14 March 2016

Committee Secretariat
Local Government and Environment
Parliament Buildings
WELLINGTON 6011

Dear Sir/Madam

PEPANZ Submission: Resource Legislation Amendment Bill

Introduction and details

This document constitutes the Petroleum Exploration and Production Association of New Zealand's ("PEPANZ") submission in respect of the *Resource Legislation Amendment Bill* ("the Bill"), which was introduced to Parliament in November 2015.

We wish to appear before the Committee to speak to our submission.

I can be contacted at 04 494 8974 and email (andrew.saunders@pepanz.com).

PEPANZ represents private sector companies holding petroleum exploration and mining permits, service companies and individuals working in the industry.

This submission is in two parts:

- Part 1 – Overarching issues
- Part 2 – Comments on individual clauses of the Bill

Part 1 – Overarching issues

Decommissioning of Offshore Infrastructure under the EEZ Act

Lack of coverage in the current EEZ Act

Operators plan to sensibly decommission their facilities once a petroleum field reaches the end of its economic life. The decommissioning of oil and gas facilities subject to the *Crown Minerals Act 1991* is already addressed in the requirements relating to field abandonment contained in petroleum mining permits issued pursuant to that Act.

There is surprisingly no reference in the Bill or the supporting Regulatory Impact Statement[1] to these regulatory requirements, namely that the abandonment of wells, facilities and operating sites is required to be carried out, and in accordance with good industry practice, under the *Crown Minerals Act 1991*. Permits also generally require the permit holder to submit a report to the Ministry of

[1] Regulatory Impact Statement, Resource Legislation Amendment Bill 2015: EEZ Amendments, Ministry for the Environment, October 2015.

Business, Innovation and Employment prior to decommissioning that describes the proposed approach and the reasons for it. These are legally binding requirements under that Act. We note that wells are also separately required to be maintained and then abandoned subject to specific requirements under health and safety regulations.[2]

Industry recognises the *Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act* ("EEZ Act") currently lacks provisions focussed on the decommissioning of offshore facilities and supports in principle the addition of provisions focussed on this matter. The EEZ Act is particularly lacking with regard to providing an appropriate regime for those existing producing facilities that pre-dated the commencement of the EEZ Act. Neither the matters that would be considered nor the processes that would applied under EEZ Act are well suited to the decommissioning context.

The current absence of a framework for offshore decommissioning under the EEZ Act and the lack of any linkage to existing regulatory requirements creates uncertainty for industry in terms of both process and outcomes. We consider it is important that a regime is put in place that achieves effective and balanced decommissioning solutions, which are consistent with international obligations and have a proper regard for the environment, health and safety, other legitimate uses of the sea, as well as economic and social considerations. It must also be sensibly integrated with other regulatory regimes.

International approaches to offshore decommissioning

As substantial numbers of offshore facilities around the world have already been decommissioned, technical as well as regulatory approaches to decommissioning are maturing. Key features of an offshore decommissioning regime tend to include:

- Obligations to responsibly decommission infrastructure following end of economic life (following the consideration of any feasible options to reuse or repurpose any facilities).
- Clear expectations and/or precedents regarding how decommissioning will be undertaken and to what extent (i.e. regimes tend to provide principles and in some cases specific rules for the extent to which some installations (generally older and larger facilities) are normally removed, which recognise the technical challenges, environmental effects and costs of removing such facilities).
- A regulatory process for authorising decommissioning activities that:
    - includes an ability to conduct a comparative assessment of the different options for decommissioning that evaluates the costs and benefits of potential approaches, including considering the technical feasibility and the relative impacts on the environment (offshore and if relevant onshore), other marine users, health and safety risks, and economic and social factors;
    - provides appropriately for input from potentially affected parties and the wider public; and
    - has elements of a negotiated and agreed outcome between the government and the operator rather than simply an application from the operator with a yes/no decision.

[2] Refer to Part 6 of the *Health and Safety in Employment (Petroleum Exploration and Extraction) Regulations 2013*.

