Oil and Gas in Taranaki

The Legal Framework

This document gives an overview of the relevant sections of the Resource Management Act 1991 and Crown Minerals Act 1991. This document has been prepared for general information purposes. It is provided in good faith, but with no guarantee as to it being comprehensive or accurate. It is not a substitute for professional advice.

Resource Management Act 1991

The Resource Management Act 1991 ("RMA") is the primary legislation under which the environmental effects of activities are regulated. The RMA can be accessed online at www.legislation.govt.nz.

The Environmental Defence Society provides the RMA Guide website which contains practical information to assist individuals, community groups and businesses to more effectively participate in RMA processes. It can be accessed at www.rmaguide.org.nz.

The Ministry for the Environment has published "An Everyday Guide to the Resource Management Act". This provides accessible guidance about the RMA and its processes. The Guide can be accessed online: www.mfe.govt.nz/publications/rma/everyday/.

The purpose of the RMA is the sustainable management of natural and physical resources. This means:

> *managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—*
>
> *a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
>
> *b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
>
> c) *avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

The RMA is implemented through planning documents: regional policy statements, regional plans and district plans.

Regional Policy Statement

Taranaki Regional Council is required to prepare a regional policy statement. The purpose of a regional policy statement is to provide an overview of the resource management issues of the region and state policies and methods to achieve integrated management of the region's natural and physical resources.

The Taranaki Regional Policy Statement was published in 2009. It sets out high-level policy that must be implemented in regional and district plans. Chapter 13 of the Taranaki Regional Policy Statement addresses minerals and includes an objective; "provid[ing] for the use and development of the region's mineral resources while avoiding, remedying or mitigating any adverse effects on the environment", as well as policies and methods.

The Taranaki Regional Policy Statement is available online: www.trc.govt.nz/regional-policy-statement/

Regional Plans

Taranaki Regional Council is required to prepare a regional coastal plan and may prepare other regional plans to assist the regional council to carry out its functions under the RMA. The Taranaki Regional Council has published a Coastal Plan (1997), an Air Quality Plan (2011), a Soil Plan (2001), and a Fresh Water Plan (2001). Which regional plan(s) must be considered by a resource consent applicant depends on the nature of the activity. Oil and gas activities may require consent from Taranaki Regional Council for discharges to water, discharges to air, and other effects.

District Plans

A District Council must prepare a district plan to assist the district council to carry out its functions under the RMA. District plans regulate the environmental effects of land use and development. They regulate issues such as the erection of structures, earthworks, hazardous substances, light, noise and traffic.

New Plymouth District Plan

The New Plymouth District Plan is accessible online: www.newplymouthnz.com/CouncilDocuments/PlansAndStrategies/DistrictPlan/

The New Plymouth District Plan does not appear to contain rules specifically addressing prospecting, exploring or mining of minerals. However it regulates the height of structures, site coverage, earthworks, hazardous facilities, light, noise, traffic and other effects of activities.

South Taranaki District Plan

The South Taranaki District Plan is accessible online: www.southtaranaki.com/Council/Plans-and-Reports/District-Plan/

The South Taranaki District Plan contains the following rules specifically addressing prospecting, exploring or mining of minerals:

- Petroleum prospecting, including seismic exploration, is a permitted activity (rule 3.01.1(j))

- Petroleum exploration and production testing is a controlled activity (rule 3.01.2(b))
- Mining prospecting and exploration is a restricted discretionary activity (rule 3.01.3(h))
- Petroleum production stations and well heads are discretionary activities (rule 3.01.4(d))

Stratford District Plan

The Stratford District Plan is accessible online: www.stratford.govt.nz/council/documents-publications/plans-reports-strategies/district-plan

The Stratford District Plan contains the following rules specifically addressing prospecting, exploring or mining of minerals:

- Minerals prospecting and pre-drilling petroleum exploration is a permitted activity (rule B1.2.1.1)
- Mineral exploration is a controlled activity (rule B1.2.1.2)
- Petroleum production facilities, mining, and the processing of minerals are discretionary activities (rule B1.2.1.4)

Activity Status

Under the RMA, regional and district plans may classify activities as permitted, controlled, restricted discretionary, discretionary, non-complying or prohibited.

Permitted: A permitted activity may be carried out without the need for a resource consent, so long as it complies with any requirements specified in the plan.

Controlled: A controlled activity requires a resource consent before it can be carried out. The consent authority must grant the consent but may impose conditions relating to those matters over which they have reserved control. For example the Stratford District Plan reserves control for mineral exploration activities over flaring duration, duration and hours of operation, duration, frequency and route for transportation, financial contributions, administrative changes, and completion of works and services.

Restricted Discretionary: A restricted discretionary activity requires a resource consent before it can be carried out. The consent authority can exercise discretion as to whether or not to grant consent, and impose conditions, but only in respect of those matters over which it has restricted its discretion.

