



Petroleum Programme

Petroleum Programme

(Minerals Programme for Petroleum 2013)

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By

His Excellency the Governor General

Pursuant to clause 3(7) of Schedule 1 of the Crown Minerals Act 1991

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1. About this Programme

1.1 Introduction

- (1) This Minerals Programme for Petroleum 2013 (this Programme) sets out, in relation to petroleum:
 - (a) how the Minister¹ and the Chief Executive² will have regard to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) for the purposes of this Programme
 - (b) how the Minister and the Chief Executive will exercise specific powers and discretions conferred on him or her by the Crown Minerals Act 1991 (the Act)
 - (c) how the Minister and the Chief Executive will interpret and apply specific provisions in the Act or regulations made under the Act
 - (d) general guidance on the Act and the regulations.³
- (2) The Minister and the Chief Executive must act in accordance with this Programme when performing a duty or exercising a power under the Act.⁴
- (3) Various sections of the Programme summarise and paraphrase relevant parts of the Act. To avoid doubt, the wording in the Act prevails in all circumstances,⁵ and any summary or paraphrase of the Act (or any other reference to it) in this Programme is a guide only. Any term or expression that is defined in the Act or in regulations made under the Act and that is used, but not defined, in this Programme has the same meaning as in the Act or the regulations, as the case may require.
- (4) This Programme refers variously to “the Crown”, “the Minister”, “the Chief Executive” and “NZP&M”, depending on the particular decision or process being discussed. “NZP&M” means New Zealand Petroleum & Minerals, a group within the Ministry of Business, Innovation and Employment (or any successor government organisation that is from time to time responsible for managing the Crown’s mineral estate). Decisions that are the responsibility of the Minister or the Chief Executive under the Act may be made from time to time by NZP&M officials under delegation from the Minister and/or the Chief Executive.

1.2 Purpose statement in the Crown Minerals Act 1991

- (1) *Section 1A of the Act* provides:
 - “(1) The purpose of this Act is to promote prospecting for, exploration for, and mining of Crown owned minerals for the benefit of New Zealand.

¹ “The Minister” means the Minister who is, under the authority of any warrant or under the authority of the Prime Minister, responsible for the administration of the Act.

² “The Chief Executive” means the chief executive of the department that is, with the authority of the Prime Minister, responsible for the administration of the Act.

³ Section 14.

⁴ Section 22.

⁵ Sections 14(5) and 22(2).

- (2) To this end, the Act provides for:
- (a) the efficient allocation of rights to prospect for, explore for, and mine Crown owned minerals; and
 - (b) the effective management and regulation of the exercise of those rights; and
 - (c) the carrying out, in accordance with good industry practice, of activities in respect of those rights; and
 - (d) a fair financial return to the Crown for its minerals.”

1.3 Interpretation of the purpose statement in relation to petroleum

- (1) This clause provides the Minister’s interpretation of the Act’s purpose statement as it applies to petroleum.
- (2) “Petroleum” is defined in *section 2(1) of the Act*.⁶ *Section 10 of the Act* provides that all petroleum existing in its natural condition in land⁷ (whether or not the land has been alienated from the Crown) shall be the property of the Crown, notwithstanding anything to the contrary in any Act or in any Crown grant, certificate of title, lease, or other instrument of title.
- (3) “Prospecting”, “exploration” and “mining” are defined terms in the Act.⁸
- (4) An underlying premise in the Act is that the government wants other parties, such as public and private corporations, to undertake prospecting for, exploring for and mining of Crown-owned minerals, including petroleum. The government does not wish to undertake these activities itself, although it may from time to time undertake seismic survey or other prospecting activities for the purpose of providing information to promote interest in New Zealand’s petroleum estate.

⁶ “**petroleum** means—

- (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 1 or more hydrocarbons (other than coal) whether in a gaseous, liquid, or solid state, and 1 or more of the following, namely hydrogen sulphide, nitrogen, helium, or carbon dioxide—

and, except in sections 10 and 11, includes any petroleum as so defined which has been mined or otherwise recovered from its natural condition, or which has been so mined or otherwise recovered but which has been returned to a natural reservoir for storage purposes”.

⁷ “Land” includes land covered by water; and also includes the foreshore and seabed to the outer limits of the territorial sea (section 2(1)).

⁸ Section 2(1).

Interpretation of “promote prospecting for, exploration for, and mining of Crown owned minerals”

- (5) The Minister interprets the words “promote prospecting for, exploration for, and mining of Crown owned minerals” as requiring the Minister and the Chief Executive to:
 - (a) ensure that parties interested in prospecting for, exploring for, and mining petroleum are able to do so as readily as possible within the mandate and provisions of the Act
 - (b) publicise and encourage interest and investment in prospecting for, exploring for, and mining New Zealand’s petroleum resources.
- (6) An important component of promoting prospecting, exploration and mining is minimising sovereign risk⁹ for investors by providing for a stable and coherent regulatory regime for petroleum.

Interpretation of “for the benefit of New Zealand”

- (7) The Minister sees “for the benefit of New Zealand” as the over-arching objective of the purpose statement and as the touchstone for interpreting the rest of the purpose statement and the provisions of the Act governing various activities and processes. The Minister considers that, within the context and mandate of the Act, “the benefit of New Zealand” is best achieved by increasing New Zealand’s economic wealth through maximising the economic recovery of New Zealand’s petroleum resources.
- (8) Other important components of “the benefit of New Zealand”, including environmental considerations, are covered in other legislation, as noted in clause 1.4.

Interpretation of “efficient allocation of rights” to prospect, explore and mine

- (9) The words “the efficient allocation of rights to prospect for, explore for, and mine [petroleum]” are interpreted by the Minister to refer to the process of efficiently allocating rights to permit holders. To give effect to the purpose statement, the Minister interprets “efficient” allocation to mean allocation that:
 - (a) ensures that permits to prospect for, explore for, and mine New Zealand’s petroleum resources are obtained by the persons most likely to do this effectively and in a timely manner
 - (b) minimises transaction costs to the extent consistent with the requirements of the Act, and makes it simpler to do business with the government
 - (c) ensures that applications for permits (including changes to permits) are processed in a timely manner (and that applicants are kept well-informed about the processes used), and
 - (d) ensures that the Minister is satisfied that the applicant for a permit is likely to comply with the conditions of any permit granted and give proper effect to it.

⁹ “Sovereign risk” is the risk that the government may unexpectedly change significant aspects of its policy and investment regime and the legal rights applying to investors to the detriment of investors.

Interpretation of “the effective management and regulation” of rights to prospect, explore and mine

- (10) The words “the effective management and regulation of the exercise of ... rights [to prospect for, explore for, and mine petroleum]” are interpreted as requiring the Minister to ensure:
- (a) that permit holders comply with the Act, regulations made under the Act, this Programme, and the conditions of their permits, and
 - (b) that rights to prospect, explore and mine are exercised proactively and efficiently in order that “benefit to New Zealand” is achieved.

Interpretation of “the carrying out, in accordance with good industry practice, of activities in respect of those rights”

- (11) *Section 2(1) of the Act* defines “good industry practice” as “acting in a manner that is technically competent and at a level of diligence and prudence reasonably and ordinarily exercised by experienced operators engaged in a similar activity and under similar circumstances, but (for the purposes of this Act) does not include any aspect of the activity regulated under environmental legislation.”
- (12) The Minister interprets “good industry practice” for petroleum to include (without limitation) the following:

Personnel and procedures

- (a) At all times the permit operator, contractors and their staff have the skills, training and experience required to carry out all prospecting, exploration and mining operations in a skilful, safe and effective manner.

Operational

- (b) Exploration and appraisal activities, production operations, and field development are designed and conducted to maximise economic petroleum recovery and minimise wastage within reasonable technical and economic constraints.
- (c) In the planning of processes and mining operations, provision is made for unexpected field behaviour.
- (d) Mining operations do not result in the inefficient production of petroleum or the inefficient storage of petroleum, whether on the surface or underground. “Inefficient” includes where there is unnecessary waste and where maximum economic recovery is precluded.
- (e) 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.

Risk management

- (f) The operator has systems and processes in place to avoid, mitigate and manage operational risks, including health and safety risks.

Acquisition of data

- (g) Prospecting, exploration/appraisal and mining operations are conducted so as to ensure that good quality data is acquired, within reasonable economic and technical constraints. Sufficient data needs to be acquired to test the understanding of a play, lead or prospect in an exploration permit. In appraisal and development, sufficient data needs to be acquired to enable understanding of reservoir development and to resolve uncertainties that affect the success of petroleum recovery.

Interpretation of “a fair financial return”

- (13) The words “providing for ... a fair financial return to the Crown for its [petroleum]” are interpreted as referring to royalty payments for any petroleum obtained under a permit.
- (14) The term “fair” is interpreted by the Minister as referring to the need to balance the interests of the Crown (as the owner of petroleum for the benefit of New Zealand) and those of petroleum prospectors, explorers and miners, taking into account:
 - (a) that petroleum is a non-renewable resource
 - (b) the need to attract ongoing investment in petroleum prospecting, exploration and mining in a competitive international environment
 - (c) that petroleum prospecting, exploration and mining is a high-risk, high-cost and high-reward activity
 - (d) the need to provide certainty and security for investors by not changing royalty rates during the life of a permit or subsequent permit.
- (15) A further component of “fair” in the Minister’s interpretation is that the Crown (for the benefit of New Zealand) should always receive a return on the production of petroleum, including from the start of production.
- (16) Overall these considerations lead to a royalty regime that:
 - (a) provides for an immediate but low ad valorem royalty that ensures that the Crown always receives some return for the production of petroleum, and
 - (b) provides for an accounting profits royalty so that the Crown shares in the benefits if a petroleum resource proves to be particularly profitable.

1.4 Broader statutory framework

- (1) The Act is about the development of the Crown’s mineral estate, and this Programme relates to the development of New Zealand’s petroleum resources. There is a wide range of other legislation that affects or relates to prospecting for, exploring for, and mining petroleum.
- (2) The following is a non-exhaustive list of other legislation (including associated regulations and rules) that is relevant to prospecting for, exploring for, and mining petroleum:
 - (a) the Resource Management Act 1991, which sets out how the environment is to be managed onshore and up to 12 nautical miles offshore
 - (b) the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, which sets out how the environment in New Zealand’s exclusive economic zone and continental shelf is to be managed
 - (c) the Climate Change Response Act 2002, which sets out how New Zealand’s greenhouse gas emissions are to be managed

- (d) the Health and Safety in Employment Act 1992, which sets out how health and safety in the workplace, including petroleum facilities, are to be managed
 - (e) the Maritime Transport Act 1994 and the Marine Protection Rules, which set out how the marine transport environment, including in relation to oil spills, is to be managed
 - (f) the Marine Mammals Protection Act 1978, which provides for the protection, conservation and management of marine mammals¹⁰
 - (g) the Marine and Coastal Area (Takutai Moana) Act 2011, which provides for the recognition of customary marine title and protected customary rights in the common marine and coastal area, and which requires mineral permit applications to be notified to customary marine title applicant groups
 - (h) the Biosecurity Act 1993, which provides for excluding, eradicating and managing unwanted organisms and pests
 - (i) the Hazardous Substances and New Organisms Act 1996, which manages and regulates the use of hazardous substances
 - (j) the Conservation Act 1987, which provides for the protection and management of indigenous biodiversity and the conservation estate.
- (3) The Minister and the Chief Executive, in administering the Act, do not have powers and functions (except where and to the extent specifically provided for in the Act) relating to matters covered by other legislation. In particular, the Minister and the Chief Executive are not required (except where and to the extent specifically provided for in the Act) to duplicate the activities and requirements of ministers and departments responsible for administering other legislation.
- (4) Applicants for permits to prospect for, explore for, and mine petroleum, and holders of permits, must meet the requirements of other legislation as applicable. The granting of a permit under the Act does not provide or imply any rights (or obligations) with respect to other legislation. Compliance with the Act, the regulations or this Programme does not relieve any person from any obligation under other legislation.
- (5) The clear separation in the statutory framework between powers and functions (and rights and obligations) under the Act on the one hand and under other legislation on the other is designed to ensure clear accountability and avoid conflicting interests and objectives on the part of ministers and departments responsible for administering relevant legislation.

1.5 Application of this Programme

- (1) This Programme takes effect from 24 May 2013. It applies to all applications for permits for petroleum received on and after this date.¹¹

¹⁰ Marine Mammal Protection Notices made under the Marine Mammals Protection Act 1978 restrict activities such as seismic surveys.

¹¹ *Schedule 1 of the Act* includes transitional provisions for applications for permits or changes to permits that were pending at the time this Programme came into effect

- (2) *Clause 3 of Schedule 1 of the Act* provides for the transfer of existing permits¹² to new minerals programmes. Existing permits will continue to be subject to the minerals programme that applied to them before this Programme came into effect, but will transfer to this Programme when, in summary, the earliest of the following events occurs:
 - (a) the holder applies to change the permit or for other consents
 - (b) the holder applies for a subsequent permit (see clause 4.3)
 - (c) the holder opts into a new minerals programme by notice in writing.
- (3) *Section 22(2) of the Act* makes it clear however that the provisions of the Act and any regulations made under the Act apply, notwithstanding the provisions of any old minerals programme that apply to an existing permit.
- (4) Before the Crown Minerals Amendment Act 2013 came into effect, royalty provisions were contained in minerals programmes. *Clause 4 of Schedule 1 of the Act* provides that the royalty rates that applied to an initial permit will continue to apply to that permit and any subsequent permit. However, new permits granted after this Programme came into effect are subject to royalty rates set out in regulations.

¹² In this Programme, “existing permits” refers to permits that were granted before this Programme came into effect, unless the context clearly requires otherwise.

2. Regard to the principles of the Treaty of Waitangi

2.1 Treaty of Waitangi (Te Tiriti o Waitangi)

- (1) *Section 4 of the Act* requires all persons exercising functions and powers under the Act to have regard to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) (“the Treaty”).
- (2) In order to meet the Crown’s responsibility to have regard to the principles of the Treaty, this Programme does the following things:
 - (a) it provides that certain land that has been identified as being of particular importance to the mana of iwi or hapū must not be included in a permit (see clause 3.1).
 - (b) it specifies the matters on which iwi and hapū must be consulted (see clauses 2.2, 2.4 and 2.5).
 - (c) it sets out principles and procedures for consulting with iwi and hapū (see clauses 2.3 to 2.6 and 2.9 and 2.10).
 - (d) it specifies the matters of which iwi and hapū must be notified (see clauses 2.4(1), 2.4(3), 2.4(4), 2.5(1), 2.5(4), 2.5(5) and 2.8)
 - (e) it requires permit holders to report annually to NZP&M on their engagement with iwi and hapū whose rohe includes some or all of the permit area or who otherwise may be directly affected by the permit (see clause 2.11).

2.2 Consultation with iwi and hapū

- (1) Iwi and hapū whose rohe includes some or all of the permit area or who may be directly affected by a permit¹³ will be consulted by the Minister or NZP&M on the following matters:
 - (a) an application for a petroleum prospecting permit
 - (b) the preparation of a Petroleum Exploration Permit Round (see clause 2.4)
 - (c) an application for a mining permit
 - (d) an application to extend the area of a permit
 - (e) an application by a permit holder to explore for or mine a petroleum mineral that is not currently included in the permit.
- (2) Where consultation with iwi and hapū is required by this Programme, it must be carried out in accordance with the consultation principles and procedures set out below or in accordance with any agreed protocol (see clause 2.9).

2.3 Consultation principles

- (1) Consultation under this Programme must be carried out in accordance with the following principles:
 - (a) the Crown will act reasonably and in utmost good faith towards its Treaty partner.
 - (b) the Crown will make informed decisions.

¹³ Referred to as “relevant iwi and hapū” in the rest of this Programme.

- (c) the Crown will consider whether a decision will impede the prospect of redress of any Treaty claims.
- (d) the Minister and NZP&M are informed of the Māori perspective, including tikanga Māori, and will have regard to the principles of the Treaty.
- (e) the Minister and NZP&M are committed to a process of meaningful consultation with iwi and hapū, which involves:
 - (i) early consultation with iwi and hapū during the decision-making process, aimed at informing the Minister and NZP&M of any Treaty implications or any other matters about which iwi and hapū may wish to express their views
 - (ii) ensuring that iwi and hapū who are consulted are given enough information to make informed decisions and to present their views
 - (iii) ensuring that iwi and hapū who are consulted are given enough time to consider the information provided by the Minister and NZP&M and to present their views
 - (iv) the Minister and NZP&M having an open mind on the views received from those iwi and hapū who are consulted
 - (v) the Minister and NZP&M giving those views full and genuine consideration.

2.4 Consultation on a Petroleum Exploration Permit Round

- (1) NZP&M must give relevant iwi and hapū notice in writing of every proposal for a Petroleum Exploration Permit Round (see clause 7.3) and must provide the following information:
 - (a) details of the proposal, including a map of the area being considered
 - (b) the types of activities that may take place should a permit be granted
 - (c) the proposed timing of the Round
 - (d) any proposed conditions of the Round.
- (2) Iwi and hapū will have 40 working days to comment on any aspect of the proposal.
- (3) Iwi and hapū must be notified that they may, if they wish, request that certain areas within the proposed blocks (or whole blocks) not be included in the Round.
- (4) Iwi and hapū must be notified that they may, if they wish, request that activities within certain areas within the proposed permit areas be subject to additional requirements that recognise the particular characteristics of those areas.
- (5) NZP&M must report to the Minister on the consultation with iwi and hapū concerning the proposed Petroleum Exploration Permit Round before the final decision on the blocks to be included in the Round is made.
- (6) Further consultation will not be undertaken with iwi and hapū between the public notification of a Petroleum Exploration Permit Round and subsequent decisions on the grant of exploration permits.

2.5 Consultation on permit applications outside of the Petroleum Exploration Permit Round process

- (1) When NZP&M has received an application for a prospecting permit or mining permit, or an application to extend the area of an existing permit or to include new petroleum minerals in an existing permit, NZP&M must notify the relevant iwi and hapū in writing and provide any or all of the following information (whichever is applicable):
 - (a) details of the application, including a map of the application area that enables the location to be readily identified
 - (b) an outline of the proposed work programme
 - (c) the proposed new petroleum mineral.
- (2) Iwi and hapū will be asked to inform NZP&M of any issues or questions that they may have in relation to the permit application, and will have 20 working days to comment on any aspect of the proposal.
- (3) Iwi and hapū may request in writing up to an additional 20 working days for making comments.
- (4) Iwi and hapū must be notified that they may, if they wish, request that certain areas within the proposed application area not be included in the permit.
- (5) Iwi and hapū must be notified that they may, if they wish, request that activities within certain areas within the proposed permit area be subject to additional requirements that recognise the particular characteristics of those areas.

2.6 Requests by iwi and hapū to protect certain land

- (1) Where iwi and hapū request that certain areas not be included in a Petroleum Exploration Permit Round or a permit, or that activities within certain areas be subject to additional requirements, they should provide an accurate description of the areas and set out the reasons for their request to assist the Minister to consider the request effectively. The matters that should be covered include (but are not limited to):
 - (a) what it is about the area that makes it important to the mana of iwi and hapū
 - (b) whether the area is a known wāhi tapu site
 - (c) the uniqueness of the area – for example, whether it is one of a number of mahinga kai (food gathering) areas or the only waka tauranga (landing place of ancestral canoes)
 - (d) whether the importance of the area to iwi and hapū has already been demonstrated – for example, by Treaty claims and settlements, and objections made by iwi and hapū under other legislation
 - (e) any Treaty claims that may be relevant and whether granting a permit over the land would impede the prospect of redress of grievances under the Treaty
 - (f) any customary rights and/or interests granted under the Marine and Coastal Area (Takutai Moana) Act 2011
 - (g) any iwi management plans in place that specifically state that the area should be excluded from certain activities.

- (2) Where iwi or hapū have requested that land be excluded from a Petroleum Exploration Permit Round or a permit, or that activities within certain areas be subject to additional requirements, or that other Round conditions be amended, the Minister will consider and make a decision on the request. The iwi and hapū who made the request must be informed in writing of the Minister's decision. If the request is declined, the reasons will be provided.
- (3) NZP&M will provide for appropriate procedures to manage information provided on a confidential basis by iwi and hapū concerning wāhi tapu. NZP&M may also provide iwi and hapū with guidelines and templates to assist them to provide information relevant to requests to exclude particular areas from permits and to requests to subject activities within certain areas to additional requirements.

2.7 Matters the Minister must consider when considering requests to protect certain land

- (1) When considering requests by iwi and hapū to exclude any land from a permit or a Petroleum Exploration Permit Round or to subject activities in certain areas to additional requirements, the Minister must take into account:
 - (a) the matters raised by iwi and hapū
 - (b) the exercise of customary marine title or of protected customary rights under the Marine and Coastal (Takutai Moana) Act 2011
 - (c) whether the area is already adequately protected under other legislation – for example, the Resource Management Act 1991, the Conservation Act 1987 or the Historic Places Act 1993
 - (d) the size of the area and the value of the potential resource affected if the area is excluded
 - (e) the impact on the viability of undertaking work under a permit if activities within certain areas are subject to additional requirements.

