



COVERSHEET

Minister	Hon Dr Megan Woods	Portfolio	Energy and Resources
Title of Cabinet paper	Regulatory Framework for Decommissioning Petroleum Infrastructure and Enforcement - Strengthening the Crown Minerals Act 1991 Regime	Date to be published	30 July 2020

List of documents that have been proactively released

Date	Title	Author
17 June 2020	<i>Cabinet paper:</i> Regulatory Framework for Decommissioning Petroleum Infrastructure and Enforcement - Strengthening the Crown Minerals Act Regime	Office of the Minister of Energy and Resources
17 June 2020	<i>Cabinet Economic Development Committee Minute of Decision:</i> Regulatory Framework for Decommissioning Petroleum Infrastructure and Enforcement - Strengthening the Crown Minerals Act Regime	Cabinet Office
17 June 2020	<i>Regulatory Impact Assessment:</i> Regulation governing legal and financial responsibility for decommissioning petroleum infrastructure and enforcement tools under the Crown Minerals Act 1991	MBIE

Information redacted

YES / NO

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reasons of confidentiality of advice to Government, legal professional privilege, free and frank advice, and commercial sensitivity.



Cabinet Economic Development Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Regulatory Framework for Decommissioning Petroleum Infrastructure and Enforcement: Strengthening the Crown Minerals Act Regime

Portfolio Energy and Resources

On 17 June 2020, the Cabinet Economic Development Committee (DEV):

Background

- 1 **noted** that:
 - 1.1 in November 2019, DEV agreed to the release of a discussion document on *Review of the Crown Minerals Act 1991* [DEV-19-MIN-0295];
 - 1.2 the discussion document (among other things) identified the need to strengthen the regulation of petroleum sector's financial preparedness for the upcoming decommissioning activities and to expand the current enforcement toolbox under the Crown Minerals Act 1991;
- 2 **noted** that in February 2020, the Cabinet Business Committee agreed to fund the decommissioning of the Tui oilfield infrastructure, as the operator of the Tui oilfield, Tamarind Taranaki Ltd, has gone into receivership and liquidation and lacks the assets necessary to meet the decommissioning costs [CBC-20-MIN-0008];
- 3 **noted** that it is timely to strengthen the provisions of the Crown Minerals Act 1991 to ensure that they are sufficiently robust to help mitigate the risk for the Crown and other third parties of potentially having to undertake and fund decommissioning in the future, and to expand its current enforcement toolbox;
- 4 **noted** that the proposals in paragraphs 9 to 30 below are designed to work as a package to create a robust outcomes-focused risk-based regulatory framework that would impose discipline and strengthen the incentives for petroleum companies to undertake and fund their decommissioning activities, in a consistent and proportionate manner;
- 5 **noted** that the proposals will complement the workings of the other regulatory regimes responsible for managing different aspects of decommissioning activities, such as the decommissioning planning process under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, thus further strengthening the overall regulatory system for decommissioning in New Zealand;

- 6 **noted** that the proposals form an enabling legislative basis for more detailed requirements to be provided for in regulations, the detailed design of which will be subject to future Cabinet decisions, informed by further consultation with stakeholders, and regulatory impact analysis;
- 7 **noted** that implementation of the proposals in paragraphs 9 to 30 below will require the Ministry of Business, Innovation and Employment to perform new regulatory functions, the scope, cost and funding sources for which will be considered as part of the policy development process for the supporting regulations, subject to future Cabinet decisions;
- 8 **noted** that the remaining areas of the Crown Minerals Act 1991 Review are being progressed in parallel and will be reported back to Cabinet in due course;

Establishing an explicit statutory obligation to decommission

- 9 **noted** that there is currently no explicit statutory obligation on permit holders to undertake and fund decommissioning activities under the Crown Minerals Act 1991, and therefore little statutory guidance, principles or a clear mandate to convey the Crown's expectations in relation to decommissioning requirements that can be stipulated in permit or licence conditions;
- 10 **noted** that the Petroleum Act 1937, which was superseded by the Crown Minerals Act 1991, did contain an explicit decommissioning obligation and continues to have an effect in relation to licences issued under the Petroleum Act 1937;
- 11 **agreed** to amend the Crown Minerals Act 1991 to introduce an explicit statutory obligation for all current and future petroleum permit and licence holders to:
- 11.1 carry out decommissioning activities in accordance with good industry practice and the applicable health and safety and environmental requirements in other legislation;
 - 11.2 meet the financial costs of the decommissioning activities, as an integral part of their mining permit;
- 12 **agreed** that the statutory obligation to undertake and fund decommissioning will supersede any existing decommissioning obligations set out in permit conditions and the Petroleum Act 1937;
- 13 **agreed** that, in a case of the permit or licence with multiple participants, the statutory obligation to undertake and fund decommissioning will apply jointly and severally to all current participants in the permit or licence;
- 14 **agreed** that, in a case of a permit transfer, a former permit holder (the transferor) will continue to be held jointly and severally liable for undertaking and funding decommissioning of petroleum infrastructure installed before a transfer has taken place, but only to the extent that the current permit holder (the transferee) fails to undertake and fund decommissioning of that infrastructure;
- 15 **agreed** that failure to comply with the statutory obligation to undertake and fund decommissioning could result in a civil pecuniary penalty of up to \$500,000 for an individual and up to \$10 million for a body corporate;

