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8 July 2022

Ministry of Business, Innovation and Employment
Via email: resource.markets.policy@mbie.govt.nz

Exposure draft of the Crown Minerals (Petroleum) Amendment Regulations 2022

Introduction

1. Energy Resources Aotearoa represents energy intensive businesses, from explorers and producers to distributors, sellers, and users of energy resources like oil, LPG, natural gas, refined products, and hydrogen.

2. This document constitutes our submission to the Ministry of Business, Innovation and Employment (MBIE) on the proposed amendments to the Crown Minerals (Petroleum) Regulations 2007 (the Regulations) to be made under the Crown Minerals (Petroleum) Amendment Regulations 2022.

3. It follows our submission on the proposed regulations to support the Crown Minerals (Decommissioning and Other Matters) Amendment Bill 2021. We refer the reader to our submission (including appendices) on the Amendment Bill, especially Wood Mackenzie's New Zealand Upstream Decommissioning Study, given its direct relevance to design of the regulations in the exposure draft.

4. While Energy Resources Aotearoa members have been consulted in the development of this submission, some may also make separate submissions. This submission is not confidential.

Executive Summary

5. We support the intent of these regulations but are concerned the Crown has continued with a risk *elimination* approach. This approach neither recognises or accounts for its unique position in the sector as the resource owner and beneficiary through the royalty regime. By adopting an approach of shedding all

risk from the Crown to permit and licence holders this gives rise to a range of issues that need to be addressed.[1]

The regulations lack sufficient clarity and go well beyond the scope of the Crown Minerals Act

6. We identify numerous issues with the proposed amendments to regulations presented in the exposure draft. We are disappointed at the lack of clarity in both risk identification and the associated mitigation strategy. This has led to excessive and costly information gathering powers in the proposed amendments.

7. There is a worrying lack of understanding about the form and content of the information requested, and an underlying presumption the information exists in the prescribed form and is readily available. This lack of understanding is also reflected in the timing requirements to provide updated information.

8. Information requirements for financial capability assessments extend beyond the scope of the Crown Minerals Act, and indeed into the global activities of non-participants. We recommend officials refocus these regulations on the specific information required to inform a financial capability assessment for each participant, rather than the broad, unfocussed approach presented in this exposure draft.

Summary of recommendations in relation to the exposure draft

9. The following summarises our recommendations in relation to the specific questions posed in the exposure draft.

    a. the requirements for field development plans are onerous and costly. These regulations should be removed from the new Part 3A, and reworked regulations included in Part 3;

    b. Regulation 37B should be amended to grant the Chief Executive the power to exercise discretion with the information requirements in Schedule 5A;

    c. Regulation 37C should be amended to better reflect the content and flexibility a field development plan provides. An updated field development plan should only be required where there is a deviation in planned activities from a previously submitted or accepted plan;

1 In addition, section 1.3(4) of the Petroleum Programme (Minerals Programme for Petroleum 2013 effectively established a principal-agent relationship between the Crown and operators, saying: "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."

d. Regulation 37E requires the ongoing maintenance of an asset register to reflect changes in well numbers and infrastructure. We recommend requiring an annual update only and including a statement that reflects whether there have been any changes in annual reporting requirements;

e. we recommend removing the requirement for an independent person to review decommissioning plans and cost estimates, with the Chief Executive reserving the right to have an independent review of the submission;

f. Regulation 37H requires serious attention to ensure the timing of submissions reflects the content and intent of a decommissioning plan;

g. update Regulation 37J to make it clear what cost estimating standards apply where decommissioning is planned more than 10 years in the future;

h. a *de minimis* exemption for the addition or removal of petroleum infrastructure needs to be included in Regulation 37L;

i. the drafting of Regulation 37M is ambiguous as to who is required to sign a decommissioning completion report. We recommend this should be the responsibility of the permit or licence operator on behalf of all participants;

j. Regulation 41A should be amended to require information from permit and licence participants only and not include the permit or licence holder in the drafting. This will remove the ambiguity where prescribed information that might not exist will not be required;

k. the requirement to provide a 1P production profile for the permit or licence being assessed and any other global operations should be removed as this is not standard industry practice and represents an unnecessary cost. Sufficient information is already collected annually to assess downside valuation risks. We favour the continued reliance on a production profile generated from a 2P reserves base; and

l. we have serious concerns about the extent to which Regulations 37N and 41A and the minimum information requirement prescribed in Schedule 5C will be applied. These regulations and requirements extend well beyond the scope of the Crown Minerals Act and the responsibilities of the permit participants. We recommend these regulations and requirements be reviewed to ensure only relevant information to the decision maker.