2.8 Notifications to iwi and hapū

- (1) NZP&M will notify relevant iwi and hapū that a permit has been granted, including providing information on where the details of the permit (including the permit holder, permit operator, location, and work programme) may be found. The notification will be given whether or not the iwi or hapū made comments during the consultation processes for Permit Rounds and permit applications (see clauses 2.4 and 2.5).
- (2) NZP&M will notify relevant iwi and hapū following consent to a change of operator (see clause 12.7).

2.9 Protocols for consultation with iwi and hapū

- (1) The Chief Executive will make available, on request, a list of iwi and hapū in respect of whom the Minister has issued protocols (Crown Minerals Protocols) governing the way in which the Crown will consult with them. Crown Minerals Protocols set out how the Crown will engage with an iwi or hapū over matters relating to Crown minerals permits. Each protocol applies to a particular protocol area. Protocols include the principles that will be followed when consulting with the iwi or hapū and details of how the Crown will seek to fulfil its obligations under the protocol. For full details of the terms of any particular protocol, refer to the protocol itself.

- (2) As of April 2013, the Minister has Crown Minerals Protocols with the following iwi and hapū: Ngaa Rauru, Ngāti Mākino, Ngāti Manawa, Ngāti Manuhiri, Ngāti Mutunga, Ngāti Porou, Ngāti Ruanui, Ngāti Tama, Ngāi Tāmanuhiri, Ngāti Whare, Ngāti Whātua ō Ōrākei, Rongowhakaata, Te Roroa, and Te Uri o Hau. These protocols are summarised in Schedule 1 in this Programme.
- (3) NZP&M will keep a register of protocols.
- (4) With the agreement of the relevant iwi or hapū, the texts of the Crown Minerals Protocols listed above and any new protocols may be made available on the NZP&M website.
- (5) A map indicating the rohe of iwi and hapū with whom the Minister has Crown Minerals Protocols is available on the NZP&M website. Protocol areas for coastal iwi and hapū include the territorial sea adjacent to the rohe. This map will be updated periodically, as new protocols are signed.

2.10 Form of consultation with iwi and hapū may be flexible

- (1) Subject to any protocols that apply to the consultation concerned, the form of the consultation process is flexible.
- (2) If iwi and hapū and the Crown think it appropriate, there may be face-to-face (kanohi ki te kanohi) consultation or the holding of a hui.
- (3) If relevant iwi and hapū have an organisation established to foster consultation processes, the Minister, the Chief Executive and NZP&M would be pleased to work with it.

2.11 Iwi engagement reports

- (1) *Section 33C of the Act* requires petroleum permit holders to provide an annual report (an iwi engagement report) to the Minister on the holder's engagement with iwi and hapū whose rohe includes some or all of the permit area or who otherwise may be directly affected by the permit. The report must be made at the time and in the manner specified in regulations.
- (2) The purpose of the report is to encourage permit holders to engage with relevant iwi and hapū in a positive and constructive manner and to enable NZP&M to monitor progress in this regard.
- (3) Permit holders are encouraged to consult with relevant iwi and hapū before submitting their report and, where possible and appropriate, to include in the report the views of those iwi and hapū on the content of the report.
- (4) The report should note any engagement with or notification to iwi and hapū that has taken place as a requirement of any other legislation.
- (5) The annual report on engagement with relevant iwi and hapū will be one of the agenda items on the annual work programme review meetings between permit holders and NZP&M (see clause 11.7). NZP&M will take into account any comments received from iwi and hapū on a permit holder's engagement with relevant iwi and hapū.
- (6) NZP&M may, as appropriate, discuss with relevant iwi and hapū the outcome of the review of the permit holder's iwi engagement report, as part of NZP&M's ongoing discussions and liaison with iwi and hapū.

3. Land available for petroleum prospecting, exploration and mining

3.1 Land unavailable for petroleum permits

- (1) *Section 14(2) of the Act* provides that, at the request of an iwi or hapū, a minerals programme may provide that defined areas of land of particular importance to the mana of the iwi or hapū are excluded from the operation of the Programme or must not be included in any permit. The following land is unavailable because of its importance to Māori:
 - (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)
 - (b) the Titi Islands, which includes all Crown Titi Islands and all Beneficial Islands (which are located in the Southland Land District) where the land (both surface and sub-surface) is above sea level.
- (2) Land south of latitude 60°S is unavailable, in recognition of the Protocol on Environmental Protection to the Antarctic Treaty.
- (3) The Sugar Loaf Islands Marine Protected Area Act 1991 excludes petroleum mining operations and the issuing of permits over all specified land and water.
- (4) From time to time, other legislation may also restrict permitting. All other land is available for the allocation of petroleum permits, subject to subclause (5).
- (5) As provided for in clause 7.2(1), all petroleum exploration permits (PEPs) will be granted by way of Petroleum Exploration Permit Rounds. Accordingly, until an area is offered in a Permit Round, that area is only available for permitting for petroleum prospecting permits (PPPs; see chapter 6) or for extensions of the land area of existing permits (see clause 12.4).

3.2 Access to Crown land and land in marine areas

- (1) *Section 61 of the Act* provides that a permit holder who wants to access Crown land for the purpose of exercising permit rights must enter into an access arrangement with the Minister responsible for the land. In relation to conservation land that will be the Minister of Conservation. Decisions on access for petroleum permits will be made jointly by the Minister of Conservation and the Minister responsible for the Crown Minerals Act 1991.
- (2) *Section 61(1A)* provides that these ministers may not accept any application for an access arrangement relating to any Crown-owned mineral in any Crown land described in Schedule 4 of the Act, except for the purpose of undertaking certain excepted activities.¹⁴

¹⁴ Relevant excepted activities for petroleum are:

- (a) those that do not result in—
 - (i) any complete stripping of vegetation over an area exceeding 16 square metres; or
 - (ii) any permanent adverse impact on the profile or surface of the land
- (b) a minimum impact activity (see footnote 15).

- (3) *Sections 61 and 61C of the Act* provide criteria and processes for access arrangements in respect of mining of Crown land where the Minister of Conservation is the appropriate Minister.
- (4) An access arrangement is not required for land in the common marine and coastal area. However, access arrangements are required for common marine and coastal areas that are described in Schedule 4 of the Act, and the provisions in subclause (2) apply.
- (5) Access arrangements are not required for access to land in New Zealand's Exclusive Economic Zone (EEZ) or the extended continental shelf (although consents may be required under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012).
- (6) Under *section 62 of the Act*, an Order in Council prohibiting all access (including for minimum impact activities¹⁵) in respect of any Crown land may be made on the recommendation of ministers. Such an Order, however, cannot affect any existing access arrangements.

3.3 Access to other land

- (1) The granting of a permit under the Act does not confer on the permit holder a right of access to any land.¹⁶ *Sections 49 to 80 of the Act* set out provisions and procedures applying to petroleum permit holders seeking to obtain access to land. These are summarised below.

¹⁵ *Section 2(1) of the Act* provides that "minimum impact activity" means any of the following:

"(a) geological, geochemical, and geophysical surveying:

(b) taking samples by hand or hand held methods:

(ba) taking small samples offshore by low-impact mechanical methods:

(c) aerial surveying:

(d) land surveying:

(e) any activity prescribed as a minimum impact activity:

(f) any lawful act incidental to any activity to which paragraphs (a) to (e) relate—

to the extent that it does not involve any activity that results in impacts of greater than minimum scale and in no circumstances shall include activities involving—

(g) the cutting, destroying, removing, or injury of any vegetation on greater than a minimum scale; or

(h) the use of explosives; or

(i) damage to improvements, stock, or chattels on any land; or

(j) any breach of the provisions of this or any other Act, including provisions in relation to protected native plants, water, noise, and historic sites; or

(k) the use of more persons for any particular activity than is reasonably necessary; or

(l) any impacts prescribed as prohibited impacts; or

(m) entry on land prescribed as prohibited land".

¹⁶ Section 47.

Written agreement of land owner/occupier required

- (2) *Section 50(1) of the Act* provides that the following classes of land can be entered for the purpose of carrying out a minimum impact activity only if the access seeker has the consent of the owner or occupier of the land:¹⁷
- (a) any land held or managed under the Conservation Act 1987 or any other Act specified in Schedule 1 of 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 that 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.
- (3) *Section 51(2) of the Act* provides that Māori land that is regarded as wāhi tapu by the tangata whenua cannot be entered for the purpose of carrying out a minimum impact activity without the consent of the owners of the land.

Notice required for minimum impact activities

- (4) *Section 49 of the Act* provides that for land other than the classes of land referred to in subclause (2) above, a petroleum permit holder (and employees, agents and contractors of a permit holder who are authorised for that purpose) may enter land to which the permit relates and carry out a minimum impact activity, if they have given at least 10 working days' notice.
- (5) For Māori land, *section 51 of the Act* also requires reasonable efforts to be made to consult with those owners of the land able to be identified by the Registrar of the Māori Land Court, and requires the local iwi authority to be given 10 working days' notice of proposed land entry.

Land owner/occupier agreement or arbitration

- (6) For activities other than minimum impact activities, *section 53(2) of the Act* provides that the holder of a petroleum permit may not prospect, explore or mine in or on land to which the permit relates otherwise than in accordance with an access arrangement that has been 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 Act.

¹⁷ If it is agreed between each owner and occupier of the land and the person seeking access, the parties may seek the assistance of an arbitrator to determine the terms of the access agreement in relation to these classes of land (section 55(2)).

- (7) An access arrangement should as far as reasonably possible be determined amicably by good faith negotiation between the permit holder and each owner and occupier of the land.
- (8) Where it has not been possible to agree on an access arrangement, *section 63 of the Act* allows the permit holder to serve a notice on each owner and occupier asking them to agree to the appointment of an arbitrator to determine an access arrangement on reasonable terms. *Section 64* provides for an arbitrator to be appointed by the Chief Executive at the request of any one of these parties, including the permit holder, if agreement cannot be reached to appoint an arbitrator. *Sections 65 and 67 to 75* set out procedures for arbitration.
- (9) *Section 83 of the Act* provides that if an access arrangement is entered into with a duration of more than six months, the permit holder must lodge a copy of the arrangement (which may exclude monetary details) with the Registrar-General of Land. Failing to do this can result in the access arrangement not being binding on any successors in title to the owner and occupier.

Meaning of entry on land

- (10) *Section 57 of the Act* provides that prospecting, exploration or mining carried out below the surface of any land does not constitute prospecting, exploration or mining on or in land if it:
 - (a) will not, or is not likely to, cause any damage to the surface of the land or any loss or damage to the owner or occupier of the land, or
 - (b) will not, or is not likely to, have any prejudicial effect in respect of the use and enjoyment of the land by the owner or occupier of the land, or
 - (c) will not, or is not likely to, have any prejudicial effect in respect of any possible future use of the surface of the land.

4. Permits: General

4.1 Introduction

- (1) *Section 8(1) of the Act* provides that no person may prospect for, explore for, or mine petroleum unless they have a permit granted under the Act.
- (2) The Act provides for permits for prospecting, exploration and mining. The purpose of petroleum prospecting, exploration and mining permits, and the provisions relating to them, are covered in chapters 6, 7 and 8 of this Programme respectively.
- (3) *Section 30 of the Act* provides that the holder of an exploration permit may also undertake prospecting within the area of the permit, and the holder of a mining permit may also undertake prospecting and exploration within the area of the permit.

4.2 Rights to explore and mine are exclusive to permit holder

- (1) Subject to the exception in subclause (2) below, the right under petroleum exploration and mining permits to explore for or mine petroleum is exclusive to the permit holder; that is, no other person may be granted a permit to explore for or mine petroleum within the area of a current permit without the prior written consent of the current permit holder.¹⁸
- (2) An exception is that exploration permits for gas hydrates may overlap exploration permits for conventional petroleum resources, and vice versa (see chapter 10).
- (3) Petroleum prospecting permits will normally be granted on a non-exclusive basis (see clause 6.2). Non-exclusive prospecting permits may also be granted over some or all of the area of petroleum exploration and mining permits held by other permit holders. In the case of petroleum exploration and mining permits or licences existing before this Programme came into effect, the prior written consent of the current permit or licence holder is required before a prospecting permit can be granted over all or part of the same area (see chapter 6).

4.3 Rights to subsequent permits

- (1) A petroleum prospecting permit carries no rights to subsequent permits.
- (2) *Section 32(3) of the Act* provides that the holder of a petroleum exploration permit has an exclusive right to apply for and receive a mining permit where the permit holder has:
 - (a) discovered a deposit or occurrence of petroleum as a result of its exploration activities, and
 - (b) proposes a satisfactory work programme to mine that discovery.
- (3) Detailed provisions relating to this right are set out in chapter 8.

¹⁸ *Section 30(7) of the Act* provides that rights to prospect, explore and mine are exclusive to the permit holder unless the permit provides otherwise. *Section 30(8)* provides that a permit conferring the same rights as a current permit in relation to all or part of the same land and the same mineral may only be granted to another person with the prior written consent of the current permit holder.

- (4) *Section 30(5) of the Act* sets out the circumstances in which the holder of a petroleum mining permit for a specified discovery may apply for a subsequent mining permit for a further discovery in the mining permit area.
- (5) *Section 32(8) of the Act* provides that permits that are subject to an application for a subsequent permit remain in force until that application has been determined.

4.4 Permits may be granted where there are non-petroleum minerals permits

- (1) Petroleum permits may be granted over land where there are non-petroleum minerals permits or licences.
- (2) If a dispute arises between a petroleum permit holder and a non-petroleum minerals permit or licence holder – for example, over potential or actual interference with one another’s mining operations – the parties should deal with the matter privately, taking into account access arrangements and possibly resource consents. If a dispute hinders or prevents a petroleum permit holder from fulfilling the work programme conditions of the permit, this may be grounds for seeking an amendment to those conditions (see clause 12.2).

4.5 Applications for permits

- (1) Applications for permits must be made in accordance with the Regulations. Forms are available on the NZP&M website.

4.6 Operators and non-operators

- (1) Permits may be held by individuals, companies or groups of companies. A “permit holder” may therefore be one person,¹⁹ or more than one person in a joint venture, partnership or other structure. Where there is more than one person they are referred to in the Act and in the Programme as “permit participants”. Each person who makes up a permit holder holds a “participating interest” (defined as a specified undivided share of the permit expressed as a percentage). The permit records each person’s share.
- (2) *Section 27 of the Act* requires each permit to have a permit operator. The operator is the person who is responsible for the day-to-day management of activities under the permit. The operator must be a permit participant (that is, hold a specified share of the permit).²⁰

4.7 Commencement of permits

- (1) All permits will specify a commencement date. The commencement date will be determined by the Minister and will normally be the date on which the applicant is notified that the Minister has agreed to grant the permit. However, the Minister may determine a later date after considering:
 - (a) work programme commitments and stages
 - (b) any reasonable requests by the applicant for a particular commencement date.

¹⁹ A “person” in this context refers to a natural person or corporate body or other legal entity.

²⁰ *Clause 13 of Schedule 1 of the Act* exempts “existing privileges” from this requirement.

- (2) *Section 35(9) of the Act* provides that the Minister may, on application by the permit holder, amend a permit's commencement date if satisfied that the permit holder has been prevented from starting activities by delays in obtaining consents under any Act, but only if those delays have not been caused or contributed to by default on the part of the permit holder.
- (3) Before the commencement of a permit, the applicant must not do any prospecting, exploring or mining in the land to which the permit relates – for example, geophysical or geochemical surveying – or any work requiring land access. The applicant may, however, initiate the process of obtaining necessary land access and resource consents and undertake engagement with iwi and hapū.

4.8 Form of a permit

- (1) A permit will include the following:
 - (a) the name of the permit participants and the operator
 - (b) the approved work programme
 - (c) the duration of the permit
 - (d) a schedule detailing the area of the permit (including a map), and
 - (e) schedules detailing the conditions of the permit (there will usually be a schedule that sets out general conditions, and a second schedule with conditions specific to that permit).
- (2) The work programme approved by the Minister will be part of the permit and a public document. Other information provided with the permit application to support and explain the work programme will not form part of the permit.
- (3) Any change to the permit's conditions (see chapter 12) will be recorded as a certificate to the permit.

4.9 Register of permits

- (1) *Section 91 of the Act* requires the Chief Executive to keep a public register of permits. This includes: the information in clause 4.8(1) above; the contact details of permit participants and of the operator; and changes, transfers and leases. This is kept electronically on a database maintained by NZP&M. A map showing the location of current petroleum prospecting, exploration and mining permits in New Zealand is also available.

4.10 Release of information

- (1) Subject to the exceptions in subclause (2) below, all reports, records, samples and other information²¹ provided by a permit holder under the Act and the Regulations will be publicly available after the earlier of:
 - (a) five years after the date on which the information was obtained by the permit holder, or
 - (b) after the permit (including every subsequent permit in so far as the information relates to land covered by both the subsequent permit and the original permit) ceases to be in force.²²
- (2) Exceptions are:
 - (a) summary information about surveys and wells (but not underlying data), which will be made public immediately
 - (b) information obtained under a prospecting permit, which will not be publicly available until the earlier of:
 - (i) 15 years after the date on which it was obtained by the permit holder, or
 - (ii) the closure of a Petroleum Exploration Permit Round (see clause 7.3) for the area to which the information relates, except that the information may not be released earlier than five years after it was obtained
 - (c) information obtained under a prospecting permit held by a speculative prospector, which will not be publicly available until 15 years after the information was obtained (see clause 6.6)
 - (d) information obtained under exploration or mining permits that are surrendered as part of an amalgamation of permits (see clause 12.6), if and to the extent that the amalgamated permit covers the same area
 - (e) royalty calculations and payments, which will remain confidential.

4.11 Regulations relating to permits

- (1) The *Crown Minerals (Petroleum) Regulations 2013 (the Regulations)* set out detailed requirements relating to:
 - (a) the information that must be included in applications for permits, changes of permits and other matters
 - (b) the information that must be included in notices relating to activities of permit holders and other matters
 - (c) the reports, records, samples and related matters that permit holders must supply²³
 - (d) flaring.

²¹ "Information" includes summaries, interpretations, reprocessing and models derived from the information.

²² Section 90.

²³ Additional information on reporting requirements is provided in Petroleum Digital Data Submission Standards, available on the NZP&M website.

- (2) These matters are covered in more detail in the relevant chapters of this Programme (particularly chapter 11).
- (3) The *Crown Minerals (Petroleum Fees) Regulations 2006* set out the annual and other fees payable with respect to petroleum permits.
- (4) The *Crown Minerals (Royalties for Petroleum) Regulations 2013* set out rates and provisions for the payment of royalties on petroleum production from permits granted after the coming into effect of this Programme. These regulations also set out royalty statement and royalty return requirements for all petroleum permit holders required to pay royalties.

4.12 Clearance from Health and Safety Regulator

- (1) *Section 33A of the Act* provides that, where an activity authorised by a permit requires the approval or consent of the Health and Safety Regulator²⁴ under the Health and Safety in Employment Act 1992 (or regulations made under that Act) before it can be carried out, that activity must not begin under the permit until the Chief Executive has notified the permit holder that the Health and Safety Regulator has given its approval or consent.

4.13 Provision of information to other regulatory agencies

- (1) *Section 90E of the Act* allows the Minister, and in some cases the Chief Executive, to provide any information or a copy of any document held by them under the Act to specified regulatory agencies if the Minister or Chief Executive considers that the information or document may assist the regulatory agency to exercise its powers or perform its duties under the legislation it administers in relation to a permit or permit application. The agencies are the Health and Safety Regulator, the Environmental Protection Authority, a consenting authority under the Resource Management Act 1991, and Maritime New Zealand. The information will be subject to the same confidentiality provisions as apply to NZP&M.

²⁴ “The Health and Safety Regulator” means the department that is responsible for the administration of the Health and Safety in Employment Act 1992 (section 2).

5. Permits: Matters the Minister must consider and be satisfied about before granting a permit

5.1 Introduction

- (1) *Section 29A of the Act* sets out the matters the Minister must consider and be satisfied about before deciding to grant a permit to an applicant.
- (2) *Section 29A* requires the Minister to be satisfied:
 - (a) that the proposed work programme is consistent with:
 - (i) the purpose of the Act
 - (ii) the purpose of the proposed permit, and
 - (iii) good industry practice
 - (b) that the applicant is likely to comply with the conditions of, and give proper effect to, the proposed work programme, taking into account:
 - (i) the applicant's technical capability
 - (ii) the applicant's financial capability, and
 - (iii) any relevant information on the applicant's failure to comply with permits or rights to prospect, explore or mine in New Zealand or internationally, or to comply with conditions in respect of those permits or rights
 - (c) that the applicant is likely to comply with the relevant obligations under the Act or the regulations in respect of reporting and the payment of fees and royalties
 - (d) that, for petroleum exploration or mining permits, the proposed operator has, or is likely to have by the time relevant work under any granted permit is undertaken, the capability and systems that are likely to be required to meet the health, safety and environmental requirements for the types of activities proposed under the permit.
- (3) This chapter sets out how the Minister will interpret and apply those provisions.
- (4) The Minister must also take into account his or her obligation under *section 4 of the Act* to have regard to the principles of the Treaty of Waitangi (see chapter 2).
- (5) *Section 29B of the Act* enables a bid for a petroleum exploration permit in response to a public tender to state that it is to be considered in accordance with section 29B, which applies the provisions of section 29A in a modified way (see clauses 5.5 and 7.6(4) to (6)).

