



COVERSHEET

Minister	Hon Dr Megan Woods	Portfolio	Energy and Resources
Title of Cabinet paper	Crown Minerals Amendment Act 2019 and Crown Minerals (Petroleum) Amendment Act 2018: Consequential changes to regulations and programmes	Date to be published	21 May 2021

List of documents that have been proactively released

Date	Title	Author
April 2021	Crown Minerals Amendment Act 2019 and Crown Minerals (Petroleum) Amendment Act 2018: Consequential changes to regulations and programmes	Office of the Minister of the Minister of Energy and Resources
7 April 2021	Crown Minerals Amendment Act 2019 and Crown Minerals (Petroleum) Amendment Act 2018: Consequential changes to regulations and programmes DEV-21-MIN-0059	Cabinet Office

Information redacted

YES/NO

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[In Confidence]

Office of the Minister of Energy and Resources

Cabinet Business Committee

Crown Minerals Amendment Act 2019 and Crown Minerals (Petroleum) Amendment Act 2018: Consequential changes to regulations and programmes

Proposal

- 1 The Crown Minerals Act 1991 (CMA) was amended by the Crown Minerals Amendment Act 2019 (the Amendment Act) and the Crown Minerals (Petroleum) Amendment Act 2018 (the Petroleum Amendment Act).
- 2 I seek your agreement to instruct the Parliamentary Counsel Office (PCO) to draft consequential changes to the minerals and petroleum regulations required as a result of the Amendment Act.
- 3 I also note that I intend to recommend to the Governor General some consequential changes to the minerals and petroleum programmes required as a result of the Amendment Act and the Petroleum Amendment Act.

Relation to government priorities

- 4 These proposals do not relate to a specific government priority. The proposals are consequential changes to the regulations required to implement changes introduced by Amendment Act, which require Cabinet approval.

Executive Summary

- 5 The Amendment Act increased Ministerial oversight where there is a change of control of a Tier 1 permit operator, and made a number of minor changes to improve the effectiveness and efficiency of the CMA's permitting regime.
- 6 A number of consequential changes to the minerals and petroleum regulations are needed in order to implement the Amendment Act. The key changes include introducing a fee for a 'change of control' application type and specifying what information needs to be provided for these applications. I am seeking Cabinet authorisation to instruct the PCO to draft these changes to the regulations.
- 7 I also intend to instruct the Ministry of Business, Innovation and Employment (MBIE) to draft consequential changes to the minerals and petroleum programmes to operationalise the Amendment Act.
- 8 The Petroleum Amendment Act gave effect to Government's decision to stop the granting of new offshore petroleum permits, and to limit new onshore petroleum permits to Taranaki. I intend to instruct MBIE to draft additional

information to be inserted into the minerals and petroleum programmes to explain the effect of the Petroleum Amendment Act.

- 9 I intend to seek Cabinet approval in 2021 to submit regulation and programme changes to the Executive Council.

Background

- 10 The Crown Minerals Act 1991 (the CMA) was recently amended through two amendment acts, the Crown Minerals Amendment Act 2019 (the Amendment Act) and the Crown Minerals (Petroleum) Amendment Act 2018 (the Petroleum Amendment Act).
- 11 Minor technical amendments to the minerals and petroleum regulations and programmes under the CMA are still required to implement the Amendment Act and explain the effect of the Petroleum Amendment Act.

Consequential changes to the regulations and programmes are needed to implement the Crown Minerals Amendment Act 2019

The Amendment Act increased Ministerial oversight when there is a change of control of a Tier 1 permit operator, and made a number of minor changes to improve the effectiveness and efficiency of the CMA's permitting regime

