

# **MINERALS PROGRAMME FOR PETROLEUM**

*Issued To Take Effect From 1 January 1995*

*By*

*Her Excellency the Governor General (19 December 1994)  
Pursuant to Section 18 of the Crown Minerals Act 1991*

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# I PREAMBLE

- 1 The Crown Minerals Act 1991 is the legislation governing the management and allocation of rights in respect of petroleum and other Crown owned minerals.<sup>1</sup> This legislation provides, at section 5, that the Minister of Energy (the Minister) shall have the following functions:
  - (a) The preparation of minerals programmes;
  - (b) The grant of minerals permits; and
  - (c) The monitoring of the effect and implementation of minerals programmes and minerals permits.
- 2 The preparation of minerals programmes is provided for in sections 12 to 15 of the Crown Minerals Act 1991. In summary, these sections provide that the Minister shall prepare one or more minerals programmes, outlining the policies on which the government shall base its management decisions in relation to Crown owned minerals, and the procedures and provisions that are to be followed in implementing these policies and the requirements of the Crown Minerals Act 1991. Minerals programmes are required to set out clearly the principal reasons for and against adopting these policies, procedures and provisions, and also any restrictions on prospecting, exploration and mining for Crown owned minerals. As provided for in sections 16 to 19 of the Crown Minerals Act 1991, minerals programmes are issued following consultation with iwi, interested parties and the community on a draft minerals programme.
- 3 Management of Crown owned minerals, through minerals programmes, aims to provide clarity to investors as to the conditions under which permits to prospect, explore or mine for particular minerals may be granted. Minerals programmes detail the operating rules and investment parameters. Within the scope provided for by the Crown Minerals Act 1991, this includes rights to subsequent permits and the payment to the Crown of any royalties.
- 4 Minerals programmes also provide a measure of accountability for those administering the Crown Minerals Act 1991. This is achieved, not only by outlining the reasons for and against the policies, procedures and provisions to be applied, but also by providing for iwi, public and industry input into the process, pursuant to sections 15 to 19 of the Act.
- 5 The Crown Minerals Act 1991 is concerned with the management and allocation of rights in respect of all Crown owned minerals. It requires the preparation of as many minerals programmes as necessary (in respect of minerals for which permits are sought or likely to be sought), to allow for the recognition that the physical characteristics of the different mineral resources and the characteristics of the markets for those resources vary and that, consequently, different policies and procedures may be necessary. This minerals programme concerns the management of petroleum.
- 6 The Crown Minerals Act 1991 provides that before any person can prospect, explore or mine for petroleum in New Zealand, that person must have been granted an appropriate permit or licence, authorising that activity. Since October 1991, permits have been granted under section 25 of the Crown Minerals Act 1991. Prior to 1 October 1991, the appropriate authorisation was a prospecting or mining licence granted under sections 5 or 12 respectively of the Petroleum Act 1937. As provided for in section 107 of the Crown Minerals Act 1991, such licences continue in force, as if the Crown Minerals Act had not been enacted, until their surrender, revocation or expiry.

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<sup>1</sup> Section 10 of the Crown Minerals Act 1991 provides that all petroleum, gold, silver and uranium existing in its natural condition in land shall be the property of the Crown; and section 11 provides that where land has been alienated from the Crown, the ownership of other minerals shall also be reserved in favour of the Crown.

- 7 Section 12 of the Crown Minerals Act 1991 provides that the purpose of minerals programmes is to establish the policies, procedures and provisions to be applied in respect of the management of any Crown owned mineral, and section 22 of the Act requires that the Minister of Energy shall carry out his or her functions and powers under the Act, in respect of permits and applications for permits, in a manner that is consistent with the policies, procedures and provisions of any relevant minerals programme. The relevant minerals programme is that which is in force at the time an initial permit is granted or that applies to the initial permit by virtue of a term of that permit.
- 8 Accordingly, this Minerals Programme for Petroleum shall apply to all allocation decisions to be made in respect of petroleum permit applications received from its effective date of issue (1 January 1995) up to the date that it is modified or replaced, and to the management of all permits granted from such applications. An exception is in respect of petroleum mining permit applications received subsequent to 1 January 1995 in accordance with section 32(3) of the Crown Minerals Act 1991, where the initial exploration permit (or prospecting licence granted in accordance with the Petroleum Act 1937) was granted prior to 1 January 1995, and to any mining permit granted from such an application.
- 9 This Minerals Programme for Petroleum does not apply in respect of petroleum permits or licences granted prior to 1 January 1995.
- 10 The Crown Minerals Act 1991 and this Minerals Programme for Petroleum do not address environmental and health and safety matters relating to petroleum prospecting, exploration and mining. These matters are provided for in the Resource Management Act 1991 and the Health and Safety in Employment Act 1992 which set the legislative requirements respectively on environmental and health and safety issues. The provisions of these two Acts complement those of the Crown Minerals Act 1991. Prior to undertaking prospecting, exploration or mining activities, a permit holder needs to ensure that any necessary consents under the Resource Management Act 1991 or the Health and Safety in Employment Act 1992 (or any relevant regulations made in accordance with these Acts), are obtained. The permit holder shall undertake prospecting, exploration or mining in accordance with the provisions of these Acts and the conditions of any consents obtained.
- 11 As well, prior to undertaking prospecting, exploration or mining, a permit holder is required to have obtained any necessary access arrangements, pursuant to sections 53 to 80 of the Crown Minerals Act 1991. (This is discussed more fully in paragraphs 4.7 to 4.12).
- 12 In this Minerals Programme for Petroleum, terms used have the same meaning as in the Crown Minerals Act 1991. In particular, Minister refers to the Minister of Energy and Secretary means the Secretary of Commerce. As provided for in section 6 of the Crown Minerals Act 1991, the Minister or Secretary may, from time to time, delegate functions, powers or duties under the Act, in accordance with the State Sector Act 1988.

## **II EXECUTIVE SUMMARY**

### ***INTRODUCTION (Chapter 1)***

- 1 The purpose of this Minerals Programme for Petroleum (the Minerals Programme) is to establish the policies, procedures and provisions to be applied in respect of the allocation and management of petroleum permits.
- 2 Petroleum is defined in accordance with the definition given in section 2 of the Crown Minerals Act 1991. The areas of New Zealand which have the potential for petroleum deposits are outlined in chapter 1.

### ***POLICY AND MANAGEMENT FRAMEWORK (Chapter 2)***

- 3 The Minister's management role will be limited to the extent and exercise of the functions and powers granted to the Minister under the Crown Minerals Act 1991.
- 4 The Minerals Programme has been prepared on the basis that the desired outcome is to allow continuing investment in petroleum prospecting, exploration and mining.
- 5 The fundamental policy established in brief is "To allow continuing investment in petroleum prospecting, exploration and mining which is in accordance with good exploration and mining practice, provided that: there is efficient allocation of permits; the Crown obtains a fair financial return from petroleum; and there is due regard to the principles of the Treaty of Waitangi.
- 6 Other policies established provide for: the Minister to have regard to international considerations; that permits should be obtained by the person most likely to effectively prospect, explore or develop the petroleum resource in accordance with good oilfield practice; as a result of investment, knowledge of New Zealand's petroleum resource should be increased; that the Crown should obtain a guaranteed minimum royalty payment and benefit in sharing in any substantial profits from the extraction of its petroleum; the royalty regime should be internationally competitive, clear and easy to comply with and administer; and that the investor should perceive that the allocation and royalty regime has minimum sovereign risk.

### ***REGARD TO THE PRINCIPLES OF THE TREATY OF WAITANGI (Chapter 3)***

- 7 In accordance with section 4 of the Crown Minerals Act 1991, the Minister and Secretary, in exercising their powers and functions under the Act, shall have regard to the principles of the Treaty of Waitangi. This requires that the Minister and Secretary shall be sufficiently informed as to the relevant facts and law before making decisions. The Minister and Secretary, accordingly, are committed to a process of consultation with Maori on management of Crown owned petroleum so that they are informed of the Maori perspective.
- 8 In summary, consultation shall occur at three levels:
  - (a) The preparation of the Minerals Programme;
  - (b) The preparation of Petroleum Exploration Permit Block Offers; and

- (c) In respect of applications for petroleum permits not made in accordance with a block offer and applications for the extension of area of permits.

#### ***LAND AVAILABLE FOR PETROLEUM PERMITS (Chapter 4)***

- 9 The following areas are not available for permitting under this Minerals Programme:
  - (a) Mount Taranaki and the Pouakai, Pukeiti and Kaitake Ranges (as defined by the boundaries of the Mount Egmont National Park and to the extent that the land is above sea level). This land is excluded in recognition of Maori values.
  - (b) Land south of latitude 60°S, in recognition of the Protocol on Environmental Protection to the Antarctic Treaty.

The Sugar Loaf Islands Marine Protected Area Act 1991 restricts petroleum mining operations and the issue of permits over a defined area which is specified. From time to time, other legislation may also restrict permitting. Otherwise all land to which the Crown Minerals Act 1991 applies is available for allocation under petroleum permits.

#### ***PERMIT ALLOCATION (Chapter 5)***

- 10 There are three types of petroleum permits: prospecting; exploration; and mining.
  - (a) Petroleum prospecting permits are granted for the purpose of conducting reconnaissance geophysical surveys and/or reconnaissance geochemical surveys and/or general investigative studies or surveys with the purpose of providing information for further petroleum exploration.
  - (b) Petroleum exploration permits are granted for the purpose of undertaking work to identify petroleum deposits and evaluating the feasibility of mining any discoveries made. Exploration activities include geological, geochemical and geophysical surveying, exploration and appraisal drilling and testing of petroleum discoveries.
  - (c) Petroleum mining permits are granted to enable the development of a petroleum field with the purpose of extracting and producing petroleum. In most cases an exploration permit would precede the consideration and grant of a mining permit.
- 11 Section 23 of the Crown Minerals Act 1991 provides that any person may apply to the Secretary for a petroleum permit. Each application shall be considered in a manner which is consistent with the policies, procedures and provisions outlined in this Minerals Programme.

#### ***PETROLEUM PROSPECTING PERMITS (Section 5.1)***

- 12 Applications for prospecting permits may be made at any time and allocation will occur provided the application is in accordance with the evaluation criteria, procedures and provisions outlined in section 5.1. A condition of the grant of these permits shall be that the prospecting permit holder shall have no right to obtain a subsequent petroleum exploration or petroleum mining permit over part or all of the area of the prospecting permit, pursuant to section 32 of the Crown Minerals Act 1991. Permits may be granted on a non-exclusive basis, which means there may be more than one permit over the extent of the area or some part of it. Petroleum prospecting permits will not be granted over land which is at the time held under a petroleum exploration or mining permit or a petroleum prospecting or mining licence (granted

under the Petroleum Act 1937) and there may be restrictions on their grant over land which is being considered for incorporation into a Petroleum Exploration Permit Block Offer in the near term.

### ***PETROLEUM EXPLORATION PERMITS (Section 5.2)***

- 13 Most petroleum permit applications are in respect of exploration permits. Staged work programme bidding, for exclusive exploration permits (refer Appendix I, xxviii to xxxi) shall be the basic form of allocation for petroleum exploration permits. This is a competitive tender allocation process which involves a Petroleum Exploration Permit Block Offer being advertised and bids being received and evaluated accordingly. The procedures and provisions associated with this allocation method are detailed in paragraphs 5.2.23 to 5.2.47.
- 14 In areas of high prospectivity and where there is strong competitive interest, cash bonus bidding for exclusive exploration permits may be the allocation method used. As with staged work programme bidding, allocation occurs as a result of applications received from an advertised Petroleum Exploration Permit Block Offer. The procedures and provisions associated with this allocation method are detailed in paragraphs 5.2.48 to 5.2.63.
- 15 The location and area of a Petroleum Exploration Permit Block Offer shall be determined by the Minister. A rolling two yearly Indicative Petroleum Exploration Permit Block Offer Schedule shall be advised to explorers approximately quarterly, in such publication(s) as considered appropriate. The indicative block offer schedule shall define the area of proposed future block offers but not the actual block or timing of the block offers. (It will also, from time to time, advertise the status of other areas available for petroleum exploration permits, refer paragraph 5.2.66). The indicative block offer schedule shall be reviewed by the Minister quarterly and may be adjusted following consideration of relevant matters. The number of Petroleum Exploration Permit Block Offer's advertised per year will be dependent upon such matters as exploration interest and availability of suitable areas.
- 16 Explorers may prompt consideration of an area for a Petroleum Exploration Permit Block Offer informally by expressing an interest in a block offer over a particular sedimentary basin, or formally by making a notification of interest. The procedures and provisions for making, receiving and evaluating a formal notification of interest are outlined in paragraphs 5.2.15 to 5.2.22. In summary, a formal notification of interest requires an explorer to specify a permit block and to provide an explanation and justification supporting the request to advertise the block as part of a Petroleum Exploration Permit Block Offer. This procedure enables explorers to prompt the release of exploration permit blocks when and where these are wanted. Permit allocation is, however, still undertaken competitively.
- 17 Allocation of petroleum exploration permits, as a consequence of a Petroleum Exploration Permit Block Offer, is expected to be the allocation method used in most instances. Petroleum exploration permits may also be allocated as a result of what are referred to as "Acceptable Frontier Offer" applications. These permit applications may be made, at any time, over land that is available for petroleum permitting (refer chapter 4) other than the following:
  - (a) Any area in a current Petroleum Exploration Permit Block Offer;
  - (b) Defined areas advised in the two yearly Indicative Petroleum Exploration Permit Block Offer Schedule;
  - (c) Any area which is the subject of a Notification of Interest not yet determined;

- (d) Any area within reasonable distance of a mining permit or an exploration permit in which a discovery has been made in the preceding three months;
  - (e) Any area from time to time advised by the Minister as unavailable for Acceptable Frontier Offer exploration permit applications; and
  - (f) Any land over which there is a petroleum permit application not yet determined.
- 18 The acceptance of such applications shall be dependent on the fulfilment of specific criteria by the applicant, in particular a commitment to undertake considerable immediate exploration work and expenditure. The procedures and provisions for this allocation method are outlined in detail in paragraphs 5.2.64 to 5.2.83. This allocation method provides the opportunity for explorers to initiate immediate intensive exploration effort without the need to have a permit application considered as part of a block offer.
- 19 A description and assessment of allocation options for petroleum exploration permits, and the principal reasons for and against adopting these allocation policies, is outlined in Appendix I.

#### ***PETROLEUM MINING PERMITS (Section 5.4)***

- 20 Petroleum mining permit applications are predominantly made by an exploration permit holder, in accordance with both sections 23 and 32 of the Crown Minerals Act 1991, who has discovered a petroleum field within the exploration permit area. Pursuant to section 32 of the Act, the exploration permit holder has the right, on applying under section 23 of the Act before the expiry of the exploration permit, to surrender the permit insofar as it relates to the land in which the discovery exists, and to be granted in exchange a mining permit. This is referred to as a right to a subsequent permit.
- 21 In limited circumstances, applications for mining permits may be made, pursuant to section 23 of the Crown Minerals Act 1991, over land that is:
- (a) Not already under a petroleum permit (or licence under the Petroleum Act 1937);
  - (b) Not the subject of a Petroleum Exploration Permit Block Offer;
  - (c) Not the subject of an application for a petroleum permit which has not been dealt with; and
  - (d) Available for petroleum permits (refer chapter 4).

These applications shall be accepted at the discretion of the Minister, to enable small scale mining of shallow petroleum discoveries (usually methane gas discoveries) over small land areas, provided it can be clearly established that there is a discovery of petroleum which can be mined and there is an acceptable scheme for the mining of the petroleum. Such applications would likely be to enable petroleum (probably gas) use by either the land owner or occupier for other than domestic purposes. Priority will be given to the first application received.

- 22 In evaluating a mining permit application, the Minister needs to be satisfied that a petroleum field has been discovered and that there is a work programme which meets the requirements of good exploration and mining practice.

## ***CONDITIONS OF PERMIT ALLOCATION***

- 23 In accordance with the general policy framework and the scheme of the Crown Minerals Act 1991, as discussed in chapter 2, petroleum permits are granted to enable permit holders to undertake prospecting, exploration and mining activities. A stated condition of all permits granted shall be to the effect that the permit holder shall make all reasonable efforts to prospect or explore or mine (as appropriate) the permit, in accordance with good exploration and mining practice.
- 24 A defined programme of work shall also be a condition of petroleum permits (although at the discretion of Minister, in unusual circumstances this may not be required). The defined programme of work would either have been specified in a Petroleum Permit Block Offer Notice or provided as part of the permit application by the permit applicant.
- 25 All petroleum exploration and mining permits also shall be granted with conditions detailing the calculation and payment of royalties, which shall be in accordance with the provisions detailed in chapter 7.
- 26 Mining permits will additionally have a condition requiring that production facilities shall be properly abandoned.
- 27 As provided in section 27 of the Crown Minerals Act 1991, the Minister shall grant a permit only where the Minister is satisfied that the applicant will comply with the conditions of, and give proper effect to, the permit. It is expected that any person applying for a permit shall intend to either prospect or explore or mine for petroleum, as appropriate. The Act does not provide a mechanism for accepting a bid for a permit from any person where the bidder's intention is to obtain a block in order to prevent prospecting, exploration or mining activities over its extent. Similarly, the Act does not provide for accepting a bid for a permit from any person with the specific intention of obtaining the permit in order to trade it. The Act does, however, provide for the assignment of permit interest by permit holders to allow for risk sharing (for example, "farming out") and for the transfer of permits as part of commercial transactions between companies with such transactions being subject to the consent of the Minister of Energy (refer section 41, Crown Minerals Act 1991).
- 28 If the Minister agrees to grant a petroleum permit, the Minister shall advise the permit applicant accordingly and note the grant of the permit is subject to the applicant's acceptance of the term and conditions. The term and conditions shall be consistent with any block offer advertisement, the application made (particularly the proposed work programme and permit term) and any correspondence concerning the application between the applicant and the Minister or Secretary.

## ***COMPLIANCE WITH CONDITIONS, ACT AND REGULATIONS (Sections 5.9 and 5.10)***

- 29 All petroleum permit holders are required to comply with the Crown Minerals Act 1991 and relevant regulations. This includes the payment of annual fees and the lodgement of data in accordance with section 90 of the Act and the specific requirements of the relevant regulations. If the Minister has reason to believe that a permit holder is contravening or not making reasonable efforts to comply with the Crown Minerals Act 1991, the relevant regulations or any of the conditions of permit, action shall be taken to revoke the permit.

### ***CHANGES TO PERMITS (Sections 5.3 and 5.5)***

- 30 A permit holder may at any time during the currency of the permit apply in writing to amend the conditions of a permit, or extend the land or minerals to which the permit relates or extend the duration of the permit, in accordance with sections 36 and 37 of the Crown Minerals Act 1991.
- 31 In accordance with sections 35, 36, 37 and 38 of the Crown Minerals Act 1991, an extension of the duration of an exploration permit may be granted for a second term for such period not exceeding ten years from the commencement date of the permit. Before a second term of a permit is granted, the permit holder must surrender at least half of the area comprised in the permit at the time of the end of the first term. The second term permit area must be a contiguous block and the land so situated that it will not prevent or seriously hinder the future exploration of that land proposed to be surrendered. Generally, the Minister shall not provide for a second term duration which is longer than the first term duration.
- 32 If a petroleum discovery is made and the discovery cannot be appraised within the duration of the permit (including any extension of permit duration granted under section 37(1) of the Crown Minerals Act 1991), then application may be made for what is referred to, for clarification purposes only, as an “appraisal extension”, pursuant to section 37(2) of the Act.

### ***UNIT DEVELOPMENT OF PETROLEUM PERMITS (Section 5.6)***

- 33 Section 46 of the Crown Minerals Act 1991 provides that in situations where a petroleum discovery extends over the area or parts of the area of more than one petroleum permit, the Minister may request the unit development of the discovery. This involves the relevant permit holders co-operating to achieve a unified development scheme for the working and development of the petroleum discovery.

### ***TRANSFERS AND OTHER DEALINGS (Section 5.7)***

- 34 Section 41 of the Crown Minerals Act 1991 provides that no petroleum permit holder or any other person shall enter into an agreement transferring the permit or any interest in a permit, or creating any interest in the permit, or imposing any obligations on the permit holder in respect of an interest in the permit which relates to or affects the production or proceeds of a permit (or subsequent permit) without the consent of the Minister.

### ***SURRENDER OF ALL OR PART OF PERMIT AREA (Section 5.8)***

- 35 The procedures in respect of the surrender of all or part of permit area are outlined in section 5.8.

### ***MONETARY DEPOSIT OR BOND (Section 6.1)***

- 36 A permit shall not be granted unless there has been deposited with the Secretary, as security for compliance with the conditions of the permit, such monetary deposit or bond as may be required by the Minister.

### ***GOOD EXPLORATION AND MINING PRACTICE (Section 6.2)***

- 37 A key permit allocation and management standard is that prospecting, exploration and mining operations are in accordance with good exploration and mining practice (also referred to as good oilfield practice). Section 6.2 outlines some of the aspects of good exploration and mining practice that the Minister shall have regard to in carrying out and exercising functions and powers under the Crown Minerals Act 1991.

### ***CROWN PARTICIPATION AND PERMIT GRANT (Section 6.3)***

- 38 The policy under this Minerals Programme is for the Minister not to take an interest in prospecting, exploration or mining permits or under any subsequent permits in terms of section 25(2) of the Crown Minerals Act 1991.

### ***THE ROYALTY REGIME (Chapter7)***

- 39 The royalty regime which shall apply to petroleum permits issued in accordance with this Minerals Programme shall be a hybrid regime comprising a 5 percent **ad valorem royalty** component and a 20 percent **accounting profits royalty** component.
- 40 Appendix II outlines the principal reasons for and against adopting the petroleum royalty regime. This includes a summary of alternative royalty options.
- 41 Terms used in the royalty provisions which are defined are indicated in bold. All defined terms are noted in paragraph 7.52 and definitions provided there, or reference given there to where the term is elsewhere defined.

### ***ROYALTY PAYABLE***

- 42 In respect of an exploration permit or where a mining permit has never had **net sales revenues** of more than \$1 million in a **reporting period**, the permit holder is liable to pay only the 5 percent **ad valorem royalty**.
- 43 For all mining permits to which the above exception does not apply, the permit holder is required to calculate for each period for which a **royalty return** must be provided both the **ad valorem royalty** and the **accounting profits royalty** and pay whichever is the higher.

### ***AD VALOREM ROYALTY***

- 44 The **ad valorem royalty** is 5 percent of **net sales revenues**.
- 45 **Net sales revenues** are the sum of total **gross sales** of petroleum, plus the value of petroleum not sold but on which royalty is payable, minus any allowable **netbacks** (or plus any **net forwards**).

### ***ACCOUNTING PROFITS ROYALTY***

- 46 The **accounting profits royalty** is 20 percent of the **accounting profits** from a mining permit. For any period for which a **royalty return** must be provided, **accounting profits** are the excess of **net sales revenues** over the total of **allowable APR deductions**. **Allowable APR**

**deductions** are: **production costs, capital costs, indirect costs, abandonment costs, operating and capital overhead allowance, operating losses and capital costs carried forward, and abandonment costs carried back.** The total of **allowable APR deductions** is the sum of **allowable APR deductions** less any **capital proceeds**.

### ***ROYALTY PAYABLE***

- 47 Royalties are payable on all petroleum obtained under the permit which is either sold or used in the production process as fuel or is otherwise exchanged or removed from the permit without sale, or remains unsold on the surrender or expiry or revocation of a permit, except as provided below.

### ***ROYALTY NOT PAYABLE***

- 48 No royalty shall be payable in respect of:
- (a) Any petroleum that, in the opinion of the Minister, has been unavoidably lost. This includes petroleum which is flared for safety reasons, or flared as part of an approved testing programme; and
  - (b) Any petroleum which has been mined or otherwise recovered from its natural condition, but which has been returned to a natural reservoir within the area of the permit (for example, reinjected gas).

### ***ROYALTY RETURNS AND PAYMENT***

- 49 The permit holder shall be required to lodge a **royalty return** and pay royalties owing within 90 days of the end of each period for which a **royalty return** must be provided. The **royalty return** shall be prescribed in regulations.
- 50 An interim quarterly royalty payment of 5 percent of the **net sales revenues** of a permit shall be required where **net sales revenues** are greater than \$250,000 for a quarter, payable within 30 days of the end of the quarter.
- 51 The collection of royalties shall be administered by the Secretary. The Secretary shall review every annual **royalty return** and, if required, may request additional information from the permit holder.

### ***CONCLUDING COMMENTS***

- 52 The Minerals Programme for Petroleum shall remain in effect until a replacement Minerals Programme for Petroleum is issued. From time to time, changes to the Minerals Programme may be made in accordance with sections 14 and 18 of the Crown Minerals Act 1991. Section 20 of the Act requires the Minister to undertake a review within ten years of the date of issue, and for a replacement minerals programme to be prepared whether or not any changes are proposed.

# 1 INTRODUCTION

- 1.1 In accordance with the provisions of the Crown Minerals Act 1991, in particular sections 12 and 15 of the Act, this Minerals Programme for Petroleum establishes the policies, procedures and provisions to be applied in respect of the management of petroleum.
- 1.2 Petroleum is defined in section 2 of the Crown Minerals Act 1991, as:
- (a) Any naturally occurring hydrocarbon (other than coal) whether in a gaseous, liquid, or solid state; or
  - (b) Any naturally occurring mixture of hydrocarbons (other than coal) whether in a gaseous, liquid, or solid state; or
  - (c) Any naturally occurring mixture of one or more hydrocarbons (other than coal) whether in a gaseous, liquid, or solid state, and one or more of the following, namely hydrogen sulphide, nitrogen, helium, or carbon dioxide.
- It includes petroleum which has been mined or otherwise recovered from its natural condition, or which has been mined or otherwise recovered but which has been returned to a natural reservoir for storage purposes in the same or an adjacent area.
- 1.3 Since 1 January 1938, all petroleum existing in its natural condition on or below the surface of any land within the territory of New Zealand (whether the land has been alienated from the Crown or not) has been the property of the Crown. Land includes land covered by water, the foreshore and seabed to the outer limits of the territorial sea [seabed]\* (section 10, and section 2, definition of 'land', Crown Minerals Act 1991). The Crown also assumes jurisdiction over the petroleum resource in the seabed and subsoil of those submarine areas that extend beyond the territorial limits of New Zealand throughout the natural prolongation of the land territory of New Zealand, to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured (Continental Shelf Act 1964).
- 1.4 Figure 1 outlines the sedimentary basins of New Zealand which have the potential for petroleum deposits. Petroleum exploration in New Zealand has been ongoing since 1866 with the Taranaki Basin being the major focus of exploration.
- 1.5 The Minerals Programme for Petroleum affects the exercise of the Minister's functions and powers under the Crown Minerals Act 1991 in respect of petroleum permits and applications for petroleum permits, by virtue of section 22(1) of the Act. This provision requires the Minister to exercise such powers and functions in a manner that is consistent with any relevant minerals programme.
- 1.6 Relevant minerals programme is defined in section 2 of the Crown Minerals Act 1991. Whether the Minerals Programme for Petroleum will be the relevant minerals programme in respect of petroleum permits and applications for petroleum permits will depend on a number of factors such as the time the initial permit was granted (refer section 2 of the Act) and whether a permit holder elects at a later time for a policy, procedure or provision of a later minerals programme to apply (refer section 22 of the Act).
- 1.7 No petroleum prospecting, exploration or mining permit application shall be considered and granted other than in accordance with this Minerals Programme, other than mining permit applications made in accordance with section 32(3) of the Crown Minerals Act 1991.

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\* *The text would appear to have included in error the additional word "seabed".*

## 2 THE POLICY FRAMEWORK

### *INTRODUCTION*

- 2.1 The purpose of this chapter is to establish the underlying policies to be applied in respect of the management of petroleum and to establish the policy and management framework on which this Minerals Programme is based.

### *THE MANAGEMENT ROLE*

- 2.2 The Crown Minerals Act 1991 provides that the Minister of Energy is responsible for the overall management of the Crown's petroleum resource. The management role includes arranging for a minerals programme to be issued in respect of petroleum (refer section 13, Crown Minerals Act 1991). In addition, the Minister manages the petroleum resource through the various functions and powers in respect of permits and applications for permits for petroleum allocated to the Minister under the Act. As part of the Minister's role in managing the petroleum resource, the Minister needs to establish management policies for the resource, upon which the exercise of the functions and powers in respect of petroleum permits and applications for permits will be based.<sup>2</sup>
- 2.3 The management role to be exercised by the Minister will be limited to the extent of the functions and powers granted to him or her under the Crown Minerals Act 1991, and to the exercise of these functions and powers as provided for by the general scheme of the Act.
- 2.4 The key management decision is to determine whether or not to allow (depending on the outcome sought by the Crown) prospecting, exploration or mining of petroleum. This decision is made taking into account the nature of the petroleum resource and the economic and commercial implications to the Crown, as owner of the petroleum resource, of possible allocation and pricing policies. There are also considerations related to the management of the resource itself, including the avoidance of unnecessary waste and the need for good exploration and mining practice.
- 2.5 Management under the Crown Minerals Act 1991 does not include taking into account the impacts which prospecting, exploration and mining activities have upon the environment. This is because specific responsibilities for the management of the environment and addressing environmental effects are established by the Resource Management Act 1991.
- 2.6 **This Minerals Programme for Petroleum has been prepared on the basis that the desired outcome is to allow continuing investment in petroleum prospecting, exploration and mining.**

### **Principal Reasons For and Against the Outcome of Continuing Investment**

- 2.7 Continuing investment in petroleum prospecting, exploration and mining is considered desirable given the strategic importance to New Zealand of access to supplies of petroleum. Over the last two decades, some 65 to 70 percent of New Zealand's energy consumption requirements have been met by petroleum in the form of natural gas, oil, condensate or LPG. Indigenous petroleum production which makes good use of investment expenditure and is competitively priced and unsubsidised, will benefit the economy. Security of supply issues are less important today than in the past, with fuels like oil and coal readily tradeable internationally. This is less so for gas, and there are economic advantages in having a continuing supply of gas available for reticulation to industrial, commercial and domestic consumers and

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<sup>2</sup> *The Minister also needs to establish procedures and provisions for the management of the petroleum resource which reflect the policies. These are the subject of chapters 3, 5, 6 and 7.*

for electricity generation, where cost effective. Continuing investment in petroleum exploration is needed to identify new sources of supply which are cost competitive, given the expected decline and exhaustion of presently producing fields.

- 2.8 The alternative to allowing continuing investment is to decline to allocate petroleum permits with the outcome of petroleum remaining in the ground. This approach is not considered in the interests of the economy.

### ***POLICIES FOR THE MANAGEMENT OF THE PETROLEUM RESOURCE***

- 2.9 Section 12 of the Crown Minerals Act 1991 states that one of the purposes of the Minerals Programme for Petroleum is to establish policies to be applied in respect of the management of petroleum. Section 12 further provides that, in particular, the policies established are to provide for:

- (a) The efficient allocation of rights in respect of Crown owned minerals; and
- (b) The obtaining by the Crown of a fair financial return from its minerals.