5.2 Work programmes

- (1) All applications for permits must include a proposed work programme for the permit, which may comprise committed activities, or committed and contingent activities.
- (2) In determining whether the proposed work programme is consistent with the purpose of the Act, the Minister will consider the matters set out in clauses 1.2 and 1.3 as applicable.

- (3) In determining whether the proposed work programme is consistent with the purpose of the proposed permit, the Minister will consider (without limitation):
 - (a) for prospecting permits, the matters set out in clauses 6.1 and 6.3(2)
 - (b) for exploration permits, the matters set out in clauses 7.1, 7.2, 7.5, 7.6, 7.9 and 7.11, as appropriate
 - (c) for mining permits, the matters set out in clauses 8.1, 8.3 and 8.4, as appropriate.
- (4) In determining whether the proposed work programme is consistent with good industry practice, the Minister will consider the matters set out in clause 1.3(12) as applicable.

5.3 Complying with and giving effect to the proposed permit and work programme

- (1) The applicant will be required to provide detailed information in support of its application to enable the Minister to consider whether the applicant is likely to comply with the conditions of, and give proper effect to, the proposed work programme. The factors the Minister will take into account in making that determination are (without limitation) outlined below.

Technical capability

- (2) The Minister will focus on the technical capability of the proposed operator to undertake responsibility for day-to-day management of the proposed work programme in accordance with good industry practice. This will include reviewing the operator's previous and current record in undertaking work programmes that are similar to the proposed work programme (including both committed and contingent work).

Financial capability

- (3) An applicant will normally be required to demonstrate that it has sufficient funding available to undertake the committed part of its proposed work programme. The applicant may also be required to demonstrate that it has sufficient funding available to undertake at least part of the proposed contingent work programme. Specific requirements and evaluation criteria will be specified for petroleum exploration permits in the Notice for the Petroleum Exploration Permit Round (see clause 7.3).

Applicant's failure to comply with other permits or licences

- (4) It will normally count against, but not necessarily preclude, the granting of a permit if the applicant, or a company related to the applicant, does not have a good record of compliance with the conditions of a previous or current permit or licence, whether in New Zealand or internationally, or has surrendered a permit or licence without completing its committed work obligations.
- (5) "Relevant information" for the purposes of section 29A(2)(b)(iii) (see clause 5.1(2)(b)(iii) above) includes information that, in the Minister's view, is material, relates to or has a bearing on the type of activity or activities proposed under the permit application, and relates to compliance in the previous 10 years. Matters the Minister may consider include, but are not limited to:
 - (a) whether any petroleum permits, minerals permits or licences held by the applicant (or a related company) in New Zealand or internationally have been revoked for non-compliance

- (b) whether the applicant (or a related company) has complied with committed work programme conditions associated with current or previously held petroleum permits, minerals permits or licences in New Zealand or internationally
 - (c) whether the applicant (or a related company) has surrendered a permit without completing committed work programme obligations (in particular, obligations to drill exploration wells or complete seismic survey work).
- (6) If the Minister may otherwise grant a permit, but has concerns about the applicant's record of compliance with other permits or rights, the Minister will raise these concerns with the applicant and inform the applicant of the matter or matters the Minister considers to be relevant to the granting of the permit. Before making a decision, the Minister will consider any comments that the applicant makes.

Likelihood of compliance with reporting obligations and payment of fees and royalties

- (7) In considering whether the applicant is likely to comply with reporting obligations and obligations to pay fees and royalties, the Minister will take account of the record of the applicant (or a related company) of compliance with reporting and payment obligations under other permits or licences.

Access to Schedule 4 land

- (8) *Section 61 of the Act* has the effect of precluding access to Crown land described in Schedule 4 of the Act for all petroleum activities except certain activities described in section 61(1A) (see clause 3.2 and footnote 14). If a permit application involves activities that could not be carried out because access to the land described in Schedule 4 is precluded by section 61, the Minister will not consider or grant the permit.
- (9) Accordingly, the following practices will apply:
- (a) Applications for petroleum prospecting and exploration permits will not be considered or granted by the Minister over Schedule 4 land except where:
 - (i) any impact on the surface of the land is within the excepted activities in section 61(1A) (see footnote 14), and
 - (ii) the work programme will provide geological or geophysical information that would help to identify the potential for mining outside of or under Schedule 4 land.
 - (b) Applications for petroleum mining permits will not be considered or granted by the Minister over Schedule 4 land except where a petroleum resource can be accessed from adjacent land and any impact on the surface of the Schedule 4 land is within the excepted activities in section 61(1A).²⁵

²⁵ Any grant of a permit does not imply that the relevant ministers will enter into an access arrangement (see clause 3.2).

5.4 Initial assessment for exploration and mining permits of the operator's capability to meet health and safety and environmental requirements

- (1) *Section 29A(3) of the Act* provides that to satisfy himself or herself of the permit operator's capability and systems to meet health and safety and environmental requirements for petroleum exploration and mining permits, the Minister:
 - (a) is only required to undertake a high-level preliminary assessment
 - (b) must seek the views of the Health and Safety Regulator and may, but is not required to, seek the views of any other regulatory agency
 - (c) may, but is not required to, rely on the views of the regulatory agencies
 - (d) is not required to duplicate any assessment processes that a regulatory agency may be required to undertake.
- (2) *Section 29A(4) of the Act* provides that, to avoid doubt, any decision by the Minister to grant a permit does not limit or have any effect or bearing on the requirements of the relevant health and safety and environmental legislation.
- (3) If, in response to a request from the Minister, the Health and Safety Regulator provides a clear view on whether the proposed operator has the capability and systems that are likely to be required to meet health and safety requirements for the types of activities proposed under the permit, the Minister may rely on that view and will not normally consider further the matters outlined in subclause (5) below.
- (4) Where the Minister has sought the views of regulatory agencies responsible for environmental legislation, the Minister will consider any views received from those agencies before making a decision.
- (5) The Minister will also consider, as appropriate, whether the proposed operator is currently undertaking similar activities in New Zealand or comparable jurisdictions:
 - (a) If the proposed operator is currently undertaking such activities, then, in the absence of clear evidence to the contrary, the Minister will normally be satisfied that the proposed operator is likely to be able to meet health and safety and environmental requirements for the types of activities proposed under the permit.
 - (b) If the proposed operator is not currently undertaking similar activities in New Zealand or comparable jurisdictions, the Minister will normally be satisfied, in the absence of clear evidence to the contrary, that the proposed operator is likely to be able to meet health and safety and environmental requirements for the types of activities proposed under the permit if the operator can show:
 - (i) an understanding of New Zealand's regulatory requirements relating to health and safety and the environment as those requirements apply to the type of activities proposed under the permit, including any iwi and hapū consultation processes prescribed in the relevant legislation
 - (ii) an understanding of the health and safety and environmental risks relating to the type of activities proposed under the permit
 - (iii) that it has, or is likely to have by the time the relevant activities are undertaken:
 - (A) appropriate systems, processes and capabilities for complying with the requirements in subparagraph (i) above
 - (B) appropriate systems, processes and capabilities for managing health and safety and environmental risks relating to the type of activities proposed under the permit

- (C) personnel with appropriate qualifications and experience relating to health and safety and environmental requirements and risks, as they apply to the type of activities proposed under the permit.
- (6) If the Minister would otherwise grant a permit, but has concerns about the applicant's ability to meet expected health and safety and environmental requirements for the activities proposed under the permit, the Minister will raise these concerns with the applicant and inform the applicant of the matter or matters the Minister considers to be relevant to the granting of the permit. Before making a decision, the Minister will consider any comments the applicant makes.
- (7) As the Act makes clear, the processes and considerations in this clause 5.4 are not designed nor intended to duplicate or substitute for the processes and requirements of the agencies responsible for the administration of the relevant legislation and related regulations (in particular the Health and Safety in Employment Act 1992, the Resource Management Act 1991, the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, the Maritime Transport Act 1994 and the Marine Mammals Protection Act 1978).

5.5 Applications for petroleum exploration permits under section 29B

- (1) *Section 29B of the Act* enables a tender (bid) for a petroleum exploration permit under a public tender (see clause 7.2) to state that the tender is to be considered in accordance with section 29B. To qualify to use that section the tender's proposed work programme must contain an exploration drilling committal date, which is the point in a work programme at which a permit holder must commit to undertake exploration drilling or surrender the permit.
- (2) *Section 29B(2)* provides that the Minister must be satisfied about the matters in section 29A(2)(b) and (d) (see clause 5.1(2) above) only in relation to work that will be undertaken before the exploration drilling committal date.
- (3) *Section 29B(3)* provides that where a permit is granted under the provisions of section 29B it will be a condition of the permit that the Minister must be satisfied, before the exploration committal date and upon application by the permit holder, about the matters in section 29A(2)(b) and (d) in relation to any exploration drilling work. Work cannot be undertaken after the exploration drilling committal date unless the Minister is satisfied of those matters and the permit holder commits to do the work.
- (4) The purpose of this provision is to enable the Minister to consider and grant a petroleum exploration permit where the bidder for the permit, at the time the permit is applied for in a public tender process, is not able to meet the requirements of section 29A(2)(b) and (d) for the exploration drilling part of its bid. The Minister's consideration of the matters in section 29A(2)(b) and (d) with regard to drilling is deferred until shortly before the permit holder must commit to undertake drilling or surrender the permit.
- (5) The matters the Minister will consider in applying the provisions of section 29B are the same as the matters the Minister will consider in applying the provisions of section 29A, as set out in clauses 5.2, 5.3 and 5.4 above, with all necessary modifications to take account of the two stage process that applies under section 29B for considering the matters in section 29A(2)(b) and (d). Specifically, the matters in clause 5.3(2) and (3) and 5.4 will be considered in relation to proposed work up to the proposed exploration drilling committal date, and will be considered again on application by the permit holder before the exploration drilling committal date in relation to drilling work.

6. Prospecting permits

6.1 Introduction

- (1) *Section 23 of the Act* provides that the purpose of a petroleum prospecting permit (PPP) is to authorise the permit holder to prospect for petroleum deposits or occurrences. The definition of “prospecting” in the Act provides that this term:
- “(a) means any activity undertaken for the purpose of identifying land likely to contain mineral deposits or occurrences; and
 - (b) includes the following activities—
 - (i) geological, geochemical, and geophysical surveying;
 - (ii) aerial surveying;
 - (iii) taking samples by hand or hand held methods;
 - (iv) taking small samples offshore by low-impact mechanical methods”.²⁶

6.2 Exclusivity and subsequent rights

Permits normally non-exclusive

- (1) PPPs will normally be granted on a non-exclusive basis. This means that the Minister may grant multiple PPPs over the same or overlapping areas.

Permits may be exclusive in certain circumstances

- (2) The Minister may grant a PPP with exclusive rights to prospect. The circumstances in which an exclusive PPP may be granted are where:
- (a) to the Minister’s knowledge (at the time of the application for the permit) there is little firm interest in undertaking prospecting activities in the area
 - (b) the area is remote and there is little or no geophysical data for it
 - (c) the applicant has the financial and technical capability to progress the work to exploration and mining within a reasonable timeframe (should the applicant be successful in a Petroleum Exploration Permit Round).
- (3) Expectations for work programmes under exclusive PPPs will be greater than for non-exclusive PPPs.
- (4) Exclusive PPPs will ordinarily have a maximum duration of two years.

Subsequent rights

- (5) Holders of PPPs do not have any subsequent rights to obtain petroleum exploration or petroleum mining permits over all or part of the area of a PPP.

²⁶ Section 2(1).

6.3 Allocation of PPPs

- (1) Applications for PPPs may be made on the relevant form (see clause 4.5) at any time over land available for petroleum permitting (see clause 3.1).
- (2) The matters the Minister must consider when deciding whether to grant a PPP are specified in chapter 5 (and section 28 of the Act). Before granting a PPP the Minister will need to be satisfied that the work proposed under the work programme will increase knowledge of New Zealand's petroleum resources.
- (3) Before the Minister grants a PPP, relevant iwi and hapū will be consulted (see clause 2.2).

6.4 Duration

- (1) *Section 35(1) and (2) of the Act* provide that:
 - (a) a PPP may have a duration of up to four years, and
 - (b) a PPP may not be extended beyond four years after the permit's commencement date.
- (2) The Minister will not normally grant a PPP for more than two years, in order to ensure that work under the permit is undertaken promptly. However, if an applicant proposes a committed and credible work programme that the Minister agrees justifies a longer period for completion (for example, for large multi-staged far frontier basin screening), the Minister may grant a PPP for more than two years (up to a maximum of four years).

6.5 Area

- (1) There are no specific size limitations for a PPP, but the area will not exceed the area to be prospected under the proposed work programme.
- (2) Non-exclusive PPPs may be granted over some or all of the area of an existing petroleum exploration or mining permit, or an existing petroleum mining licence granted under the Petroleum Act 1937. However, different rules apply depending on whether the underlying exploration or mining permit or licence was granted before or after this Programme came into effect.
- (3) A PPP will not be granted over some or all of the same area of an exploration or mining permit or licence without the prior written consent of the underlying permit or licence holder in accordance with section 30(8) of the Act, if:
 - (a) the exploration or mining permit or licence was granted before this Programme came into effect, or
 - (b) in the case of a mining permit, the permit was granted after this Programme came into effect but was granted subsequent to an exploration permit granted before this Programme came into effect (see clause 8.2).

- (4) The permit conditions of petroleum exploration and mining permits (other than those referred to in subclause (3)(b) above) will provide that the right to prospect for petroleum under the permit is non-exclusive. As such, a non-exclusive PPP may be granted over some or all of the same area without the prior written consent of the underlying permit holder. Permit conditions will also provide that:
 - (a) the PPP holder must obtain the written consent of the underlying permit holder before beginning activities over the same area as the underlying permit
 - (b) the underlying permit holder must not unreasonably withhold consent or impose unreasonable conditions on the proposed activities of the PPP holder
 - (c) if there is a dispute over either of these matters, the Minister may make a determination, which will be binding on both permit holders.
- (5) As a guideline, but without restricting the conditions that may be considered reasonable, the Minister will normally consider that the following types of conditions proposed by an underlying permit holder are reasonable:
 - (a) restrictions designed to avoid or minimise interference with or disruption to the activities of the underlying permit holder
 - (b) restrictions designed to avoid or minimise health and safety risks
 - (c) observance of procedures and practices intended to maintain good relationships with relevant iwi or hapū or landowners
 - (d) a requirement, in the case of a speculative prospector (see clause 6.6), that the underlying permit holder may purchase data from the speculative prospector on the same commercial terms as any other party.
- (6) As a guideline, the Minister will normally consider that the following types of conditions proposed by an underlying permit holder are not reasonable (unless both parties agree):
 - (a) a requirement for the PPP holder to make payments in cash or in kind (including discounted rates not available to other parties for the purchase of data from a speculative prospector) for undertaking activities in the area of the underlying permit
 - (b) restrictions on the use of data acquired by the PPP holder.

6.6 Confidentiality of data

- (1) Different information protection and confidentiality provisions apply to information acquired and provided to NZP&M under a PPP depending on whether or not the PPP holder is a “speculative prospector”.²⁷
- (2) *Section 90C of the Act* provides that, on an application from a non-exclusive PPP holder or from an applicant for a non-exclusive PPP, the Minister may determine that that holder or applicant has, or will have, the status of a speculative prospector. *Section 90C(7)* defines a “speculative prospector” as a non-exclusive PPP holder who carries out activities under the permit solely for the purpose of on-selling the information obtained on a non-exclusive basis to petroleum explorers and producers.

²⁷ Information provided to NZP&M is also subject to the Official Information Act 1982.

- (3) The Minister's decision on whether the applicant for the determination qualifies as a speculative prospector will be based on the Minister's assessment of the applicant's business model and the purpose for which the applicant proposes to obtain information under the permit. When making a decision the Minister will take into account:
 - (a) the activities of any related companies (for example, if the applicant is owned in part or in whole by, or is the ultimate subsidiary of, a company that is in the business of petroleum exploration and production)
 - (b) the applicant's business history
 - (c) whether the applicant is a member of a relevant international trade association, such as the International Association of Geophysical Contractors (IAGC).
- (4) *Section 90C(3) of the Act* provides that if at any point a permit holder with speculative prospector status becomes aware that it no longer qualifies for this status, it must notify the Minister within 10 working days.
- (5) *Section 90C(4) and (5)* enables the Minister to remove a permit holder's status as a speculative prospector, after considering any comments made by the permit holder, if the Minister considers that its business activities are not consistent with those of a speculative prospector (for example, if it provides or sells data exclusively to one petroleum explorer).

Information acquired by a PPP holder that is not a speculative prospector

- (6) *Section 90(7) of the Act* provides that information provided to NZP&M by a PPP holder (that is not a speculative prospector) must be released to the public on the earlier of 15 years after it has been obtained by the permit holder or the conclusion of a public tender for petroleum exploration permits over the area, provided that any release is not earlier than five years after the information has been obtained by the PPP holder. *Section 90A* provides that the information must not be released before that time except under specified circumstances.

Information acquired by a speculative prospector

- (7) *Section 90(8) of the Act* provides that information provided to NZP&M by a non-exclusive PPP holder that is a speculative prospector must be released to the public by NZP&M 15 years after it has been obtained by the PPP holder. *Section 90A* provides that the information must not be released before that time except under specified circumstances. This is irrespective of whether the area has been included in a public tender for petroleum exploration permits.
- (8) *Section 90D of the Act* provides that where a permit holder purchases or licences data that relates to the permit from a speculative prospector, it must submit that data to the Chief Executive as if it had itself obtained the data under its permit. Such data must be clearly identified as acquired from a speculative prospector and it will then be subject to the 15 year release period.

- (9) The objective of the extended confidentiality period for data acquired by speculative prospectors is to encourage the acquisition of prospectivity information by specialist companies for on-selling on a non-exclusive basis under a restricted non-transferrable data user licence²⁸ or similar arrangement to petroleum exploration and mining companies. An extended confidentiality period improves the commercial viability of undertaking speculative prospecting activities.

²⁸ See the International Association of Geophysical Contractors (IAGC) Statement of Principles for Non-Exclusive (Multi-Client) Geophysical Data Licensing.

7. Exploration permits

7.1 Introduction

- (1) *Section 23 of the Act* provides that the purpose of a petroleum exploration permit (PEP) is to authorise the permit holder to explore for petroleum resources. “To explore” is defined in the Act as “any activity undertaken for the purpose of identifying mineral deposits or occurrences and evaluating the feasibility of mining particular deposits or occurrences ... and includes any drilling ... that [is] reasonably necessary to determine the nature and size of a mineral deposit or occurrence”.²⁹

Allocation processes

7.2 Competitive allocation

- (1) All PEPs will be allocated competitively by way of Petroleum Exploration Permit Rounds. Two methods of competitive allocation may be used:
 - (a) staged work programme bidding
 - (b) cash bonus bidding.
- (2) **Staged work programme bidding** involves parties submitting bids to undertake a work programme to explore for petroleum resources. The term “staged” refers to the fact that work programmes can include later stages of contingent work, depending on the results of the earlier stage or stages.
- (3) Under staged work programme bidding, the permit will normally be granted to the party proposing to undertake a work programme that has the best information-gathering value and that is most likely to find petroleum deposits in a timely manner, provided the work programme is technically appropriate and credible (see clause 7.6), and subject to the other matters the Minister must consider and be satisfied about before granting a permit (see chapter 5).
- (4) **Cash bonus bidding** involves parties submitting bids to pay cash for an exploration permit. The party making the highest cash bid (subject to meeting other requirements) wins the tender. The cash payment is in addition to royalty and fee payment obligations. Permits will not be granted on the basis of competing work programmes, although minimum work programme requirements may be specified as part of the Round.
- (5) Staged work programme bidding will be used under most circumstances. Cash bonus bidding is only likely to be used when there is high prospectivity (for example, after a discovery or discoveries) and when there is particularly strong competitive interest in permits. Cash bonus bidding is not considered further in this Programme.

²⁹ Section 2(1).