- 12 The Amendment Act came into force on 19 February 2019.
- 13 The key change introduced by the Amendment Act is a requirement to obtain the Minister of Energy and Resources' (the Minister) prior consent for *changes of control* of petroleum and minerals Tier 1¹ permit operators. This only applies to transactions entered into after the Amendment Act came into force.
- 14 *Changes of control* of permit operators occur when the majority voting rights for a corporate body are transferred. For example, this could occur when a permit operator is a New Zealand-based subsidiary of a global company and the subsidiary is sold to another company.
- 15 Prior to the Amendment Act, the Minister's consent was only required in instances of a *change* of permit operator, when the permit is transferred to another permit holder.
- 16 The requirement to obtain the Minister's prior consent for *changes of control* of Tier 1 permit operators was introduced after the takeover of the Tui oil field by Tamarind Taranaki Ltd in March 2017 brought to light the significant risk around change of control.
- 17 The requirement creates the requisite Ministerial oversight to ensure the permit is operated efficiently and effectively.

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A Tier 1 permit means a permit that relates to petroleum, or to other complex, higher risk and higher return mineral operations requiring a more hands-on and proactive regulatory regime.

- 18 In response to the receivership and liquidation of Tamarind Taranaki Ltd and the Crown having to undertake and fund the decommissioning of the Tui infrastructure, in June 2020, Cabinet also agreed to introduce a legal requirement in the CMA for petroleum permit holders to undertake and fund decommissioning activities. I intend to seek Cabinet approval to introduce an amendment Bill in 2021.
- 19 Other minor changes to improve the effectiveness and efficiency of the CMA's permitting regime introduced by the Amendment Act include: clarifying timeframes for notifying revocation of permits, and clarifying that where a permit relates to land in the common marine and coastal area the permit holder must have an access agreement.

Changes need to be made to Petroleum Fees Regulations and Minerals Fees Regulations to enable fees to be charged when an application for change of control is made

- 20 I seek Cabinet approval for minor, technical changes to be made to:
- 20.1 **The Crown Minerals (Petroleum Fees) Regulations 2016** (Petroleum Fees Regulations);
 - 20.2 **The Crown Minerals (Minerals Fees) Regulations 2016** (Minerals Fees Regulations).
- 21 MBIE charges fees under the CMA and associated regulations to recover the costs of processing permit applications, applications for changes to permits, and administering permits and licences. These activities provide private benefits to industry, and are necessary to meet the Crown's custodial role as the owner of Crown-owned minerals.
- 22 The Petroleum Fees Regulations and the Minerals Fees Regulations prescribe the fees relevant to each application type existing under the CMA's permitting regime.
- 23 As there is a new change of control of a permit operator of a Tier 1 permit application type, this needs to be added to the Petroleum Fees Regulations and the Minerals Fees Regulations to enable MBIE to charge a fee for those applications. Currently MBIE is unable to charge any fee for these application types.
- 24 I propose to amend the Petroleum Fees Regulations to set the fee for the change of control of permit operator of a Tier 1 petroleum permit at \$3,000. This is consistent with the fees for similar petroleum application types, such as an application for a 'change of operator' and a 'transfer of interest'.
- 25 I propose to amend the Minerals Fees Regulations to set the fee for the change of control of permit operator of a Tier 1 minerals permit at \$2,200. This is consistent with similar change applications for minerals permits.

Changes need to be made to the Petroleum Regulations and the Minerals Regulations to update the information that is required when an application for change of control is made

26 I seek Cabinet approval for minor, technical changes to be made to the following minerals and petroleum regulations to implement the Amendment Act:

26.1 **The Crown Minerals (Petroleum) Regulations 2007** (Petroleum Regulations); and

26.2 **The Crown Minerals (Minerals other than Petroleum) Regulations 2007** (Minerals Regulations).

27 The Petroleum Regulations and the Minerals Regulations set out what is required to be provided with each application type.

28 As there is a new change of control of permit operator of a Tier 1 permit application type, the Petroleum Regulations and the Minerals Regulations need to be updated to prescribe what is to be supplied when one of these applications is made.

29 Currently, the regulations do not set out what an applicant must provide with these applications.

30 I propose these applications:

30.1 be signed by the relevant person²;

30.2 be in the form prescribed by the chief executive;

30.3 be accompanied by the prescribed fee or evidence of it having been paid; and

30.4 be accompanied by the information required under CMA section 41AC, application for consent for change of control.

