

# Financial Securities Guidelines – Decommissioning

relating to Chapter 13 of the Petroleum Programme

**Draft December 2024**

DRAFT

**Purpose of these guidelines**

These guidelines support Chapter 13 of the Minerals Programme for Petroleum 2025 (the “Petroleum Programme”) as that chapter relates to financial securities.

These guidelines are for information and illustrative purposes only. The Minister retains legislative discretion in respect of all matters covered by these guidelines.

Where reference is made in these guidelines to a clause in the Petroleum Programme, this will be indicated by the prefix ‘P’, i.e., P13.21 refers to clause 13.21 of the Petroleum Programme.

Capitalised terms used but not defined in these guidelines have the meaning given to them in the Petroleum Programme.

**Data confidentiality**

All information received by MBIE under the Crown Minerals Act 1991 will be maintained in accordance with MBIE operational policy. All information submitted to, and held by, MBIE is subject to the Official Information Act 1982 (“the OIA”).

**We recommend early engagement ahead of any formal proposal**

Permit Holders, Permit Participants and other persons (as appropriate) are encouraged to discuss any proposed financial security arrangement with officials in advance of any formal proposal.

This will ensure officials are familiar with the proposal before it is received.

The formal proposal is a matter considered by the Minister when determining an acceptable financial security arrangement.

## Contents

|  |    |
|--|----|
| Introduction .....   | 4  |
| Requirement for acceptable financial security arrangements.....                                    | 4  |
| Financial securities for petroleum exploration permits.....  | 4  |
| G1. Petroleum exploration permits (P13.21(3)).....   | 4  |
| Kinds of financial security .....  | 4  |
| G2. The kinds of financial security that may be acceptable (P13.22(4)).....                        | 4  |
| G3. Financial security arrangements may comprise different kinds of financial security (P13.22(4)) | 6  |
| G4. Financial security arrangement may cover multiple permits (P13.22(4)) .....                    | 7  |
| Holding of financial securities.....   | 8  |
| G5. How financial securities may be held (P13.23(1)(c)).....                                       | 8  |
| Amount of financial security .....   | 9  |
| G6. Example of how an amount may be determined and monitored (P13.23(5)) .....                     | 9  |
| Use of financial security arrangements .....   | 12 |
| G7. Use of financial security during decommissioning (P13.27).....                                 | 12 |
| G8. Release of financial security post-decommissioning (P13.28) .....                              | 13 |
| Appendices.....  | 14 |
| Appendix 1. Escrow accounts.....   | 15 |
| Appendix 2. Bank securities.....   | 21 |
| Appendix 3. Investment funds .....   | 22 |
| Appendix 4. Parent company guarantee.....  | 24 |
| Appendix 5A. Income tax refunds.....   | 26 |
| Appendix 5B. Royalty Refunds .....   | 27 |
| Appendix 6. Financial security arrangements - examples.....  | 29 |

## Introduction

These guidelines support Chapter 13 of the Petroleum Programme and provide information on, and examples of, the standard features and process for what may constitute an acceptable financial security arrangement in the context of decommissioning.

The Minister retains legislative discretion in respect of all matters covered by these guidelines.

## Requirement for acceptable financial security arrangements

Clause 13.21 of the Petroleum Programme states that Permit Holders and licence holders must ensure there is in place and maintained an acceptable financial security arrangement (“AFSA”) on behalf of the Crown, of a kind and amount determined by the Minister.

As defined in the Crown Minerals Act 1991, an “acceptable financial security arrangement” means a financial security arrangement that the Minister is satisfied operates in an acceptable way and provides an acceptable level of security in relation to the performance of obligations imposed on persons (relating to decommissioning).

## Financial securities for petroleum exploration permits

### G1. Petroleum exploration permits (P13.21(3))

Ordinarily where a petroleum exploration Permit Holder:

- has no decommissioning obligations, a nominal security will be required.
- has any infrastructure and/or wells which need to be decommissioned, those obligations will be considered in the same way as mining permits.
- will undertake an activity which will create a decommissioning obligation (e.g., drilling a well) an appropriate financial security may be required before the activity commences. For example, in the case of a well this may be the estimated cost to plug and abandon the well to mitigate the risk of the well being left suspended.
- may have an existing financial security (e.g., a PCG provided under a Block Offer), which remains current and is relevant to the activity in the permit. The Permit Holder may propose that financial security be continued (see P13.22(3)).

## Kinds of financial security

### G2. The kinds of financial security that may be acceptable (P13.22(4))

There are four kinds of financial security the Minister is likely to accept:

- (1) An escrow account<sup>1</sup> held by an independent Custodian (see G5) with funds ordinarily able to be invested in -
  - Cash, including fixed interest deposits (**Cash**)<sup>2</sup>.

<sup>1</sup> See Appendix 1

<sup>2</sup> A fixed interest (including term) deposit is considered ‘liquid’ as it can usually be used to secure a loan if it is not able to be liquidated before the end of its term.

- Government Debt, including Treasury and local government bills, government and local government bonds, which are traded on an active secondary market (e.g., the NZX Debt Market) (**Government Debt Securities**).
- Managed Investment Schemes, being open-ended multi-asset managed funds investing in varying proportions of different asset types (e.g., shares, property, bonds, or cash). These may be actively or passively managed with differing risk and return profiles (**Investment Fund**)<sup>3</sup>.

(2) Bank Securities (or other suitable financial institution) for example, letter of credit, performance bond, bank guarantee or surety bond (**Bank Securities**)<sup>4</sup>.

(3) Parent Company Guarantee (**PCG**) ordinarily being an unlimited guarantee of the performance of decommissioning obligations (see Appendix 4). It would usually be provided by an intermediate or ultimate holding company (or sister company) of a Permit Participant in favour of the Crown. It can also include a guarantee provided by a natural person.

(4) Section 97(5)<sup>5</sup> Security (monies paid in respect of any monetary deposit or bond), paid to and held by MBIE in trust<sup>6</sup> (**Section 97 Securities**). Note – there is no further discussion on this security. In the first instance refer to s89ZN(4) and s97.

Other securities will be considered on a case-by-case basis noting the Minister's considerations outlined in P13.23(3) and (4).

#### **Foreign currency**

Financial securities may be held or denominated in a currency where there is a natural hedge of the future decommissioning costs (e.g., United States dollars, where future decommissioning costs are expected to be paid in that currency). Also see P13.23(4).

Investment Funds may include a portfolio with international securities denominated in foreign currency. There is no expectation of a natural hedge although that may be a consequence.

#### **Unlikely to be an acceptable security**

The Minister is unlikely to consider the following kinds of security as suitable:

- direct bank deposits (i.e., held with a bank in a Permit Holder's or Participant's name) - they would not satisfy the characteristic of designating the Crown as the sole beneficiary and free from any claims or securities.
- close-ended and single asset managed investment schemes (often associated with forestry and property syndicates) - due to their illiquid nature and general underlying risk of exposure to a limited asset class.
- mortgages and security over real and personal property - due to their illiquid nature and general underlying risk, especially where the property concerned is related to the decommissioning obligations.
- Any type of investment or holding in or with a related party.

#### **Costs and administrative burden**

The following conditions may be imposed as conditions on any AFSA:

- the Permit Holder (or whoever is providing the financial security) will be responsible for all administrative costs associated with the establishment, operation and maintenance of

<sup>3</sup> See Appendix 3

<sup>4</sup> See Appendix 2 and Appendix 1 Bank Security - Tranches

<sup>5</sup> And section 47H Petroleum Act 1937

<sup>6</sup> Part 7 of the Public Finance Act 1989 applies subject to the CMA section 97(2), (4) and (5).

financial securities (e.g., custodian and bank security fees and expenses) and should, as appropriate, establish between themselves the mechanism to share any costs (as applicable).