#### **Interpretation of “Efficient Allocation of Rights”**

- 2.10 The concept of “efficient allocation of rights” in section 12 of the Act refers to the process of efficiently allocating rights to permit holders, rather than the concept of economically efficient extraction of the resource. An efficient process is one which enables the Minister to allocate permits in accordance with the policies established (refer paragraphs 2.15 to 2.17) and the requirements of the Crown Minerals Act 1991, without imposing unreasonable transaction costs. This includes the obligation on the Minister to be satisfied that the permit applicant will comply with the conditions of, and give proper effect to, any permit granted (section 27, Crown Minerals Act 1991). Efficient allocation concerns how it is determined who should be the holder of permits, and having policies and procedures which provide for permits to be obtained by the person who will make all reasonable efforts to prospect, explore or mine (as appropriate) effectively and efficiently in accordance with recognised good exploration and mining practice.
- 2.11 While the concept of efficient allocation of rights is distinct from that of efficient extraction of the resource, it is noted that, where there is efficient allocation of rights, this should lead to an efficient economic outcome.

#### **Interpretation of “Fair Financial Return”**

- 2.12 The term “fair financial return” in section 12 of the Crown Minerals Act 1991 is used in relation to the Crown obtaining a financial return from its petroleum resource. Relevant considerations for determining whether the return is fair include:
- The Crown’s role as owner of the resource;
  - The non-renewable nature of petroleum as a resource;
  - The attractiveness of the petroleum regime to investors;
  - That any requirements to make payments for any petroleum obtained under a permit apply equitably to all permit holders.
- 2.13 Determining the attractiveness of the petroleum regime requires a balance to be found between royalty payments required by the Crown for extracting its petroleum resource and the regime’s capacity to attract continuing investment. This balancing includes recognising the risks and

potential gains to investors from petroleum exploration and mining. A regime which is unduly concessionary will result in the Crown not receiving a fair financial return on its petroleum resource, while an unduly harsh regime is likely to result in declining or no investment.

- 2.14 The obtaining by the Crown of a fair financial return is achieved not only by policies requiring payments by the permit holder for any petroleum obtained under the permit, but also through policies for the allocation and ongoing administration of permits. In particular, the Crown wants to ensure that there will be sound management of petroleum resource extraction, including the avoidance of unnecessary waste.

### ***POLICY OBJECTIVES***

- 2.15 On the basis of the above considerations, the fundamental policy objective established for the management of petroleum is:

***To allow continuing investment in petroleum prospecting, exploration and mining which is in accordance with good exploration and mining practice, always provided that -***

- ***There is efficient allocation of petroleum prospecting, exploration and mining permits;***
- ***The Crown obtains a fair financial return from the extraction of petroleum by a permit holder under a permit; and***
- ***There is due regard to the principles of the Treaty of Waitangi.***

- 2.16 In addition, the Minister will take into consideration any international obligations which are relevant in managing the petroleum resource and in exercising the functions and powers prescribed under the Crown Minerals Act 1991.

- 2.17 The following policies which all contribute to achieving the objectives of efficient allocation of rights in respect of petroleum, and the obtaining by the Crown of a fair financial return from its petroleum, are also established:

- ***Petroleum prospecting, exploration or mining permits should be obtained by the person who is most likely to effectively and efficiently prospect or explore and develop the petroleum resource;***
- ***Permit areas should be prospected, explored or mined in accordance with an appropriate work programme which has the objective, either:***
  - (a) ***in respect of prospecting and exploration permits, of assessing the petroleum resource potential of the permit area; or***
  - (b) ***in respect of mining permits, of achieving sound management of the petroleum resource through good mining practice, including the avoidance of wastage of petroleum;***
- ***The conditions of the petroleum permit should be complied with;***
- ***Exploration and mining operations should result in increased knowledge of New Zealand's petroleum resource and petroleum potential;***
- ***The Crown, as owner of the petroleum resource, should obtain a guaranteed minimum royalty payment from the extraction of its petroleum;***

- *The Crown, as owner of the petroleum resource, should benefit in sharing in any substantial profits arising from a petroleum development;*
- *The royalty regime in place should be sufficiently internationally competitive to attract mobile and competitively driven investment;*
- *The investor should perceive that sovereign risk is minimised (sovereign risk is defined as the risk that the government may change significant aspects of its policy and investment regime);*
- *The allocation and royalty systems should be clearly outlined and easy to comply with and administer; and*
- *The allocation and royalty systems should not impose unreasonable transaction costs and should not significantly deter investment.*

### **Principal Reasons For and Against the Policies Established**

- 2.18 The establishment of these policies recognises that petroleum is a valuable, non-renewable resource of strategic importance to the economy as noted in paragraph 2.7. They also recognise that decisions on prospecting, exploration and mining are considered most appropriately made by those prepared to invest and take risks rather than being made by the Crown (subject to investors meeting the standard of good exploration and mining practice). The policies also recognise that New Zealand is competing for international petroleum investment and needs to have an attractive regime to secure continuing investment.
- 2.19 Other policies which would involve the Minister and the Crown directing or favouring who should be involved in investment or the type of investment to be undertaken under petroleum permits have been considered and rejected as not being in the interests of the economy and not likely to achieve the outcome of continuing investment in petroleum prospecting, exploration and mining.

### 3 REGARD TO THE PRINCIPLES OF THE TREATY OF WAITANGI

- 3.1 Section 4 of the Crown Minerals Act 1991 provides that all persons exercising functions and powers under the Act shall have regard to the principles of the Treaty of Waitangi (Te Tiriti O Waitangi) (“the Treaty”). This means that Parliament has directed that the principles of the Treaty are a relevant factor that must be given weight to by all those exercising a power of decision under the Crown Minerals Act 1991.<sup>3</sup>
- 3.2 It is considered that the requirement to have regard to the principles of the Treaty gives rise to three basic requirements that apply to the Crown. The Minister and the Secretary must act in accordance with each of these principles when exercising powers under the Act. The first principle is that the Crown acts, in accordance with what is the paramount principle, reasonably and in good faith to its Treaty partner. The second principle is that the Crown must make informed decisions. The third principle is that the Crown shall have regard to whether a decision will impede the prospect of redress of grievances under the Treaty (this will be more relevant where there is an application for a permit in respect of land or resources that is the subject of a claim before Government or the Waitangi Tribunal).
- 3.3 In order to make an informed decision, that is, one that takes into account all relevant considerations, the Minister and Secretary must be sufficiently informed as to the relevant facts and law, to be able to show that they have had proper regard to the impact of the principles of the Treaty. The Minister and Secretary are, therefore, committed to a process of consultation with Maori on the management of the petroleum resource so that they are informed of the Maori perspective. Decisions will be made taking into account the considerations raised in the course of that consultation.
- 3.4 In relation to the management of the petroleum resource under the Crown Minerals Act 1991, consultation involves a process in which the Minister and Secretary are committed to a dialogue with tangata whenua<sup>4</sup> hapu and iwi and are receptive to Maori views and give those views full consideration. This process is seen as operating on three levels. These are:
- (a) The preparation of the Minerals Programme for Petroleum. The consultation process with Maori on the preparation of this Minerals Programme is discussed in Appendix III;
  - (b) Planning in respect of petroleum exploration permit block offers, which are the predominant form of petroleum permit allocation, as discussed in paragraphs 5.2.5 to 5.2.12. The procedures for undertaking consultation with tangata whenua hapu and iwi on block offers are discussed in paragraphs 3.6 to 3.13; and
  - (c) Decisions in relation to applications for petroleum permits (where the relevant issues have not already been addressed), and applications for amendments to petroleum permits to extend the land or minerals. The procedures for undertaking consultation on such applications are discussed in paragraph 3.14.
- 3.5 It is important to note that each decision will be made having regard to the considerations in relation to the principles of the Treaty that are raised as a result of the consultation, taking into account the circumstances of each case. The basic principles that will be followed in each case, however, are:

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<sup>3</sup> As noted in footnote 1 of the Preamble, the Crown Minerals Act 1991 provides that ownership of all petroleum, gold, silver and uranium rests with the Crown. (Refer also to paragraph 1.3)

<sup>4</sup> Tangata whenua is defined as the Maori iwi or hapu which has mana whenua over a particular area. Literally, it translates as “people of the land”. For a further discussion of this and a glossary of Maori terms, refer to Proposed Guidelines for Local Authority Consultation with Tangata Whenua, Office of the Parliamentary Commissioner for the Environment, June 1992.

- (a) That there is early consultation with Maori at the onset of the decision making process aimed at informing the Secretary and the Minister of the Treaty implications of particular issues;
- (b) That sufficient information is provided to the consulted party, so that they can make informed decisions and submissions;
- (c) That sufficient time is given for both the participation of the consulted party and the consideration of the advice; and
- (d) That the Secretary and the Minister genuinely consider the advice, and approach the consultation with open minds and a willingness to change.

### ***BLOCK OFFER CONSULTATION***

- 3.6 Most applications for petroleum permits are for petroleum exploration permits. Predominantly, these are allocated following a Petroleum Exploration Permit Block Offer (refer section 5.2 for further details). Prior to recommending a block offer to the Minister, the Secretary shall consult with appropriate tangata whenua hapu and iwi. There will be a period of no less than one month given to tangata whenua hapu and iwi to comment on the proposal to hold a block offer and any of the proposed elements of the block offer.
- 3.7 The form of the consultation process is flexible. In all cases, the Secretary shall consult with local representatives of tangata whenua hapu and iwi, and outline the proposals for holding a block offer. This shall include writing to tangata whenua hapu and iwi advising the area of the proposed block offer, outlining a map of the blocks defined, and giving an outline of the types of activities that may take place should a petroleum exploration permit be allocated, the timing of the block offer and any proposed conditions of the offer.
- 3.8 If tangata whenua hapu and iwi and the Crown think it is appropriate, there may be face to face (kanohi ki te kanohi) consultation or a hui held. Officials shall be available to discuss and provide information on a proposed block offer if tangata whenua hapu and iwi require further information. If tangata whenua hapu and iwi have organisations established to foster consultation processes (for example, a committee which meets to consider permits and consents under the Crown Minerals Act 1991 and the Resource Management Act 1991 respectively), the Secretary would be pleased to work with these organisations.
- 3.9 To ensure that there is appropriate consultation, the Secretary shall maintain a tangata whenua hapu and iwi contact list for the purposes of consultation and shall endeavour to ensure that this is up to date. Tangata whenua hapu and iwi are encouraged to advise the Secretary of any changes in contact names and addresses in order to facilitate the consultation process.
- 3.10 As part of the consultation process, tangata whenua hapu and iwi may request an amendment to the proposed block offer or that defined areas of land not be included in any permit (block), in recognition of the principles of the Treaty of Waitangi.
- 3.11 In determining a Petroleum Exploration Permit Block Offer, the Secretary shall also have regard to claims under the Treaty that are before Government and the Waitangi Tribunal which may have implications for the management of the Crown owned petroleum estate.
- 3.12 In recommending a Petroleum Exploration Permit Block Offer to the Minister, the Secretary shall report on tangata whenua hapu and iwi consultation and give an assessment of any claims before the Waitangi Tribunal which relate to the area of the block offer. Where tangata whenua hapu or iwi have requested an amendment to the proposed block offer or the exclusion

of any land from the block offer, the request(s) shall be outlined and an evaluation made. In evaluating such requests, matters that the Minister shall take into consideration, but is not limited to, include the following:

- What it is about the area that makes it important to the mana of tangata whenua hapu and iwi;
- Whether the area is a known wahi tapu site;
- The uniqueness of the area, for example, is it one of a number of mahinga kai (food gathering) areas or the only waka tauranga (the landing places of the ancestral canoes);
- Whether the importance of the area to tangata whenua hapu and iwi has already been demonstrated, for example, by Treaty claims and objections under other legislation;
- Any Treaty claims which may be relevant and whether granting a permit over the land would impede the prospect of redress of grievances under the Treaty;
- Any iwi management plans in place in which the area is specifically mentioned as being important and should be excluded from certain activities;
- The area's landowner status. If the area is one of the special classes of land in section 55, landowner veto rights may protect the area;
- Whether the area is already protected under other legislation, for example, the Resource Management Act 1991, Conservation Act 1987, Historic Places Act 1993; and
- The size of area and value of the potential resource affected if the area is excluded.

- 3.13 Where tangata whenua hapu or iwi have requested land to be excluded from a block offer or other amendments to the block offer conditions, following the Minister's full consideration of the matter, tangata whenua hapu and iwi shall be informed in writing of the Minister's decision.

### ***CONSULTATION ON PETROLEUM PERMIT APPLICATIONS OTHER THAN THOSE ARISING FROM A BLOCK OFFER***

- 3.14 Applications for petroleum permits which do not relate to a Petroleum Exploration Permit Block Offer are likely to be less common. Where these do occur, for example, an acceptable frontier offer exploration permit application, or when there is an application to extend a permit area, a similar procedure of consultation with tangata whenua hapu and iwi as for a petroleum exploration permit block offer, shall be followed. In this case, however, tangata whenua hapu and iwi shall be consulted about the specific application area and details of the proposed work to be undertaken. Where tangata whenua hapu and iwi then request that any land be excluded from a permit application, this request shall be evaluated taking into consideration the criteria outlined in paragraph 3.12.

### ***ONGOING PROVISION OF INFORMATION TO ASSIST CONSULTATION***

- 3.15 To assist tangata whenua hapu and iwi, the Secretary may, from time to time, publish information brochures on the Crown Minerals Act 1991 and its operation and distribute these to tangata whenua hapu and iwi.

### ***OTHER PROVISIONS AVAILABLE TO IWI***

- 3.16 In addition to the provisions of the Crown Minerals Act 1991 outlined above, tangata whenua hapu and iwi may use the land access provisions of the Act to protect areas of importance. These provisions are discussed in paragraphs 4.11 to 4.16. Also, there are other legislative mechanisms open to tangata whenua hapu and iwi to use to protect areas of importance. The Crown Minerals Act 1991 is complemented by the Resource Management Act 1991 which promotes the sustainable management of natural and physical resources. The Resource Management Act 1991 requires all decision makers to take into account the principles of the Treaty of Waitangi. Where tangata whenua hapu and iwi are concerned that petroleum prospecting, exploration or mining may have an impact on surface land areas or features of significance, the Resource Management Act 1991 provisions could be used to protect taonga and wahi tapu areas. There are also provisions in the Conservation Act 1987 and the Historic Places Act 1993 which may be appropriate to use. (Refer also to paragraphs 4.5 and 4.7.)

## **4 LAND AVAILABLE FOR PETROLEUM PERMITS**

- 4.1 Section 15(1)(b) of the Crown Minerals Act 1991 requires that this Minerals Programme for Petroleum shall identify any restrictions on prospecting, exploration and mining of petroleum. This chapter outlines restrictions on land available for permitting.

### ***LAND UNAVAILABLE BECAUSE OF IMPORTANCE TO MAORI***

- 4.2 Areas of land may be unavailable for permitting by policy decision of the Minister in accordance with section 15(3) of the Crown Minerals Act 1991. This provides that on the request of an iwi, a minerals programme may provide that defined areas of land of particular importance to its mana are excluded from the operation of the minerals programme or shall not be included in any permit.
- 4.3 In accordance with section 15(3) of the Crown Minerals Act 1991, Mt Taranaki and the Pouakai, Pukeiti and Kaitake Ranges as defined by the area of the Mt Egmont National Park, shall be unavailable for inclusion in any petroleum permit where the land (surface and subsurface) is above sea level. The boundaries of the Mount Egmont National Park containing 33764.7817 hectares, more or less, are:
- Pts Sub 2, Subs 1, 3, 4, 5, 9, Pts Subs 7, 8, 10, Pts Secs 49, 170, Pt Sec 189, Lots 1, 2, 3, 4 DP 13397, Lot 1 DP 15932, Blk III Cape SD,
- Pt Sec 169 Oakura District, Blks III & VII Cape SD,
- Secs 1-3, 11-14, 16-18 Blk V Egmont SD,
- Sec 38 Blk VI Cape SD,
- Lot 2 DP 7882, Secs 3, 4, 6, 7, 10, 14, 15, 20, Blk VII Cape SD,
- Lot 1 DP 10394, Lot 1 DP 8824, Lot 2 DP 8649, Lot 1 DP 11816 & Secs 8, 14, 16, 18, Blk XI Cape SD,
- Pt Sec 3, Blk XV Cape SD,
- Lot 1 DP 10401, Blk XII Egmont SD
- Secs 54, 55, 68 & Pt Sec 63, Blk IV Kaupokonui SD,
- and Egmont National Park in Blks V, VI, VII, IX, X, XI, XIII, XIV, XV Egmont SD,  
Blks XI, XV Cape SD,  
Blk IV Opunake SD,  
and Blks I, II, III, IV, V, VI, VII Kaupokonui SD
- Section 1 SO 13356 Blk XII Egmont SD  
Pt Sec 134 Omata District Blk VI Egmont SD
- Lot 1 DP 13427 Blk I Egmont SD.
- 4.4 Mt Taranaki and the Pouakai, Pukeiti and Kaitake Ranges are a fundamental source of tribal identity and mana for the iwi of Taranaki. The iwi of Taranaki consider Mt Taranaki and its associated ranges to be a tipuna (ancestor). The area is regarded as a wahi tapu (of special and/or sacred importance).

### ***OTHER LAND UNAVAILABLE***

- 4.5 The Sugar Loaf Islands Marine Protected Area Act 1991 excludes petroleum mining operations and the issue of permits over all the land and water bounded by a line commencing at 39° 03' 36.0" S and 174° 01' 24.6" E to a point 39° 02' 51.77" S and 174° 01' 51.71" E; then along a line from the navigation light on the lee breakwater of Port Taranaki at 39° 03' 24.15" S and 174° 02' 39.98" E to the breakwater; then in a westerly and south-westerly direction along the line of mean high water mark to the point of commencement; and includes all seabed and subsoil below those waters that extends down to the bedrock or 10 metres below the surface of the seabed, whichever distance is the greater; except subsequent permits arising from petroleum prospecting licence 38437.
- 4.6 In recognition of the Protocol on Environmental Protection to the Antarctic Treaty, all land south of latitude 60°S is unavailable to prospecting, exploration and mining permits.
- 4.7 Where there is a prohibition of any other land to prospecting, exploration or mining petroleum made in accordance with statute, the Minister shall consider such land unavailable for allocation by permit in respect of the activity.

### ***OTHER LAND AVAILABLE***

- 4.8 Other than the land noted in paragraphs 4.3 and 4.5 to 4.7 above, all land to which the Crown Minerals Act 1991 applies (refer paragraph 1.3) is available for allocation under petroleum permits, in accordance with the policies and procedures outlined in sections 5.1, 5.2 and 5.4 of this Minerals Programme.
- 4.9 Petroleum is a resource which is in a fluid or gaseous and flowing state sub-surface (sometimes referred to as a pool resource). Petroleum exploration and mining permits need to extend over the full area of a prospect or discovery as far as possible, even though access to that discovery may be from just several identifiable drilling sites. Accordingly, the permit needs to fully define the rights of the permit holder to the extent of that discovery.
- 4.10 Petroleum prospecting, exploration and mining can often be undertaken to avoid surface land areas or features of significance. For such areas to be protected from adverse impacts of petroleum prospecting, exploration or mining activities, the provisions of the Resource Management Act 1991 will apply. Under that Act, Regional Policy Statements, Regional Plans or District Plans may establish such environmental standards in some sensitive areas that they could preclude some petroleum mining operations. As well, an Order in Council under section 62 of the Crown Minerals Act 1991 may prohibit access to some Crown lands. Such an Order, however, cannot affect any existing access arrangements.

### ***LAND ACCESS***

- 4.11 The granting of a permit under the Crown Minerals Act 1991 does not confer on the permit holder a right of access to any land (section 47 of the Act refers). Sections 49 to 80 of the Crown Minerals Act 1991 set out the procedures and provisions for petroleum permit holders obtaining access to land. These are summarised below.
- 4.12 Pursuant to section 55(2) of the Act, the following classes of land cannot be entered without the written agreement of each owner or occupier of the land with the person desiring access (or without an access agreement determined by an arbitrator where this is agreed to by each owner or occupier of the land and the person desiring access):

- (a) Any land held or managed under the Conservation Act 1987 or any other Act specified in the First Schedule to the Conservation Act 1987;
- (b) Land subject to an open space covenant in terms of the Queen Elizabeth the Second National Trust Act 1977;
- (c) Land subject to a covenant in terms of the Conservation Act 1987 or the Reserves Act 1977;
- (d) Land for the time being under crop;
- (e) Land used as or situated within 30 metres of a yard, stockyard, garden, orchard, vineyard, plant nursery, farm plantation, shelterbelt, airstrip, or indigenous forest;
- (f) Land which is the site of or situated within 30 metres of any building, cemetery, burial ground, waterworks, race, or dam; and
- (g) Land having an area of 4.05 hectares or less.

As well, pursuant to section 51(2) of the Act, Maori land cannot be entered for the purpose of carrying out a minimum impact activity where the land is regarded as wahi tapu by the tangata whenua, without the consent of the owners of the land.

- 4.13 Other than the classes of land referred to above, a petroleum permit holder (and employees, agents and contractors of a permit holder authorised for that purpose) may enter land to which the permit relates and carry out minimum impact activity (defined in section 2, Crown Minerals Act 1991), upon giving at least 10 working days notice in the appropriate manner outlined in section 49 of the Crown Minerals Act 1991. For Maori land, section 51 of the Crown Minerals Act 1991 provides additionally that reasonable efforts are to be made to consult with those owners of the land able to be identified by the Registrar of the Maori Land Court and that the local iwi authority also be given 10 working days notice of proposed land entry. As noted in paragraph 4.8, if the Maori land is regarded as wahi tapu by the tangata whenua, no person may enter the land for minimum impact activity without the land owners' consent.
- 4.14 Pursuant to section 53 of the Crown Minerals Act 1991 for other than minimum impact activities, the holder of a petroleum permit shall not prospect, explore or mine in or on land to which the permit relates otherwise than in accordance with an access arrangement either:
  - (a) Agreed in writing between the permit holder and each owner and occupier of the land; or
  - (b) Determined by an arbitrator in accordance with the Crown Minerals Act 1991.
- 4.15 Desirably, an access arrangement is amicably determined between the permit holder and each owner and occupier of the land. If this does not occur, the permit holder may serve a notice on each owner and occupier requesting agreement to the appointment of an arbitrator. The Crown Minerals Act 1991 details this procedure and those for conducting hearings (sections 63 to 75 Crown Minerals Act 1991).
- 4.16 As noted, section 62 of the Crown Minerals Act 1991 provides for an Order in Council to be issued on the request of Ministers, prohibiting access in respect of any Crown land, such that neither minimum impact activities can be undertaken nor access arrangements entered into in respect of the defined Crown land area.

## ***PETROLEUM PERMITS AND OTHER MINERALS PERMITS***

- 4.17 A petroleum permit may be granted over land where there are other non-petroleum permits. This is highly likely to occur given that petroleum exploration and mining permits often extend over large areas (even though the surface exploration or mining activity may be from only a small number of identifiable sites). In most situations, it is not expected that the overlap of petroleum and non-petroleum permits will be of any consequence.
- 4.18 If a dispute does arise between a petroleum permit holder and a non-petroleum permit holder, for example, over potential or actual interference with one another's mining operations, the matter would need to be dealt with privately by the parties concerned, taking into account access arrangements and possibly resource consents.
- 4.19 If a dispute does arise and a petroleum permit holder is hindered or prevented from fulfilling the work programme conditions of the permit, this may be grounds to seek an amendment to the permit work programme conditions (refer sections 5.3 and 5.5). In considering any such application, the Minister shall have regard to the situation causing its request.

## 5 THE PERMITTING REGIME

### *INTRODUCTORY SUMMARY*

*There are three types of petroleum permits: prospecting; exploration; and mining. Section 23 of the Crown Minerals Act 1991 provides that any person may apply to the Secretary for a petroleum permit. Each application shall be considered in a manner which is consistent with the policies, procedures and provisions outlined in this Minerals Programme for Petroleum.*

*Prospecting permits are granted to enable reconnaissance and general investigations of an area. The grant of prospecting permits is on the condition that the permit holder has no subsequent right to an exploration permit.*

*Exploration permits are the basis for obtaining petroleum exploration and mining rights. There are three methods of allocating petroleum exploration permits:*

- (a) Staged work programme bidding, which shall be the primary method of allocation (refer paragraphs 5.2.23 to 5.2.47);*
- (b) Cash bonus bidding, which shall be used in areas of high prospectivity and where there is strong competitive interest (refer paragraphs 5.2.48 to 5.2.63); and*
- (c) Acceptable frontier offer applications, which may be made at any time over any area not reserved for allocation by staged work programme bidding or cash bonus bidding, not already allocated or otherwise reserved by a policy decision (refer paragraphs 5.2.64 to 5.2.83).*

*Staged work programme and cash bonus bidding applications are made pursuant to a Petroleum Exploration Permit Block Offer. A block offer is preceded by a Two Yearly Indicative Block Offer Schedule and may be initiated by a Notification of Interest from an explorer.*

*Petroleum exploration permits are granted with exclusive rights and the right to a subsequent mining permit.*

*Petroleum mining permit applications are predominantly made by an exploration permit holder, pursuant to both sections 23 and 32 of the Crown Minerals Act 1991, who has discovered a petroleum field within the exploration permit area. In very limited circumstances, applications will be considered for a mining permit from a person not holding an exploration permit.*

*This Chapter discusses the policies, procedures and provisions in respect of the allocation of petroleum permits and changes to granted permits. The criteria used in assessing applications are outlined. Details of how to apply for a permit or a change to a permit may be found in the relevant Crown Minerals regulations.*

## **5.1 ALLOCATION OF PETROLEUM PROSPECTING PERMITS**

### ***INTRODUCTION***

- 5.1.1 Petroleum prospecting permits are granted for the purpose of conducting reconnaissance geophysical surveys and/or reconnaissance geochemical surveys and/or general investigative studies or surveys with the purpose of providing information for further petroleum exploration. Prospecting also includes the taking of samples by hand or hand held methods. Prospecting permits may be granted both offshore and onshore. Work undertaken over the permits is most likely to be minimum impact activity, which is defined in section 2 of the Crown Minerals Act 1991. (This is not, however, a requirement of such permits).
- 5.1.2 Prospecting permits may be taken up by both exploration and mining companies to undertake reconnaissance work over relatively large areas, and data processing and research organisations wishing to undertake reconnaissance studies for sale of the information obtained to potential and existing explorers.
- 5.1.3 The Minister may also reserve an area for prospecting permits prior to advertising the area in a Petroleum Exploration Permit Block Offer (refer paragraphs 5.2.5 to 5.2.9), in order to provide for interested parties to undertake pre-bid prospecting, and to better formulate their bids for an exploration permit(s).
- 5.1.4 Applications for petroleum prospecting permits may be made at any time, over land available for petroleum permitting. Details of how to apply for a prospecting permit are prescribed in the relevant regulations. Permits generally shall be granted for a period of no more than one year. The Minister is unlikely to grant any extension of duration.
- 5.1.5 Petroleum prospecting permits shall not be granted over acreage held either in existing petroleum exploration or mining permits, or petroleum prospecting or mining licences (granted under the Petroleum Act 1937), during the currency of these permits or licences. As well, the Minister may choose not to grant prospecting permits over land which is being advertised in a Petroleum Exploration Permit Block Offer within three months of the closing date of exploration permit applications in respect of the Block Offer.

### ***CONDITIONS OF GRANT***

- 5.1.6 Petroleum prospecting permits shall be granted on the condition that a prospecting permit holder shall have no subsequent right to obtain petroleum exploration or petroleum mining permits over part or all of the area of the prospecting permit.
- 5.1.7 The Minister may determine that more than one prospecting permit may be issued over the same land, in other words, that the permit does not have an exclusive prospecting right.
- 5.1.8 The grant of a petroleum prospecting permit shall be on the condition that the permit holder shall make all efforts to prospect in accordance with good industry practice<sup>5</sup> and shall undertake a programme of work with the objective of materially adding to the existing knowledge about the petroleum potential of the permit area. There will also be a condition relating to the payment of prescribed fees.

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<sup>5</sup> Section 6.2 discusses the term 'good exploration and mining practice'. Good industry practice is a derivative of this term. It is more appropriate to use this term in reference to prospecting permits.

## ***EVALUATION OF APPLICATIONS***

5.1.9 In evaluating an application for a prospecting permit, the matters that the Minister shall take into account as relevant, but is not limited to, include the following:

- The objective of the work programme and work methods proposed, in particular taking into consideration the size of the desired permit and other work in the area, and the duration of the desired permit;
- Whether the objective of the work programme is to enable the better formulation of an exploration permit application;
- Whether the prospecting proposed in the application is likely to materially add to the existing knowledge of the petroleum resource in all or part of the land to which the application relates (section 28, Crown Minerals Act 1991);
- Other exploration or mining interest in all or part of the land to which the application relates (section 28, Crown Minerals Act 1991); and
- The size and location of the desired permit.

5.1.10 Having determined that the petroleum prospecting permit application is acceptable following a technical evaluation, then the Minister must also be satisfied that the applicant will comply with the conditions of, and give proper effect to, the permit (section 27, Crown Minerals Act 1991). In this respect, the matters that the Minister shall take into consideration as relevant, but is not limited to, include the following:

- (a) The applicant's financial capability to carry out the proposed work programme and to pay prescribed fees;
- (b) The applicant's technical capability, which may include proposed use of technical experts; and
- (c) Other prospecting, exploration or mining activities, both in New Zealand and internationally, that the applicant has been involved with, to the extent that these activities impact on the applicant's ability and likelihood to comply with the conditions of the proposed permit.

If the Minister is aware of any factors which could contribute to the view that the applicant may not give proper effect to the permit, for example, the applicant (or related companies) has not complied either with work programme conditions or the lodgement of data or the payment of fees or the conditions of consents associated with previously held petroleum privileges, then the Minister shall raise with the applicant the concerns held and advise the applicant of the factor(s) that are considered to be relevant to the grant of the permit. Before deciding on the matter, the Minister will consider any comments that the applicant has to make.

5.1.11 Any application assessment shall also take into consideration any international obligations contingent on the government, if relevant to the particular permit application in question.

## ***PROCESSING TIME FOR APPLICATIONS***

5.1.12 Where applications are received in relation to the Minister reserving an area for pre-exploration permit bid prospecting, then applications would be expected to be processed within one month of receipt. Otherwise processing should be completed within three months of receipt of an application.

## ***GRANT OF PERMIT***

- 5.1.13 Where the Minister agrees to grant a petroleum prospecting permit, the grant of the permit shall be subject to the acceptance of the conditions of grant by the applicant and the lodging of the required monetary deposit or bond with the Secretary (section 27(2), Crown Minerals Act 1991). A period of three months shall be given to lodge the monetary deposit or bond. This period of time may be extended if the Secretary considers there are good reasons, upon written application.
- 5.1.14 The permit granted will be in the form of a preamble, a first schedule detailing the area of the permit (including a map) and a second schedule detailing the conditions of permit grant, these being compliance with a prescribed work programme and/or methods of work, as proposed by the applicant in the application, and those stated in paragraphs 5.1.6 to 5.1.8.

## **5.2 ALLOCATION OF PETROLEUM EXPLORATION PERMITS**

### ***INTRODUCTION***

5.2.1 Petroleum exploration permits are granted for the purpose of undertaking work to identify petroleum deposits and evaluating the feasibility of mining any discoveries made. Exploration activities include geological, geochemical and geophysical surveying, exploration and appraisal drilling and testing of petroleum discoveries.<sup>6</sup> In most cases, an exploration permit would precede the consideration and grant of a mining permit.