31 This approach is consistent with the current requirements for similar applications, such as regulation 24 of the Petroleum Regulations and regulation 28 of the Minerals Regulations, which deal with applications for consent to the transfer of an interest in a permit.

32 CMA Section 41AE states that a Minister may consent to the change of control if satisfied that the permit holder:

32.1 has the financial capability to meet its obligations under the permit;

32.2 is likely to comply with, and give proper effect to, the work programme for the permit; and

²

As defined in section 41AC of the Act.

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- 32.3 is likely to comply with the relevant obligations under the CMA or the regulations in respect of reporting and the payment of fees and royalties.
- 33 In order to inform my decisions on these applications I propose to amend the regulations by requiring applicants to provide certain information, such as:
- 33.1 information about the applicant's financial and technical capability;
 - 33.2 information about the applicant's capability to comply with relevant obligations under this Act or the regulations in respects of reporting and the payment of fees and royalties;
 - 33.3 information about the applicant's compliance history;
 - 33.4 information about other relevant activities of a similar kind to those in the work programme that the person gaining control is currently undertaking in New Zealand or in comparable jurisdictions;
 - 33.5 information about any changes to the permit participant and permit holder's company's management structure;
 - 33.6 information about the permit holder's key personnel involved in decision-making; and
 - 33.7 information about the permit holder's health and safety capability, safety management systems, and history of compliance with health and safety legislation.

Changes need to be made to the Petroleum Programme and the Minerals Programme to ensure consistency with the Amendment Act

- 34 Following the changes introduced by the Amendment Act, the Minerals Programme for Petroleum 2013 (the Petroleum Programme) and Minerals Programme for Minerals (Excluding Petroleum) 2013 (the Minerals Programme) need to be updated to ensure their consistency with the CMA. This includes by setting out the procedure for the new 'change of control' application type.
- 35 These programmes are tertiary legislation.
- 36 Section 14 of the CMA sets out what can be contained in a programme. Section 14 states that a programme may set out or describe how the Minister or the chief executive will exercise any specified powers or discretions conferred on him or her by or under the CMA in relation to the mineral or minerals that are subject to the programme.
- 37 The Minister and chief executive must act in accordance with a programme. However, if there is any inconsistency, the CMA prevails.
- 38 I intend to recommend to the Governor General amending the Petroleum Programme and the Minerals Programme to set out the procedure for the new

change of control of a permit operator of a Tier 1 permit application type; and ensure they are consistent with other minor changes introduced by the Amendment Act such as:

- 38.1 clarifying that the royalty rate in the 2008 minerals programmes still applies for permit holders who opted into the 2008 Minerals Programme for Minerals (excluding petroleum); and
- 38.2 clarifying who the relevant Ministers are to make decisions on access arrangements for Tier 1 and Tier 2 permits.

Consequential changes to the regulations and programmes are needed to implement the Crown Minerals (Petroleum) Amendment Act 2018

The Petroleum Amendment Act gives effect to the decision to limit new petroleum permits to onshore Taranaki

- 39 The Petroleum Amendment Act came into force on 13 November 2018.
- 40 The purpose of the Petroleum Amendment Act was to amend the CMA to give effect to the Government's decision to stop the granting of new offshore petroleum permits and to limit new onshore petroleum permits to Taranaki.

Changes need to be made to the Petroleum Programme and the Minerals Programme to ensure consistency with the Petroleum Amendment Act

- 41 Both the Petroleum Programme and the Minerals Programme need to be updated to explain the effect of the Petroleum Amendment Act.
- 42 I intend to recommend to the Governor General amending Chapters 3, 6, 7, 8, 10 and 12.4 of the Petroleum Programme to include overarching statements to explain the effect of the Petroleum Amendment Act. These statements will make it clear that new petroleum permits can only be granted within onshore Taranaki, unless the permit is an existing permit³, or a subsequent permit⁴.
- 43 I also intend to recommend amending Chapter 11.2 (coal seam gas) of the Minerals Programme to include an overarching statement to explain the effect of the Petroleum Amendment Act. This statement will make it clear that a coal mining permit holder that wants to use, sell or trade petroleum gas associated with their permit, is no longer able to apply for a new petroleum exploration or mining permit outside of onshore Taranaki.

