



COVERSHEET

Minister	Hon Dr Megan Woods	Portfolio	Energy and Resources
Title of Cabinet paper	Release of Discussion Document: Proposed Regulations to Support the Crown Minerals (Decommissioning and Other Matters) Amendment Bill	Date to be published	03/09/21

List of documents that have been proactively released

Date	Title	Author
07/07/21	<i>Release of Discussion Document: Proposed Regulations to Support the Crown Minerals (Decommissioning and Other Matters) Amendment Bill</i>	<i>Office of the Minister of Energy and Resources</i>
07/07/21	<i>Cabinet Economic Development Committee: Minute of Decision</i>	<i>Cabinet Office</i>

Information redacted

YES / NO

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- Commercial Information
- Confidential advice to Government
- Free and frank opinions

In Confidence

Office of the Minister of Energy and Resources

Cabinet Economic Development Committee

Release of Discussion Document: Proposed Regulations to Support the Crown Minerals (Decommissioning and Other Matters) Amendment Bill

Proposal

- 1 This paper seeks approval to release for public consultation the Discussion Document: *Proposed Regulations to Support the Crown Minerals (Decommissioning and Other Matters) Amendment Bill* seeking feedback on proposed regulations to support changes proposed in the Crown Minerals (Decommissioning and Other Matters) Amendment Bill.

Relation to government priorities

- 2 We have set a low emissions target for 2050, a target for 100 per cent renewable electricity by 2030. In 2018 we decided that there will be no further offshore exploration permits in New Zealand, and initiated a review of the Crown Minerals Act 1991 (the CMA). The proposals in the Discussion Document, in addition to the proposals approved by Cabinet in June 2020 [DEV-20-MIN-0092] and in April 2021 [DEV-21-MIN-0058] seek to strengthen the petroleum sector's financial preparedness for decommissioning as this transition occurs. These proposals are part of the wider regulatory framework that includes, for example, new decommissioning regulations proposed under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.
- 3 These proposals are also part of the wider work programme the Government is undertaking in the recently released 10-year Resource Strategy 'Responsibly Delivering Value – A Minerals and Petroleum Resource Strategy for Aotearoa New Zealand: 2019-2029'. This Strategy is designed to drive a shift towards a 'world leading environmentally and socially responsible petroleum and minerals sector that delivers affordable and secure resources, for the benefit of current and future New Zealanders'.

Executive Summary

- 4 Decommissioning is an increasing concern as a number of petroleum fields near the end of their economic lives. The cost of decommissioning should be covered by industry as part of good industry practice. However, these costs can be significant and, in the case of a permit holder defaulting, there is a risk that the Crown or other third parties will have to undertake and fund decommissioning and any needed post-decommissioning work.

- 5 Currently there is no explicit statutory obligation to decommission and there is a lack of clarity about petroleum permit and licence holders' legal and financial responsibilities.
- 6 In June 2020, the Government announced proposals to amend the Crown Minerals Act 1991 (CMA) to strengthen the regulation of the petroleum sector's decommissioning activities. On Monday 14 June 2021, Cabinet agreed to introduce the Crown Minerals (Decommissioning and Other Matters) Amendment Bill [LEG-21-MIN-0086]. The Bill was introduced on Wednesday 23 June 2021 and received its First Reading on Tuesday 6 July 2021.
- 7 The Bill and the CMA have empowering provisions that allow regulations to be made. I propose to release for public consultation the Discussion Document to seek feedback on the design of the regulations. I propose that regulations are consulted on now so that interested parties have an opportunity to consider the regime as a whole and provide feedback on both the Bill and regulations in parallel.

Background

- 8 In December 2019 Tamarind Taranaki Ltd. (the operator of the Tui oil and gas field) went into liquidation. In February 2020, Cabinet agreed to appropriate \$154.641 million to decommission Tui [CBC-20-MIN-0008] and Budget 2021 included additional funding of Commercial Information to complete the decommissioning process.
- 9 The liquidation of Tamarind Taranaki Ltd highlights the need for a more strategic and proactive approach to the regulation of the petroleum sector's financial preparedness for decommissioning.
- 10 In 2019 the Government amended the CMA that closed the loophole that allowed the takeover of the Tui oil field by Tamarind Taranaki Ltd. in March 2017, and brought to light the significant risk around change of control. Previously changes of control of permit operators occurred when the majority voting rights for a corporate body were transferred. The 2019 amendment changed this to require the Minister's consent for changes of control.
- 11 MBIE consulted on the high-level policy options for improving petroleum sector decommissioning from 19 November 2019 to 27 January 2020 as part of the Discussion Document: Review of the Crown Minerals Act 1991.
- 12 In June 2020 Cabinet agreed to amend the CMA to strengthen legal and financial responsibility for decommissioning petroleum sector infrastructure and expand the current enforcement toolbox under the CMA [DEV-20-MIN-0092].
- 13 Additional policy decisions were approved by Cabinet in April 2021 [DEV-21-MIN-0058, CAB-21-MIN-0111].
- 14 The objective of the Bill is to strengthen the CMA regulatory provisions to ensure that they are sufficiently robust to help mitigate the risk to the Crown