- legal fees (and any other costs) will sit where they fall as between the Permit Holder (or whoever is providing the financial security) and MBIE during the establishment and documentation of the AFSA. Custodian legal fees and costs will be for Permit Holder account during establishment. Any costs incurred by MBIE for changes required post-establishment will be for Permit Holder account.
- Resident Withholding Tax (RWT) or other taxes and fees. Where RWT (or any other tax or fee) is deducted from any financial security (e.g., an escrow account), the Permit Holder (or whoever is providing the financial security) will be required to deposit the total amount deducted in any year into the escrow account on an annual basis within 30 days of the calendar year end (or other agreed date).

Administrative burden for MBIE and the complexity of any financial security arrangement will be a consideration in evaluating any proposal.

### G3. Financial security arrangements may comprise different kinds of financial security (P13.22(4))

A Permit Holder may propose a financial security arrangement with more than one kind of financial security.

Where two Permit Participants propose multiple securities as a package, all the securities should be held jointly and in the same proportions. For administrative efficiency the Minister is unlikely to support the proposal where:

- one security is held jointly and another is separate (e.g., a joint escrow account but separate Bank securities).
- the sum of the individual securities does not represent the Amount (of security) required (see G6 Amount of financial security).

Any proposal should consider:

- the guidance under G6 Amount of financial security.
- the guidance on Bank Securities (see Appendix 2)
- the guidance on Investment Funds (see Appendix 3)
- the guidance on PCGs (see Appendix 4)

#### **Timing or Deferral of Establishment**

Where there is more than one financial security in the AFSA, each financial security must be in place and maintained within the timeframe determined by the Minister.

**Ministerial Discretion.** In determining the AFSA, the Minister may determine a nominal amount, either as a lump sum or periodic payment (depending on the kind of security), is satisfactory for a specified period before being fully activated. The amount will necessarily need to be sufficient to maintain the operation of the security involved.

For example, a Deferral of Establishment might see:

- a Bank Security established for an amount to cover the first 5 years of operation (possibly retained thereafter or replaced, for example, by a lump sum to an Escrow Account); and

- an Escrow Account established, with nominal cash contributions in the first 5 years and then being fully funded thereafter.

#### **Encouraging Decommissioning**

While decommissioning activities are often left until the end of field life (sometimes out of necessity or for commercial and economic reasons) it can be advantageous to both the Crown and Permit Holders to pursue decommissioning on a more frequent basis, to reduce both the cost and activity at a time where there is little or no income.

For the Permit Holder, completing decommissioning activities prior to the end of life can result in lower costs (e.g., landowner lease costs onshore, discounted rig-rates for filling a gap in a rig programme or enabling a longer multi-well campaign, ongoing maintenance, escrow payments, immediate deductibility for royalties or income tax). For the Crown, it can reduce the risk of being left with the cost of decommissioning.

**Ministerial Discretion.** Where there is an agreed programme of decommissioning activity undertaken over the course of a year (e.g., an agreed number of wells plug and abandoned and/or infrastructure decommissioned) the Minister may consider a proposal from the Permit Holder to reduce the amount to be secured or to otherwise alter the AFSA.

In considering such proposals, the Minister will ordinarily take into account the future cash generation of the Permit Holder and the net effect for the Permit Holder on both income tax and royalty rebates used in determining the amount of financial security (see G6).

#### **G4. Financial security arrangement may cover multiple permits (P13.22(4))**

A Permit Holder may propose a financial security arrangement which includes, for example, financial securities from:

- the permit holder (i.e., the permit participants jointly)
- the permit participants (individually or with others)
- the permit participants (individually or with others) encompassing more than one permit and permit holder.

Note - the decision on any AFSA is on a permit-by-permit basis.

The following are provided as examples, provided for illustrative purposes and are not intended to limit any proposal a permit holder may wish make. These examples are further developed in Appendix 6.

#### **Individual Permits**

**Permit Holders.** Permit Holders may propose a financial security arrangement (including amount) which jointly secures the decommissioning obligations of all Permit Participants. The process in P13.22-P13.23 will be applied to the Permit Holder.

**Permit Participants.** Individual Permit Participants may propose, in conjunction with the Permit Holder, a financial security arrangement (including amount) representing their participating interest in the permit and which secures their decommissioning obligations. The process in P13.22-P13.23 (with any necessary modifications) will be applied to the Permit Participants. This may result in different Permit Participants with the same participating interest providing different financial securities arrangements.

For example, two Permit Participants each have a 30% participating interest. One may be required to provide “Amount (of security)” of 30% of DCE, while the other may be required to provide “Amount (of security)” of 20% of DCE (see G8 Financial security - amount).

**Multiple Participants.** Two (or more) Permit Participants may propose, in conjunction with the Permit Holder, a financial security arrangement (including amount) representing their combined participating interest in the permit and which jointly secures their decommissioning obligations. The process in P13.22-P13.23 (with any necessary modifications) will be applied to the Permit Participants.

### Multiple Permits

A single entity or a Group (consisting of multiple related entities) could propose providing 1 or more financial securities for more than one permit. This can be structured in various forms, in conjunction with the respective Permit Holders, where for example -

- **Across Permits.** A single entity which holds a participating interest in several permits, may propose a financial security arrangement (including amount) representing the total of their participating interest in all the permits and which secures their decommissioning obligations across all those permits.
- **Related Parties.** A Group holds participating interests in several permits (e.g., through multiple entities), may propose a financial security arrangement (including amount) representing the total of their participating interests in all the permits and which secures their decommissioning obligations across all those permits. The financial security can be held in the name of one entity (usually a parent company) with appropriate cross guarantees.

**Amount (of security).** For the avoidance of doubt. Where a Permit Participant (or another party) provides the financial security the Minister will determine the amount of “Amount (of security)” in respect of each Permit following the process in P13.22-P13.23 (with any necessary modifications) applied to the respective Permit Holders. The “Amount (of security)” will then be the sum attributable to all relevant Permits. See G6 Amount of financial security.

**Joint and Several Liability.** None of these arrangements affects joint and several liability.

## Holding of financial securities

### G5. How financial securities may be held (P13.23(1)(c))

#### Financial services provider

The Minister will appoint a **Custodian**<sup>7</sup> to hold any Cash, Government Debt Securities, or Investment Fund units (cash-based security) on trust for the Crown and managed in a separate account (**Escrow Account**).

- those cash-based securities must be transferred outright (free and clear of any encumbrances) to the Custodian.
- any interest, dividends and other returns generated by funds held in the Escrow Account will be credited to and held for the benefit of the Escrow Account.

<sup>7</sup> Being a provider of regulated client money or property services (as defined in the Financial Markets Conduct Act 2013) registered on the Financial Service Providers Register.



Bank Securities and PCGs (which are documentary in nature) and Section 97 Securities will be held by MBIE on behalf of the Crown.

**Providers of security and investment products**

- Cash will be held by a Custodian with a registered bank having a credit rating no lower than the minimum rating in the table below (**Strong Investment Grade**).

| Rating Agency | Minimum Rating |
|---------------|----------------|
| S&P           | A-             |
| Fitch         | A-             |
| Moody's       | A3             |

- Government Debt Securities must have a Strong Investment Grade credit rating.
- The provider of a Bank Security is expected to have a Strong Investment Grade credit rating and be a registered bank or licenced insurer under the prudential supervision of the Reserve Bank of New Zealand (or another international institution approved by the Minister, not subject to foreign exchange restrictions).
- Investment Fund – see Appendix 3.
- PCGs – see Appendix 4.

## Amount of financial security

### G6. Example of how an amount may be determined and monitored (P13.23(5))

Figure 1 illustrates the description in P13.23(5) of how ordinarily the amount of the AFSA may be determined (subject to both eligibility for the reductions applied and the application of the discretion by the Minister).

The “Amount (of security)” outcome of the reductions (if any) applied to the Decommissioning Cost Estimate (the ‘starting point’) is intended to describe the “amount” of any financial security other than a PCG which will ordinarily be required (e.g. escrow account, bank security, or s97).

