MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

Minister	Hon Dr Megan Woods	**Portfolio**	Energy and Resources
Title of Cabinet paper	Crown Minerals Act 1991 Review: Enabling flexibility in the management of Crown-owned minerals, improving engagement with hapū and iwi, and clarification amendments	**Date to be published**	24 November 2022

List of documents that have been proactively released		
Date	**Title**	**Author**
June 2022	Crown Minerals Act 1991 Review: Enabling flexibility in the management of Crown-owned minerals, improving engagement with hapū and iwi, and clarification amendments	Office of the Minister of Energy and Resources
4 July 2022	CAB-22-MIN-0256 Minute	Cabinet Office
21 June 2022	Regulatory Impact Statement: Enabling flexibility in the management of Crown minerals development under the Crown Minerals Act 1991	Ministry of Business, Innovation and Employment
21 June 2022	Regulatory Impact Statement: Improving permit/licence holder and permit applicant engagement with hapū and iwi under the Crown Minerals Act 1991	Ministry of Business, Innovation and Employment

Information redacted **YES**

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 constitutional conventions, legal professional privilege, free and frank opinions, confidential information entrusted to the Government and confidentiality.

Regulatory Impact Statement: Improving permit/licence holder and permit applicant engagement with hapū and iwi under the Crown Minerals Act 1991

Coversheet

Purpose of Document	
Decision sought:	Analysis produced for the purpose of informing final Cabinet decisions.
Advising agencies:	Ministry of Business, Innovation and Employment
Proposing Ministers:	Minister of Energy and Resources
Date finalised:	21 June 2022

Problem Definition

The Crown's expectations for permit/licence holder and permit applicant engagement with hapū and iwi are unclear. There are also limited requirements to engage, limited consequences for non-engagement, and no clear consequences for poor engagement. This has led to the following adverse outcomes:

- many hapū and iwi consider that permit/licence holder and permit applicant engagement does not always demonstrate respect for their authority, mana, and local expertise;
- confusion from some permit/licence holders and permit applicants as to the purpose of engagement under the CMA and what constitutes positive engagement; and
- where relationships are poor, potential benefits from positive engagement between hapū/iwi and industry being forgone (e.g. hapū and iwi sharing economic benefits of activities, industry being informed by local expertise of mana whenua).

Executive Summary

The proposals in this paper originate from Tranche Two of the Review of the Crown Minerals Act 1991 (CMA Review) and relate to improving the engagement of permit/licence holders and permit applicants with hapū and iwi.

The Crown Minerals Act 1991 regime operates in a wider regulatory system of checks and balances

The Crown Minerals Act 1991 (CMA) sets out the legislative framework for issuing permits to prospect, explore, and mine for Crown-owned minerals within New Zealand. The CMA is supported by a suite of regulations and programmes, which collectively comprise the CMA regime. The CMA operates alongside other legislation that regulates the health, safety and environmental aspects of mining. The efficient allocation and management of rights to

develop Crown minerals, and the management of environmental effects from extracting these resources have been deliberately separated.

Tier 1 includes high-return, high-risk projects. Applicants for a Tier 1 permit must satisfy a high-level health, safety, and environmental capability test. Tier 2 permits are lower-return industrial, small business, and hobby mineral operations needing a simpler, more pragmatic regulatory regime.

The Government commenced a review of the Crown Minerals Act 1991, Tranche Two of the Review seeks to make incremental changes

In 2018, the Government announced the CMA Review. Tranche Two of the Review is intended to ensure the CMA is fit-for-purpose now and in the future. In November 2020, the Minister for Energy and Resources agreed to incremental changes as part of Tranche Two. Incremental changes were considered the best course of action to avoid duplicating reforms that were being progressed in the wider Crown-minerals regulatory system, such as resource management and conservation land protection.

MBIE has undertaken public and targeted consultation on proposals to improve iwi engagement as part of the Tranche Two Review

A discussion document for Tranche Two was released on 19 November 2019. Chapter 5 of the discussion document focused on improving Māori engagement and involvement in Crown minerals, and raised the issue that Māori feel there is a lack of quality engagement with permit holders throughout the duration of a permit. On the basis of feedback received on Chapter 5 of the discussion document, MBIE developed a range of draft proposals for non-regulatory and regulatory changes to respond to the issues raised by hapū and iwi. MBIE then further engaged with hapū and iwi on those draft proposals from November 2021 to February 2022.

This Regulatory Impact Statement considers changes to improve permit/licence holder and permit applicant engagement with hapū and iwi

Hapū and iwi expect the Crown, as their Treaty partner, to ensure that at a minimum, those seeking or granted Tier 1 permits within their rohe will keep them informed of their plans and activities, and engage in a manner that demonstrates respect and understanding for their authority, mana and expertise in relation to the natural environment and local community.

Feedback from hapū and iwi has been mixed as to whether all permit holders or just Tier 1 permit holders should be subject to iwi engagement requirements.

While engagement is already required under environmental legislation, this engagement is formal and often transactional, restricted to consideration of the impacts of specific activities that meet a certain threshold for engagement, and does not always occur at the start of the petroleum and mineral development process. In contrast, engagement under the CMA for Tier 1 permits and some Tier 2 permits has the potential to be more informal, ongoing (and from an early stage), relationship-based and on a broader range of matters (such as economic and broader cultural interests of mana whenua).

The rationale for considering these changes is described at the problem definition above.

Four options are being considered

These options are:

- **Option One – *status quo (mainly voluntary compliance)*;**

Currently, only recent Petroleum Exploration Permit (PEP) holders are required to engage with hapū and iwi, as a result of conditions that have been added to their permits. There is no requirement for permit applicants to engage.

Tier 1 permit/licence[1] holders are required to report on any engagement with hapū and iwi, but the quality of reports can vary greatly. Tier 1 permit/licence holders are also required to attend annual review meetings where iwi engagement reports are a standing agenda item. In granting a permit, the decision-maker must be satisfied the applicant is highly likely to comply with reporting obligations under the CMA.

In granting a permit, the decision-maker must also have regard to the principles of the Treaty, as a result of Section 4 of the CMA. This can include consideration of past engagement of permit applicants with hapū and iwi.

Non-compliance with a requirement under the CMA, or with a permit condition can result in revocation or transfer of a permit.

NZP&M provides some guidance and support for this engagement.

- **Option Two – *operational changes including wider use of engagement conditions for new permits*;**

Option Two consists of introducing additional measures available under the status quo to assist with compliance (such as improving information provision and helping to make introductions) and also direct behaviour through wider use of engagement conditions for new Tier 1 permits and new Tier 2 permits for which the regulations specify that an iwi engagement report is required with the option of enforcement through permit revocation or transfer.

- **Option Three – *operational changes including wider use of engagement conditions for new permits, and a range of legislative and regulatory[2] changes*;**

Option Three builds on Option Two, including a broader mix of directed regulatory actions. Along with the operational changes described at Option Two, a range of regulatory changes (to both the CMA and regulations) would be introduced, including:

  - Amendments to the regulations to require as part of permit application types for which NZP&M would normally consult or notify hapū and iwi, provision of contact information to be passed on by NZP&M to hapū or iwi whose rohe include some or all of the permit area or who otherwise may be directly affected by the permit if granted;

  - Amendments to the empowering provisions of the CMA and the regulations to prescribe minimum content requirements for iwi engagement reports (where they are required);

[1] The Petroleum Act 1937, the Coal Mines Act 1979, the Mining Act 1971, and the Iron and Steel Industry Act 1959 all used the term ‘licences’ rather than ‘permits’. The CMA enables some of the licences granted under those Acts to continue to have effect as if they were still in force

[2] Regulatory changes include both changes to the CMA and regulations under the CMA.

- Amendments to the CMA to provide hapū or iwi whose rohe include some or all of the permit/licence area or who otherwise may be directly affected by the permit/licence with opportunities to review draft iwi engagement reports;

- Amendments to the CMA to make it explicit that decision-makers may have regard to feedback from hapū and iwi on the quality of past engagement with permit/licence holders for future permit allocation decisions;

- **Option Four –** ***operational changes and a range of legislative and regulatory changes including a broad engagement requirement under the CMA (building on option three to enable enforcement action for both current and future permits)*****.**

  Option Four builds on Option Three to strengthen enforcement action for both current permits and future permit applications.

  Under Option Four, the operational and regulatory changes described in Options Two and Three would be made, except the use of engagement conditions in permits would be replaced by an engagement requirement in the CMA. This requirement would apply to both current and future permit/licence holders.

Option Three is the preferred option (as reflected in the Cabinet paper)

Options Three and Four are both considered much more effective and proportionate than the status quo, and to result in much more regulatory certainty. They are the most effective as they include a wide range of changes for greater assistance and direction, as well as wider availability of enforcement options.

Costs for the regulator are not high, and direct costs for industry are low. Indirect costs through any increase in engagement are not significant where industry are already engaging well, and are considered proportionate to the importance of engagement and the permit types to which they apply. Direct costs to hapū and iwi are low as engagement for them remains discretionary. However, there is an implementation risk that the impact of some changes will be minimal, as resourcing pressures mean hapū and iwi have limited capacity to engage. NZP&M has identified this risk and is currently considering operational changes that look to enhance the ability of hapū and iwi to engage.

The main direct benefit is to hapū and iwi, who will be better informed of mining plans and activities in their rohe. There is also the potential for indirect benefits to both hapū and iwi and industry, e.g. industry benefiting from local expertise, and hapū and iwi benefitting through employment and skills.

As the proposals have been developed in consultation with hapū and iwi, it is considered that they are likely be supported. As the direct costs to industry are not high and most industry feedback has been that more support for these relationships would be beneficial, it is considered that industry is likely to support the proposals. Communications to clarify the purpose of engagement under the CMA, as opposed to engagement under environmental legislation, should help industry understand the purpose of the changes.

While Option Four is somewhat more effective, as the engagement requirement under the CMA would apply to both current and future permit holders, Option Three is the more practical option. Permit conditions are more easily amended than legislative provisions and can be tailored to the varying preferences of hapū and iwi across different rohe, and the

varying nature of mining activities across New Zealand. This flexibility is important as getting the wording of the engagement requirement(s) right is likely to be difficult.

It is considered that Option Three is the best option at this time, so that the wording of engagement conditions can be tested and refined..