Offshore decommissioning can be costly and long lead times are required to undertake the technical planning and source the appropriate equipment and vessels. It is difficult to undertake that planning if major uncertainty exists as to how, and to what extent, a facility will ultimately be decommissioned. Particularly for larger and more complex facilities it is necessary to have a process for narrowing the many feasible options as the implications and costs can vary considerably. Some approaches could be disproportionally costly and problematic. This scale of this cost, and the variation in it, can have implications for commercial decisions on the field more generally and on taxes and royalties paid to the Crown because decommissioning costs are deductible from these profit based measures.

The standard marine consent process under the EEZ Act, where the operator makes an application based on a particular approach and the regulator then either approves it, or not, is poorly suited to narrowing the feasible options. It is particularly uncertain here as there are no domestic precedents to rely on and the decision making criteria applying under section 59 of the EEZ Act are tailored to yet to be established activities, rather than closing out activities already underway. Furthermore, decommissioning must take place, so unlike potential new activities that can simply have their marine consent applications turned down, an approach to decommissioning an existing facility must be approved to enable the work to be done.

Based on this we consider that a framework for decommissioning activity is required within the EEZ Act regime to enable offshore decommissioning to be effectively and efficiently planned for, consulted on, considered, approved and ultimately undertaken.

The proposal to require the owner of an offshore installation to prepare a decommissioning plan

Clause 217 of the Bill provides for the inclusion of a new section 100A in the EEZ Act that would formally introduce decommissioning to the Act by requiring "the owner of an offshore installation to prepare a decommissioning plan" in accordance with any regulations that are yet to be developed. This section would also require the owner (in practice the Permit Operator) to consult the Environmental Protection Authority ("EPA") about the decommissioning plan within any prescribed period and to apply for a marine consent for every discretionary activity that is proposed as part of the decommissioning plan.

Whilst in principle we support the introduction of decommissioning related provisions we have concerns with this proposed provision as it is currently written:

- There is no linkage between the proposed decommissioning plan and the rest of the EEZ Act regime or other statutes (e.g. the Crown Minerals Act 1991).
- When a decommissioning plan would be required and what it should contain is unclear (we recognise this could be provided for in regulations but we note these are critical issues).
- The status of a decommissioning plan once developed is uncertain. Is it approved by the EPA and if so how is it then maintained and updated?
- The linkage between developing the decommissioning plan and the requirement to apply for marine consent/s is uncertain. Proposed section 100A(3)(b) requires that an owner of an offshore installation "apply for a marine consent for every discretionary activity that is proposed as part of the decommissioning plan". We understand from the RIS that the intended effect of this to give decision makers under the EEZ Act the authority to require operators, including existing operators, to apply for consent for activities associated with

decommissioning. It is unclear whether this is supposed to mean applying for a marine consent at that time (unnecessary and likely impractical) or applying at a later time when the relevant activities are more imminent. It should be clarified that it is the latter that is intended. Obtaining marine consents far in advance of the actual decommissioning activities would likely be impractical for various reasons including that the details would be uncertain.

Beyond these specific aspects we are concerned that the single provision proposed in the Bill would be insufficient of itself to create a comprehensive and appropriate regime for decommissioning. In the absence of further amendments this might create more issues than solutions. There is a risk it simply becomes an additional requirement that does not link to other pre-existing requirements.

There are for instance elements of the EEZ Act regime that are not consistent with international best practice approaches to offshore decommissioning noted previously. For example the current criteria applied to marine consents is not sufficiently broad to encompass the factors considered internationally (e.g. technical feasibility or health and safety impacts) when determining the most appropriate approach for decommissioning a facility.

A key risk associated with this is that an operator (the "owner" of a facility) prepares a decommissioning plan but is then unable to secure some of the consents required to implement it, as they are determined under a different process run at a different time and potentially subject to different criteria and a different decision maker (for instance a board of inquiry). We therefore consider that for the decommissioning plan concept to have value it would have to be integrated with other elements of the EEZ Act regime, and not simply tacked on as an additional feature.

