CROWN MINERALS – PETROLEUM EXPLORATION PERMIT – OPTION TO LEASE*

Greymouth Petroleum v Todd Taranaki Ltd, (unreported, High Court, Wellington, 25 July 2006, CIV 2004-485-1651, Wild J)

Right to mine across permit boundary – Exercise of lease option dependent on legal right to explore, appraise or mine in area concerned

Background

The northern Taranaki Prospecting Licence PPL 38705 was granted in 1988 under the Petroleum Act 1937. Over time, the permit area was reduced in size and passed to numerous licensees. In 2002 the licence (together with the adjacent, still existing Mangahewa Mining Permit PMP 38150) was transferred to Todd. The boundary of PMP 38150, which was carved out of the PPL 38705, bisected the Ohanga-2 well so that the bottom hold section of the well was included in the PMP 38150 area and the well head in the PPL 38705 area. Both permits were held by Todd at that time so the situation did not initially cause any problems. Issues arose in 2003 when PPL 38705 expired and Todd bid unsuccessfully for Block J which covered the Ohunga-A well site (on which the Ohanga-2 and Ohanga-1 well heads were located). An Exploration Permit for this area, and later a Mining Permit, was awarded to Greymouth without any conditions relating to the Ohanga-1 or Ohanga-2 wells.

Issues

The main issues in this case were:

- whether Todd was legally entitled to mine for petroleum in its permit area through the well head of Ohanga-2;
- whether Todd had a lease, or was entitled to a lease of the Ohanga-A well site in order to conduct mining activities; and
- whether Todd had a legal obligation, and therefore a right, to plug and abandon (P&A) Ohanga-1, even though it was no longer the permit holder.

Regarding the first issue, the court had to resolve:

1. Whether the *Crown Minerals Act 1991* (the "CMA") regime regulated the location of the mineral only, or both the location and the activity involved in exploring for the mineral and mining if it is discovered.
2. If the regime did regulate the activity as well, where does the activity of exploration and mining take place. In particular, regarding Ohunga-2, would any mining occur only in the bottom section of the well bore (only within PMP 38150) or would it occur throughout the well bore and at the well head of Ohanga-2 (and therefore within PEP 38762).

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Permitted Activity

The court found that the CMA regulates both the location of the mineral and the activity involved, and that the exploration and mining activities occurred throughout the well bore from the bottom-hole to the well head. Todd was therefore not entitled to explore and mine for petroleum using the Ohanga-2 well because such activity would occur in an area for which Todd did not have a permit.

No Lease

The court also rejected Todd's second argument as well, finding that it did not have, and was not entitled to, a lease of the Ohunga-A well site. Todd argued that according to PPL 38705 it was required to explore in accordance with good exploration and mining practice, and the obligation to P&A is inherent in good oil field practice. It further argued that the *Petroleum Regulations 1978* and the *Health and Safety in Employment (Petroleum Exploration and Extraction) Regulations 1999* place general requirements on an employer to take all practicable steps to prevent uncontrolled releases or accumulation of hazardous liquids or gases. The court concluded there was no obligation to P&A after the expiration of PPL 38705. It found there was no such obligation in the Petroleum Act 1937 unless specifically included as part of a work programme. Todd therefore had no obligation or right to P&A the Ohanga-1 well as the P&A was not part of the work programme. The P&A obligation is not generally included in exploration permits (unlike in mining permits) therefore explorers may not be under an obligation to carry out P&A. However, an obligation to perform P&A can be specifically included in the work programme accompanying the exploration permit.

CROWN MINERALS – PETROLEUM EXPLORATION – PERMIT APPLICATIONS*

TAP (New Zealand) Pty Ltd v Attorney-General of New Zealand (unreported, Court of Appeal, Wellington, 13 December 2006, CA48/06, William Young P, Robertson J, Ellen France J)

Appeal against decision declining judicial review – Competing applications for petroleum exploration permit – Treatment under current regime

Background

TAP and AWE holders of a petroleum exploration permit for the Canterbury Basin, seeking permission to explore an adjacent area, lodged a "priority in time"[1] application at 11.30am on Tuesday 22 February 2005. Details of the application were posted on the Crown Minerals website the following Friday in accordance with the Ministry's[2] usual practice. Origin Energy then lodged a competing application at 5.30pm on Monday 28 February 2005.

At Issue

The subject of this case is how competing "Priority in Time" applications for exploration permits under the *Minerals Programme for Petroleum (2005)* are treated. TAP argued that "within the same five day working period"[3] meant that a competing application had to be lodged before

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1 A form of application provided for under the *Minerals Programme for Petroleum* whereby competitive bids made within the same five days will be considered against each other.

2 Ministry of Energy.

3 *Minerals Programme for Petroleum,* clause 5.1.1.