5.2.2 Applications for exploration permits may be made:

#### *Either*

in accordance with a competitive bid Petroleum Exploration Permit Block Offer, which will provide for staged work programme bidding, or cash bonus bidding in areas of high prospectivity and where there is strong competitive interest (refer paragraphs 5.2.5 to 5.2.63);

#### *Or*

in accordance with acceptable frontier offer allocation (refer paragraphs 5.2.64 to 5.2.83).

Details of how to apply for an exploration permit are prescribed in the relevant regulations.

5.2.3 Exploration permits will usually be granted for a first term of five years with a five year second term extension of duration permissible. This is subject to sections 36, 37 and 38 of the Crown Minerals Act 1991. Section 36 provides that the duration of an exploration permit shall not be changed to be more than ten years from its commencement date. Section 37 *inter alia* requires that one half of the area of the permit shall be relinquished at the completion of the first term. Section 38 provides for the Minister to decline an extension of duration if the permit holder has not substantially complied with the conditions of the permit (for more detail refer to paragraphs 5.3.15 to 5.3.18).

5.2.4 Applicants for exploration permits can request a shorter term than five years. The Minister may define that exploration permits will be awarded for a shorter term than five years at the time of advertising exploration blocks, although this is not expected to happen.

### **PETROLEUM EXPLORATION PERMIT BLOCK OFFER**

5.2.5 A Petroleum Exploration Permit Block Offer is a method of allocation by public tender, in general accordance with section 24 of the Crown Minerals Act 1991. This competitive allocation method is considered most likely to result in a petroleum exploration permit being obtained by the person or company who is most likely to effectively and efficiently prospect, explore and develop the petroleum resource, and thus is in accordance with the efficient allocation of petroleum exploration rights (refer chapter 2).

5.2.6 From time to time, the Minister of Energy shall advertise a Petroleum Exploration Permit Block Offer in an appropriate publication(s). The objective is to advertise the block offer as widely as possible to parties who may be interested in exploration opportunities in New Zealand. The number of Petroleum Exploration Permit Block Offer's advertised each year is dependent upon exploration interest, the availability of suitable areas for exploration permit blocks, the general economic climate and administrative criteria (staff resources, processing schedules and such like).

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<sup>6</sup> *It should be noted that to undertake these activities, the provisions of the Resource Management Act 1991 and the Health and Safety in Employment Act 1992 will also apply (refer paragraph 5.2.87).*

- 5.2.7 Every Petroleum Exploration Permit Block Offer shall specify:
- (a) The block(s) available for tender or bid, including the specification of block area(s) in general terms (usually a map) and advice as to where the precise latitude and longitude co-ordinates may be obtained;
  - (b) The manner in which bids must be submitted: either by staged work programme bid or by cash bid to be lodged in accordance with the relevant regulations;
  - (c) The time by which bids must be received in order to be valid and the place where bids must be received;
  - (d) The conditions to which any permit granted in accordance with the Petroleum Exploration Permit Block Offer will be subject. This includes any conditions relating to minimum work requirements and the calculation and payment of royalties. The conditions advertised shall not be varied by the Minister after the close of the block offer, unless there is agreement with a successful applicant, and the amendments are not substantial; and
  - (e) Any application fee to be paid.
- 5.2.8 From the time of advertising a Petroleum Exploration Permit Block Offer to the closing time for bids to be received, there will generally be a period of approximately six months allowed for interested parties to formulate and lodge a bid. At no time will this period be less than four months.
- 5.2.9 This time provides for parties to obtain and research available petroleum data relevant to the permit block(s) on offer. It should provide sufficient time for parties to formulate and submit a bid(s).
- 5.2.10 A rolling two yearly Indicative Petroleum Exploration Permit Block Offer Schedule shall be advised to explorers approximately quarterly, in an appropriate publication(s). The indicative block offer schedule shall define the area of proposed future block offers but not the actual blocks or timing of the block offers. (It will also, from time to time, advertise the status of other areas available for application for petroleum exploration permits, refer paragraphs 5.2.64 to 5.2.83).
- 5.2.11 The Indicative Petroleum Exploration Permit Block Offer Schedule has the objective of giving companies advanced notice of what exploration acreage will be advertised for bids, to assist them with forward planning. It allows for prospecting permits to be obtained and general studies to be undertaken, thus enabling companies to be in a position to better formulate any bids in the upcoming block offer.
- 5.2.12 It is expected that no more than two or three areas would be included in the Indicative Petroleum Exploration Permit Block Offer Schedule at any time. The indicative block offer schedule shall be reviewed by the Minister quarterly and may be adjusted following consideration of relevant matters. This may include advancing the timing of a block offer or part of a block offer, if explorers advise substantial interest in this and provided other explorers would not be adversely affected by the decision.

## ***DETERMINATION OF PETROLEUM EXPLORATION PERMIT BLOCKS***

5.2.13 The location and area of any petroleum exploration permit block offered for bid shall be determined by the Minister, who, in prescribing the block, shall take into account relevant considerations such as:

- Whether there have been any expressions of interest from parties wanting to explore an area;
- Whether there has been a formal notification of interest (refer paragraphs 5.2.15 to 5.2.22);
- The geology and geological play concepts in the area of the block offer;
- The likely number and size of hydrocarbon prospects and leads; and
- The extent of exploration previously undertaken and the amount of information available on the block offer area.

5.2.14 Generally, the size of a petroleum exploration permit should be such as to extend over known or potential exploration targets. There is no fixed size of permits but, typically, exploration permits onshore and in prospective areas offshore would be in the range of 150 to 5000 square kilometres. Exploration permits in less explored offshore areas would be in the range of 3,000 to 25,000 square kilometres. Where a block is over 6000 square kilometres, there shall be special conditions of grant requiring early partial relinquishment of acreage (refer paragraph 5.2.26).

## **NOTIFICATION OF INTEREST IN BLOCK OFFER**

5.2.15 Explorers may have an interest in obtaining a permit over an area which is neither the subject of a Petroleum Exploration Permit Block Offer nor has been advised on the rolling two yearly Indicative Petroleum Exploration Permit Block Offer Schedule. At any such time, explorers may formally signal to the Minister land that they would like advertised in a Petroleum Exploration Permit Block Offer, by making a Notification of Interest. This procedure provides for both competitive allocation and allocation of land desired by explorers being made available.

5.2.16 A Notification of Interest shall be made in writing. It may be forwarded at any time and should provide the following:

- (a) A description of the area of interest, including a map or maps having each corner of the area of interest defined in terms of latitude and longitude;
- (b) A detailed geological evaluation of the area of interest, summarising the projected petroleum potential; and
- (c) A summary of the notifier's exploration intentions and objectives.

All Notifications of Interest should be forwarded to the Secretary, who shall assess them on behalf of the Minister. Following this assessment, the Secretary shall recommend to the Minister whether or not there should be a Petroleum Exploration Permit Block Offer.

5.2.17 On receipt of a Notification of Interest, firstly the Secretary shall establish whether the area of interest is legally available to be permitted. If there are any restrictions on permitting, or there are petroleum privileges, or there are unprocessed permit applications over any part of the Notification of Interest area, the person notifying the interest shall be advised that the Notification of Interest cannot be processed. An exception would be where there is a partial

overlap with the Notification of Interest area and an area subject to one of these restrictions. In this case, the person notifying the interest shall be advised of the overlap and asked to confirm whether he or she wants the notification to continue to be processed in respect of the available area.

5.2.18 The Secretary then must be satisfied that there is merit in advertising the area of interest in a block offer. The criteria which shall be taken into consideration in making this assessment and a recommendation to the Minister on the matter, include, but shall not be limited to, the following:

- The location and size of the area or block of interest;
- Any scheduled block offers in the same region;
- The technical and financial basis on which the Notification of Interest is made;
- The summary of exploration intentions and objectives; and
- The policy framework as outlined in chapter 2.

5.2.19 Having assessed a Notification of Interest, the Secretary may not consider it appropriate to recommend that the area of interest be advertised in a block offer exactly as notified. In such cases there shall be discussions held with the person who notified the interest to see if a modified area would be acceptable. For example, if a person notifies an interest in having an exploration permit over a large block in a sedimentary basin where there has already been significant exploration work, and the Secretary considers that the desired block's size and location could seriously hinder exploration of adjacent acreage, then the person notifying the interest shall be advised that the area of interest is not acceptable, but that consideration may be given to a modified area.

5.2.20 If a Notification of Interest is received for an area that is to be the subject of a planned future block offer, the person notifying the interest shall be informed of the proposed block offer and whether the desired block is or can be incorporated.

5.2.21 Having evaluated the Notification of Interest, the Secretary shall report to the Minister outlining the relevant considerations and recommend whether or not there should be a Petroleum Exploration Permit Block Offer. The person who lodged the Notification of Interest shall be advised, in writing, of the Minister's decision as to whether the area of interest will be advertised. Any advice that the area will be advertised shall indicate when and advise where details can be obtained. If a decision is made to decline advertising the area of interest, the principal reasons for this decision shall be outlined to the person who made the Notification of Interest.

5.2.22 Processing of a Notification of Interest would usually be completed within three months of receipt. If processing is likely to take longer than this, the person who notified an interest shall be advised and an indication given of when processing is likely to be completed.

## **ALLOCATION BY STAGED WORK PROGRAMME BIDDING**

5.2.23 When a Petroleum Exploration Permit Block Offer is advertised by the Minister, staged work programme bidding for exclusive exploration permits shall be used as the method for permit allocation except in areas of high prospectivity and where there is strong competitive interest, where cash bonus bidding will be used (refer paragraphs 5.2.48 to 5.2.63). Details of how to apply for an exploration permit are prescribed in relevant regulations. This includes the requirement that the applicant must forward a statement of proposed work.

5.2.24 With allocation by staged work programme bidding, the emphasis of the evaluation process shall be on the statement of proposed work and any supporting information. Accordingly, the work programme is required to detail the minimum work that is proposed to be undertaken and should clearly define the stages proposed to complete the work and any ongoing work commitment options. Permit applicants may request the opportunity to present a bid with a supporting technical presentation.

### ***CONDITIONS OF GRANT***

5.2.25 Where an exploration permit is granted by staged work programme bid allocation, there will be conditions set by the Minister along the following lines:

- (a) The permit holder will be required to make all reasonable efforts to explore and delineate the resource potential of the permit area, in accordance with good exploration and mining practice. (All exploration permits regardless of whether or not they have been allocated by staged programme bid will have such a condition); and
- (b) A defined programme of work, including any options to surrender the permit and when these may be exercised, will be specified; and
- (c) Conditions on the calculation and payment of royalties, in accordance with the provisions outlined in chapter 7, will be specified; and
- (d) There will be a requirement to pay prescribed fees.

There may also be other conditions which are particular to a block offer or part of a block offer, for example, related to the Minister's obligations to have regard to the principles of the Treaty of Waitangi. As noted in paragraph 5.2.7(d), the conditions to which any permit granted in accordance with a Petroleum Exploration Permit Block Offer will be subject, will be specified in the block offer advertisement.

5.2.26 From time to time, the Minister may call for bids in less explored areas over permit blocks greater than 6000 square kilometres in size. In advertising a Petroleum Exploration Permit Block Offer which includes blocks of this size, the Minister shall note that the grant of any permit greater than 6000 square kilometres shall be on the condition that, after a defined period, there shall be a requirement for partial relinquishment of a defined proportion of the area of the permit. Typically, the condition shall be that at least 50 percent of the area of the permit be relinquished after three years. The area remaining in the permit after this partial relinquishment must be contiguous, and the relinquished land situated so that it will not prevent or seriously hinder the exploration by any future permit holder of this land. Accordingly, any staged work programme bid would need to take this into account. This partial relinquishment of acreage would be in addition to that acreage required to be relinquished prior to the award of a second term of a permit (section 37(1), Crown Minerals Act 1991).

5.2.27 In advertising any block offer, the Minister may choose to advise some minimum work programme conditions which every bid would be required to meet, for example, a well drilling commitment option to be included within a defined period. If the Minister adopts this approach, the minimum work to be included in any bid shall be clearly stated in the advertisement of the Petroleum Exploration Permit Block Offer.

## ***EVALUATION OF APPLICATIONS***

5.2.28 An application shall be assessed on the basis of the information contained in the written application, any complementary presentation made, and any subsequent information provided by the applicant. Evaluation of bids shall be undertaken in accordance with the general policy framework as outlined in chapter 2, in particular, the policies:

- that the permit should be explored in accordance with an appropriate work programme which has the objective of assessing the petroleum resource potential of the permit area; and
- that exploration operations should result in increased knowledge of New Zealand's petroleum resource and petroleum potential.

The Minister also wants to be satisfied that the permit applicant has, as an objective, to achieve comprehensive exploration over the full permit area.

5.2.29 Where there are competitive bids, in most cases the applicant proposing the best staged work programme shall be the successful bidder, but always subject to the best bid being acceptable following technical evaluation and subject to the Minister being satisfied with those matters outlined in paragraph 5.2.41. It should be noted that the Minister is not obliged to accept the highest offer or to accept any offer.

5.2.30 Where there is more than one bid for a block, the applicants' proposed exploration work programmes shall be ranked according to the potential of the proposed work to make a petroleum discovery at the earliest time and their information gathering value. Committed work, where there is an upfront obligation to it being undertaken, shall generally be favoured ahead of contingent work. The timing and appropriateness of the proposed technical approach to working the area given existing knowledge of the geology and potential prospects or leads also shall be of major consideration.

5.2.31 As a general indication, exploration programmes are rated according to the work categories listed below. The work categories are listed in decreasing order of petroleum potential information gathering value:

- (a) Well drilling: the number and timing of exploration wells proposed to be drilled and the comprehensiveness of the associated geological evaluation programme;
- (b) Major geophysical surveying: the quantity and coverage of 3 Dimensional (3D) and 2 Dimensional (2D) seismic surveys and the relevance of any proposed programmes;
- (c) Geophysical reprocessing (taking existing seismic data over the permit area and reprocessing it using new or different techniques in order to aid its reinterpretation): the quantity of coverage and objective of reprocessing proposals; and
- (d) Minor geophysical surveys (for example, gravity, magnetic and passive fluorescence), geochemical surveys and general geological studies.

5.2.32 Another evaluation technique that the Minister may choose to use is to rank exploration work programme bids on the basis of proposed expenditure: committed and conditional. If expenditure is to be a major evaluation criteria, this will be advised in the Petroleum Exploration Permit Block Offer Notice.

5.2.33 Generally, it is considered that a work programme should include a well drilling commitment within the permit land area every three years. For more prospective areas, well drilling would

be expected to occur earlier and, for more frontier areas, there may be a case for later well drilling. A work programme must provide for at least one exploration well to be committed to and drilled during the first term of a permit, otherwise it will not be acceptable.

- 5.2.34 Where the content of an application is unclear, the applicant shall be asked to clarify meaning and, if appropriate, to provide further information or a technical presentation.
- 5.2.35 When there is only one application for a block and it is considered that there is not an acceptable work programme, the applicant may be approached to consider modifying the proposed work programme, if it is considered that to do so would generally be in the interest of ensuring continuing petroleum exploration in New Zealand. Otherwise the application shall be declined.
- 5.2.36 Where there are competing applications for a block, no party shall be given the opportunity to modify or improve a bid unless asked to clarify meaning. An exception to this provision shall be when there are competing applications for a block and none are considered acceptable. The Minister may, in such circumstances, advise all bidders for that block of this position and invite them to re-submit modified bids within a defined time frame, probably of the order of 20 working days. The modified bids shall then be considered as though these were the original bids.
- 5.2.37 Competing applications may be received for a block such that there are, for example, two applicants both interested in pursuing distinct exploration programmes over distinct parts of the block. If it is possible to issue two permits and the applicants are agreeable, then the Minister may choose to take this course of action.
- 5.2.38 It is possible for applications to be made for a single permit over adjacent blocks or part blocks. When this option is taken, the applicant may be asked to specify the exploration work proposed for each block or part block in order to allow for fair evaluation of competitive bids, which shall be undertaken on the basis of the advertised block areas.
- 5.2.39 An applicant may make a permit application which is contingent on the success of another of their applications for another block(s) or part block(s). In such cases, the applications for each of the blocks shall be evaluated on their merits as though they were stand alone. If, after this evaluation, any application is successful and another not, then the Minister shall decline all the relevant applications on the basis that they were contingent. The Minister shall decline contingent applications from an applicant making more than one application for the same block, such that application 'y' for block 'a' is considered only if application 'x' for block 'a' is unsuccessful.
- 5.2.40 To provide for the situation where a party may bid on multiple blocks in the hope of obtaining one or more, and more of the party's applications are successful than the party is technically or financially able to commit to, an application may be made subject to a stated priority consideration, for example, that a bid for block 'c' is considered only if either of bids for blocks 'a' or 'b' are unsuccessful.
- 5.2.41 Having determined that a petroleum exploration permit application is acceptable following a technical evaluation and that it is the best competitive application, then the Minister must also be satisfied that the applicant will comply with the conditions of, and give proper effect to, the permit (section 27, Crown Minerals Act 1991). In this respect, the matters that the Minister shall take into consideration as relevant include, but are not limited to, the following:
- (a) The applicant's financial capability to carry out the proposed work programme and to pay prescribed fees;

- (b) The applicant's technical capability, which may include proposed use of technical experts; and
- (c) Other prospecting, exploration or mining activities both in New Zealand and internationally that the applicant has been involved with, to the extent that these activities impact on the applicant's ability and likelihood to comply with the conditions of the proposed permit.

If the Minister is aware of any factors which could contribute to the view that the applicant may not give proper effect to the permit, for example, the applicant (or related companies) has not complied either with work programme conditions or the lodgement of data or the payment of fees or the conditions of consents associated with previously held petroleum privileges, then the Minister shall raise with the applicant the concerns held and advise the applicant of the factor(s) that are considered to be relevant to the grant of the permit. Before deciding on the matter, the Minister will consider any comments that the applicant has to make.

### ***PROCESSING TIME***

- 5.2.42 Processing of staged work programme bid applications should usually be completed within three months of the closing date of applications. Applicants shall be advised if processing will take longer than this.

### ***GRANT OF PERMIT AND CONDITIONS OF GRANT***

- 5.2.43 Once the Minister has decided whether or not to grant an exploration permit, all applicants shall be advised in writing of the outcome of their applications, as quickly as possible. If there is not an acceptable bid for a block, the Minister shall decline all bids. Any media statements issued, advising the results of a Petroleum Exploration Permit Block Offer, shall be timed so that, as far as possible, applicants would already know the outcome of their own applications. Unsuccessful applications shall not be advised to the media.
- 5.2.44 Where a petroleum exploration permit is to be granted, the grant of the permit shall be subject to the conditions of grant that were advertised in the final notice that the permit area was available for application (in other words, the notice applying at the time of the closure of receipt of bids), unless otherwise modified in agreement with the applicant, provided that any modifications are not substantial. The grant of the permit shall occur after the formal acceptance of the conditions of grant by the applicant and the lodging of the required monetary deposit or bond with the Secretary (section 27(2), Crown Minerals Act 1991). A period of three months shall be given to lodge the monetary deposit or bond. This period of time may be extended, upon written application, if the Minister considers that there are good reasons. If the monetary deposit or bond is not received as required, the decision to award the permit lapses and the Minister shall decline the permit application accordingly.
- 5.2.45 The permit granted will be in the form of: a preamble which references the permit holder(s); a first schedule detailing the area of the permit (including a map); and subsequent schedules detailing the conditions of permit grant. This includes conditions along the lines of those outlined in paragraph 5.2.25 and any other conditions of grant advised at the time of advertising the Petroleum Exploration Permit Block Offer.
- 5.2.46 If the successful bidder chooses not to accept the offer to grant a permit or does not forward the monetary deposit or bond within the required time frame, the Minister's decision to award the exploration permit shall lapse and the Minister subsequently shall decline the application. The Minister may then choose to approach the next most acceptable bidder and treat the bid from that applicant as if it were the accepted bid.

## ***GROUNDNS FOR DECLINE OF PERMIT APPLICATION***

5.2.47 A staged work programme bid application may be declined on the grounds that the proposed work programme is not acceptable, taking into account the various evaluation criteria detailed in paragraphs 5.2.28 to 5.2.40, or if taking into account all relevant considerations, the Minister considers that the applicant would not give proper effect to any permit granted (refer paragraph 5.2.41). An application may also be declined taking into consideration the Government's international obligations, if they are relevant to the particular permit in question. As well, an application may be declined if the required monetary deposit or bond is not lodged (refer paragraph 5.2.44).

## ***ALLOCATION BY CASH BONUS BIDDING***

5.2.48 In areas of high prospectivity and where there is strong competitive interest, in advertising a Petroleum Exploration Permit Block Offer in the manner outlined in paragraphs 5.2.5 to 5.2.9, the Minister may use cash bonus bidding as the method of exploration permit allocation. For such areas, it is highly likely there exists a good petroleum exploration information database. Applications are required to be made in the manner prescribed in the relevant regulations and in accordance with any detailed instructions specified in the Block Offer Notice. All the conditions, to which any permit granted from the block offer will be subject, shall be prescribed in the Block Offer Notice.

5.2.49 With the cash bonus bidding allocation method, there is minimal evaluation of the applications and an exploration permit shall be awarded to the applicant who has made the highest cash bid for a block, always provided that the applicant is satisfactory to the Minister (refer paragraphs 5.2.59 and 5.2.60) and has complied with the bidding criteria. This may include bids having to be equal to, or higher than, either a minimum cash amount per square kilometre announced prior to bidding or a reserve price (not disclosed until bidding closes) which may be set by the Minister. If there is a minimum bidding price, or bids are to be measured against an unstated reserve price, this shall be advised in the Petroleum Exploration Permit Block Offer Notice.

## ***CONDITIONS OF GRANT***

5.2.50 A stated condition of the grant of a petroleum exploration permit (by both cash bonus bidding allocation and other allocation methods) shall be along the lines that the permit holder shall make all reasonable efforts to explore and delineate the petroleum resource potential of the permit area, in accordance with good exploration and mining practice. Such a condition of grant shall be specified precisely in the advertisement of the Petroleum Exploration Permit Block Offer.

5.2.51 As well, to ensure that the land under a permit allocated by cash bonus bidding is adequately explored, it shall be a condition of the grant of a permit that either at least one exploration well is drilled within the permit area within three years of the commencement date of the permit, or the permit is surrendered. In advertising any block offer, the Minister may also choose to advise that it shall be necessary for every permit holder to undertake some other defined work obligations to maintain the permit property right. For example, this could be a permit condition to undertake a minimum level of seismic surveying. As well, petroleum exploration permits shall be granted with conditions relating to the calculation and payment of royalties (in accordance with the provisions outlined in chapter 7) and the payment of prescribed fees. There may also be other conditions which are particular to a block offer or part of a block offer, for example, related to the Minister's obligations to have regard to the principles of the Treaty of Waitangi. As noted in paragraph 5.2.7(d), the conditions to which any permit granted in accordance with a Petroleum Exploration Permit Block Offer will be subject, will be specified in the block offer advertisement.

## ***LODGEMENT AND ACCEPTANCE OF BIDS***

- 5.2.52 The Block Offer Notice shall clearly specify where cash bonus bids should be forwarded. For a bid to be accepted, it must be accompanied by an overseas bank draft in New Zealand dollars or a certified bank cheque drawn on a New Zealand registered bank of a minimum deposit of twenty percent of the bid proposed. If a bid is successful, there shall be a maximum period of 5 working days to forward any outstanding bid payment owing. Failure to pay the outstanding amount will result in disqualification of the bid and forfeiture of the deposit. This procedure is to ensure bona fide bids. Unsuccessful bids will be returned within 15 working days (refer paragraph 5.2.58).
- 5.2.53 Any person lodging a bid for a block shall be deemed to have accepted the conditions of permit grant (refer paragraphs 5.2.50 and 5.2.51) as specified in the Petroleum Exploration Permit Block Offer Notice.

## ***CONSIDERATION OF EQUAL CASH BIDS***

- 5.2.54 When more than one bidding party submits exactly equal dollar value highest bids for a permit block, the Minister shall defer a decision on the award of the permit and shall request the applicants to modify the original bid lodged. The Minister shall then determine an outcome.

## ***CONDITIONAL BIDS***

- 5.2.55 An applicant may make a permit application bid which is contingent on the success of another of their application bids for another block(s) or part block(s). In such cases, the applications for each of the blocks shall be evaluated as though they were stand alone. If, after this evaluation, any application is successful and another not, then the Minister shall decline all the applications on the basis that they were contingent. The deposit forwarded in respect of the unsuccessful applications shall be returned within 15 working days, as outlined in paragraph 5.2.58. The Minister shall decline contingent applications from an applicant making more than one application for the same block, such that application 'y' for block 'a' is considered only if application 'x' for block 'a' is unsuccessful.
- 5.2.56 To provide for the situation where a party may bid on multiple blocks in the hope of obtaining a certain number and more of the party's bids are successful than the party is technically or financially able to commit to, a cash bonus bid may be made subject to conditions limiting the applicant's financial commitment or the number of permits to be granted to the applicant. The bidder may choose to limit the total number of permits obtained by marking that a bid for a block is made conditional upon the non-success of another bid for another block, in other words, that a bid for block 'c' is considered only if either of bids for blocks 'a' or 'b' is unsuccessful. The bidder may choose to limit the total financial commitment by marking that a bid is made conditional upon the sum total of other bids accepted from the bidder not being in excess of a certain level of expenditure, in other words, that a bid for block 'c' is considered only if a bid for block 'a' is not successful. Conditional bids which are then not considered shall be treated as though they were unsuccessful and the return of the deposit(s) shall be made within 15 working days as outlined in paragraph 5.2.58.

## ***BIDDING PROCEDURES***

- 5.2.57 At a nominated time, all bids received shall be opened. No bids shall be opened before this time. The bids shall be opened by no less than two people, one of whom is a government official and one of whom is a Justice of the Peace. Receipt of every bid shall be acknowledged promptly. The successful bidders shall be formally advised in writing within ten working

days or the Minister shall determine that consideration of bids for defined blocks is deferred for a set time, and shall advise the applicants with reasons accordingly, and of the time period of the deferral.

- 5.2.58 All cash bonus bid deposits (which are received with bids) shall be deposited in a trust account in accordance with Part VII of the Public Finance Act 1989. For bids then determined unsuccessful (or withdrawn), the deposit plus any interest accrued shall be returned to the applicant within 15 working days from the opening date of bids. For successful bids, the interest shall be paid to the Crown Bank Account.

### ***EVALUATION OF APPLICATIONS***

- 5.2.59 Before granting a permit to the highest bidder, the Minister must also be satisfied that the applicant will comply with the conditions of, and give proper effect to, the permit (section 27, Crown Minerals Act 1991). In this respect, the matters that the Minister shall take into consideration as relevant include, but are not limited to, the following:

- (a) The applicant's financial capability to carry out the proposed work programme and to pay prescribed fees;
- (b) The applicant's technical capability, which may include proposed use of technical experts; and
- (c) Other prospecting, exploration or mining activities both in New Zealand and internationally that the applicant has been involved with, to the extent that these activities impact on the applicant's ability and likelihood to comply with the conditions of the proposed permit.

If the Minister is aware of any factors which could contribute to the view that the applicant may not give proper effect to the permit, for example, the applicant (or related companies) has not complied either with work programme conditions or the lodgement of data or the payment of fees or the conditions of consents associated with previously held petroleum privileges, then the Minister shall raise with the applicant the concerns held and advise the applicant of the factor(s) that are considered to be relevant to the grant of the permit. Before deciding on the matter, the Minister will consider any comments that the applicant has to make.

- 5.2.60 If there is insufficient information included with an application to establish whether or not the applicant would be able to give proper effect to a permit, the Minister shall give the applicant three working days to rectify the omission. If this does not occur, and the Minister is not satisfied that the applicant will comply with the conditions of, and give proper effect to the permit, then the Minister may decline the bid. Any cash bid application may also be declined taking into consideration the Government's international obligations, if relevant to the particular permit application in question.

### ***GRANT OF PERMIT AND CONDITIONS OF GRANT***

- 5.2.61 Where a petroleum exploration permit is to be granted, the grant of the permit shall be subject to the conditions of grant that were advertised in the final notice that the permit area was available for application, unless otherwise modified in agreement with the applicant provided that the modifications are not substantial. The grant of the permit shall occur after the formal acceptance of the conditions of grant by the applicant, the lodgement of the full cash bid (refer paragraph 5.2.52), and the lodging of the required monetary deposit or bond with the Secretary (section 27(2), Crown Minerals Act 1991). A period of three months shall be given to lodge the monetary deposit or bond. This period of time may be extended, upon written application, if the Minister considers that there are good reasons.

- 5.2.62 The exploration permit granted shall be in the form of: a preamble with references to the permit holder(s); a first schedule detailing the area of the permit (including a map); and subsequent schedules detailing the conditions of permit grant advised at the time of advertising the Petroleum Exploration Permit Block Offer. This will include conditions as noted in paragraphs 5.2.50 and 5.2.51 and conditions which detail the calculation and payment of royalties.
- 5.2.63 If the successful bidder chooses not to accept the offer to grant a permit by not validating a bid or does not forward the monetary deposit or bond within the required time frame, the Minister's decision to award the exploration permit shall lapse and the deposit shall be forfeited (refer paragraph 5.2.52). The Minister shall decline the application accordingly. The Minister may then choose to approach the next highest acceptable bidder and to allocate the permit to this party. For a subsequent bid to become acceptable in such circumstances, it needs to be validated by the lodging of a deposit within ten working days of notification.

## **ACCEPTABLE FRONTIER OFFER**

- 5.2.64 Allocation of petroleum exploration permits by staged work programme or cash bonus bidding in accordance with a Petroleum Exploration Permit Block Offer is expected to be the allocation method used in most instances for petroleum exploration permits. Petroleum exploration permits may also be allocated as a result of what are referred to as "Acceptable Frontier Offer" applications. These applications may be made at any time, over land that is available for exploration, other than over the areas specified in paragraph 5.2.66. Acceptable Frontier Offer applications provide an explorer, who has resources and commitment to aggressively explore a frontier area, the opportunity to obtain a permit and commence exploration activity within a short time frame. A condition of acceptance and grant of such applications shall be the commitment to undertake considerable, immediate exploration work and expenditure to the minimum standards as set out in paragraphs 5.2.71 or 5.2.72.
- 5.2.65 Application requirements are prescribed in the relevant regulations. These include the requirement that the applicant must forward a statement of proposed work. As with staged work programme bid applications made pursuant to a Petroleum Exploration Permit Block Offer, the emphasis of the evaluation process is on the statement of proposed work and any supporting information. The work programme should detail the minimum work that is proposed to be undertaken and should clearly define the stages proposed to complete the work and any ongoing work commitment options. Permit applicants may request the opportunity to present a bid with a supporting technical presentation.
- 5.2.66 Acceptable Frontier Offer applications may be made over all land that is available for petroleum permitting (refer chapter 4) other than the following:
- (a) Any area in a current Petroleum Exploration Permit Block Offer (refer paragraphs 5.2.5 to 5.2.9);
  - (b) Any defined areas advised in the rolling two yearly Indicative Petroleum Exploration Permit Block Offer Schedule (refer paragraphs 5.2.10 to 5.2.12);
  - (c) Any area which is the subject of a Notification of Interest not yet determined (refer paragraphs 5.2.15 to 5.2.22);
  - (d) Any area within reasonable distance of a mining permit or an exploration permit in which a discovery has been made in the preceding three months (with reasonable distance being determined taking into account matters such as geological factors and proximity to the discovery. Typically, this would be one exploration permit size block distant from the permit in which the discovery was made [refer paragraph 5.2.14]);

(e) Any area from time to time advised by the Minister as being unavailable for Acceptable Frontier Offer exploration permit applications; and

(f) Any land over which there is a petroleum permit application not yet determined.