7.3 Petroleum Exploration Permit Rounds

- (1) There will usually be an annual Petroleum Exploration Permit Round. This will normally consist of a competitive tender for a number of exploration permits. The Minister will normally seek nominations from interested parties on areas for inclusion in upcoming Permit Rounds. Areas where prospecting under prospecting permits has been undertaken will normally be included in upcoming Permit Rounds where requested by interested parties.
- (2) Consultation will be undertaken with iwi and hapū (see clause 2.4) and may also be undertaken with industry, government departments, relevant Crown entities and local authorities before decisions are made about the timing and location of blocks on offer.
- (3) The process for each annual Petroleum Exploration Permit Round will normally start in the previous year, and permits will be awarded by the end of the year of the Permit Round. There will generally be a period of three to six months for interested parties to formulate and lodge a bid.
- (4) Petroleum Exploration Permit Rounds may be held over areas that are subject to current petroleum prospecting permits. Petroleum Exploration Permit Rounds will not include areas subject to PEPs or petroleum mining permits or licences without the prior written consent of the permit or licence holder.³⁰
- (5) The Notice for a Petroleum Exploration Permit Round will normally include (without limitation):
 - (a) the areas (blocks) available for tender or bid, including:
 - (i) the specification of the area of each block³¹
 - (ii) whether bids may be made for combinations of blocks
 - (iii) any maximum number of blocks that can be combined in a bid
 - (b) the type of bids invited (for example, staged work programme bids)
 - (c) the time by which bids must be received and the place where bids must be received
 - (d) any minimum requirements for bids, such as minimum work programme requirements
 - (e) the conditions that will be attached to any permit that is granted – for example, relinquishment requirements

³⁰ A request for an area to be included in a Petroleum Exploration Permit Round, notwithstanding that the area is already subject to a petroleum exploration permit or a petroleum mining permit for conventional petroleum resources, may be made by a person wishing to explore for gas hydrates (see chapter 10), or vice versa.

³¹ Blocks will typically be graticular defined by NZGD2000 latitudes and longitudes rounded to the nearest minute, except where a block boundary abuts a non-rounded existing permit, or a geographic feature such as a national park, the territorial sea or the coastline. Blocks may be either single contiguous areas defined by NZP&M (usually onshore) or larger regions, basins or sub-basins comprising smaller blocks (usually defined by a 5 or 10 minute latitudes and longitudes grid) from which companies may assemble multiple contiguous 10 minute blocks for a preferred customised combination of blocks to bid on.

- (f) how bids will be evaluated, including what happens when:
 - (i) some competing bids are under section 29A and other bids are under section 29B (see chapter 5)
 - (ii) competing bids involve differing but overlapping blocks
 - (g) any application fee.
- (6) *Section 24(3) of the Act* provides that the Minister must not accept any bid that does not comply in a material way with the requirements of the Notice.

7.4 Reservation of land

- (1) *Section 28A of the Act* provides powers for the Minister to declare (by notice in the *Gazette*) that specified land will not be available for specified permits for a specified time (with a maximum of three years) if the Minister believes this is necessary to better meet the purposes of the Act. (The specified land is referred to in this Programme as “reserved land”.)
- (2) This power will normally only be used for petroleum where the Minister considers that land should be reserved for competitive allocation through a future Petroleum Exploration Permit Round.
- (3) An application by an exploration permit holder for an extension of land over reserved land will be declined by the Minister (see clause 12.4). Reservation of land will not affect applications for prospecting permits.

7.5 Staged work programme bids

- (1) Bids (permit applications) for Petroleum Exploration Permit Rounds will normally consist of:
 - (a) a committed work programme (including timetables), called “the first stage”
 - (b) one or more subsequent stages consisting of contingent work. At specified times the permit holder will either commit to undertake this subsequent work or surrender the permit.
- (2) Where applicants submit staged work programme bids, the proposed stages must be unambiguous, must have clear completion dates, and must specify clearly, in relation to subsequent contingent work, dates at which the applicant must either commit to carrying out the work or surrender the permit.
- (3) The Minister may include minimum work programme requirements as a condition of bids for particular blocks – for example, that bids must include:
 - (a) an undertaking (which may be contingent) to drill one or more exploration wells within a particular timeframe or timeframes
 - (b) a structured work programme (committed and/or contingent) to achieve at least the minimum work programme requirements.

7.6 Evaluation criteria for staged work programme bids

- (1) If there is more than one bid for a block, the applicants' proposed exploration work programmes will be ranked according to the Minister's view of:
 - (a) the potential of the proposed work to make a petroleum discovery in a timely manner
 - (b) its information-gathering value.
- (2) When considering the matters in subclause (1) above, the Minister will also take into account:
 - (a) the technical credibility of the bid and, in particular:
 - (i) the applicant's demonstrated understanding of the geology and potential plays, leads or prospects of the area, and
 - (ii) the timing and appropriateness of the proposed technical approach to working the area
 - (b) any timetables proposed for making decisions to commit to drilling one or more wells or surrendering the permit. Timetables with earlier "commit or surrender" dates will normally be favoured ahead of those with later dates.
 - (c) whether work is committed or contingent. Committed work will be favoured ahead of contingent work.
- (3) In general, exploration programmes will be rated according to the work categories listed below. The work categories are listed in decreasing order of their information-gathering value:
 - (a) well drilling: the number and timing of exploration wells proposed to be drilled, target depths, and the comprehensiveness of the evaluation of well data
 - (b) major geophysical surveying: the quantity, quality and coverage of 3 Dimensional (3D) and 2 Dimensional (2D) seismic surveys and other techniques and the relevance of any proposed programmes
 - (c) geophysical data 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, quality and coverage and the relevance of reprocessing proposals
 - (d) minor geophysical surveys (for example: gravity; magnetic and passive fluorescence; and resistivity), geochemical surveys and general geological studies.
- (4) After ranking the bids, the Minister will consider, for the top-ranked bid or bids:
 - (a) the matters in section 29A(2)(b) of the Act, which relate to whether the applicant is likely to comply with and give proper effect to its proposed work programme (see clause 5.1 and 5.3). Where a bid is under section 29B, this consideration will apply to the proposed work programme up to the exploration drilling committal date.
 - (b) the matters in section 29A(2)(c) of the Act, which relate to reporting obligations and payment of fees and royalties (see clauses 5.1 and 5.3), and
 - (c) the matters in section 29A(2)(d) of the Act, which relate to whether the applicant is likely to have the capability and systems to meet likely health and safety and environmental requirements (see clauses 5.1 and 5.4). Where a bid is under section 29B, this consideration will apply to the proposed work programme up to the exploration drilling committal date.

- (5) The assessment referred to subclause (4) above may result in changes to the ranking, including rejection of one or more top-ranked bids. As noted in chapter 5, the Minister must be satisfied about all of the matters set out in section 29A(2), modified as applicable for applications under section 29B, before granting a permit.
- (6) Where some competing top-ranked bids are under section 29A and others are under section 29B and the Minister is satisfied that the requirements of section 29A or 29B as applicable are met, the Minister will normally give preference to the bid or bids made under section 29A but may grant the permit in respect of the bid that in the Minister's opinion will best meet the purpose of the Act.

7.7 Processes for staged work programme bidding and grant of permits

- (1) The Minister may, among other things:
 - (a) decide not to award any permits (the Minister is not required to accept the best bid or any bids)
 - (b) ask an applicant to clarify an aspect of their bid or provide further information or a technical presentation. However, no applicant will be given the opportunity to modify or improve a bid (except if there is only one bid and the bid is not acceptable: see paragraph (1)(d) below)
 - (c) if there are no acceptable bids, invite all applicants to re-submit modified bids within a specified period. The modified bids will then be considered as if they were the original bids.
 - (d) if there is only one bid but it is not acceptable, request the bidder to improve its bid.
- (2) If there are competing applications for a block, but the applicants propose to pursue distinct exploration programmes in separate parts of the block, the Minister may split the permit area and grant more than one permit.
- (3) If the Minister considers that the two leading (highest ranked) applications have complementary interests and expertise but their work programmes cannot be separated geographically, the Minister may propose to the applicants that they re-submit a combined work programme. In doing so, the Minister may not reveal to any applicant any information about the bid or identity of the other applicant without the explicit permission of that other applicant. If either party declines to submit a combined work programme, the original competing bids will be considered in the normal way.
- (4) The Minister may award only part of a block (or parts of a group of blocks applied for as one permit) if the Minister is not satisfied that the proposed work sufficiently covers the area applied for. In this instance, the applicant may decline the award of the permit.
- (5) The Minister will not ordinarily grant more than one permit over a prospect that has been identified to the satisfaction of the Minister during the bidding process. This may require the Minister to split blocks when determining permit areas and granting permits. The policy objective is to minimise the risk of requiring unitisation following a discovery (see clauses 8.10 to 8.12).
- (6) The Minister may invite a bidder to accept a work programme proposed by the Minister where, as a result of deciding to grant permits to other bidders, blocks that were part of the bidder's bid remain available. The Minister may consult with the bidder on the proposed invitation before making the invitation.

- (7) Where there is only one acceptable work programme bid for a block or blocks and where that bid has been submitted under section 29A but the Minister is not satisfied that the bidder meets the requirements of section 29A, the Minister may invite the bidder to amend its bid to state that it is to be considered under section 29B.
- (8) The processing of staged work programme bids will usually be completed within five months after the closing date for applications. Applicants will be notified if processing will take longer than this.
- (9) As far as possible, applicants will be notified of the outcome of their bids before any statements are made to the media about the outcome of the Permit Round. Details of unsuccessful applicants and applications will not be given to the media or disclosed to other parties (unless required under the Official Information Act 1982 or otherwise required by law³²).
- (10) The granting of a PEP will be subject to the conditions of grant that were advertised in the Notice for the Round, unless those conditions are modified by agreement with the applicant. The Minister will not agree to any modifications that the Minister considers to be substantial.

Terms and conditions

7.8 Duration

- (1) *Section 35(3) and (4) of the Act* provide that:
 - (a) a PEP may have a duration of up to 15 years
 - (b) the duration of a PEP may not be extended except for appraisal work (see clauses 7.12 to 7.14).
- (2) The Minister may set different durations (up to 15 years) for any or all blocks as part of the terms and conditions of a Petroleum Exploration Permit Round (see clause 7.3). In setting the maximum duration of an exploration permit for a block the Minister will take into account (but is not limited to) the following considerations:
 - (a) whether blocks are onshore or offshore
 - (b) geographic remoteness
 - (c) water depth
 - (d) the extent of previous exploration in an area and relevant geological information about the area
 - (e) whether the permit is for conventional resources or for gas hydrates (see chapter 10).
- (3) Normally, the Minister will set shorter durations for blocks that are onshore, for offshore blocks that are in shallower water and not geographically remote, and for blocks where extensive geological information is already available.

³² For example, under an order of a court of competent jurisdiction.

- (4) Permits will normally be granted for the maximum duration set for a block. Whether the permit runs to its full duration (or is earlier surrendered) will depend on:
 - (a) the work programme for each stage of the permit being completed satisfactorily (see clause 7.9)
 - (b) agreement on a committed work programme for the next or subsequent stage of the permit (see clause 7.9).

Extension of duration of existing PEPs

- (5) *Clause 7 of Schedule 1 of the Act* provides that the duration of existing PEPs may be extended to up to 15 years from the commencement of the permit.

Onshore PEPs

- (6) Where an existing PEP has a duration of five years and is largely or wholly onshore, the Minister may grant an extension of duration to 10 years on application by the permit holder under the following conditions:
 - (a) the permit holder must have undertaken the work programme for the existing permit in a timely and effective manner
 - (b) the permit holder must propose a work programme that includes at least one exploration well during the extension of duration
 - (c) the permit holder must relinquish at least 50 percent of the area of the permit five years after the commencement of the permit.
- (7) Where an existing PEP has a duration of 10 years and is largely or wholly onshore, the Minister's practice is not to grant an extension of duration.

Offshore PEPs

- (8) Where an existing permit has a duration of five years and is largely or wholly offshore, the Minister may grant an extension of duration to 12 years or 15 years (see subclause (10)) on application by the permit holder under the following conditions:
 - (a) the permit holder must have undertaken the work programme for the existing permit in a timely and effective manner
 - (b) the permit holder must propose a work programme for the following five years that:
 - (i) meets or exceeds any minimum work requirements set at the commencement of the permit, and
 - (ii) includes at least one exploration well
 - (c) the permit holder must undertake, as part of the application, that by the end of the tenth year after the permit has commenced, it will either:
 - (i) commit to drill at least one further exploration well during the remaining period of the extension, or
 - (ii) surrender the permit.

- (9) Where an existing permit has a duration of 10 years and is largely or wholly offshore, the Minister may grant an extension of duration to 12 years or 15 years (see subclause (10)) on application by the permit holder under the following conditions:
 - (a) the permit holder must have undertaken the work programme for the existing permit in a timely and effective manner
 - (b) the permit holder must undertake, as part of the application, that by the end of the eleventh year after the permit has commenced, it will either:
 - (i) commit to drill at least one exploration well during the period of the extension, in addition to any well or wells committed to under the existing permit or required as part of minimum work programme conditions, or
 - (ii) surrender the permit.
- (10) The duration that may be applied for under subclauses (8) and (9) – that is, 12 years or 15 years – will be determined by the Minister for all existing offshore PEPs based on the considerations in subclause (2) above. The available duration for each permit, as well as the proportion of the area that must be relinquished at specified dates after the commencement of the permit (see subclause (13) below), will be notified to eligible PEP holders.
- (11) The holder of an existing PEP may apply for an extension of duration under subclauses (6) or (8) at any time after three years after commencement of the permit or under subclause (9) at any time after seven years after the commencement of the permit.
- (12) The provisions of clause 7.9 of this Programme, with all necessary modifications, will apply with respect to setting work programmes for extensions of duration under subclauses (6), (8) and (9) of this clause 7.8.
- (13) The provisions of clause 7.10 of the Programme, with all necessary modifications, will apply to setting relinquishment obligations for extensions of duration under subclauses (6), (8) and (9) of this clause 7.8.

7.9 Work programmes

- (1) Normally, a work programme under a permit will have stages that correspond to the committed and contingent stages in the proposed work programme submitted with the bid of the successful bidder.
- (2) Normally, the work programme for the first stage of a permit will consist of the committed work programme of the successful bidder.

Key and secondary deliverables

- (3) The work programme for each committed stage will consist of:
 - (a) key deliverables, which will be the components of the work programme that the Minister considers to be crucial to the success of the permit. The key deliverables will be identified as such in the work programme for the permit and have timeframes and milestones.
 - (b) secondary deliverables (such as technical studies and minor reprocessing).
- (4) Performance against these deliverables and milestones, in particular the key deliverables, will be reviewed during annual work programme review meetings (see clause 11.7).

- (5) The Minister will not consent to changes to the conditions of the permit (see clauses 12.1 to 12.2) with respect to key deliverables within a stage, other than in the circumstances specified in clause 12.2.
- (6) Changes to conditions relating to secondary deliverables in the work programme are not required and failure to meet secondary objectives will not be a cause for revocation (see clause 12.13).

Transition from one stage to the subsequent stage

- (7) In the final year of a committed stage of a permit, the transition to the subsequent stage must be addressed at an annual work programme review meeting or at a separate meeting. Before the end of the stage, any revisions to the subsequent (contingent) stage of the work programme that was initially submitted with the permit application should be agreed by both parties and become the new committed work programme for the subsequent stage.
- (8) If the parties cannot agree on an amended work programme, the Minister will determine the required work programme, which will be consistent with the contingent work programme the permit holder submitted when the bid was made, subject to any modifications the Minister considers reasonable to take account of the results of work done under the permit.
- (9) If a contingent stage has not been bid or is not applicable (for example later in the life of the permit), the parties must agree on a new work programme for the subsequent stage that is consistent with any minimum work programme requirements set in the Permit Round (for example, to drill a well) and the provisions of the Act. If the parties cannot agree on a work programme the Minister will determine a work programme that, in the Minister's view, is consistent with any minimum work requirements set in the Permit Round and the provisions of the Act. Before making a determination, the Minister will consider any views expressed by the permit holder on the proposed work programme.
- (10) Provisions to the effect of subclauses (7) to (9) above will be included in all relevant permits granted after this Programme comes into effect.
- (11) The permit (and the work programme) will be amended by the Minister to record the new committed work programme for the next stage. An application to change the conditions of the permit is not required.
- (12) If, at the end of a stage, the permit holder decides not to commit to a new work programme (agreed or determined as above), it must surrender the permit.³³ In doing so, it will remain in "good standing", provided it has completed the key deliverables of the previous stage and complied with the other provisions of the Act and the permit. "In good standing" means that the fact that the permit has not gone to its full duration will not be considered to be a failure to comply with the conditions of a permit when the Minister considers future applications for a permit (see clause 5.3).
- (13) As with the first stage, the committed work programme for the second or subsequent stage will consist of key and secondary deliverables, and the same provisions as for the first stage (subclauses (3) to (9) and (11) and (12) above) will apply to the second stage, and so on.

³³ If the permit is not surrendered the permit holder will be non-compliant with the conditions of the permit and the Minister may commence revocation proceedings (see clause 12.13).

Timetable for each stage

- (14) The timetable for each stage set by the Minister will allow sufficient time, in the Minister's opinion, to:
- (a) complete the key deliverables for the stage, including, where applicable, processing information
 - (b) agree on the committed work programme for the next stage
 - (c) record the new committed work programme on the permit.

Failure to perform work

- (15) If a permit holder fails to achieve committed key work programme deliverables:
- (a) the Minister may revoke the permit (see clause 12.13)
 - (b) the revocation will be noted on the record of the permit and will be taken into account when the Minister considers whether the permit holder is in good standing in the context of future permit applications (see clause 5.3). This provision applies irrespective of whether the permit is surrendered.

Work programmes of existing exploration permits transferred to this Programme

- (16) Where an existing PEP transfers to this Programme pursuant to clause 3 of Schedule 1 of the Act (see clause 1.5 of this Programme), the Minister and the permit holder will agree on a revised work programme that is consistent with the provisions of this clause 7.9, including providing for key deliverables, secondary deliverables, and timeframes and milestones for the applicable stage. Pending approval of the re-specified work programme, the permit holder will be expected to comply with its existing work programme.
- (17) If the transfer to this Programme is a consequence of an application to change the conditions of the work programme of the permit, the Minister will take into account, in considering whether to consent to the change of conditions:
- (a) whether any of the circumstances specified in clause 12.2 exist
 - (b) any other relevant factors, which may include that the work programme was set under the conditions of the old minerals programme.

7.10 Permit areas and relinquishment obligations

- (1) Areas available for permitting will be decided as part of the Petroleum Exploration Permit Round process, and the area of a permit will be set when the permit is granted.
- (2) *Section 35C of the Act* enables the Minister to impose up to two relinquishment obligations on a PEP requiring the relinquishment of a total area that may not exceed 75 percent of the original permit area.
- (3) The Minister may:
 - (a) set relinquishment requirements in the Notice of a Petroleum Exploration Permit Round, or
 - (b) request that bids in a Petroleum Exploration Permit Round include relinquishment undertakings at the conclusion of committed and contingent stages.

- (4) The timing of any relinquishments, which will normally be at the completion of a stage in the work programme, and the amount of the area to be relinquished, will normally be set at the commencement of the permit.
- (5) The permit holder must apply for and obtain the Minister's approval for the proposed areas to be relinquished. The retained area following a relinquishment must normally be contiguous (unbroken). However, the Minister will consider a relinquishment where the retained area is not contiguous if there are strong geological or geophysical reasons for this and each part has its own work programme. The Minister may also consider:
 - (a) whether the remaining area is consistent with the work programme
 - (b) what effect the shape and location of the retained area has on the viability of subsequently offering the relinquished area in a Permit Round process.
- (6) The Minister will not normally consent to an application for a change of conditions regarding the timing and amount of the relinquishment obligations set at the start of the permit.

Transitional arrangements

- (7) If the holder of a PEP at the time this Programme comes into effect has relinquished land as part of an extension of duration application under previous section 37(1) of the Act, this will be deemed to be a single "relinquishment obligation".

Appraisal and appraisal extensions

7.11 Discoveries and appraisal work programmes

- (1) The Regulations require permit holders to notify NZP&M as soon as a practicable and not later than 20 working days after the date of a discovery.
- (2) A petroleum discovery is considered to be established when there are significant moveable hydrocarbons in the drilling column as a result of exploration and/or appraisal well drilling operations, or well stimulation operations. Moveable hydrocarbons can be related to a sub-surface deposit which can be established through testing, sampling, and/or logging. Significant moveable hydrocarbons are considered to exist if there is evidence of a sufficient quantity of petroleum to justify further appraisal activities.
- (3) NZP&M will require the permit holder to attend a meeting to enable NZP&M to better understand the nature of the discovery and the permit holder's intentions with respect to appraisal of the discovery and for continued exploration of the wider permit area.
- (4) The permit holder's plans for and progress on appraising the discovery will be kept under review at annual work programme review meetings (see 11.7), bearing in mind that an extension of duration to appraise a discovery (pursuant to section 35A of the Act) will not be granted if an appraisal work programme for the discovery could have been completed within the duration of the permit (see clause 7.12(1)(b) below).