The reduction applied in respect of a PCG is taken into account in determining the “Amount (of security)” does not represent the amount of the PCG itself – which is ordinarily expected to be an unlimited PCG from a party with a strong credit rating (see Appendix 4 – PCGs).

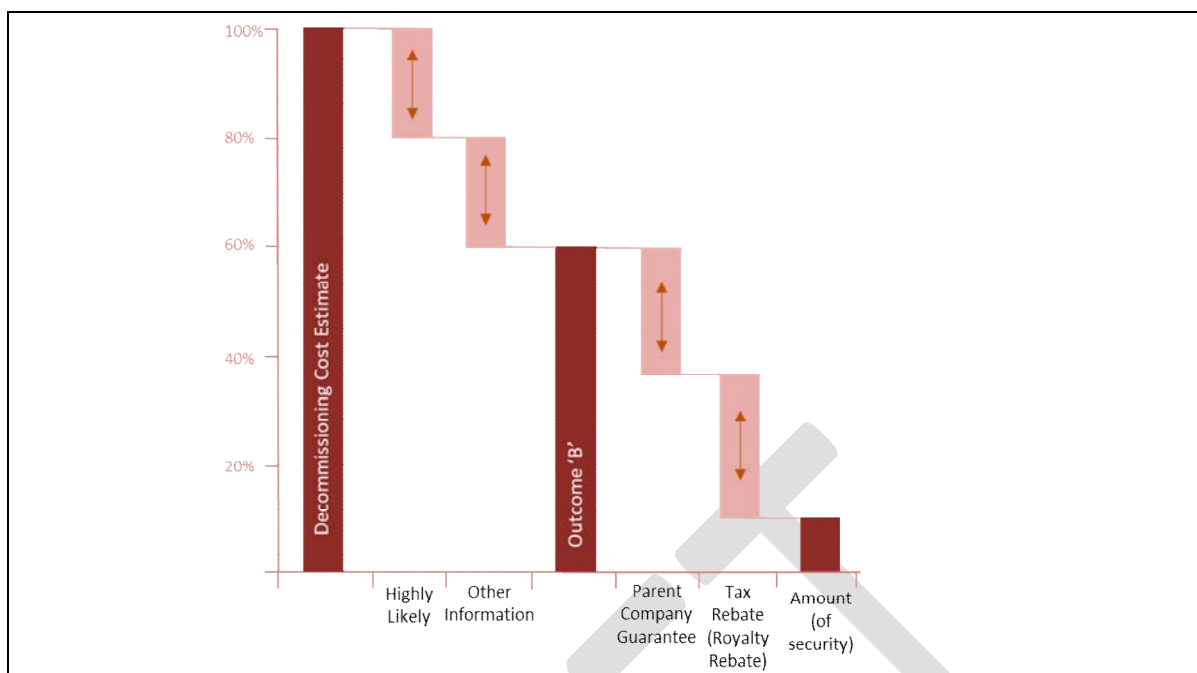


Figure 1 - illustration of how ordinarily the amount of AFSA may be determined.

The **Decommissioning Cost Estimate** (DCE) of the Permit Holder is the estimated current cost at the time of preparing the most recent Decommissioning Plan submitted to MBIE -

- where total 2P Reserves are used (see Appendix 1) the DCE will include the estimated cost to decommission the undeveloped infrastructure and/or wells which support the 2P Reserves.
- where an exemption or deferral has been granted (see P13.9 – P13.10) the DCE will reflect that effect, if any.

For the avoidance of doubt. It is the intention the Permit Holder (in total) provides security based on 100% of the permit DCE.

As an illustration, Figure 1 assumes:

- the Permit Holder has achieved “Highly Likely” and hence a 20% reduction from the DCE.
- Other Matters relating to the Permit Holder have been evaluated to provide a further 20% reduction from the DCE, hence -
- Outcome B is 60% of DCE (and assuming the Permit Participant has a 100% participating interest), with
  - the PCG provided by the Permit Participant determined as a further 20% reduction to the DCE and
  - the Permit Participant income tax/royalty refund eligibility calculated as 30% of the DCE, resulting in
  - the “Amount (of security)” required by the Permit Participant (e.g. escrow account, bank security, or s97) being 10% of the DCE<sup>8</sup>.

**Ministerial Discretion.** The Minister is ordinarily unlikely to accept an Outcome B less than 60% of the DCE but does have the discretion to do so.

For example, the Minister may consider the recommendation for Other Matters does not sufficiently recognise benefits associated with the Permit Holder although it did not attain Highly Likely. The Minister might adjust the weighting of Other Matters (e.g., from a 20% to a 30% reduction to the decommissioning cost estimate). In the reverse the Minister might adjust the weighting for any risks identified (e.g., from 20% to 10%).

Similarly, in the case of “Amount (of security)”, if the Permit Holder (or other person) does not meet the ordinary criteria to be eligible for any (or all) of the specific reductions (i.e., PCG and tax/royalty refunds) the Minister may apply greater (or lesser) weight in the Other Matters. This may (partly) compensate for not benefitting from the specific reductions to the DCE.

By way of illustration, in Figure 2 the Permit Holder did not attain “Highly Likely” and the Permit Holder (or other person) was not eligible for an income tax or royalty refund. In exercising discretion, the Minister determined Other Matters and PCG each warranted a 30% weighting - resulting in a 40% “Amount (of security)”.

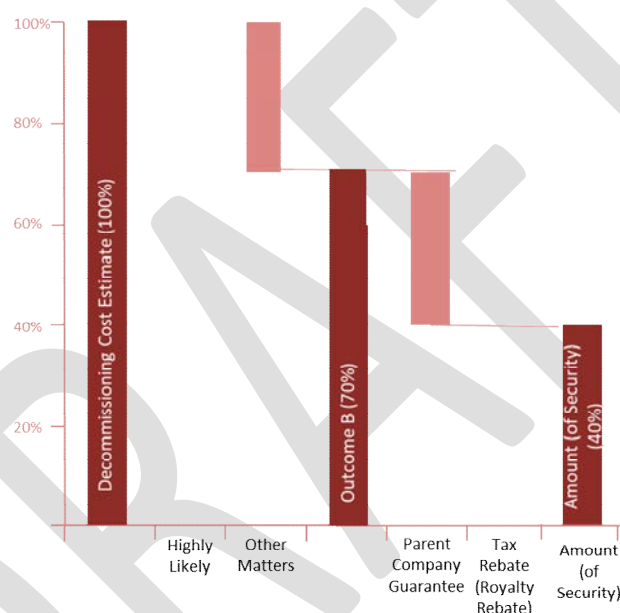


Figure 2 – illustration of how the amount of AFSA may be determined if the permit holder is not determined to be ‘highly likely’

### Monitoring

MBIE will periodically monitor the appropriateness of the AFSA. For example, a review may arise through:

- submission of an updated Asset Register and/or Decommissioning Plan and Decommissioning Cost Estimate where there are changes (e.g., the addition or removal of infrastructure and wells, resulting in a 20% or greater addition to/reduction of the DCE).
- performance and status reporting of Escrow Accounts.
- non-payment of escrow payments.
- forthcoming expiry of Bank Securities.
- production not meeting forecast and the effect on Reserves and Bank Security tranches.
- current income tax or royalty position.

<sup>8</sup> In the example, where a Permit Participant had a 30% participating interest the “Amount (of security)” outcome would be 3% of the DCE (i.e., 10% of DCE \* 30% = 3%).

- results and information from any FCA monitoring.
- knowledge or notification of any other matters, such as those relevant to the determination of the AFSA which have changed materially (e.g., see P13.22(6))
- general information received from Permit Holders in the Annual Summary Reports or Annual Review Meetings or other meetings with Permit Participants.
- publicly available information.