To make the decommissioning plan provisions more appropriate we consider that at minimum the following need to be provided for in the Bill:

a. What status would the decommissioning plan have once it is developed (i.e. how would it be factored in to decisions on marine consents)?

b. Whether the decommissioning plan is accepted or approved by the EPA, or simply provided to the EPA?

c. Who other than the EPA should be consulted in the development of a decommissioning plan (e.g. potentially affected parties, relevant iwi, other government departments etc.)? Consultation requirements here should be linked and integrated with other parts of the EEZ Act so that consultation occurs at appropriate times and duplication is avoided.

d. The factors and criteria that should be considered in determining appropriate options for decommissioning (these would be need to be consistent with the purpose of the EEZ Act but would also need to go beyond what is currently provided for under section 59 of the Act for marine consents).

More detailed matters could be provided for in the regulations envisaged to be made under section 100A. These would need to include:

- What would trigger the requirement to produce a decommissioning plan. The ultimate date of decommissioning can move in response to market conditions and other factors and so any trigger would logically need to take this into account.
- The level of detail to be provided in a decommissioning plan and at what stage. When decommissioning is still many years in the future a plan would need to be high level in nature. As likely decommissioning approaches the plan would naturally become more

detailed and specific and would also take account of more recent technical developments and lessons learned from international and/or domestic experience. This dynamic aspect needs to be accounted for in the regulatory design.

- The process by which the operator is expected to engage with potentially affected parties and relevant government agencies.
- The sort of comparative assessment that should be carried out to determine the most practicable and appropriate option (e.g. the requirement for a net environmental benefit analysis as part of the assessment of alternatives and the inclusion of technical, environmental, safety and economic factors).

Recommendations

- Revise the proposals to clarify: the status of the decommissioning plan; whether it is accepted or approved by the EPA; and who other than the EPA should be consulted in the development of a decommissioning plan.
- Provide within the EEZ Act regime factors and criteria that should be considered in determining appropriate options for decommissioning that are tailored to the decommissioning context and go beyond what are provided for under section 59 of the Act for marine consents.

Scope and transitional provisions

A matter of scope also requires clarification. The ability to require the owner of an offshore installation to prepare a decommissioning plan should be limited to those permanent offshore installations involved with producing/mining petroleum. It should exclude mobile offshore installations (e.g. drilling rigs) for which there are no permanent facilities and therefore no need to undertake decommissioning.

Any introduction of provisions related to decommissioning should not unduly complicate planning or processes that might already be underway. It is possible that one field may be decommissioned as soon as early 2018. The planning for this project might need to commence in 2016 and so introducing new provisions relating to decommissioning through the Bill could create new uncertainty and complexity and result in extra costs and potential delays to the decommissioning of this field. Any delay in decommissioning of existing facilities would be contrary to the purposes of introducing these provisions.

Recommendations

- Clarify that decommissioning plan related requirements apply only to permanent producing facilities.
- Introduce appropriate transitional arrangements so that any existing operator/s already progressing decommissioning in a prudent manner can choose to progress that under the provisions of the existing EEZ Act.

Decommissioning submarine pipelines

PEPANZ notes the current EEZ Act does not comprehensively provide for the decommissioning of submarine pipelines. Altering or removing pipelines requires a marine consent but abandonment in situ would not currently appear to require any form of approval as this passive act does not appear

to fit within the scope of section 20 of the Act or be considered dumping as pipelines are not "structures". This is a gap in the EEZ Act regime that should be rectified.

The most appropriate approach would be to make "decommissioning" pipelines a restricted activity under section 20 of the EEZ Act, thereby requiring approval under the Act. This would enable the various options utilised around the world for decommissioning a pipeline (e.g. removal or burying in-situ, which would already be covered by section 20, and abandonment in-situ, which wouldn't be) and the related activities to be considered under the same part of the EEZ Act. International experience suggests that which of these approaches is most appropriate depends on the specific context (e.g. nature of benthic environment, water depth, nature and size of pipeline, other uses of the area, technical approaches required etc.) and so it is logical for them all to be subject to the same regulatory process.