and other third parties of having to undertake and fund decommissioning in the future. It is not possible to completely eliminate this risk.

The Crown Minerals (Decommissioning and Other Matters) Amendment Bill was introduced on Wednesday 23 June 2021

- 15 The Crown Minerals (Decommissioning and Other Matters) Amendment Bill received its first reading on Tuesday 6 July.
- 16 The Bill proposes to:
- 16.1 Introduce an explicit statutory obligation on all current and future petroleum permit and licence holders to carry out and meet the costs of decommissioning in accordance with relevant requirements set out in other legislation, standard-setting processes, or consents. Where those requirements do not exist, petroleum permit and licence holders must ensure all wells are plugged and abandoned and infrastructure is completely removed.
 - 16.2 Require permit and licence holders to obtain and maintain a financial security to secure in full or in part the performance of their decommissioning obligations that can be accessed by the Crown if a permit or licence holder fails to carry out or fund decommissioning.
 - 16.3 Empower the Minister to carry out more effective monitoring of a permit or licence holder's financial position and plans for field development, and to carry out assessments of a permit or licence holder's financial capability to complete decommissioning when needed.
 - 16.4 Provide MBIE with additional enforcement powers to accept enforceable undertakings, issue compliance notices, and authorise the development of an infringement offence scheme.
 - 16.5 Require permit or licence holders to make payments towards the cost of any residual or legacy liability.

I now propose to release the Discussion Document to consult on supporting regulations

- 17 The Bill provides for several new regulation-making powers [LEG-21-MIN-0058 refers]. The regulations cannot be made until the Bill is enacted. While not all aspects of the proposed changes in the Bill require regulations to function as intended, permit or licence holders and decision makers will benefit from the clarity and certainty provided by regulations.
- 18 Stakeholders have a reasonable expectation that consultation will occur as regulations under the CMA have been consulted on publicly in the past.
- 19 The regulations cannot be made until the Bill is enacted. However, I propose consulting at the same time the Bill is being considered by Select Committee. This is to allow the Bill to be read in conjunction with the regulations proposed in the discussion document. This will provide a more holistic view of the regime

and allow submitters to provide feedback on the Bill and proposed regulations in parallel. This will ensure it is successful in meeting its intended purpose.

- 20 I seek Cabinet's agreement to release 'Discussion Document - Proposed regulations to support the Crown Minerals (Decommissioning and Other Matters) Amendment Bill 2021'. The issues covered in the Discussion Document are largely technical in nature, with the primary audience being petroleum permit and licence holders. I do also anticipate interest from environmental groups and iwi.

Proposed consultation on regulations relating to monitoring, financial capability assessments and financial security requirements

I intend to consult on regulations relating to the content and frequency for submitting Field Development Plans and Asset Registers

- 21 The Bill proposes that current petroleum mining permit and licence holders must submit new and updated Field Development Plans¹ (FDP) and Asset Registers² to MBIE's Chief Executive.
- 22 The Bill provides that regulations can be made to set out the information that FDPs and Asset Registers must contain. I propose using the Discussion Document to consult on the proposed approaches to the content of FDPs and Asset Registers.
- 23 The Bill proposes that regulations will set out the times, events or intervals when petroleum mining permit and licence holders must submit a new or updated FDP and Asset Register. I propose consulting on the following options for times, events and intervals in which new and updated FDPs and Asset Registers must be submitted:
- 23.1 When there is a significant change, or
- 23.2 At regular intervals and when there is a significant change

I intend to consult on regulations relating to information required to monitor a permit or licence holder's financial position

- 24 The Bill proposes that the Minister may, by written notice, require petroleum permit and licence holders to provide information so that their financial position can be monitored. The type of information must be set out in regulations.
- 25 I propose consulting on the information required for ongoing financial monitoring in the Discussion Document.

¹ A FDP provides a description of the petroleum resource, geological settings, estimated field life, a description of the proposed development and projected decommissioning activities.

