

# Oil and gas and Maori iwi



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The past few years have seen a number of developments to address the issue of improving Maori stakeholder engagement, but later this month a new phase in this process will begin. By **Deborah Edmunds**, partner, Kensington Swan.

THE INTRODUCTION OF TWO settlement Bills into the House (expected in May) will in due course put in place a new level of regulator engagement with Maori stakeholders that will also affect the oil and gas industry.

The government's management of oil and gas resources and engagement with Maori has been the subject of criticism and challenge by Maori, particularly by the iwi of Taranaki, for many decades.

This issue has seen the investigation of claims by Ngaruahine (an iwi from southern Taranaki) and others by the Waitangi Tribunal in two Petroleum Inquiries before the Waitangi Tribunal, particularly the Management of the Petroleum Resource Inquiry in 2010.

In the later report the Tribunal considered that Maori perspectives were not adequately considered or protected in decision making on petroleum matters. It considered that the regime had specific flaws in 'Treaty' terms: It failed to provide sufficient protection for the small surviving Maori land base and for wahi tapu (significant sites).

One of the key concerns of the many Maori submitters on the review of the Act was that, despite section 4 of the Crown Minerals Act (persons exercising functions under the Act must 'have regard' to the principles of the Treaty of Waitangi), they had insufficient input into decisions made under the legislative regime, there was insufficient consultation by the regulator or the industry, and the block offer process did not provide a real opportunity to protect wahi tapu.

Internationally the oil and gas industry has recognised the benefits of better engagement with indigenous peoples. IPIECA states that the industry has a responsibility to respect indigenous communities and protect their culture: Working with indigenous peoples and developing opportunities for them to participate in training, employment and business relationships is likely to benefit both the company and the indigenous peoples. IPIECA has developed guidelines for engagement with indigenous peoples. In New Zealand NZP&M encourages all permit holders to engage with iwi (tribes) and hapu (sub tribes) that could be affected by their operations.

The last few years have seen several developments to address these concerns.

## Amendments to the CMA

In 2012-13 a major review of the Crown Minerals Act and the associated Minerals Programmes was undertaken which led to significant changes in the Act and the minerals programmes in 2013. The 2013 amendment placed greater emphasis on competitive tenders for allocation of minerals. All new petroleum exploration permits would be allocated in an annual competitive tender process, known as "Block offers". A number of provisions were made for engagement with or consideration of Maori issues.

In terms of Maori and Treaty issues the Act now provided that the minerals programme must set out how the Minister of Energy and Resources and the chief executive of the Ministry of Business, Innovation and Employment (MBIE) will have regard to the principles of the Treaty of Waitangi for the purposes of the Petroleum Programme; that defined areas of land of particular importance to an iwi's or hapu's mana are excluded from the operation of the Petroleum Programme or are not to be included in any permit. Of particular interest is that Tier 1 permit holders have to report annually to NZP&M on their engagement with iwi and hapu whose rohe includes some or all of the permit area or who otherwise may be directly affected by the permit.

## Guidelines for engagement

For the iwi of Taranaki the activities of the oil and gas industry and regime have had special impact. These iwi have led the way in pressing for improvements in Maori stakeholder engagement. One Taranaki iwi, Te Runanga o Ngati Ruanui, developed and, in August 2014, published a guideline and resource document to support industry best practice engagement with iwi. This guideline is of course voluntary.

## Taranaki relationship agreements

Of a more binding nature are the new relationship agreements that the MBIE has agreed with two Taranaki iwi, Ngaruahine and Te Atiawa. These agreements are currently contained within their Treaty of Waitangi Deeds of Settlements. The Deeds provide that these agreements will be formally signed 'by or on settlement date'; settlement date being a date shortly after the settlement legislation is passed, but the agreements can be signed at any point and it is understood that practically they are being given effect to already.

These agreements will not merely benefit the two iwi who have signed the Deeds, but are intended to introduce a new engagement relationship between the Crown and all the iwi of Taranaki.

The agreement states that the purpose of the agreements is to 'provide for the development and maintenance of a dynamic, respectful, robust and evolving relationship between the Parties based on the principles of Te Tiriti o Waitangi / the Treaty of Waitangi', and applies to all functions and responsibilities of the Minister of Energy and Resources and the chief executive of MBIE within the Energy and Resources portfolio. It includes acknowledgements by the Crown of the special position of the iwi of Taranaki in respect to petroleum exploration and development and includes a set of principles which apply to the relationship.

The agreements introduce the use of annual fora between the eight iwi of Taranaki, the Crown and other regulatory bodies to discuss policy, regulatory and work plan developments envisaged for the forthcoming year across both petroleum and minerals development, review of past year's engagement and future opportunities to develop mutual understandings and relationships; review of early engagement on block offers and any other competitive tenders; and discussion of the Ministry's future strategy for block offer areas. Also included is provision for early engagement on proposed annual block offers prior to formal consultation. The agreements also record that the parties will seek to enhance iwi engagement mechanisms to better provide for the protection of areas of particular importance to the iwi.

Much of the agreements introduce new forms of engagement between iwi and the Crown, but they also recognise the role of industry in the oil and gas regime. The agreements record that the Ministry will provide assistance to industry on how to build and maintain good relationships with the iwi, provide it with an opportunity to comment to the Ministry on a permit holder's engagement with those iwi, and facilitate introductions of tribal representatives to permit holder/s as early as feasible after the allocation of a permit.

The agreements also record that the Ministry will facilitate the development of industry best practice guidelines for engagement with iwi.

This last measure could open the way for better relationships between iwi and the industry and have mutual benefit to both iwi and industry.

• *Deborah Edmunds acted for many years for the government in respect to oil and gas regulation and Crown involvement as an active participant in petroleum exploration and development. She also acted for the claimants in the Tribunal inquiries and advised them on the development of the new engagement guidelines discussed in this paper.* ○