Permit Holders could expect officials to raise with them any concerns arising from the monitoring before undertaking any further steps (e.g., an alteration to the financial securities per P13.24).

## Use of financial security arrangements

### G7. Use of financial security during decommissioning (P13.27)

The following relates to both partial and the final decommissioning of infrastructure and wells.

**Ministerial Discretion.** Ordinarily the Minister will consent to a Permit Holder (or other person) using a part of or all cash-based security (i.e., Cash, Government Security, Investment Fund, Section 97 Security) to carry out the decommissioning to which the security relates.

#### **Cash Calls** (Permit Holder)

It is expected Permit Holders will request cash-based securities be refunded on a cash call basis<sup>9,10</sup>.

To ensure this is an effective process (and to enable the Custodian to monetise any securities in an orderly fashion), the Permit Holder must provide to MBIE in writing, preferably 60 days in advance of requiring the funds:

- the cash call process envisaged, including:
  - phasing of anticipated cash calls.
  - timing (i.e., normal date) of the cash call notice to pay.
  - due date for calls to be paid.
  - where applicable, the respective share for each Permit Participant or other person (e.g., where Permit Participants have separate escrow accounts).
  - Permit Operator's bank account details where the funds should be paid.
  - how decommissioning work completed will be verified.
- reporting (as provided to Permit Participants) on the costs incurred on decommissioning to date and the estimated cost to complete.

Changes to Bank Securities will be considered under alteration of financial securities (see P13.24) or release of financial security post-decommissioning (see G8).

#### **Partial decommissioning activities**

The Minister will ordinarily agree to releasing a proportional amount of security held where further decommissioning obligations will remain. However, there may be opportunities to discuss options for releasing more than proportional financial securities under Encouraging Decommissioning (see G3).

<sup>9</sup> Cash calls are requests for payment for anticipated future capital and operating expenditures (commonly used in joint ventures by the joint venture operator to non-operating participants).

<sup>10</sup> As the DCE used to calculate the escrow payments (and the escrow payments themselves) does not include GST, cash calls should not include GST.

Before consenting to a partial refund, the following factors may be considered and as necessary an adjustment made to the Escrow Account balance:

- Any Investment Fund is in-funds (i.e., there has been no loss subject to Make Good or will crystallise such a loss - see Appendix 3).
- Any withdrawal of an interest-bearing security is not crystallising a mark-to-market loss.
- The partial refund is in the same proportion to the total cash-based financial security held as the estimated cost of the infrastructure and/or wells being decommissioned is to the total decommissioning cost estimate (see below).
- The refund being paid is based on cash calls.

A typical calculation of a partial refund from an Escrow Account would be:

PR = (EB+BS+s97) \* DA/DC where:

PR = the Partial Refund (\$)

EB = Escrow Account balance (after adjustment for any Make Good and/or crystallised losses) (\$)

BS = Bank Security (face value) (\$)

s97= Section 97 Security (\$)

DA = DCE of the separately identified infrastructure and/or wells being decommissioned in the most recently submitted DCE<sup>11</sup> (\$)

DC = the total DCE of infrastructure and/or wells in the most recently submitted DCE<sup>12</sup> (\$)

#### **Final decommissioning**

It is expected any final decommissioning (i.e., a permit has permanently ceased production) will be preceded by a notice of cessation<sup>13</sup>.

A Permit Holder should first meet the costs of decommissioning from its own resources. Access to the financial securities held as an “Amount (of security)” should only be requested when the estimated decommissioning costs remaining are equal to or less than the financial securities held.

### **G8. Release of financial security post-decommissioning (P13.28)**

To be satisfied all decommissioning obligations have been met and there are no remaining financial security requirements, the following must be completed:

- Receipt by MBIE of the final asset register.
- Receipt by MBIE of the decommissioning completion report<sup>14</sup>.
- Receipt of formal advice from the appropriate regulatory authority that it is satisfied all decommissioning obligations have been met in accordance with their approval OR a statutory declaration from the directors of the Permit Participants of the Permit Holder to the same effect.

<sup>11</sup> Section 89ZC.

<sup>12</sup> Section 89ZC.

<sup>13</sup> Section 42C(3).

<sup>14</sup> Section 89ZE.

## Appendices

|    |   |    |
|----|---|----|
| 1  | Escrow Accounts                           | 15 |
| 2  | Bank Securities                           | 21 |
| 3  | Investment Funds                          | 22 |
| 4  | Parent Company Guarantee                  | 24 |
| 5A | Income Tax Refunds                        | 26 |
| 5B | Royalty Refunds                           | 27 |
| 6  | Flexible Security Arrangements - examples | 29 |

DRAFT

## Appendix 1. Escrow accounts

### Periodic Payment Calculation (Reserves Based)

#### 1 Escrow Account – cash-based payments

An Escrow Account is managed by a Custodian which receives lump sums and/or periodic payments (in cash) from the Permit Holder (or any other person). The funds received in the Escrow Account may be invested in Cash, Government Debt Securities or Investment Funds as proposed by the Permit Holder, in line with the considerations and conditions outlined in P13.23(4), G2, G3, G4, G5 Appendix 2 and Appendix 3.

**Periodic Payments - Reserves Based.** Ordinarily, the calculation of a reserves based periodic payment (usually quarterly, paid 30 days in arrears) to an Escrow Account would be:

$$EP = ((A * B) - (A * C) - D - E - F - G - H) * P / R * K$$

Where:

EP = the Escrow Payment (\$).

A = DCE (\$) – see G6

B = Outcome B (%) – see G6

C = extent (%) DCE covered by PCG – see G6

D = the balance (\$) in any Escrow Account.

E = the face value (\$) of any Bank Securities.

F = the balance (\$) of any Section 97 Securities.

G = the estimated tax refund (\$).

H = the estimated (net) royalty refund (\$).

P = production available for sale in barrels of oil equivalent (**BOE**) for the relevant period.

R = remaining Reserves (see G6) available for sale in BOE updated at the beginning of each year or following a revised reserves report.

K = the appropriate **Compound Interest Factor** - recognises the effects of compound interest (or other investment earning and growth) over time. See 'Compound Interest Factor' below.

See 'Periodic Payment Calculation (Reserves Based)' - worked examples below.

#### Periodic Payment - Flat

Ordinarily a flat periodic payment may be more appropriate where:

- there are not predominantly reserve-based operations (e.g., tolling operations) and future volumes are difficult to estimate with certainty.
- existing infrastructure is no longer (or only partially) operational.
- reserves are fully or nearly fully depleted.
- production has been suspended for some time (e.g., due to well issues) and future production is uncertain.
- there are no reserves (e.g., only resources) but infrastructure and/or wells remain to be decommissioned.

- there are exploration permits (see G1).

The periodic payment for tolling operations will ordinarily be calculated as a flat amount:

$$P = 1$$

R = number of agreed quarterly periods reflecting the agreed metric (e.g., throughput for other Permit Holders, expected useful life).

K = considered with reference to contractual terms, reserves or another appropriate basis.

### **Escrow Flexibility**

The Minister is conscious a 'one size fits all' approach will not always be appropriate and may result in unintended consequences.

MBIE encourages Permit Holders in this situation to discuss the matter with officials, noting examples under the heading 'Development' below and the information which can be provided when responding to the 'notice' (see P13.22(1)+(6) and G2).

### **Reporting**

The Permit Holder or other person will be responsible for advising MBIE (copied to the Permit Holder) of the periodic payments (usually quarterly) made to the Custodian at the time the payment is made. Supporting details of the payment made should include details of the production, by product, in both standard units (e.g., barrels of oil) and BOE.

### **2 Bank Securities – tranches**

A Permit Holder or other person may wish to progressively increase the face value of Bank Securities over time (i.e., in tranches).