Limitations and Constraints on Analysis

Changes are considered within the scope of Tranche Two of the Crown Minerals Act 1991 Review, which is intended to bring about incremental change only

The Government initiated a review of the Crown Minerals Act 1991 (CMA) in July 2018 which was commenced following the Government's announcement to prohibit future offshore petroleum exploration and limit onshore petroleum exploration to the Taranaki region. Tranche One of the review implemented these changes.

Tranche Two of the review was initiated in June 2019. It was scoped to examine whether the CMA is fit-for-purpose to achieve Government objectives, without changing fundamental aspects of its operation and wider legislative settings. Tranche Two included consideration of iwi engagement under the CMA, and the CMA's purpose statement, among other issues.

In November 2020, the Minister agreed to conclude Tranche Two by considering incremental changes. Incremental changes were considered the best course of action to avoid duplicating reforms that were being progressed in the wider Crown-minerals regulatory system, such as resource management reforms and conservation land protection. Constitutional conventions

The changes considered are therefore limited to those within the framework of the current scope and purpose of the CMA, including the existing Section 4 Treaty clause. For iwi engagement, this means considering how to enhance the status quo, rather than consideration of the fundamental role of Māori under the CMA, or how Māori interests are balanced against economic interests.

The Crown's ownership of existing Crown-owned minerals and petroleum and the Crown's right to collect and use royalties have always been outside the scope of Tranche Two.

The public was consulted in 2019/20, and hapū and iwi were consulted on draft iwi engagement proposals in 2021/22

MBIE publicly consulted on a high-level version of some of the proposals in this regulatory impact statement between 19 November 2019 and 27 January 2020. The 2019 discussion document put forward the following specific proposals:

- Maintain the legislative settings while evaluating the engagement condition in Block Offer 2018;
- Stipulate required content for iwi engagement reports submitted by permit holders under section 33C of the CMA.

It also asked the following broader questions:

- Do you agree that iwi engagement reports should be evaluated against a set of reporting requirements, and, if so, what should permit holders be required to report on in regards to engaging with iwi and hapū?
- How can the Crown support effective engagement between Māori and permit holders?

Proposed regulatory changes that industry have so far not been specifically consulted on include:

- **The inclusion of licence holders for proposals relating to iwi engagement reports** – however, current iwi engagement reporting requirements also apply to licence holders, and submissions on the 2019 Discussion Document were received from industry representative bodies that also represent licence holders;
- **Requiring certain permit applicants to provide contact details as part of their applications, to be passed on to hapū/iwi by NZP&M -** this change is not considered onerous, or a significant departure from the status quo whereby NZP&M often requests contact information for this purpose;
- **Hapū/iwi having opportunities to review and discuss iwi engagement reports -** these proposals are not considered particularly onerous, and can be responded to by industry through the Select Committee process;
- **Clarifying that decision-makers may have regard to quality of past engagement for future permit allocation decisions** – this is a clarification only, decision-makers may already take this into consideration due to the CMA's Section 4 Treaty clause.

NZP&M currently sets an expectation that Tier 1 permit/licence holders and permit applicants will engage with hapū and iwi. For example, NZP&M discusses iwi engagement at Annual Review Meetings with Tier 1 permit holders. Proposals are not a significant departure from current expectations for good engagement. Industry stakeholders will have a further opportunity to comment on the final proposals for improving iwi engagement during a full Select Committee process.

Further consultation was carried out with hapū and iwi over the end of 2021/early 2022. This consultation included discussions on proposals in this paper.

Responsible Manager(s) (completed by relevant manager)

Catherine Montague

Acting Manager

Resource Markets Policy

Ministry of Business, Innovation and Employment

21 June 2022

Quality Assurance (completed by QA panel)

Reviewing Agency:	Ministry of Business Innovation and Employment

Panel Assessment & Comment:	MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Impact Statement prepared by MBIE. The panel considers that the information and analysis summarised in the Impact Statement meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

The Crown Minerals Act 1991

1. The Crown Minerals Act 1991 (CMA) sets out the legislative framework for issuing permits to prospect, explore, and mine for Crown-owned minerals within New Zealand. It operates alongside other legislation that regulates the health, safety and environmental aspects of mining. The CMA is supported by a suite of regulations and programmes, which collectively comprise the CMA regime.

2. The CMA separates permits into Tier 1 and Tier 2 categories. Tier 1 includes high-return, high-risk projects. Applicants for a Tier 1 permit must satisfy a high-level health, safety, and environmental capability test. Tier 2 permits are lower-return industrial, small business, and hobby mineral operations needing a simpler, more pragmatic regulatory regime.

3. The Crown Minerals Act 1991 also enables some of the licences granted under previous legislation to continue to have effect, as if that legislation were still in force.

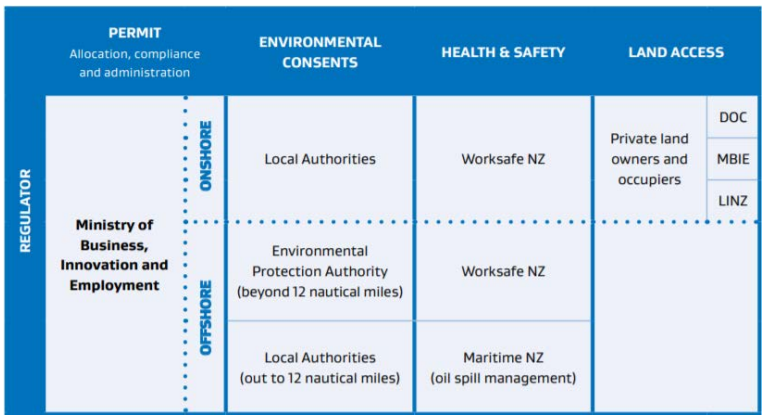
4. The Ministry for Business, Innovation and Employment (MBIE) manages the Crown's petroleum and mineral resources under the brand name 'New Zealand Petroleum and Minerals' (NZP&M).

5. For more information on the Crown-minerals regulatory system, see **Annex One.**

The CMA Regime operates in a wider regulatory system of checks and balances

6. The CMA is one among several pieces of legislation that affects or relates to prospecting, exploring or mining Crown minerals. The other key statutes include the Resource Management Act 1991 (RMA), the Maritime Transport Act 1994, the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act), and the Health and Safety at Work Act 2015. Obtaining a permit under the CMA is necessary when the minerals are owned by the Crown, but it is not sufficient on its own to start to develop those minerals.

7. The different regulators within the Crown-owned minerals system are set out below:



8. Engagement with hapū and iwi required under the RMA and EEZ Act is formal and often transactional, restricted to consideration of the impacts of specific activities that meet a certain threshold for engagement, and occurs part way through the petroleum and mineral development process. In contrast, engagement under the CMA has the potential to be more informal, ongoing, relationship-based and on a broader range of matters (such as economic and broader cultural interests of mana whenua). It also enables a relationship to be established at an early stage of the petroleum and mineral development process.

The Resource Management Act 1991

9. The CMA was introduced at the same time as the RMA. The efficient allocation and management of rights to develop Crown minerals, and the management of environmental effects from extracting these resources, were deliberately separated at the time. This separation was intended to minimise potential conflict between the Crown's dual roles as both resource owner and as regulator. It ensures independent and transparent decision-making, clear accountability for the different objectives, and regulatory efficiency.

10. Consultation with hapū and iwi relating to the environmental effects of mining activities is therefore undertaken through engagement in relation to the RMA. Where resource consent holders or applicants are undertaking or proposing an activity that is or is likely to adversely affect a site of significance to Māori, there will generally be a requirement to engage with the relevant iwi either within the plan itself or from the local authority when assessing the application and making a notification assessment.

11. Some larger mining operations (e.g. OceanaGold's Waihi operation[3]) also have specific conditions in their resource consents to engage with iwi on a regular basis. This engagement can take a range of forms including regular meetings between the consent holder and iwi, consultation with iwi on specific works, undertaking Cultural Impact Assessments, establishing and resourcing Iwi Advisory Groups, establishing and following a Memorandum of Understanding etc.

The EEZ Act

12. Mining activities in the Exclusive Economic Zone (EEZ) require consent under the EEZ Act. These applications are required to include an impact assessment describing the activities for which consent is sought, and the various potential impacts of those activities.

13. As part of an impact assessment under the EEZ Act, applicants are required to identify persons whose existing interests are likely to be adversely impacted by the activity, describe any consultation undertaken with those persons identified, and specify those persons who have given written approval for the activity. In practice, this is often taken as requiring engagement with impacted hapū and iwi.

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[3] Specifically, the Annual Consultation Reports consent conditions require "*The consent holder shall forward to the council a report annually, covering the period to 1 June of each year, that details the discussions and outcomes of ongoing consultation with Ngati Tamatera in relation to the spiritual and cultural interests of Ngati Tamatera. Each report shall be produced in conjunction with Ngati Tamatera and forwarded to Council within 3 months at the end of the period to which the particular report relates".*

Building closer partnerships with Māori is an ongoing Government priority

14. On behalf of the Minister of Energy and Resources, MBIE manages a number of relationship instruments which set out how MBIE/the Government will work together with hapū and iwi on matters relating to Energy and Resources.

15. The Government's *Minerals and Petroleum Resource Strategy for Aotearoa New Zealand: 2019-2029* (the Strategy) articulates the Government's long-term vision for the minerals and petroleum sectors in New Zealand. The Strategy identifies 'Improving Treaty Partnerships' as one of six action areas where the Government can make a significant contribution towards the objectives set out in the Strategy, including by seeking to achieve clarity within the mining sector about the role of Māori, the industry, and the Crown's obligations as a Treaty partner.

Māori have different interests in petroleum and mineral development

16. Māori interests in the energy and resources sector include, but are not limited to:

- A desire to protect sites of significance from the impact of resource development;
- A desire to protect the environment as kaitiaki;
- Claims to customary title under the Marine and Coastal Area (Takutai Moana) Act 2011, which creates special rights for applicants and groups for which customary marine title has been recognised;
- An interest in sharing the economic benefits of the industry, for example, in employment and skills; and
- Having appropriate recognition of their mana and status as Treaty of Waitangi partners.

