Petroleum Environment Regulations, Transitional Arrangements and Directions

i. Petroleum (Environment) Regulations

> With regard to the hydraulic fracturing of the Amungee-NW-1H well, the environment plan was assessed under a prior version of the Schedule and approved using a Ministerial direction under section 71 of the Petroleum Act.
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> While it undoubtedly compromised the community's trust in the assessment and approval process, the approval of Origin's environment plan was lawful because the Petroleum Act gives the Minister power to effectively bypass any regulation, including the Environment Regulations. Some stakeholders think that this is a major weakness of the current regulatory framework, which could potentially be overcome by amendments to the Petroleum Act. I note that the Minister's ability to grant a direction under the Petroleum Act could be considered both a strength and a weakness of the Act: a weakness for the reasons set out above, and a strength because it may allow the Minister to impose prescriptive minimum standards on interest holders (something the Inquiry has been considering) notwithstanding the objective-based nature of the regulations. (RFI p.6)

CONFIRMATION OF DPIR'S ROLE AND COMMENTS ON OBSERVATIONS

The understanding is correct that a direction by the Minister can override a regulation. It is useful to consider the following context in this respect:

- The Minister's directions power has the same scope as the regulations power (see ss71(1)) which for the most part concerns technical/operational matters (see s118(2)).
- The *Petroleum Act* itself does not provide for the control of operations in much detail, except in s67 which requires consent in order to commence drilling and seismic surveys.
- Given the technical nature of regulation of operational matters, and the ongoing emergence of new technologies and techniques, it has previously been considered to be efficient for appropriately qualified officers to be able to revise the Schedule as easily as possible over time, with the Minister's approval. Involving the Administrator and the Legislative Assembly in updating these technical requirements by regulation has not been necessary under this arrangement. The Schedule has always been publicly available.
- Conditions of a permit or licence will require compliance with a technical works programme, but that in itself does not regulate the carrying out of the relevant operations. Further, conditions cannot be varied at the initiation of the Minister, whereas directions can.

As noted in the letter, there are benefits to the directions power in terms of the requirements that can be imposed on operational matters. There is also another in relation to the transitional arrangements for the *Petroleum (Environment) Regulations* (Regulations), and the transitional arrangements for the *Petroleum Act* in 1984.

Certain Production Leases, being OL3 (Palm Valley), OL4 (Mereenie) and OL5 (Mereenie) remain governed by the *Petroleum (Prospecting and Mining) Act* (Repealed Act) (see s119 of the *Petroleum Act* in particular s119(1)(a) and (2)). As a result of the transitional arrangements from the introduction of the *Petroleum Act* in 1984, these leases are not subject to the *Petroleum Act* except to a limited extent. Relevantly, s119(2) provides that

such a lease is subject to the provisions of the *Petroleum Act* relating to the giving of directions by the Minister.

Accordingly, a direction was lawful and was required to provide for the transition.

Providing for the transition of those oil leases from the Repealed Act to a new regime will be complex. Undoubtedly, the *Petroleum Act* is old legislation, which keeps alive the Repealed Act in some respects which is older still. A modern petroleum regime may well take a different approach to conditions, directions and regulations. It may provide for flexibility and Ministerial discretions in different ways.

However, the current legislation is somewhat entrenched in terms of the rights that have been granted to interest holders. Government must take care not to legislate such that granted rights are sterilised, given that acquisition of property is invalid unless just terms compensation is paid. This involves limitations which will be complex to address. It appears the risk of paying to acquire existing interests just to allow those interests to continue under a slightly different regime has not been considered by successive governments to be worthwhile at any time since 1984 when the transition to the *Petroleum Act* was devised. The extent of the benefits would be questionable in any event. Appropriate controls on operational activities have always been possible under the regime in place, via the Schedule and now via the Regulations.

Great strides in communicating the priorities of the petroleum regulator were achieved in the Regulations given they *are* modern and centre an outcomes based approach to environmental risks and impacts, stakeholder engagement and transparency. They provide flexibility in that requirements in an environment plan must be kept current to provide for changes in risk. The processes are efficient. Taken in context however, it is noted that the Regulations give modern expression to the position of the regulator that has existed and has been implemented for some time.

DETAILED BACKGROUND TO THE APPLICATION AND APPROVAL

DPIR sees that this topic is an opportunity to clarify how the environment management plan (EMP) for the Hydraulic Fracturing Stimulation and Testing for Amungee NW-1H was assessed, which may assist, through transparency, to restore the community's trust in this respect.