10. Given the extent of our recommendations concerns above, and the lack of engagement with Energy Resources Aotearoa and the sector more broadly through the policy development and drafting process, we believe these regulations would benefit greatly from a second exposure draft.

Scene-setting remarks

11. Our aim is to ensure the requirements and timing for these new requirements reflect the overall intent and purpose of the Amendment Act. This approach aligns closely with the context provided by the Ministry in the request for submissions (emphasis added):

    1. *the **decision-maker has relevant, consistent, accurate and timely information** to make decisions relating to decommissioning obligations under the Amendment Act and to monitor permit and licence holders' capability to discharge those obligations;*

    2. *the regulator has relevant, consistent, accurate and timely information to monitor and enforce compliance with obligations under the Amendment Act;*

    3. *permit and licence holders have certainty on the types of records and reports that they are obligated to maintain; and*

    4. *the overall purpose of the Amendment Act is effectively met – to **mitigate the risk** to the Crown and other third parties **of having to carry out and fund decommissioning.***[2]

12. However, the regulations as presented do not work to achieve these aims, which we discuss further below.

A confusing approach to risk management leads to excessive and costly information gathering regulations

13. Throughout the review of the Crown Minerals Act 1991 and subsequent amendments to regulations, the Crown has referred to itself as a "third party". This downplays the unique position the Crown occupies in the sector as the resource owner, principal in a principal-agent relationship with permit holders, and as a direct financial beneficiary through the royalty regime.

14. Energy Resources Aotearoa supports the general intent in developing legislation to mitigate the risk of the cost of decommissioning oil and gas facilities and wells falling to third parties or the Crown. However, we do not support the risk *elimination* approach adopted by the changes to the Crown Minerals Act and the proposed amendments to regulation for the following reasons:

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[2] See page 5 of https://www.mbie.govt.nz/dmsdocument/21363-exposure-draft-of-the-crown-minerals-petroleum-amendment-regulations-2022-commentary-and-request-for-submissions

a. the shedding of risk to operators potentially shifts the economics of field operations with unintended implications for investment in the sector; and

b. this approach ultimately leads to the development of the excessive information gathering powers in the proposed regulations, with no net public benefit.

15. It is difficult to see how all the information requirements link to reducing the exposure of the Crown and third parties to having to fund and carry out decommissioning activities. In other words, there is an important question of relevance.

16. We draw officials' attention to the *"Government Expectations for Good Regulatory Practice"* guidance from The Treasury.[3] We highlight the expectations for the design of regulatory systems outlined in Part A, where a proportionate, least-cost approach that allows the regulator some flexibility is advanced. In our view these regulations do not meet these expectations.

17. We would like to reiterate previously stated concerns on the regulatory design of the Crown Minerals Act 1991 amendments, and subsequent amendments to petroleum regulations proposed here.[4]

18. While not directly relevant to the regulations under discussion, there is a need for guidance on how the information will be collected, stored, and used. All the information required is commercially sensitive and developed in response to regulatory requests at significant cost.

Concerns regarding the absence of a specific cost benefit analysis supporting the implementation of these regulations

19. The exposure draft does not appear to have been accompanied by an updated Regulatory Impact Statement (RIS) nor any cost-benefit analysis. We note that no formal cost benefit analysis was performed in the RIS for the Crown Minerals

3 See https://www.treasury.govt.nz/publications/guide/government-expectations-good-regulatory-practice

4 We recommend the reader refer to our previous submission on the Decommissioning and other matters Bill (See https://www.energyresources.org.nz/dmsdocument/187). Independent reports, commissioned by Energy Resources Aotearoa , supported our views the proposed legislation was:

a. a global outlier, being duplicative and unnecessarily strict;
b. excessively costly to the New Zealand economy and permit holders; and
c. poor quality law.