7.12 Extension of duration for appraisal

- (1) *Section 35A of the Act* provides that the Minister may grant an extension of duration of a PEP to appraise the extent and characteristics of a discovery where:
 - (a) the permit holder has made a discovery that has the potential to lead to a mining permit
 - (b) the duration of the PEP does not allow sufficient time for the permit holder to appraise the discovery, and
 - (c) the work programme in relation to the appraisal is adequate to appraise the discovery.
- (2) An appraisal extension will not be granted for the purposes of allowing further general exploration. It is also not a means to produce petroleum as an alternative to obtaining a mining permit.
- (3) The appraisal work programme may include key and secondary deliverables (see clause 7.9(3) to (6)).
- (4) An application for an appraisal extension must contain the information required by the Regulations and may be made on the appropriate form on NZP&M's website.
- (5) *Section 36(4) of the Act* provides that the application for an appraisal extension must be made not later than six months before the expiry of the permit unless the Minister is satisfied that there are compelling reasons why a permit holder could not comply with this requirement.
- (6) Where a discovery is made later than six months before the expiry of the permit, the Minister will be satisfied that this is a compelling reason why the permit holder could not comply with the six-month deadline. Guidance on other matters the Minister may consider to be "compelling reasons" is provided in clause 12.1(6) and (7).

7.13 Duration of an appraisal extension

- (1) *Section 35A of the Act* provides that an appraisal extension may have a duration of up to four years. The Minister may grant a further extension of not more than four years subject to the same provisions as for the initial appraisal extension.
- (2) Any application for a mining permit must be submitted before the appraisal extension expires. *Section 32(8) of the Act* provides that the appraisal extension will continue in force until a decision has been made on the mining permit application.

7.14 Area of an appraisal extension

- (1) *Section 35A of the Act* provides that the area of an appraisal extension must be restricted to the land in the permit to which the Minister determines it is likely that the discovery relates.
- (2) In determining the area of an appraisal extension the Minister will take into account that it may be difficult to be precise about the actual limits of a petroleum field before the appraisal work is completed. The Minister's objective will be to allow the permit holder a reasonably adequate area of land to enable it to appraise the discovery.

- (3) As a condition of granting an appraisal extension, the Minister may require that the area of an appraisal extension be re-considered at a specified time. If, after consulting with the permit holder, the Minister considers that all of the original area is no longer required for appraisal purposes, the Minister may reduce the area of the appraisal extension to the area that continues to be required.

7.15 Minister may allow the sale of production

- (1) As part of an exploration permit (including an appraisal extension), the Minister may allow the permit holder to sell the production of a well-testing programme. Royalty rates for exploration permits are specified in the Crown Minerals (Royalties for Petroleum) Regulations 2013 (or the relevant minerals programme for existing permits).

8. Mining permits

8.1 Introduction

- (1) *Section 23 of the Act* provides that the purpose of a petroleum mining permit (PMP) is to authorise the permit holder to mine petroleum. “Mining” is defined in the Act as meaning “to take, win, or extract, by whatever means, a mineral existing in its natural state in land, or a chemical substance from [that mineral]”, and “includes the injection of petroleum into...and the extraction of petroleum from an underground gas storage facility” (see clause 10.7).

8.2 Allocation process

- (1) PMPs are most commonly allocated to an exploration permit holder who has discovered a petroleum field within the exploration permit area (see clause 7.11). *Section 32(3) of the Act* provides that the holder of an exploration permit has an exclusive right to apply for, and to receive, a PMP, provided the exploration permit holder meets all the following requirements:
 - (a) The exploration permit holder must:
 - (i) apply, before the expiry of the exploration permit, to surrender the permit to the extent that it relates to the land in which the discovery exists, and
 - (ii) meet the criteria and considerations set out in the Act for granting a permit (see chapter 5).
 - (b) The Minister must be satisfied that a petroleum field has been discovered as a result of activities authorised by the exploration permit.
- (2) If these conditions are met, the permit holder will be granted a PMP in exchange for the surrendered exploration permit area.
- (3) *Section 32(8) of the Act* provides that if an application for a PMP has not been determined before the exploration permit expires, the exploration permit will continue in force until the Minister determines the application.
- (4) *Section 43 of the Act* provides that the Minister must approve the proposed work programme (and grant the PMP) within six months of receiving the proposed work programme or notify the applicant that the Minister is withholding approval of the proposed work programme. In the latter event, specific provisions apply (see clause 8.8).
- (5) An application for a PMP should be on the prescribed form (see clause 4.5).
- (6) Before the Minister grants a PMP, relevant iwi and hapū will be consulted (see clauses 2.2 and 2.5).

8.3 Evaluation of an application

- (1) The criteria and considerations for evaluating an application are referred to in clause 8.2(1) above. A key preliminary consideration is to confirm that the permit applicant has identified and delineated a petroleum field that can be effectively mined within technical and economic constraints.

- (2) The Minister will also consider the following matters:
- (a) the geology of the PMP application area
 - (b) the nature, extent, and physical and chemical characteristics of the petroleum to be extracted and produced
 - (c) estimates of petroleum in place and recoverable petroleum reserves
 - (d) proposed operations in respect of production and reservoir management
 - (e) alternative field development plans, and whether the proposed plan is optimal in terms of the purpose of the Act, the maximum recovery of economic reserves, and good industry practice (see clause 1.3)
 - (f) proposed operations in respect of processing and transport facilities, and decommissioning operations
 - (g) the proposed production profile and the proposed start date for production
 - (h) any condition of an initial exploration permit that that permit had specified should also be included in a later PMP³⁴
 - (i) any market or economic considerations that are relevant to determining maximum economic recovery.
- (3) If the Minister requires alternative field development plans to be evaluated to ensure the proposed plan is optimal in terms of the purpose of the Act, maximum recovery of economic reserves and good industry practice, the Minister may require the application of specific discount rates to help rank alternative development options. Normally, the discount rate will be 3 percent as a proxy for the social rate of time preference.³⁵ In addition, a discount rate of 10 percent may be applied as a proxy for the cost of capital of a (hypothetical) large, diversified petroleum explorer and producer. The latter discount rate will be used to confirm that the preferred development option or options using the social time preference discount rate is or are commercially viable; if this is not the case, any non-viable options will not be considered further.

8.4 Staged work programmes

- (1) The Minister will consider a work programme that is set out in development stages. For example, this may be appropriate if a petroleum reservoir has been identified but its long-term performance characteristics cannot be established other than by commercial production. The work programme may provide for a first stage of work and then for the permit holder to submit for the Minister's approval a work programme for the remainder of the permit's term or for the subsequent stage.
- (2) If a staged development is proposed, the applicant will need to demonstrate that the staged development will not unreasonably prejudice the field's economic recovery. An understanding of how each stage is intended to fit with further possible stages will need to be shown.

³⁴ Section 32(5) and (5A).

³⁵ The social rate of time preference discounts future benefits and costs based on the way that society values present, as opposed to future, consumption.

- (3) The Minister may require options to be included in the work programme for reducing the size of the permit area or for amending 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 forecast.

8.5 Permit area

- (1) The area of a PMP will be determined by the Minister after consulting with the permit applicant and after considering:
 - (a) geological information submitted to demonstrate the area of the field
 - (b) information showing that the field can be developed within economic and technical constraints
 - (c) what will be reasonably adequate to enable the permit holder to carry out the activities authorised by the permit.
- (2) In deciding on the permit area, the Minister will 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.

8.6 Duration

- (1) The appropriate duration of a PMP will be determined by the Minister. In deciding this, the Minister will consult with the permit applicant and will take into account such matters as:
 - (a) the estimated reserves of the petroleum field to be produced
 - (b) the planned production programme
 - (c) any potential for enhanced production
 - (d) the time required to conclude mining activities and to decommission operations and rehabilitate the site or sites as necessary.
- (2) *Section 35(7) and (8) of the Act* provides that a PMP must not have a duration longer than 40 years, except where an extension of duration is granted (see clause 12.5).

8.7 Commencement of production

- (1) In general, mining operations will be expected to start as soon as possible. However, the Minister may consider a work programme in which mining starts after the commencement date of the PMP. The matters the Minister may take into account include:
 - (a) whether development of the petroleum field will be in coordination with the development of other PMPs and there is a logical development progression proposed that will result in all the permits being developed to ensure maximum economic recovery
 - (b) whether the permit applicant wishes to delay development until new infrastructure required for transporting or processing the petroleum has been constructed.

8.8 Processes where the Minister withholds approval of a work programme

- (1) *Sections 43 and 44 of the Act* provide specific processes for where the Minister considers that a work programme submitted by the applicant for the purposes of obtaining a PMP subsequent to a PEP is not satisfactory.
- (2) *Section 43* provides that the Minister may not withhold approval of the proposed work programme unless:
 - (a) the proposed work programme is contrary to good industry practice (see clause 1.3)
 - (b) approval would be contrary to this Programme.
- (3) *Sections 43 and 44* provide that:
 - (a) the Minister must notify the applicant that the work programme is not approved
 - (b) the applicant may, within a reasonable period specified by the Minister, submit a modified work programme
 - (c) the Minister must approve or withhold approval of the modified work programme within six months
 - (d) the Minister may not withhold approval of a work programme or modified work programme without first informing the applicant of the reasons for proposing to withhold approval and providing a reasonable opportunity for the applicant to make representations to the Minister on the matter.
- (4) If the Minister withholds approval of a work programme or modified work programme the applicant may refer the matter to arbitration under section 44 of the Act. The arbitrator's decision is binding on the parties.

8.9 Decommissioning

- (1) Environmental protection provisions relating to decommissioning are set by regional authorities under the Resource Management Act 1991 (onshore and up to 12 nautical miles offshore) and the Environmental Protection Authority (EPA) under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (in New Zealand's exclusive economic zone and continental shelf). Other relevant legislation includes the Health and Safety in Employment Act 1992 and the Maritime Transport Act 1994.
- (2) The Minister may include provisions in a PMP work programme for decommissioning structures and abandoning wells in accordance with good industry practice.

Unit development

8.10 Initiating a unit development scheme

- (1) *Section 46 of the Act* provides that where a petroleum discovery extends over the area, or parts of the area, of more than one petroleum permit or licence, the Minister may, at the request of one or more of the permit or licence holders or on his or her own initiative, issue a notice requiring all the relevant permit and licence holders to co-operate in preparing a development scheme for working and developing the petroleum field as a unit. In doing so, the Minister must be satisfied that unit development is needed in order to secure the maximum ultimate recovery of the petroleum.³⁶
- (2) *Section 46* provides that the notice must specify the area to which the unit development scheme must apply and the time period for submitting a scheme.
- (3) *Section 46* gives the Minister the power to require permit holders to suspend or reduce production from one or more wells until a unit development scheme is in place. Before issuing a notice to this effect, the Minister must consult with the affected parties.
- (4) The Minister will not issue a notice requiring submission of a unit development scheme if he or she considers that the relevant permit and licence holders are co-operating sufficiently to achieve a unified development. For example, this could be achieved by adjacent PMPs and licences having complementary work programmes, determined by mutual co-operation.

8.11 Evaluation of a unit development proposal

- (1) *Section 46 of the Act* provides that where the Minister decides not to approve a unit development scheme submitted in response to a notice (see clause 8.10(1) above), the Minister must provide reasons for doing so, and invite the permit holders to submit a modified unit development scheme within a specified reasonable period.
- (2) The Minister will assess unit development schemes using the same considerations as for the assessment of an application for a mining permit (see clause 8.3(2)), amended as appropriate. The Minister will also take into account:
 - (a) any approved work programmes relating to any of the permits subject to the notice of unit development, or any work programmes submitted for approval and under consideration
 - (b) any conditions of the permits or licences that are subject to the notice of unit development, and
 - (c) proposals or agreements entered into by the relevant permit and licence holders concerning obligations, liabilities and entitlement to production.
- (3) Where the Minister approves or determines a unit development scheme, a certificate or endorsement to that effect will be issued in respect of each of the affected permits or licences.

³⁶ The maximum ultimate recovery of petroleum depends on sound petroleum reservoir management, avoiding wastage, and a production programme that accords with good industry practice. Without an overall petroleum field management or development scheme, maximum ultimate recovery of petroleum may not be achieved. For example, this may be due to a failure to use enhanced recovery techniques, such as pressure maintenance through gas or water techniques and gas cycling.

8.12 Preparation of a unit development scheme by the Minister

- (1) *Section 46 of the Act* provides that if a unit development scheme or modified unit development scheme is not submitted to the Minister within the period specified in the relevant notice or within any extended period agreed to (and the notice has not subsequently been cancelled), or if the modified unit development scheme is not approved, then the Minister must prepare a unit development scheme that in his or her opinion is fair and equitable to all the permit and licence holders. The permit holders will be required to conduct mining activities and to perform in accordance with that scheme and to observe the conditions of the scheme.
- (2) The matters that the Minister will consider when determining a unit development scheme include:
 - (a) each permit and/or licence holder's production entitlement. This will require a determination of the petroleum in place and estimates of moveable and recoverable reserves in each affected permit. Other factors that may be relevant are whether one permit or licence holder has incurred or may incur greater exploration, appraisal and development costs, or will provide more facilities.
 - (b) the need for reservoir management consistent with good industry practice and for the balancing of production from different parts of the field
 - (c) the production profile for the petroleum field and depletion scenarios (which must be in accordance with good industry practice)
 - (d) the technical merits, risks, costs and benefits of alternative field development plans. Where discount rates are used, the rates in clause 8.3(3) will apply
 - (e) each permit and licence holder's liability for the costs of necessary ongoing mining activities
 - (f) each permit and/or licence holder's obligations in respect of liability under the Act³⁷ and the carrying out of mining activities, and
 - (g) the need for a unit operating agreement. (This may be imposed as a condition of the unit development scheme, with the agreement to be reached by the affected permit or licence holders within a specified period.)
- (3) *Section 46 of the Act* provides that if the Minister incurs costs in determining the unit development scheme (for example, because of the need to obtain independent expert advice), these costs must be paid by the permit holders and licence holders, with the share of costs determined as the Minister thinks fit.

³⁷ Sections 102 and 103.

9. Flaring, incinerating and venting

9.1 Introduction

- (1) “Flaring” is the burning off of natural gas as a waste product when it is uneconomic to sell or conserve it, or in emergencies when accumulations of gas become a safety concern; flaring can be associated with both exploration and mining activities. “Incinerating” is the burning off of waste gas in an incineration unit. “Venting” is the direct release of natural gas into the atmosphere.
- (2) The Resource Management Act 1991, the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 and the Climate Change Response Act 2002 control the environmental effects of flaring and venting.

9.2 General provisions on flaring, incinerating and venting

- (1) As required by the purpose statement of the Act and section 33(1)(b), and under the Minister’s interpretation of the purpose statement (see clause 1.3), all activities and operations must be designed and conducted so as to maximise economic petroleum recovery and minimise wastage, within reasonable technical and economic constraints.
- (2) The Regulations limit the circumstances in which permit holders may flare or vent petroleum. In summary, these are:
 - (a) as a consequence of an emergency shutdown
 - (b) as a consequence of equipment failure (but petroleum may not be flared for more than seven days)
 - (c) during initial well-testing operations (petroleum may not be flared on more than 30 days, irrespective of how long it is flared during any given day)
 - (d) under a PMP work programme approved by the Minister
 - (e) with the Chief Executive’s written consent.
- (3) Applications for the Chief Executive’s consent to flare petroleum must be made in accordance with the Regulations and on the form on the NZP&M website.

9.3 Evaluation of applications for consent to flare or vent

- (1) In evaluating an application the Chief Executive may consider:
 - (a) whether alternatives for the use of gas are available and economically viable (including the feasibility of re-injection and transportation for use through existing or new gas-gathering systems)
 - (b) whether shut-ins may cause damage to equipment and hamper reservoir performance while facilities are installed to avoid wastage of gas
 - (c) the value of information derived from well-testing operations in terms of design of development plans that will maximise economic recovery
 - (d) the effect of any flaring restriction on the net present value of a development option under a PMP or PMP application using the discount rates specified in clause 8.3(3).

9.4 Conditions of consents to flare

- (1) The Regulations provide that the Chief Executive may grant an application to flare or vent petroleum with any conditions he or she sees fit. The regulation sets out the types of conditions that (without limitation) may be applied. In general, the conditions aim to minimise flaring and venting.
- (2) The duration of a consent to flare petroleum will be at the Chief Executive's discretion.
- (3) Similar conditions may apply to any mining work programme approved by the Minister.
- (4) As a matter of policy:
 - (a) permit holders will be expected to implement practical and economic options for collecting and using gas
 - (b) consent to venting gas will not be granted (gas may only be vented following equipment failure or as a consequence of an emergency shutdown).
- (5) The Crown Minerals (Royalties for Petroleum) Regulations 2013 set out royalty provisions for flared gas that apply to permits (excluding subsequent permits) granted after this Programme comes into effect.

10. Unconventional petroleum resources and underground gas storage

10.1 Introduction

- (1) This chapter sets out practices and procedures concerning the following unconventional petroleum resources:
 - (a) Gas hydrates
 - (b) Coal seam gas
- (2) The chapter also sets out policies and procedures for underground gas storage.
- (3) Permits granted after this Programme comes into effect for both conventional and unconventional petroleum will include provisions providing for overlapping permits as set out in this chapter, and for processes and requirements for the coordination of activities between permit holders and determination of disputes.

Gas hydrates

10.2 Gas hydrates: Introduction

- (1) As noted in clause 4.2, petroleum exploration and mining permits provide a right to explore and mine that is exclusive to the permit holder, except that permits for gas hydrates may overlap permits for conventional petroleum resources (and vice versa).
- (2) Gas hydrates are solids that form from a combination of water and one or more hydrocarbon or non-hydrocarbon gases. Gas hydrates are expected to become an important petroleum resource for New Zealand over the medium term, once technical solutions are available for safely and efficiently processing these resources on a commercial scale. In the meantime, the gas hydrate resource provides opportunities for research and development (R&D).
- (3) The provisions of this Programme dealing with the following issues apply to permits for gas hydrates in the same manner as to conventional petroleum resources (with all necessary modifications):
 - (a) regard to the principles of the Treaty of Waitangi (chapter 2)
 - (b) land available for petroleum permits (chapter 3)
 - (c) general provisions relating to permits (chapter 4)
 - (d) matters the Minister must consider and be satisfied about before granting permits (chapter 5)
 - (e) management of permits and obligations of permit holders (chapter 11)
 - (f) changes to permits (chapter 12), as applicable and subject to the provisions in this chapter 10 on gas hydrates.

10.3 Gas hydrate prospecting permits

- (1) The purpose of a gas hydrate prospecting permit (P(H)PP) is to authorise the permit holder to prospect for gas hydrate deposits or occurrences.
- (2) The provisions in this Programme relating to prospecting permits (chapter 6) also apply to gas hydrate prospecting permits.

10.4 Gas hydrate exploration permits

- (1) The purpose of a petroleum (gas hydrate) exploration permit (P(H)EP) is to authorise the permit holder to explore for gas hydrate resources. It does not convey a right to explore for, or prospect for, conventional petroleum resources or any other Crown-owned mineral.
- (2) P(H)EPs provide an exclusive right for permit holders to explore for gas hydrate resources in a particular area.
- (3) The Minister will normally make P(H)EPs available only through Petroleum Exploration Permit Rounds.
- (4) The matters the Minister must consider before granting P(H)EPs are the same as those specified in chapter 5 of this Programme.
- (5) Before granting a P(H)EP the Minister will need to be satisfied that the work proposed under the work programme is likely to identify gas hydrate systems and evaluate the feasibility of mining particular gas hydrate deposits or occurrences.
- (6) The Minister may grant a P(H)EP that overlaps a PEP for conventional petroleum resources (and vice versa). Where the underlying PEP existed before this Programme came into effect, a P(H)EP will not be granted without the prior written consent of the underlying permit holder. Where the PEP was granted after this programme came into effect, the Minister will consult with the PEP holder and consider any views they express before deciding whether to grant a P(H)EP.
- (7) Where P(H)EPs and PEPs overlap, the holder of the permit that was granted later in time must obtain the written consent of the first or underlying permit holder before commencing activities over the same area as the underlying permit. The underlying permit holder must not unreasonably refuse permission or impose unreasonable conditions on the proposed activities of the other permit holder. If there is a dispute over this matter, the Minister may make a determination, which will be binding on both parties. Guidelines on the types of conditions the Minister will normally consider reasonable and unreasonable are provided in clause 6.5(5) and (6).
- (8) The Minister will not grant a P(H)EP that overlaps the area of a PMP or petroleum licence for conventional petroleum resources (or a PEP that overlaps the area of a P(H)MP) without the written consent of the first or underlying permit or licence holder.

Duration

- (9) P(H)EPs will be granted by the Minister for a term set by the Notice for the Petroleum Exploration Permit Round.
- (10) The Minister will not grant an appraisal extension unless satisfied about the matters set out in section 35A of the Act (see clause 7.12).

Area

- (11) There are no specific size limits for a P(H)EP, but the area may not exceed the area to be explored under the proposed work programme.

Relinquishment

- (12) Relinquishment obligations may be imposed as a condition of a P(H)EP and will be set out in the Permit Round Notice.