Recommendation

- Amend section 20 of the EEZ Act to provide that decommissioning of a submarine pipeline is covered by sub-section 20(2).

Changes to the Marine Consent Process and the Introduction of Boards of Inquiry

PEPANZ notes the proposed changes to the marine consent process under the EEZ Act, most notably to introduce a board of inquiry ("BOI") process with the stated intent of aligning certain notified discretionary marine consents under the EEZ Act with the BOI process for nationally significant proposals under the *Resource Management Act 1991*. The General Policy Statement for the Bill states the purpose of this is to enable the EPA to make efficiency gains by standardising business processes. The size of these benefits is unclear and does not appear to have been addressed in the Regulatory Impact Statement.[3]

Whilst we have identified some issues with the current process for marine consent applications we are concerned this change would not solve them, but would have the effect of introducing new complications and risks.

As decision making committees are convened on an ad-hoc basis, knowledge of the processes, marine environment, sector specific activities and relationships with the EPA staff tend to have to be built through each consent application. This is both inefficient and risks undermining confidence in the process. Resolving this issue does not necessarily require regulatory change but instead the building of a pool of persons with a mixture of the required expertise and experience. A positive of the proposed changes is making having an EPA Board member on the BOI optional, as opposed to the current mandatory requirement, which may help to ensure that decision makers are staffed with people with the appropriate skills.

We have some concerns with the suitability of applying the proposed BOI process to notified marine consent applications under the EEZ Act:

- Experiences under the RMA suggest the BOI process can be legalistic and costly compared with the decision making committees convened under the EEZ Act to this point.

[3] Regulatory Impact Statement, Resource Legislation Amendment Bill 2015: EEZ Amendments, Ministry for the Environment, October 2015.

- A BOI process has been developed for major applications and whilst some marine consent applications may have this character, others could be relatively discrete and for these the process could be unnecessarily large and complex. We note that under the EEZ Act anything not provided for as permitted activity or subject to the non-notified process is a notified marine consent. As such consents for relatively minor activities could become subject to the BOI process and the potential up to 9 month timeline (for the consent process itself).

Giving the Minister for the Environment a role in appointing the BOI inevitability introduces a political element to the process that would otherwise be absent. Whilst it is proposed this role is exercised subject to a set of broadly sensible criteria, this political aspect creates a level of uncertainty for investors, particularly those with a long term outlook.

If the BOI process is to be introduced to the EEZ Act we consider it should be limited to only the more significant applications, in the same way that it is only applied to "nationally significant projects" under the RMA. Criteria would need to be included in the Act for making this determination.

Policy Statements under the EEZ Act

We note the Bill contains provisions allowing the Minister for the Environment to adopt EEZ Policy Statements to support decision-making on applications for marine consents. Decision makers on marine consents have acknowledged challenges with applying aspects of the EEZ Act and so we can see the rationale for this new tool. Such policy statements could presumably provide statutory guidance on matters such as: uncertainty, risk, adaptive management, other marine management regimes, and principles and criteria for making decisions.

The scope of these instruments appears to be narrow and different from National Policy Statements under the RMA. Given the limitation to technical issues, we question the purpose of such a significant development process as is proposed in the Bill. Where the matters to be addressed via a policy statement are technical in nature, and based on well-founded science, there is little need for a consultation process of the sort undertaken when developing national policy statements under the RMA.

We also suggest that using the similar title "EEZ Policy Statements" invites confusion in comparison to the differently scoped but similarly named "National Policy Statements" under the RMA. The simple but sweeping title proposed for these instruments does not reflect the relatively limited scope of these within the EEZ Act or the fact that they would have no application at all to the most common human activities taking place in the EEZ (e.g. fishing and shipping) as these are not subject to the EEZ Act.