(Decommissioning and Other Matters) Amendment Bill 2021 either, with the proposals instead relying on non-monetised cost and benefits impacts.

20. The regulations are developed with an implicit assumption the information required exists and is readily available in the prescribed formats, and this is apparently a key reason for assuming compliance costs will be low. However, in our view frequency and extensive nature of the minimum information requirements will impose significant costs on permit and licence holders and participants, as well as the Crown.

21. We feel this highlights a lack of engagement with Energy Resources Aotearoa and with permit and licence holders affected by these new regulations. Many of these requirements do not accurately reflect the business relationship between participants or seek to impose prescriptive minimum information requirements, not normally relied on by permit and licence holders in managing development activities.

Specific comments on the design of regulations

22. It is clear how the information required by the asset register, decommissioning plan and decommissioning cost estimates fit into information requirements to define decommissioning obligations. However, it is less clear how the information provided in a field development plan is relevant to decisions relating to financial capability and security arrangements.

23. We support a requirement for permit and licence holders to maintain an up-to-date field development plan and a requirement to follow that plan. However, revisions to a field development plan should only be required where there is a material deviation from a previously submitted plan or substantive changes warrant a revision.

24. We note with concern the lack of discretion for the Chief Executive or a *de minimus* exemption with any of the regulations. When coupled with common timing requirements across subparts 1 to 4, this imposes unnecessary costs on the permit and licence holders.

QUESTION 1: Field development plans

QUESTION 1(a): Is it clear and unambiguous within Regulations 37B, 37C and Schedule 5A that field development plans should describe planned developments within a permit or licence area?

Energy Resources Aotearoa response: The intent of this regulation is unclear. Schedule 5A essentially repeats Schedule 3, which describes the information to be included in a report when applying for a mining permit. Therefore, the majority of the minimum information requirements in Schedule 5A relate to geological and permit history and are not forward looking in respect to planned developments.

We support the requirement for a field development plan to be up-to-date, and for any development activities to be consistent with the plan. However, the design of the regulations requires a new field development plan to be developed and submitted for existing mining operations.

It is difficult to understand how a field development plan relates to decommissioning information requirements. The substantive information needed to understand decommissioning obligations are met by the asset register, decommissioning plan, and cost estimate.

We submit Regulations 37B and 37C do not fit in new Part 3A and should be removed. Updated regulations be included in the notices section, reflecting a requirement for operators to keep field development plans updated, and for activities to be consistent with the plan.

QUESTION 1(b): Are the minimum information requirements for field development plans in Schedule 5A clear and unambiguous? If not, how could they be amended?

Energy Resources Aotearoa response: As noted in our response to Question 1(a) Schedule 5A essentially repeats the requirements of Schedule 3. We are concerned with the change in language of the proposed regulations from “to be included” in Schedule 3 to an unequivocal “must include” or “must contain” in Schedule 5A. This presupposes the information specified exists and is readily available. Where the information does not exist, the regulations require permit and licence holders to develop this information to meet minimum information requirements of regulation 37B.

For long lived fields such as Maui and Kapuni the collection and collation of historical information serves no net benefit or relevance to understanding decommissioning risks. We are also concerned the regulations do not provide the MBIE Chief Executive

with any discretion on the information requirements. This potentially imposes significant, unnecessary cost to permit and licence holders.

We submit the proposed regulations should also be amended to allow the Chief Executive the power to exercise discretion with the information requirements in Schedule 5A.

QUESTION 1(c): Is regulation 37C clear and unambiguous regarding the times when field development plans should be submitted to the Chief Executive? If not, what additional detail should be added to the regulation?

Energy Resources Aotearoa response: The proposed times to submit a field development plan do not reflect the content and the intent of such a plan. Our membership advises us that it is quite common for a field development plan to provide some flexibility in development decisions. For example, the number of wells to be drilled may be given as a range, and it may be signalled if any wells could be redesignated for a future service, such as water disposal. Similarly, the abandonment wells would not be considered a development activity, so would not require a plan to be updated.

The prescriptive triggers to provide a field development plan in Regulation 37C(a) are inconsistent with the content or purpose of a field development plan, which is to describe the efficient development of hydrocarbon resources. We are also concerned by the lack of a *de minimus* exemption for changes to petroleum infrastructure.