3

Means a permit that exists immediately before the commencement of the Petroleum Amendment Act.

4

Means a permit granted in exchange for an existing prospecting or exploration permit, see section 32 Crown Minerals Act 1991.

Financial Implications

- 44 The changes to the Petroleum Fees Regulations and Minerals Fees Regulations create a new fee that will enable us to generate revenue for the work undertaken to assess change of control of a permit operator of a Tier 1 permit applications.
- 45 There are no other financial implications.

Legislative Implications

- 46 To give effect to the proposals in this paper, amendments to the following regulations will be required:
- 46.1 The Crown Minerals (Petroleum Fees) Regulations 2016;
 - 46.2 The Crown Minerals (Minerals Fees) Regulations 2016;
 - 46.3 The Crown Minerals (Petroleum) Regulations 2007;
 - 46.4 The Crown Minerals (Minerals other than Petroleum) Regulations 2007.
- 47 The amendments to these regulations will be drafted by the Parliamentary Counsel Office (PCO).
- 48 I also intend to recommend changes to:
- 48.1 The Minerals Programme for Petroleum 2013;
 - 48.2 The Minerals Programme for Minerals (Excluding Petroleum) 2013.
- 49 The programmes are disallowable instruments and not legislative instruments and are therefore not required to be drafted by PCO. The changes to the programmes will be drafted by MBIE.

Regulatory Impact Statement

- 50 The Regulatory Quality Team at the Treasury has determined that the regulatory decisions sought in this paper are exempt from the requirement to provide a Regulatory Impact Assessment as they have no, or minor, impacts on businesses, individuals or not for profit entities.

Climate Implications of Policy Assessment

- 51 A Climate Implications of Policy Assessment is not required for the proposals in this Cabinet paper.

Population Implications

- 52 There are no population implications in regards to the proposals in this paper.

Human Rights

- 53 The proposals in this paper are not inconsistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Iwi engagement

- 54 I have relationship arrangements, in the form of Protocols, Accords, and Relationship Agreements with various iwi groups relating to the management of minerals and natural resources.
- 55 MBIE contacted all iwi I have a relationship arrangement with, and other iwi MBIE have identified as having high interest or influence in matters relating to minerals and petroleum. A letter was sent on 29 September 2020 explaining the proposed changes and inviting feedback. Consultation closed on 6 November 2020. No Feedback was received.

Consultation

- 56 Consultation on the proposals in this paper has taken place with the Ministry for the Environment, the Ministry of Foreign Affairs and Trade, the Department of Conservation, the Ministry of Justice, the Environmental Protection Authority, Te Arawhiti, and the Treasury.
- 57 The Department of Prime Minister and Cabinet was informed.
- 58 The Amendment Act provides that the standard public notice and submissions process (set out in sections 17 and 18 of the CMA) that would otherwise apply does not apply to any change to a programme if the change that is made is consequential to the amendments made to the CMA by the Amendment Act (including any change to remove inconsistencies between the minerals programme and the CMA as amended).
- 59 The Petroleum Amendment Act also provides that the standard public notice and submissions process that would otherwise apply does not apply to a change to a minerals programme if the change inserts information into the programme to explain the effect of the amendments made to the CMA by the Petroleum Amendment Act.
- 60 The regulations will be publically notified in the New Zealand Gazette at least 28 days before they come into force.

Communications

- 61 As the proposals in this Cabinet paper are consequential to CMA amendments already in force, I propose a reactive communications approach be taken.
- 62 In particular, in relation to the proposed fees, I do not expect these fees to be controversial, since the fees I am proposing are the same as the fees under similar applications.

Proactive Release

- 63 I propose to proactively release this Cabinet paper and minutes within 30 business days.