5.2.67 If an explorer wishes to make an Acceptable Frontier Offer application, this should be for a permit sized block (refer paragraph 5.2.14). As a guide, if a block offer has previously been held in the area of interest, the application should be over a similar sized block to those in the block offer. If the application area is considered to be too large, the Secretary will approach the applicant and recommend the area be reduced. Onshore permit applications will not be accepted if the area is greater than 2000 square kilometres.

5.2.68 If the proposed permit is for an area greater than 6000 square kilometres, then the applicant needs to recognise that it shall be a condition of the grant of a permit of this size that there shall be a requirement for partial relinquishment of the area of the permit after a defined period. Typically, the condition shall be that at least 50 percent of the area of the permit be relinquished after three years. The area remaining in the permit after this partial relinquishment must be contiguous, and the relinquished land situated so that it will not prevent or seriously hinder the exploration by any future permit holder of this land. This partial relinquishment would be in addition to that acreage required to be relinquished prior to the award of a second term of a permit (section 37(1), Crown Minerals Act 1991).

5.2.69 Acceptable Frontier Offer applications may be made for an exploration permit of up to five years duration, with the potential for a second term extension of duration pursuant to section 37 of the Crown Minerals Act 1991 (refer paragraphs 5.3.15 to 5.3.18).

### ***EVALUATION OF BIDS***

5.2.70 An Acceptable Frontier Offer exploration permit application shall be assessed on the basis of the information contained in the written application, any complementary presentation made, and any other information provided by the applicant. Evaluation of bids is undertaken in accordance with the general policy framework as outlined in chapter 2.

5.2.71 Except as otherwise provided in paragraph 5.2.72, for an Acceptable Frontier Offer exploration permit application to be accepted by the Minister, an applicant must, as a minimum, commit to undertake a programme of exploration work which provides for:

(a) Within twelve months of the commencement date of the proposed permit:

- i the completion of such detailed exploration work as is necessary to determine an exploration well drilling location; and
- ii either a commitment to undertake exploration well drilling as per (b) below, or the surrender of the permit; and

(b) Within twenty-four months of the commencement date of the proposed permit, the drilling of an exploration well.

5.2.72 In circumstances which are defined below, an applicant may request the Minister to consider an Acceptable Frontier Offer application with a minimum work programme providing for exploration well drilling in the third year of the proposed permit. The Minister would consider such applications in circumstances where there has been little or no recent geophysical or well drilling activity within the area of the application. In such circumstances, the Minister may allow a permit holder a period of up to eighteen months to undertake a work programme which shall comprise an initial appraisal of the permit area's potential, for example by

completing a geophysical survey over the full extent of the proposed permit. Following from this, the work programme would then need to provide for the permit holder to undertake such detailed exploration work as considered necessary to determine an exploration well drilling location and a commitment to exploration well drilling within twenty-four to thirty months of the commencement date of the permit. Drilling of at least one exploration well within thirty-six months of the commencement date of the permit shall be required.

5.2.73 The Minister must be satisfied that the programme of work for the full term of the proposed permit:

- (a) has the objective of assessing the petroleum resource potential of the permit; and
- (b) will result in ongoing working of the granted permit in accordance with good exploration and mining practice; and that
- (c) as a result of exploration operations, there shall be increased knowledge of New Zealand's petroleum resource and petroleum potential.

5.2.74 If an application does not comply with the minimum criteria set out above, then the Minister shall decline the application.

5.2.75 Where the applicant meets the minimum criteria set out above, the Minister may, at any time, seek clarification of the application and may enter into discussions with the applicant concerning the proposed work programme and conditions of grant of a possible permit. The applicant may be requested to provide further information and to give a technical presentation.

5.2.76 If an application has been received and is being processed, and then a subsequent application is received, the first application is considered solely on its merits and any subsequent application is not considered until the first has been finally disposed of by being granted, granted in an amended form, declined or withdrawn.

5.2.77 Having determined that a petroleum exploration permit application is acceptable following a technical evaluation, then the Minister must also be satisfied that the applicant will comply with the conditions of, and give proper effect to, the permit (section 27, Crown Minerals Act 1991). In this respect, the matters that the Minister shall take into consideration as relevant include, but are not limited to, the following:

- (a) The applicant's financial capability to carry out the proposed work programme and to pay prescribed fees;
- (b) The applicant's technical capability, which may include proposed use of technical experts; and
- (c) Other exploration or mining activities both in New Zealand and internationally that the applicant has been involved with, to the extent that these activities impact on the applicant's ability and likelihood to comply with the conditions of the proposed permit.

5.2.78 In respect of the applicant's financial and technical ability the Minister requires evidence that the applicant has the financial and technical capability to undertake the proposed programme of work up to the completion of at least one exploration well, without needing to attract farm-in partners to finance the activity.

5.2.79 If the Minister is aware of any factors that could contribute to the view that the applicant may not give proper effect to the permit, then the Minister shall raise with the applicant the concerns held and advise the applicant of the factor(s) that are considered to be relevant to the grant of the permit. For example, the applicant (or related companies) may not have complied with

work programme conditions or the lodgement of data or the payment of fees or the conditions of consents associated with previously held petroleum privileges. If the applicant has previously held all or part of the application area under an exploration permit (or prospecting licence) and recently surrendered it prior to undertaking substantial work, for example, well drilling or a major seismic programme, then the Minister may also consider that the non-completion of the major work under the previous right is grounds that the applicant may not be able to give effect to aggressively exploring the permit application area. Before deciding on the matter, the Minister will consider any comments that the applicant has to make.

### ***GRANT OF PERMIT AND CONDITIONS OF GRANT***

5.2.80 Once the Minister has decided whether or not to grant an exploration permit, the applicant shall be advised in writing of the outcome of the decision as quickly as possible. Where a petroleum exploration permit is to be granted, the grant of the permit shall be subject to conditions along the following lines:

- (a) The permit holder shall make all reasonable efforts to explore and delineate the petroleum resource potential of the permit area, in accordance with good exploration and mining practice;
- (b) The accepted work programme shall be a condition of the permit;
- (c) If the permit land area is greater than 6000 square kilometres there shall be a condition on the partial relinquishment of land after a defined period (refer paragraph 5.2.68);
- (d) There will be conditions on the calculation and payment of royalties, in accordance with the provisions outlined in chapter 7;
- (e) There will be a requirement to pay prescribed fees;
- (f) The grant of a permit as a consequence of an Acceptable Frontier Offer application shall also be made within the general policy that there shall be no amendments allowed to the exploration permit minimum work programme (subject to any reasonable request to provide for the timely completion of well drilling which has commenced but is not able to be properly completed within the minimum time frames of twenty-four or thirty-six months in accordance with paragraphs 5.2.71 and 5.2.72).

5.2.81 There may also be other conditions which are particular to the application or application area, for example, related to the Minister's obligations to have regard to the principles of the Treaty of Waitangi.

5.2.82 The grant of the permit shall occur after the formal acceptance of the conditions of grant by the applicant and the lodging of the required monetary deposit or bond with the Secretary (section 27(2), Crown Minerals Act 1991). A period of three months shall be given to lodge the monetary deposit or bond. This period of time may be extended, upon written application, if the Minister considers that there are good reasons. If the monetary deposit or bond is not received as required, the decision to award the permit lapses and the Minister shall decline the permit application accordingly.

### ***GROUNDINGS FOR DECLINE OF PERMIT APPLICATION***

5.2.83 The Minister may decline an Acceptable Frontier Offer exploration permit application on the grounds that the proposed work programme is not acceptable, in particular taking into consideration the requirements of paragraphs 5.2.71 and 5.2.72, or if taking into account all

relevant considerations, the Minister considers that the applicant would not give proper effect to any permit granted (refer paragraphs 5.2.77 to 5.2.79). An application may also be declined taking into consideration the Government's international obligations, if they are relevant to the particular permit in question. As well, an application may be declined if the required monetary deposit or bond is not lodged.

## **COMMENCEMENT DATE OF PERMIT**

5.2.84 Every exploration permit shall specify a commencement date. This shall be determined by the Minister taking into consideration such relevant matters which include, but are not limited to:

- The date of advice to the applicant that the Minister has agreed to the grant of the permit;
- The date by which a monetary deposit or bond is required to be lodged;
- Any work programme commitments and stages;
- Avoidance of permit anniversary dates being a day in the period commencing 20 December and ending with 15 January (in accordance with section 2, Crown Minerals Act 1991, definition of "working days"); and
- Any reasonable requests of the applicant for a commencement date.

5.2.85 As noted previously, permits are not granted until the lodgement with the Secretary of the required monetary deposit or bond (section 27(2), Crown Minerals Act 1991) and a period of three months is given for this. Accordingly, in most cases, the commencement date of the permit shall be a date approximately three months following advice to the permit applicant that the Minister has agreed to grant the permit.

5.2.86 Prior to the formal permit grant, the prospective permit holder cannot do any prospecting or exploration in the land to which the permit relates, for example, geophysical or geochemical surveying and any exploration work requiring land access. A prospective permit holder, however, can initiate obtaining necessary land access and resource consents.

## **OTHER CONSENTS REQUIRED**

5.2.87 The grant of a permit gives to the permit holder rights as outlined in sections 30, 31 and 32 of the Crown Minerals Act 1991, essentially to prospect, explore and mine as appropriate, to have that right exclusively unless the permit conditions expressly provide otherwise, to be the owner of all minerals lawfully obtained and to have rights to subsequent permits, unless the permit conditions expressly provide otherwise. Other consents complementing the permit granted under the Crown Minerals Act 1991 are likely to be necessary to give full effect to the permit. A permit holder is likely to need to obtain relevant consents pursuant to the Resource Management Act 1991 and the Health and Safety in Employment Act 1992, and any regulations made pursuant to these Acts which are relevant, and to undertake prospecting, exploration or mining in accordance with the provisions of these Acts and the conditions of consents obtained. A permit holder must also obtain necessary land access consents before undertaking any exploration or mining work requiring land access (refer paragraphs 4.11 to 4.16).

## **5.3 CHANGES TO EXPLORATION PERMITS**

- 5.3.1 The permit holder at any time during the currency of an exploration permit, may apply in writing to the Secretary to amend the conditions of a permit, or extend the land or minerals to which the permit relates, or extend the duration of the permit (section 36 of the Crown Minerals Act 1991). Any application should be made in accordance with the relevant regulations.
- 5.3.2 An application shall be assessed on the basis of the information contained in the written application, any complementary presentation made and any subsequent information provided, with evaluation being undertaken in general accordance with the policy framework as outlined in chapter 2 and the provisions of sections 36, 37 and 38 of the Crown Minerals Act 1991. Depending on the type of change being requested, various criteria shall be taken into consideration in assessing an application. These are discussed by subject in paragraphs 5.3.5 to 5.3.28.
- 5.3.3 When the Minister has decided whether or not to grant an application to change a permit, the permit holder shall be advised in writing of the decision as quickly as possible. Where a change is to be made to the permit, a permit endorsement (being either a certificate of change of conditions, or a certificate of extension as the case may be) shall be forwarded to the permit holder and the permit register noted accordingly.
- 5.3.4 Processing of applications for changes to permits should usually be completed within three months of receipt, except for applications to extend the duration of an exploration permit to appraise a discovery, which should be completed within six months. If processing is likely to take longer than this, the permit holder shall be advised of this with reasons.

### ***AMENDING PERMIT WORK PROGRAMME CONDITIONS***

- 5.3.5 Where exploration permits are granted with work programme conditions, compliance with these conditions is a fundamental tenet of the allocation process. Whilst section 36 of the Crown Minerals Act 1991 provides for amendments to permit work programme conditions, the Minister expects to receive applications for such amendments only as a consequence of extenuating circumstances.
- 5.3.6 The Minister shall take into account, but is not limited to, any of the following matters in evaluating an application to amend an exploration permit's work programme:
- Exploration work undertaken on the permit up to the time of application and the results of this;
  - Whether the proposed amended work programme will achieve comprehensive exploration over the permit area, enabling the assessment of the petroleum potential of the permit;
  - Whether the proposed amendment shall facilitate more effective exploration of the permit area;
  - Whether the proposed amendment shall enable an exploration problem to be better addressed;
  - Any previous applications to amend the permit work programme;
  - Whether the proposed amendment would result in an unacceptably reduced level of exploration work to that agreed to between the permit holder and the Minister at the time of permit grant or the grant of a second term of the permit;

- Whether the permit holder has substantially complied with the permit (section 38, Crown Minerals Act 1991);
- Whether agreeing to the amendment is necessary to give effect to the Minister's agreement to extend the area or minerals covered by the permit;
- Any force majeure circumstances which may prevent the permit holder progressing exploration work to the timetable outlined in the permit conditions;
- Whether the permit holder is being prevented from progressing exploration work by delays in obtaining consents under the Crown Minerals Act 1991 or any other Act, and that those delays have not been caused or contributed to by negligence or default on the part of the permit holder and the permit holder is making all reasonable efforts to progress the matter (this is consistent with the principles of section 35(2) of the Crown Minerals Act 1991);
- Whether the permit holder is unable to progress work because there is a need for legal agreements to be in place and these have not been finalised, provided that negligence or default on the part of the permit holder has not caused or contributed to these agreements not being finalised and the permit holder is making all reasonable efforts to progress the matter; and
- Whether agreeing to the amendment may be inconsistent with the petroleum permit allocation process.

5.3.7 In particular, the Minister shall take into account whether agreeing to an amendment to a permit's work programme conditions would be inconsistent with the petroleum permit allocation process. If the permit was awarded from a Petroleum Exploration Permit Block Offer, on the basis of staged work programme bidding, and there were competitive bids for the permit, the assessment of the application to amend the permit's work programme conditions shall involve assessing whether the proposed amended work programme would have been of lower work value than other bids originally received over the same block. If the permit was awarded from either a Petroleum Exploration Permit Block Offer on the basis of cash bonus bidding, or as a consequence of an Acceptable Frontier Offer exploration permit application, on the condition of undertaking defined minimum exploration work, the grant of the permit has been made within the general policy that there shall be no amendments allowed to the exploration permit minimum work programme (subject to any reasonable request to provide for the timely completion of well drilling which has commenced but is not able to be completed within the stated minimum time frame). The Minister's assessment shall take into consideration this general policy.

### ***AMENDING OTHER PERMIT CONDITIONS***

5.3.8 Exploration permits are granted with conditions related to work programme obligations, the calculation and payment of royalties, the payment of prescribed fees and, from time to time, other conditions relevant to activities to be undertaken under the permit. The latter are most likely to be administrative conditions, for example, a condition requiring the permit holder to have consultation with iwi or a local government body concerning particular activities. In evaluating an application to amend an exploration permit's conditions, other than those relating to a work programme, each situation shall be considered on its merits. Matters that the Minister shall take into consideration, but not be limited to, may include any of the following as considered relevant to the situation:

- Whether the commercial viability of activities related to the permit is affected by the imposition of a condition on the permit and an amendment is being sought to this condition to alleviate this situation;
- Whether the imposition of a condition on the permit imposes an unreasonable administrative or financial cost and an amendment is being sought to this condition to alleviate this situation;
- Whether the permit holder desires that a policy, procedure or provision in a replacement minerals programme shall apply to the holder's permit as provided for in section 22(1)(a)(ii) of the Crown Minerals Act 1991; and
- Whether agreeing to the amendment may be inconsistent with the petroleum permit allocation process.

### ***EXTENSION OF TYPES OF CROWN OWNED MINERALS COVERED BY THE PERMIT***

5.3.9 It is considered unlikely that applications will be received to extend the minerals covered by an existing petroleum exploration permit because:

- (a) Generally, petroleum exploration permits are over larger areas than other minerals exploration permits and such large areas would usually be difficult to justify for other minerals exploration programmes;
- (b) There are considerable variances in work methods used in petroleum exploration and other minerals exploration.

An exception may be where a petroleum permit exists to explore for and assess coal-bed methane gas extraction and the permit holder may want to extend the minerals covered by the exploration permit to allow both petroleum and coal exploration, provided that the relevant minerals are Crown owned.

5.3.10 In considering an application to extend the minerals covered by an existing petroleum exploration permit, the matters that the Minister shall have regard to include, but are not limited to:

- Whether or not such an extension will facilitate a more rational carrying out of activities under the permit (section 36(2), Crown Minerals Act 1991);
- Whether the permit holder has substantially complied with the permit (section 38, Crown Minerals Act 1991);
- Whether the application can be justified geologically;
- Whether it is more appropriate to grant a distinct exploration permit to obtain the right to explore for the additional minerals;
- Whether or not an exploration permit block offer is planned, or in place, for the particular mineral it is proposed to extend the permit to include;
- Any proposed programme of work to be used to explore for the additional mineral and any positive or negative effects this may have on the existing permit's programme of work;

- Any comments received from iwi regarding the application; and
- Any relevant minerals programme in relation to the new mineral that is proposed to be added to the permit. The Minerals Programme for Petroleum will not be the relevant minerals programme. The policies, procedures and provisions of the relevant minerals programme shall be taken into account accordingly.

5.3.11 As a condition to agreeing to extend the types of minerals covered by a permit, the Minister may require an amendment to the permit work programme conditions.

### ***EXTENSION OF LAND COVERED BY PERMIT***

5.3.12 A permit holder may apply to extend an exploration permit over land which is not already held under a petroleum permit or licence (granted under the Petroleum Act 1937), in order to facilitate a more rational carrying out of activities under the permit. For example, a permit holder may identify a lead or prospect which extends beyond the boundary of the existing permit and prior to further exploration of this lead or prospect may want to include its extent within the permit as far as possible. This may facilitate well drilling if the permit holder is able to better define rights over the lead or prospect. Extensions to a permit land area may also be considered as a means of amalgamating adjoining permits to enable a rationalising of exploration activities. (In this case, there would need to be an application made also to surrender one of the adjoining permits and for this to be agreed to prior to the extension of the other of the adjoining permits. The surrender and extension applications may be considered together).

5.3.13 In evaluating the merits of an application to extend the land area of an exploration permit, matters that the Minister shall have regard to include, but are not limited to, the following:

- The geological justification for extending the permit boundary;
- Any exploration work to be undertaken over the proposed extension to the permit, and how this exploration work relates to that to be undertaken over the existing permit;
- Any other complementary changes proposed to the permit, in particular partial land surrenders and how these in total may affect the full appraisal of the permit area;
- Exploration work undertaken on the permit up to the time of the application, the results of this and whether the permit holder has substantially complied with the permit (section 38, Crown Minerals Act 1991);
- Whether or not such an extension will facilitate a more rational carrying out of activities under the permit (section 36(2), Crown Minerals Act 1991);
- Whether there is a Petroleum Exploration Permit Block Offer being advertised which includes the area which is the subject of the extension application and how agreeing to the extension application would affect the Block Offer;
- Whether agreeing to the extension may be inconsistent with the petroleum permit allocation process; and
- Any comments received from iwi regarding the proposed change.

5.3.14 As a condition to agreeing to extend the land covered by a permit, the Minister may require an amendment to the permit work programme conditions. The Minister may also agree to extend the land covered by a permit on the condition that there is a complementary partial surrender

of the permit's area or the surrender of the area or part of the area of other permits held by the applicant, if relevant to the consideration of the application.

### ***EXTENSION OF DURATION OF A PERMIT***

5.3.15 A petroleum exploration permit is granted initially for up to a term of five years. A permit holder, however, may apply to extend the duration of an exploration permit for a second term for such period not exceeding ten years from the commencement date of the permit (sections 36(4) and 37(1), Crown Minerals Act 1991). The duration of a second term shall be determined by the Minister within this framework. Generally, the Minister shall not provide for a second term duration which is longer than the first term duration. There are specific requirements to be met before a second term of a permit shall be granted (section 37(1), Crown Minerals Act 1991). These are summarised in paragraph 5.3.16.

5.3.16 Before a second term of a permit is granted, the permit holder must relinquish at least half of the area comprised in the permit at the time of the end of the first term. Any relinquishment of part or parts of a permit area, prior to this time, are not taken into consideration in determining whether this requirement has been met. The second term permit area must be a contiguous block and the land so situated that it will not prevent or seriously hinder the future exploration of that land proposed to be surrendered.

5.3.17 The permit holder must submit, with the application for a second term, a proposed programme of work to be carried out during the second term, which the Minister must be satisfied will provide for comprehensive exploration over the extent of the permit. In considering whether the work programme does meet this objective and whether to extend the duration of an exploration permit, matters that the Minister shall have regard to, but is not limited to, include the following:

- Exploration work undertaken on the permit during the first term;
- Whether the second term work programme is consistent with any obligations specified in the permit's first term work programme for any subsequent term;
- Whether the work programme objective is to achieve a comprehensive exploration effort over the permit area, enabling the assessment of the petroleum potential of the permit;
- The timing and appropriateness of the proposed technical approach to working the area, given existing knowledge of the geology;
- Proposed expenditure on exploration work; and
- Whether the permit holder has substantially complied with the conditions of the permit during its first term (section 38, Crown Minerals Act 1991).

5.3.18 The approved work programme shall be a condition of the extension of the duration of an exploration permit.

### ***EXTENSION OF DURATION OF EXPLORATION PERMIT TO APPRAISE A DISCOVERY***

5.3.19 If, as a consequence of well drilling, a petroleum discovery is made and an extension of permit duration granted under section 37(1) would be insufficient to enable appraisal of the discovery, either because of the requirement to relinquish 50 percent of the permit area or

because the duration cannot extend beyond ten years, then a permit holder may apply for a special extension of duration of an exploration permit, pursuant to section 37(2) of the Crown Minerals Act 1991. For clarification purposes only, a permit which has a term extended in this way shall be referred to as an “appraisal extension”.

- 5.3.20 A petroleum discovery is considered to have been established when there are moveable hydrocarbons present in the drilling column in association with exploration or appraisal well drilling. The moveable hydrocarbons in turn can be related to a sub-surface deposit or occurrence of petroleum, which can be established from engineering, geological, and/or geophysical data derived from the well and other sources, such as seismic surveys.
- 5.3.21 An appraisal extension is granted in situations where a petroleum discovery has been made and where the duration of the exploration permit is insufficient to carry out the appraisal work for the discovery. (This duration is usually ten years, but also five years where a discovery is made and the 50 percent relinquishment requirement for a second term would mean that all the land to which it is likely that the discovery relates is not able to be included in the second term of the permit). The additional time enables the permit holder to complete the appraisal work for the discovery to the point where a decision can be made whether or not to apply for a mining permit in respect of the discovery. Appraisal work may include production testing of an exploration well, drilling and production testing of appraisal wells, and seismic and geotechnical studies to further define the extent of the petroleum field. It also includes the preparation of a work programme for the development and mining of a discovery, which is required to be approved by the Minister, pursuant to section 43 of the Crown Minerals Act 1991, prior to the grant of a mining permit (unless the Minister specifically decides otherwise). It is expected that during an appraisal extension, mining feasibility and environmental assessment studies would be completed. (These studies would not, however, be a work programme condition imposed on an appraisal permit).
- 5.3.22 The grant of an appraisal extension is not for the purposes of allowing further general exploration. It is also not a means to produce petroleum instead of obtaining a mining permit.
- 5.3.23 As required by the relevant regulations, an application for an appraisal extension, in brief, should provide a detailed preliminary evaluation of the discovery made and a statement detailing the appraisal work programme proposed to be carried out and the reasons why such a programme is proposed. The Minister shall grant an appraisal extension, if satisfied with the technical merits of the application, over that part of the land of the permit which the Minister determines is reasonably adequate to enable the permit holder to carry out the appraisal work for a discovery. In determining this, it is recognised that whilst the general extent of a discovery may be ascertained using geological, geophysical and well drilling data, it is difficult to be precise as to the actual limits of a petroleum field, particularly if there has not been significant appraisal work undertaken (refer paragraph 5.4.1 for a definition of petroleum field). The guide that shall be used is to allow the permit holder sufficient area of land which will be reasonably adequate to enable appraisal and subsequent mining operations to be carried out in respect of the petroleum discovery and to maintain rights to the discovery.
- 5.3.24 The Minister may, as a condition of grant of an appraisal extension, require the permit holder, at a specified time, to justify holding the full land area of an appraisal permit. Such a mechanism may be imposed where the areal extent of a discovery has not been delineated adequately and the Minister allows the permit holder the benefit of better delineating the extent of a discovery but within a restricted time frame.
- 5.3.25 If there is more than one discovery, separate appraisal extensions can be granted, appropriate to each discovery.

- 5.3.26 An appraisal extension shall be granted only if the Minister is satisfied that reasonable efforts are being made by the permit holder to carry out the appraisal of a discovery and the appraisal work programme is sufficient to complete this. As a result of appraisal operations, the permit holder shall be expected to make a sound assessment of the extent and nature of the petroleum reservoir or field, the subject of the appraisal extension. Such assessment should include an estimation of reserves in place and recoverable oil, gas and other petroleum. The Minister, in considering the proposed work programme to be undertaken during an appraisal extension, shall have regard to whether it is likely to achieve these objectives and to the proposed timing of the work.
- 5.3.27 There is no statutory limit on the duration of an appraisal extension. The Minister's general approach shall be to not grant an appraisal extension for a duration beyond four years. Where necessary, the Minister may amend the duration of the appraisal extension, if the permit holder satisfies the Minister that the appraisal work programme cannot be completed within the original time frame and that the permit holder is taking all reasonable steps to advance appraisal of the petroleum discovery.
- 5.3.28 If a permit holder wishes to obtain a subsequent mining permit in respect of a discovery appraised under an appraisal extension (as provided for in section 32(3) of the Crown Minerals Act 1991, unless the exploration permit currently held provides otherwise), any mining permit application should be forwarded at least six months before the expiry of the duration of the appraisal extension. A decision on the award or decline of a subsequent mining permit is made on or before the end of the appraisal extension. If necessary, the duration of an appraisal extension shall be extended for a sufficient period of time to enable due consideration of a mining permit application.

## 5.4 ALLOCATION OF PETROLEUM MINING PERMITS

### *INTRODUCTION*

5.4.1 Mining permits are granted to enable the development of a petroleum field with the purpose of extracting and producing petroleum. A petroleum field is defined by the occurrence of a petroleum deposit or accumulation, and can be specified in terms of a geological formation or formations or parts of formations or a specified reservoir or reservoirs or a combination of any of the aforementioned.

5.4.2 Petroleum mining activities may include:

- Mining operations relevant to the extraction, transport, treatment, processing and separation of petroleum;
- Mining operations relevant to the construction, maintenance and operation of any works or structures (including production facilities, wells, pipelines and treatment, processing and storage facilities), other land improvements associated with the development and any machinery and equipment connected with such operations.<sup>7</sup>

A mining permit also allows the permit holder to undertake prospecting or exploration activities in the area over which the mining permit is held.

5.4.3 An application for a mining permit most commonly is made by an exploration permit holder who has discovered a petroleum field within the exploration permit area. The application is made in accordance with sections 23 and 32(3) and subject to sections 27 and 43 of the Crown Minerals Act 1991. It is referred to as a subsequent (mining) permit application. Section 32(3) provides that the holder of an exploration permit has an exclusive right to apply for, and to receive, a mining permit (except where the original permit states otherwise), provided that the exploration permit holder meets all the following requirements:

- Satisfies the Minister that a petroleum field has been discovered as a result of activities authorised by the exploration permit; and
- Applies under section 23 of the Act before the expiry of the exploration permit to surrender the permit insofar as it relates to the land in which the discovery exists; and
- Has a work programme approved, pursuant to section 43(1)(a) of the Crown Minerals Act 1991, unless the Minister agrees that a work programme is not required to be approved, pursuant to section 43(1)(b) which so provides; then
- The permit holder shall be granted in exchange for the surrendered exploration permit area, a mining permit.

5.4.4 In limited circumstances, an application for a mining permit may be made by a person who does not hold a petroleum exploration permit. The application shall be made pursuant to section 23 of the Crown Minerals Act 1991, and only in respect of land that is not already under a petroleum permit (or licence under the Petroleum Act 1937) or the subject of a Petroleum Exploration Permit Block Offer or the subject of an application for a petroleum permit which has not been dealt with and that land is available for petroleum permits (refer chapter 4). Such an application would likely be to enable petroleum (probably gas) use by either the landowner or occupier for other than domestic purposes. The application shall be

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<sup>7</sup> *It should be noted that, to undertake these mining activities, the provisions of the Resource Management Act 1991 and the Health and Safety in Employment Act 1992 will also apply (refer paragraph 5.4.30).*

accepted at the discretion of the Minister, to enable small scale mining of shallow petroleum discoveries (usually methane gas discoveries) over small land areas, provided it can be clearly established that there is a discovery of petroleum which can be mined and there is an acceptable scheme for the mining of the petroleum. Priority will be given to the first application received. This type of application is expected to be received rarely.

- 5.4.5 An application for a mining permit should be made in the manner prescribed in the relevant regulations. The basis of the application is the work programme, which has to be approved by the Minister. In summary, the work programme should outline the proposals for extracting and producing petroleum, including reservoir management and if there are different development or production scenarios dependent upon future information, these should be outlined. To complement the work programme, the permit applicant should provide a detailed evaluation report of the petroleum field intended to be mined. This information shall be used to determine whether the proposed work programme is acceptable (refer paragraphs 5.4.8 to 5.4.13). This information also enables an assessment of an appropriate term and the appropriate permit area if the Minister agrees it is in order to grant a mining permit (refer paragraphs 5.4.16 to 5.4.19).

### ***EVALUATION OF AN APPLICATION***

- 5.4.6 A mining permit application will be assessed on the basis of the information contained in the written application, any complementary presentation made, and any subsequent information provided by the applicant. Its evaluation will be undertaken in general accordance with the policy framework outlined in chapter 2. The Minister, in particular, will want to be satisfied that the resource proposed to be mined will be extracted in accordance with good exploration and mining practice and that the Crown will obtain a fair financial return from the extraction of its petroleum resource. With this objective, in deciding on the grant of a mining permit, the Minister shall make several distinct but related decisions. These are:

- Whether the permit applicant has identified and delineated a petroleum field that can be effectively mined within technical and economic constraints. (In the case of a subsequent mining permit application, the identification and delineation should be as a result of activities authorised by the exploration permit, refer section 32(3) of the Crown Minerals Act 1991);
- Whether or not there is an acceptable work programme which is in accordance with good exploration and mining practice and accordingly shall enable sound management of the petroleum field and avoidance of wastage of petroleum;
- The appropriate area of the mining permit;
- The appropriate term or duration of the mining permit; and
- The appropriate points of valuation for royalty purposes, which shall be determined in accordance with the overall royalty regime (refer chapter 7, particularly paragraphs 7.15 to 7.19).

### ***DELINEATION OF A PETROLEUM FIELD***

- 5.4.7 The first step in evaluating a mining permit application is to determine whether or not there is sufficient evidence of a petroleum field having been discovered, to support the grant of the permit. The applicant needs to satisfy the Minister that a petroleum field has been identified and delineated to such a degree that the proposed work programme and mining development can be supported. The information the Minister needs in order to establish that a petroleum field has been identified and delineated shall be set out from time to time in relevant regulations.