Discoveries and appraisal work programmes

- (13) Permit holders that discover³⁸ gas hydrate resources must notify the Chief Executive of the discovery as soon as practicable. NZP&M will require the permit holder to attend a meeting to enable NZP&M to better understand the nature of the discovery and the permit holder's intentions for the wider permit area.
- (14) Permit holders are entitled to undertake a programme of appraisal under their P(H)EPs.
- (15) The Minister may grant an appraisal extension (extension of duration) if the Minister is satisfied that additional time is required for appraisal to enable the permit holder to submit a satisfactory mining permit application.

10.5 Gas hydrate mining permits

- (1) A petroleum (gas hydrate) mining permit (P(H)MP) gives the permit holder the right to mine gas hydrate resources.
- (2) In considering whether to grant an application for a P(H)MP, the Minister will:
- (a) consider whether the application meets the same requirements as for a conventional petroleum mining permit (see chapter 5)
 - (b) consider whether the mining operation is technically feasible and can be undertaken safely, and whether it will interfere with other petroleum permits in the area, and
 - (c) determine an appropriate royalty that ensures a fair financial return to the Crown.
- (3) The Minister will not normally grant a P(H)MP unless satisfied that production is likely to begin within a negotiated period.
- (4) The Minister will not grant a P(H)MP that overlaps the area of a PMP or petroleum licence for conventional petroleum resources (and vice versa) without the written consent of the first or underlying permit or licence holder.
- (5) If the Minister is satisfied that the conditions in subclauses (2) and (3) can be met, the Minister may grant a P(H)MP on conditions set in accordance with the Act, in exchange for the surrendered exploration permit area.

³⁸ For gas hydrates, the term "discover" refers to the identification of gas hydrate resources that the permit holder considers to be potentially mineable using known extraction techniques.

Coal seam gas

10.6 Coal seam gas

- (1) Coal seam gas is petroleum as defined in the Act. The provisions of this Programme that apply to permits to prospect for, explore for, and mine conventional petroleum resources also apply to coal seam gas.
- (2) The holders of coal mining permits and licences have an incidental right to extract, collect and release coal seam gas, where it is necessary and reasonable to do so in conjunction with the safe management of coal mining operations. This right does not give coal mining permit operators a right of ownership of the gas or the right to sell or trade gas.
- (3) A coal mining permit or licence holder that wants to sell or trade gas, including that associated with coal mining, must apply for a petroleum mining permit.

Coordination with existing coal mining operations

- (4) To avoid potential interference issues between coal and petroleum activities, if a petroleum permit targeting coal seam gas overlaps with an existing coal mining permit or licence, the coal mining permit or licence holders must provide to the petroleum permit holder a five-year development plan for the existing coalmine, showing the location and extent of the area of the mining permit or licence in which mining is proposed for the following five years. This will include a three-year rolling coal extraction zone, which will be excluded from any non-minimum impact petroleum activities by the petroleum permit holder unless the underlying coal mining permit or licence holder gives written consent for those activities.

Coordination with new coal mining operations

- (5) When a coal mining permit is granted over the area of an existing petroleum permit that is held for the purpose of prospecting for, exploring for, or mining coal seam gas, the Minister will require the holders of both permits to adhere to a coordination procedure similar to that in subclause (4) above.
- (6) For the avoidance of doubt, if a minerals permit targeting coal resources overlaps with an existing petroleum permit targeting coal seam gas, the petroleum permit holder must provide to the mineral permit holder a five-year development plan for the existing coal seam gas operation, showing the location and extent of the permit area in which coal seam gas production is proposed for the following five years. This will include a three-year rolling coal seam gas production zone, which will be excluded from any non-minimum impact mineral activities by the mineral permit holder unless the underlying petroleum permit holder gives written consent for those activities.

Underground gas storage

10.7 Underground gas storage

- (1) *Section 2 of the Act* defines an “underground gas storage facility” as a natural reservoir into which petroleum is injected in a gaseous state for subsequent extraction.
- (2) Underground gas storage facilities provide a useful mechanism for storing gas for later use when it has a higher value – for example, for use in gas-fired electricity generation.
- (3) The use of a natural reservoir as an underground gas storage facility requires a petroleum mining permit (PMP) covering the natural reservoir and the operation of the underground gas storage facility.
- (4) A PMP may include or be amended to include an underground gas storage facility where the gas to be injected into the reservoir is mined from the same area as the permit, provided that:
 - (a) none of the gas to be injected into the reservoir is subject to a sales agreement before it is injected into the reservoir
 - (b) none of the gas to be injected into the reservoir is mined under another permit.
- (5) If either of the circumstances in sub-clause (4)(a) and (b) above are not met, a new PMP must be applied for, and, where applicable, the area of an existing permit must be reduced to exclude the area of the PMP covering the area of the underground gas storage facility.
- (6) Where the area of the proposed facility is subject to a petroleum mining licence under the Petroleum Act 1937, the licence holder must apply for a PMP covering the proposed facility before operating the facility.
- (7) The provisions of the Act, the Regulations and this Programme that apply to PMPs apply with all necessary modifications to PMPs that include an underground gas storage facility. Without limitation, these include provisions relating to:
 - (a) exclusivity of rights (see clause 4.2)
 - (b) matters the Minister must be satisfied about before granting a permit (see chapter 5)
 - (c) requirements relating to the management of permits and the obligations of permit holders (see chapter 11)
 - (d) changes to permits (see chapter 12).
- (8) Special royalty provisions apply to permits for underground gas storage facilities granted after this Programme comes into effect. These are specified in the Crown Minerals (Royalties for Petroleum) Regulations 2013.

11. Permits (General): Management of permits and obligations of permit holders

Obligations of the permit holder

11.1 Obligations of the permit holder

- (1) The main obligations of the permit holder³⁹ are to:
 - (a) carry out the work programme specified in the permit
 - (b) comply with the conditions of the permit and all other obligations under it
 - (c) operate in accordance with good industry practice (see clause 1.3(11) and (12))
 - (d) report annually to NZP&M on specified matters (see clause 11.2)
 - (e) attend an annual work programme review meeting with NZP&M (see clause 11.7)
 - (f) calculate and pay royalties (prescribed in the Crown Minerals (Royalties for Petroleum) Regulations 2013, the relevant Minerals Programme or an existing privilege), and submit royalty returns
 - (g) pay fees prescribed in the Crown Minerals (Petroleum Fees) Regulations 2006
 - (h) notify the Minister of and obtain consent to specified events and transactions (see clauses 12.7 to 12.11 on transfers and dealings)
 - (i) lodge information and data in accordance with the Regulations (see clauses 11.3 to 11.6)
 - (j) properly decommission production facilities and abandon wells in accordance with good industry practice (see clause 8.9)
 - (k) comply with the Act, regulations and this Programme
 - (l) comply with the Health and Safety in Employment Act 1992 and regulations made under that Act.
- (2) Other obligations include to:
 - (a) cooperate with any enforcement officer
 - (b) keep records for at least seven years after the year to which they relate, or two years after the end of a permit to which they relate, whichever is the longer.
- (3) *Section 100(2) of the Act* provides that it is an offence to fail to comply with permit conditions and with the Act. Under *section 101(2) of the Act*, every person who commits an offence against section 100(2) is liable on summary conviction to be fined.
- (4) The Minister may also revoke a permit if the permit holder has contravened or is contravening the Act, regulations, or any of the conditions of a permit (see clause 12.13).

³⁹ See sections 33, 33C, 33D and 34 of the Act.

- (5) *Section 25(5) of the Act* provides that a permit must not be granted if a monetary deposit or bond that is required by the Minister as security for compliance with the conditions of the permit has not been deposited with the Chief Executive. Monetary deposits or bonds will not normally be required.

Reports, records and samples

11.2 Annual reporting by the permit holder

- (1) Permit holders must submit to NZP&M an activity and expenditure report covering the previous calendar year no later than 31 March in each year. The detailed requirements are set out in Part 4 of the Regulations.
- (2) The annual activity and expenditure report must include:
- (a) a report on all activities undertaken under the permit, including the extent of compliance with the work programme:
 - (i) prospecting and exploration permit holders must include information on all field investigations, surveys, reprocessing of data and drilling activities
 - (ii) PMP holders must include information on production rates, well-stimulation activities, various reservoir metrics, drilling, survey activity, and proposed mining activity for the next 12 months
 - (b) a report on expenditure over the previous year.
- (3) Permit holders must also submit to NZP&M, at the same time as the annual activity and expenditure report, a report on the permit holder's engagement with iwi and hapū whose rohe includes some or all of the permit area or who otherwise may be directly affected by the permit (see clause 2.11).

11.3 Notice of activities

- (1) The Regulations require permit holders to notify NZP&M of their intention to carry out the following exploration and production activities (at least the number of working days stated below prior to commencement of the activity):
- (a) geochemical, gravity, magnetic or seismic surveys (at least 15 working days)
 - (b) commencement of well-drilling operations (at least 15 working days)
 - (c) commencement of well-stimulation operations (including hydraulic fracturing) (at least 10 working days)
 - (d) commencement of well-workover operations (at least 10 working days)
 - (e) commencement of well-testing operations (at least 10 working days)
 - (f) abandonment of a well (before the abandonment operation commences).
- (2) The Regulations require permit holders to notify NZP&M of the following exploration and production activities as soon as practicable (within the number of working days stated below):
- (a) discovery of a hydrocarbon accumulation (within 20 working days)
 - (b) completion of a well producing, or associated with producing, petroleum (within 20 working days)

- (c) suspension of well-drilling operations (within 20 working days)
- (d) conclusion of well-stimulation operations (including hydraulic fracturing) (within 10 working days)
- (e) conclusion of well-workover operations (within 10 working days)
- (f) conclusion of well-testing operations (within 10 working days).

11.4 Operation reports, records and samples

- (1) The Regulations require permit holders to provide reports and records to NZP&M after the conclusion of specified survey and drilling operations. Detailed requirements are set out in the Regulations.
- (2) The main requirements for reports, records and samples relate to:
 - (a) surveys
 - (b) daily drilling reports
 - (c) well-workover reports
 - (d) well testing reports
 - (e) well completion and well-stimulation and testing
 - (f) well abandonment
 - (g) drill cuttings
 - (h) core analysis
 - (i) core samples and sidewall core samples
 - (j) microfossil and petrographic material
 - (k) oil samples.

11.5 Permit conclusion reports

- (1) The Regulations require specified information to be supplied after a permit expires or is surrendered or revoked. This includes copies of all reports and records that relate to plays, leads and prospects that have been identified in the permit area during the permit holder's tenure.

11.6 Petroleum reserves and resources

- (1) The Regulations require permit holders to provide annual reports, using standardised approaches, on petroleum reserves and resources, gas deliverability on installed infrastructure, and related information.
- (2) The Regulations allow the Chief Executive to publish this information (in some cases on an aggregated basis) for public interest reasons, and to verify and validate estimates of reserves and resources.

Annual work programme review meeting

11.7 Annual work programme review meeting

- (1) *Section 33D of the Act* provides that the Chief Executive may require the holders of petroleum permits to attend an annual review meeting to monitor progress against the work programme and to provide an opportunity for discussions, including with any other person or regulatory agency the Chief Executive has invited to the meeting.
- (2) To elaborate, the purpose of the meeting is to:
 - (a) review progress by the permit holder against the work programme
 - (b) discuss expectations, risks and key decisions for the period ahead
 - (c) discuss, where applicable, the next stage of the work programme of a petroleum exploration permit (see clause 7.9)
 - (d) review the permit holder's report on its engagement with iwi and hapū
 - (e) inform other regulatory agencies about the permit holder's activities relevant to each agency's responsibilities, and improve the overall coordination of regulatory activities (for the other regulatory agencies that will be involved, see subclause (8) below).
- (3) The timing, location, duration and agenda of the meeting will be set by NZP&M after consulting with the permit holder. Normally the meeting will:
 - (a) be held in Wellington
 - (b) take place in the second or third quarter of the year (after annual activity and expenditure reports have been submitted in the first quarter)
 - (c) be scheduled with at least 20 working days' notice.
- (4) NZP&M may request the permit holder (or operator) to provide information on the matters in subclause (2) above, if the information has not already been provided in the permit holder's annual report (see clause 11.2).
- (5) *Section 33D of the Act* provides that the meeting must be attended by at least one representative of the operator who has sufficient seniority, expertise and knowledge to enable full discussion of the work programme and permit conditions. Representatives of other holders of the permit may also attend the meeting.
- (6) A draft record of the meeting will be prepared by NZP&M and circulated to the meeting participants for comment. NZP&M will prepare a final record after considering any comments, and will circulate it to the meeting participants. Where meeting participants did not attend the entire meeting for reasons of commercial confidentiality, NZP&M may circulate a draft and final record of the meeting to those participants that redacts material as appropriate.
- (7) As a guideline, NZP&M will aim to:
 - (a) circulate a draft record of the meeting within 20 working days of the meeting
 - (b) provide 15 working days for comment by participants
 - (c) provide a final record within 20 working days of the end of the period for comments.

- (8) The Chief Executive must invite to the annual meeting other regulatory agencies he or she thinks are likely to have regulatory oversight of the activities under the permit(s) (see subclause (9) below). The Chief Executive may also invite the applicable “appropriate Minister” (as defined in section 2A of the Act) if the permit holder has an access arrangement (or has applied, or intends to apply, for an arrangement) in respect of Crown land. NZP&M will consult with the permit holder and the regulatory agencies about the parts of the meeting in which it would be desirable to involve other regulatory agencies, and about confidentiality requirements. To avoid doubt, any involvement of other regulatory agencies in an annual review meeting is not a substitute for the permit holder meeting those agencies’ own regulatory requirements, and does not relieve the permit holder from meeting all other applicable legislative and regulatory requirements.
- (9) Other regulatory agencies include:
 - (a) the Environmental Protection Authority
 - (b) a consenting authority under the Resource Management Act 1991
 - (c) Maritime New Zealand
 - (d) the Health and Safety Regulator
 - (e) the Department of Conservation.
- (10) NZP&M may also call a meeting with the operator at any time outside the annual work programme meeting cycle as appropriate – for example, in the final year of a stage of a petroleum exploration permit (see clause 7.9), or following a discovery (see clause 7.11).

12. Changes to permits

Changes to conditions of permits

12.1 Applications to change the conditions of permits: Introduction and processes

- (1) *Section 36 of the Act* provides that a permit holder may apply to change the conditions of a permit in the following ways:
 - (a) to amend permit conditions, and in particular the approved work programme
 - (b) to extend the land area of the permit
 - (c) to extend the duration of the permit.
- (2) Although section 36 allows for an extension of the minerals to which a permit relates, this will not apply to petroleum permits:
 - (a) If a petroleum permit holder wants to prospect for, explore for, or mine a non-petroleum mineral, it will need to apply for a non-petroleum minerals permit.
 - (b) If a petroleum permit holder wants to prospect for, explore for, or mine gas hydrates, it will need to apply for a separate petroleum permit for gas hydrates (see chapter 10).
- (3) An application to change the conditions of a permit must be made in accordance with the Regulations. Forms are available on the NZP&M website.
- (4) *Section 36 of the Act* requires that any application to amend the conditions of a permit (except for an appraisal extension or to extend the duration of a mining permit⁴⁰) must be received not later than 90 days before the “due date”, which is:
 - (a) the expiry of the permit, or
 - (b) a specified date, if the application is to change work in a work programme that must be carried out by the specified date or is to change the specified date.
- (5) However, *section 36 of the Act* provides that the Minister may accept an application after 90 days before the due date, but no later than the due date, if the Minister considers there are compelling reasons why the 90-day requirement could not be complied with.
- (6) Without limiting the matters that the Minister may consider, the following may be “compelling reasons” for allowing a late application:
 - (a) that the information required for the application either did not exist or could not have been known in sufficient time to make the application earlier than 90 days before the due date
 - (b) force majeure reasons (that is, causes that are beyond the control of the permit holder and that do not involve default or negligence on its part).⁴¹

⁴⁰ Applications for an appraisal extension (see clause 7.12) or to extend the duration of a mining permit (see clause 12.5) must be received six months before the due date.

⁴¹ Force majeure events are those that, in the Minister’s opinion, are beyond the reasonable control of the permit holder and could not reasonably be anticipated, controlled, mitigated or prevented by the permit

- (7) Delays in obtaining agreement between permit participants or delays in obtaining other legal or financial agreements will not be considered to be “compelling reasons” for allowing a late application.
- (8) When a change is made to a permit, the permit register will be updated accordingly.

12.2 Changes to work programmes

Prospecting

- (1) The Minister will normally consent to a change in the work programme for a petroleum prospecting permit. However, the Minister may require permit holders wishing to make major changes to their work programme to surrender the permit and submit a new application.

Exploration

- (2) The Minister will not consent to a change to the key deliverables of the current stage of a work programme (see clause 7.9), including to the duration of the stage, except in the following circumstances:
 - (a) A force majeure event prevents the permit holder from carrying out work in accordance with the approved work programme.⁴²
 - (b) There are unavoidable delays in obtaining a drilling rig or seismic survey vessel. Unavoidable delays are those that, in the Minister’s opinion, could not have been managed or overcome by the permit holder without incurring excessive (uneconomic) costs.⁴³
 - (c) New geological or geophysical evidence clearly demonstrates, in the Minister’s opinion, that there is a justifiable need to change some elements or the timing of the work programme, and this would not materially reduce the value of the work programme. The permit holder must have used its best endeavours to comply with the existing work programme, and must have identified the geological or geophysical problem and notified the Minister of the problem at the earliest reasonable opportunity.

holder and that are not caused or contributed to by the permit holder. A force majeure event will normally only suspend the performance of a work programme for the period of the event or its aftermath. They do not include normal commercial circumstances and risks, such as changes in oil prices, difficulties in obtaining farm-in partners, disputes or difficulties with joint venture partners, difficulties in raising capital, or avoidable delays in obtaining a drilling rig or seismic survey vessel.

⁴² See footnote 41 on force majeure.

⁴³ A delay in obtaining a drilling rig or seismic survey vessel will not be unavoidable where, with proper foresight and planning (including entering into early commitments with suppliers), the delay could have been avoided. A permit holder is expected to negotiate with suppliers early enough to enable rig clubs to be formed and contract negotiations to be concluded. A delay will also not be unavoidable if it has been caused by the permit holder’s failure to commit to meeting the costs involved for commercial reasons.

- (d) The permit holder is being prevented from progressing exploration work by delays in obtaining consents under the Act or any other Act, and:
- (i) those delays have not been caused or contributed to by any failure or default on the part of the permit holder
 - (ii) the permit holder has applied for consents under the relevant legislation in sufficient time to obtain them under normal circumstances, and
 - (iii) the permit holder is making all reasonable efforts to progress these applications.

The Minister may seek and take into account the views of the consenting authority on these matters.

- (e) The permit holder is being prevented from progressing exploration work by delays in obtaining one or more access arrangements to land, where, in the Minister's opinion:
- (i) those delays have not been caused or contributed to by any failure or default on the part of the permit holder
 - (ii) the permit holder can demonstrate a clear record of planning, early engagement with landowners, and reasonable offers to landowners,⁴⁴ and
 - (iii) the permit holder is making all reasonable efforts to progress access arrangements.
- (f) Agreeing to the change is necessary to give effect to a decision by the Minister to extend the area of the permit or the duration of the permit.
- (g) The permit holder is being prevented from fulfilling a work programme condition by a dispute with a non-petroleum or non-conventional petroleum permit holder (see clause 4.4).

- (3) The Minister may decline to consent to a change to the work programme if the permit holder has not complied with other conditions of the permit, the regulations or the Act.
- (4) Consent to changes in the secondary deliverables in a work programme is not required (see clause 7.9).
- (5) Permit holders are not required to apply for a change to work programme conditions when a new work programme is agreed between the permit holder and the Minister for a subsequent stage of the permit, as the new work programme conditions will be automatically recorded in the permit (see clause 7.9).

Mining

- (6) An application to change a mining work programme will be considered by the Minister taking into account the same matters as for the grant of the PMP (see chapter 8).

⁴⁴ The Minister will normally consider (without limitation) that offers to landowners are reasonable if the permit holder can demonstrate that similar offers have been agreed to by landowners in similar circumstances in the previous three years.

- (7) The Minister will also consider (but is not limited to) the following matters when considering an application to change a PMP:
- (a) whether the proposed change will facilitate a more efficient development of the resource
 - (b) whether there will be a material reduction in production over time as a result of the proposed change
 - (c) whether agreeing to the change is necessary to give effect to a decision by the Minister to extend the area covered by the permit
 - (d) any force majeure event that has prevented or may be preventing the permit holder from progressing mining operations in accordance with the approved work programme⁴⁵
 - (e) whether the permit holder has complied with the other conditions of the permit, the regulations and the Act.

