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New Zealand Petroleum and Minerals

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Feedback on Financial Securities and Financial Capability Assessment Guidelines

Introduction

This document constitutes our feedback on the proposed Financial Security and Financial Capability Assessment guidelines ('the guidelines').

Introduction

1. We thank New Zealand Petroleum and Minerals ('NZP&M') for the opportunity to provide feedback on the draft guidelines. We understand this guidance has been developed for information and illustrative purposes only and should not be relied on by permit and license holders in any way.

2. At the request of NZP&M, we provide our feedback for each guideline as presented.

Overarching comments

3. Our comments are premised on no substantive changes being made to the Crown Minerals Act Amendment Bill 2024 ('the Bill'), which is currently paused at its third reading.

4. Despite our serious concerns about the unnecessary blurring of regulatory responsibilities by drawing land use issues into the Crown Minerals Act 1991 ('the CMA'), we do not intend to relitigate these policy decisions in our feedback.

5. We raised our concerns in discussions with NZP&M on 23 January that, while the intention of the guidelines is to provide permit and license holders with information on how the regulator might operationalise provisions in the CMA, the legal standing of the guidance remains unclear. NZP&M has advised that any guidance should be regarded as information only and should not be relied upon.

This raises questions on both the necessity of the guidelines and the legal risk they pose, particularly in the absence of supporting regulations.

Financial Securities Guidelines – Decommissioning

G1. Petroleum exploration permits (P13.21(3))

6. S13.21 (3) refers to a permit or license without any wells or infrastructure to decommission, *"the Minister will ordinarily accept a nominal security"* – this seems to create a circular reference. There is an obligation to decommission – but there may be nothing to decommission. Is this correct?

7. If there is nothing to decommission, guidance should be clear on what is meant by *"nominal security"*. Otherwise, we read this as an exploration permit now requires some form of bond or parent company guarantee in the absence of any actual decommissioning obligation (nothing on an asset register), presumably to the cost of the PEP holder. This creates a circular reference that cannot be resolved unless a security is provided.

8. The primary risk to the Crown from activities undertaken under the authority of a PEP is the permit holder failing to plug and abandon ('P&A') an exploration or appraisal well. The reasons for not plugging and abandoning (suspending) a well at this stage would perhaps be for future use as a production well.

9. The majority of exploration and appraisal wells are planned to be abandoned as part of the initial drilling campaign, with suspension of the well on a case-by-case-basis. Requiring a financial security to ensure funds are available to P&A the well **at the time of suspension** is a fairer and more proportionate way to manage the Crown's financial exposure, rather than through a token nominal security.

G2. The kinds of financial security that may be acceptable (P13.22(4))

10. We have no feedback on this guideline.

G3. Financial security arrangements may comprise different kinds of financial security (P13.22(4))

11. We have no feedback on this guideline.

G4. Financial security arrangement may cover multiple permits (P13.22(4))

12. For collective security across several permits the guidelines indicate the Acceptable Financial Security Arrangement ('AFSA') is on a "permit-by-permit" basis. We suggest a clarification that means **the amount** of the required security is assessed on a permit-by-permit basis. Where multiple permits are to be covered by the AFSA this will be assessed on the sum. We believe this

clarification is more consistent with the general point made above that an ASFA has two components – an amount and an agreement on how this amount is secured.

G5. How financial securities may be held (P13.23(1)(c))

13. We have no feedback on this guideline.

G6. Example of how an amount may be determined and monitored (P13.23(5))

14. The guideline states that the decommissioning cost estimate is for the full development of the 2P reserves base, and that this includes all future wells and undeveloped infrastructure.

15. The intention is to require a permit holder to provide financial security for 100% of the wells and infrastructure described in a field development plan, for the 2P reserves. We think this is problematic and inconsistent with the purpose of having an asset register.

16. Noting the absence of regulations, the enabling provision in the CMA is section 89ZD, which sets out the obligation for permit holders to submit an asset register to the chief executive. We expect regulations will require permit holders to keep this asset register up-to-date, and this resister will list what the permit holder is **actually** responsible for decommissioning, not what they **may** be responsible for.

17. It is not clear why the Minister would require financial security for 100% of the cost of decommissioning a development, including wells that have not been drilled and infrastructure that has not been built. This is particularly perplexing because CMA field development plans do not require Ministerial approval, unlike many of the jurisdictions this legislation draws from.

18. In our view, this will incentivise permit holders to minimise the scope of field developments to the bare minimum, consistent with reserves reporting requirements.

19. We **strongly recommend** updating this guideline to reflect a fairer and more proportionate approach that genuinely reflects the potential financial exposure to the Crown.

20. In the third sub bullet of the third bullet for the section beginning *"As an illustration, Figure 1 assumes:"* we recommend replacing *"s97"* with *"monetary deposits (see section 97)"*.