## ***APPROVAL OF WORK PROGRAMME***

- 5.4.8 Before a mining permit will be granted, there must be an approved work programme. For subsequent mining permit applications, the work programme will be approved in accordance with section 43(1) of the Crown Minerals Act 1991.<sup>8</sup> The approved work programme is the key aspect of a mining permit. It is integral to determining the duration of a mining permit and the land area of a mining permit.
- 5.4.9 The work programme should be designed in accordance with good exploration and mining practice to enable sound management of the petroleum field and the avoidance of waste of petroleum (especially avoidable and unnecessary gas flaring and avoidable non-production of petroleum).
- 5.4.10 The acceptability of the work programme is determined in relation to the circumstances of each application. The Minister shall take into account, but not be limited to, the following:
- The geology of the mining permit application area;
  - The nature, extent and physical and chemical characteristics of the petroleum to be extracted and produced;
  - Estimates of petroleum in place and recoverable petroleum reserves;
  - Proposed mining operations in respect of production operations and reservoir management;
  - Proposed mining operations in respect of extraction, production, processing and transport facilities, and abandonment of operations;
  - The production profile proposed and the proposed commencement date for production;
  - The avoidance of waste of the petroleum resource, including avoidable and unnecessary flaring of petroleum;
  - Whether proposed mining operations are in accordance with good exploration and mining practice including having regard to matters such as financial viability and technical considerations; and
  - Any condition of an initial exploration permit specified to be included in the mining permit (section 32(5), Crown Minerals Act 1991).
- 5.4.11 The Minister will consider a work programme which is set out in development stages. For example, this may be appropriate where a petroleum reservoir has been identified but its long term performance characteristics cannot be established other than by commercial production. The work programme could provide for a first stage of work and then for the permit holder to submit to the Minister a work programme for approval for the remainder of the permit's term or subsequent stage. Where a staged development is proposed, it will be necessary for the applicant to demonstrate that the staged development will not unreasonably prejudice the field's economic recovery. An understanding of how each phase is intended to fit into further possible stages will need to be shown. The Minister may require that there be options to reduce the size of the permit area or to amend the duration of the permit after the first stage, if it is established that the extent of the reservoir or amount of reserves is less than originally prognosed.

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<sup>8</sup> *Unless the Minister specifically determines otherwise, which is not expected to occur with respect to petroleum mining permits.*

5.4.12 The Minister may consider a work programme with mining operations commencing at some future date several years after the commencement date of the mining permit. In considering this, matters that the Minister shall have regard to, include but are not limited to:

- Whether development of the petroleum field is in co-ordination with the development of other mining permits and there is a logical development progression proposed; and
- Whether the permit applicant wishes to develop the petroleum field at a future time to take account of a specific future marketing opportunity.

5.4.13 If the Minister is satisfied that the work programme is in general accordance with the policy framework outlined in chapter 2, the provisions outlined in paragraphs 5.4.9 and 5.4.10 and is in accordance with recognised good exploration and mining practice, then the work programme will be approved. Compliance with the approved mining permit work programme shall be a condition of the award of the permit and the work programme shall be included as part of the permit.

### ***WITHHOLDING OF APPROVAL OF A WORK PROGRAMME***

5.4.14 If, taking into account any of the evaluation criteria outlined in paragraphs 5.4.9 and 5.4.10, the Minister is not satisfied with a proposed work programme submitted for approval with a mining permit application, then the Minister shall withhold approval of the work programme. In situations where a petroleum field extends over more than one permit and the Minister has served a notice of unit development, and one exploration permit holder applies for a mining permit prior to a unit development scheme having been determined and approved, then the Minister may withhold approval of the proposed work programme until the Minister has considered the unit development scheme (refer paragraphs 5.6.1 to 5.6.16). The withholding of the approval would be on the grounds that the Minister is not reasonably able to determine whether the proposed work programme shall enable sound management of the petroleum field and the avoidance of wastage of petroleum until the work programme can be evaluated in the context of the approved unit development scheme.

5.4.15 If the Minister withholds approval of a mining permit application work programme, the permit applicant shall be advised of this decision and the grounds on which it was made. For permit applications which are made in accordance with section 32(3) of the Crown Minerals Act 1991, sections 43 and 44 outline the formal procedure to be used if the Minister withholds approval of a work programme. (For other mining permit applications made on the basis of priority to the first application received, the Minister may also adopt this procedure, which includes provision for the applicant to submit and have considered a modified work programme.)

### ***PERMIT AREA***

5.4.16 The appropriate area of a mining permit, in every case, shall be the area that the Minister determines is reasonably adequate to enable the activities authorised by the mining permit to be carried out. This is required by section 32(4) of the Crown Minerals Act 1991 for subsequent mining permit applications and shall also apply to the consideration of any other mining permit application. The Minister's assessment shall be made having regard to the applicant's delineation of the petroleum field and the proposed work programme, in particular those matters outlined in paragraph 5.4.10. In making a decision the Minister shall recognise that while the general extent of a field can be ascertained using geological, geophysical and engineering data, it can be difficult to clearly define the limits of a petroleum field (refer paragraph 5.3.23).

5.4.17 The Minister grants the permit over either the geographical land area of the petroleum field or in respect of the specified discovery. It is noted that where the mining permit states that the right to mine only applies to a specified discovery, then sections 30(5) and 30(6) of the Crown Minerals Act 1991 apply if further discoveries are made as a consequence of mining operations.

5.4.18 Where the Minister does not consider that the area of a permit application is fully justified, the Minister shall advise the applicant of the concerns held and the grounds for these. The Minister will advise the area which is considered acceptable taking into account the information on the petroleum field and the proposed work programme. The permit applicant will be given the opportunity to amend the application or to comment on the Minister's view, within a reasonable timeframe. Before deciding on the matter, the Minister will consider any comments that the applicant has to make.

### ***PERMIT DURATION***

5.4.19 The appropriate duration of a mining permit shall be determined by the Minister. In making a decision, the Minister shall consult with the permit applicant and will take into account such matters as the estimated reserves of the petroleum field to be produced, the planned production programme, any potential for enhanced production (secondary or tertiary production) and the time required to conclude mining operations and undertake necessary abandonment of operations and rehabilitation of site(s). Section 35 of the Crown Minerals Act 1991 provides that a mining permit shall not have a duration longer than forty years, except where an extension of duration is granted in accordance with section 36(5) of the Act.

### ***POINT OF VALUATION***

5.4.20 Having determined that there is an acceptable work programme and having determined the permit duration and area, then the Minister shall specify the point(s) of valuation for royalty purposes. As noted, these shall be determined in accordance with the royalty regime (which is discussed in detail in chapter 7) and also following consultation with the permit applicant. The criteria which the Minister shall use to define the point(s) of valuation are outlined in paragraphs 7.15 to 7.19. The point(s) of valuation shall be stated as a condition of the permit.

### ***ASSESSMENT OF APPLICANT***

5.4.21 Finally, before granting a permit, the Minister must also be satisfied that the applicant will comply with the conditions of, and give proper effect to, the permit (section 27, Crown Minerals Act 1991). In this respect, matters that the Minister shall take into consideration as relevant include, but are not limited to, the following:

- (a) The applicant's financial capability to carry out the proposed work programme and to pay monies owed to the Crown;
- (b) The applicant's technical capability, which may include proposed use of technical experts; and
- (c) Other prospecting, exploration or mining activities, both in New Zealand and internationally, that the applicant has been involved with, to the extent that these activities impact on the applicant's ability and likelihood to comply with the conditions of the proposed permit.

If the Minister is aware of any factors which could contribute to the view that the applicant may not give proper effect to the permit, for example, the applicant (or related companies) has not complied either with work programme conditions or the lodgement of data or the payment of fees or the conditions of consents associated with previously held petroleum privileges, then the Minister shall raise with the applicant the concerns held and advise the applicant of the factor(s) that are considered to be relevant to the grant of the permit. Before deciding on the matter, the Minister will consider any comments that the applicant has to make.

### ***PROCESSING TIME***

5.4.22 The processing of an application shall be completed within six months, except where a longer period is allowed, pursuant to section 43 of the Crown Minerals Act 1991. Section 43(3) provides for this process to extend beyond six months, where the Minister withholds approval of a proposed work programme and the applicant chooses to submit a modified work programme to the Minister for consideration.

### ***CONDITIONS OF GRANT OF MINING PERMIT***

5.4.23 Once the Minister has decided whether or not to grant a mining permit, the applicant shall be advised in writing of the outcome of the application. The Minister may choose to make a public announcement. Any announcement shall be timed so that, as far as possible, the permit applicant would already know of the decision.

5.4.24 Petroleum mining permits shall be granted on the following conditions set by the Minister in accordance with section 25(1) of the Crown Minerals Act 1991:

- (a) A general condition of grant to the effect that the permit holder will make reasonable efforts to undertake the activities authorised by the permit in a systematic and efficient manner in accordance with the approved work programme and any work programme conditions;
- (b) A general condition that the permit holder will undertake mining operations in accordance with good exploration and mining practice (or good oilfield practice);
- (c) In accordance with the provisions outlined in chapter 7, conditions which require the permit holder to calculate and make payment of royalties to the Crown in respect of any petroleum obtained under the permit, which is either sold or used in the production process as fuel or otherwise exchanged without sale;
- (d) A condition requiring the proper abandonment of production facilities; and
- (e) The payment of prescribed fees.

5.4.25 Additionally, the Minister may decide to set other conditions as considered appropriate, related to the work programme and efficient extraction of petroleum. Where the Minister agrees to grant a petroleum mining permit, the grant of the permit shall be subject to the formal acceptance of the conditions of grant by the applicant and the lodging of the required monetary deposit or bond with the Secretary (section 27(2), Crown Minerals Act 1991). A period of three months shall be given to lodge the monetary deposit or bond. This period of time may be extended if the Secretary considers there are good reasons, upon written application. If the monetary deposit or bond is not received as required, the decision to award the permit lapses, and the Minister shall decline the permit application accordingly.

### ***GROUNDNS FOR DECLINE OF APPLICATION***

5.4.26 An application may be declined by the Minister on the grounds that:

- (a) The Minister is not satisfied that a petroleum field has been discovered or adequately defined to support the grant of a permit (refer paragraph 5.4.7);
- (b) The Minister withholds approval of a work programme or modified work programme and the requirements of sections 43 and 44 of the Crown Minerals Act 1991 have been met if appropriate (refer paragraphs 5.4.8 to 5.4.15);
- (c) The Minister is not satisfied that the full area of the permit application is justifiable in relation to the petroleum field identified (refer paragraph 5.4.18);
- (d) The Minister considers that the applicant would not comply with the conditions of, and give proper effect to, any permit granted (refer paragraph 5.4.21);
- (e) The Government has international obligations which would be affected if the permit was granted;
- (f) The applicant does not lodge the required monetary deposit or bond (refer paragraph 5.4.25).

### ***FORM OF A MINING PERMIT***

5.4.27 The mining permit granted shall be in the form of: a preamble with references to the permit holder(s), the approved work programme, the permit duration and any related matters considered appropriate to reference; a schedule detailing the area of the permit (including a map); and subsequent schedules detailing conditions of permit grant, other than any specified in the preamble (refer paragraphs 5.4.24 and 5.4.25). Where the Minister approves a work programme, the work programme shall be part of the permit and a public document.

5.4.28 Other information provided with the permit application, to support and explain the work programme, shall not form part of the permit.

### ***COMMENCEMENT DATE OF PERMIT***

5.4.29 The commencement date of a mining permit is specified by the Minister in the permit. In most cases, this shall be the date the Minister signs the grant of the mining permit. It should be noted that the Minister may consent to a deferment of the commencement date of the permit where the applicants meets the criteria set out in section 35(2) of the Crown Minerals Act 1991. The Minister may also provide for mining operations under a work programme to commence at some future date several years hence, if there are reasonable grounds to support this (refer paragraph 5.4.12).

### ***OTHER CONSENTS NECESSARY***

5.4.30 The grant of a permit gives to the permit holder rights as outlined in sections 30, 31 and 32 of the Crown Minerals Act 1991, essentially to prospect, explore and mine, to have that right exclusively unless the permit conditions expressly provide otherwise and to be the owner of all minerals lawfully obtained. Other consents complementing the permit granted under the Crown Minerals Act 1991 are likely to be necessary to give full effect to the permit. A permit holder is likely to need to obtain relevant consents pursuant to the Resource Management Act

1991 and the Health and Safety in Employment Act 1992, and any Regulations made pursuant to these Acts which are relevant, and to undertake prospecting, exploration or mining in accordance with the provisions of these Acts and the conditions of consents obtained. A permit holder must also obtain necessary land access consents before undertaking any exploration or mining work requiring land access (refer paragraphs 4.11 to 4.16).

## **5.5 CHANGES TO MINING PERMITS**

- 5.5.1 A mining permit holder may apply to change the permit, pursuant to section 36 of the Crown Minerals Act 1991, in the following ways:
- (a) To amend the mining permit conditions, including modifying the approved work programme;
  - (b) To extend the land area of the mining permit;
  - (c) To extend the types of minerals covered by the permit; and
  - (d) To extend the duration of the permit.
- 5.5.2 Applications should be made in accordance with the relevant regulations. The application shall then be assessed on its merits, taking into consideration the information presented in the written application and any subsequent information provided.
- 5.5.3 As with mining permit applications, the evaluation of an application to change a mining permit shall be undertaken in general accordance with the policy framework outlined in chapter 2. The Minister, in particular, will want to be satisfied that the extraction of petroleum is in accordance with good exploration and mining practice and provides at all times for the Crown to obtain a fair financial return from the extraction of its petroleum. The evaluation shall also be undertaken in terms of the provisions of sections 36 and 38 of the Crown Minerals Act 1991.
- 5.5.4 The approved work programme is the basis of a mining permit, as noted in paragraph 5.4.5. In most situations, an application to change a mining permit is likely to involve amendment of, or modification to, the work programme with either the permit holder seeking to amend just this or seeking to extend the land area or types of minerals covered by the permit or the duration of the permit and the change(s) required necessitate(s) an amendment to the approved work programme. Two exceptions to this situation are minor amendment applications in respect of permit area and applications to change the permit conditions related to the calculation and payment of royalties and other administrative matters.
- 5.5.5 In considering applications to amend or modify a mining permit work programme, or to extend the area or duration of the mining permit, the Minister's evaluation shall be undertaken in the same way as for a mining permit application. Accordingly, the Minister shall take into consideration any of the matters outlined in paragraphs 5.4.6 to 5.4.13 and 5.4.16 to 5.4.19, as considered relevant.

### ***AMENDING PERMIT WORK PROGRAMME***

- 5.5.6 Matters that the Minister shall also take into consideration, but shall not be limited to, in considering an application to amend or modify a mining permit work programme include:
- Mining operations undertaken on the permit up to the time of application;
  - Whether the proposed change will facilitate a more effective carrying out of activities under the permit;
  - Whether the proposed change is due to changes in the planned production scenario;
  - Any previous applications to change the mining permit insofar as they are relevant to the application under consideration;

- Whether agreeing to the amendment is necessary to give effect to the Minister's agreement to extend the area or minerals covered by the permit or the duration of the permit;
- Any force majeure circumstances which may be preventing the permit holder from progressing mining operations in accordance with the approved work programme;
- Whether the permit holder is being prevented from progressing exploration work by delays in obtaining consents under the Crown Minerals Act 1991 or any other Act, and that those delays have not been caused or contributed to by negligence or default on the part of the permit holder and the permit holder is making all reasonable efforts to progress the matter (this is consistent with the principles of section 35(2) of the Crown Minerals Act 1991);
- Whether the permit holder's mining operations have been affected because there is a need for legal agreements to be in place and these have not been finalised, provided that negligence or default on the part of the permit holder has not caused or contributed to these agreements not being finalised and the permit holder is making all reasonable efforts to progress the matter; and
- Whether the permit holder has substantially complied with the permit (section 38, Crown Minerals Act 1991).

### ***EXTENSION OF LAND COVERED BY PERMIT***

- 5.5.7 With respect to an application to extend the area of a mining permit, in addition to the evaluation criteria outlined in paragraphs 5.4.6 to 5.4.13 and 5.4.16 to 5.4.18, the Minister is required pursuant to section 36(2) of the Crown Minerals Act 1991, to have regard to whether or not such an extension will facilitate a more rational carrying out of activities under the permit. Section 36(1) of the Act also requires that the Minister shall be satisfied that the permit holder has substantially complied with the permit pursuant to section 38 of the Act. As noted, except where the application concerns minor boundary changes, as a condition to agreeing to extend the land covered by a permit, the Minister is likely to require an amendment to the approved work programme.
- 5.5.8 An application to extend the land covered by a permit is likely to be made either as a result of new geological information pertaining to the petroleum field being mined (obtained during the conducting of mining operations) or in relation to the permit holder making a further petroleum discovery on the land to which the permit relates. The Minister is able to consider applications to extend the land covered by a permit only where the proposed extension is not on land which is held under a petroleum permit or licence.
- 5.5.9 The Minister may decline an application to extend the land covered by the permit if the Minister considers that to grant the extension would not be the best means of achieving efficient allocation and the obtaining of a fair financial return by the Crown from its petroleum. The Minister would be likely to decline an application if the extension area applied for was at the time of application subject to a Petroleum Exploration Permit Block Offer.
- 5.5.10 It should be noted that if the permit holder makes a further petroleum discovery on the land to which the permit relates and the permit holder's right to mine does not apply to this discovery, the permit holder may apply for a new permit in relation to the new discovery pursuant to section 30(5) of the Crown Minerals Act 1991.

### ***EXTENSION OF DURATION OF A MINING PERMIT***

5.5.11 As provided in section 36(5), the duration of a mining permit may not be extended unless the permit holder satisfies the Minister that the discovery to which the permit relates cannot be economically depleted before the permit expiry date, and the Minister approves a new permit work programme unless determined otherwise.

5.5.12 In evaluating the application the Minister is required to:

- (a) Either approve a new work programme, which is done as for a mining permit application including allowing for any necessary modifications to the work programme (refer paragraphs 5.4.8 to 5.4.13), or determine that a new work programme is not needed which is done by assessing the application in terms of the criteria outlined in paragraph 5.4.10; and
- (b) Consider the extent to which the inability to deplete the discovery during the term of the permit is due to causes or reasons beyond the permit holder's control; and
- (c) Ensure that any such extension shall be only for such period as the Minister considers reasonable to enable the permit holder to economically deplete the discovery; and
- (d) Be satisfied that the permit holder has substantially complied with the conditions of the permit (section 38, Crown Minerals Act 1991).

### ***AMENDING PERMIT CONDITIONS OTHER THAN THE WORK PROGRAMME***

5.5.13 Mining permits shall be granted with a condition requiring compliance with the approved work programme, conditions in respect of the calculation and payment of royalties, a requirement to pay prescribed fees and, from time to time, other conditions relevant to the activities to be undertaken under the permit. The latter are most likely to be administrative conditions, for example, a condition requiring the permit holder to have consultation with iwi or a local government body concerning particular activities. In evaluating an application to amend a mining permit's conditions, other than those relating to a work programme, each situation shall be considered on its merits. Matters that the Minister shall take into consideration include, but are not limited to:

- Whether the commercial viability of activities related to the permit, is affected by the imposition of a condition on the permit and an amendment is being sought to this condition to alleviate this situation;
- Whether the imposition of a condition on the permit imposes an unreasonable administrative or financial cost and an amendment is being sought to this condition to alleviate this situation; and
- Whether the permit holder desires that a policy, procedure or provision in a replacement minerals programme shall apply to the holder's permit as provided for in section 22(1)(a) of the Crown Minerals Act 1991.

### ***EXTENSION OF TYPES OF CROWN OWNED MINERALS COVERED BY THE PERMIT***

5.5.14 As with exploration permits, it is considered unlikely that applications will be received to extend the minerals covered by an existing petroleum mining permit because:

- (a) Generally, petroleum mining permits are over larger areas than mining permits for other minerals and such large areas would usually be difficult to justify for other minerals; and
- (b) There are considerable variances in work methods used in petroleum mining operations as compared to mining operations used for other minerals.

An exception may be where a petroleum permit exists to mine coal-bed methane gas and the permit holder desires to extend the minerals covered by the mining permit to allow both petroleum and coal mining, provided that the relevant minerals are Crown owned.

5.5.15 In considering an application to extend the minerals covered by an existing petroleum mining permit, the Minister is particularly concerned to ensure that the extraction of petroleum is in accordance with good exploration and mining practice and provides for the Crown to obtain a fair financial return from the extraction of its resource. Matters that the Minister has regard to include, but are not limited to:

- Whether or not such an extension will facilitate a more rational carrying out of activities under the permit (section 36(2), Crown Minerals Act 1991);
- Whether the permit holder has substantially complied with the permit (section 38, Crown Minerals Act 1991);
- Can the application be justified geologically;
- Whether it is more appropriate to grant a distinct mining permit to obtain the right to mine for the additional mineral(s);
- Any relevant minerals programme in relation to the new mineral that is proposed to be added to the permit. The Minerals Programme for Petroleum will not be the relevant minerals programme. The policies, procedures and provisions of the relevant minerals programme shall be taken into account accordingly;
- Whether or not there are any permit applications for the particular mineral it is proposed to extend the permit to include; and
- The proposed programme of work to mine for the additional mineral and any positive or negative effects this may have on the existing permit's approved work programme.

5.5.16 As a condition to agreeing to extend the types of minerals covered by a permit, the Minister is likely to require an amendment to the permit's approved work programme.

### ***ADMINISTRATIVE MATTERS***

5.5.17 Processing of applications for changes to mining permits should usually be completed within three months of receipt, except for applications which propose significant amendments to the approved work programme, which should be completed within six months. When the Minister has decided whether or not to grant an application to change a permit, the permit holder shall be advised in writing of the decision as quickly as possible. Where a change is to be made to the permit, a permit endorsement (being either a certificate of change of conditions, or a certificate of extension as the case may be) shall be forwarded to the permit holder and the permit register noted accordingly.

## 5.6 UNIT DEVELOPMENT OF PETROLEUM PERMITS

- 5.6.1 The granting of a petroleum exploration or mining permit gives the permit holder a right to extract petroleum, in the course of activities authorised by the permit, and to acquire ownership of it. As provided in section 30 of the Crown Minerals Act 1991, the right to prospect, explore or mine (depending on the permit type held) is in respect of petroleum in the land specified by the permit held, and subject to the conditions of the grant of the permit.
- 5.6.2 Accordingly, if in the course of petroleum exploration a petroleum discovery is made, the permit holder has the right to mine the petroleum discovery (subject to an approved work programme and a mining permit being granted) but only so far as the discovery lies in the land specified by the permit. If the petroleum discovery extends beyond the boundaries of a permit, the permit holder has no rights to the extent of the discovery outside of the permit.
- 5.6.3 Section 46 of the Crown Minerals Act 1991 provides that in situations where a petroleum discovery extends over the area or parts of the area of more than one petroleum permit, the Minister may request the unit development of the discovery. (In situations where the discovery extends beyond the permit boundary into land which is not permitted, it is expected that the permit holder would apply to extend the permit area. The Minister's consideration of an application to extend the area of a permit is subject to the limitations noted in paragraph 5.5.9 and the general provisions outlined in paragraphs 5.3.12 to 5.3.14 and paragraphs 5.5.7 to 5.5.10.)
- 5.6.4 The Minister's role in respect of unit development is:
- To prevent waste and secure the maximum ultimate recovery of petroleum;
  - To prevent unnecessary competitive extraction from a petroleum field; and
  - In those situations where the Minister has to prepare a development scheme (section 46(4) of the Crown Minerals Act 1991), to ensure there is fair and equitable treatment of all the affected permit holders.

The maximum ultimate recovery of petroleum is dependent on sound petroleum reservoir management, the avoidance of wastage of petroleum, and a production programme which is in accordance with good exploration and mining practice. Due to the fluid and mobile nature of petroleum, it may flow through any permeable strata as a result of extraction from a well bore. As such, it is possible for a permit holder to extract petroleum by mining operations within the boundary of the permit held but that petroleum has migrated or flowed from outside of the boundaries of the permit. Without this extraction being part of an overall petroleum field management or development scheme, there may not be the maximum ultimate recovery of petroleum. For example, this may be due to the non-use of enhanced recovery techniques such as pressure maintenance through gas or water techniques and gas cycling, which would be expected to be otherwise implemented. As well, it is likely that the extraction of migrated petroleum is at the cost of the rights of another permit holder(s) which may lead to unnecessary competitive extraction from a petroleum field, and waste and avoidable non-production of petroleum.

- 5.6.5 Having a unit development scheme for the working and development of a petroleum field which extends over land in more than one permit, allows for the preservation of the rights of all parties to a fair and equitable share of production and enables sound management and good exploration and mining practice to be achieved. It is not necessary, however, for the Minister to serve a formal notice of unit development if the Minister considers that the relevant permit holders are co-operating sufficiently to achieve a unified development. For example,

this could be achieved by adjacent mining permits having complementary work programmes, determined by mutual co-operation and submitted for approval as part of mining permit applications.

### ***INITIATING A UNIT DEVELOPMENT SCHEME***

- 5.6.6 Section 46 of the Crown Minerals Act 1991 provides that where a petroleum discovery has been made and the petroleum deposit or accumulation (referred to here as a petroleum field) extends over the area or part of the area of more than one petroleum permit, that the Minister may, on the request of one or more of the permit holders or of his or her own accord, require all the relevant permit holders to co-operate in the preparation of a development scheme for the working and development of the petroleum field as a unit, with the objectives to prevent waste, to avoid unnecessary competitive extraction and to secure the maximum ultimate recovery of petroleum. The Minister shall do so by issuing a notice of unit development to all the relevant permit holders. The notice shall specify the land in respect of which the Minister requires a development scheme to be submitted and shall specify a date by which the development scheme must be forwarded.
- 5.6.7 As noted, either the permit holder may apply to the Minister to issue a notice of unit development or the notice may be initiated by the Minister. There is no prescribed form for a permit holder to request the Minister to consider issuing a notice of unit development. A request is required however to be made in writing.

### ***EVALUATION OF A UNIT DEVELOPMENT SCHEME***

- 5.6.8 Where a unit development scheme is prepared for the working and development of a petroleum field which extends over land in more than one permit, this shall be submitted to the Minister for approval, pursuant to section 46(1) of the Crown Minerals Act 1991. The Minister shall assess the development scheme in much the same manner as assessing an application for a mining permit. The evaluation shall be undertaken in general accordance with the policy framework outlined in chapter 2, and the Minister, in particular, will want to be satisfied that the petroleum to be mined will be extracted in accordance with good exploration and mining practice and that the Crown will obtain a fair financial return from the extraction of its petroleum.
- 5.6.9 Matters that the Minister shall take into consideration include, but are not limited to:
- The geological assessment of the petroleum field;
  - The nature, extent and physical and chemical characteristics of the petroleum field and petroleum to be extracted and produced;
  - Estimates of petroleum in place and recoverable petroleum reserves;
  - Proposed mining operations in respect of production operations and reservoir management;
  - Proposed mining operations in respect of extraction, production and processing facilities;
  - The production profile proposed and the proposed commencement date for production;
  - The avoidance of waste of the petroleum resource, including avoidable and unnecessary flaring of petroleum;

- Whether proposed mining operations are in accordance with good exploration and mining practice including having regard to matters such as economic (financial) viability and technical considerations;
- Any approved work programme(s) pursuant to section 43 of the Crown Minerals Act 1991, relating to any of the permits which are subject to the notice of unit development, or any work programmes submitted for approval and under consideration;
- Any conditions of the permits which are subject to the notice of unit development; and
- Proposals or agreements entered into by the relevant permit holders concerning obligations, liabilities and entitlement to production.

5.6.10 Where the Minister requires adjoining exploration permit holders to co-operate in the preparation of a unit development scheme, the Minister is likely to require the unit development scheme to be approved before approving a work programme submitted in accordance with a subsequent mining permit application made by any of the affected permit holders. The Minister may require that the evaluation of the unit development scheme and subsequent mining permit applications occurs in tandem (refer also to paragraph 5.4.14).

#### ***WITHHOLDING OF APPROVAL OF DEVELOPMENT SCHEME***

5.6.11 If the Minister is not satisfied that a proposed unit development scheme will prevent waste, avoid unnecessary competitive extraction, and/or secure the maximum ultimate recovery of petroleum, then the Minister shall withhold approval of the proposed scheme and shall invite the permit holders to submit a modified development scheme for the Minister's approval within a reasonable period, which shall be specified by a further notice (section 46(3), Crown Minerals Act 1991).

#### ***PREPARATION OF DEVELOPMENT SCHEME BY MINISTER***

5.6.12 As provided in section 46(4) of the Crown Minerals Act 1991, if a development scheme or modified development scheme is not submitted to the Minister within the period specified in the relevant notice given or any extended period agreed to (and the notice of unit development has not subsequently been cancelled), or if the modified development scheme is not approved, then the Minister shall prepare a development scheme that in the opinion of the Minister is fair and equitable to all the permit holders. The permit holders are required to conduct mining operations and perform in accordance with that scheme and to observe the conditions of that scheme.

5.6.13 The preparation of a development scheme by the Minister occurs only if the Minister is convinced that the relevant permit holders are not able to co-operate to achieve the scheme amongst themselves. The desirable course is for the permit holders to agree to a scheme and for this to be approved by the Minister.

5.6.14 If the Minister does have to determine a development scheme, matters that the Minister shall address, but not be limited to, include the following:

- Estimating each permit holder's production entitlement. This shall require a determination of the petroleum in place, moveable and recoverable reserves estimates in each affected permit. Other factors which may be relevant are whether one permit holder has incurred or may incur greater exploration, appraisal and development costs, or will provide more facilities;

- Reservoir management and the balancing of production from different parts of the field;
- The production profile for the petroleum field and depletion scenarios, which shall be in accordance with good exploration and mining practice;
- Consideration of alternative development options in terms of technical merits, risks, costs and benefits;
- Each permit holder's liability to the costs of necessary ongoing mining operations;
- Each permit holder's obligations in respect of liability under the Crown Minerals Act 1991 (sections 102 and 103) and the discharging of mining operations; and
- The need for a unit operating agreement. (This may be imposed as a condition of the development scheme, to be determined by the affected permit holders within a defined period).

### ***APPROVED DEVELOPMENT SCHEME***

5.6.15 The approval of a unit development scheme shall be given in the form of a permit certificate or endorsement, issued in respect of all the affected permits. Compliance with the development scheme shall be a condition of the permits and the development scheme shall be a part of the permits and a public document. If a unit development scheme is prepared simultaneously with a unit operating agreement (similar to a joint venture operating agreement) the Minister's consent to this may be separately required (refer section 5.7) and this document shall not be a part of the permits.

5.6.16 Where the Minister determines a development scheme (rather than giving approval to a scheme), similar to the provisions outlined in paragraph 5.6.16, the determined scheme shall be registered on the permit by endorsement or certificate.