We note also 37C(b)(iii) requires the field development plan to be updated should hydrocarbons be flared. We submit this eventuality is adequately covered by Regulations 26, 27 and 37 and should not be included as a requirement to resubmit a field development plan.

Updating a field development plan is a considerable cost to permit and licence holders. These regulations would have benefited from increased engagement with Energy Resources and the upstream sector to ensure they are fit for purpose.

In respect to 37C Energy Resources Aotearoa proposes the following to meet the intent of s42B of the Crown Minerals Act 1991 and removes the need to provide or create unnecessary information:

> *"Permit and licence holders are required to have a current field development plan and development activities must be consistent with this plan. Where development activities and described facilities and operations deviate from this plan a permit or*

*licence holder is required to provide the Chief Executive with an **updated** plan 6 months prior to commencing further development."*

QUESTION 1(d): Do you foresee any challenges in providing the information required in Schedule 5A within the timeframes specified in Regulation 37C?

Energy Resources Aotearoa response: Theses regulations are planned to come into effect 30 November 2022, and we note there are no transitional provisions. Therefore, any planned activities commencing after that date, such as drilling a well require an updated field development plan to have been submitted six months prior to commencing drilling operations.

Due to the detailed, prescriptive requirements in Schedule 5A our members advise the collection and interpretation of historical information is a costly and time-consuming process. We submit this is an unnecessary expense for permit and licence holders with no net benefit to the public.

Reflecting on our responses in the above questions, we submit permit and licence holders should only be required to provide an updated field development plan that reflects any changes and not be required to develop a new plan as these regulations require. Transitional savings should be included to account for planned development activities over the next year.

QUESTION 2: Asset Registers

QUESTION 2(a): Are the minimum information requirements for asset registers in Schedule 5B clear and unambiguous? If not, how could they be amended?

Energy Resources Aotearoa response: Overall this approach seems reasonable. We agree that it is important to ensure regulator and permit and licence holders have a common understanding of what is covered by the obligation of permit and licence holder to decommission petroleum infrastructure pursuant to sections 89J and 89K of the Crown Minerals Act 1991.

QUESTION 2(b): Is Regulation 37E clear and unambiguous regarding the times when asset registers should be submitted to the Chief Executive? If not, what additional detail should be added to the regulation?

Energy Resources Aotearoa response: Overall this approach seems reasonable. We agree it is important an asset register is maintained and kept current by permit and licence holders. It would be helpful if MBIE had provided guidance on how this

regulation will be operationalised and the mechanism or system used to update an asset register with any changes.

QUESTION 2(C): Do you foresee any challenges in providing the information required in Schedule 5B within the timeframes specified in Regulation 37E?

Energy Resources Aotearoa response: Overall the timing to make changes to an asset register are reasonable. However, we suggest an annual update (including a declaration where no changes have been made) could be included in annual reporting requirements. This approach would have a lower administrative cost and link to the provision of reserves and production profiles, as required by Regulation 39.

QUESTION 3: Decommissioning plan

QUESTION 3(a): Are the minimum information requirements for decommissioning plans in regulation 37F clear and unambiguous? If not, how could they be amended?

Energy Resources Aotearoa response: Overall, we support the approach of defining the assumptions and approaches to the decommissioning of petroleum infrastructure and wells. Although it is unclear as to the purpose of including an engagement plan in these requirements as it has no relevance to developing a decommissioning cost estimate.

QUESTION 3(b): Do you have any comments on the practical feasibility of appointing a competent and independent person to review the decommissioning plan as outlined in Regulation 37G?

Energy Resources Aotearoa response: We have serious concerns with the design of this regulation and do not support it in its current form.

It is important to remember the purpose of the decommissioning plan is to provide a summary of the assumptions to be used in the development of a decommissioning cost estimate to inform setting financial security arrangements. It is equally important to bear in mind the standards for decommissioning will be set by other decision-making bodies, such as regional councils and the EPA. As such any assumptions relied on to estimate costs need only be reasonable.

In the absence of an acceptance or how different views might be resolved it is difficult to understand how this regulation will be operationalised.

We submit this regulation could be significantly improved by requiring permit and licence holders to prepare and submit a decommissioning plan to the Chief Executive.