Effective engagement with permit/licence holders and permit applicants under the CMA has a number of benefits

17. The 2014 *Best Practice Guidelines for Engagement with Māori* developed by Ngāti Ruanui in consultation with industry and the Iwi Chairs Forum, articulate some of the benefits of positive engagement. The guidelines state:

> *Iwi will always have a strong presence in their communities and often their knowledge 'on the ground' is second to none. This 'on the ground' knowledge, that can help a company decide how to consult or where to invest, is the kind of knowledge that only comes as a result of being present in a community for hundreds of years with the intention of being present for thousands of years to come. Engaging with iwi will often lead to an improved reputation for a company in the eyes of the overall community. Early feedback from iwi may help influence a company's technical reports or management plans.*

18. The guidelines also point to examples of measures that have been put in place as a result of engagement under the CMA. Examples include: funding iwi projects; site blessings; emergency procedures that include iwi as a first point of contact; education opportunities including scholarships and hosting technical workshops; monitoring

programmes that incorporate cultural health indicators; and providing iwi with relevant technical reports.

19. The guidelines also discuss the benefits of early engagement under the CMA, which include building an understanding of Māori interests at an early stage to prevent problems arising later, e.g. as part of consenting processes.

Hapū and iwi view the Crown as having an active role in ensuring permit/licence holders and permit applicants engage effectively

20. Hapū and iwi expect the Crown, as their Treaty partner, to ensure that at a minimum, those seeking or granted Tier 1 permits within their rohe will keep them informed of their plans and activities, and engage in a manner that demonstrates respect and understanding for their authority, mana and expertise in relation to the natural environment and local community.

Under the current regime, permit applicant and permit and licence holder engagement with hapū and iwi is encouraged, but not normally required

Permit applicants are not required to engage with hapū and iwi

21. NZP&M notifies and consults with hapū and iwi on certain application types, is available to help facilitate contact between applicants and hapū and iwi, and will encourage applicants to engage. However, permit applicants themselves have no regulatory obligation to engage with hapū and iwi.

Tier 1 permit/licence holders are required to report annually on their engagement with hapū and iwi

22. The CMA requires certain permit/licence holders[4] to report on any engagement with hapū and iwi, but does not require engagement:

- Section 33C of the CMA requires Tier 1 permit holders to file an annual report outlining their engagement activities with hapū and iwi whose rohe includes some or all of the permit area, or who otherwise may be directly affected by the permit.

- Section 33C(2) requires classes or kinds of Tier 2 permit holders specified in regulations to provide an annual report on their engagement with hapū and iwi whose rohe includes some or all of the permit area, or who otherwise may be directly affected by the permit. To date, no regulations have been made under this provision.

23. The Minerals Programmes provide further detail on the intention of these requirements. Iwi engagement reports are intended to encourage permit/licence holders to engage with hapū and iwi in a positive and constructive manner and to enable NZP&M to monitor progress in this regard.

24. Reporting requirements are not extended to all Tier 2 permits, as they are considered to not be proportionate to more minor operations, such as some lower-return industrial operations, small business, and hobby mineral operations.

[4] These requirements also extend to licence holders under section 14 of the CMA.

25. As the requirement under section 33C is only that a report be submitted, the quality of these reports can vary greatly, they are considered to be either:

- **Detailed**: Reporting on engagement is fulsome and provides a good overview of what level of engagement occurred and how close the relationship/s are with iwi or hapū affected by permit holder activities;
- **Itemised**: Engagement activities, such as meetings or phone calls, are itemised with a description of the activity. Descriptions are usually brief and the reporting will sometimes include an overarching statement on how positive the relationship is with iwi or hapū;
- **Brief**: Permit holders provide a brief overview of the level of engagement with iwi and hapū; or
- **Minimal**: Engagement reports are very brief and sometimes just state that no engagement occurred (this is usually because permit holders have been inactive and not considered engagement necessary or because of a permit surrender. In some cases, ongoing legal challenges to consents has been cited as the reason for no engagement occurring).

26. For petroleum permits, quality of reports is generally evenly spread over the four categories. For minerals permits, roughly 50 per cent of all reports are considered to be minimal, with about ten per cent are considered to be detailed.

27. Under section 33D, Tier 1 permit/licence holders are required to attend annual review meetings. The iwi engagement report is one of the agenda items for these meetings, and permit/licence holders are encouraged to contact hapū and iwi before submitting their report, and to include their feedback where appropriate. NZP&M provides guidance on their website for the report structure and content.

Since 2018, new Petroleum Exploration Permits include conditions requiring permit holders to engage with hapū and iwi

28. Under Section 25 of the CMA, the Minister (or delegated decision-maker) may grant a permit subject to any conditions they think fit. Under Section 33 of the CMA, permit holders are required to comply with the conditions of their permit.

29. In 2018, an iwi engagement condition was introduced in the Block Offer[5] Invitation for Bids requiring permit holders to engage with hapū and iwi on an ongoing basis, with specific early engagement requirements in relation to activities to be undertaken within 200 meters of areas of significance to iwi. The condition was introduced to encourage permit holders to understand Māori interests, so that they can be considered as the work programme is implemented.

30. A total of three permits include this condition. Block Offer 2018 concluded in 2020 with the award of one Petroleum Exploration Permit (PEP), and Block Offer 2019 (the most recent block offer) concluded in 2021 with the award of two PEPs. Confidential information entrusted to the Government [redacted]

[5] Block Offer is the method of allocation currently used in New Zealand for PEPs.

Confidential information entrusted to the Government

There is the potential for consequences relating to engagement with hapū and iwi

31. Non-compliance with a requirement under the CMA, or with a permit condition can result in revocation or transfer of a permit. Before revoking or transferring a permit, the permit holder will be served written notice of the intention to revoke/transfer the permit, which provides the permit holder 40 working days to either remove the grounds for the revocation/transfer or provide reasons why the permit should not be revoked/transferred.

32. Section 29A of the CMA sets out the process for considering permit applications. There are a number of factors the Minister, or delegated decision-maker, must be satisfied with before granting the permit.

33. One factor the decision-maker must be satisfied with is that the applicant is highly likely to comply with reporting obligations under the CMA. This means past compliance with the iwi engagement reporting requirement can be considered as part of future permit allocation decisions. As the requirement is only that a report be submitted, this does not extend to consideration of the quality of those reports or related engagement.

34. The decision-maker must also have regard to the principles of the Treaty, as a result of Section 4 of the CMA. This means the decision-maker has the discretion to take a broad range of considerations into account, which may include past engagement of permit applicants with hapū and iwi. Legal professional privilege

NZP&M provides information and support for permit holder engagement with Māori

35. The NZP&M website provides a number of principles for permit holders to consider during engagement with hapū and iwi. It also provides a link to best practice guidelines for engagement developed by Ngāti Ruanui.

36. NZP&M also provides additional support for these relationships, such as promoting discussions when any issues arise and encouraging the exchange of information between parties.

The Government commenced a review of the Crown Minerals Act 1991

37. In 2018, the Government announced a review of the CMA (CMA Review). Tranche One of the Review focused on the changes necessary to give effect to the Government's new policy to end future offshore petroleum exploration and confine any future onshore exploration to the Taranaki region.

38. Tranche Two of the Review is intended to be wider to ensure the CMA is fit-for-purpose now and in the future. It includes consideration of the fundamental role of the CMA and its purpose statement, regulation of decommissioning, iwi engagement and community participation, and future petroleum permitting processes.

39. A discussion document for Tranche Two was released on 19 November 2019, inviting submissions until 27 January 2020.

40. Chapter 5 of the discussion document focused on improving Māori engagement and involvement in Crown minerals and was based on a variety of issues that have been raised by Māori across different contexts. It identified three main interrelated groups of issues:

- Māori feel there is a lack of quality engagement from the Crown during the permit allocation process;
- Māori feel there is a lack of quality engagement with permit holders throughout the duration of a permit; and
- resource constraints affect the capacity of hapū and iwi to effectively engage with other parties.

41. For more information on the CMA Review, see **Annex Two.** For more information on feedback received in response to Chapter 5 of the 2019 discussion document, see **Annex Three.**

In November 2020, the Minister of Energy and Resources agreed to incremental change under Tranche Two Constitutional conventions

42. Incremental changes were considered the best course of action to avoid duplicating reforms that were being progressed in the wider Crown-minerals regulatory system, such as resource management and conservation protection. Constitutional conventions

43. Any changes considered as part of the Tranche Two review need to be consistent with the existing emphasis on the role of the Crown as resource owner, and its economic stewardship. For iwi engagement, this means considering how to enhance the status quo, rather than consideration of the fundamental role of Māori under the CMA, or how Māori interests are balanced against economic interests.

44. The Crown's ownership of existing Crown-owned minerals and petroleum and the Crown's right to collect and use royalties have always been outside the scope of the Tranche Two.

Hapū and iwi were consulted on draft proposals arising from submissions on Chapter 5 of the Discussion Document in 2021/2022

45. On the basis of feedback received on Chapter 5 of the discussion document, MBIE developed a range of draft proposals for non-regulatory and regulatory changes to respond to the issues raised by hapū and iwi.

46. MBIE then engaged with hapū and iwi on those draft proposals from November 2021 to February 2022. MBIE ran four huitopa (online hui), at which participants represented a minimum of 11 hapū and iwi.[6] MBIE also received seven written submissions, with

[6] Including representatives from Te Arawa River Iwi Trust; Ngāti Kearoa-Ngāti Tuara, Ngāti Tahu-Ngāti Whāoa, Te Arawa Lakes Trust, Tuhourangi-Ngāti Wāhiao, Te Rūnanga o Ngāti Ruanui Trust, Te Korowai o Ngāruahine Trust, Te Kotahitanga o Atiawa Trust, Te Kāhui o Taranaki Iwi, Te Rūnanga o Ngāi Tahu, Te Rūnanga o Ngāti Waewae.

three of these coming from representatives who also attended a huitopa, and four from other groups.[7] A summary of 2021/2022 engagement with hapū and iwi representatives is provided at **Annex Four**.

This Regulatory Impact Statement only considers changes to improve permit/licence holder and permit applicant engagement with hapū and iwi

47. Regulatory changes to improve Crown engagement by addressing resource constraints and improving protections in place for sites of significance to Māori, are not the focus. Consultation indicated that improvements to Crown engagement with Māori and resourcing issues are best addressed through non-regulatory means. Additionally, the Resource Management Act 1991 (RMA) is currently under review, which includes consideration of protection for sites of significance to Māori.

The CMA Review found that if the regulation and supports for iwi engagement under the CMA remain the same, engagement will continue to be variable

48. Under the status quo, only recent and future Petroleum Exploration Permit (PEP) holders are required to engage with hapū and iwi under the CMA. All other Tier 1 permit/licence holders are required to submit an iwi engagement report, although the quality of these reports can vary greatly. There are no requirements relating to iwi engagement for permit applicants.