To be considered, such an approach is expected to:

- be for a period of 3 to 5 years, calculated in full year increments.
- have a face value (in \$000) based on the Escrow Account methodology (see Periodic Payments – Reserves Based above), with P equal to the forecast production for the period selected (e.g., 3 years) and the Compound Interest Factor (K) set at 1.
- be consistent with the Permit Holder's history of actual versus forecast production.
- take into account the administrative effort and cost involved for both the Permit Holder or any other person and MBIE.

### **Reserves**

#### **Reserves: Based on the Petroleum Resources Management System Guidelines.**

For the purposes of this guideline remaining **Reserves** may be either:

- remaining 2P developed reserves (i.e., based on assets currently in place) or
- remaining total 2P reserves based on developed and undeveloped reserves (i.e., the Decommissioning Plan (DP) and Decommissioning Cost Estimate (DCE) will include the undeveloped infrastructure and/or wells which support the 2P reserves figure).

Where remaining reserves are based on the forecast production profile, constrained by the timing of decommissioning (see below).



2P Developed reserves are most closely related to the asset register. However, a number of Permit Holders have advised they do not calculate 2P Developed and industry practice is more commonly associated with 2P Reserves.

Reserves should be based on the Permit Holder's reserves report. For a joint venture, it is expected the reserves will have been approved by its Operating Committee or similar. Officials may request a copy of the reserves report.

Annual Updates. For the escrow calculation (see above), reserves are usually updated annually. Where there is a revised reserves report during the year (e.g., as a result of a permit extension or technical revision) reserves should be updated if significant, from the start of the next quarterly period.

### **Decommissioning Timing**

The Permit Holder must carry out their decommissioning obligations before the **expiry** or surrender of the permit (unless an exemption or deferral has been granted)<sup>15</sup>. The CMA [and Programme] also addresses timeframes where, for example, production permanently ceases before permit expiry and the criteria the Minister must consider in agreeing or setting timeframes<sup>16</sup>.

### **Reserves – Permit Expiry during implementation**

During implementation of these guidelines, if remaining reserves extend beyond the permit expiry date they can continue to be used in the escrow calculation for up to 36 months after the date of the determination of the AFSA (see P13.23). The 36 months is to allow time for an application for and the decision on any permit extension.

This implementation phase applies to existing permits as at the date the Programme 2025 comes into force. If a decision is made within the 36 month period then this concession no longer applies.

### **Development**

Permit Holders should discuss with officials the most appropriate approach where:

- there is development in a new permit which has not produced (e.g., to determine a financial security to mitigate the risk of decommissioning petroleum infrastructure and/or wells if commercial production is unsuccessful).
- there is new or ongoing development in a producing (or previously producing) permit which will result in a higher decommissioning cost estimate (e.g., >20% of the current decommissioning cost estimate) and/or
- significant 2P undeveloped reserves are being progressively brought on stream (e.g., integrating incremental reserves, production and DCE into an escrow calculation).
- production volumes (and associated revenue) are relatively small compared to the DCE (see 'Periodic Payment Calculation (Reserves Based)' above).
- an application for permit extension has been made, noting 'Decommissioning Timing' above.

---

<sup>15</sup> See P13.4.

<sup>16</sup> P13.5 sets out the considerations when agreeing or setting dates for decommissioning.

**Periodic Payment Calculation (Reserves Based) - worked examples**

Examples assume the Year begins on 1 July 2024 and Permit Holder is “Highly Likely”.

**Calculation 1. Initial Periodic Payment (PP)**

Assuming the first s89ZN Notice (P13.22(1)) had been issued and the first quarterly payment is to be based on production during the quarter 1 July 2024 to 30 September 2024. The example inputs below would result in the first periodic payment of \$0.286m being due once the quarter has been completed.

| Variable   | Description   | Value | Units |
|------------|---|-------|-------|
| A          | Decommissioning Cost Estimate (DCE)                     | 22    | \$m   |
| B          | Extent A is covered by financial security               | 80    | %     |
| C          | Extent A is covered by Parental Company Guarantee (PCG) | 20    | %     |
| D          | Balance of cash/Govt securities in the Escrow Account   | 0     | \$m   |
| E, F, G, H | All assumed 0   | 0     | \$m   |
| K          | 2P remaining reserves expected to last 12 years         | 65    | %     |
| P          | Actual production 1 July 2024 to 30 Sept 2024           | 4     | mboe  |
| R          | 2P remaining reserves at 1 July 2024                    | 120   | mboe  |

Calculation:  $PP = ((A \times B) - (A \times C) - D - E - F - G - H) \times P / R \times K$   
 $PP = ((22 \times 0.8) - (22 \times 0.2) - 0 - 0 - 0 - 0 - 0) \times 4 / 120 \times 0.65$   
 $PP = 13.2 \times 4 / 120 \times 0.65$   
**PP = \$0.286m**

**Calculation 2. The Second Periodic Payment**

Following the above example, the second periodic payment would be based on production 1 October 2024 to 31 December 2024. The example inputs below would result in the second payment of \$0.270m. Note D is assumed to increase by a minor interest payment, and R has not changed.

| Variable   | Description  | Value | Units |
|------------|--|-------|-------|
| A          | DCE  | 22    | \$m   |
| B          | Extent A is to be covered by financial security    | 80    | %     |
| C          | Extent A is covered by PCG                         | 20    | %     |
| D          | Balance of the Escrow Account (including interest) | 0.40  | \$m   |
| E, F, G, H | All assumed 0                                      | 0     | \$m   |
| K          | 2P remaining reserves expected to last 12 years    | 65    | %     |
| P          | Forecast production 1 Oct 2024 to 31 Dec 2024      | 3.9   | mboe  |
| R          | Developed reserves at 1 July 2024                  | 120   | mboe  |

Calculation:  $PP = ((A \times B) - (A \times C) - D - E - F - G - H) \times P / R \times K$   
 $PP = ((22 \times 0.8) - (22 \times 0.2) - 0.4 - 0 - 0 - 0 - 0) \times 3.9 / 120$   
 $PP = 12.8 \times 3.9 / 120 \times 0.65$   
**PP = \$0.270m**

**Calculation 3. The Second Periodic Payment, With a “Significant” Upward Revision of Reserves**

When completing Calculation 2, R was calculated using the 2P Reserves as at 1 July. Usually reserves would be updated annually (taking into account both production and other revisions). In the event of a significant increase (e.g., 20% or more) in 2P Reserves during the year, it may be appropriate to revise R and K if the production profile extends the life (also possibly the DCE if there is new infrastructure and/or wells not already included). The timing of the revision would be the beginning of the next quarter.

For this example: reserves have been revised during September 2024, so on 1 October 2P remaining reserves are estimated at 140 mboe (net of YTD production), the production profile extends to 16 years (K is therefore 0.54) and there is no change to the DCE. Note D is assumed to increase by a minor interest payment. P has not changed (the increased production came onstream in late September).

The example inputs below would result in the second payment of \$0.193m.

| Variable | Description                                     | Value | Units |
|----------|---|-------|-------|
| A        | DCE   | 22    | \$m   |
| K        | 2P remaining reserves expected to last 16 years | 54    | %     |
| R        | 2P remaining reserves at 1 October 2024         | 140   | mboe  |

Calculation:  $PP = ((A \times B) - (A \times C) - D - E - F - G - H) \times P / R \times I$   
 $PP = ((22 \times 0.8) - (22 \times 0.2) - 0.4 - 0 - 0 - 0 - 0) \times 3.9 / 140 \times 0.54$   
 $PP = 12.8 \times 3.9 / 140 \times 0.54$   
**PP = \$0.193m**

#### Calculation 4. The Second Periodic Payment, With a “Significant” Downward Revision of Reserves

In the event of a significant decrease (e.g., 20% or more) in 2P Reserves during the year the Permit Participant may choose to either apply Calculation 3 (with the appropriate changes to the variables) in reverse, effective from the next quarter or wait until the beginning of the next year to apply the changes.