## 5.7 TRANSFERS AND OTHER DEALINGS WITH PERMITS

- 5.7.1 Section 41 of the Crown Minerals Act 1991 provides that no petroleum permit holder or any other person shall enter into an agreement transferring the permit or any interest in a permit, or creating any interest in the permit, or imposing any obligations on the permit holder in respect of an interest in the permit which relates to or affects the production or proceeds of a permit (or subsequent permit) without the consent of the Minister. By this means, the Minister is able to consider such agreements generally in terms of the policy framework of chapter 2. Any decision the Minister has made on the allocation of permits, taking into account the policy framework and section 27 of the Crown Minerals Act 1991, is not able to be reversed by way of a subsequent agreement, without the Minister's consideration and consent. A type of agreement that typically needs the consent of the Minister is a Deed of Assignment and Assumption, where one party assigns interest in a permit to another party or parties.
- 5.7.2 An application for the consent of the Minister to an agreement affecting a permit of the kind referred to above, must be made within three months after the date of the agreement. Details of how to apply for the Minister's consent are prescribed in the relevant regulations.
- 5.7.3 Before giving consent to an agreement, the Minister shall require verification that the agreement has been entered into. This may require a true copy of the agreement to be forwarded with any application for consent. An agreement does not need to conform to a specific form or style, although it should be in accordance with generally accepted legal practice.
- 5.7.4 In considering an application to consent to an agreement which will result in a new permit holder<sup>9</sup> (be this by transfer of the permit or creation or transfer of operating interest in the permit), matters the Minister shall take into account, but is not limited to, include the following as considered relevant:
- Whether the proposed new permit holder or holder of an operating interest in the permit has the financial and technical capability to comply with the conditions of, and give proper effect to, the permit;
  - Other exploration or mining activities both in New Zealand and internationally that the proposed new permit holder or holder of an operating interest in the permit has been involved with to the extent that these activities impact on the proposed permit holder's ability to comply with the conditions of the permit;
  - Whether any proposed new permit holder or holder of an operating interest in the permit (or related companies) has complied with work programme conditions, the lodgement of data, the payment of fees and the conditions of consents associated with previously held petroleum permits or licences;
  - International obligations the Government may have which are relevant to the application for consent;
  - Verification of registration and incorporation as a New Zealand or international company and any legislative requirements that need to be met to invest and operate in New Zealand; and

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<sup>9</sup> *The permit holder may be one party or more than one party in a joint venture, partnership or otherwise. When there is a transfer of the permit or a change in the interests held in a permit (by transfer or creation), then there is a new permit holder. In other words, the permit holder as an entity has changed.*

- Arrangements that the proposed new permit holder or changed permit interest holder(s) may need to make to replace the permit monetary deposit or bond (or part of the same) held by the Secretary.
- 5.7.5 In considering an application to consent to an agreement affecting a permit (other than as provided in paragraph 5.7.4), the matters which the Minister has regard to include, but are not limited to, the following:
- Whether the agreement may affect the operations of the permit, bearing in mind the duty of the permit holder to comply with the conditions of, and give proper effect to, the permit; and
  - International obligations the Government may have which are relevant to the application for consent.
- 5.7.6 If there are negative concerns about any of the criteria outlined in paragraphs 5.7.4 and 5.7.5, the Minister shall raise with the applicant the concerns held, and advise the applicant of the factor(s) that are considered to be relevant to the giving of the consent. Before deciding on the matter, the Minister will consider any comments that the applicant has to make.
- 5.7.7 As provided for in section 41(3) of the Crown Minerals Act 1991, the Minister may give consent to an agreement subject to such conditions as he or she thinks fit. In most cases, it is unlikely that the Minister will give conditional agreement. If there are conditions attached to a consent, it is likely these will concern such matters as:
- Work programme obligations, including expenditure; and
  - Obligations to consult with iwi, local government bodies or other appropriate parties.
- 5.7.8 Applications for the consent of the Minister to an agreement in most cases should be processed within 15 working days, provided that all relevant information and documentation have been supplied. More complicated agreements may take up to 40 days to be processed. On consent being given, the applicant shall be advised promptly and a permit endorsement forwarded to the permit holder.
- 5.7.9 It is noted that section 91 of the Crown Minerals Act 1991 requires that the Secretary shall keep a register of permits in which there shall be entered brief particulars of all permits, including charges, transfers and leases. Accordingly, following the consent of the Minister to an agreement which results in a change to the permit holder or permit interest holders, brief particulars of the changed permit interest holder(s) shall be noted in the register.

## **5.8 SURRENDER OF ALL OR PART OF PERMIT AREA**

5.8.1 Section 40 of the Crown Minerals Act 1991 provides that a permit holder may surrender a permit or part of the area of a permit, by giving notice to the Secretary. By this means, a permit holder is not obliged to hold acreage in a permit which is no longer wanted and accordingly the permit holder is not obliged to pay annual fees and to make ongoing work commitments. The manner of surrendering permits is outlined in the relevant regulations.

### ***PARTIAL SURRENDERS OF PERMIT AREA***

5.8.2 An application to surrender a part of the area of a permit generally is made by either a permit holder seeking to reduce the area of a permit to that of ongoing interest or by a permit holder seeking to redefine a permit's area by means of partial surrender and extension of area. This is more likely to occur in respect of exploration permits than other permit types. The permit holder applies to the Secretary to surrender part of the area of a permit and this shall be accepted provided that the remaining land under the permit is an unbroken area and the land being surrendered is so situated that it will not prevent or seriously hinder the exploration by any other permit holder of this land.

5.8.3 Often an application to surrender part of the area of a permit is dependent upon achieving other changes to a permit. In this regard, the Secretary is able to consider applications to surrender part of the area of a permit in conjunction with applications to extend the area of a permit (as noted above) or to amend a permit work programme. As the partial surrender application shall be dependent upon the Minister's approval of another application, the acceptance of the partial surrender may be deferred until the outcome of the other application is known.

5.8.4 Following agreement to a surrender of part of the area of a permit, the permit holder is advised promptly, and a permit endorsement forwarded to the permit holder (including a redefined permit map) and the permit register (section 91, Crown Minerals Act 1991) amended by the Secretary accordingly.

### ***FULL SURRENDER OF PERMIT***

5.8.5 Notice of full surrender of a permit may be given by the permit holder at any time to the Secretary. For permits with staged work programmes, there are work commitment or permit surrender options defined in the permit. For such permits, usually any notice of surrender would be received in accordance with the schedule prescribed in the work programme.

5.8.6 Upon acceptance of a notice of surrender, the Secretary shall advise the permit holder promptly and the permit register (section 91, Crown Minerals Act 1991) shall be amended accordingly.

5.8.7 Where a permit is surrendered in whole or in part and payments have been made to the Crown in respect of the surrendered area (for example, annual fees which are paid in advance), then the permit holder is entitled to a refund of so much of the payments as have been made in respect of the land surrendered subsequent to the date of surrender (section 40(5), Crown Minerals Act 1991). Any refunds shall be arranged by the Secretary promptly.

5.8.8 Where there is full surrender of a permit, the monetary deposit or bond lodged, to ensure compliance with the permit, shall be released upon verification that all permit fees, royalties or other payments to the Crown in relation to the permit and the Crown Minerals Act 1991 have been paid.

5.8.9 Section 90(6) of the Crown Minerals Act 1991 requires that the permit holder, upon surrender or part surrender of a permit area under section 40 of the Act, shall provide certified copies of all reports lodged pursuant to the relevant regulations, showing, separately, details in respect of the area of the land surrendered. Information and reports lodged over surrendered area are publicly available for reference or copying.

5.8.10 It should be noted that, as provided in section 40(6) of the Crown Minerals Act 1991, the surrender of a permit does not release the permit holder from any liability in respect of:

- (a) The permit up to the date of surrender; and
- (b) Any act under the permit up to the date of surrender giving rise to a cause of action.

## 5.9 COMPLIANCE WITH PERMIT AND ACT

- 5.9.1 At all times, a permit holder is expected to make reasonable efforts to comply with the conditions of the permit held and the Crown Minerals Act and relevant regulations.
- 5.9.2 As outlined in this Minerals Programme, petroleum permits shall be issued with general conditions which are along the following lines:
- There shall be a condition on all petroleum permits to the effect that the permit holder shall undertake a programme of work and make all reasonable efforts to prospect or explore or mine (as appropriate) the permit in accordance with good exploration and mining practice;
  - A defined programme of work shall be a condition of petroleum permits, although in unusual circumstances, at the discretion of the Minister, this may not be required;
  - All petroleum exploration and mining permits shall be granted with conditions relating to the calculation and payment of royalties to the Crown; and
  - There will be a condition requiring the payment of prescribed fees.
- 5.9.3 Compliance by the permit holder with the Crown Minerals Act 1991 and the relevant regulations also includes the lodgement of data, in accordance with section 90 of the Crown Minerals Act 1991 and the specific requirements of the relevant regulations.
- 5.9.4 There is ongoing monitoring of a permit holder's compliance with the permit conditions, the Act and relevant regulations by the Secretary. As required by regulations, a permit holder must regularly report on permit exploration and/or mining activities. Permit work programme commitments are checked against the reports of activity, for compliance monitoring purposes. Similarly, permit royalty returns are audited on an ongoing basis and referenced against production returns.
- 5.9.5 Where the Secretary has reason to believe that the permit holder has not substantially complied with the conditions of the permit held (and has not been exempted or excused from such compliance) or with the Crown Minerals Act 1991 or relevant regulations, then the Secretary shall request an explanation and seek advice on how the matter has or is being rectified. If the Secretary does not receive a satisfactory response, then the Secretary shall report to the Minister on the matter and this may initiate permit revocation proceedings (refer section 5.10).
- 5.9.6 The Minister must be satisfied that the permit holder has substantially complied with the conditions of the permit or that the permit holder has been exempted or excused from such compliance, before considering any application to amend the conditions of a permit, extend the minerals or land to which a permit relates or to extend the duration of a permit (refer sections 2(3) and 38(1) of the Crown Minerals Act 1991). If the Minister is not satisfied on either of these two counts, then the Minister shall decline the application and give written notice to the permit holder, pursuant to section 38(1) of the Crown Minerals Act 1991.
- 5.9.7 Prior to doing this, where the Minister proposes to decline an application to change a permit, the Minister shall first serve a notice on the applicant (the permit holder) which:
- (a) States that the Minister believes there has been non-compliance with permit conditions;
  - (b) Specifies the respects in which the permit holder has not complied with the conditions; and

- (c) States that the application will be declined within 20 working days of the service of the notice, unless the permit holder shows that there has been substantial compliance with the permit conditions (refer section 38(2) of the Crown Minerals Act 1991).
- 5.9.8 Before determining whether to decline an application to change a permit on the grounds of non-compliance, the Minister considers any representations made by the permit holder. If a permit holder has an application to change a permit declined on the grounds of non-compliance, the permit holder may appeal the Minister's decision to the High Court, not later than 20 working days after notification of the Minister's decision (refer sections 38(2) and 38(4) of the Crown Minerals Act 1991).
- 5.9.9 Section 100(2) of the Crown Minerals Act 1991 provides that it is an offence to fail to comply with permit conditions and with the Crown Minerals Act. Pursuant to section 101(2) of the Act, every person who commits an offence against section 100(2) is liable on summary conviction to be fined.

## 5.10 REVOCATION OF PERMIT

5.10.1 If the Minister has reason to believe that a permit holder is contravening or not making reasonable efforts to comply with the Crown Minerals Act 1991, relevant regulations or any of the conditions of a permit, pursuant to section 39 of the Crown Minerals Act 1991, the Minister may initiate permit revocation. Permit revocation is a punitive measure and accordingly is considered a very serious matter. The fact that a person has had a permit revoked may be a consideration against the award of future permits to that person or a related company.

5.10.2 Section 39 of the Crown Minerals Act 1991 outlines in detail the procedures to be followed to revoke a permit. The Secretary is required to report to the Minister on those matters a permit holder is believed to be in contravention or non-compliance with.

5.10.3 The Secretary's report shall detail such matters as the following:

- The permit condition(s) the permit holder has not complied with or the section of the Crown Minerals Act 1991 or the relevant regulations the permit holder has contravened;
- Correspondence (verbal and written) that has been held between the permit holder and the Secretary concerning the non-compliance or contravention and the views (if known) of the permit holder on the matter;
- The permit's history, as considered relevant;
- An evaluation of the non-compliance or contravention having regard to the policy framework as outlined in chapter 2; and
- An evaluation of the non-compliance or contravention having regard to the permit allocation process or any changes to the permit subsequently approved.

5.10.4 If the Minister is satisfied that a permit holder is not complying with the conditions of the permit or the requirements of the Crown Minerals Act 1991 or the relevant regulations, or is not making reasonable efforts to rectify non-compliance or contravention, then the Minister shall agree to the permit holder being served a notice which:

- (a) Specifies the alleged contravention or non-compliance; and
- (b) Requires the permit holder within 20 working days after the service of the notice (or such longer time as the Minister specifies) to remedy or make reasonable efforts to remedy, the contravention or non-compliance, or show reasonable cause for its occurrence, or show that it has not in fact occurred; and
- (c) States that failure to comply with the requirements of the notice may result in permit revocation.

5.10.5 At the end of the 20 working days (or such longer time as the Minister specifies) the Secretary shall report again to the Minister and shall recommend that the permit be revoked or that no further action be taken. The Secretary's report shall outline, but is not limited to, such matters as:

- Action that the permit holder has taken, or is taking, to put in order the non-compliance or contravention matter(s) the Minister raised with the permit holder;
- A summary of any views of the permit holder which have been expressed in verbal or written correspondence to the Secretary;

- Any alternative action the permit holder has proposed, for example, permit surrender or part surrender or an application to amend a permit work programme;
- Any evidence presented by the permit holder to prove that the alleged contravention or non-compliance has not occurred; and
- An evaluation of the alleged contravention or non-compliance having regard to any of the matters above and the policy framework as outlined in chapter 2.

5.10.6 If, after having given consideration to the Secretary's report, the Minister is satisfied that a permit holder has failed to comply with the requirements of a notice served (as detailed in paragraph 5.10.4 and section 39(1) of the Crown Minerals Act 1991), then the Minister shall take action to revoke the permit. The Minister shall serve a further written notice on the permit holder, which declares that 20 working days after the date of service of the notice, the permit either shall be revoked or shall become the property of the Minister, subject to the permit holder appealing this decision to the High Court. In the notice, the Minister shall specify the reason for the Minister's decision (section 39(2), Crown Minerals Act 1991).

5.10.7 As indicated in paragraph 5.10.6, a permit holder who has been served a notice of revocation may appeal against the Minister's decision to the High Court, not later than 20 working days after the date of service of the notice. Pending the determination of any appeal, the permit in respect of which the appeal is made shall for all purposes continue in force unless it sooner expires (or is surrendered). (Refer to sections 39(5) and 39(6) of the Crown Minerals Act 1991).

5.10.8 Following the revocation of a permit, the permit register (refer section 91, Crown Minerals Act 1991) shall be noted accordingly. Upon revocation, the Minister may direct that the monetary deposit or bond held in respect of the permit shall be applied in full or part to recover outstanding fees or other payments outstanding (for example, royalties) in respect of the revoked permit. The return of the monetary deposit or bond, less any amount that has been applied, shall then be arranged.

5.10.9 The revocation of a permit (or the transfer of a permit to the Minister pursuant to section 39(3) of the Crown Minerals Act 1991) shall not release the permit holder from any liability in respect of:

- (a) The permit, or any condition of it, up to the date of revocation (or transfer); and
- (b) Any act under the permit up to the date of revocation (or transfer) giving rise to a cause of action.

5.10.10 As noted, the Minister shall either revoke a permit or direct that a permit shall be transferred to the Minister pursuant to section 39 of the Crown Minerals Act 1991. For example, the latter course of action may be taken in respect of a mining permit which is operational and the permit holder has breached conditions of the permit. Section 39(3) of the Act provides that the Minister may then sell the permit or any part of it.

## **6 OTHER PERMITTING PROVISIONS**

### **6.1 MONETARY DEPOSIT OR BOND REQUIRED PRIOR TO PERMIT GRANT**

- 6.1.1 A permit shall not be granted unless there has been deposited with the Secretary, as security for compliance with the conditions of the permit, such monetary deposit or bond as may be required by the Minister (section 27(2), Crown Minerals Act 1991). The value of the deposit or bond required by the Minister is prescribed in the relevant regulations.
- 6.1.2 The holding by the Crown of a deposit or bond provides a form of security which can be realised in situations of non-compliance, without the need for recourse to legal proceedings. The Minister may direct that the full deposit or such part of it as thought fit, is paid into the Departmental Bank Account in respect of outstanding fees, or into the Crown Bank Account in respect of other payments outstanding (refer section 97(4)(b) of the Crown Minerals Act 1991).
- 6.1.3 The deposit or bond shall be held for the duration of the permit and shall be returned when it is established that the permit holder has substantially complied with the conditions of the permit throughout its currency, less any amount that has been applied by the Minister in accordance with section 97 of the Act.
- 6.1.4 Where the permit holder is a joint venture, partnership or otherwise made up of two or more parties, there is an option for each of the parties to lodge with the Secretary a monetary deposit or bond (equal to their percentage interest in the permit) or for one party (usually the permit operator) to lodge one monetary deposit or bond. On the withdrawal of a party from a joint venture, the withdrawing party should arrange for the replacement of any monetary deposit or bond lodged with the Secretary by the withdrawing party.
- 6.1.5 The Secretary returns monetary deposits or bonds either upon surrender, expiry or revocation (refer paragraph 5.10.8) of the permit or upon the replacement of the deposit or bond by an alternative, equivalent amount monetary deposit or bond. At no time can the permit monetary deposit(s) or bond(s) total value fall below the value prescribed in the relevant regulations.
- 6.1.6 Monetary deposits are held in a Trust Account pursuant to Part VII of the Public Finance Act 1989. Interest paid on the deposits is payable to the permit holder or party which has lodged the monetary deposit (refer section 97 of the Crown Minerals Act 1991).
- 6.1.7 With the approval of the Secretary, a bond may be lodged by a permit applicant or holder instead of a monetary deposit. The bond is required to be issued by a registered bank or other financial organisation approved by the Secretary. All bonds are held by the Secretary in a safety deposit box.

## **6.2 GOOD EXPLORATION AND MINING PRACTICE**

- 6.2.1 This section outlines some of the aspects of good exploration and mining practice that the Minister shall have regard to in carrying out and exercising functions and powers under the Crown Minerals Act 1991 with respect to petroleum prospecting, exploration and mining permits and applications for permits. It should be noted that this section does not address those good exploration and mining practice components which are not relevant to the functions of the Crown Minerals Act 1991, for example, those aspects of good exploration and mining practice concerning health and safety matters and environmental effects. These latter issues are covered by the legislative requirements of the Health and Safety in Employment Act 1992 and the Resource Management Act 1991, respectively.
- 6.2.2 Good exploration and mining practice is the term used in the Crown Minerals Act 1991. In the petroleum industry, the term “good oilfield practice” is more commonly used and defined, other than for coalbed demethanation. The two terms are used interchangeably in this Minerals Programme and either term may be used in reference to petroleum permitting matters. For petroleum prospecting permits, the term good industry practice has been adopted, given that exploration and mining are not allowed under such permits.
- 6.2.3 Good exploration and mining practice is relevant to all petroleum mining operations (as defined in section 2 of the Crown Minerals Act 1991, and includes exploration and prospecting operations). It is a concept implying that a permit holder will act in a technically competent manner and with the degree of diligence and prudence reasonably and ordinarily exercised by experienced operators engaged in a similar activity under similar circumstances and conditions.
- 6.2.4 The Minister has regard to good exploration and mining practice when considering permit applications, applications to amend permit work programmes, to extend the land or minerals covered by a permit and to extend the duration of a permit. The Minister is concerned to ensure that there is sound exploration for, and management of, petroleum resources through good exploration and mining practice including the avoidance of wastage of petroleum. This involves being satisfied with the programme of work and mining operations proposed, as well as being satisfied that a permit holder will act in a technically competent manner and with reasonable diligence and prudence in undertaking the programme of work and mining operations.
- 6.2.5 All petroleum permits are granted with a condition to the effect that the permit holder shall make all reasonable efforts to prospect or explore or mine (as appropriate) the permit in accordance with good exploration and mining practice (or good industry practice). As noted in paragraph 5.9.4, there is ongoing monitoring of a permit holder’s compliance with permit conditions, including whether mining operations (including exploration and prospecting) are in accordance with good exploration and mining practice. Data obtained on mining operations, pursuant to section 90 of the Crown Minerals Act 1991, may be used to monitor good exploration and mining practice and permit work programme compliance.
- 6.2.6 Good exploration and mining practice (good oilfield practice) cannot be defined. Rather, as noted above, it is a concept. In determining whether a permit application and permit mining operations (including exploration and prospecting) are in accordance with good practice, matters that the Minister shall have regard to, as considered relevant to the matter under consideration, include but are not limited to the following:

### **PERSONNEL AND PROCEDURES**

- The ability of the permit holder to act in a technically competent manner and with a reasonable degree of diligence and prudence in carrying out a proposed programme of work;

- That the permit holder or permit operator (agent on behalf of the permit holder responsible for permit operations), contractors and their staff shall have the skills, training and experience to the required level at all times, to carry out all mining operations in a skilful and effective manner.

#### **FIELD ACTIVITIES**

- That exploration activities, production operations and field development are designed and conducted so as to maximise ultimate petroleum recovery and minimise wastage, within reasonable technical and economic constraints;
- That there is provision made in planning processes and mining operations for unexpected field behaviour;
- That mining operations do not result in the inefficient production of petroleum or the inefficient storage of petroleum whether on the surface or underground;
- That, to facilitate sound field appraisal and development and production, there is ongoing definition of the hydrocarbon accumulation in terms of volumes in place, recoverable reserves and producibility parameters.

#### **DATA ACQUISITION**

- That mining operations are conducted in such a way as to ensure a reasonable amount of good quality data is acquired, within reasonable economic and technical constraints.

#### **EQUIPMENT**

- That appropriate equipment and consumables for mining operations will be used and all equipment and consumables involved in mining operations should be in good order when used. All reasonable contingencies should be prepared for. Routine maintenance and replacement actions and renewal of time expired components should be carried out as required. Equipment should be used within its designated specifications.

6.2.7 The Minister, in determining whether a permit application and proposed mining operations are in accordance with good exploration and mining practice, may obtain expert advice on the application of good exploration and mining practice (good oilfield practice), as considered necessary. The Minister may also refer to any industry standards for good exploration and mining practice (good oilfield practice), as considered appropriate. If the Minister has concerns about a permit application with respect to good practice then the Minister shall raise with the applicant the concerns held and advise the applicant of the factors that are considered to be relevant to the grant of the permit or permit change. Before deciding on the matter, the Minister will consider any comments that the applicant has to make. With respect to a mining permit application, the procedures outlined in paragraphs 5.4.14 and 5.4.15 shall also be followed as considered necessary.

6.2.8 Where the Minister has concerns about a permit holder not undertaking mining operations (including prospecting and exploration) in accordance with good exploration and mining practice, this is a compliance matter and shall be dealt with as under the procedures outlined in sections 5.9 and 5.10.

## **6.3 CROWN PARTICIPATION AND PERMIT GRANT**

- 6.3.1 Section 25(2) of the Crown Minerals Act 1991 provides that the Minister on granting a permit, may specify as a condition of the permit the terms on which the Minister, or any other person acting on behalf of the Crown, shall be entitled to participate in prospecting, exploration or mining under the permit or under any subsequent permit. This provision enables the Minister (or any other person acting on behalf of the Crown) to obtain an interest in a permit and by this means to obtain a fair financial return for the Crown from its petroleum.
- 6.3.2 As discussed in Appendix II (in particular, paragraphs xvii and xviii), this type of royalty provision is not favoured in comparison to other available mechanisms. (Chapter 7 outlines the hybrid royalty which shall apply).
- 6.3.3 Accordingly, the policy under this Minerals Programme is for the Minister (or any other person acting on behalf of the Crown) not to take an interest in prospecting, exploration or mining permits or under any subsequent permit in terms of section 25(2) of the Crown Minerals Act 1991.
- 6.3.4 If the Minister or any other representative of the Crown wishes to hold a petroleum permit, the Minister may grant a permit to a representative of the Crown as a permit holder under section 25(1) of the Crown Minerals Act 1991. In such a case, the Crown's involvement would be subject to the same conditions as any other permit holders. Similarly, a permit can be transferred or sold to the Minister or some other representative of the Crown.

## 7 THE ROYALTY REGIME

### INTRODUCTORY SUMMARY

*To provide for the obtaining by the Crown of a fair financial return from its petroleum, all petroleum exploration and mining permits shall be granted subject to conditions which require the permit holder to calculate and make payment of royalties to the Crown in respect of any petroleum obtained under the permit, which is either sold or used in the production process as fuel or otherwise exchanged without sale.*

*This section sets out the provisions on which the conditions in a permit related to the payment of royalties and petroleum production shall be based.*

*In summary, the royalty regime is a hybrid regime comprising a 5 percent **ad valorem royalty** component and a 20 percent **accounting profits royalty** component.*

*An ad valorem royalty, in brief, is a royalty payable on the basis of either a sales price received or, where there has been no sale or no **arm's length** sale, the deemed sales price. The **ad valorem royalty** is referred to in abbreviated form as an AVR.*

*In general terms, an accounting profits royalty is a mechanism whereby the resource owner receives a share of profits once all significant costs have been recovered by the producer. It is payable on the net accumulated accounting profit of production from a petroleum field. It takes into account both prices received for products and the costs of extracting, processing and selling those products up to the **point of sale**. The **accounting profits royalty** is referred to in abbreviated form as an APR.*

*The hybrid royalty regime has been chosen to provide for the Crown to obtain a fair minimum royalty (achieved through the **ad valorem royalty** component) and a fair share of substantial profits arising from a petroleum development, where these occur (achieved through the **accounting profits royalty**). This is in accordance with the policy framework outlined in chapter 2 and provides for the obtaining by the Crown of a fair financial return from its petroleum.*

*In respect of an exploration permit or where a mining permit has never had **net sales revenues** of more than \$1 million in a **reporting period**, the permit holder is liable to pay only the 5 percent **ad valorem royalty**.*

*For all mining permits to which the above exception does not apply, the permit holder is required to calculate for each period for which a **royalty return** must be provided both the **ad valorem royalty** and the **accounting profits royalty** and pay whichever is the higher.*

*An interim quarterly royalty payment of 5 percent of the **net sales revenues** of a permit shall be required where **net sales revenues** are greater than \$250,000 for a quarter. A final royalty payment is due within 90 days of the end of a period for which a **royalty return** must be provided.*

*The collection of royalties shall be administered by the Secretary. The Secretary shall review every annual **royalty return** and, if required, may request additional information.*

*Appendix II outlines the principal reasons for and against adopting the petroleum royalty regime outlined. This includes a summary of alternative royalty options.*

## THE PETROLEUM ROYALTY REGIME

- 7.1 Where the Minister agrees to the grant of a petroleum exploration or mining permit, the permit shall be granted subject to conditions which impose requirements in relation to the calculation and payment of royalties to the Crown by the permit holder. The conditions which are specified in each permit shall be written in accordance with the provisions outlined in this chapter. In this chapter, any reference to permit or permit holder is a reference to either an exploration or mining permit or an exploration or mining permit holder respectively. These provisions do not apply to prospecting permits.
- 7.2 Terms used in these royalty provisions, which are defined, are indicated in bold. All defined terms are noted in paragraph 7.52 and definitions provided there or reference given there to where the term is elsewhere defined. In calculating royalties, the permit holder shall be required to use accounting procedures which are in accordance with **generally accepted accounting practice**, except where otherwise indicated.

### ***WHEN IS A ROYALTY PAYABLE***

- 7.3 It shall be a condition of the permit that the permit holder shall be liable for the calculation and payment of royalties to the Crown in respect of all petroleum obtained under the permit, which is either sold or used in the production process as fuel or is otherwise exchanged or removed from the permit without sale, or remains unsold on the surrender, expiry or revocation of a permit, except as provided for in paragraph 7.4
- 7.4 No royalty shall be payable in respect of:
- (a) Any petroleum that, in the opinion of the Minister, has been unavoidably lost. This includes petroleum which is flared for safety reasons, or flared as part of an approved testing programme; and
  - (b) Any petroleum which has been mined or otherwise recovered from its natural condition, but which has been returned to a natural reservoir within the area of the permit (for example, reinjected gas).

### ***THE ROYALTY PAYABLE***

- 7.5 Where an exploration permit is held, it shall be a condition of the permit that the permit holder shall be liable to pay a 5 percent **ad valorem royalty** in respect of any period for which a **royalty return** must be provided, in accordance with paragraphs 7.30 to 7.34. The **ad valorem royalty** liability is determined in accordance with paragraphs 7.7 and 7.10 to 7.19.
- 7.6 Where a mining permit is held, it shall be a condition of the permit that the permit holder shall calculate and be liable to pay the higher of either a 5 percent **ad valorem royalty** or a 20 percent **accounting profits royalty** in respect of any period for which a **royalty return** must be provided in accordance with paragraphs 7.30 to 7.34, except where the exemption in paragraph 7.45 applies. In the event that **abandonment costs** are still to be incurred in respect of the permit, the permit holder shall be liable to pay the higher of a 5 percent **ad valorem royalty** or a 20 percent **provisional accounting profits royalty**, except where the exemption in paragraph 7.45 applies. The **ad valorem royalty**, the **accounting profits royalty** and the **provisional accounting profits royalty** are determined in accordance with the provisions of paragraphs 7.7 to 7.27.

## ***AD VALOREM ROYALTY***

- 7.7 The **ad valorem royalty** (AVR) shall be 5 percent of the **net sales revenues** from a permit. The calculation of **net sales revenues** is determined in accordance with the provisions outlined in paragraphs 7.10 to 7.19.

## ***ACCOUNTING PROFITS ROYALTY***

- 7.8 The **accounting profits royalty** (APR) shall be 20 percent of **accounting profits** from a mining permit. For any period for which a **royalty return** must be provided, **accounting profits** are the excess of **net sales revenues** (determined in accordance with paragraphs 7.10 to 7.19) over the total of **allowable APR deductions**. **Allowable APR deductions** are:

**Production Costs;**  
**Capital Costs** (exploration costs, development costs, permit acquisition costs and feasibility study costs);  
**Indirect Costs;**  
**Abandonment Costs;**  
**Operating and Capital Overhead Allowance;**  
**Operating Losses and Capital Costs Carried Forward;** and  
**Abandonment Costs Carried Back.**

The total of **allowable APR deductions** for any period for which a **royalty return** must be provided is the sum of **allowable APR deductions** less any **capital proceeds**. For the purposes of calculating the **allowable APR deductions**, all costs are to be included as incurred. The **allowable APR deductions** and the total of **allowable APR deductions** are discussed further in paragraphs 7.20 to 7.24. In no case may **non allowable costs** be deducted in calculating **accounting profits** for **accounting profits royalty** purposes and, as provided for in paragraph 7.25, no deduction or allowance shall be made more than once in respect of any amount expended.

- 7.9 The **provisional accounting profits royalty** shall be 20 percent of **provisional accounting profits** from a mining permit. For any period for which a **royalty return** must be provided, **provisional accounting profits** are the excess of **net sales revenues** over the **allowable APR deductions** referred to in paragraph 7.8, other than **abandonment costs carried back**. When **abandonment costs carried back** are taken into account in accordance with paragraph 7.20(g), the resulting figures shall be the final **accounting profits** figures for such periods, upon which the final **accounting profits royalty** liability is calculated.