49. While consultation with hapū and iwi is required under other legislation, this is limited to consultation on the environmental effects of mining activities. There is no requirement for a permit/licence holder to keep hapū and iwi up to date, informed and involved on their plans and activities beyond this.

50. The result is that hapū and iwi consider engagement with permit/licence holders and permit applicants to be highly variable, and to not always reflect respect and understanding for their authority, mana and expertise in relation to the natural environment and local community.

What is the policy problem or opportunity?

Hapū and iwi have expressed an ongoing concern that engagement with permit/licence holders and permit applicants is variable

51. While MBIE has heard that some relationships with permit/licence holders and permit applications are positive, hapū and iwi have expressed that these relationships are still variable. Not all permit holders are prioritising engagement, the quality of engagement when it does occur is variable, and there can be a lack of transparency on the part of permit holders when it comes to sharing information.

52. Many hapū and iwi consider that this variable engagement demonstrates variable respect for their authority, mana, and local expertise.

53. Hapū and iwi have expressed these concerns with MBIE through multiple written submissions and kanohi ki te kanohi and online engagements. All hapū and iwi that participated in the review, either by submitting a response to the 2019 discussion

[7] Including representatives from Te Ohu Kaimoana, Te Rūnanga o Ngāti Kuia Trust, Ngāti Tama ki te Waipounamu Trust, and Te Rūnanga o Ōraka Aparima.

document or participating in 2021/early 2022 engagement, raised quality of permit holder engagement as a concern. Concerns have also been raised directly with NZP&M.

In part, this is because the Crown's expectations for permit/licence holder and permit applicant engagement with hapū and iwi are unclear

Hapū and iwi have raised the need to create more certainty as to engagement expectations

54. Hapū and iwi have raised the need to clearly set out expectations for the nature and purpose of iwi engagement. Some have raised concerns with the lack of specificity on the content and purpose of iwi engagement reports, the fact that there is no clear expectation that hapū and iwi should be given the opportunity to review and discuss iwi engagement reports, and that there is no general requirement to engage.

55. Hapū and iwi have also highlighted the importance of early engagement, including at the application stage. While encouraged by NZP&M, the regulatory regime is silent as to an expectation for engagement to occur at this stage.

Some permit/licence holders and applicants are uncertain why iwi engagement under the CMA is important and what constitutes positive engagement

56. Industry submissions on the 2019 discussion document indicate a perception by some industry groups that hapū and iwi interests are limited to environmental concerns, and that engagement is therefore already adequately covered under environmental legislation, such as the RMA and the EEZ Act.

57. Engagement under the RMA and EEZ Act is formal and often transactional, restricted to consideration of the impacts of specific activities that meet a certain threshold for engagement, and does not always occur at the start of the petroleum and mineral development process. In contrast, engagement under the CMA has the potential to be more informal, ongoing, relationship-based and on a broader range of matters (such as economic and broader cultural interests of mana whenua). It also enables a relationship to be established at an early stage of the petroleum and mineral development process.

58. Industry submissions on the 2019 discussion document also indicate that industry's perception of what constitutes sufficient engagement is mis-aligned with the expectations of hapū and iwi. Submissions from Energy Resources Aotearoa (named PEPANZ at the time of submission), Straterra and the chair of the Aggregate and Quarry Association (AQA) all stated that permit holders are already engaging regularly with hapū and iwi.

59. Online submissions from industry did however make a range of comments around the need for more guidelines to aid permit holders with engagement with iwi, more education for both permit holders and iwi and hapū, assistance from MBIE to help permit holders to identify the correct contact points for iwi and making introductions, and government facilitation of engagement between Māori and permit holders.

It is also because there are limited requirements for engagement, limited consequences for non-engagement, and no clear consequences for poor engagement

60. There is currently no general engagement requirement under the CMA, and engagement conditions are only included in new Petroleum Exploration Permits. This

means that only recent and future Petroleum Exploration Permits have the potential to be revoked or transferred for non-engagement.

61. Further consequences for non-engagement or poor engagement are unclear. While Section 4 enables decision-makers to take a variety of considerations into account as part of permit allocation decisions, it is not clear to permit/licence holders that this could include the quality of past iwi engagement.

Where relationships are poor, potential benefits resulting from positive relationships are foregone

62. As mentioned previously, positive engagement under the CMA has the potential to result in benefits for both hapū and iwi and industry. Hapū and iwi hold expertise in relation to the local community and natural environment that can be of benefit to permit holders. Positive engagement can also improve the reputation of a company within the local community. For hapū and iwi, as well as respecting their mana whenua status by keeping them informed and involved, positive relationships have been proven to support their interest in sharing the economic benefits of any activities.

63. While most opportunities for hapū and iwi to influence decisions would continue to be under the RMA, positive relationships developed in the context of the CMA's processes create opportunities for early engagement and better understanding between parties. In some instances, this can help mitigate the risk of issues arising later in the consenting process, which can result in time consuming and costly negotiations for both parties.

What objectives are sought in relation to the policy problem? The following objectives are sought in relation to the policy problem:

64. Based on the principles, objectives and outcomes for the CMA Tranche Two Review, we are seeking the following objectives in relation to the specific policy problem:

- Iwi and hapū feel permit/licence holders and permit applicants hear their perspectives, react appropriately and provide reasonable information when requested;
- Permit/licence holders and permit applicants engage appropriately, ensuring adequate information is provided to iwi and hapū, reasonable opportunities for feedback and discussion are provided and the views of iwi and hapū are considered when undertaking activities under the permit;
- The requirements of the regime are clear, fair, and efficient for industry, the regulator and other affected parties. Permit holders understand what is expected of them, there are no consequences for permit/licence holders in situations where hapū/iwi are unwilling or unable to engage, and engagement remains discretionary for hapū and iwi; and
- Changes align with Government Expectations for Good Regulatory Practice by ensuring the CMA avoids duplicating functions provided for in other enactments in the wider Crown-minerals regulatory regime.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

65. The following criteria will be used to compare options to the status quo, the criteria have equal weighting:

- **Effective:** options effectively meet the objectives described above.
- **Proportionate:** options ensure the cost of complying with the proposed requirements are proportionate to the objectives intended to be achieved.
- **Regulatory certainty:** the requirements under options are clear and provide certainty and predictability of compliance for permit/licence holders and permit applicants.
- **Practical:** that the options minimise implementation risks, provide for administrative simplicity and are able to respond flexibly to the varying circumstances and expectations of hapū and iwi.

What scope will options be considered within?

Options are limited by the scope of Tranche Two of the CMA Review

66. The CMA Tranche Two Review is intended to examine whether the CMA is fit-for-purpose to achieve Government objectives, without changing fundamental aspects of its operation and wider legislative settings.

67. In November 2020, the Minister agreed to conclude Tranche Two by considering incremental changes. Incremental changes were considered the best course of action to avoid duplicating reforms that were being progressed in the wider Crown-minerals regulatory system, such as resource management and conservation protection.

68. The changes considered are therefore limited to those within the framework of the current scope and purpose of the CMA.

Not all draft proposals relating to permit/licence holder engagement and permit applicant engagement supported by hapū/iwi are being considered

69. In late 2021/early 2022 hapū and iwi were consulted on a range of draft proposals, which are listed at Annex Four. Some of these were considered and rejected for a range of reasons and are not discussed further in this paper. For example:

- **Introducing engagement requirements for all Tier 1 and Tier 2 permit/licence holders** - Hapū and iwi have expressed divergent views as to whether they would like there to be an engagement requirement that applies to all permit/licence holders, or whether such a requirement should be limited to Tier 1 permit holders only.

  The policy proposals limit engagement requirements in the CMA to Tier 1 permit/licence holders, and any Tier 2 permit that is specified in the regulations as being required to submit an iwi engagement report. Additional requirements could be introduced for Tier 2 permit holders through the addition of permit

conditions. This is considered a flexible middle ground that is able to respond to the preferences of hapū and iwi across different rohe on a case-by-case basis, and the varying nature of mining activities across New Zealand.

- **Introducing a requirement in the programmes for NZP&M to support quality engagement across all permits** – while there was some support for this proposal through consultation, consultation also indicated that NZP&M is already providing some degree of support, and always provides support when specifically requested. Rather than introducing a general requirement for NZP&M to support engagement, proposals therefore look to introduce more specific requirements, such as requiring NZP&M to pass on contact information, and to facilitate annual meetings.

Proposals are not limited to addressing permit holder engagement

70. While the discussion document did not directly seek feedback on licence holder and permit applicant engagement, these proposals include engagement for both of these parties. Currently, under the CMA, licence holders are subject to the same iwi engagement reporting requirements as permit holders. Hapū and iwi have made submissions relating to the quality of permit applicant engagement, and this formed part of 2021/2022 discussions.

What options are being considered?

Four options are being considered ranging from the status quo, where the majority[8] of permit/licence holders are encouraged to comply with iwi engagement expectations of the regulator (voluntary behaviour), through to options that also provide a mix of potential regulatory actions, including assisting with compliance through to enforcement action in the event of significant non-compliance.[9]

- Option One – *status quo (mainly voluntary compliance)*;
- Option Two – *operational changes including wider use of engagement conditions for new permits (measures to assist with compliance and also direct behaviour through permit conditions for new permits with the option of enforcement action through permit revocation)*;
- Option Three – *operational changes including wider use of engagement conditions for new permits, and a range of legislative and regulatory[10] changes (building on Option Two with a broader mix of directed regulatory actions)*;

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[8] Other than those recently granted Petroleum Exportation Permits, which include engagement conditions.

[9] This range of options is based on the VADE model, used by NZP&M to facilitate compliance. The VADE model uses core principles (transparent and consistent, targeted, fair, reasonable and proportionate, collaborative and responsive) to determine the best compliance approach when industry behaviour fails to meet expectations or breaches regulatory obligations. These principles are reflected in the criteria selected to compare the options. The model aims to provide a measured and graduated approach to resolving non-compliance proportionate to the nature of offending. The model starts with seeking voluntary behaviour, to assisting industry with compliance (including increased monitoring, education and support), directing behaviour(such as through varying permit conditions) and ultimately enforcement action to respond to intentional serious or repeated actions or omissions e.g. through permit revocation.

[10] Regulatory changes include both changes to the CMA and regulations under the CMA.