Lack of Provisions in the EEZ Act Relating to Emergency Situations

The EEZ Act lacks provisions explicitly allowing action to be taken in an emergency to prevent loss of life, environmental damage or loss or damage to property. The only provisions of this kind relate to emergency dumping (section 20H and a so far unutilised regulation making power under section 29B) and actions undertaken in accordance with a formal direction under the Maritime Transport Act 1994. This is a gap that should be more generally filled to bring it into line with other legislation and avoid potentially contributing to bad decision making in what would inevitably be an unplanned and stressful situation. It is not appropriate to allow emergencies to be cited as an excuse for non-

conformance but neither is it desirable for people to hesitate from taking appropriate action that may avoid or significantly reduce adverse effects due to uncertainties about the legal implications.

The RMA for instance (refer to sections 330 and 330A of the RMA) provides that in certain situations acts can be undertake to avoid adverse effects or any sudden event causing or likely to cause loss of life, injury, or serious damage to property. The context is a little different under the EEZ Act but in some situations it is desirable to act to mitigate a bad situation even where that might involve acting in contravention of the EEZ Act. This is particularly relevant because offshore operations are continuous and the EPA is not configured to operate on a 24 hour per day, 7 day per week basis, and so it may not be practical to contact the regulator at a critical time.

Recommendation

- Include a provisions in the Bill providing for emergency situations in the EEZ Act.

Duplicative Rules/Conditions under the RMA

The upstream petroleum sector is subject to extensive regulation, particularly in the health and safety and environmental spheres. This is appropriate, however, in some cases these different regulatory regimes can overlap, resulting in duplicative regulation of the same activity or risk. Where this occurs it is inefficient and creates uncertainty. There can also end up being different approaches in different parts of the country due to varying regulatory interpretations or approaches.

A specific example that has arisen is the important area of regulating for the integrity of petroleum wells.[4] Despite the existence of a recently created and comprehensive regulatory regime for managing well integrity under health and safety legal law[5], the role that councils take under the RMA has varied due to differing perspectives on the interrelationship between these two regimes. Constructive engagement between central government, councils and stakeholders is slowly working towards clarifying this specific situation but the lack of explicit provisions in the RMA allowing councils to rely on other laws has proved a barrier to instituting clear and efficient solutions.

There are potentially many areas where a council may consider there is an environmental effect or risk (e.g. biosecurity) that needs to be managed under the RMA even though that effect or risk is being managed under a different regime, although perhaps for a slightly different purpose. It would not be sufficient to provide simply that provisions in plans or consent conditions should not conflict (as this doesn't necessarily avoid duplication), but to provide that those acting under the RMA can effectively rely on other regulatory regimes where they fully address the issue of concern. We consider this to be entirely in alignment with the stated objective for the Bill to achieve better alignment and integration across the resource management system, so that duplication within the system is reduced and legislative frameworks are consistent internally and with each other.

We note and accordingly support the proposed provisions intended to remove the explicit function of regional councils and territorial authorities to manage hazardous substances in order to remove duplication between the RMA and the *Hazardous Substances and New Organisms Act 1996*. We also

[4] "Well integrity" is the application of technical, operational and organizational solutions to reduce the risk of uncontrolled release of fluids throughout the life cycle of a petroleum well. Practically, this means that a well doesn't leak throughout its lifecycle.

[5] Refer to Part 6 of the *Health and Safety in Employment (Petroleum Exploration and Extraction) Regulations 2013*.

recognise that one of the purposes of proposed new section 360D is to allow regulations to be made to prohibit or override rules or types of rules that would duplicate or overlap with other legislation, where duplication or overlap would be undesirable. This could be utilised to resolve specific issues of duplication but relies on a specific regulation making process rather than establishing a general principle.

We therefore suggest consideration is also given to a provision that generally outlines that councils should not introduce a provision or impose a condition to deal with an environmental effect if the condition would have the same or similar effect as, or conflict with, a measure required in relation to the activity by another regulatory regime. Where uncertainty exists it would then be relatively straightforward for the Ministry for the Environment to issue guidance in relevant areas if necessary.

Recommendation

- Include a provision in the Bill providing that councils should not introduce a provision or impose a condition under the RMA to deal with an environmental effect if the condition would have the same or similar effect as, or conflict with, a measure required in relation to the activity by another regulatory regime.