The Chief Executive should treat every submission on its merits and reserve the right to refer the plan to an independent party for review.

QUESTION 3(c): Is Regulation 37H clear and unambiguous regarding the times when decommissioning plans should be submitted to the Chief Executive? If not, what additional detail should be added to the regulation?

Energy Resources Aotearoa response: We do not support this regulation in its current form. The requirements to provide an update of a decommissioning plan in 37H(a) are inconsistent and overly prescriptive for the level of detail required by 37F. The intent of the decommissioning plan is outlined in the request for submissions (emphasis added):

> *"A decommissioning plan should explain, for the petroleum infrastructure and wells listed in an asset register, **the planned methodology** for decommissioning, the proposed solution for each asset, and the **timing** of decommissioning, including **any dependencies** such as regulatory or other processes."*

Only the requirements of 37H(vi), changes to methodology to decommission or plug and abandon, should be retained, as only this requirement is consistent with the stated intent of a decommissioning plan.

QUESTION 4: Decommissioning cost estimates

QUESTION 4(a): Are the minimum information requirements for decommissioning cost estimates in Regulation 37I clear and unambiguous? If not, how could they be amended?

Energy Resources Aotearoa response: We are concerned there is no explicit link to the either the asset register or the decommissioning plan as the basis for developing a decommissioning cost estimate.

This is important as both documents combine to define the scope of decommissioning and any assumptions in methodology and the end state of the site, and any facilities or pipelines abandoned in place.

QUESTION 4(b): Are the standards to be met in Regulation 37J accessible?

Energy Resources Aotearoa response: We are comfortable with the requirements of this regulation.

QUESTION 4(c): Do you have any comments on the practical feasibility of appointing a competent and independent person to review the decommissioning cost estimate as outlined in Regulation 37K?

Energy Resources Aotearoa response: We refer also to our response to Question 3B above. We do not support this regulation in its current form.

We are concerned about the protection of intellectual property (IP) when providing information to an independent reviewer. The development of IP for cost estimating norms and methodologies is commercially sensitive and providing this information to competitors for review is unacceptable. In its current form this regulation works to restrict competition such that those persons approved by the Chief Executive will be able to produce cost estimates without risking the sharing of their IP.

We note the requirement of 37G are common with the review required for a decommissioning cost estimate in regulation 37K. It is unclear if this can be the same person or whether another independent person is required

We submit this regulation could be significantly improved by requiring permit and licence holders to prepare and submit a decommissioning cost estimate, consistent with the assumptions and methodologies outlined in the decommissioning plan, to the Chief Executive. The chief executive should treat every submission on its merits and reserve the right to refer high level information to an independent reviewer.

QUESTION 4(d): Is Regulation 37L clear and unambiguous regarding the times when decommissioning cost estimates should be submitted to the Chief Executive? If not, what additional detail should be added to the regulation?

Energy Resources Aotearoa response: We are concerned by the lack of a *de minimis* exemption for the addition or removal of petroleum infrastructure. The proposed requirements in Regulation 37L require more frequent cost estimate updates where there is no material impact on the costs or risk exposure.

We note this is administratively costly and requires an independent review each time. Again, suitable guidance should be developed to ensure there is no ambiguity in the timing, for example if independent review is required prior to submission, given the report back includes the Chief Executive.

We submit permit and licence holders should complete an annual statutory declaration on whether there has been a material change in decommissioning cost and scope. We would support a requirement to provide an updated decommissioning cost estimates every 4 years to account for changes in market conditions and inflation.

QUESTION 5: Decommissioning completion reports

QUESTION 5(a): Are the minimum information requirements for the decommissioning completion report and supporting information as outlined in regulation 37M clear, unambiguous, and practicable? If not, how could they be amended?

Energy Resources Aotearoa response: We support the intent of this regulation but recommend clarifying who is required to sign the report on behalf of the permit or licence holder. We recommend this would be done by the operator on behalf of all participants.

QUESTION 5(b): Are the new requirements in regulation 47 relating to well abandonment reports clear and unambiguous? Specifically, in 47(2)(d)(v) and (vi), is it clear what a "description of fluid" entails? If not, how could it be made clearer?

Energy Resources Aotearoa response: We support the regulation as drafted.