- Option Four – *operational changes and legislative and regulatory changes including an engagement requirement for existing and new permit holders under the CMA (builds on Option Three to strengthen enforcement action for both current and future permits).*

Option One – *status quo (mainly voluntary compliance)*

71. Under the status quo the CMA does not have an engagement requirement, although it does require Tier 1 (and Tier 2 permit/licence holders where specified in the regulations) to report on iwi engagement. There are no content requirements for these reports, and their quality is variable.

72. There is no general requirement for permit/licence holders to engage, although engagement conditions have been included in recent PEPs. As conditions were only first applied to PEPs awarded from Block Offer 2018 (concluded in 2020), there is insufficient evidence (due to lack of time passed Confidentiality to conclude whether this permit condition has had a positive impact on hapū and iwi engagement with permit holders.

73. Where there is no requirement to engage, there are no enforcement options for non-engagement. Consequences for poor engagement are also unclear.

74. NZP&M supports these relationships when requested by industry or hapū and iwi, which can result in some limited improvements to permit/licence holder and permit applicant engagement, and the understanding on the part of permit/licence holders as to what is expected for positive engagement.

75. Many hapū and iwi have expressed frustration with the variability of engagement under the status quo, and some industry players have suggested NZP&M should provide more support for these relationships.

Option Two – *operational changes including wider use of engagement conditions for new permits*

76. Option Two consists of measures to assist with compliance and also direct behaviour through permit conditions for new permits with the option of enforcement action through permit revocation or transfer.

77. Under Option Two, NZP&M would implement a range of operational changes under current regulatory settings, aimed at clarifying their expectations for engagement, and improving the support they provide to permit applicants, regulated parties and hapū and iwi to help encourage positive engagement. These changes would consist of:

    - Improving the provision of introductory material (including contact information with consent) for hapū and iwi and permit/licence holders and permit applicants, to help facilitate the establishment of those relationships;

    - Being clear in communications about the support NZP&M can provide to help facilitate positive relationships between permit/licence holders and hapū and iwi;

- Improving information provision to permit/licence holders and permit applicants on effective engagement with hapū and iwi, including to ensure they understand the purpose and benefits of that engagement;

- With permit/licence holders' consent, seeking hapū and iwi feedback on annual iwi engagement reports;

- With permit/licence holders' consent, providing hapū and iwi the opportunity to engage with permit holders and NZP&M annually to discuss the standard of engagement.

78. Additionally, NZP&M would extend the use of engagement conditions to also include new Tier 1 minerals permits, and any new Tier 2 permit for which the regulations specify an iwi engagement report is required. This would create an engagement obligation for those permit holders, which if not met, has the potential to result in permit revocation or transfer. The intention would be to encourage engagement efforts on the part of permit/licence holders throughout the duration of the permit, while still enabling flexibility for hapū and iwi to guide the extent and frequency of that engagement.

79. Option Two would respond to industry requests for increased operational support for these relationships. Wider use of engagement conditions would also respond to feedback from hapū and iwi that there should be a requirement to engage. However, this option does not include regulatory changes also sought by hapū and iwi through consultation. Some hapū and iwi also indicated a preference for enduring regulatory change, over strictly operational changes.

Option Three – *operational changes including wider use of engagement conditions for new permits, and a range of legislative and regulatory changes*

80. Option Three builds on Option Two with a broader mix of directed regulatory actions.

81. Under Option Three, along with the operational changes described at Option Two, a range of changes (to both the CMA and regulations) would be introduced to further increase clarity of engagement expectations, and clarify potential consequences for poor or non-engagement including to:

    - Require, as part of certain permit application types, provision of contact information to be passed on by NZP&M to hapū or iwi whose rohe include some or all of the permit area or who otherwise may be directly affected by the permit if granted;

    - Prescribe minimum content for iwi engagement reports;

    - Provide hapū or iwi whose rohe include some or all of the permit/licence area or who otherwise may be directly affected by the permit/licence with opportunities to review iwi engagement reports;

    - Make explicit that decision-makers may have regard to feedback from hapū and iwi on the quality of past engagement with permit/licence holders for future permit allocation decisions.

Require, as part of certain permit application types, provision of contact information to be passed on by NZP&M to hapū or iwi

82. This change would require amendments to the regulations, which set out the information requirements for certain permit application types.

83. This would apply to permit application types for which:

- NZP&M would ordinarily consult with hapū and iwi as part of their assessment of the application (in accordance with guidance in the programmes);
- NZP&M would ordinarily notify hapū and iwi of the application (in accordance with guidance in the programmes);
- Approval of the application would result in a change of permit operator. This could include, for example, where there is a transfer of interest, or change of control of a permit operator.

84. NZP&M would then pass the contact information on to hapū and iwi when they consult with them on, or notify them of, the application, or, in the case of applications that would result in a change of permit operator, upon approval of the application. Hapū and iwi would then have the option to contact the permit applicant directly.

85. Applications that did not include contact details for this purpose would be considered incomplete, and would therefore not be accepted.

86. This change responds to feedback from hapū and iwi that early engagement from the application stage is important, and that they do not always have contact information to be able to contact permit applicants directly to discuss their applications when they are consulted on them by NZP&M.

Prescribe minimum content for iwi engagement reports

87. This would include changes to the empowering provisions of the CMA and to the regulations to prescribe the following minimum content for iwi engagement reports:

- a record of all relevant conversations between permit/licence holders and hapū/iwi;
- a description of how hapū and iwi have been kept informed of activities and plans relating to the permit;
- a summary of any issues or concerns raised by hapū/iwi and how they were responded to;
- a statement of the permit/licence holder's understanding of Māori interests in the permit area;
- a summary of any impact of activities on Māori interests or aspirations and, if negative, any efforts to mitigate that impact;
- details of any requests made by hapū/iwi for additional information, including whether that information was provided, and if not, why not;
- a section for hapū/iwi to include their views on the state of the relationship and the contents of the report.

88. Permit/licence holders would be required to fill out each of these sections of the report in relation to their engagement. The provisions would be drafted to ensure there are no obligations for hapū and iwi to engage, and no consequences for permit/licence holders where hapū and iwi choose not to engage.

89. Non-compliance with the CMA has the potential to result in permit revocation or transfer. However, in practice where there is non-compliance with this reporting provision permit/licence holders would likely be given the opportunity to rectify their non-compliance, meaning revocation/transfer on this basis is unlikely.

90. Hapū and iwi were supportive of this proposal, and the proposed content requirements respond to the feedback they provided through consultation.

Provide hapū and iwi with opportunities to review iwi engagement reports

91. This would include changes to the CMA to require permit/licence holders to:

- share iwi engagement reports with hapū and iwi for their review prior to them being submitted; and

- at the request of an iwi or hapū, attend an annual meeting with that iwi or hapū, any other hapū or iwi that wish to attend, and NZP&M, for the purpose of discussing the contents of iwi engagement reports.

92. The intention is that one meeting would be held per year, where requested, for the purpose of discussing the reports. NZP&M would arrange the meeting in consultation with the groups wanting or required to attend.

93. As above, non-compliance with the CMA has the potential to result in permit revocation or transfer, however, permit/licence holders would likely be given the opportunity to rectify their non-compliance with these provisions, meaning revocation/transfer on this basis is unlikely.

94. These proposals respond to requests made by hapū and iwi through consultation. A very high number of groups consulted were of the view that hapū and iwi should have the opportunity to validate the contents of reports. Representatives of Te Rūnanga o Ngāti Ruanui proposed that hapū and iwi should have the opportunity to attend annual review meetings for the purpose of discussing reports. NZP&M consider that this may be difficult/impractical in all situations, and recommended that the requirement should enable flexibility so that these meetings can either take place as part of annual review meetings, or separately.

Make explicit that decision-makers may have regard to feedback from hapū and iwi on the quality of past engagement for future permit allocation decisions

95. This would require an amendment to the CMA to clarify that decision-makers may have regard to this feedback as one factor for consideration when making permit allocation decisions. While this factor may not be determinative on its own, clarifying that this may be taken into account will send a signal to industry that the Crown considers it to be important.

96. This proposal responds to feedback from hapū and iwi that there are no clear consequences for non- or poor-engagement. It directly responds to the

recommendation of Te Ohu Kaimoana that the quality of past engagement should be considered as part of future permit allocation decisions.

Option Four – *operational changes and legislative and regulatory changes including an engagement requirement for existing and new permit holders under the CMA*

97. Option Four builds on Option Three to enable enforcement action for both current and future permits.

98. Under Option Four, the operational, legislative and regulatory changes described in Options Two and Three would be made, except the use of engagement conditions in permits would be replaced by an engagement requirement in the CMA.

99. The requirement would be for holders of Tier 1 permits/licences and any Tier 2 permit specified in regulations as being required to submit an iwi engagement report, to make efforts to engage with hapū or iwi whose rohe include some or all of the permit/licence area or who otherwise may be directly affected by the permit/licence throughout the duration of the permit/licence.

100. This requirement would apply to both current and new permit/licence holders. As with engagement conditions, the intention would be to encourage engagement efforts on the part of permit/licence holders throughout the duration of the permit, while still enabling flexibility for hapū and iwi to guide the extent and frequency of that engagement.

101. As this requirement would apply to both current and future permit holders of the classes of permit described, enforcement action for non-compliance with the CMA would be possible for non-engagement in relation to a larger number of permits.

102. Hapū and iwi were supportive of having an engagement requirement in the CMA. However, different hapū and iwi had different perspectives on whether it should apply to all permit holders, or just Tier 1 and some Tier 2 permit holders. Some also raised the importance of ensuring the wording of the requirement ensures its effectiveness, as well as creates regulatory certainty, while also avoiding unintended obligations for hapū and iwi.

How do the options compare to the status quo?