Part 2 – Comments on individual clauses of the Bill

In the following table we provide comments on individual clauses of the Bill.

Clause of the Bill	Specific change proposed	Rationale for proposed change
Clause 188		
Section 42 of the EEZ Act	Include provision for a cost estimate in relation to "commissioning independent reviews" and clarify the nature of the review.	The EPA should be required to provide a cost estimate before commissioning an independent review of an impact assessment. Whether an independent review can include recommendations should also be clarified.
Section 43 of the EEZ Act	Consider revising section 43(2).	We question whether it is necessary for section 43(2) to simply require either that information be provided within 5 days or that this request is "refused", when the EPA and the applicant might reasonably agree to a longer timeframe. Five days can be unreasonable where for instance multiple people need to input or review the responses.
Section 53(4)(b) of the EEZ Act	Revise to allow one or more EPA board members to be appointed as members of a board of inquiry.	Appointment should be based on relevant skills and expertise and if there are multiple EPA board members who are suitable this should be possible. The current wording, "a board member", would seem to preclude this, perhaps unintentionally.
Section 53(5) of the EEZ Act	We recommend adding to the phrase "technical	The term "technical expertise" is vague and unnecessarily bland

	expertise", the words "relevant to activities covered by the marine consent" or similar.	as to what sort of technical expertise is required or the purpose of it. We suggest this is more clearly linked to the purpose of the expertise.
Clause 192 Section 61 of the EEZ Act	Reconsider the change to exclude the application of an adaptive management approach to applications for marine dumping consents and discharge consents.	We note the replacement of section 61(4) of the EEZ Act makes a change to the current Act by excluding the application of an adaptive management approach to applications for marine dumping consents and marine discharge consents. Adaptive management clearly makes little sense in relation to a single dumping event but could have a place in relation to repetitive dumping activities (e.g. dredge spoil) or to discharges. We recognise the adaptive management approach can be problematic for projects with large upfront capital investments (due to the uncertainty it can introduce).
Clause 190 Section 59 of the EEZ Act	Reverse the order paragraphs of 2A(b)(i)-(iv) in section 59 of the Act.	The current ordering of paragraphs 2A(b)(i)-(iv) in the EEZ Act, which is proposed to be continued in the Bill, is inconsistent with conventional approaches to dumping issues whereby the first consideration is reuse of the relevant waste or matter if possible, followed by alternative methods of disposal before considering the proposed approach and its effects.
Clause 217 New section 100A of the EEZ Act	Please refer to our comments in Part 1 of this submission.	Please refer to our comments in Part 1 of this submission.
Clause 229 New section 147A of the EEZ Act	Remove clause 229 from the Bill.	We note that proposed new section 147A provides for the EPA to potentially suspend work in relation to an application if costs invoiced to an applicant are not paid within 20 working days and could also direct a Board of Inquiry ("BOI") to suspend work though both must resume their duties if the costs are subsequently paid. An affected applicant could lodge an objection in relation to costs, however, that does not affect the rights of the EPA and the BOI to stop work. The EPA has a legitimate expectation in being compensated for costs incurred in conducting its regulatory processes in a timely manner, however, the impact of stopping a marine consent process potentially midstream could be significant and this proposal appears disproportionate and out of step with other regulatory frameworks. The proposal would effectively prevent an applicant from disputing costs passed to it by the EPA. It also potentially fails to recognise conventional processes, such as paying invoices on the 20th day of the following month, which might be more than 20 working days after an invoice is received.

		The same comments apply to the similar proposed section 149ZG of the RMA.
Clause 232 Section 162 of the EEZ Act	We support the proposed change to section 162.	The Bill would amend Section 162 to provide that a "minor or less than minor" ruling from the EPA is only required for an activity that has "adverse effects" on the environment or existing interests. We have advocated for this change to avoid the costs and uncertainty of requiring approval of activities potentially covered by section 20 of the EEZ Act that have no adverse effects at all (e.g. minor changes to internal parts of existing structures).