Recommendations

The Minister of Energy and Resources recommends that the Committee:

- 1 **note** the Crown Minerals Act 1991 (the CMA) was amended through the Crown Minerals Amendment Act 2019 (the **Amendment Act**).
- 2 **note** that to implement the Amendment Act, minor technical amendments are still required to following regulations (the Regulations):
 - 2.1 The Crown Minerals (Petroleum Fees) Regulations 2016;
 - 2.2 The Crown Minerals (Minerals Fees) Regulations 2016;
 - 2.3 The Crown Minerals (Petroleum) Regulations 2007;
 - 2.4 The Crown Minerals (Minerals other than Petroleum) Regulations 2007.
- 3 **note** MBIE cannot currently charge for applications for a change of control of a permit operator of a Tier 1 permit.
- 4 **agree** to introduce a new type of application for changes of control of a permit operator of a Tier 1 petroleum permit (Change of Control for a Petroleum Permit) and to set a fee for that application of \$3000, GST inclusive.
- 5 **agree** to introduce a new type of application for changes of control of a permit operator of a Tier 1 minerals permit (Change of Control for a Minerals Permit) and to set a fee for that application of \$2,200 GST inclusive.
- 6 **agree** to require applicants for a Change of Control for a Petroleum Permit and a Change of Control for a Minerals Permit, to provide the same information as required for similar applications, such as applications under section 41 for consent to a transfer of interest in a permit, and also to provide the information required under section 41AC of the CMA , such as, information about the permit holder's financial capability, technical capability and health and safety capability after the change of control.
- 7 **agree** to require applications for change of control of permit operator of a Tier 1 permit to be in the form prescribed by the Chief Executive, signed by the permit holder or permit participant and accompanied by the fee or evidence of it being paid.
- 8 **invite** the Minister of Energy and Resources to issue drafting instructions to the Parliamentary Counsel Office to draft to give effect to the decisions in paragraphs 4 to 7 above.

- 9 **authorise** the Minister of Energy and Resources to make decisions on minor and technical matters that may arise during the drafting process.
- 10 **note** minor technical amendments to the minerals programmes are still required to ensure consistency with the Amendment Act.
- 11 **note** the Amendment Act enabled consequential amendments to the Minerals Programme for Petroleum 2013 (the Petroleum Programme) and Minerals Programme for Minerals (Excluding Petroleum) 2013 (the Minerals Programme) without complying with the public notice and submission process that would otherwise apply.
- 12 **note** the Minister of Energy and Resources intends to recommend making consequential changes to the Petroleum Programme and the Minerals Programme to ensure their consistency with the CMA following the Amendment Act.
- 13 **note** the Minister of Energy and Resources intends to advise MBIE to draft the above proposed changes to the Petroleum Programme and the Minerals Programme.
- 14 **note** that the CMA was also earlier amended through the Crown Minerals (Petroleum) Amendment Act 2018 (**the Petroleum Amendment Act**).
- 15 **note** minor technical amendments to the Petroleum Programme and the Minerals Programme are still required to explain the effects of the Petroleum Amendment Act.
- 16 **note** the Petroleum Amendment Act enabled information to be inserted into the Petroleum Programme and the Minerals Programme to explain the effects of the amendments without complying with the public notice and submission process that would otherwise apply.
- 17 **note** the Minister of Energy and Resources intends to recommend inserting information into Chapters 3, 6, 7, 8, 10 and 12.4 of the Petroleum Programme to include overarching statements to explain the effect of the Petroleum Amendment Act.
- 18 **note** the Minister of Energy and Resources intends to recommend inserting information into Chapter 12.2 of the Minerals Programme to include an overarching statement to explain the effect of the Petroleum Amendment Act.
- 19 **note** the Minister of Energy and Resources intends to advise MBIE to draft the above proposed changes to the Petroleum Programme and the Minerals Programme.
- 20 **note** the Minister of Energy and Resources intends to seek your authorisation in 2021 to submit the Regulation and the Petroleum Programme and Minerals Programme changes to the Executive Council.

I N C O N F I D E N C E

Authorised for lodgement

Hon Dr Megan Woods

Minister of Energy and Resources

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