Discretionary: A discretionary activity requires a resource consent before it can be carried out. The consent authority can exercise full discretion as to whether or not to grant consent and as to what conditions to impose on the consent if granted.

Non-complying: A non-complying activity requires a resource consent before it can be carried out. A resource consent can be granted for a non-complying activity, but the applicant has an additional burden of establishing that the adverse effects of the activity on the environment will be minor or that the activity will not be contrary to the objectives of the relevant plan or proposed plan.

Prohibited: A prohibited activity may not be carried out and no resource consent can be granted to authorise the activity. Parties wishing to carry out a prohibited activity must apply for a change to the plan to reclassify the activity.

Notification

When a consent is required the consent authority must decide whether or not to notify the consent application. The consent authority may decide not to notify the application ("non-notified"), notify affected persons ("limited notification"), or notify the general public ("public notification").

Limited Notification

A consent application must be notified to affected persons if the consent authority decides that there are any affected persons, an affected protected customary rights group, or an affected customary marine title group.

A consent authority must decide that a person is an affected person if the activity's adverse effects on the person are not less than minor. When carrying out this assessment the consent authority may disregard an effect of the activity if a rule in the plan permits an activity with that effect – this is known as the "permitted baseline". A person is not an affected person if the person has given written approval to the activity and has not withdrawn their approval.

See sections 95B and 95E of the RMA.

Public Notification

A consent application must be publicly notified if the consent authority decides that the activity will have or is likely to have adverse effects on the environment which are more than minor, or, the applicant requests public notification of the application, or, a rule in a plan requires public notification of the application.

A consent authority also has a discretion to notify a consent application if special circumstances exist. These will include circumstances which make notification desirable, despite the general provisions excluding the need for notification. If the activity is specifically envisaged by the plan it cannot give rise to special circumstances.

When assessing the adverse effects of the activity on the environment the consent authority must disregard any effects on persons who own the land on which the activity will occur or adjacent land, any effect on a person who have given written approval to the activity, and any trade competition. The consent authority may also disregard the "permitted baseline".

See sections 95A and 95D of the RMA.

"Minor"

There are no national standards for determining whether the adverse effects of an activity are minor. The assessment of whether an adverse effect is "minor" is one of fact and degree. It requires the exercise of discretion as to the degree of seriousness involved. It is at the lower end of the scale of major – moderate – minor, but is more than de minimus or negligible.

It is notable that the notification provisions refer to "adverse effects" only. Therefore the Council must not 'balance' adverse and beneficial effects when determining whether the adverse effects are minor and therefore whether or not an application should be notified. Beneficial effects are to be considered when the Council is determining whether or not to grant the consent sought.

Challenging a decision on notification

You may request the Council's decision on notification. This will set out their reasons for deciding whether or not to notify a consent application. If you think the Council has incorrectly determined not to notify a resource consent application the only avenue for challenging this decision is through judicial review in the High Court. Judicial review is only available if the Council has misapplied the law. There is no opportunity to appeal the decision on the merits.

Submissions

If a consent application is notified there is an opportunity for affected persons (limited notification) or any person (public notification) to make a submission.

A submission must state:

- The name of the submitter
- The application which is being submitted on
- A description of the application (such as proposed activity and location)
- The specific parts of the application to which the submission relates
- The reasons for the submission
- The decision sought from the consent authority (including any conditions)
- Whether or not the submitter wishes to be heard at the hearing

In order to decide whether or not to lodge a submission you will need to assess the resource consent application to determine the effects of the proposed activity on the environment and your interests. Ensure that you have the full consent application including the description of the activity, plans of the site and the assessment of environmental effects.

Before preparing your submission read the assessment of environmental effects carefully and consider the effects on the environment and your interests. You will also need to consider whether the application gives effect to the purpose and principles of the RMA and the objectives, policies and methods contained in the planning documents.

Once you have identified the issues you would like to raise you can prepare your written submission. Ensure your submission is clear and persuasive, but not argumentative. Use a readable typeface such as Calibri 11 point with wide margins and ample spacing and use headings liberally.

Your submission needs to identify what effect the proposed activity will have on you and what you think the decision on the application should be. You may request that the application to be granted, granted with amendments, or declined. You may specify conditions you wish to see imposed on the resource consent if it is granted.

Hearing

If the applicant or a submitter has requested to be heard the consent authority must hold a hearing. You will be given at least 10 working days notice of the hearing. At the hearing you will have an opportunity to present your submission to the hearings panel.