G7. Use of financial security during decommissioning (P13.27)

21. We have no feedback on this guideline.

G8. Release of financial security post-decommissioning (P13.28)

22. We have no feedback on this guideline.

Financial Capability Guidelines – Decommissioning

23. The following outlines our feedback on the financial capability elements of the CMA.

General comment

24. Quite a bit of the financial capability assessment and financial monitoring is similar to what would normally be expected from a well-resourced regulator. Would expect regulations, when available, will address many of the annual reporting requirements needed for ongoing monitoring.

G1. Permit holder and Permit Participant assessments (P13.16(1))

25. We don't believe G1 provides clear information on the implications of these assessments for the permit holder and permit participant. Our specific concern relates to the application of the aggregated results (the 'highly likely' test).

26. For the avoidance of doubt, and for consistency with G6 in the Financial Securities guidelines, it should be explicit if the aggregated result for the permit holder will be applied to the permit participant when determining an acceptable financial security arrangement. If this is indeed the case.

G2. How information may be used in assessments (P13.18(2))

27. There is a significant difference in the financial risks to the Crown from an exploration permit and a mining permit. By making G2 generic, it does not differentiate between the information requirements for petroleum exploration ('PEP') and petroleum mining ('PMP') permits. For example, section 42B of the CMA requires the holder of a PMP to submit a field development plan, however, this is not a requirement of a PEP.

28. This section provides insufficient information on how point-in-time issues will be managed with respect to the asset register and a field development plan. Our understanding is an asset register should only list items that are in existence, not planned. This has serious implications for the decommissioning scope (and therefore cost), which flow on to any financial security arrangements.

29. We recommend including relevant older infrastructure and wells in G2(ii) as this will be part of any decommissioning obligations (implied but not explicit).

30. It is not clear what is meant by *"what the scope of decommissioning entails with reference to section 89E and implications of total removal (if any)*".

31. Section 89E(2) is clear on the presumption of complete removal in the absence of a consent to do otherwise. The guideline implies two decommissioning cost estimates are required, at the permit holder's cost, one for complete removal and another for a potentially limited scope. Guidelines should be clear on this.

32. We also suggest expanding G2 (iii) to provide additional detail on what the expectations of "total removal" are, and how exemptions are to be incorporated. For example; does this include site restoration? If so, to what standard?

33. For onshore infrastructure in particular it is important that permit holders have guidance on how landowner preferences might be accommodated. For example, if well pads and access roads might be left as-is for the benefit of the landowner, rather than returned to prior condition. This may be, for example, at the discretion of the regulator in assessing a decommissioning plan (we expect regulations will provide further clarity on this, when available).

34. The information outlined in this guideline relates exclusively to the circumstances of the permit holder or the permit participant. No consideration is given to the effects of a policy change in other legislation. New Zealand's recent volatile policy environment means it is essential permit holders are provided with information on **how sovereign risk will be assessed** in relation to their financial capability assessments.

G3. Quantitative metrics and scoring (P13.18(4)(a)+(b))

35. We understand the scores and relative weightings G3 are provided for information only. However, guidance should be clear how the weightings in will be applied or modified. For example, will these be common across all permit holder and participant financial capability assessments, or will they be "tuned" on a case-by-case basis?

36. We agree in principle with the approach that the permit participant is a company in its own right (footnote 15) – this is consistent with the risk management approach employed by oil and gas companies to manage business risk.

G3(a). Financial (point-in-time) metrics5 (P13.18(4)(a))

37. We have no specific feedback on this guideline.

G3(b). Cashflow (cash generation) metrics and assumptions (P13.18(4)(b))

38. We have no specific feedback on this guideline.

G4. Qualitative information (13.18(6))

39. In the third bullet point for G4, we recommend "changes to other enactments" be included as a current or emerging risk.

G5. Example assessment of Permit holder with multiple Permit Participants

40. In respect to footnote 16, does this mean that, where the Minister decides not to assess the financial capability of a minor permit participant, they have a default "highly likely" outcome at the participant level?

41. This question sheets back to our comment for G1 on how the aggregated outcome of the "highly likely" test will be applied when determining the financial security arrangements.

42. The example provided highlights many of the issues in how the Minister will treat information received from permit participants. The Minister needs to take all **care not to disclose confidential financial information** when discussing financial capability assessment outcomes (pursuant to section 89ZJ) where participants are unrelated. We highlight our comment in G1 regarding the application of the outcome of the "highly likely" test.

G6. When monitoring may occur (P13.20)

43. For the purposes of clarity, the guidelines (and the draft Programme) should refer to section 89ZF as this creates additional annual reporting requirements for permit participants.

44. An annual assessment to determine whether a permit holder is "highly likely" is both costly and unnecessary. We recommend a risk-based approach, considering the circumstances of the permit holder, in determining the frequency of these assessments (we envisage every three to five years for most permit holders). This approach will be informed by information received and developed as part of annual reporting requirements.

Concluding comments

45. We thank NZP&M for their attention to this important information, and the opportunity to provide feedback.

46. Should any of our comments require clarification please do not hesitate to contact us.