Key			
++	much better than doing nothing/the status quo/counterfactual	-	worse than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual	- -	much worse than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual		

	Option One – Status quo	**Option Two –** Operational changes including wider use of engagement conditions	**Option Three –** Operational changes including wider use of engagement conditions and a range of regulatory changes	**Option Four-** Operational and a range of regulatory changes including a broad engagement requirement under the CMA
Effectiveness	**0** Option One has been found to be ineffective. This largely voluntary/assisted approach has resulted in hapū and iwi continuing to raise the longstanding issue that permit/licence holder engagement is variable, and permit/licence holders experiencing a lack of clarity as to what it expected of them. There is little incentive to engage with no deterrent for non-compliance, other than for new and future PEPs.	**+** Operational changes would increase regulatory assistance and direction to increase clarity of expectations, which should help improve quality and degree of engagement to some extent. Increased use of engagement conditions also enables wider use of enforcement options for new permit holders (Tier 1 and some Tier 2), which should provide an effective deterrent against non-compliance.	**++** Regulatory changes to clarify expectations will provide stronger direction to industry – changes will signal that engagement at the application stage is expected where hapū and iwi request it, clarify what is expected of current and future permit/licence holders through iwi engagement reporting requirements and opportunities for hapū and iwi to review reports, and clarify that poor engagement may be taken into account for future permit allocation decisions.	**++** Including an engagement requirement in the CMA will increase direction for all current and future permit/licence holders and enable wider use of existing enforcement options for non-compliance. It would therefore likely be somewhat more effective than Option Three at reducing the variability of engagement (at least in the short and medium-term, as over time permits expire and new permits are granted the proportion of permits with the engagement condition will increase).
Proportionality	**0** Cost for the regulator is low as compliance largely relies on voluntary actions from industry. Cost	**+** This option is more about encouraging behaviour and is less directive. This option would only	**++** Increased assistance coupled with significantly more direction, and some wider use of enforcement	**++** As for Option Three, increased assistance coupled with significantly more direction, and

	of permit/licence holder compliance is low as (other than for recent PEPs and future PEP holders) permit holders have no formal regulatory engagement obligations.	impose additional costs on *new* Tier 1 permit holders and some new Tier 2 permit holders. This is considered proportionate to the scale of activities undertaken under those permits. There would be additional costs for the regulator in relation to ensuring compliance with engagement conditions. This slightly higher cost of complying for both permit holders and the regulator when compared to the status quo is seen as more proportionate to the importance of engaging.	options is proportionate to the desired objectives of the policy. Costs are unlikely to affect those permit/licence holders and permit applicants already engaging with iwi and hapū as expected. This option is proportionate as it will not penalise permit holders/applicants if hapū and iwi are unwilling/unable to engage. Reporting-related requirements only apply to Tier 1 permit holders and some new Tier 2 permit holders. This is considered proportionate to the scale of activities undertaken under those permits. Additional costs to the regulator to ensure/monitor compliance, pass on contact details of applicants, and arrange meetings to discuss iwi engagement reports where requested is seen as proportionate to the importance of engagement.	some wider use of enforcement options is considered much more proportionate than the status quo. This option is somewhat more proportionate than Option Three, as it will also apply to current Tier 1 and potentially some current Tier 2 permit/licence holders.
Regulatory certainty	**0** There is uncertainty among regulated parties as to what is expected in terms of iwi engagement.	**+** Better operational support and increased use of engagement conditions would clarify expectations to some extent. It may be difficult for permit holders to know with certainty when engagement conditions are being sufficiently met, although the	**++** This option clarifies expectations for engagement through specifying minimum content requirements for reports and providing hapū and iwi with more opportunities to give feedback. It also clarifies that past engagement may be taken into account for future permit allocation decisions. As with Option Two,	**++** This option clarifies expectations as with Options Two and Three. As with engagement conditions, the engagement requirement in the CMA will result in uncertainty, although the regulator can provide guidance to help mitigate this risk.

		regulator can provide guidance to help mitigate this risk.	engagement conditions will result in some uncertainty, although the regulator can provide guidance to help mitigate this risk.	
Practicality	**0** Current settings create a lack of clarity which requires the regulator to continuously ensure parties understand what is expected. The regulator has no means for enforcing engagement, other than for recent and future PEP holders.	**+** Introducing a broad engagement requirement to minerals permit conditions will result in some administrative uncertainty, as it will be difficult to know when it is being sufficiently met from a compliance and enforcement perspective. However, compared to the status quo the regulator will have some means to enforce engagement, and permit conditions are able to be tailored to respond to the varying circumstances and expectations of hapū and iwi. Engagement conditions are also practical as they can be amended by NZP&M if required (with consent from the permit holder). On balance this is considered more practical than the status quo.	**++** On balance, Option Three is considered more practical than the status quo. NZP&M will not have to seek consent from permit/licence holders/applicants to pass on permit applicant contact information and enable hapū/iwi to review and discuss engagement reports. Changes should also increase clarity of expectations, which should make it simpler for NZP&M to support these relationships. Engagement conditions will result in some administrative uncertainty, and there may be further uncertainty involved in understanding when minimum content requirements for iwi engagement reports have been sufficiently met.	**+** Option Four is considered more practical than the status quo. However, having an engagement requirement in the CMA means the same requirement will apply to all hapū/iwi, which does not leave much flexibility to respond to the varying circumstances and expectations of hapū and iwi.
Overall assessment	**0**	**4**	**8**	**7**

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

103. **Option Three is the preferred option:**

- It effectively addresses the policy problem by not only increasing assistance and guidance for positive engagement (e.g. by increasing operational supports, and stipulating content requirements for reports), but also providing more opportunities to direct both permit/licence holders and permit applicants, and to and enforce engagement (as a result of having more requirements in the CMA and permit conditions).

- It is proportionate to the policy problem. Having stronger operational support, more widely used engagement requirements, and stronger incentives in the CMA reflects the importance of the Crown ensuring hapū and iwi are engaged in a way that demonstrates respect and understanding for their authority, mana and expertise. Costs for the regulator are low, as are direct costs for industry, particularly where they are already engaging well. Additional costs apply to new Tier 1 permit holders and some new Tier 2 permit holders. This is considered proportionate to the scale of activities undertaken under those permits.

- This option clarifies expectations for engagement through operational changes, the introduction of required content for iwi engagement reports, and increased opportunities for hapū and iwi to provide feedback on engagement will also help to clarify what is expected. It also clarifies that past engagement may be taken into account for future permit allocation decisions. While the use of broad engagement conditions can result in some regulatory uncertainty for permit/licence holders, as it is difficult to know when they are being sufficiently met, the regulator can provide guidance to help mitigate this risk.

- The option responds to feedback from industry requesting more guidance and support for their engagement with hapū and iwi. While industry feedback has been that engagement is already well catered for under environmental legislation, under this option the purpose of engagement under the CMA will be clarified.

- Hapū and iwi will likely support the Option Three particularly as the proposals were developed in consultation with hapū and iwi. Some groups voiced a preference for enduring regulatory change in addition to operational change. While hapū and iwi were supportive of having a broad engagement requirement in the CMA (Option Four), they also voiced concern about how the requirement would be worded to ensure regulatory certainty, while also avoiding unintended obligations for hapū and iwi. It is therefore considered that they would support including the requirement in permit conditions, which can also be tailored depending on the particular circumstances of the permit and interests of hapū/iwi.

104. It is the recommended option when compared with Option One. The status quo will not meet all of the policy objectives. Under the status quo hapū and iwi consider engagement is variable, and permit/licence holders and applicants are uncertain of the standard of engagement expected.

105. It is also the recommended option when compared with Option Two:

- While Option Two would make some difference to permit/licence holder engagement with hapū and iwi, Option Three would be the more effective option. The proposed regulatory changes would increase guidance, direction and availability of enforcement measures to encourage positive engagement and, unlike Option Two, also introduce requirements for permit applicants.

- Some hapū and iwi have communicated a preference for enduring regulatory change above changes that are left to the discretion of NZP&M, they may not therefore be supportive of Option Two.

106. It is also the recommended option when compared with Option Four because, although Option Four would be somewhat more effective, Option Three would be more practical:

- Unlike Option Three, Option Four would extend the engagement requirement over both current and future permits, and therefore would be more effective at improving engagement.

- However, Option Three is the more practical option because permit conditions are more easily amended than legislative provisions and can be tailored to the varying preferences of hapū and iwi across different rohe, and the varying nature of mining activities across New Zealand. This flexibility is important as getting the wording of such an engagement requirement right is likely to be difficult. There is a need to ensure regulatory certainty, in that permit holders understand what is expected of them, while also ensuring effectiveness, fairness for permit/licence holders in situations where hapū/iwi are unwilling or unable to engage and avoiding unintended obligations for hapū and iwi.

- It is considered that Option Three is the best option at this time, so that the wording of engagement conditions can be tested and refined. Constitutional conventions [redacted]

107. All options are effective at not duplicating functions provided for in other enactments in the wider Crown-minerals regulatory regime. Engagement required under other enactments is restricted to consideration of the environmental impacts of specific activities that meet a certain threshold for engagement. The above proposals encourage early, ongoing, relationship-based engagement on a broader range of matters (such as economic and broader cultural interests of mana whenua).

What are the marginal costs and benefits of the option?

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
Additional costs of the preferred option compared to taking no action			
Permit applicants (for certain application types).	The direct cost of complying with the new requirement to provide contact details that can be shared with iwi and hapū. There may be indirect costs arising from any ongoing engagement depending on what existing engagement the permit applicant already undertakes.	LOW LOW to MEDIUM *Costs might include one or more engagement FTE, depending on the nature and size of the project.*	HIGH *Involves including details with application only.* MEDIUM *Exact cost is unknown, as it will vary depending on the permit application. However, cost very unlikely to be high as engagement is still discretionary.*
Existing permit/licence holders for whom iwi engagement reporting obligations apply	The direct cost of complying with the new requirements (e.g., minimum content, sharing reports, and annual meetings). There may be indirect costs arising from any ongoing engagement, depending on what existing engagement the permit/licence holder undertakes.	LOW LOW to MEDIUM *Costs might include one or more engagement FTE, depending on the nature and size of the project.*	HIGH *Changes are not onerous.* MEDIUM *Exact cost is unknown, as it will vary depending on the permit/licence. However, cost not considered to be high in the context of the permit types to which it applies (larger scale operations).*
Some new permit holders (all Tier 1 and some Tier 2)	There are direct costs associated with including engagement requirements in future permit conditions for certain types of permits.	MEDIUM *Costs might include one or more engagement FTE, depending on the nature and size of the project.*	MEDIUM *Exact cost is unknown, as it will vary depending on the permit. However, cost not considered to be*