12.3 Changes to a petroleum mining permit work programme required by the Minister

- (1) *Section 37 of the Act* provides for the work programme of a PMP to be changed if this is necessary to maximise the economic recovery of the petroleum in accordance with good industry practice.
- (2) *Section 37* provides that if, on the basis of information received by Minister on the characteristics and extent of the field, the Minister considers that a change in the work programme is necessary, the Minister must notify the permit holder of the proposed change and set out the reasons why it is being proposed.
- (3) *Section 37* provides that if the permit holder and the Minister cannot agree on the proposed changes, the permit holder may notify the Minister, within 30 days after being notified of the proposed change or within any further time that the Minister may allow, that the permit holder requires the matter to be determined by an independent expert.
- (4) *Sections 37 and 38* set out provisions and processes for the appointment of the independent expert and for his or her determination.
- (5) The provisions in sections 37 and 38 are not expected to be utilised other than in exceptional circumstances. The Minister will take into account the investment implications of activating the provisions in section 37. In the first instance, it is expected that the Minister and the permit holder will discuss the issues in good faith and use reasonable endeavours to agree on amendments to the work programme.

⁴⁵ See footnote 41 on force majeure.

12.4 Extension of land area of a permit

Prospecting

- (1) The Minister will normally grant an extension to the land area of a PPP where, and to the extent that, the permit holder requires additional land to undertake an expanded work programme.

Exploration, including an appraisal extension

- (2) The Minister will not grant an extension of land (EOL) if:
 - (a) the area of the proposed extension is already subject to a petroleum permit or licence, or
 - (b) the area of the proposed extension is:
 - (i) in a proposed block in a Petroleum Exploration Permit Round that has been released for public consultation through publication on the relevant government website, or
 - (ii) in an area reserved for competitive allocation (see clause 7.4).
- (3) The Minister may decline to consent to an EOL if the permit holder has not complied with other conditions of the permit, the regulations or the Act or if the Minister is not otherwise satisfied of the matters set out in subclauses (4) and (5) below (as appropriate).
- (4) If the permit holder has made a discovery, the Minister will grant an extension of land, subject to the holder agreeing to an appraisal work programme that is satisfactory to the Minister, where the Minister is satisfied that:
 - (a) the discovery extends beyond the boundary of the permit area, and
 - (b) the area of the extension sought is necessary in order to appraise the discovery.
- (5) If the permit holder's application for an extension of land is based only on seismic and other geotechnical information (and not on a discovery), the Minister may grant an extension of land where:
 - (a) the Minister is satisfied that:
 - (i) the permit holder has identified a clearly defined, drill-ready prospect that extends beyond the boundary of the permit area
 - (ii) the area of the extension sought is necessary in order to explore the prospect, and
 - (iii) there is little or no competitive interest in the area from other permit holders in the region (see subclause (6) below), and
 - (b) the permit holder commits, as part of the application, to drill an exploration well (in addition to any existing well obligations in the permit work programme) for the prospect before:
 - (i) the expiry of the permit, or
 - (ii) 18 months after the date on which the application is granted, for an onshore permit, or 30 months after the date on which the application is granted, for an offshore permit,whichever is earlier.

- (6) To determine whether there is competitive interest in the area of the requested extension of land (that is, where subclause (5) applies) the Minister will provide 15 working days for other permit holders in the region to identify any alternative prospects that extend from their permit areas into the area over which the EOL has been applied for.⁴⁶ Where one or more alternative clear prospects are identified by other permit holders to the satisfaction of the Minister, the Minister may:
- (a) decline the EOL application, and
 - (b) reserve the area for a future Petroleum Exploration Permit Round (see clause 7.4).

Mining

- (7) The Minister may grant an extension of the area of a PMP only if:
- (a) the area of the proposed extension is not already subject to a petroleum permit or licence held by another permit holder
 - (b) the area of the proposed extension is not in a proposed block in a Petroleum Exploration Permit Round that has been released for public consultation through publication on the relevant government website
 - (c) the petroleum field has been demonstrated, as a consequence of exploration or mining activities, to extend beyond the boundaries of the current permit
 - (d) the permit holder proposes to mine the petroleum field within a period the Minister considers reasonable, and
 - (e) the permit holder has complied in all material respects with the conditions of the permit, the regulations and the Act.

General

- (8) As a condition to agreeing to extend the land covered by a permit, the Minister may require:
- (a) an amendment to the permit's work programme conditions
 - (b) a surrender of area of the permit.

Geophysical surveys outside the area of a permit

- (9) *Section 42A of the Act* provides for the Minister to grant written authorisation to a permit holder to carry out geophysical surveys on land adjacent to the land to which the permit relates if another permit is not in force on that adjacent land. The authorisation is subject to the provisions of the Act as if the authorisation were a prospecting permit.

⁴⁶ When asking whether there is competitive interest from other permit holders in the area of the proposed EOL, the details of the justification for the application for the EOL will not be disclosed to other permit holders.

12.5 Extension of the duration of a permit

Prospecting

- (1) The Minister may grant an extension to the duration of a PPP, provided:
 - (a) the total duration of the PPP does not exceed four years
 - (b) the permit holder has undertaken the work in the original work programme in a timely and effective manner,
 - (c) the permit holder proposes an appropriate work programme for the additional duration.

Exploration

- (2) The maximum durations of PEPs are set out in clause 7.8. *Section 35 of the Act* does not allow an extension to the duration of a petroleum exploration permit except where a discovery has been made and the remaining duration of the permit does not allow sufficient time for appraisal work.⁴⁷ In that case, the appraisal extension provisions will come into effect (see clause 7.12).

Mining

- (3) *Section 36(5) of the Act* provides that the duration of a PMP 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.
- (4) In evaluating the application for an extension of the duration of a PMP, the Minister will:
 - (a) either approve a new work programme, or determine that a new work programme is not needed, on the basis of the considerations applicable to PMPs set out in chapter 8
 - (b) consider the extent to which the inability to deplete the discovery during the term of the permit is due to force majeure events⁴⁸
 - (c) ensure that any such extension is only for such a period as the Minister considers reasonable to enable the permit holder to economically deplete the discovery
 - (d) consider whether the permit holder has complied with the conditions of the permit, the regulations and the Act.
- (5) *Section 36(3) and (4A) of the Act* provides that an application for an extension of duration of a mining permit must be received no later than six months before the expiry of the permit but that the Minister may agree to accept an application at a later date agreed by the Minister if the Minister is satisfied that there were compelling reasons why the six-month deadline could not be met.
- (6) Guidance on matters the Minister may consider to be “compelling reasons” is provided in clause 12.1(6) and (7).

⁴⁷ *Clause 7 of Schedule 1 of the Act* allows for an extension of duration of existing permits (see clause 7.8 of this Programme)

⁴⁸ See footnote 41 on force majeure.

12.6 Amalgamation of adjacent permits

- (1) A permit holder who holds two or more adjacent PEPs or two or more adjacent PMPs (referred to in this clause as “current permits”) may apply to amalgamate the current permits through surrendering one (or more) of the permits in exchange for an extension of land of an adjacent permit of the same type over some or all of the area of the surrendered permit.
- (2) In considering whether to grant an application to amalgamate adjacent permits, the Minister will consider:
 - (a) the results of prospecting, exploration or mining work undertaken up to the date of the application
 - (b) the area of each of the current permits and the extent to which they share a common boundary
 - (c) whether there is one continuous petroleum prospect spanning the current permits, as follows:
 - (i) for PEPs, the Minister must be satisfied that the current permits cover a single prospect that can most effectively be explored by a single work programme
 - (ii) for PMPs, the Minister must be satisfied that the current permits are part of the same mining operation
 - (d) whether amalgamating the current permits will enable the permit holder to more efficiently explore or mine.
- (3) The Minister will not allow amalgamation of adjacent permits unless the work programme is equivalent to or better than the combined work programmes of the current permits. Normally the conditions for amalgamation will be determined based on:
 - (a) the shortest remaining duration of the current permits
 - (b) the work programmes and conditions and reporting requirements of each current permit
 - (c) ensuring that the work programme provides for working the full area of the amalgamated permit.
- (4) If the Minister declines to grant an application to amalgamate adjacent permits, the application to surrender the current permit or permits will be deemed to be withdrawn.

Transfers and dealings

12.7 Change of operator

- (1) *Section 41C of the Act* provides that a permit operator may only be changed with the prior consent of the Minister.
- (2) *Section 41C* provides that an application to change the operator must be made by the permit holder, and jointly with the proposed new operator if that operator is not already an existing permit participant.

- (3) *Section 41C* provides that the Minister may consent to a change of operator only if:
 - (a) the Minister is satisfied that the proposed new operator is likely to comply with and give proper effect to the work programme and comply with obligations relating to reporting and payment of fees and royalties, and
 - (b) the Health and Safety Regulator has advised the Chief Executive that it is satisfied that the proposed new operator has met or is likely to meet any requirements of the Health and Safety in Employment Act 1992 and regulations made under that Act for day-to-day management of activities under the permit.

12.8 Transfer of interests in a permit

- (1) *Section 41 of the Act* provides that the transfer of all or part of an interest in a permit requires the consent of the Minister.
- (2) *Section 41* provides that the Minister may only grant consent if he or she is satisfied that the transferee is likely to be able to comply with the conditions of the permit and give proper effect to the permit. The Minister may request a statement of financial capability from the transferee and supporting information.
- (3) Matters the Minister will take into account include, but are not limited to, whether:
 - (a) the permit holder, following the transfer, will continue to have the financial and technical capability to give proper effect to the permit
 - (b) the prospecting, exploration or mining activities that the transferee (or a related company) is involved with, in New Zealand or internationally, may affect the transferee's capability to meet its obligations under the permit.
- (4) *Sections 92 and 92A of the Act* provide specific processes for transfers of permits following death, bankruptcy or liquidations of a permit holder.

12.9 Changes of control

- (1) *Section 41A of the Act* requires a permit participant to notify the Minister if:
 - (a) it is a corporate body and undergoes a change of control, or
 - (b) a corporate body that has provided a guarantee for the permit participant's obligations under the permit undergoes a change of control.
- (2) *Section 41A* provides that a change of control occurs when a person, not previously in control of the corporate body, acquires control of it. A person has control if they:
 - (a) have the power, directly or indirectly, to exercise or control the exercise of 50 percent or more of the voting rights over the corporate body, or
 - (b) together with one or more specified persons (as defined), have the power, directly or indirectly, to exercise or control the exercise of 50 percent or more of the voting rights over the corporate body.

- (3) *Section 41A(3)* requires the permit participant to:
- (a) provide the notification to the Minister within three months of the change of control occurring, and
 - (b) provide with the notice:
 - (i) a copy of the agreement or document that specifies the change of control
 - (ii) a statement from the permit participant that it has the financial capability to meet its obligations under the permit, and
 - (iii) in the case of a change of control of a guarantor, a statement from the guarantor that it has the financial capability to meet its obligations under the guarantee.
- (4) *Section 41A(5)* provides that, if required by the Minister, a permit participant must also provide to the Minister information or documents relevant to the financial capability of the person acquiring control, which may be:
- (a) general information about that person's financial capability, or
 - (b) information specific to the matters referred to in subparagraphs (3)(b)(ii) and (iii) above.
- (5) *Section 41A(7)* provides that the Minister may revoke the permit in accordance with the process set out in section 39 (see clause 12.13) if:
- (a) the Minister is not satisfied that, after the change of control, the permit holder is capable of meeting its financial obligations under the permit, and
 - (b) the Minister revokes the permit no later than three months from the date the change of control is notified in accordance with section 41A.
- (6) The power to revoke a permit in these circumstances will be used very sparingly because of its effect on other participants in the permit. It will only be used if, in the Minister's view, the change of control results in a significant risk that the permit holder will not be able to meet its financial obligations under the permit.

12.10 Dealings

- (1) *Section 41B of the Act* provides that dealings are not legally valid unless the Minister consents to them. A "dealing" is any agreement (other than a transfer of interest in a permit or a mortgage or other charge) that imposes on any participant in a permit any obligation relating to the sale or proceeds of production, if:
- (a) a reasonable person would consider that the agreement:
 - (i) has not been entered into on an arm's length basis, or
 - (ii) is not on arm's length terms, or
 - (iii) is otherwise not on a fair market basis, or
 - (b) the term of the agreement is 12 months or longer.
- (2) *Section 41B* provides that an application to the Minister for consent to the dealing must be made within three months of the agreement that contains the proposed dealing and be accompanied by a copy of the agreement. Applications must contain any information prescribed in the Regulations and be made using any applicable form that is available on the NZP&M website.

- (3) If a permit participant is uncertain whether an agreement is or is not a dealing that falls within the provisions of section 41B(4)(a) (see subclause (1)(a) above), they should apply to the Minister for consent.
- (4) As noted in subclause (1) above, the term “dealing” refers to *any* agreement (other than a transfer of interest in a permit or a mortgage or other charge) that imposes on any permit participant any obligation relating to the sales or proceeds of production. It therefore includes (without limitation) petroleum sales agreements and overriding royalty agreements.
- (5) In the application for consent to a dealing falling within the provisions of section 41B(4)(a), the permit participant must provide full details of: the transaction; its purpose; the reasons why it may not be on an arm’s length basis, or not on arm’s length terms, or not at fair market value; and why, in the permit participant’s view, that is justified in the circumstances.
- (6) In providing this assessment the permit participant must consider and provide sufficiently detailed information on all of the factors referred to in subclause (8) below, to the extent that they are relevant, to enable the Minister to make his or her assessment.
- (7) In assessing an application for consent to dealings falling within the provisions of section 41B(4)(a) and (b), the Minister will consider whether the agreement could adversely affect the royalties that will be paid under the permit. This may happen, for example, if a permit participant or holder has entered into an agreement to sell production from a permit at a specified price that is less than an arm’s length price.
- (8) The matters the Minister may consider include, but are not limited to:
 - (a) the point of sale and the point of valuation
 - (b) the nature of the market for the grade of petroleum being sold or transferred
 - (c) the average price of any petroleum sold at arm’s length by the permit holder during the reporting period
 - (d) the terms of relevant contracts or sales agreements and the quantities specified in them
 - (e) the state of the market at the time the prices in the contracts for sales were set
 - (f) the provisions of the contracts or sales agreements relating to the variation or renegotiation of prices
 - (g) prices paid to producers of similar petroleum products elsewhere in arm’s length transactions
 - (h) prices recommended by international associations of governments of countries producing the petroleum product.
- (9) After considering the application, the Minister may:
 - (a) determine that the agreement is a dealing and consent to the dealing (with or without conditions)
 - (b) determine that the agreement is a dealing and decline to consent to the dealing
 - (c) determine that the agreement is not a dealing and notify the permit holder that consent is not required.
- (10) The Minister may impose conditions when consenting to a dealing. Conditions may, among other things, require the terms of the agreement, including the sale price of petroleum, to be amended within a period specified by the Minister.

12.11 General provisions on transfers and dealings

- (1) Applications for consent to transfers and dealings must contain the information prescribed in the Regulations and may be made using any applicable form that is available on the NZP&M website.
- (2) Either an original or a true copy of the agreement must be forwarded with the application. The Minister must have complete information about the transactions for which consent is being sought. Agreements will not be accepted if the applicant has deleted or withheld information relating to matters such as permit interests and obligations that affect production from the permit and the proceeds of this production.
- (3) Subject to the Official Information Act 1982, agreements will be kept confidential to NZP&M.
- (4) If the Minister has concerns about any of the matters outlined in clauses 12.7 to 12.10 above, the Minister will raise these with the applicant, and inform the applicant of the factor or factors that the Minister considers to be relevant to making a decision. The Minister will consider any response from the applicant before making a decision.
- (5) The time taken to assess and make decisions on applications will depend on:
 - (a) the extent and quality of the information provided in support of the application
 - (b) the level of complexity of the transaction
 - (c) available resources.

As a guide, straightforward applications are likely to be dealt with within 20 working days. However, applications that are more complex, that are incomplete, or that require more investigation may take several months.

- (6) The Minister will not normally consent to a transfer or dealing until any money owing to the Crown (whether fees or royalties) has been paid.
- (7) *Section 41D of the Act* provides that the Minister may impose conditions on a consent to a transfer, dealing and change of operator, as the Minister sees fit.
- (8) Any conditions of the Minister's consent to a transfer or dealing become conditions of the permit.

Surrender of permits

12.12 Surrender of all or part of a permit

- (1) *Section 40 of the Act* provides that a permit holder may apply to surrender a permit or part of a permit by:
 - (a) lodging an application (which must contain the information prescribed in the Regulations and be made using any applicable form available on the NZP&M website)
 - (b) paying any money owing to the Crown under the Act, and
 - (c) providing information and records as required by the permit, the regulations or the Act.

- (2) *Section 40* provides that despite the requirements in subclause (1) above, the Chief Executive may, at his or her discretion, approve the surrender application notwithstanding that all money owing has not been paid or that records and information have not been provided as required.
- (3) Subject to subclauses (1) and (2) above, surrender of part of the area of a permit will be accepted provided the remaining land under the permit is an unbroken area.
- (4) *Section 40* provides that if 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 that 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 surrendered land after the date of surrender.
- (5) Information and reports lodged in relation to the surrendered area are publicly available for reference or copying from the date of surrender, unless an exception applies (see clause 4.10).
- (6) *Section 40* provides that 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, or
 - (b) any act under the permit up to the date of surrender that gives rise to a cause of action.
- (7) Specific requirements relating to surrender are set out in the Regulations.
- (8) Once a permit has been surrendered, the permit holder is no longer required to meet the obligations of the work programme under the permit. If the permit holder surrenders the permit before committed work programme obligations have been met, the Minister may take that into account as a failure to comply with permit conditions when considering whether to grant any future permit (see clause 5.3).

Revocation of permits

12.13 Revocation of a permit

- (1) *Section 39 of the Act* provides that the Minister may revoke a permit if:
 - (a) the Minister is satisfied a permit holder has breached a condition of the permit or a condition imposed by the Act or the regulations, or
 - (b) payment of money to the Crown under the permit or the Act (such as fees or royalties) has not been made 90 days after the due date for the payment.
- (2) *Section 41A(7) of the Act* provides that the Minister may revoke the permit in accordance with the procedure set out in section 39 if the Minister is not satisfied that the permit holder, following a change of control of a permit participant, is capable of meeting its financial obligations under the permit (see clause 12.9).

- (3) *Section 39* provides that before deciding to revoke a permit the Minister must notify the permit holder in writing of his or her intention to revoke the permit. The notice must:
 - (a) set out the grounds on which the Minister intends to revoke the permit
 - (b) give the permit holder 40 working days to either remove the grounds for revocation or provide reasons why the permit should not be revoked.
- (4) *Section 39* provides that if the grounds for revocation have not been removed, and if after considering any reasons given the Minister still considers that there are grounds for revocation, the Minister may revoke the permit by giving written notice to the permit holder. The revocation will take effect 20 working days after the Minister's notice has been given.
- (5) *Section 39* provides that the permit holder may appeal the Minister's decision to revoke the permit to the High Court, but only on the grounds that it is erroneous in point of law. An appeal must be lodged within 20 working days after the date of the Minister's notice. The permit continues in force until the appeal is determined (or until the permit expires if this is earlier).
- (6) *Section 39* provides that the Minister may transfer the permit to the Minister instead of revoking it. If the Minister replaces the permit holder the Minister may exercise the rights granted by the permit. The Minister may also offer the permit or any share in it for sale by public tender or otherwise.
- (7) The Minister will normally transfer the permit to himself or herself only if there are good reasons to maintain continuous operation of activities under a permit, such as safety reasons or to avoid unnecessary waste of or damage to petroleum production. The Minister will normally offer the permit for sale as soon as possible.
- (8) *Section 39* provides that the Minister must record the revocation or transfer on the register of permits, but need not record the reasons for the revocation.
- (9) *Section 39* provides that the revocation of a permit (or replacement of the permit holder) will 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
 - (b) any act under the permit up to the date of revocation that gives rise to a cause of action.
- (10) The revocation of a permit is a very serious matter. The fact that a person has had a permit revoked will be a consideration counting against the granting of any future permits to that person or a related company (see clause 5.3).
- (11) The Minister will not undertake revocation proceedings lightly. It is not possible to provide hard and fast rules on the application of revocation procedures because there are a significant number of potential breaches of permit conditions, the regulations and the Act, and the circumstances of each case are likely to differ. However, subclauses (12) to (15) below provide high-level guidance.
- (12) It is not the Minister's practice to use revocation in response to minor breaches of permit conditions (including breaches of the regulations) – for example, a late filing of information – provided:
 - (a) the breach is not ongoing, and
 - (b) such breaches (or breaches of similar obligations) are not a frequent occurrence.

- (13) It is also not the Minister's practice to use the revocation process for non-performance of secondary objectives (see clause 7.9).
- (14) The revocation process is likely to occur (without limitation) where:
- (a) the permit holder has failed to comply with its committed work programme and has not sought and been granted a change of work programme conditions (and has not applied to surrender the permit)
 - (b) the permit holder has not submitted royalty returns and paid royalties
 - (c) the permit holder frequently breaches due dates for the submission of royalty returns and payment of royalties, or
 - (d) the permit holder frequently breaches due dates for the submission of notices and information.
- (15) Revocation may occur following a serious failure or an ongoing failure or frequent failures to comply with the Health and Safety in Employment Act 1992 where the Health and Safety Regulator has notified the Chief Executive to that effect under section 33B of the Act.⁴⁹ It is not the Minister's practice to commence revocation proceedings for minor breaches of the Health and Safety in Employment Act 1992 and regulations made under that Act. To avoid doubt, sole responsibility for enforcement of the Health and Safety in Employment Act 1992 rests with the Health and Safety Regulator.