Resource Consent Decisions

When making a decision the consent authority must have regard to:

- Part 2 of the RMA – this includes the purpose and principles of the RMA
- The actual and potential effects on the environment of allowing the activity
- Any relevant provisions of a national environment standard, national policy statement including the New Zealand coastal policy statement, regional policy statement, regional plan or district plan
- Any other matter the consent authority considers relevant and reasonably necessary to determine the application

The consent authority:

- May disregard the permitted baseline
- Must not have regard to trade competition
- Must not have regard to the effects of a discharge of greenhouse gases on climate change
- May decline an application for a resource consent on the grounds that it has inadequate information to determine the application

See section 104 of the RMA.

Appealing a Resource Consent Decision

The decision will be notified to the applicant and submitters. You will then be able to request a copy of the full decision. If you lodged a submission and are unhappy about the decision of a consent authority on a resource consent application you may lodge an appeal with the Environment Court. An appeal may challenge the merits of the decision and/or the legality of the decision.

Where a resource consent application was non-notified there is no opportunity for an interested party to appeal the decision of the consent authority to grant the consent.

Crown Minerals Act 1991

Any person may apply for a prospecting, exploration, or mining permit, this means that a person may apply for a permit in respect of land that person does not own. However, the grant of a permit does not give the permit holder a right of access to land.

In order to enter land to carry out a minimum impact activity (which includes surveying and taking samples by handheld methods) a permit holder requires the written consent of each owner and occupier to enter the land to which the permit relates.

In order to enter land to carry out other activities the permit holder must enter into an access arrangement with each owner and occupier of the land or obtain an access agreement determined by an arbitrator.

If a person wishes to obtain an access arrangement they must serve notice on the owner and occupier of the land expressing their intention to seek an access agreement. The notice must specify the land, the purpose for which access is required, the proposed programme of work, the proposed compensation and safeguards against adverse effects, and the type of permit held.

If, sixty days after service of that notice, the person seeking access and the owners and occupiers of the land have been unable to agree on an access agreement the person seeking access may request the owners and occupiers of the land to agree to the appointment of an arbitrator. If the parties are unable to agree on the appointment of an arbitrator then either party may apply to the Chief Executive of the Ministry of Economic Development and request that he or she appoint an arbitrator.

If the owner or occupier of the land fails or refuses to enter into an access arrangement, the person seeking access may apply to the Chief Executive of the Ministry of Economic Development for a declaration that an arbitrator may determine an access arrangement. The Chief Executive of the Ministry of Economic Development must report on the application the Minister of Energy. If the Minister of Energy considers that there are sufficient public interest grounds to support the application the Minister of Energy shall serve a notice on the owners and occupiers of the land containing:

- the application,
- the Minister's preliminary views, and
- informing the owner and occupier of the land that they have 3 months to:
    - enter into an access arrangement with the person seeking access,
    - agree to an arbitrator determining an access arrangement, or
    - make representations to the Minister as to why a declaration should not be made

If, after the 3 month period, the owner or occupier of land has not entered into an access arrangement or consented to an arbitrator, the Governor-General, on the advice of the Minister of Energy and the Minister for the Environment, must determine whether it is in the public interest to declare that an arbitrator may determine an access arrangement.

The arbitrator must conduct a hearing and at the hearing a person seeking access and the owner and occupier of the land are entitled to appear and be heard and may be represented by a lawyer. The arbitrator then determines an access agreement, giving the person seeking access access to the land on "reasonable conditions". The access arrangement must specify the compensation to which each owner or occupier is entitled. The owner and occupier of the land are entitled to compensation from the person seeking access for all injurious affection and all other loss or damage suffered as a result of the grant of the permit or by an access arrangement. This includes:

- reimbursement of costs incurred in negotiations,
- reimbursement of lost income,
- a sum by way of solatium for loss of privacy and amenities, and

- reimbursement of costs associated with ensuring compliance with and monitoring the access arrangement.

The owner and occupier of land's costs in relation the hearing are borne by the person seeking access.

The Crown Minerals Act provides that an arbitrator is *not* entitled to determine an access agreement to enable prospecting or exploration for, of mining of petroleum in respect of the following classes of land unless the parties agree:

- Land managed under the Conservation Act 1987
- Land subject to a QEII covenant
- Land subject to a Conservation Act 1987 or Reserves Act 1977 covenant
- Land for the time being under crop
- Land used as or situated within 30 metres of a yard, stockyard, garden, orchard, vineyard, plant nursery, farm plantation, shelterbelt, airstrip or indigenous forest
- Land which is the site of or situated within 30 metres of any building, cemetery, burial ground, waterworks, race or dam
- Land having an areas of 4.05 hectares or less

If there is a dispute regarding whether any land falls within one of the above classes a party may apply to the District Court to determine the matter.

An access arrangement is binding on the owner and occupier and all successors in title to the owner and occupier, provided that the particulars of the arrangement are noted on the title.

See sections 53 to 77 of the Crown Minerals Act 1991.