#### Compound Interest Factor (CIF) Defined

This factor is intended to recognise the effects of compound interest (or other investment earning and growth). It is acknowledged the actual outcome will be different, but the effect of this variation is factored into the Escrow calculation where the formula adjusts for the quarterly value of the cash-based securities held (see ‘Escrow Account – cash-based payments’ above).

It has been initially set as follows and will be subject to regular (not necessarily annual) review:

- An estimated real rate of return, based on Treasury estimates for the risk-free rate and consumer price index (CPI). These figures are published quarterly, with the figures below being based on the September 2023 tables. [NZ Treasury Tables](#)<sup>17</sup>
- For the purposes of ‘Escrow Accounts – cash-based payments’ above, and in the interest of simplicity, the Compound Interest Factors (K) are based on 5-year periods. The factor to be used is based on the number of years remaining, being the shorter of permit life or 2P reserves (see ‘Reserves’ above) as:
  - 1 to 5 years (average 3) = 0.91 (91%)

<sup>17</sup> New Zealand Treasury Tables: <https://www.treasury.govt.nz/information-and-services/state-sector-leadership/guidance/reporting-financial/discount-rates/discount-rates-and-cpi-assumptions-accounting-valuation-purposes>

- 6 to 10 years (average 8) = 0.78 (78%)
- 11 to 15 years (average 13) = 0.65 (65%)
- 16 to 20 years (average 18) = 0.54 (54%)
- 21 to 25 years (average 23) = 0.45 (45%)
- 26 to 30 years (average 28) = 0.37 (37%)
- 31 to 35 years (average 33) = 0.32 (32%)
- See 'Periodic Payment Calculation (Reserves Based) – worked examples' above, where the examples provided include the Compound Interest Factor.
- The basis for the calculation of the Compound Interest Factors is summarised in the two tables below, where:
  - Net Interest less CPI = Spot Rate less Spot CPI, so
  - Year 3 (3.25%) = 5.51% - 2.26% and the Compound Interest Factor (K)
  - $K (0.91\%) = 1/(1 + 3.25\%)^3$

**Table of Risk-free Discount Rates and CPI Assumptions at 30 September 2023 for Accounting Valuation Purposes**  
 Published 5 October 2023  
 Published by the Treasury at <https://treasury.govt.nz/publications/guidance/reporting/accounting/discountrates>

The following table shows the risk-free rates and CPI to be used for certain accounting valuations as at 30 September 2023

| Valuation Year<br>(for Annual Cash Flows to 30<br>September) | Duration<br>in Years | Spot Rate | Spot CPI | Net Interest less<br>CPI | Mid-rate |
|--|----------------------|-----------|----------|--------------------------|----------|
| 2024   | 1                    | 5.87%     | 2.49%    | 3.38%                    |          |
| 2025   | 2                    | 5.71%     | 2.39%    | 3.32%                    |          |
| 2026   | 3                    | 5.51%     | 2.26%    | 3.25%                    | 0.91     |
| 2027   | 4                    | 5.38%     | 2.21%    | 3.17%                    |          |
| 2028   | 5                    | 5.32%     | 2.18%    | 3.14%                    |          |
| 2029   | 6                    | 5.32%     | 2.16%    | 3.16%                    |          |
| 2030   | 7                    | 5.33%     | 2.15%    | 3.18%                    |          |
| 2031   | 8                    | 5.36%     | 2.14%    | 3.22%                    | 0.78     |
| 2032   | 9                    | 5.39%     | 2.13%    | 3.26%                    |          |
| 2033   | 10                   | 5.42%     | 2.13%    | 3.29%                    |          |
| 2034   | 11                   | 5.46%     | 2.12%    | 3.34%                    |          |
| 2035   | 12                   | 5.48%     | 2.12%    | 3.36%                    |          |
| 2036   | 13                   | 5.51%     | 2.12%    | 3.39%                    | 0.65     |
| 2037   | 14                   | 5.53%     | 2.11%    | 3.42%                    |          |
| 2038   | 15                   | 5.55%     | 2.11%    | 3.44%                    |          |
| 2039   | 16                   | 5.56%     | 2.11%    | 3.45%                    |          |
| 2040   | 17                   | 5.58%     | 2.11%    | 3.47%                    |          |
| 2041   | 18                   | 5.59%     | 2.11%    | 3.48%                    | 0.54     |
| 2042   | 19                   | 5.60%     | 2.10%    | 3.50%                    |          |
| 2043   | 20                   | 5.61%     | 2.10%    | 3.51%                    |          |
| 2044   | 21                   | 5.62%     | 2.10%    | 3.52%                    |          |
| 2045   | 22                   | 5.63%     | 2.10%    | 3.53%                    |          |
| 2046   | 23                   | 5.63%     | 2.10%    | 3.53%                    | 0.45     |
| 2047   | 24                   | 5.64%     | 2.09%    | 3.55%                    |          |
| 2048   | 25                   | 5.65%     | 2.09%    | 3.56%                    |          |
| 2049   | 26                   | 5.65%     | 2.09%    | 3.56%                    |          |
| 2050   | 27                   | 5.66%     | 2.09%    | 3.57%                    |          |
| 2051   | 28                   | 5.66%     | 2.09%    | 3.57%                    | 0.37     |
| 2052   | 29                   | 5.66%     | 2.08%    | 3.58%                    |          |
| 2053   | 30                   | 5.66%     | 2.08%    | 3.58%                    |          |
| 2054   | 31                   | 5.65%     | 2.08%    | 3.57%                    |          |
| 2055   | 32                   | 5.63%     | 2.08%    | 3.55%                    |          |
| 2056   | 33                   | 5.62%     | 2.08%    | 3.54%                    | 0.32     |
| 2057   | 34                   | 5.60%     | 2.08%    | 3.52%                    |          |
| 2058   | 35                   | 5.57%     | 2.07%    | 3.50%                    |          |
| 2059   | 36                   | 5.55%     | 2.07%    | 3.48%                    |          |
| 2060   | 37                   | 5.52%     | 2.07%    | 3.45%                    |          |

## Appendix 2. Bank securities

Bank Securities include a letter of credit (**LOC**), performance bond, bank guarantee or surety bond (or a similar type of security) issued by a provider (see G5).

Tranches – see ‘Bank Securities – tranches’ in Appendix 1.

To be acceptable, a bank security is likely to need to:

- have the characteristics described in P13.23(4) and be issued on terms which are typical for Bank Securities issued by New Zealand registered banks.
- be irrevocable during their term, noting in practice many Bank Securities will have an expiry date (see Demand and Renewal Process below).
- regardless of the form (i.e., LOC, performance bond, bank guarantee or surety bond), have as the only conditions to payment:
  - demand being made by the Crown on the provider; and
  - confirmation by the Crown to the provider the relevant Permit Holder or other person has defaulted on either its financial security obligations under the CMA and/or its decommissioning obligations under the CMA, with no requirement for the Crown to present evidence of default. Default in this context will include the Permit Holder or other person not maintaining, at any time, the required type and amount of financial security.

### **Demand and Renewal Process**

In keeping with standard practice, the relevant Permit Holder (or other person) must ensure each Bank Security is replaced in full at least 90 days prior to the expiry date of the existing Bank Security.

**WHERE A BANK SECURITY IS NOT RENEWED OR REPLACED WITH AN EQUIVALENT VALUE OF SECURITY WITHIN 90 DAYS OF ITS DUE DATE, IT MAY BE CALLED BY THE CROWN.**

Where this is foreseen as being the likely outcome, the Permit Holder (or other person) should initiate an alteration to a financial security process well in advance.

### **Non-renewal or Default**

In the event of non-renewal of, or in the event of a Permit Holder (or other person) being in default, and the Bank Security being called the money drawn down would be deposited in a Section 97 security and accrue interest until it is needed to pay for decommissioning costs.

