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[redacted]
General Manager, Resources
Ministry of Business, Innovation, and Employment

via e-mail:

Dear [redacted]

Re: potential issues for applicants referred to the expert committee as a one-stop-shop for determining consent conditions

We contain our feedback to the process of considering the environmental and social impacts and their mitigations, noting the referral of a project to the fast-track consenting process will be the purview of Ministers.

Economic activity, indeed, any human activity will impact its environmental and social context. Setting the conditions of a consent requires the careful consideration of the trade-offs between desirable outcomes. We are pleased to see a return to a more balanced stance on reviewing and consenting projects.

Summary of feedback received

Feedback on the intent of a fast-track consenting process has been uniformly positive. Addressing an open-ended and costly resource and marine consenting process is a welcome development.

That said, there remains a degree of scepticism, given the history with trying to implement a fast-track processes in New Zealand. The willingness of opponents to utilise any means available, including the courts, to delay and obstruct developments remains a concern. We note officials have already indicated they are aware of this concern, and the potential impacts on the intent of this new legislation.

The need for certainty regarding consenting timelines is critical when making investment decisions. The setting of consent conditions is an essential part of the

checks and balances to ensure environmental, social, and economic trade-offs are managed in a pragmatic and realistic way.

In this context some concerns were raised about the make-up of an expert panel, their accountability, and the process appeal conditions set by the panel.

In our view it is reasonable to raise these issues in the absence of a drafted Bill where these processes are set out and available for review and comment. We expect these issues will be fully interrogated at the Committee stage.

Applicants are facing increasingly stringent consent conditions

Feedback from our members suggests consent conditions are becoming increasingly more stringent.

Views suggested an unreasonable entrenchment of a precautionary approach, where in the absence of 'sufficient' information, caution must be favoured (the "precautionary principle"). Where the decision-makers do not have to live with the consequences of their decisions, it seems that "too much information is barely enough". Unfortunately, this is usually at the cost and inconvenience of the applicant.

Anecdotally we also noted an increasingly entrenched view with officials that environmental trade-offs are a no-go area. This leaves very little room to manoeuvre for applicants seeking to manage their impacts through a process of adaptive management.

We note much of this feedback is subjective, and we have not undertaken a review of how consent conditions and processing times have changed over the years.

Specific areas of concern highlighted in having a "one-stop-shop" for consents

We understand that particular attention is being given to the requirements under the Wildlife Act 1953, and land access arrangements with the Department of Conservation. This is also reflected in feedback from members.

Other considerations raised included:

- difficulties navigating the requirements of Hazardous Substances and New Organisms (HASNO) legislation administered by the EPA;
- interface issues between the consenting requirements for onshore and coastal waters (RMA), and New Zealand's exclusive economic zone (EEZ);

- the specific and technical nature of marine consents, especially requirements under the Marine Transport Act 1994; and

- issues with archaeological permits.

We noted limited discretion for regulators or decision-makers to apply "de minimis" in their decision making. In some cases, particularly for hazardous substances in the offshore setting, this has led to costly and time-consuming delays for projects, inconsistent with the risk being managed.[1]

We also wish to highlight an area of concern with potential reforms of the resource management legislation. While aware government direction is forthcoming on how the Resource Management Act 1991, and potentially the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, might be reformed– the concept of environmental limits for discharge consents (airshed and water) are worth considering.

Discharge consents need to consider the cumulative effects of discharges from multiple locations (industrial facilities or projects). It is likely this would be so at the local level. It is worth thinking about how the expert panel would consider any environmental limits in conjunction with local authorities.

Māori and iwi engagement

Some concerns were raised in respect to the potential implications of a fast-track process on community and iwi engagement. Many of our members have invested significant time and effort into their community and iwi engagement. These relationships are essential to maintain the social license of the sector and are taken very seriously by our members.

Generally speaking, the consenting processes for local government are well trodden and understood. Engagement with local stakeholders and tangata whenua have *generally* been timely and positive for all parties. The concern stems from the introduction of a fast-track process, which if not locally supported, may erode the quality and strength of the relationship. This aspect needs to be navigated with some deftness.

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[1] Referring to legal doctrine of *de minimis non curat lex* (essentially "the law does not concern itself with trifling matters")

Given this process is premised on referral by a responsible Ministers or Ministers, we are comfortable that project proponents will be able to engage locally and get their "ducks in a row" prior to applying for referral to a fast-track consenting process.

A lifecycle approach should be considered

Our particular interest in the fast-track consenting process relates to the construction and maintenance of energy infrastructure.

In our view, regulatory bodies should adopt a "cradle-to-grave" approach to granting consents. This approach would consider the lifecycle of a project from installation, through operations, and finally decommissioning - essentially aligning with the asset management approach taken by the infrastructure owners.

The lifecycle of a project, such as a gas field development, has three distinct consenting phases. Broadly speaking these are consents to:

- construct or build the project;
- operate the project (discharge consents); and
- decommission facilities and remediate the (if required) the site.

While there is significant overlap as parallel consenting processes for the installation and operating phases, it is not yet common practice for installation consents to set conditions or a standard for decommissioning and site remediation.

Setting decommissioning expectations early is important, not only for investment decisions (costing of decommissioning), but also to ensure decommissioning is incorporated into the design of facilities.

This approach has the added benefit of streamlining the decommissioning consenting process through having a common understanding of what the end state for the project will be. This allows decision makers to focus on managing the effects of decommissioning activities, without needing to interrogate the scope of work. This also acknowledges decommissioning and site remediation as an activity that **needs to be undertaken**, not as a discretionary activity.

We see examples of this in the offshore oil and gas industry, where modern platforms are designed in such a way that they can be removed at the end of field life. Earlier offshore designs, such as the early gravity base structures (essentially large concrete

oil tanks installed on the seafloor) are nearly impossible to remove without risking breakup.

We have highlighted the shortcomings of the disconnected decision-making processes in submissions on offshore wind and during the development of the decommissioning regime in the Crown Minerals Act 1991.[2]

Conclusion

Thank you for the opportunity to provide some early feedback on the fast-track consenting process. Without draft legislation to consider, our comments are necessarily high level. However, we hope our feedback helps inform your policy thinking and aids in the development of the Bill.

We look forward to engaging with you through the Select Committee process as this legislation takes shape. Should you require any clarification on the points raised here, please do not hesitate to get in touch with either myself or Craig Barry.

Yours sincerely

John Carnegie
Chief Executive

[2] See paragraph 44 of our *"Enabling Investment on Offshore Renewable Energy"* submission. Available at https://www.energyresources.org.nz/dmsdocument/download/239