## ***NET SALES REVENUES***

- 7.10 **Net sales revenues** are the basis of calculating the **ad valorem royalty** or **accounting profits royalty** or **provisional accounting profits royalty** liability in relation to a permit producing petroleum. For each period for which a **royalty return** must be provided, **net sales revenues** are the sum of total **gross sales** of petroleum (G), plus the value of petroleum not sold but on which royalty is payable (P), minus any allowable **netbacks** (or plus any **net forwards**) (N), as defined in paragraphs 7.11 to 7.19 below.

i.e. **Net sales revenues** = (G)+(P)-(N) [or (G)+(P)+(N)]

For the purposes of calculating **net sales revenues**, all revenues are to be included as realised (except where indicated otherwise).

- 7.11 **Gross sales** means the total sales of petroleum from the permit during the period for which a **royalty return** must be provided, determined in accordance with **Generally Accepted Accounting Practice (GAAP)** and excluding goods and services tax (GST), always provided that:
- i Where a **take or pay contract** or a **forward sales contract** applies then the sale of petroleum shall be included in **gross sales** at the **date of delivery**, and the sales price will be that received under the default provisions of the **take or pay contract** or under the **forward sales contract**;
  - ii If any of the sale prices have been denominated in a foreign currency, the sales price to be used for calculating **gross sales** will be translated into New Zealand dollars at the sell rate obtained. In the event that sale proceeds are not immediately translated into New Zealand dollars, but are retained in a foreign currency, then the exchange rate to use shall be the mid point between the buy and sell rates for the foreign currency on the **date of sale**, set by a major New Zealand registered bank. Foreign currency gains and losses are **non allowable costs**;
  - iii If any **gross sale** amount has not been determined on a fully **arm's length** basis, for example, pursuant to a contract between **related parties**, then the said quantity shall be valued by the permit holder using an **arm's length value**, as approved by the Minister in accordance with paragraph 7.27; and
  - iv Petroleum **futures contracts** used as hedging transactions are irrelevant in determining **gross sales**, and gains and losses arising therefrom are **non allowable costs**. Payments received in respect of the default provisions of a **take or pay contract**, which are not recompensed with delivery of petroleum products at a later date before the expiry of the permit are irrelevant in determining **gross sales**:
- 7.12 The value of petroleum not sold, but on which royalty is payable (refer paragraphs 7.3 and 7.4) shall be determined using an **arm's length value**, as approved by the Minister in accordance with paragraph 7.27. In determining an appropriate price, the Minister will take into consideration that petroleum used as a process fuel or otherwise exchanged or removed from the permit without sale, may have a lesser value to a similar product being marketed:
- 7.13 **Netbacks (net forwards)** means that portion of the sale price that represents the cost of transporting and/or storing and/or processing the petroleum between the **point of valuation** (refer paragraphs 7.15 to 7.19) and the **point of sale**, provided that:
- i If any of the costs of transporting, storing or processing are not considered to have been charged on a fully **arm's length** basis, for example have been determined pursuant to a contract between **related parties**, then the **netbacks (net forwards)** to be used shall be calculated by the permit holder using an **arm's length value**, as approved by the Minister in accordance with paragraph 7.27; and
  - ii The amount of **netbacks** may not exceed **gross sales**.
- 7.14 If the **point of sale** for petroleum is downstream from the **point(s) of valuation**, **netbacks** should be deducted from **gross sales** to arrive at **net sales revenues**. If the **point of sale** of petroleum is upstream of the **point(s) of valuation**, then **net forwards** incurred between the **point of sale** and the **point(s) of valuation** should be added to **gross sales** to arrive at **net sales revenues**.

## ***POINT OF VALUATION***

- 7.15 The **point(s) of valuation** for calculating **net sales revenues** shall be defined by the Minister, in consultation with the permit holder, at the time of granting a mining permit or in respect of an exploration permit, by written notice given by the Minister to the permit holder within 30 working days, or such other time as shall be notified to the permit holder, after the time when production of petroleum under the permit commences. The Minister shall endeavour to provide that the **point of valuation** will generally be the same as, or very close to, the **point of sale** for each product stream and, therefore, **netbacks** or **net forwards** will not generally be allowed or will not be significant.
- 7.16 In the case of **oil**, the **point of valuation** will normally be expected to be defined at a point where both:
- i The associated bulk sediment and water content of the **oil** is less than 1 percent (or such higher levels as are acceptable to a purchaser); and
  - ii The **oil** is available for shipment to customers via a mainline pipeline, a marine tanker or appropriate truck or rail transport.
- The **point of valuation** for **oil** will normally be expected to be defined as the outlet valve of a central storage facility, which is the final storage facility prior to the sale of the **oil**.
- 7.17 In the case of **natural gas**, the **point of valuation** will normally be expected to be defined at the outlet valve from the production facilities or an associated processing plant.
- 7.18 In the case of **natural gas liquids** which are sold as products distinct from **oil** and **natural gas**, the **point of valuation** will normally be expected to be defined at the outlet valve of the processing facilities producing a readily saleable product.
- 7.19 When determining the **point of valuation**, the Minister has as the objective to obtain an **ad valorem royalty** take per unit of output for similar products that is broadly equitable between permit holders notwithstanding that permit holders may have different delivery and sales arrangements.

## ***ALLOWABLE APR DEDUCTIONS***

- 7.20 As noted in paragraph 7.8, the **accounting profits royalty** is payable on the **accounting profits** from a mining permit. For any period for which a **royalty return** must be provided, **accounting profits** are the excess of **net sales revenues** over the total of **allowable APR deductions**. The **allowable APR deductions** are:

### **a Production Costs**

The eligible costs are outlined in definition (pp), paragraph 7.52.

### **b Capital Costs**

**Development costs, exploration costs, feasibility study costs** and **permit acquisition costs** are deductible from **net sales revenues** as **capital costs**. These are more fully described in definitions (o), (p), (q) and (ll) respectively, paragraph 7.52.

**Development costs** which are deductible from **net sales revenues** are those incurred by the permit holder to enable mining operations in respect of the mining permit, both before and subsequent to the date that the mining permit was granted and prior to the date the mining permit is relinquished.

**Exploration costs** which are deductible from **net sales revenues** are those incurred by the permit holder:

- i In respect only of the area defined in the mining permit, subsequent to the date that the mining permit was granted; and
- ii Within an area defined in the exploration permit from which the mining permit was derived, subsequent to the date that the respective exploration permit was granted and before the mining permit was granted. This includes **exploration costs** within any part of the exploration permit, even if the area had been relinquished in accordance with section 37(1)(a) of the Crown Minerals Act 1991 (refer also paragraphs 7.23 and 7.24); and
- iii Within the area of any extensions of area to the mining permit, prior to their inclusion in the mining permit, provided that these were incurred under an exploration permit held by the permit holder immediately prior to the area's inclusion in the mining permit.

c **Indirect Costs**

Those costs deductible from **net sales revenues** are outlined in definition (x), paragraph 7.52.

d **Abandonment Costs**

The eligible costs deductible from **net sales revenues** are outlined in definition (a), paragraph 7.52. In most instances, **abandonment costs** are incurred when production under the permit has ended. These will be able to be deducted from the surplus of **net sales revenues** over other **allowable APR deductions**, once the actual **abandonment costs** have been incurred (also refer **abandonment costs carried back** below).

e **Operating and Capital Overhead Allowance**

This is an allowance to reflect **head office costs** attributable to the mining permit. For any period for which a **royalty return** must be provided, the allowance is either 2.5 percent (for **onshore** mining permits) or 1.5 percent (for **offshore** or part **offshore** and **onshore** mining permits) of the total **production costs, capital costs** and **indirect costs** claimed in the period for which a **royalty return** must be provided. This allowance may not be claimed in respect of **abandonment costs**.

f **Operating Losses and Capital Costs Carried Forward**

The excess of **operating and capital expenses** (being the sum of **production costs, capital costs, indirect costs, abandonment costs, operating and capital overhead allowance**) over **net sales revenues** in any period for which a **royalty return** must be provided, may be accumulated as **operating losses and capital costs carried forward**. **Operating losses and capital costs carried forward** may then be deducted in subsequent periods for which **royalty returns** must be provided where **net sales revenues** exceed **operating and capital expenses**. **Operating losses and capital costs carried forward** are taken forward to subsequent periods for which **royalty returns** must be provided until fully utilised or the mining permit is relinquished.

g **Abandonment Costs Carried Back** and Recapture of Capital Expenditure Deductions

**Abandonment costs** may have been incurred during the duration of the permit and have been unable to be deducted against **net sales revenues** because they have been incurred after production on the permit has significantly declined or has finished. In the permit holder's final **royalty return**, such actual **abandonment costs** may be included for the purpose of

calculating the **abandonment costs carried back**. **Abandonment costs carried back** may be claimed as a deduction in respect of any period or periods for which **provisional accounting profit royalties** were paid.

In the **royalty return** in which such **abandonment costs** are entered, the permit holder will also provide a schedule setting out all equipment and other tangible assets which had been included in previous **royalty returns** as **capital costs**. Such schedule will list:

- i each such item of equipment and other tangible asset and its original cost; and
- ii the means by which each such item of equipment and other tangible asset has been or will be disposed of, whether by sale, transfer or scrapping; and
- iii the actual or estimated proceeds from such dispositions; and
- iv the **reporting period** in which the equipment or other tangible asset which had been sold or transferred had been accounted for as **capital proceeds**.

The **abandonment costs carried back** is calculated by deducting from the **abandonment costs** specified in the final **royalty return** the proceeds of the sale of equipment or other tangible assets, the cost of which was previously deducted, and/or insurance reimbursement resulting from loss or damage to such equipment or other tangible assets, not to exceed the equipment's or other tangible asset's original cost, except where such proceeds or reimbursement is from equipment and other tangible assets previously accounted for as **capital proceeds**.

Except for equipment and other tangible assets previously accounted for as **capital proceeds**, if equipment or other tangible assets, either in total or in part, the cost of which was previously deducted, has been transferred to or in respect of another exploration or mining permit without being sold, a sale of such equipment or other tangible assets will be deemed to have occurred, with the proceeds of such sale being the **arm's length value** of the equipment or other tangible assets or part thereof.

In respect of equipment and tangible assets, the cost of which was previously deducted, for which disposition has not actually occurred, a sale of such equipment or other tangible assets will be deemed to have occurred with the proceeds of such sale being the **arm's length value** of the equipment or other tangible assets or part thereof.

For those periods to which **abandonment costs** are carried back, **accounting profits** will be redetermined in accordance with paragraph 7.8. The final royalties payable for those periods will be redetermined in accordance with paragraph 7.6.

- 7.21 The total of **allowable APR deductions** for any period for which a **royalty return** must be provided, as noted in paragraph 7.8, is the sum of **allowable APR deductions** as outlined in paragraph 7.20(a) to (g) above, less any **capital proceeds**. **Capital proceeds** result from the sale of equipment or other tangible assets, the cost of which was previously deducted, and/or insurance reimbursement resulting from loss or damages to such equipment or other tangible assets (to the limit of the related equipment's or other tangible assets original cost). As well, **capital proceeds** result if equipment or other tangible assets, either in total or in part, the cost of which were previously deducted, are transferred to or in respect of another exploration permit or mining permit without being sold. In such a case, a sale of said equipment or other tangible assets will be deemed to have occurred with the proceeds of the sale being the **arm's length value** of the equipment or other tangible assets or part thereof.
- 7.22 If any of the **production costs, indirect costs, abandonment costs, exploration costs, development costs, permit acquisition costs, feasibility study costs** or **capital proceeds**

have not been determined pursuant to an **arm's length** contract, then the relevant costs to be used shall be calculated by the permit holder using an **arm's length value(s)** approved by the Minister in accordance with paragraph 7.27.

### ***CARRYING FORWARD OF EXPLORATION COSTS INCURRED PRIOR TO MINING PERMIT***

- 7.23 As noted in paragraph 7.20(b)(i), (ii) and (iii), a permit holder may claim a deduction for **exploration costs**. If a permit holder wishes to claim a deduction for **exploration costs** as described in paragraph 7.20(b)(ii), these must be brought forward for **accounting profits royalty** assessment purposes in the first **royalty return** forwarded after the grant of the mining permit, or in the case of **exploration costs** described in paragraph 7.20(b)(iii), the first **royalty return** after the extension is approved.
- 7.24 With respect to **exploration costs** incurred by the permit holder in an exploration permit preceding the mining permit, paragraphs 7.20(b)(ii) and 7.23 have been written on the general premise that the **exploration costs** that are incurred within an exploration permit area will be attributable to a single mining permit, for deduction against **accounting profits royalty** liabilities. However, it is recognised that there may be cases in which the permit holder develops more than one mining permit from an exploration permit area, on the basis of information gained during the term of the exploration permit. In this case, the Minister will accept requests, at the time of the granting of the first mining permit, for the allocation of the total **exploration costs** incurred within the exploration permit area prior to the commencement of the first mining permit, between the first mining permit and any additional mining permits envisaged by the permit holder.

### ***DEDUCTION ALLOWED ONLY ONCE***

- 7.25 Notwithstanding that an amount expended by a permit holder may fall under more than one category of deduction under these royalty provisions, no deduction or allowance shall be made more than once in respect of any amount expended.

### ***ARM'S LENGTH VALUE***

- 7.26 When a person is not, or having been, ceases to be, under the influence or control of another, s/he is said to be "at **arm's length**" with her/him. If such is not the situation, and there are contracts or transactions between the parties, then the contracts or transactions may be deemed to be not at **arm's length**. For example, contracts or transactions between **related parties**.
- 7.27 Where costs and prices used in determining petroleum royalties liabilities are not the result of **arm's length** transactions between parties, the **arm's length value** of costs and prices used shall be such amount as is agreed between the permit holder and the Minister or, in the absence of agreement within such period as the Minister allows, shall be such amount as is determined by the Minister to be the value. The Minister, in determining the **arm's length value** shall have regard, but is not limited to, any of the following as relevant:
- the grade of the petroleum commodity;
  - the **point of valuation**;
  - the nature of the market for the petroleum being sold or transferred or the asset or service being purchased or acquired;

- the terms of relevant contracts or sales agreements and the quantities specified therein;
- the state of the market at the time the prices in the contracts or sales, purchase, employment, service etc agreements were set;
- the provisions of the contracts or sales agreements relating to the variation or renegotiation of prices;
- prices paid to producers of similar petroleum products elsewhere in **arm's length** transactions;
- costs paid for similar assets or services elsewhere in **arm's length** transactions;
- prices recommended by international associations of governments of countries producing the mineral commodity;
- any provisions in joint venture operating agreements which relate to transactions between **related parties**; and
- such other matters as the Minister thinks fit.

In determining **arm's length value**, the Minister may seek advice from experts but, in any event, the Minister's decision is final.

### ***REPORTING PERIOD***

- 7.28 Every mining permit shall be granted with a condition specifying a 12 monthly **reporting period** as the basis for the calculation and payment of royalty liability by the permit holder. The **reporting period** shall be determined by the Minister in consultation with the mining permit applicant prior to the grant of the permit. The **reporting period** shall be either the financial year of the permit holder or some other fiscal year approved by the Minister.
- 7.29 Every exploration permit shall include a condition providing that if exploration under the permit results in petroleum production on which a royalty is payable (refer paragraphs 7.3 and 7.4), then the Minister may, after consultation with the permit holder, amend the conditions of the permit in accordance with section 36 of the Crown Minerals Act 1991, to specify a 12 monthly **reporting period**, with the initial period for which the **royalty return** must be provided commencing on a specified date. As for mining permits, the **reporting period** shall be either the financial year of the permit holder or some other fiscal year approved by the Minister. It would be expected that the **reporting period** specified for an exploration permit would be the same for any subsequent mining permit.

### ***PERIOD FOR WHICH A ROYALTY RETURN MUST BE PROVIDED***

- 7.30 The permit holder shall provide to the Secretary a **royalty return** for every period within the duration of the permit, between a date for the commencement of a period and the next following date for the expiry of a period.
- 7.31 Dates for the commencement of a period are:
- (a) The date of commencement of the permit; and
  - (b) The date of commencement of a **reporting period**; and

- (c) The date following the date of transfer of the permit or of an ownership interest in the permit.
- 7.32 Dates for the expiry of a period are:
- (a) The date of expiry of a **reporting period**; and
  - (b) The date of transfer of the permit or an ownership interest in the permit; and
  - (c) The date of expiry, surrender or revocation of the permit.
- 7.33 In the case of an exploration permit, the initial period for which a **royalty return** must be provided shall not commence before the initial **reporting period** commencement date specified in the permit (refer paragraph 7.29).
- 7.34 A **royalty return** shall be provided within 90 days of the end of the relevant period.

### ***ROYALTY RETURN***

- 7.35 The **royalty return** shall be in the form prescribed, from time to time, in relevant regulations. In summary, the permit holder will be required where applicable to provide, on the **royalty return**, the following information:
- a A calculation of **gross sales** and **net sales revenues** for the relevant period as determined in accordance with paragraphs 7.30 to 7.33.
  - b For the relevant period as determined in accordance with paragraphs 7.30 to 7.33 in total, details of:
    - Production Costs;**
    - Capital Costs;**
    - Indirect Costs;**
    - Abandonment Costs;**
    - Operating and Capital Overhead Allowance;**
    - Operating Losses and Capital Costs Carried Forward; and**
    - Capital Proceeds.**
  - c A calculation of the **provisional accounting profits** for the relevant period as determined in accordance with paragraphs 7.30 to 7.33.
  - d A calculation of **ad valorem royalties** and the **provisional accounting profits royalties** for the relevant period as determined in accordance with paragraphs 7.30 to 7.33.

There will be a special final **royalty return** form for taking into account **abandonment costs carried back** and calculating final **accounting profits royalty** liabilities.

- 7.36 Where the permit holder is a joint venture, partnership or otherwise made up of two or more parties, a **royalty return** may include separate statements from each of the parties detailing each party's share of:
- Gross sales;**
  - Net sales revenues;**
  - Production costs;**
  - Capital costs;**
  - Indirect costs;**

**Abandonment costs;**  
**Operating and Capital Overhead Allowance;**  
**Operating Losses and Capital Costs Carried Forward;**  
**Capital Proceeds;** and  
The royalty liability.

- 7.37 Every **royalty return** is required to be accompanied by a written statement from an **auditor**, or in the case of a **royalty return** which includes separate statements from each of the parties comprising a permit holder, a written statement from an **auditor** in respect of each party's statement. This shall be in the form prescribed in the relevant regulations. It is expected that the **auditor** making a written statement will be the auditor that the permit holder or party uses in the regular course of business. The audit statement shall be paid for by the permit holder or party.
- 7.38 The collection of royalties shall be administered by the Secretary. The Secretary shall review every **royalty return** and, if required, may request additional information or a detailed explanation of the basis of the **royalty return** from the permit holder who shall comply with such request within a reasonable period. The Secretary may also audit **royalty returns** or appoint someone else to do this audit. The Secretary shall pay for any such audit.

### ***SALE OR TRANSFER OF ALL OR PART OF PERMIT INTEREST***

- 7.39 Where a permit has been sold or transferred, or an ownership interest in a permit has been sold or transferred, any pro-rata balance of **operating losses and capital costs carried forward** which have not been deducted against **net sales revenues**, shall be carried forward and shall be available to the new permit holder to the same extent as if no transaction had taken place.

### ***PAYMENT AND REFUND OF ROYALTIES***

- 7.40 It shall be a condition of a permit that the permit holder pay the royalty due for any period for which a **royalty return** must be provided within 90 days of the end of the period. Where the **royalty return** has been provided with separate statements from the parties to a permit (refer paragraph 7.36), the royalty due may be paid by such parties forwarding their share of the royalty due together with a copy of their statement.
- 7.41 Where the royalty due is the **provisional accounting profits royalty**, the royalty shall be provisional pending the calculation of total **abandonment costs** for the duration of the permit (refer paragraph 7.20(g)). Following the calculation of total **abandonment costs**, the final **accounting profits royalty** shall be determined. After the Secretary is satisfied as to the validity of the final **royalty return**, a one time refund, if any, to the permit holder shall be made. A refund shall be made to the permit holder filing the final **royalty return** or to the persons and in the manner nominated by such permit holder.

### ***Interim Payments***

- 7.42 It shall also be a condition of the permit that where **net sales revenues** for any quarter in a **reporting period**, or a lesser period for which a **royalty return** must be provided, are \$250,000 or more, the permit holder shall make an interim royalty payment to the Secretary, of 5 percent of the **net sales revenues** for the quarter or lesser period, within thirty calendar days after the end of the quarter or lesser period. Where the permit holder is a partnership, joint venture or otherwise made up of two or more parties, the interim payment due may be made by each of the parties paying an agreed share.

- 7.43 If the interim royalties paid in a period vary by more than 20 percent from the previous quarterly payment, the permit holder may be required to provide an explanation of the variance and, if required by the Minister, copies of underlying accounting/production records.

#### **Final Payment**

- 7.44 If, upon completion of the **royalty return** for a period, there is a balance of royalties payable net of interim payments made in respect of the period, the permit holder shall be required to pay the balance within 90 days following the end of the period. If upon completion of the **royalty return**, the total of interim payments exceeds the amount of the royalties due for the period, the overpayment of royalties shall be refunded or may, at the request of the permit holder, be applied against future liabilities. Where a refund is to be made and the royalties have been paid by two or more parties, the refund shall be divided between the parties in the same proportion as the payments made.

#### ***SPECIAL PROVISION FOR SMALL PRODUCERS***

- 7.45 Until such time as **net sales revenues** exceed \$1,000,000 (one million dollars) within a **reporting period** for a mining permit, the permit holder shall only be required to calculate and pay the 5 percent **ad valorem royalty** for any period for which a **royalty return** must be provided, and shall be exempt from the **provisional accounting profits royalty** or the **accounting profits royalty**.
- 7.46 Where a mining permit has initial **net sales revenues** below \$1,000,000 within a **reporting period** (and thus the permit holder is exempt the **provisional accounting profits royalty**), but it is anticipated **net sales revenues** will exceed \$1,000,000 in subsequent **reporting periods**, the permit holder is strongly recommended to retain comprehensive records of **operating and capital expenses** in order to claim **allowable APR deductions** against any future **accounting profits royalty** liabilities.
- 7.47 Where the Minister considers that the \$1,000,000 threshold for exemption from the **accounting profits royalty** should be raised for all mining permits, the Minister may amend the conditions of mining permits to provide for the new threshold.

#### ***BOOKS AND RECORDS***

- 7.48 It shall be a condition of the permit that the permit holder shall, for the purposes of supporting the **royalty return**, keep for ten years or until the expiry of the permit, whichever occurs first, proper books of account and records maintained in accordance with accepted business practice. The Secretary may require the permit holder to provide detailed records and supporting information to explain any aspect of the **royalty return**.

#### ***FAILURE TO FILE A RETURN AND FAILURE TO PAY ROYALTY***

- 7.49 As noted, the requirement to file a **royalty return** and to pay royalty shall be set out as conditions of permit grant. The Crown Minerals Act 1991 provides that it is an offence to fail to comply with the conditions of a permit. Therefore, every permit holder who fails to comply with a condition requiring the permit holder to file a **royalty return** or fails to pay royalties owed to the Crown commits an offence against section 100(2) and shall be liable on summary conviction to a fine not exceeding \$10,000 and, if the offence is a continuing one, to a further fine not exceeding \$1,000 for every day or part of a day during which the offence continues. In addition, section 39 of the Crown Minerals Act 1991 provides for revocation of a permit if the Minister has reason to believe that any permit holder is contravening or not making reasonable efforts to comply with the Act or any of the conditions of the permit (refer section 5.10).

- 7.50 There shall be a strict credit policy applied with regard to overdue returns and payments. Overdue returns and payments will be followed up and, if payment is not received within a reasonable period, then appropriate measures shall be implemented to collect the overdue amount as a debt due to the Crown. These measures may include referral of the debt to a collection agency and legal action.
- 7.51 On termination of the permit by expiry, surrender or revocation, recourse can be had to any bond or cash deposit, for any outstanding debts pursuant to section 97 of the Crown Minerals Act 1991.

### ***DEFINITIONS***

- 7.52 Unless specifically defined, terms and references in these royalty provisions shall be interpreted in accordance with generally accepted usage in the International Oil and Gas Industry and specifically with reference to the interpretations set out in Regulation SX 4-10 of the United States Securities and Exchange Commission titled “Financial Reporting for Oil and Gas Producing Activities Pursuant to the Federal Securities Laws and The Energy Policy and Conservation Act of 1975”.
- a “Abandonment Costs” means for any mining permit, the post production costs of abandoning and restoring sites and dismantling or demolishing equipment or structures, used in mining operations in respect of the mining permit.
- b “Abandonment Costs Carried Back” has the meaning expressed in paragraph 7.20(g) of these royalty provisions.
- c “Accounting Profits” has the meaning expressed in paragraph 7.8 of these royalty provisions.
- d “Accounting Profits Royalty” means a royalty in respect of **accounting profits** resulting from **petroleum producing activities** determined in accordance with paragraphs 7.8 and 7.10 to 7.27.
- e “Ad Valorem Royalty” means a royalty in respect of **net sales revenues** resulting from **petroleum producing activities** determined in accordance with paragraphs 7.7 and 7.10 to 7.19.
- f “Allowable APR Deductions” has the meaning expressed in paragraphs 7.8 and 7.20.
- g “Arm’s Length” has the meaning expressed in paragraph 7.26.
- h “Arm’s Length Value” means in respect of costs and prices, those which a willing buyer and a willing seller, who are not **related parties**, would agree are fair in the circumstances. Paragraph 7.27 describes criteria that may be used to determine the arm’s length value of costs and prices when this situation is not satisfied.
- i “Auditor” means:
- i A member of the New Zealand Society of Accountants who holds a certificate of public practice; or
  - ii An officer of the Audit Department authorised in writing by the Controller and Auditor-General to be an auditor of a company for the purposes of section 199 of the Companies Act 1993; or

- iii A member, fellow, or associate of an association of accountants constituted outside New Zealand which is for the time being approved for the purposes of section 199 of the Companies Act 1993 by the Minister of Justice by notice in the Gazette.
- j “Capital Costs” are **development costs, exploration costs, feasibility study costs and permit acquisition costs** as outlined in paragraph 7.20(b).
- k “Capital Proceeds” has the meaning expressed in paragraph 7.21 of these royalty provisions.
- l “Condensate” means a liquid hydrocarbon of high API gravity above 60° (very light crude-oil composition) that condenses into a liquid upon production and surface conditions.
- m “Date of Delivery” means the actual date a petroleum product is physically transferred to the purchaser.
- n “Date of Sale” means the date on which a sale is deemed to have occurred in accordance with **GAAP**. In respect of **forward sales contracts** and **take or pay contracts**, notwithstanding the terms of such contracts, date of sale means the **date of delivery** of the petroleum to the purchaser.
- o “Development Costs” means costs incurred to obtain access to petroleum and to provide facilities for extracting, treating, gathering and storing the petroleum up to the **point of valuation**. More specifically, development costs include, but are not limited to costs incurred to:
  - i Gain access to and prepare well location sites for drilling, including surveying well locations for the purpose of determining specific development drilling sites, clearing ground, draining, road building, and relocating public roads, gas lines and power lines, to the extent necessary in developing the resource;
  - ii Drill and equip development wells, development type stratigraphic test wells and service wells, including the costs of platforms and of well equipment such as casing, tubing, pumping equipment and the wellhead equipment;
  - iii Design, acquire, construct, install and commission production facilities such as flow lines, separators, treaters, heaters, manifolds, measuring devices and production storage tanks, natural gas cycling and processing plants and central utility and waste disposal systems;
  - iv Provide improved recovery systems;
  - v Acquire through purchase or capitalisable lease equipment otherwise used in production; and
  - vi Acquire, construct and install support facilities to service the development site and the personnel directly involved in development and production.

Development costs do not include **indirect costs, exploration costs, abandonment costs, production costs** or **non allowable costs**.

- p “Exploration Costs” are those costs incurred, in identifying areas that may warrant examination and in examining and appraising specific areas that are considered to have prospects of containing petroleum reserves including costs of drilling exploratory wells

and exploratory type stratigraphic test wells. Principal types of exploration costs, which include capital and applicable operating costs of support facilities charged through day rates or other allocation mechanisms and other costs of exploration activities, are:

- i Costs of topographical, geological and geophysical studies, rights of access to properties to conduct those studies and salaries and other expenses of geologists, geophysical crews and others conducting those studies. Collectively these costs are sometimes referred to as Geological and Geophysical or “G&G” Costs. These costs may be incurred directly by the permit holder, on behalf of the permit holder pursuant to a contract, or in the form of a payment to a third party to purchase the results of Geological and Geophysical studies carried out by that third party;
- ii Costs of drilling and equipping exploratory and appraisal wells;
- iii Costs of seismic work undertaken outside the exploration permit area to facilitate bridging to pre-existing survey tie lines; and
- iv Costs associated with testing operations of any discovery made.

Exploration costs do not include **development costs, production costs, indirect costs, abandonment costs or non allowable costs.**

- q “Feasibility Study Costs” means costs of studies leading to the determination of technical feasibility and commercial viability of an exploration permit or a mining permit. This may include market feasibility studies and market negotiations relating to initial petroleum sales contracts.
- r “Forward Sales Contract” means a contract to sell production from a permit producing petroleum at a specified price on a fixed future date.
- s “Futures Contract” means transactions undertaken for hedging purposes which involve the purchase and sale of contracts to supply petroleum on a recognised futures trading exchange.
- t “GAAP” means **Generally Accepted Accounting Practice.**
- u “Generally Accepted Accounting Practice” is as defined in the Financial Reporting Act 1993.
- v “Gross Sales” has the meaning expressed in paragraph 7.11.
- w “Head Office Costs” means costs incurred outside of the mining permit operations which, while in some manner may benefit the mining permit, do not qualify as **indirect costs** and are, therefore, **non allowable costs.** An **operating and capital overhead allowance** is permitted in lieu of head office costs.
- x “Indirect Costs” means actual general and administrative costs incurred by the permit holder that are not **capital costs, non allowable costs, production costs or abandonment costs,** directly related to the **petroleum producing activities,** carried out on or in respect to the mining permit. Such costs, while not directly relating to production from the mining permit, provide supporting services which are reasonable and necessary to effective and efficient production. **Insurance costs** are included in this definition. Marketing costs incurred up to the **point of sale** which are directly related to petroleum produced from the mining permit are also included in this definition. Indirect costs are those which would normally be allocable by the operator to joint venture parties in a conventional

Joint Venture Operating Agreement such as, but not limited to, communications, travel, audit, legal, office expenses, insurance, etc.