² An Asset Register is a complete and accurate list of the petroleum infrastructure and wells that the permit and licence holder must decommission.

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I intend to consult on regulations relating to information required to assess a permit or licence holder's financial capability to decommission

- 26 The Bill enables the Minister to undertake financial capability assessments and regulations can be made to require information that must be provided to the Minister.
- 27 I propose consulting on requiring decommissioning cost estimates from permit and licence holders and setting out in regulations the requirements they must meet. This includes a baseline of requirements and two options for offshore petroleum fields:
- 27.1 No additional requirements for decommissioning cost estimates for offshore petroleum fields, or
- 27.2 For offshore petroleum fields, decommissioning cost estimates are developed by or verified by an independent third party.
- 28 I also propose requiring certain financial information from petroleum permit and licence holders to enable financial capability assessments. I propose two options for the types of financial information required:
- 28.1 Permit and licence holders provide a statement of financial capability, or
- 28.2 Permit and licence participants provide categories of financial information.

I intend to consult on regulations specifying criteria relating to particular kinds of financial security

- 29 The Bill proposes that permit and licence holders must obtain and maintain one or more financial securities to meet their decommissioning obligations, and the Minister must set the kind and amount of such security.
- 30 When making this decision, the Bill proposes a range of considerations that the Minister must take into account. Although these considerations are set out in the Bill, there is flexibility to include further matters in regulations, if they are necessary.
- 31 I propose to consult on specific considerations the Minister must take into account when determining the kind of financial security required to be obtained and maintained by permit and licence holders.

I intend to consult on regulations specifying when permit and licence holders must notify MBIE's Chief Executive of expected cessation of production

- 32 Currently, the CMA does not specify when the obligation to decommission arises, although this is expected to happen at the end of field life or when production ceases.

- 33 The Bill proposes requiring permit and licence holders to notify MBIE's Chief Executive of expected cessation of production. Notification must be at certain times, at regular intervals or when certain events occur, which may be set out in regulations.
- 34 I propose consulting on when estimated cessation of production must be notified to MBIE's Chief Executive.

Proposed regulations on post-decommissioning payments

I intend to consult on regulations specifying criteria to calculate the post-decommissioning payment

- 35 The Bill proposes that permit and licence holders must make one or more payments to MBIE's Chief Executive to meet the cost of any post-decommissioning work required, and the Minister must set the amount to be paid.
- 36 I propose to consult on the use of a risk-based approach to determining the amount of post-decommissioning payments required from petroleum permit and licence holders.
- 37 I propose to consult on criteria for a payment based on the following three components:
- 37.1 a risk assessment of well integrity;
 - 37.2 a risk assessment of any infrastructure left in place; and
 - 37.3 environmental and health and safety factors.

I intend to consult on regulations for when post-decommissioning payments should be made

- 38 The Bill proposes that the Minister must require either a lump sum or payment in two or more instalments by a certain date or by instalments according to a schedule. The dates of these payments, whether by lump sum or instalment, must be prescribed in regulations.
- 39 In deciding which approach to take, the Minister must consider the most recent financial capability assessment (if there is one) and any criteria prescribed in regulations. The financial strength of the permit holder is important to the Minister's decision as to when payments should be made because of the varying risk of permit holders defaulting on payments.
- 40 I propose to consult on the criteria the Minister will use to assess when payments to the post-decommissioning fund should be made. I propose the following:
- 40.1 A report on the most recent financial capability assessment;

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- 40.2 An assessment of the time left before decommissioning takes place; and
- 40.3 The ability of the permit holder to build up the fund overtime by payment of instalments.

I intend to consult on regulations on criteria for determining whether to grant an exemption from post-decommissioning payments

- 41 The Bill proposes allowing the Minister to grant permit and licence holder's exemptions from post-decommissioning payments. I propose that it is reasonable to assume that there may be scenarios where there is no residual liability remaining from the permit once decommissioning has occurred.
- 42 The Minister must, in deciding whether to grant an exemption, consider criteria prescribed in regulations. I propose consulting on the following criteria that the Minister must consider to grant an exemption from post-decommissioning payments:
 - 42.1 Whether hydrocarbons were ever present in the well; and
 - 42.2 Whether infrastructure has been removed in its entirety.

I intend to consult on regulations that specify who can apply for post-decommissioning funding

- 43 The Bill proposes allowing the Minister to set out in regulations who can apply to the post-decommissioning fund to undertake remediation, associated clean-up, or investigative activities.
- 44 The groups set out in regulations may make an application to the Minister for an investigation into any suspected post-decommissioning failures of wells and infrastructure.
- 45 I propose consulting on the list of agencies and groups who can apply to access the post-decommissioning fund.