Where a Bank Security has been called and the funds deposited in a Section 97 account the Permit Holder (or other person) can request the Minister to alter the financial security arrangement required (including amount). See P13.24.

### **Exercise of Powers**

While entitled to do so, the Crown is unlikely to exercise such a power without discussion with the Permit Holder (or other person) on whose behalf the bank security has been provided.

### **Good Faith**

It is expected, in accordance with good commercial practice, the parties will act in good faith and be proactive in their communication well in advance of the Minister needing to take any action.

## Appendix 3. Investment funds

Given the timeframes often involved before undertaking decommissioning, the Minister may accept an Escrow Account investing in an Investment Fund (see G2(1)).

### Risk Management

- the risk of any Investment Fund sits with the Permit Holder or person providing the escrow account as security and investing in the Investment Funds. While there is an inherent volatility in Investment Funds the volatility is mitigated by an annual Make Good mechanism (see below) and the use of a financial advice provider (see below).
- as provided in G5, the Investment Fund units are held by a Custodian.
- an **independent New Zealand licensed financial advice provider** (from an agreed investment advisory firm<sup>18</sup>) must be actively involved in managing the investment funds with the Permit Holder or person providing the security on an ongoing basis, with regular (e.g., quarterly) formal reviews.
  - formal recommendations (and subsequent implementation) should recognise the type of investment fund (i.e., its risk profile) will change with the timeframe for when funds will be required.
  - the selection of Investment Fund(s) should be decided in consultation with the Permit Holder or person providing the security.
  - the risk profile of the Investment Fund(s) should be considered in its own right - direct holdings in Cash, Government Debt Securities, Bank Securities and Section 97 Security should not be seen as forming part of the portfolio.
  - the Permit Holder or person providing the security may decide to transfer Investment Funds into direct holdings in Cash, Government Debt Securities or Section 97 Securities.
  - copies of formal correspondence (including investment recommendations, reviews and assurance reports) should be provided to MBIE by the financial advice provider and Custodian (as applicable).

### Make Good

The Minister will require the Permit Holder or person providing the security to agree to offset any Investment Fund losses on an annual basis (**Make Good**). For administrative convenience, it is recognised this may include gains added in previous years. However, those gains will be considered in any review of the amount payable to the escrow account (see Appendix 1) or any alteration to financial securities (see P13.24).

Make Good will be calculated by the Permit Holder or person providing the security and agreed with MBIE at the end of each calendar year (unless another date has been agreed). The amount of Make Good would be paid in additional cash funds to the Custodian for the benefit of the Escrow Account (which may include further additions to the Investment Fund) within 60 days of the end of the calendar year. If, within the 60 days, the Investment Fund has recovered in value (in whole or part), officials may agree some or all the Make Good is not required.

A typical calculation, for example, of the Make Good would be:

$$MG = (A + C - D) - B$$

Where:

<sup>18</sup> It is likely an agreed investment advisory firm will have at least 5 registered financial advisers, with at least 2 allocated to the Permit Holder's (or person providing the security) account, to maintain continuity of coverage.

MG = Make Good (any positive amount).

A = the value of the Investment Funds at the beginning of the calendar year.

B = the value of the Investment Funds at the end of the calendar year end.

C = the amount of any deposits during the year (e.g., additional funds, prior year Make Good).

D = the amount of any agreed withdrawals during the year (e.g., for decommissioning, transfer to another financial security).

Investment gains will accrue to the Escrow Account and may only be drawn down for decommissioning activity (see P13.27 and G7).

**Direct Investments.** Make Good will not apply to any mark-to-market valuation associated with direct investments (i.e. not investment funds) held in fixed interest deposits, Government Debt Securities (or Section 97 Security) provided the investment is being held to maturity.

However, make good will apply for any direct investment that matures after decommissioning is forecast to be completed.

DRAFT

## Appendix 4. Parent company guarantee

### Form

Any PCG must be a guarantee, indemnity and covenant to pay and should provide for the party providing it to guarantee performance by the Permit Holder or other person of its decommissioning obligations and to meet its liabilities under the Permit and relevant Acts.

Ordinarily a PCG will not be an acceptable financial security on its own (for the reasons outlined below) but may be considered as part of a financial security arrangement with different securities (see G3). The reduction applied in determining the Amount (of security) (see G6) will ordinarily be based on the credit rating of the PCG provider, indicatively:

|            | Provider's Long Term Credit Rating: |               |
|------------|-------------------------------------|---------------|
| Percentage | S&P or Fitch                        | Moody's       |
| 20%        | A- or better                        | A3 or better  |
| 10%        | BBB- to BBB+                        | Baa3- to Baa1 |

**The Percentage should be read in the context of the ordinary approach to Amount** (see G6).

**Ministerial Discretion.** The Minister may determine a PCG to contribute a higher (or lower) than the ordinarily accepted percentage (above) of the Security to Fund.

**Conditions.** Outlined below are conditions the Minister may require and take into account in determining the extent to which a PCG will be acceptable in constituting a financial security (if at all).

**CONDITION: Rating Change.** Where the credit rating of the entity providing the PCG changes the Permit Holder must notify MBIE within 14 days and an alteration (see P13.24) may be considered -

- in the case of a reduction, the Minister may require additional financial security (in other kinds) to be provided within 90 days.
- in the case of an improvement the Permit Holder may want to request the Minister to reduce the amount of another security.

**CONDITION: Existing PCG.** Where an existing PCG is held, it will be retained. If the PCG is proposed as part of a financial security arrangement, the Minister is likely to require changes to the PCG to reflect current best practice and to meet the requirements of the new decommissioning regime before it being an AFSA.

**CONDITION: Non-New Zealand Provider.** Where a PCG is issued by a non-New Zealand entity, the PCG needs to be enforceable by the Crown in both New Zealand and the entity's home jurisdiction.

Legal advice, from the relevant jurisdiction, may be independently sought before agreeing the form and content of such a PCG. The relevant person will need to provide a due capacity and enforceability legal opinion from the relevant jurisdiction on the PCG in a form, issued by a law firm, satisfactory to MBIE.

On its own, the Minister does not ordinarily consider a PCG as an acceptable form of security for the following reasons:

- they may not always meet the characteristics described in P13.23(4)
- the recoverability of a PCG which can be influenced by several factors and its value will be considered with regard to the following items:



- its structural subordination to its ultimate parent company and position within the hierarchy of group subsidiaries.
- its position relative to the origin of the group's operating cash flow and key value creation activities.
- other asset or cash flow based competing third party secured and unsecured priorities/ obligations.
- corporate going concern tenor consideration relative to the fixed life New Zealand permit and oil & gas field.
- any underlying United States dollar (or other) denominated currency-based risk assessment.
- exposure of the Crown to expensive litigation expense (and risk).
- lack of protection to the Crown if there is a restructure of the relevant corporate group resulting in material assets being moved out of the entity which has provided the PCG.

However, the Minister in their consideration of 'any other matters the Minister considers relevant' (P13.23(2)) may consider a PCG acceptable in its own right (or to warrant a higher than ordinarily accepted percentage discount of the security required) given:

- the previous history of the provider of the PCG in meeting past decommissioning obligations and/or undertaking previous decommissioning activities.
- the extent and diversity of other revenue sources available to the provider of the PCG.
- the underlying shareholding of the provider of the PCG.
- the consequence (e.g., reputation) to the provider of the PCG should it not meet its decommissioning obligations.

## Appendix 5A. Income tax refunds

**This guidance is not legal advice, and Permit Holder (and other persons) must form their own views on any tax refund entitlements, and whether they would be eligible as a reduction of the decommissioning cost estimate in establishing the Amount (of security) (see G6).**

Decommissioning costs are generally a deductible expense for income tax purposes where decommissioning is undertaken progressively. Where decommissioning occurs after production ceases (or where there are insufficient revenues to offset the costs incurred), the income tax is refundable in the relevant tax year to the extent the Permit Holder or other person (as taxpayer) has paid income tax (and if applicable, has sufficient imputation credits).

