must still be exercised in accordance with the RMA. However, they can only be constrained on the grounds of sustainability. The framework expects that this will be achieved by providing for the customary right as a permitted or possibly as a controlled activity in regional coastal plans. If it needs to be declined on some basis, there will be a call-in function to allow it to be considered by the Minister.
- Amendments will also be made to the RMA to ensure that customary rights are considered at the outset before an allocation of any space is made, through zoning rules in plans or through individual permit applications. Customary titles will be noted on the relevant plans, and, before these are officially updated, will be automatically deemed to form part of both the New Zealand coastal policy statement and regional coastal plans in the interim.
- There is some comment in Government documents about the ability of iwi to develop a commercial element of a customary right, but its scope is unclear. It will depend on the nature of the customary right that is determined, and any commercial development will still be subject to the normal regulatory controls.
- Getting good information and maintaining good relationships with iwi will be the key to avoiding any surprises.

Oceans Policy

The Oceans Policy process has been a long time in its formulation. Its aim is to address a perceived lack of integration and the lack of an overarching framework governing the management of New Zealand's marine area. Pete Hodgson, Chair of the Ministerial Advisory Group on Oceans Policy has characterised it as a process 'to fix up the shortcomings of compartmentalised thinking'³

The Oceans Policy website states:

... development of the policy would be a cross-government exercise, covering all aspects of oceans management, including effects from land, and would extend out to the edge of the Exclusive Economic Zone and the Continental Shelf beyond.

The major issue for the Policy is how to integrate the conflicting statutes that govern the marine area. Some of these statutes include the:

- Maritime Transport Act;
 - Fisheries Act;
 - Resource Management Act;
 - Submarine Cables and Pipelines Act;
- and many others.

However, the Oceans Policy is a management policy. It does not address ownership questions which is one reason why it has now taken a lower priority. However, the biggest risk of shifting this to one side is that decisions on easier, single-issue policies will be made in advance of more integrated decisions – perpetuating the problem.

A report commissioned by the Oceans Policy Secretariat⁴ focussing on economic opportunities in the ocean shows that the ability to integrate these Acts is a real concern. Most industries operating offshore work with only a subset of the long list of Acts that apply to the marine area. While they are happy with these statutes, they are dissatisfied with the way that the statutes which are not core to their industry impinge on their operations.

As well, while most of these players acknowledge that there is a lack of an overarching framework, they are concerned that any solution might negatively impact on their interests. Some of the compromises that will be required to create an overarching framework will certainly be hard-won. As far back as 1999 Hon Pete Hodgson said:

It will not be easy .. identifying existing and potential conflicts means that sooner or later we will need to order, or re-order priorities. If we develop goals and principles, and if they are valid and considered and agreed, then sooner or later, somewhere, they will bite. Inevitably some interest will have to give way to, or learn to share with, another.⁵

This is still the major issue for the Oceans Policy project to overcome. It is obvious that any integration of the existing, sectoral regime will likely mean more regulation, or more barriers, for the industry.

However, it is still not clear how this integration will be achieved. Work released by the Secretariat up until this point has been aimed at gathering information on the individual industry sectors – asking questions such as (what's out there? how do we value it? what are the future opportunities? what are the concerns?) The Secretariat now seems to be moving onto identifying hot spots in the marine area, where this 'bite' might be most keenly felt and where draft policy aimed at ordering these priorities could be initially tested.

³ Speech to Maori [Find specific reference] May 2003.

⁴ 'Economic Opportunities in New Zealand's Oceans – Informing the Development of Oceans Policy' Centre for Advanced Engineering, June 2003.

⁵ Address to the Energy and Natural Resources Law Association, Hon Pete Hodgson, Wgtn 12 October 2000

In its early stages the process was characterised by some as a 'blue RMA' – as in a reformulation and integration of existing legislation under one umbrella. This term is no longer being used but it is still unclear whether the process will result in a new Oceans statute, a rationalisation of existing statutes or a simple policy framework (as in some overseas examples).

Regardless of the form of the amendments, we believe it has the potential to pose the following issues for the industry:

Potential risks for the industry

- An increased focus on integrated management will mean increased regulation, particularly in areas where there was no integration previously. This will particularly affect the area beyond the 12NM limit, where there is currently no integrated environmental regime in place, beyond the application of maritime transport rules and individual industry best practice.
- We note that the new marine protection rule (Part 200) will attempt to further this in the interim. However, this is still another example of sector-based regulation. There are other examples of 'interim' steps being taken which may close down opportunities for the industry – such as steps taken towards the Government's Biodiversity goals which will lock up areas without broader assessments of the priorities for a particular area.
- RMA processes are also likely to be used to try and further integrate some of these competing interests. This will mean new or amended compliance obligations and changes to plans at both the regional and national level. It may also raise the possibility of more interested parties submitting on proposals (where activities are not permitted as of right) as the implications of a proposal on a broader range of interests need to be taken account of at the consenting stage.
- As a result, there may be more difficulty getting access to sites which have been identified as having competing values for various sectors (as has already been seen in conflicts over granting access to seamounts in the Kermadec area).
- There may also be more competing interests to address within block areas that are allocated for exploration and prospecting – which may affect the effective size of the blocks offered, or result in more specific areas in which work programme commitments are made.