I intend to consult on regulations for how the post-decommissioning payments will be managed

- 46 The Bill proposes that MBIE's Chief Executive must ensure the money is managed in accordance with obligations in the Bill and with requirements in regulations.
- 47 I propose consulting on how the post-decommissioning fund will be held and managed
- 48 The Discussion Document will seek feedback on whether the fund should be a pooled fund with funds from offshore and onshore permits ring fenced due to the quantum of the risks differing significantly.

Financial Implications

49 The policy proposals agreed to by Cabinet previously [DEV-20-MIN-0092, DEV-21-MIN-0058] may incur the following additional costs:

49.1 Additional costs on petroleum companies; and

49.2 Additional administration, monitoring, enforcement, and litigation costs;

50 The Bill may also impact timing of tax credit refunds and may impact the timing of royalty refunds.

51 MBIE, as the regulator, will incur additional administration, monitoring, enforcement, and litigation costs. The scope of MBIE's new functions will be developed as part of the regulations consulted on in the Discussion Document. It is therefore difficult to accurately estimate the cost of these proposals at this stage. Confidential advice to Government

Legislative Implications

52 Regulations will be developed to implement the proposals following consultation. Development of regulations will be subject to the passage of the Crown Minerals (Decommissioning and Other Matters) Amendment Bill.

Impact Analysis

Regulatory Impact Statement

53 The discussion document functions as an interim Regulatory Impact Assessment. The Regulatory Impact Analysis panel at the Ministry of Business, Innovation and Employment has reviewed and confirmed that the discussion document meets and can substitute for an interim Regulatory Impact Statement. It will lead to effective consultation and support the eventual development of a quality Regulatory Impact Statement.

Climate Implications of Policy Assessment

54 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal at this stage as there is no direct impact on emissions. The CIPA team will work with MBIE to assess the emissions impacts of policy proposals as appropriate as they are advanced.

Population Implications

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

Human Rights

- 56 This paper is not inconsistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

- 57 The following departments and agencies were consulted on the proposals of the regulations set out in the discussion document: Ministry for the Environment, Environmental Protection Authority; Ministry of Justice; Ministry of Transport; Department of Conservation, The Treasury, Ministry of Transport, Maritime New Zealand, and Inland Revenue.
- 58 MBIE officials have also consulted with industry on the high-level policy decisions included in the Bill.

Iwi Engagement

- 59 MBIE officials communicated a summary of the proposed scope of the discussion document to 39 iwi which MBIE has Treaty settlement commitments with. This includes eight iwi located in the Taranaki region as they are geographically closest to the issue.
- 60 MBIE have engaged with a number of iwi in Taranaki including Te Rūnanga o Ngāti Ruanui Trust, Te Korowai o Ngāruahine, Te Atiawa and Te Kāhui o Taranaki Trust. Feedback from iwi has so far been supportive of improving petroleum sector regulation.

Risks and Mitigations

- 61 The introduction of the Bill is likely to be controversial with the petroleum sector [LEG-21-MIN-0058 refers]. I do not anticipate any additional risks associated with publishing this Discussion Document.

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Communications

- 64 I propose to release the discussion document in July 2021 for a six-week public consultation.
- 65 MBIE will issue a media statement of the Discussion Document's release and publish it on the MBIE website. Officials may also contact relevant stakeholders to inform them of its release.

Proactive Release

- 66 I intend to proactively release a copy of this this paper within 30 business days of decisions being confirmed by Cabinet with appropriate redactions under the Official Information Act 1982.

Recommendations

The Minister of Energy and Resources recommends that the Committee:

- 1 **note** that on Monday 14 June, Cabinet agreed to introduce the Crown Minerals (Decommissioning and Other Matters) Amendment Bill [LEG-21-MIN-0092];
- 2 **agree** to the release of the discussion document titled *Proposed Regulations to Support the Crown Minerals (Decommissioning and Other Matters) Amendment Bill 2021*, subject to any minor or technical amendments, in July 2021 for a six-week public consultation;
- 3 **note** that consultation on proposed regulations should occur while the Bill is being considered by the Select Committee so the Bill can be considered in conjunction with the regulations;
- 4 **note** that the consultation period on the discussion document is six weeks; and
- 5 **note** that after I consider feedback received from consultation, I will provide policy recommendations to Cabinet and seek approval to issue drafting instructions to the Parliamentary Counsel Office to draft regulations.

Authorised for lodgement

Hon Dr Megan Woods

Minister of Energy and Resources