Implementation of the transitional arrangement

The reasons for the design of the transitional arrangement that was applied to the Origin oil lease by letter of 6 July 2016 are many, and include the following:

- The content of the proposed EMP was well known to the then Department of Mines and Energy (DME) at the time, and in DME's view addressed the environmental impacts and risks, and had involved stakeholder consultation, in a manner that was generally commensurate with the standards set by the Regulations in any case.
- The transitional arrangement was designed to provide as seamless and fair transition as possible, and to reduce confusion about the application of the new regime to EMP holders and applicants. It was considered orderly, fair and reasonable to assess the application under the same regime under which it was made.
- EMP holders and applicants were given 18 months to prepare and submit a *proposed revision* of an EMP in order to bring it into full alignment with the Regulations. That period was considered to be reasonable given the efforts already made to prepare a comprehensive EMP. As it transpired in this case, Origin's work was complete well before that time so a proposed revision will not be required. Any further work will be required to proceed through the processes in the Regulations (and the moratorium will apply as relevant).

- Regulation 24, which references an approval notice, was not considered to apply because the determination of the application was to be under the *Petroleum Act* and Schedule. Following the election of the new Labor government on 27 August 2016, which was sworn in on 12 September 2016, Origin agreed to publish the EMP after discussions with DME. It is understood that no issues have been raised with the content of the EMP.

Chronology and context

The EMP for the Amungee NW-1H Hydraulic Fracture Stimulation and Testing Program was assessed and approved under the *Petroleum Act* and the Schedule.

Origin submitted an EMP to the DME on 20 May 2016 following extensive prior engagement with the department and other stakeholders. This EMP covered several activities, some of which were unrelated to Amungee NW-1H Hydraulic Fracture Stimulation and Testing Program.

The DME undertook a thorough assessment of the EMP and requested that Origin reformat the EMP and submit a stand-alone hydraulic fracturing stimulation and testing EMP. On 1 July 2016, the DME received the EMP for the Hydraulic Fracture Stimulation and Testing Program and, following further comments from the DME, on 13 July 2016 Origin submitted a revised EMP.

On 15 July 2016, the DME referred the EMP to the Northern Territory Environment Protection Authority (NT EPA).

On 18 July 2016, the relevant Notice of Intent (NoI) was sent out by NT EPA for consultation to relevant agencies.

On the 4th of August the NT EPA sent Origin a Request for further information.

On the 9th of August Origin, replied to the NT EPA with a response to the request for further information.

On 17 August 2016, the NT EPA advised DME that no environmental assessment was required under the EAA. This decision was supported by a statement of reasons. DME also received the outcomes of the inter-agency consultation. Under the *Environmental Assessment Act*, a decision that environmental assessment is not required is based on the NT EPA forming the opinion that the proposed action is not reasonably considered to be capable of having a significant effect on the environment (see s4 of that Act and cl 8 of the 'Procedures' made under that Act).

On 23 August the DME received final confirmation from Origin of the following requirements: land holder access agreement; evidence of well insurance bank guarantee for environmental security; Material Safety Data Sheets (MSDS); final casing pressure test to 10,000 psi and the EMP summary.

The approval for the program to commence was sent out on the 23rd of August.

The EMP summary and chemical disclosure where confirmed as uploaded on the internet on the 1st September.

In order to continue to assess the application and associated EMP lodged before the enactment of the *Petroleum Environment Regulations* (Regulations) on 6 July 2016, the Chief Executive of DME advised Origin of the transitional assessment processes that would apply.

The advised transitional arrangements are reproduced below:

Assessment of current application

I refer to your application to conduct 2016 Hydraulic Fracture Stimulation and Well Testing submitted on 1 July 2016. The attached direction:

- *confirms the application will be assessed under the relevant provisions of the Petroleum Act and the Schedule (if applicable) notwithstanding the introduction of the Regulations*
- *deems that if the application is approved, the relevant EMP (Approved Plan) to which the approval may be subject is a current plan under the Regulations*
- *requires you to achieve compliance with the Regulations by obtaining the Minister's approval of a proposed revision of the current plan by 5.00 pm ACST on 1 December 2017 (if you intend to carry out relevant activities under that plan after that date).*

For the avoidance of doubt, at any time before that date a circumstance may arise whereby, under the Regulations, you are required to submit a proposed revision of the current plan which must comply with the Regulations. Therefore, it is recommended that you familiarise yourself with the requirements of the Regulations and plan ahead to achieve compliance in the most efficient manner.

I advise that the Approved Plan will not be published by the Minister, as regulation 24 of the Regulations is not considered to apply.

Following the introduction of the Regulations, the EMP assessment was completed. The letter of approval dated 23 August 2016 included the following conditions:

- clause 301(5) of the *NT Schedule of Onshore Petroleum Exploration and Production Requirements 2016* states: 'An approved program shall not be varied without approval'
- this communication represents approval to re-enter Amungee NW-1H well and conduct stimulation and testing in accordance with the application only
- applications seeking approval to commence other operations will need to be lodged as separate future applications
- this approval does not cover any additional approvals that may be required from other agencies such as matters relating to occupational health and safety which are administered by NT WorkSafe.