QUESTION 6: Monitoring financial position

QUESTION 6(a): Are the information requirements for monitoring of financial position as outlined in regulation 41A and Schedule 5C clear and unambiguous? If not, how could they be amended?

Energy Resources Aotearoa response: We have serious concerns with the breadth and scope of this regulation. When read in conjunction with s89ZK of the Act the information gathering powers of the Minister are unfettered and stray far beyond the scope and intent of the Crown Minerals Act 1991.

We submit this is a clear case of regulatory overreach and are concerned as to the justification for such strict regulatory impositions. We also note the absence of guidance on how any information gathered from related parties will be used and protected, and how this will be communicated with permit licence holders.

We submit these regulations require serious attention to ensure they are consistent and reasonable, and within the scope and purpose statement of the Crown Minerals Act 1991.

QUESTION 6(b): Is the timing for submission the specified financial information clear and unambiguous from Regulation 41A? If you are a permit or license holder, assuming the regulations come into force by the end of 2022, by which date do you understand this information would need to be provided?

Energy Resources Aotearoa response: This regulation is poorly drafted and appears to require information at both the permit and licence holder level and at the participant level. Where there are multiple participants in a mining operation these are typically unincorporated joint ventures. Participants typically do not share this information due to the commercial sensitivity of these matters.

We recommend limiting the drafting language to requiring information from participants for the removal of any doubt.

QUESTION 7: Assessment of financial capability

Are the information requirements for the assessment of financial capability and supporting information, as outlined in regulation 37N, clear and unambiguous? If not, how could they be amended?

Energy Resources Aotearoa response: Regulation 37N requires serious attention. The intent of the regulation and the empowering s89ZK of the Act is to assess the financial capability of the permit or licence holder to meet decommissioning costs. However, this regulation applies uniformly at the holder and participant level. It is unclear how this regulation will apply to unincorporated joint ventures, where joint venture accounts are not kept.

More seriously the information requirements outlined in 37N(3) extend far beyond matters of the Crown Minerals Act and the business activities of the permit or licence participant, requiring information to be supplied regarding the global business of the related entities. This is a clear case of regulatory overreach.

We also note our member's concerns that generating production profiles based on a 1P reserves basis, as required by r37N(3)(f). Generating 1P production profiles is not standard industry practice. The Society of Petroleum Engineers Petroleum Resource Management System (PRMS) defines 2P reserves as the "*best estimate scenario of reserves*". As such, production profiles generated from this scenario are relied by permit and licence holders on for field development planning, production forecasting and capital allocation. This provides the best basis for value remaining and provides an adequate basis to assess value remaining in an overall assessment of exposure to decommissioning costs. We note sufficient additional data is also collected via annual reporting requirements, including the range of reserves estimates and operating expenses, to supplement an examination of financial capability of a permit or licence participant.

The use of 1P reserves in 37N(3)(e) as a basis for estimating value remaining is unnecessarily conservative when considering financial capability. It is an egregious

example regulatory overreach requiring the extension of non-standard industry practices to non-permit or licence participants.

We submit the requirement to provide a 1P production profile, for either the permit or licence in New Zealand and a global portfolio, should be removed and the information requirements be limited to the permit or licence subject to assessment.

Concluding remarks

25. Many of the regulations presented in this exposure draft require serious attention. It is our view a second exposure draft is warranted. These regulations are critical to New Zealand's ongoing energy security, affordability, and ultimately the competitiveness of our export sector who rely on reliable, affordable energy. While well intentioned, we find many instances where the intent of the regulations is not met, and significant costs will be imposed on permit and licence holders for no net public benefit.

26. There is precedent for circulating a revised exposure draft based on feedback from submitters. The Ministry for the Environment took this approach when developing decommissioning legislation under the EEZ Act.

27. At a time when energy consumers are facing burgeoning costs it is important that unnecessary costs are not imposed on energy producers. Ultimately these costs will be passed on to consumers and we suggest policy settings need to be cognisant of such.

28. It is important officials work collaboratively with Energy Resources Aotearoa and the sector on the next tranche of regulations to ensure we can avoid the issues identified in this exposure draft. It is in the interests of all New Zealanders to ensure the regulations are durable and take a least cost approach.