			high in the context of the permit types to which it applies (larger scale operations).
The regulator (NZP&M)	Some additional resourcing required to increase support and oversight of engagement. This can be covered by funding recently awarded through Budget 2022 ($38million over four years), including for the purpose of supporting NZP&M to improve and sustain how it engages with hapū and iwi.	LOW *Changes are not a significant departure from the status quo.*	HIGH *The regulator has been consulted.*
Hapū and iwi	While engagement for hapū and iwi remains discretionary under the changes, the changes will increase the demand for engagement meaning additional capability may be required. The nature and cost of this capability will vary depending on the hapū and iwi, as well as on the nature and scale of the permit/licence activities they are being engaged on.	MEDIUM – *Degree and therefore cost of engagement varies greatly depending on the hapū/iwi and permit. No cost if they choose not to engage, but resourcing pressures faced by hapū and iwi mean if they do, the cost for them of engaging is not low.*	MEDIUM *Hapū and iwi have continuously raised that limited resourcing impacts their ability to engage.*
Total monetised costs	N/A		
Non-monetised costs	Overall, the changes are not seen to be particularly costly for any affected group.	LOW – MEDIUM *Changes do not represent a big departure from the status quo.*	HIGH – MEDIUM *In some instances, the associated costs of the changes are clearly apparent, while for others they will depend on the particular circumstances.*
Additional benefits of the preferred option compared to taking no action			
Permit/licence holders and permit applicants to which the	The direct benefit would be greater assistance for iwi engagement, and greater certainty as to the	LOW – MEDIUM *Will benefit as described, but*	HIGH – *Industry have indicated that they would benefit from greater*

proposals would apply.	Crown's expectations for engagement. There may also be indirect benefits from engagement e.g. hapū and iwi can hold useful expertise for when problems arise, and positive engagement can contribute to the positive reputation of a company/any Corporate Social Responsibility goals.	*there is no direct economic benefit.* LOW – MEDIUM *Depends on the circumstances of engagement.*	*operational support, as proposed.* MEDIUM – *Engagement guidelines developed in consultation with industry indicate that industry can benefit from positive engagement.*
The regulator (NZP&M)	The regulator will have better information and tools to be able to support and monitor positive engagement.	MEDIUM	HIGH *The regulator has been consulted.*
Hapū and iwi	Hapū and iwi will be better informed of mining plans and activities in their rohe. There is also the potential for additional benefits – e.g. employment and skills benefits.	HIGH	HIGH *Hapū and iwi have continuously raised that they would like the Crown to ensure engagement is improved for these reasons.*
Total monetised benefits	N/A		
Non-monetised benefits	The option is seen to have high benefits for hapū and iwi, it is also seen to have low - medium benefits for other affected parties.	MEDIUM	MEDIUM

Section 3: Delivering an option

How will the new arrangements be implemented?

108. Legislative and regulatory changes are to be incorporated into a Crown Minerals Amendment Bill. It is anticipated this will be introduced in the second half of 2022, and would be expected to come into effect in the second half of 2023.

109. NZP&M will be responsible for the implementation of the regulatory arrangements. For example, they will pass on contact details provided as part of permit applications to the relevant hapū and iwi as part of their normal consultation and notification processes. They will also organise meetings to discuss iwi engagement reports each year where these meetings are requested, similar to how they currently organise Annual Review Meetings.

110. Changes will be communicated through normal channels, such as the NZP&M website, and the regular meetings that NZP&M has with industry and iwi. There are a number of annual public engagements where NZP&M can also communicate these changes, such as events organised by Minerals West Coast, Straterra and Energy Resources Aotearoa, and industry conferences and events that are currently organised by Freeman Media. NZP&M can also discuss the changes at meetings with iwi in relation to various Crown minerals relationship instruments.

111. The new obligations proposed for permit/licence holders and applicants are not onerous, particularly where they are already prioritising positive engagement with Māori. NZP&M will be able to provide information and support to permit/licence holders, permit applicants, and hapū and iwi, prior to implementation.

112. Consequential amendments to the Minerals Programmes will also be considered if/when the proposals are put in place. These amendments can help to elaborate on and clarify the changes for industry, NZP&M, and hapū and iwi.

113. The additional considerations introduced by the proposals will be incorporated into the regulators' standard monitoring and assessment of minerals permits. MBIE was awarded additional funding through Budget 2022 to enhance both its iwi engagement and its approach to monitoring, compliance and enforcement, which will help support implementation of these changes.

114. As the changes are not a significant departure from the status quo, the compliance and enforcement processes as used currently in relation to iwi engagement reporting requirements, and engagement conditions on permits would apply. MBIE is well practiced with using the VADE model where the regulatory toolbox allows regulatory response to be tailored to the nature and gravity of non-compliance.

115. The operational changes proposed are currently being considered by NZP&M, with a view to starting to implement them over the second half of 2022. Funding awarded through Budget 2022 will also help ensure NZP&M has the resources available to engage with iwi and industry to inform them of these changes and implement operational and regulatory improvements to iwi engagement.

116. An implementation risk is that the impact of some changes will be minimal, as resourcing pressures mean hapū and iwi have limited capacity to engage. NZP&M has

identified this risk and is currently considering operational changes that look to enhance the ability of hapū and iwi to engage with its processes.

How will the new arrangements be monitored, evaluated, and reviewed?

118. MBIE has a responsibility in its regulatory stewardship role to monitor, review and report on regulatory systems. As part of this, NZP&M has a Regulatory Stewardship Assurance Programme.

119. Any new changes related to permit/licence holder and permit applicant engagement with hapū and iwi would be monitored, evaluated and reviewed as part of the wider CMA framework. This would include determining whether the changes are delivering the benefits envisaged and addressing any unintended costs and other impacts.

120. Aside from this, changes under the preferred option would increase the degree of information and oversight NZP&M would have over the status of relationships between permit/licence holders and hapū and iwi, which would assist NZP&M with monitoring the impacts of the changes. For example:

    - NZP&M would be able to monitor and review the content of iwi engagement reports, including hapū/iwi feedback, to determine whether the changes have resulted in any improvements; and

    - meetings to discuss iwi engagement on a yearly basis would provide a further opportunity to assess and discuss the impact of the proposals.

121. NZP&M would have further opportunities to discuss the impact of the proposals, including through annual review meetings with permit/licence holders, and regular meetings with iwi arising from the various Crown minerals relationship instruments.

122. Constitutional conventions

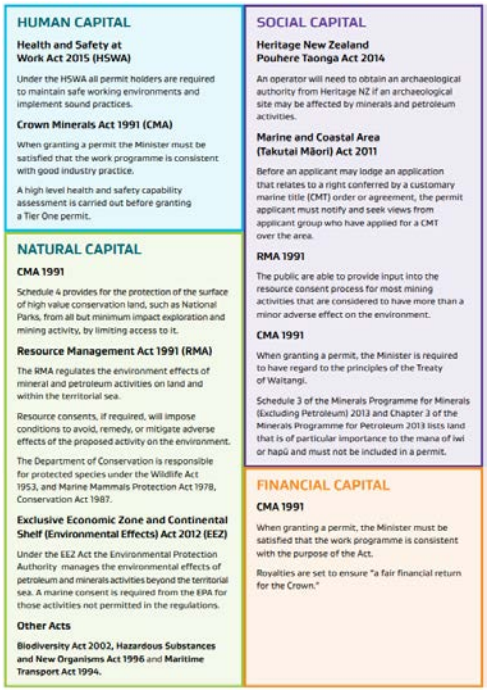
Annex One: Overview of the Crown-minerals and wider regulatory system

The Crown Minerals Act 1991 operates in a wider regulatory system of checks and balances

The Crown Minerals Act 1991 (CMA) is one among several pieces of legislation that relate to prospecting, exploring, or mining Crown minerals. The other key statutes include the Resource Management Act 1991 (RMA), the Maritime Transport Act 1994, the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, and the Health and Safety at Work Act 2015. Obtaining a permit under the CMA is necessary when the minerals are owned by the Crown, but it is not sufficient on its own to start to develop those minerals.

The CMA was introduced at the same time as the RMA. The efficient allocation and management of rights to develop Crown minerals, and the management of environmental effects from extracting these resources were deliberately separated at the time. This separation was intended to minimise potential conflict between the Crown's dual roles as resource owner and as regulator. It ensures independent and transparent decision making, clear accountability for the different objectives, and regulatory efficiency.

Overall, the regulatory system provides checks and balances which aim to achieve positive wellbeing outcomes. The below diagram sets out how the regulatory system accounts for the broader dimensions of wellbeing understood through the Treasury's 'Living Standards' framework which highlights natural, human, social and financial capital as key determinants of wellbeing.



The Crown Minerals Act 1991 regime

Role and purpose

The current purpose of the CMA is to promote the prospecting for, exploration for, and mining of Crown-owned minerals for the benefit of New Zealand. "The benefit of New

Zealand" is defined as best achieved by increasing New Zealand's economic wealth through maximising the economic recovery of New Zealand's Crown-owned minerals.

Incremental changes to the CMA's purpose statement to bring it more in line with Government priorities and the substantive provisions of the CMA are also being considered as part of the Tranche Two Review.

Under section 10 of the CMA, all petroleum, gold, silver, and uranium lying in its natural state within New Zealand land, including land underwater in the Territorial Sea, Exclusive Economic Zone or Extended Continental Shelf, is the property of the Crown.

In summary, the CMA sets out the legislative framework for:

- the efficient allocation of the right to explore for, prospect for, and mine Crown minerals;
- the effective management of those rights; and
- obtaining a fair financial return from the development of Crown-owned minerals.

The role of the Minister of Energy and Resources is to manage this regime and deliver these outcomes.

The CMA enables a permit to be issued, which provides the right to prospect for, explore for, or mine Crown-owned minerals in a particular area. A permit provides a permit holder with these rights subject to certain conditions, including compliance with good industry practice and the payment of royalties to the Crown.

The CMA replaced a range of Acts that had previously awarded licences to develop Crown owned minerals. The holders of licences granted under the former legislation continue to have obligations under that legislation and under the CMA.

Programmes and regulations

The CMA is supported and applied through the Minerals Programme for Petroleum 2013, the Minerals Programme for Minerals (Excluding Petroleum) 2013 (collectively referred to as 'the Programmes') and regulations.

The Programmes may set out or describe how the Minister or chief executive (of MBIE) will exercise any specified powers or discretions conferred on them by, or under, the CMA. It also sets out the requirements for consultation with iwi and hapū. The regulations set out the reporting, fee, and royalty obligations on permit and licence holders.

The permitting process

Permit work programmes are designed to strike a fair balance between giving the permit holder flexibility as to how they explore for, prospect for, or mine petroleum or minerals while making sure this occurs in a reasonable timeframe and in a way consistent with 'good industry practice'.