Providing for effective monitoring and informed regulatory oversight

- 16 **noted** that the regulator lacks statutory powers to undertake periodic financial capability assessments and access sufficiently detailed and up to date planning and financial information, which limits the regulator's ability to identify current and emerging risks to decommissioning not being adequately provided for by the permit and licence holders;
- 17 **agreed** to amend the Crown Minerals Act 1991 to empower the regulator to conduct periodic financial capability assessments over the life of a petroleum permit or licence;
- 18 **agreed** that the regulation-making powers will stipulate the scope of information requirements to be set in regulations along with the frequency of periodic financial capability assessments;
- 19 **agreed** that the development of regulations be guided by the principle of ensuring sufficient flexibility and proportionately, rather than being overly prescriptive;

Ensure adequate financial security is provided for decommissioning purposes

- 20 **noted** that the regulator lacks statutory powers to require permit and licence holders to maintain adequate financial security for decommissioning purposes, which limits the regulator's ability to take preventative measures to help mitigate against potential lack of financial preparedness for the upcoming decommissioning activities by permit and licence holders;
- 21 **agreed** to empower the regulator to require petroleum permit and licence holders to establish and maintain adequate financial security to discharge their decommissioning obligations, if and when and of a type and a financial value the regulator deems necessary, based on individual circumstances and risk profiles;
- 22 **agreed** that, consistent with the joint and several liability approach in paragraph 13 above, financial security be assigned to the permit as a whole, rather than any individual participants in a permit;
- 23 **agreed** that regulations will stipulate the decision-making criteria, range of potential financial security mechanisms, and other relevant processes and procedures for requiring financial security to be established and maintained for decommissioning purposes, subject to future Cabinet decisions;
- 24 **noted** that options to establish a dedicated decommissioning fund could be explored, but that they would represent a departure from the risk-based approach to requiring financial security to be established and maintained only if and when necessary;
- 25 **directed** officials to explore options for establishing a dedicated decommissioning fund, with a view to potentially adding the preferred option to this package of policy proposals ahead of seeking Cabinet's approval for introduction;

Expanding the current enforcement toolbox

- 26 **noted** that the effectiveness of the regulator's current enforcement tools is limited, and that additional enforcement tools are needed to ensure that timely and proportionate enforcement action can be taken, if and when necessary, for decommissioning related and other types of breaches under the Crown Minerals Act 1991;

- 27 **agreed** to expand the regulator's enforcement toolbox under the Crown Minerals Act 1991, in relation to all types of breaches, including decommissioning related ones, by:
- 27.1 enabling the regulator to accept enforceable undertakings and to seek court orders in response to a breach of an undertaking;
 - 27.2 introducing a pecuniary penalty for a breach of an enforceable undertaking, with the maximum penalty level set at \$200,000 per breach;
 - 27.3 enabling the regulator to issue compliance notices and to seek court orders in response to a breach of the terms of a notice;
 - 27.4 introducing a pecuniary penalty for a breach of a compliance notice, with the maximum penalty level set at \$200,000 per breach;
 - 27.5 enabling an infringement offence scheme to be developed in regulations and specify such provisions as the form of the infringement notice, the specific action or omission constituting an infringement offence, and the specific penalty levels for each infringement offence;
 - 27.6 setting the maximum infringement fee to \$1,000 for an individual and \$3,000 for a body corporate, per infringement;

Providing for minor and technical improvements

- 28 **noted** that a number of minor and technical amendments are needed to support an effective implementation of the above proposals, and to improve the general administration of the Crown Minerals Act 1991;
- 29 **agreed** to make minor and technical changes by:
- 29.1 making it an offence for non-permit holders not to comply with the regulator's requests for information, which non-permit holders are required to provide under the Crown Minerals Act 1991;
 - 29.2 introducing the maximum penalty for non-permit holders' non-compliance with the regulator's information requests at \$20,000 per offence or \$2,000 per day for an ongoing offence;
 - 29.3 clarifying existing record keeping requirements by specifying their scope and building on the relevant definitions of 'records' in the Tax Administration Act 1994 and the Financial Reporting Act 1993, and enabling regulations to be made in provide for further specificity, if necessary;
 - 29.4 specifically permitting proactive release of records and reports required under sections 90(1) to 90(3) of the Crown Minerals Act 1991;
 - 29.5 removing the requirement to re-assess the tier status of minerals permits annually;
 - 29.6 classifying all minerals prospecting permits as Tier 2;
- 30 **directed** officials to explore the option of introducing general injunction powers into the Crown Minerals Act 1991, with a view to adding these powers to the package of policy proposals ahead of seeking Cabinet's approval for introduction;

Confidential advice to Government

31 Confidential advice to Government

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Legislative implications

35 **noted** that the above proposals will be given effect through the Crown Minerals Amendment Bill. Confidential advice to Government on the 2020 Legislation Programme Confidential advice to Government

36 **invited** the Minister of Energy and Resources to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;

37 **authorised** the Minister of Energy and Resources to make decisions consistent with the above paragraphs and on any minor or technical matters that may arise during the legislative drafting process.

Janine Harvey
Committee Secretary

Present:

Rt Hon Winston Peters (Chair)
Hon Kelvin Davis
Hon Phil Twyford
Hon Dr Megan Woods
Hon David Parker
Hon Iain Lees-Galloway (part of item)
Hon Jenny Salesa
Hon Damien O'Connor
Hon Shane Jones
Hon James Shaw
Hon Eugenie Sage

Officials present from:

Office of the Prime Minister
Officials Committee for DEV