Conclusion – Offshore Legislative Reform

Obviously at the time of writing most of these proposals are still in progress, and none have had their effects tested. However, the industry should be on notice that these provisions, whether independently or in combination, have the potential to significantly alter the playing field in the offshore area over the next few years.

The foreshore and seabed, marine reserves and aquaculture legislation all involve decisions about the allocation, and priority of use, of coastal space. This is a debate in which the industry should be involved, or at least agitating for these decisions to be taken at a bigger-picture level.

We can only hope that the draft Oceans Policy legislation, hopefully to be released at some point later this year, has some teeth with which to integrate these competing interests. As can be seen by the foreshore and seabed legislation, and the speed with which it overtook other proposed legislation, the process has the potential to be hijacked by political pressures.

None are impossible to overcome, or should be construed as barriers to investment or uncertainty. However, there is an argument for being more proactive in terms of assessing the likely impediments to a project at the front end, and investing time in assessing which relationships should be cultivated in order to ensure a smooth run.

Local Government Reform

Introduction

We are currently living in an era of 'small' government. Even though the Crown may own and licence petroleum resources, in the current climate the development of extraction infrastructure is practically impossible without local government support. Unfortunately in relation to the petroleum industry (in contrast with Project Aqua), the days of government sponsoring or actively enabling big exploration projects and providing, as and when needed, the legislative basis for them, seem to be gone.

The Local Government Act 1974 (**LGA 1974**) has been the principal Act controlling local government for the last generation. However, major changes during 2002 have introduced a replacement, the Local Government Act 2002 (**LGA 2002**). This has now fully come into force as of July 2003.

The broadest changes introduced by the Act are as follows:

- In comparison with the prescriptive approach of the LGA 1974, the LGA 2002 now gives local authorities a 'power of general competence' to take whatever measures they consider necessary to give effect to their communities' expectations.
- As a result, the basis for all fundamental decisions at local level (including environmental, infrastructure and social policies) is now a set of 'community outcomes' which must be identified – not set – by every Council.

The role of the long term council community plan (LTCCP) – what must councils do?

Part 6 of the LGA 2002 contains the provisions that set out the way in which a local authority is to carry out its business. The mechanisms by which a local authority establishes what its community expects from it, and how those competing expectations and demands are to be described, are now embodied within the LGA 2002.

The long term council community plan (**LTCCP**) is by far the most important of the planning and policy documents that a local authority is required to produce. This plan must

integrate the strategies, policies and activities of a local authority, in the context of identified community outcomes, in a way that promotes public accountability and integrated decision making.

The LTCCP has a number of important inter-related functions. It is the primary means by which the local authority both derives its mandate from and accounts to its community. It contains all key strategies, policies and activities.

Certain decisions cannot be made unless authorised in a LTCCP. All of a local authority's financial planning and forecasting must also be included within the LTCCP. Finally, all of these things must be done in a way that is intelligible to the public, and that serves as a basis for integrated decision making.

Councils have a challenging task ahead of them. To ensure consistency and transparency it is essential that better integration of activities within a council is achieved. This requires a robust communication and co-operation protocol and may necessitate some changes to council structures and systems. Enhanced cooperation with other agencies, tangata whenua and community groups is also a specific obligation of the new Act.

Enhancing the ability for the community and stakeholders to engage with council in the development of policy and in planning for projects is a fundamental aim of the LGA 2002. The special consultative procedure must be used for amendments to and adoption of the LTCCP, whilst a consultation framework is also necessary to carry out a process to identify community outcomes at least every six years.

Whilst there will be some leniency with respect to the extent and sophistication of consultation undertaken for an interim LTCCP, it is expected that a concerted comprehensive effort will be made for the 2006 LTCCP. A realistic budget must be established for this important task.

The role of environmental plans and the RMA

The relationship between the RMA and the new LGA 2002 is also now relatively clear in the context of local policy setting – the RMA is subservient to the LGA.

In policy terms, the wider decisions made by local authorities under the LGA 2002 will ultimately produce policy 'outcomes' under the RMA. Where communities buy into a need, or desire, to support local exploration projects, local authorities have a broader mandate to implement these changes.

Conclusion – potential role local government can play for industry

There is now a much stronger requirement for local authorities to consult with communities to find out what these aspirations are. These create the council's mandate for long term planning and the context within which all major decision making is approached.

As the process of identifying community outcomes is refined, it is likely that councils will increasingly suggest explicit choices to their communities:

- What level of development (if any) will you accept?
- What kind of development, what return, as a community, do you expect from development?

As mentioned above, these community aspirations are recorded in a LTCCP which the council is bound to adopt.

As a result of these changes, the industry now has a potentially greater ability to interact with, and influence, the local authorities that make the bulk of the consenting decisions that are so important once permit allocation and site selection have occurred.

In particular, the ability of local government to react quickly to significant proposals outside the scope of (let alone contrary to) its community mandated plans might be very limited. Therefore, early, proactive input by the industry into these processes, particularly in those regions which are relatively new to petroleum exploration activity, is crucial.

Historically, the industry, like most, have tended to engage with councils at the level of environmental management. The time has come, as heralded by the new requirements imposed in the LGA 2002, for industry and local government alike to engage at a more fundamental level (economic, social) to decide what kind of relationship they will have in the future.

Authors

MICHAELA STIRLING Lawyer Direct +64 4 917 3295 Email michaela.stirling@phillipsfox.com
HELEN ATKINS Partner Direct +64 9 300 3811 Email helen.atkins@phillipsfox.com