The income tax refund for the purpose of calculating the Amount (of security) (see G6) should be estimated:

- as if decommissioning had been completed at the estimated current cost (i.e., the cost in the latest DCE).
- based on the most recent filed income tax return (including if applicable the imputation credit balance<sup>19</sup>) and tax rate.

and certified correct by an independent external tax advisor (or independent auditor). This estimate of eligibility should accompany the response to any notice (see 13.23(3)).

**The Minister will require authority to request a letter from the Inland Revenue Department to confirm the individual taxpayer's eligibility for the income tax refund calculated for G6 and Appendix 1.**

A change in the estimated income tax refund, on its own, is unlikely to be considered as a reason to change the amount calculated for any escrow account payment (see Appendix 1). It will be updated as a consequential change when the decommissioning cost estimate is revised or when there is an alteration to Financial Securities (see P13.24).

---

<sup>19</sup> Where a company at the time of preparing the estimate expects it will be able to utilise the decommissioning loss to reduce tax payable (rather than receive a cash refund), it will not need to take the imputation credit balance into account.

## Appendix 5B. Royalty Refunds

**This guidance is not legal advice, and Permit Holders (and other persons) must form their own views on any royalty refund entitlements, and whether they would be eligible as a reduction of the decommissioning cost estimate in establishing the Amount (of security) (see G6 and Appendix 1).**

### Accounting Profits Royalty (APR)

Where a Permit Holder is subject to the APR regime<sup>20</sup>, there is either a provisional royalty payable of 20%<sup>21</sup> of accounting profits (being revenues less allowable costs including exploration and capital) or an ad valorem royalty of 5% of revenue (whichever is higher).

Decommissioning expenditure is deductible under the APR regime when incurred. For the final royalty return, those costs (net of any sale proceeds) can:

- under the 1995 and 2005 Minerals Programme, be spread back over periods when APR was paid.
- under the 2013 regulations, the balance divided over each reporting period of the life of the permit and distributed equally over each of those periods.

This may lead to a refund of the provisional APR royalty paid in a period, noting the Ad Valorem Royalty of 5%<sup>22</sup> of revenue will then be the default royalty payable for that period.

Supporting information. The Minister is likely to request information on any estimated royalty refund in the request notice (see 13.23(3)). If that is the case, the Minister would expect the Permit Holder (or other person) to provide an estimate based on:

- the current decommissioning cost estimate (i.e., the cost in the latest decommissioning cost estimate).
- the estimated net refund of royalty (e.g., APR refund net of AVR payable and cost recoveries) at the date of the most recent royalty return as if decommissioning was complete.

### Ad Valorem Royalty (AVR)

Where a licence holder is subject to royalties under the Petroleum Act 1937, the royalty is usually an AVR determined at a defined point of valuation and excluding any costs incurred before that point. Hence there may not be a royalty refund applicable for all or any decommissioning costs.

Supporting information. The Minister is likely to request information on any estimated royalty refund in the request notice (see 13.23(3)). If that is the case, the Minister would expect the Permit Holder (or other person) to provide an estimate based on:

- whether there is a deduction available for royalty based on their Royalty Agreement, and if so to what extent.
- any provisional deductions already taken.
- the current decommissioning cost estimate (i.e., the cost in the latest decommissioning cost estimate) for any allowable infrastructure and wells.
- the estimated net refund of royalty (e.g., after cost recoveries) at the date of the most recent royalty return as if decommissioning was complete.

### General

For both the APR and AVR royalty regimes, it is recognised there may be some differences in the royalty returns for individual participants. Given these are expected to be relatively minor, the

returns of the Permit Participant with the largest permit interest will be used (on a confidential basis).

The approach will be modified as necessary to cater for any flexibility being taken.

#### **Refund Timing**

Generally, **any (net) royalty refund will only be payable once decommissioning is complete** (e.g., after the Secretary is satisfied as to the validity of the final royalty return, a one-time refund, if any, to the permit holder shall be made<sup>23</sup>).

MBIE may refer to royalty return records it maintains to confirm the extent of any refund requested is consistent with the information held.

A change in the estimated royalty refund estimate, on its own, is unlikely to be considered as a reason to change the amount calculated for any escrow account payment (see Appendix 1). It will be updated as a consequential change when the DCE is revised or when there is otherwise an Alteration to Financial Securities (see P13.24).

---

<sup>20</sup> As provided in the relevant Minerals Programme for Petroleum (1995 or 2005) when the permit was awarded. From 24 May 2013 the Crown Minerals (Royalties for Petroleum) Regulations 2013 apply.

<sup>21</sup> This was 15% for discoveries made between 30 June 2004 and 31 December 2009 based on the first \$750 million (offshore) and \$250 million (onshore) of gross sales (Minerals Programme for Petroleum 2005).

<sup>22</sup> This was 1% for gas (5% for oil) discoveries made between 30 June 2004 and 31 December 2009 (Minerals Programme for Petroleum 2005). The AVR also applies in any period when the AVR is greater than the APR.

<sup>23</sup> Para 7.41 Minerals Programme for Petroleum 1995

## Appendix 6. Financial security arrangements - examples

These examples are not exhaustive but illustrate the flexibility which may be acceptable to the Minister in determining the 'structure' of an AFSA.

### In all examples -

- the **Permit Holder** may propose to obtain and maintain one or more financial securities for each permit.
- each **Permit Participant** may propose to obtain and maintain one or more financial securities for each permit.

#### 1. Multiple Participants

|              |    |   |   |
|--------------|----|---|---|
| Permit Alpha |    |   |   |
| A1           | A2 | B | C |

- Permit Participants A1 and A2 are related companies; B and C are independent with participating interests in one permit (Permit Alpha).
- A1 and A2 could propose to secure their obligations (using one or more securities) jointly (e.g., propose one PCG for each) as could B and C.
- A1, A2 and B could propose to secure their obligations (using one or more securities) jointly, and C could provide security on its own.

#### 2. Multiple Permits – across permits

|              |             |              |
|--------------|-------------|--------------|
| Permit Alpha | Permit Beta | Permit Delta |
| A1           | A1          | A1           |
| D            | E           | F            |

- Permit Participant A1 has participating interests in the 3 permits (Alpha, Beta and Delta)
- A1 could propose to secure its obligations (using one or more securities) jointly across all 3 permits

#### 3. Multiple Permits – related parties

|              |             |              |
|--------------|-------------|--------------|
| Permit Alpha | Permit Beta | Permit Delta |
| A1           | A1          | A1           |
| A2           | A3          | F            |
| G            | H           | K            |

- Group A has 3 subsidiaries (A1, A2, A3) with participating interests in the 3 permits (Alpha, Beta and Delta)
- Group A's parent company could propose to secure the obligations of A1, A2, A3 (using one or more securities) jointly across all 3 permits (with a cross guarantee); or

- A1 could propose to secure the obligations of A1, A2, A3 (using one or more securities) jointly across all 3 permits (with a cross guarantee).

**4. Multiple Permits – common holdings**

| Permit Alpha | Permit Beta | Permit Delta |
|--------------|-------------|--------------|
| A1           | A2          | A3           |
| B1           | B2          | B1           |

- Group A has 3 subsidiaries (A1, A2, A3) with participating interests in the 3 permits (Alpha, Beta and Delta)
- Group B has 2 subsidiaries (B1, B2) with participating interests in the 3 permits (Alpha, Beta and Delta)
- Group A’s and Group B’s parent companies could propose to jointly secure the obligations of A1, A2, A3, B1 and B2 (using one or more securities) across all 3 permits (with a cross guarantee); or
- A1 and Group B’s parent company could propose to secure the obligations of A1, A2, A3, B1 and B2 (using one or more securities) jointly across all 3 permits (with a cross guarantee).