- y “Insurance Costs” means costs incurred by the permit holder in keeping with normal business practices, which provide reasonable and prudent protection against risk of loss of assets, equipment, personnel, etc related to the exploration permit and mining permit, and result from the payment of premiums to an insurance company. Insurance costs include reasonable and prudent co-insurance and deductible amounts.
- z “Land Access Costs” means either:
  - i payments made to land owners and/or occupiers to gain access to their land to conduct mining operations; or
  - ii costs of purchasing land to gain access to land to conduct mining operations, provided that the amount which can be claimed shall be the lesser of the actual land purchase price or twice the government valuation of the land.
- aa “Natural Gas” means all gaseous hydrocarbons produced from wells including wet gas and residual gas remaining after the extraction of **condensate** and **natural gas liquids** from wet gas.
- bb “Natural Gas Liquids” means, for these royalty provisions, the liquid hydrocarbons other than **condensate** extracted from wet gas and sold as natural gas liquids, for example, LPG.
- cc “Netbacks (Net forwards)” has the meaning expressed in paragraph 7.13. Netbacks or net forwards are amounts either incurred to third parties, or where the permit holder owns its own means of transportation, storage or processing are the **arm’s length** cost to use those means between the **point of sale** and the **point of valuation**. In this respect, the **capital costs** of any owned transportation, storage or processing assets are therefore **non allowable costs**.
- dd “Net Sales Revenues” has the meaning expressed in, and is determined in accordance with, paragraphs 7.10 to 7.19.
- ee “Non Allowable Costs” include the following categories:
  - i Depreciation and amortisation;
  - ii Royalties payable to the Crown or any other party from the proceeds of production;
  - iii **Head office costs**;
  - iv Interest costs or cost of equity;
  - v Income taxes and Goods and Services Taxes;
  - vi Costs incurred in purchasing title to an existing exploration permit or mining permit or an ownership interest therein;
  - vii Cash bonus bid payments;
  - viii Foreign exchange gains and losses;

- ix The capital cost of owned transportation, storage and processing assets used by the permit holder between the **point of valuation** and the **point of sale**;
  - x Donations; and
  - xi Other costs not directly associated with the mining permit.
- ff “Offshore” means any area of the sea out from the landward boundary, as detailed in the “Coastal Marine Area” definition given in the Resource Management Act 1991. If there is any disagreement as to whether a project is offshore, then the Minister shall have the right of determination.
- gg “Oil” means all petroleum, including **condensate**, except **natural gas** and **natural gas liquids**.
- hh “Onshore” means any petroleum project inland from the landward boundary, as detailed in the “Coastal Marine Area” definition given in the Resource Management Act 1991. If there is any disagreement as to whether a project is onshore, then the Minister shall have the right of determination.
- ii “Operating and Capital Expenses” means the sum of **production costs, capital costs, indirect costs, abandonment costs, and operating and capital overhead allowance** (refer paragraph 7.20(f)).
- jj “Operating Losses and Capital Costs Carried Forward” has the meaning expressed in paragraph 7.20(f).
- kk “Operating and Capital Overhead Allowance” is an allowance to reflect **head office costs** attributable to the mining permit. For any period for which a **royalty return** must be provided, the allowance is either 2.5 percent for **onshore** mining permits or 1.5 percent for **offshore** or part **offshore** and **onshore** mining permits, of the total **production costs, capital costs** and **indirect costs** claimed in the particular period. The operating and capital overhead allowance may not be claimed in respect of **abandonment costs**. (Refer paragraph 7.20(e)).
- ll “Permit Acquisition Costs” means the payments made to the Crown and other governmental authorities by the permit holder to:
- i obtain and maintain an exploration permit and/or a mining permit, other than cash bonus bidding payments which are **non allowable costs**; and
  - ii to obtain and maintain associated resource consents, including costs associated with the preparation of any Environmental Impact Statement(s) which may be required under the Resource Management Act 1991.

Also included herein are **land access costs**.

mm “Petroleum Producing Activities” include:

- i the search for petroleum in its natural state and original location; and
- ii construction, drilling and production activities necessary to retrieve petroleum from its natural reservoirs and the acquisition, construction, installation and maintenance of field gathering and storage systems, including lifting the petroleum to the surface and gathering, treating, field processing (as in the case of processing

gas to extract liquid hydrocarbons) and field storage. For the purposes of this definition, the petroleum producing activities shall normally be regarded as terminating at the **point of valuation**.

nn “Point of Sale” means the point at which the sale of petroleum is deemed to have occurred in accordance with **GAAP**.

oo “Point of Valuation” has the meaning expressed and is determined in accordance with the provisions outlined in paragraphs 7.15 to 7.19.

pp “Production Costs” means:

i Costs incurred to operate and maintain wells and related equipment and facilities up to the **point of valuation**, including capital and applicable operating costs of support facilities, charged to production activities in the form of a day rate or similar allocation mechanism, and other costs incurred to maintain and operate those wells and related facilities. Examples of production costs are:

- Costs of labour to operate the wells and related equipment and facilities; labour costs may include remuneration elements such as wages and salaries, and reasonable fringe benefits as provided for in employment contracts such as housing, education, health care and recreation;
- Repairs and maintenance;
- Materials, supplies and purchased fuel consumed and supplies used in operating the wells and related equipment and facilities;
- Site maintenance costs during production; and
- Costs for leasing or hiring of capital equipment.

ii Some support equipment or facilities may serve **petroleum producing activities** on two or more mining permits and may also serve transportation, refining and marketing activities. To the extent that support equipment and facilities are used in respect of two or more mining permits and/or in more than one facet of **petroleum producing activities**, a reasonable allocation of related capital and applicable operating costs can be deducted as production costs. In no circumstance may the total of such allocated costs exceed the cost to be allocated.

Production costs do not include **exploration costs, development costs, indirect costs, abandonment costs** or **non allowable costs**.

qq “Provisional Accounting Profits” has the meaning expressed in paragraph 7.9.

rr “Provisional Accounting Profits Royalty” has the meaning expressed and is determined in accordance with the provisions outlined in paragraph 7.9.

ss “Related Parties” refers to:

i Entities that directly or through one or more intermediaries, exercise control, or are controlled by, or are under common control with the permit holder; and similarly the corresponding set of entities when the relationship is based on significant influence. (Included are holding companies, subsidiaries and associates and fellow subsidiaries and associates, joint ventures and other contractual arrangements);

- ii Individuals and their close family members or controlled trusts owning directly or indirectly, an interest in the voting power of the permit holder that gives them significant influence over that entity. (Close members of the family of an individual are those that may be expected to influence or be influenced by that person in their dealings with an entity);
  - iii Key management personnel, that is those persons having authority and responsibility for planning, directing and controlling the activities of the permit holder including directors and officers of companies and close members of the families of such individuals; and
  - iv Entities in which a substantial interest in the voting power is owned, directly or indirectly, by any person described in (ii) or (iii) over which such a person is able to exercise significant influence. This includes entities owned by directors or major shareholders of the permit holder and entities that have a member of key management in common with the permit holder.
- tt “Reporting Period” means the fiscal year defined in the permit as the reporting period for the permit. (Refer also to paragraphs 7.28 and 7.29.)
- uu “Royalty Return” means a detailed statement of the permit holder’s **petroleum producing activities** in the form prescribed, from time to time, in regulations (refer paragraph 7.35).
- vv “Take or Pay Contract” means a contract between a producer and a purchaser whereby a purchaser agrees to take or pay for a minimum quantity of product per year whether or not the purchaser takes delivery of the product. Usually, any product paid for but not taken in a particular period may be taken at some later time subject to limitations.

## 8 CONCLUDING COMMENTS

- 8.1 The preparation of the Minerals Programme for Petroleum was undertaken in accordance with sections 13 to 17 of the Crown Minerals Act 1991. It was preceded by a Draft Minerals Programme for Petroleum. In accordance with section 16 of the Act, on 14 May 1994, public notice was given of the Draft Programme and that submissions would be received. Notice was also given to all iwi and the Draft Programme was made available for inspection and purchase.
- 8.2 Submissions were then received and considered by the Secretary in accordance with section 17 of the Crown Minerals Act 1991, and a report and recommendations on the submissions was made by the Secretary to the Minister. Following the consideration of this report, the Minister prepared a revised Draft Minerals Programme for Petroleum which was publicly notified.
- 8.3 The Minerals Programme for Petroleum shall remain effective until a replacement Minerals Programme for Petroleum is issued. From time to time, changes to the Minerals Programme may be made in accordance with sections 14 and 18 of the Crown Minerals Act 1991. Section 20 of the Act requires the Minister to undertake a review within ten years of the date of issue, and for a replacement minerals programme to be prepared whether or not any changes are proposed.

## *APPENDIX I*

# **DETAILED SUMMARY OF THE REASONS FOR AND AGAINST ADOPTING THE ALLOCATION FRAMEWORK**

- i The petroleum permit allocation framework the Minister shall use was summarised in the Introductory Summary to chapter 5, with the detailed allocation procedures outlined in chapter 5, sections 5.1, 5.2 and 5.4. In accordance with section 15(1)(e) of the Crown Minerals Act 1991, this appendix summarises the reasons for and against adopting the allocation policies, procedures and provisions. The permit allocation options are described and the advantages and disadvantages of these options are summarised. A more detailed assessment of generic issues can be obtained from the publication “Crown Minerals Act 1991 : Evaluation of Allocation and Pricing Regimes, Ministry of Commerce (1992)”.
- ii A principal policy objective guiding the determination of the policies, procedures and provisions of this minerals programme has been to provide for the efficient allocation of rights in respect of petroleum. Allocation is the process of matching prospecting, exploration and mining opportunities with those who wish to take advantage of these opportunities. Two basic approaches to allocation are:
  - (a) to have a mechanism whereby defined exploration acreage is advertised and different parties can compete for the same opportunity by some sort of bidding process, with the most competitive bid being successful;
  - (b) to have some minimum allocation criteria having to be satisfied (for example, an acceptable programme of work) and allocation being to the first party registering an interest and meeting the allocation criteria.
- iii In general, competitive bidding allocation methods are favoured. These are considered efficient in that this allocation approach will result in a permit being allocated to the company which most values the exploration and development of the petroleum resource of the area and accordingly is most likely to diligently work the permit area.
- iv Cash bidding, cash bonus bidding, work programme bidding and staged work programme bidding are examples of competitive bidding allocation methods. First acceptable frontier offer and priority to the first acceptable application received are examples of allocation methods where minimum criteria have to be met and the first acceptable application received is eligible for consideration for permit grant.
- v In respect of petroleum, most allocation decisions concern exploration permits or prospecting permits. Mining permits tend to be allocated as subsequent permits following from an exploration permit.

### ***A CASH BIDDING AND CASH BONUS BIDDING***

- vi Cash bidding (also referred to as pure cash bidding), involves an interested party making a cash offer or bid for a defined block or permit, in a competitive tendering procedure. The cash bid is used as the allocation tool and also incorporates a share of economic rent or the equivalent of a once off royalty payment. There may be some basic prescribed conditions to be met if a permit is purchased, for example, a requirement to drill a well in a defined period, and there may be a floor price required to be met before allocation occurs.

- vii Cash bonus bidding involves an interested party making a cash offer or bid as with cash bidding. With cash bonus bidding, however, the permit holder is required to pay a royalty to the Crown on any petroleum production as well as the cash paid with the original purchase. Cash bonus bidding, by requiring royalty payments on any production, is considered to be more likely to meet the requirements of the Crown Minerals Act 1991 for a fair financial return to the Crown than cash bidding, since bids for unexplored acreage are likely to be very heavily discounted.
- viii There are various ways the cash allocation payment can be made. These include an up front cash payment, or an instalment payment commitment made over a defined period, or a commitment payment discounted with successive exploration work, as well as variations on these approaches.
- ix Cash bonus bidding allocation resembles cash purchasing at an auction. This allocation method has the advantage of being very transparent and easy to understand.
- x With cash bonus bidding allocation, the resource owner may have minimal control on the extent or type of exploration work that will be undertaken on a permit. If this is a concern, a condition of holding a permit could be a minimal work obligation to be met for a permit to continue to be held after a defined period.
- xi Exploration companies suggest that any type of cash bidding diverts funds away from exploration work in that a set amount of funds will be allocated to a project. If these have to be shared between a cash bid and exploration work, this increases the cost of exploration per unit of exploration effort.
- xii Where cash bidding or cash bonus bidding is used internationally, it tends to be on a selective basis generally involving highly prospective acreage. Work programme bidding is generally the more accepted petroleum permit allocation method. Any decision that New Zealand uses cash bonus bidding allocation needs to recognise that it could reduce our international competitiveness for petroleum exploration and mining. Cash bonus bidding allocation could raise the entry costs of exploration in New Zealand, and assuming the same level of exploration, would raise the average cost of exploration. This would be a disincentive to exploration in New Zealand.
- xiii Cash bonus bidding may not be simple to administer if the system adopted involves the Minister in determining a floor price. This would likely involve some subjective judgement based on investment criteria (for example oil prices), geological interpretation and risk assessment.
- xiv On balance, cash bonus bidding is an effective mechanism for efficiently allocating petroleum permits where there is strong competitive interest in acreage. This is most likely to occur for highly prospective areas where there is a good exploration information database.

## ***B WORK PROGRAMME BIDDING***

- xv Work programme bidding involves making a bid in a competitive situation on the basis of committing to exploration work over the duration of a permit term. A variation of work programme bidding is staged work programme bidding which involves committing to a work programme for an initial period and having, at defined stages, the right to commit to further work or to surrender the permit. Staged work programme bidding is considered a more effective variant, in that progressive commitments to work are made in the light of additional information

on which to progress investment decisions. A criticism of work programme bidding, without commitment stages, is that it locks a company into investing in a programme of work which, with time, may not be appropriate and/or efficient.

- xvi The successful work programme bidder is the person considered to be most prepared to commit to investing in working a permit area in accordance with established criteria and determining the permit area's potential. Over the last decade in New Zealand, petroleum exploration rights have been awarded on the basis of staged work programme bids.
- xvii There is a concern that allocation by work programme bidding results in companies proposing unnecessary work or inefficient work schedules in order to be the successful bidder. Providing for staged work programme commitments with companies having, at regular stages, surrender options, and allowing modifications to work programmes where there are good reasons, reduces the likelihood of inefficient work schedules. The potential for inappropriate work proposals, especially in areas of high competition and good information, however, is recognised. As well, if there is a propensity to request modifications to work programmes, this raises questions about the effectiveness of allocation by work programme bidding.
- xviii Allocation of a permit on the basis of a work programme guarantees to the resource owner that it will obtain some further information about its mineral estate as a consequence of the holding and working of the permit. In comparison, with allocation by a cash bidding method, the resource owner may have less control on the working of a permit (unless there is a minimum specified work required) and thus the obtaining of information. There is an argument that any extra exploration that may be induced by work programme bidding can be seen as a benefit to the resource owner in the form of additional resource information.
- xix The petroleum industry favours staged work programme bidding particularly because it allows explorers to make progressive investment decisions. Staged work programme bidding recognises the considerable uncertainty of petroleum exploration and provides an appropriate mechanism for explorers to indicate a potential programme of work but not to be locked into this. The petroleum industry also favours staged work programme bidding because it allows all funds allocated to exploration to all be spent on exploration work rather than being partially dissipated on cash bids. Allocation on the basis of work commitments is well understood and, as noted, is a widely used allocation mechanism internationally.
- xx Work programme bidding is potentially complex to administer as it involves the assessment of bids by officials. It may involve officials having to define a minimum accepted level of work before allocation takes place. Where there is strong competition for a permit, it can be difficult to identify the best bid. The nature of such assessments can be made more transparent and easy to administer by clearly outlining the evaluation criteria and process.
- xxi There are also ongoing administrative costs involved in monitoring compliance with work obligations and attending to programme modification requests.
- xxii Overall, staged work programme bidding is an attractive allocation option because it results both in permits being explored (and thus there is increased knowledge of New Zealand's resources) and it provides for competitive allocation such that the party which most wants to explore and potentially mine an area is allocated the permit. Particularly, for those areas of petroleum potential which are under-explored and where there has been little well drilling, it is an effective allocation option.

## ***C ACCEPTABLE WORK PROGRAMME APPLICATIONS***

- xxiii Permit allocation, which does not result from a competitive bidding allocation method, typically provides for interested parties to apply for a permit at any time, for allocation to occur as a result of a permit applicant having met some defined allocation criteria (most commonly an acceptable work programme), and for the first application received to be considered in priority over any subsequent applications.
- xxiv This type of allocation method is effective where there is no, or little, competition for access to acreage. This may be due to an area being frontier for exploration and, as such, there is less interest in exploration there. As such exploration bidding rounds cannot be justified.
- xxv It enables fairly immediate obtaining of exploration rights, depending on administrative processing. As such, if an interested party has resources immediately available to invest, these can be used to advantage. It is also a more secure investment approach. Having identified an area of interest, the explorer can immediately secure exploration rights and then determine the prospectivity and value of the area. In comparison, a competitive bidding allocation method may involve much work and expenditure prior to making a bid, which then may not be successful.
- xxvi The major disadvantage of this type of allocation method may occur where there is competitive interest in an area. In such circumstances the timing of an application may have priority over the merit of an application and, therefore, the area may not be awarded to the company which most values exploring and developing the petroleum resource.
- xxvii Overall, for petroleum permits, an allocation method which provides that acreage is available for application at any time, and which defines a minimum work programme requirement, has potential application for allocating exploration permits in more frontier areas. However, as a general principle, given that petroleum is a high value product, competitive bidding methods for allocation of exploration permits are the preferred option.

## ***EXCLUSIVE OR NON-EXCLUSIVE PERMITS***

- xxviii In determining the most efficient allocation system to use, not only do different allocation methods have to be considered but also whether or not it is appropriate for the permits allocated to be exclusive or non-exclusive.
- xxix An exclusive permit gives to the permit holder exclusive rights to prospect and/or explore and/or mine the permit. In other words, no other party may enter on the land covered by the permit for these purposes without the specific agreement of the permit holder. Typically, an exclusive permit would be granted on the basis that the permit holder retains the right to a subsequent permit (for example, as provided under section 32 of the Crown Minerals Act 1991). This means that, if the holder of an exploration permit makes a discovery and wishes to mine it, provided the exploration permit is still valid, only the permit holder has the right to apply for and be granted a permit to mine the discovery.
- xxx With non-exclusive permits, more than one party may have rights to prospect or explore for petroleum over the same area. It is not appropriate for a non-exclusive permit holder to have subsequent permit rights. Non-exclusive permits are only possible for prospecting and exploration and are not relevant for mining. With respect to non-exclusive permits, allocation is usually on an on-demand basis.
- xxxi Exclusive permits, with subsequent permit rights, are most common. They allow for a permit holder to invest in prospecting, exploration or mining as appropriate with the certainty that the permit holder can benefit solely from this investment. Non-exclusive permits are appropriate when the purpose of the permit is to obtain reconnaissance data or information.

## **APPENDIX II**

# **A DETAILED SUMMARY OF THE REASONS FOR AND AGAINST ADOPTING THE ROYALTY REGIME**

- i The petroleum royalty regime to apply was outlined in chapter 7. In accordance with section 15(1)(e) of the Crown Minerals Act 1991, this appendix summarises the reasons for and against adopting the royalty regime policies, procedures and provisions. It sets out the objectives of the royalty regime, briefly reviews various royalty alternatives and the advantages and disadvantages of these and summarises the work undertaken on the assessment and choice of the form and rates of the royalty regime adopted. A more detailed assessment can be obtained from the publication “Crown Minerals Act 1991 : Evaluation of Allocation and Pricing Regimes”, Ministry of Commerce (1992).
- ii Royalties are payments to the owner of a resource for extraction or use rights and may be payable whether the owner is the government or a private individual. In respect of petroleum, the Crown Minerals Act 1991 provides the legal basis for the imposition of royalties by the Crown. A private resource owner would use a contract to achieve the same end. Royalties are not taxes.
- iii The Crown Minerals Act 1991 specifies at section 12, that policies, procedures and provisions to be applied in respect of the management of the petroleum resource should provide for the obtaining by the Crown of a fair financial return from its minerals. Chapter 2 outlined the criteria for achieving this, in particular:
  - The Crown, as owner of the petroleum resource, obtaining a guaranteed minimum payment from the extraction of its petroleum;
  - The Crown, as owner of the petroleum resource, benefitting in sharing in any substantial profits arising from a petroleum development; and
  - The royalty regime being internationally competitive, clear and easy to comply with and administer and not to impose unreasonable transaction costs.
- iv Within this policy framework, petroleum royalty regime options were evaluated. The concept of economic rent was used as a guide to determining an efficient price. Economic rent is the residual that remains open to claim by the resource owner when all significant economic costs have been recovered by the resource developer.

### ***ROYALTY OPTIONS***

- v A resource owner may obtain a price for the extraction of its petroleum resource by either charging in advance for its use (an ex ante basis) or charging on the basis of production (an ex post basis).

### ***EX ANTE MECHANISMS***

- vi Ex ante pricing methods generally require a high level of knowledge of the resource if a fair price is to be achieved. Pure cash bidding is an example of an ex ante pricing method. This involves a once and for all payment by the producer following competitive allocation by auction (with no subsequent royalty liabilities).

- vii Petroleum extraction rights are usually allocated by an explorer initially obtaining exploration rights and then having a subsequent right to mine any discovery made. At the exploration allocation stage, there is rarely sufficient information on the extraction potential of an area to ensure that a fair price shall be achieved by pure cash bidding.
- viii Cash bonus bidding which combines cash bidding with a subsequent liability to pay royalties, is a mixture of ex ante and ex post pricing, and bidders will discount their bids against assessments of the future levels of royalty payable. Cash bonus bidding best meets the objective of a fair financial return when there are high levels of resource information available.

### ***EX POST MECHANISMS***

- ix Ex post pricing methods include specific rate royalties, ad valorem royalties, profit based royalties and equity interest in projects.

### ***SPECIFIC RATE ROYALTY***

- x A specific rate royalty is a specified price to be paid based on either the crude volume or tonnage produced. Specific rate royalties do not take account of either the market value of the petroleum nor the costs of extraction and production, and accordingly can be viewed as the least efficient form of royalty from an economic viewpoint. Although such royalties are easy to collect, they are not recommended for high value resources like petroleum.

### ***AD VALOREM ROYALTY***

- xi An ad valorem royalty collects a fixed percentage of the price received on petroleum production. Traditionally, one eighth of the value of production was the owners share, usually taken in kind. This royalty method is more economically efficient than a specific rate royalty as it varies according to the price received by the producer. As a rule, however, it does not recognise all extraction and production costs. This royalty method is commonly applied to petroleum, often in combination with a profit related instrument as part of a hybrid. Applied both as a single instrument royalty and as part of a hybrid royalty regime, it has been the royalty method used in New Zealand over the last fifty years. It provides a guaranteed minimum return to the resource owner.

### ***PROFIT BASED ROYALTIES***

- xii Profit based royalties take into account both output prices and input costs, and from an economic viewpoint are generally more efficient. There are two main types: a resource rent royalty, and an accounting profits royalty.

### ***RESOURCE RENT ROYALTY***

- xiii The resource rent royalty is a profit based mechanism that is based directly on the concept of economic rent and attempts to give an economic assessment of the surplus that is available for sharing between the resource owner and the resource developer. With the resource rent royalty, all direct operating expenses and capital expenditures are available for deduction against royalty liability and any losses are carried forward with capital recognition at an economic threshold rate (approximating the risk-adjusted or "opportunity cost" of capital). Once flows become positive, they are subject to royalty assessment.

- xiv Problems can arise with resource rent royalties if the economic threshold rate is set too low (as this penalises producers) or too high (as this leads to royalty revenue losses). There are also likely to be administrative and compliance complexities (including the need to regularly update the estimate of the economic cost of capital). In addition, if used as the sole royalty mechanism, resource rent royalties may engender sovereign risk as producers may not pay royalties until a project nears the end of its economic life or indeed pay no royalties whatsoever. The resource rent royalty has, therefore, been rejected as an option for the pricing of petroleum in New Zealand.

### ***ACCOUNTING PROFITS ROYALTY***

- xv An accounting profits royalty assesses profit for royalty purposes primarily in financial terms, using defined accounting conventions relating to the treatment of profits, operating expenses and capital expenditures. Capital recognition can be restricted to depreciation (including, say, the immediate write-off of capital expenditures against royalty liabilities) but can also include recognition of actual or notional interest payments (though this is likely to increase administrative and compliance burdens). Accounting profit royalties have the great merit that their reporting rules have a high degree of compatibility with those employed in tax returns and company accounts. They are applied internationally to higher value minerals.
- xvi Used alone, the accounting profits approach could guarantee the Crown a share of any substantial profits arising from a petroleum project. However, as with the resource rent royalty, it is likely that some producers would only incur accounting profits liabilities late in the life of a project.

### ***EQUITY INTEREST***

- xvii Taking an equity interest in a project is another way in which a resource owner can share in the economic rent that is generated by a project. The most economically efficient form of equity interest is one in which the resource owner shares profits with the developer and meets a proportionate share of all costs, including the cost of unsuccessful and successful exploration. One variant is the carried/contributory interest in which the resource owner's cost liability is limited to development, production and operating costs should a project proceed. This is less efficient in economic terms than a full equity interest.
- xviii Petroleum licences in New Zealand from 1986 to 1993 were granted with an 11 percent carried/contributory interest. It was not thought desirable to continue this regime because:
- The petroleum industry perceives a conflict of interest between the Crown's regulatory role as an allocator of permits and its joint venture role, through the possibility of the Crown utilising the information that it gains from joint venture parties to its own advantage in allocating permits;
  - The Government must find large amounts of development finance;
  - Government funds are subject to commercial risk; and
  - Decisions involving significant commercial risks have to be made by Ministers on advice which is not necessarily subject to clear commercial objectives and incentives.

## ***HYBRID ROYALTIES***

- xix As noted above, each type of royalty has its own set of advantages and disadvantages from the economic, financial, accounting, compliance and administrative viewpoints. No single royalty form can meet such multiple objectives as safeguarding the resource owner's right to a guaranteed minimum return and reserving the right to share in any substantial profits. To meet multiple objectives of this kind, it is necessary to have a hybrid royalty that combines an output or price related royalty form with a profit related form.

## ***ASSESSMENT OF ROYALTY OPTIONS***

- xx To provide for the obtaining of a fair financial return by the Crown from developers who extract or use a Crown resource, it is assumed that a nil return will not be acceptable by the public. This suggests that a low guaranteed return is required in all instances. At the same time, the fair return criteria suggests that the Crown should also retain a right to share in any substantial profits that arise from such factors as the discovery of particularly rich reserves or steep international price rises.
- xxi These grounds provided the basis for making an initial assessment that there could be considerable merit in a hybrid regime combining a low level ad valorem royalty with an accounting profits royalty, with producers being asked to calculate their liabilities to both components in any one royalty period and pay the higher of the two liabilities.
- xxii The low level ad valorem component guarantees that the Crown would receive a minimum return from the extraction and use of its resource, while the accounting profits component preserves the Crown's right to share in any substantial profits that arise. An accounting profits royalty also has the advantage of less administrative and compliance difficulties compared to other profit sharing royalties.
- xxiii The eventual selection of the hybrid ad valorem: accounting profits royalty was facilitated by a thorough review of the available options that included extensive economic and financial modelling exercises. The objectives of the modelling work were:
- To evaluate the impact of different royalty instruments and rates on productive efficiency in the petroleum industry; and
  - To analyse the dynamic efficiency consequences of alternative proposals (in other words, the level of deterrence provided by alternative instruments and rates on "go-decisions" for investments in marginal projects).
- xxiv The cash flow models were also used to simulate the levels and timing of private, tax and royalty revenues.
- xxv The salient results of the modelling work were:
- Given current levels of prospectivity, resource information and price-cost relationships pure cash bidding would not be appropriate under New Zealand conditions and opportunities for the use of cash bonus bidding are likely to be limited;
  - Modelling on the dynamic efficiency aspects of different types of royalties suggest that, under current New Zealand conditions, ad valorem rates for petroleum that are greater than about 5 percent have a negative impact on investment in marginal projects (thus suggesting that, if an ad valorem royalty is adopted, to guarantee a minimum return to the Crown, the rate should be no higher than 5 percent);

- Comparisons of the relative economic impact of resource rent royalties vis a vis accounting profits royalties under current New Zealand conditions suggest that the likely advantages of the former in terms of stimulating output and investment are very small (thus confirming the validity of adopting an Accounting Profits royalty as a component of the regime); and
  - A hybrid regime with the ad valorem component set at 5 percent and the accounting profits component set at 20 percent will provide broadly the same levels of returns to the Crown and to investors as the prior ad valorem - carried contributory interest hybrid royalty regime.
- xxvi Further modelling work, using the precise accounting rules of the new regime (refer chapter 7) and detailed cost data on planned projects, indicates that the 5 percent ad valorem - 20 percent accounting profits hybrid royalty regime will give somewhat lower returns to the Crown (in the order of 3 percent to 6 percent) compared to the prior regime.
- xxvii The modelling studies also confirmed that the 5 percent ad valorem -20 percent accounting profits hybrid royalty regime will leave producers with levels of returns that will make it attractive to invest in oilfield development in New Zealand, in comparison to the returns available under the royalty and tax regimes applying in a wide range of overseas jurisdictions.

### *APPENDIX III*

## **CONSULTATION WITH MAORI ON THE PREPARATION OF THE MINERALS PROGRAMME FOR PETROLEUM**

- i As noted in chapter 3, the Minister and Secretary are committed to a process of consultation with Maori on the management of the petroleum resource. In respect of the allocation and management of petroleum permits under the Crown Minerals Act 1991, consultation involves a process in which the Minister and Secretary are committed to a dialogue with tangata whenua hapu and iwi and are receptive to Maori views and give those views full consideration. An example of the operation of this process was consultation on the preparation of this Minerals Programme for Petroleum. This appendix summarises this process.
- ii Prior to commencing preparation of minerals programmes, a series of regional and national hui (meetings) were held, attended by the Minister and/or the Secretary, officials and Maori. The regional hui were held in February and March 1992 on the following marae: Miihira (Pakipaki, near Hastings); Te Pae O Hauraki (near Paeroa); Te Rehua (Christchurch); Murihiku (near Invercargill); Taiporohenui (Hawera); and Waimononi (near Kaitaia). These were followed by a national hui on 11 April 1992 held in Wellington. The kaupapa (purpose) of the consultation process was to inform, to listen to Maori and to establish a process for protecting areas of land important to the mana of iwi. This involved informing Maori about the Crown Minerals Act 1991 and the opportunities it provides for Maori involvement; generally discussing the protection of areas of importance to the mana of iwi; obtaining initial views on the management of Crown owned minerals; and listening to all matters raised by tangata whenua at the hui.
- iii Following the hui in 1992, there was detailed drafting of minerals programmes, including the Draft Minerals Programme for Petroleum. The views expressed by Maori at the hui were incorporated into:
  - (a) the procedures and provisions for consultation with tangata whenua hapu and iwi on block offers and other petroleum permit applications outlined in the Draft Minerals Programme for Petroleum; and
  - (b) the criteria that the Minister shall have regard to in considering requests from tangata whenua hapu and iwi to amend a proposed block offer or permit, which were outlined in the Draft Minerals Programme for Petroleum.
- iv Prior to the Minister giving formal notice of the publication of the Draft Minerals Programme for Petroleum, the Minister forwarded copies of the Draft Minerals Programme and an Iwi Discussion Document "He Tuhinga Matapakinga", which provided supplementary information on the Draft Minerals Programme, to representatives of tangata whenua hapu and iwi.
- v The Secretary complemented this advice by holding a hui in March 1994 to which representatives of key Maori organisations and iwi were invited. The purpose of the hui was: to provide a briefing on the Draft Minerals Programme and the Iwi Discussion Document; to receive the preliminary views of Maori on the issues raised; and to discuss a proposed consultation process of regional hui on the Draft Minerals Programme.
- vi The view of those attending the March 1994 hui was that regional hui should not proceed. This view was accepted by the Minister and Secretary.

- vii The Minister again wrote to tangata whenua hapu and iwi representatives in May 1994 advising that the views of Maori on the Draft Minerals Programme for Petroleum would be welcomed and that these could be forwarded either as part of the process of ongoing consultation with Maori on the Draft Minerals Programme for Petroleum or through the public submission process in accordance with section 17 of the Crown Minerals Act 1991.