⁴⁹ Section 33(1) of the Act requires permit holders to comply with the Health and Safety in Employment Act 1992 and regulations made under that Act.

Schedule 1: Summary of Crown Minerals Protocols

Ngaa Rauru

- (1) Under the Deed of Settlement dated 27 November 2003 between Ngaa Rauru Kiitahi and the Crown, and the Ngaa Rauru Kiitahi Claims Settlement Act 2005, the Minister of Energy and Resources has entered into a protocol setting out how the Ministry of Business, Innovation and Employment will interact with Ngaa Rauru Kiitahi concerning the administration of Crown-owned minerals. This Minerals Programme includes a summary of the terms under which the protocol is issued pursuant to section 27 of the Ngaa Rauru Kiitahi Claims Settlement Act 2005.

- (2) *Terms of Issue*

For the full terms of issue of the protocol, refer to the protocol itself. In summary, the terms of issue include the following provisions:

- (a) A failure by the Crown to comply with the protocol is not a breach of the Deed of Settlement, but its obligations may be enforced subject to the Crown Proceedings Act 1950.
- (b) The Minister may issue, amend or cancel the protocol.
- (c) The protocol is consistent with section 4 of the Crown Minerals Act 1991 and does not override or diminish the requirements of that Act, the functions and powers of the Minister of Energy and Resources or the Ministry under that Act, or the rights of Ngaa Rauru Kiitahi under that Act.

Ngāti Mākino

- (1) Under the Deed of Settlement dated 2 April 2011 between Ngāti Mākino and the Crown, and the Ngāti Mākino Claims Settlement Act 2012, the Minister of Energy and Resources has entered into a protocol regarding consultation with Ngāti Mākino by the Ministry of Business, Innovation and Employment on the administration of Crown-owned minerals. This Minerals Programme includes a summary of the terms of the protocol pursuant to section 22 of the Ngāti Mākino Claims Settlement Act 2012.

- (2) *Terms of the Protocol*

For full details of the terms of the protocol, refer to the protocol itself. In summary the protocol includes the following terms:

- (a) The protocol applies across the protocol area.
- (b) The protocol is issued pursuant to section 18 of the Ngāti Mākino Claims Settlement Act 2012 and is subject to that Act and the Deed of Settlement.
- (c) The Minister will ensure that the Governance Entity is consulted by the Ministry in relation to the following issues, where they relate to the protocol area:
 - (i) the preparation of new minerals programmes
 - (ii) the planning of petroleum exploration permit block offers
 - (iii) other petroleum exploration permit applications
 - (iv) amendments to petroleum exploration permits

- (v) permit block offers for Crown-owned minerals other than petroleum
 - (vi) other permit applications for Crown-owned minerals other than petroleum
 - (vii) newly available acreage
 - (viii) amendments to permits for Crown-owned minerals other than petroleum.
- (d) the principles that will be followed by the Ministry in consulting with the Governance Entity
- (e) how the Ministry will seek to fulfil its obligations under the protocol.

Ngāti Manawa

- (1) Under the Deed of Settlement dated 12 December 2009 between Ngāti Manawa and the Crown, and the Ngāti Manawa Claims Settlement Act 2012, the Minister of Energy and Resources has entered into a protocol regarding consultation with Ngāti Manawa by the Ministry of Business, Innovation and Employment on the administration of Crown-owned minerals. This Minerals Programme includes a summary of the terms of the protocol pursuant to section 40 of the Ngāti Manawa Claims Settlement Act 2012.

(2) *Terms of the Protocol*

For full details of the terms of the protocol, refer to the protocol itself. In summary, the protocol includes the following terms:

- (a) The protocol applies across the protocol area.
- (b) The protocol is issued pursuant to section 34 of the Ngāti Manawa Claims Settlement Act 2012 and is subject to that Act and the Deed of Settlement.
- (c) The Minister will ensure that the Governance Entity is consulted by the Ministry in relation to the following issues, where they relate to the protocol area:
 - (i) the preparation of new minerals programmes
 - (ii) the planning of petroleum exploration permit block offers
 - (iii) other petroleum exploration permit applications
 - (iv) amendments to petroleum exploration permits
 - (v) permit block offers for Crown-owned minerals other than petroleum
 - (vi) other permit applications for Crown-owned minerals other than petroleum
 - (vii) newly available acreage
 - (viii) amendments to permits for Crown-owned minerals other than petroleum.
- (d) the principles that will be followed by the Ministry in consulting with the Governance Entity
- (e) how the Ministry will seek to fulfil its obligations under the protocol
- (f) provisions for sharing information
- (g) provisions for the resolution of disputes under this protocol.

Ngāti Manuhiri

- (1) Under the Deed of Settlement dated 21 May 2011 between Ngāti Manuhiri and the Crown, and the Ngāti Manuhiri Claims Settlement Act 2012, the Minister of Energy and Resources has entered into a protocol regarding consultation with Ngāti Manuhiri by the Ministry of Business, Innovation and Employment on the administration of Crown-owned minerals. This Minerals Programme includes a summary of the terms of the protocol pursuant to section 25 of the Ngāti Manuhiri Claims Settlement Act 2012.
- (2) *Terms of the Protocol*

For full details of the terms of the protocol, refer to the protocol itself. In summary, the protocol includes the following terms:

- (a) The protocol applies across the protocol area.
- (b) The protocol is issued pursuant to section 20 of the Ngāti Manuhiri Claims Settlement Act 2012 and is subject to that Act and the Deed of Settlement.
- (c) The Minister will ensure that the Governance Entity is consulted by the Ministry in relation to the following issues, where they relate to the protocol area:
 - (i) the preparation of new minerals programmes
 - (ii) the planning of petroleum exploration permit block offers
 - (iii) other petroleum exploration permit applications
 - (iv) amendments to petroleum exploration permits
 - (v) permit block offers for Crown-owned minerals other than petroleum
 - (vi) other permit applications for Crown-owned minerals other than petroleum
 - (vii) newly available acreage
 - (viii) amendments to permits for Crown-owned minerals other than petroleum.
- (d) the principles that will be followed by the Ministry in consulting with the Governance Entity
- (e) how the Ministry will seek to fulfil its obligations under the protocol.

Ngāti Mutunga

- (1) Under the Deed of Settlement dated 31 July 2005 between Ngāti Mutunga and the Crown, and the Ngāti Mutunga Claims Settlement Act 2006, the Minister of Energy and Resources has entered into a protocol regarding consultation with Ngāti Mutunga by the Ministry of Business, Innovation and Employment on the administration of Crown-owned minerals. This Minerals Programme includes a summary of the terms of the protocol pursuant to section 26 of the Ngāti Mutunga Claims Settlement Act 2006.
- (2) *Terms of the Protocol*

For full details of the terms of the protocol, refer to the protocol itself. In summary, the protocol includes the following terms:

- (a) The protocol applies across the protocol area.
- (b) The protocol is issued pursuant to section 21 of the Ngāti Mutunga Claims Settlement Act 2006 and is subject to that Act and the Deed of Settlement.

- (c) The Minister will ensure that the Governance Entity is consulted by the Ministry in relation to the following issues, where they relate to the protocol area:
 - (i) the preparation of new minerals programmes
 - (ii) the planning of petroleum exploration permit block offers
 - (iii) other petroleum exploration permit applications
 - (iv) amendments to petroleum exploration permits
 - (v) permit block offers for Crown-owned minerals other than petroleum
 - (vi) other permit applications for Crown-owned minerals other than petroleum
 - (vii) amendments to permits for Crown-owned minerals other than petroleum.
- (d) the principles that will be followed by the Ministry in consulting with the Governance Entity
- (e) how the Ministry will seek to fulfil its obligations under the protocol.

Ngāti Porou

- (1) Under the Deed of Settlement dated 22 December 2010 between Ngāti Porou and the Crown, and the Ngati Porou Claims Settlement Act 2012 (sic), the Minister of Energy and Resources has entered into a protocol regarding consultation with Ngāti Porou by the Ministry of Business, Innovation and Employment on the administration of Crown-owned minerals. This Minerals Programme includes a summary of the terms of the protocol pursuant to section 42 of the Ngati Porou Claims Settlement Act 2012.

- (2) *Terms of the Protocol*

For full details of the terms of the protocol, refer to the protocol itself. In summary the protocol includes the following terms:

- (a) The protocol applies across the protocol area.
- (b) The protocol is issued pursuant to section 38 of the Ngati Porou Claims Settlement Act 2012 and is subject to that Act and the Deed of Settlement.
- (c) The Minister will ensure that the Governance Entity is consulted by the Ministry in relation to the following issues, where they relate to the protocol area:
 - (i) the preparation of new minerals programmes
 - (ii) the planning of petroleum exploration permit block offers
 - (iii) other petroleum exploration permit applications
 - (iv) amendments to petroleum exploration permits
 - (v) permit block offers for Crown-owned minerals other than petroleum
 - (vi) other permit applications for Crown-owned minerals other than petroleum
 - (vii) newly available acreage
 - (viii) amendments to permits for Crown-owned minerals other than petroleum
 - (ix) gold fossicking areas
 - (x) developments in relevant policy and legislation
 - (xi) the Ministry's relevant operational activities.

- (d) the principles that will be followed by the Ministry in consulting with the Governance Entity
- (e) how the Ministry will seek to fulfil its obligations under the protocol
- (f) provisions for sharing information
- (g) provisions for the resolution of disputes under this protocol.

Ngāti Ruanui

- (1) Under the Deed of Settlement dated 12 May 2001 between Ngāti Ruanui and the Crown, and the Ngati Ruanui Claims Settlement Act 2003 (sic), the Minister of Energy and Resources has entered into a protocol regarding consultation with Ngāti Ruanui by the Ministry of Business, Innovation and Employment on the administration of Crown-owned minerals. This Minerals Programme includes a summary of the terms under which the protocol is issued pursuant to section 32 of the Ngati Ruanui Claims Settlement Act 2003.

- (2) *Terms of Issue*

For the full terms of issue of the protocol, refer to the protocol itself. In summary, the terms of issue include the following provisions:

- (a) A failure by the Crown to comply with the protocol is not a breach of the Deed of Settlement, but its obligations may be enforced subject to the Crown Proceedings Act 1950.
- (b) The Minister may issue, amend or cancel the protocol.
- (c) The protocol is consistent with section 4 of the Crown Minerals Act 1991 and does not override or diminish the requirements of that Act, the functions and powers of the Minister of Energy and Resources or the Ministry under that Act, or the rights of Ngāti Ruanui under that Act.

Ngāti Tama

- (1) Under the Deed of Settlement dated 20 December 2001 between Ngāti Tama and the Crown, and the Ngati Tama Claims Settlement Act 2003 (sic), the Minister of Energy and Resources has entered into a protocol setting out how the Ministry of Business, Innovation and Employment will interact with Ngāti Tama concerning the administration of Crown-owned minerals. This Minerals Programme includes a summary of the terms under which the protocol is issued pursuant to section 26 of the Ngati Tama Claims Settlement Act 2003.

- (2) *Terms of Issue*

For the full terms of issue of the protocol, refer to the protocol itself. In summary, the terms of issue include the following provisions:

- (a) A failure by the Crown to comply with the protocol is not a breach of the Deed of Settlement, but its obligations may be enforced subject to the Crown Proceedings Act 1950.
- (b) The Minister may issue, amend or cancel the protocol.
- (c) The protocol is consistent with section 4 of the Crown Minerals Act 1991 and does not override or diminish the requirements of that Act, the functions and powers of the Minister of Energy and Resources or the Ministry under that Act, or the rights of Ngāti Tama under that Act.

Ngāi Tāmanuhiri

- (1) Under the Deed of Settlement dated 5 March 2011 between Ngai Tāmanuhiri and the Crown, and the Ngai Tāmanuhiri Claims Settlement Act 2012, the Minister of Energy and Resources has entered into a protocol regarding consultation with Ngai Tāmanuhiri by the Ministry of Business, Innovation and Employment on the administration of Crown-owned minerals. This Minerals Programme includes a summary of the terms of the protocol pursuant to section 25 of the Ngai Tāmanuhiri Claims Settlement Act 2012.
- (2) *Terms of the Protocol*

For full details of the terms of the protocol, refer to the protocol itself. In summary the protocol includes the following terms:

- (a) The protocol applies across the protocol area.
- (b) The protocol is issued pursuant to section 21 of the Ngai Tāmanuhiri Claims Settlement Act 2012 and is subject to that Act and the Deed of Settlement.
- (c) The Minister will ensure that the Governance Entity is consulted by the Ministry in relation to the following issues, where they relate to the protocol area:
 - (i) the preparation of new minerals programmes
 - (ii) the planning of petroleum exploration permit block offers
 - (iii) other petroleum exploration permit applications
 - (iv) amendments to petroleum exploration permits
 - (v) permit block offers for Crown-owned minerals other than petroleum
 - (vi) other permit applications for Crown-owned minerals other than petroleum
 - (vii) newly available acreage
 - (viii) amendments to permits for Crown-owned minerals other than petroleum
 - (ix) gold fossicking areas
 - (x) developments in relevant policy and legislation
 - (xi) the Ministry's relevant operational activities.
- (d) the principles that will be followed by the Ministry in consulting with the Governance Entity
- (e) how the Ministry will seek to fulfil its obligations under the protocol
- (f) provisions for sharing information
- (g) provisions for the resolution of disputes under this protocol.

Ngāti Whare

- (1) Under the Deed of Settlement dated 8 December 2009 between Ngāti Whare and the Crown, and the Ngāti Whare Claims Settlement Act 2012, the Minister of Energy and Resources has entered into a protocol regarding consultation with Ngāti Whare by the Ministry of Business, Innovation and Employment on the administration of Crown-owned minerals. This Minerals Programme includes a summary of the terms of the protocol pursuant to section 48 of the Ngāti Whare Claims Settlement Act 2012.

(2) *Terms of the Protocol*

For full details of the terms of the protocol, refer to the protocol itself. In summary, the protocol includes the following terms:

- (a) The protocol applies across the protocol area.
- (b) The protocol is issued pursuant to section 42 of the Ngāti Whare Claims Settlement Act 2012 and is subject to that Act and the Deed of Settlement.
- (c) The Minister will ensure that the Governance Entity is consulted by the Ministry in relation to the following issues, where they relate to the protocol area:
 - (i) the preparation of new minerals programmes
 - (ii) the planning of petroleum exploration permit block offers
 - (iii) other petroleum exploration permit applications
 - (iv) amendments to petroleum exploration permits
 - (v) permit block offers for Crown-owned minerals other than petroleum
 - (vi) other permit applications for Crown-owned minerals other than petroleum
 - (vii) newly available acreage
 - (viii) amendments to permits for Crown-owned minerals other than petroleum.
- (d) the principles that will be followed by the Ministry in consulting with the Governance Entity
- (e) how the Ministry will seek to fulfil its obligations under the protocol.

Ngāti Whātua Ō Ōrākei

- (1) Under the Deed of Settlement dated 5 November 2011 between Ngāti Whātua Ōrākei and the Crown, and the Ngāti Whātua Ōrākei Claims Settlement Act 2012, the Minister of Energy and Resources has entered into a protocol regarding consultation with Ngāti Whātua Ōrākei by the Ministry of Business, Innovation and Employment on the administration of Crown-owned minerals. This Minerals Programme includes a summary of the terms of the protocol pursuant to section 27 of the Ngāti Whātua Ōrākei Claims Settlement Act 2012.

(2) *Terms of the Protocol*

For full details of the terms of the protocol, refer to the protocol itself. In summary, the protocol includes the following terms:

- (a) The protocol applies across the protocol area.
- (b) The protocol is issued pursuant to section 22 of the Ngāti Whātua Ōrākei Claims Settlement Act 2012 and is subject to that Act and the Deed of Settlement.
- (c) The Minister will ensure that the Governance Entity is consulted by the Ministry in relation to the following issues, where they relate to the protocol area:
 - (i) the preparation of new minerals programmes
 - (ii) the planning of petroleum exploration permit block offers
 - (iii) other petroleum exploration permit applications
 - (iv) amendments to petroleum exploration permits
 - (v) permit block offers for Crown-owned minerals other than petroleum

- (vi) other permit applications for Crown-owned minerals other than petroleum
- (vii) newly available acreage
- (viii) amendments to permits for Crown-owned minerals other than petroleum.
- (d) the principles that will be followed by the Ministry in consulting with the Governance Entity
- (e) how the Ministry will seek to fulfil its obligations under the protocol.

Rongowhakaata

- (1) Under the Deed of Settlement dated 30 September 2011 between Rongowhakaata and the Crown, and the Rongowhakaata Claims Settlement Act 2012, the Minister of Energy and Resources has entered into a protocol regarding consultation with Rongowhakaata by the Ministry of Business, Innovation and Employment on the administration of Crown-owned minerals. This Minerals Programme includes a summary of the terms of the protocol pursuant to section 28 of the Rongowhakaata Claims Settlement Act 2012.

- (2) *Terms of the Protocol*

For full details of the terms of the protocol, refer to the protocol itself. In summary, the protocol includes the following terms:

- (a) The protocol applies across the protocol area.
- (b) The protocol is issued pursuant to section 24 of the Rongowhakaata Claims Settlement Act 2012 and is subject to that Act and the Deed of Settlement.
- (c) The Minister will ensure that the Governance Entity is consulted by the Ministry in relation to the following issues, where they relate to the protocol area:
 - (i) the preparation of new minerals programmes
 - (ii) the planning of proposed petroleum exploration permit block offers
 - (iii) other petroleum exploration permit applications
 - (iv) amendments to petroleum exploration permits
 - (v) permit block offers for Crown-owned minerals other than petroleum
 - (vi) other permit applications for Crown-owned minerals other than petroleum
 - (vii) newly available acreage
 - (viii) amendments to permits for Crown-owned minerals other than petroleum
 - (ix) gold fossicking areas
 - (x) developments in relevant policy and legislation
 - (xi) the Ministry's relevant operational activities.
- (d) the principles that will be followed by the Ministry in consulting with the Governance Entity
- (e) how the Ministry will seek to fulfil its obligations under the protocol
- (f) provisions for sharing information
- (g) provisions for the resolution of disputes under this protocol.

Te Roroa

- (1) Under the Deed of Settlement dated 17 December 2005 between Te Roroa and the Crown, and the Te Roroa Claims Settlement Act 2008, the Minister of Energy and Resources has entered into a protocol regarding consultation with Te Roroa by the Ministry of Business, Innovation and Employment on the administration of Crown-owned minerals. This Minerals Programme includes a summary of the terms of the protocol pursuant to section 24 of the Te Roroa Claims Settlement Act 2008.

- (2) *Terms of the Protocol*

For full details of the terms of the protocol, refer to the protocol itself. In summary, the protocol includes the following terms:

- (a) The protocol applies across the protocol area.
- (b) The protocol is issued pursuant to section 19 of the Te Roroa Claims Settlement Act 2008 and is subject to that Act and the Deed of Settlement.
- (c) The Minister will ensure that the Governance Entity is consulted by the Ministry in relation to the following issues, where they relate to the protocol area:
 - (i) the preparation of new minerals programmes
 - (ii) the planning of petroleum exploration permit block offers
 - (iii) other petroleum exploration permit applications
 - (iv) amendments to petroleum exploration permits
 - (v) permit block offers for Crown-owned minerals other than petroleum
 - (vi) other permit applications for Crown-owned minerals other than petroleum
 - (vii) amendments to permits for Crown-owned minerals other than petroleum.
- (d) the principles that will be followed by the Ministry in consulting with the Governance Entity
- (e) how the Ministry will seek to fulfil its obligations under the protocol.

Te Uri O Hau

- (1) Under the Deed of Settlement dated 13 December 2000 between Te Uri o Hau and the Crown, and the Te Uri o Hau Claims Settlement Act 2002, the Minister of Energy and Resources has entered into a protocol regarding consultation with Te Uri o Hau by the Ministry of Business, Innovation and Employment on the administration of Crown-owned minerals.

- (2) *Terms of the Protocol*

For full details of the terms of the protocol, refer to the protocol itself. In summary, the protocol includes the following terms:

- (a) The protocol applies across the protocol area.
- (b) The protocol is issued pursuant to section 108 of the Te Uri o Hau Claims Settlement Act 2002 and is subject to that Act and the Deed of Settlement.

- (c) The Minister will ensure that the Governance Entity is consulted by the Ministry in relation to the following issues, where they relate to the protocol area:
 - (i) the preparation of new minerals programmes
 - (ii) the planning of petroleum exploration permit block offers
 - (iii) other petroleum exploration permit applications
 - (iv) amendments to petroleum exploration permits
 - (v) permit block offers for Crown-owned minerals other than petroleum
 - (vi) other permit applications for Crown-owned minerals other than petroleum
 - (vii) amendments to permits for Crown-owned minerals other than petroleum.
- (d) the principles that will be followed by the Ministry in consulting with the Governance Entity
- (e) how the Ministry will seek to fulfil its obligations under the protocol.