The CMA separates permits into Tier 1 and Tier 2 categories. Tier 1 includes high-return, high-risk projects. Applicants for a Tier 1 permit must satisfy a high-level health, safety, and environmental capability test. Tier 2 permits are lower-return industrial, small business, and hobby mineral operations needing a simpler, more pragmatic regulatory regime.

Permits are required at different stages of operation. Each permit has specific timeframes and requirements associated with it, which vary for petroleum and minerals permits. The types of permits are:

- **Prospecting permit** – gives the permit holder the right to look for minerals owned by the Crown using survey activities to assess the area.
- **Exploration permit** – gives the permit holder the right to explore for mineral deposits and evaluating the feasibility of mining.

- **Mining permit** – gives the permit holder the right to mine Crown owned minerals once a discovery has been made.

Annex Two: Review of the Crown Minerals Act 1991

In June 2019, Cabinet agreed to the following principles, objectives, and outcomes of Tranche Two of the Crown Minerals Act 1991 (CMA) Review:

Principles

- Support New Zealand's wellbeing – The Review will focus on making changes that benefit the long-term wellbeing of New Zealanders;
- Fairness – The Review will seek to ensure that legislative settings are fair for all affected parties. Fair legislative settings may affect the allocation of benefits, opportunities, and risks associated with the sector;
- Future-proofing – The Review will seek to ensure that the legislative regime is able to accommodate new regulatory challenges as they arise; and
- Responsible regulation – The Review will seek to ensure that the CMA regime is clear, predictable, and coherent.

Objectives and outcomes

Objective	Outcomes
New Zealand's petroleum and minerals resources sector should contribute to the country's productive, sustainable and inclusive economy. *This should be done by:* • *Growing and sharing New Zealand's prosperity, and supporting thriving regions;* • *Supporting the transition to a clean, green New Zealand; and* • *Providing a secure and affordable supply of critical resources.*	• Crown-owned minerals are for the benefit of all New Zealanders; • The Crown will keep Māori informed, listen and acknowledge concerns and aspirations, and provide feedback on how their input influences decisions about the sector; • A sector that is contributing to the transition to a clean, green, carbon-neutral New Zealand; and • The management of the sector supports the realisation of the Government's wider priorities (including affordable energy, housing, urban development and roading infrastructure)
Risks and downsides associated with the sector need to be appropriately managed. *Risks and downsides may include:* • *Harm to people and the environment; and* • *Financial loss to the Crown, businesses, individuals and third parties.*	• The likelihood of costs falling to the Crown or other third parties, when they are not liable or responsible, is minimised; and • Liabilities are clear and agreed upfront.
The sector needs to be governed by a regulatory regime that is clear, coherent and fair.	• The CMA regime aligns with the Government Expectations for Good Regulatory Practice; • The requirements of the regime are clear, fair and efficient for industry, the regulator and other affected parties; and • Compliance and enforcement tools are fit-for-purpose.

Annex Three: Summary of submissions from Chapter 5 of the 2019 discussion document relating to permit holder engagement

2019 Discussion document Chapter 5: Māori engagement and involvement in Crown minerals

Substantial submissions

The Māori engagement chapter received 31 substantial submissions, 10 of these were from iwi groups and Māori organisations. The chapter asked six questions on Māori engagement and involvement in Crown Minerals.

"Do you agree or disagree that iwi engagement reports should be evaluated against a set of reporting requirements?" and "If so what should permit holders be required to report on in regards to engaging with iwi and hapū?"

Four out of the 10 iwi groups submitted on this proposal. All four supported this proposal but generally felt that engagement reports were meaningless without a mandatory requirement for permit holders to engage with iwi and hapū and felt that the engagement report should also be signed off by iwi and hapu before it is submitted to NZP&M.

a) "*thinks this may lead to more comprehensive and transparent reporting. However, we note that unless our recommendation for the requirement of hapū and iwi to validate those reports, then even stipulated content will not necessarily capture the most relevant and pertinent issues relating to mana whenua*." - ***Te Rūnanga o Ngāti Ruanui Trust***.

b) *"There is no absolute requirement to engage, and as the discussion document says there is no penalty for non-engagement. The reporting clause is therefore meaningless. And, as already stated there is no measure or assessment about the effectiveness of the consultation. Moving forward if this provision is to remain, as part of each application process an engagement report, approved by the iwi/hapū should be submitted as part of the process."* – ***Te Korowai o Ngāruahine Trust.***

Other submitters generally supported iwi engagement reports being evaluated against a set of reporting requirement. **New Zealand Law Society** submitted "*This proposal would provide clarity to permit holders as to what is required and having a consistent format for the report would enable key issues or trends emerging overtime to be identified. It may also enable MBIE to identify where permit holders may benefit from additional guidance in relation to engagement*."

Bathurst Resources Limited however "*queried whether requiring iwi engagement reports under CMA adds any real value to the administration of granted permits and whether it only duplicates what is already required under RMA*."

Very few submissions commented on what permit holders should actually be required to report on. **Ngati Tahu-Ngati Whaoa Runanga Trust** was the only submitter to suggest a detailed list of reporting requirements. "*Reporting requirements must be set by iwi in conjunction with the Crown. Reporting requirements could include:*

a) What iwi group has been involved in any engagement process

b) *What permit activities have been actioned in the previous year and what is planned for the next year and how this has been notified and discussed with relevant iwi*

c) *What opportunities have been provided for iwi to have input into these activities (where applicable)*

d) *What concerns have been raised by iwi regarding any activities and how these have potentially been addressed*

e) *Any other issues discussed during engagement."*

Te Rūnanga o Ngāi Tahu *"welcome the opportunity to co-design requirements for Iwi Engagement Reports with the Crown. This is important to ensure that mana whenua needs and aspirations are appropriately captured."*

"How can the Crown support effective engagement between Māori and permit holders?"

Comments from iwi and hapū can be summarised as

a) **Requirement for permit holders to engage with iwi and hapū** – "*Do not support the status quo. There is a need for permit applicants to begin engagement with Maori on all permits as early as possible which the Crown should require rather than just encourage. Engagement with iwi should not be seen as something that would be nice to do but rather necessary to do therefore no incentification should be required."* - ***Ngāti Tahu-Ngāti Whaoa Rūnanga Trust***

b) **Proof of consultation with iwi from applicants –** *"Would like to see proof of consultation with iwi from applicants with every application made to NZP&M."* - ***Te Ātiawa Manawhenua Ki Te Tau Ihu Trust***

c) **Mandatory culturally-based impact assessment reports –** *"Culturally-based impact assessment reports should be mandatory in consultation processes and required by applicants and regulators as part of the pre-application process. Ngāti Tama provision of such reports should also be remunerated accordingly by the applicant and regulator."* - ***Ngāti Tama ki Te Waipounamu Trust***

Comments from permit holders / industry can be summarised as:

d) **Already sufficient engagement between permit holders and iwi and hapū –** *"Within the West Coast, there is already fairly effective engagement between Māori and permit holders. Once a permit holder wishes to progress their permit to the consenting stage, there will be involvement from local authorities, most of whom will often request consultation with iwi."* – ***Minerals West Coast***

e) **MBIE could provide permit holders with iwi contact information** – *"NZP&M could assist by ensuring it has the authoritative iwi contact or contacts and provide for them to meet initially with the respective permit applicants or holder, prior to NZP&M formally accepting a permit application. Then it is up to each party to develop a relationship if so desired."* – ***Trans-Tasman Resources Limited***

f) **Government should only assist with those permit holders who are struggling with engagement** – *"Considers that the involvement by Government in existing, successful relationships between iwi and permit holders may not be helpful to those*

relationships, but the Government should ideally be able to assist those permit holders that are struggling with iwi engagement or are new to New Zealand. Todd recommends that guidelines be issued rather than prescriptive regulations." - ***Todd Corporation Ltd***

Online survey submissions

28 submissions were received via the online survey on the Māori engagement chapter. A majority of these submissions were from the general public. Submissions from the general public and environmental groups made a range of comments around more consultation being needed with Māori, the Treaty of Waitangi needing to be acknowledged, Māori being involved in decision making around mineral and oil and gas activities, more education for both iwi and hapū and permit holders and Māori being better resourced for engagement.

The submissions received from industry made a range of comments around more guidelines needed to aid permit holders with engagement with industry, more education, MBIE assisting permit holders to identify the correct contact points for iwi and making introductions and the government facilitating engagement between Māori and permit holders.

Annex Four: Summary of submissions from 2021/2022 engagement with hapū and iwi

Follow up engagement with hapū and iwi on draft proposals was carried out from November 2021 – February 2022. MBIE led workshops on the proposals at four huitopa (online hui), at which participants represented a minimum of 11 hapū and iwi.[11] MBIE also received seven written submissions, with three of these coming from representatives who also attended a huitopa, and four from other groups.[12]

Improve information provision to permit holders on effective engagement with hapū and iwi

This proposal was well supported. Representatives from Te Rūnanga o Ngāti Ruanui advised that this should be accompanied by legislative change, to ensure longevity.

Introduce a requirement for Tier 1 permit holders to make reasonable attempts to engage with mana whenua

There was broad support for this requirement. However, there were mixed reviews as to whether this should be limited to Tier 1 permits or apply to all permits, e.g. representatives from Te Rūnanga o Ngāti Waewae indicated a preference for it to apply to Tier 1 permits only, given the high number of Tier 2 minerals permits in their rohe, while representatives from Ngāti Tahu – Ngāti Whaoa Rūnanga Trust indicated a preference for it to apply to all permit holders. Feedback also included the need to clarify what is meant by a "reasonable attempt" at engagement, although there was agreement that the requirement should not create engagement obligations for hapū and iwi.

Prescribe minimum content for iwi engagement reports

There was broad support for this proposal, with a suggestion that templates should also be provided by NZP&M. Many groups provided feedback that hapū/iwi should have the opportunity to review these reports, and validate their content. Some groups also indicated an interest in attending Annual Review Meetings, at which the contents of these reports are currently discussed by permit/licence holders and NZP&M.

Introduce consequences for when no reasonable attempts at engagement are made and/or reporting requirements are not met

There was broad support for there being a range of consequences for poor engagement or failing to comply with reporting requirements, with revocation of the licence/permit being at the top end of the scale. Te Ohu Kaimoana proposed that past performance should be considered for new permits.

Require permit holders/applicants to provide certain information to hapū and iwi

[11] Including representatives from Te Arawa River Iwi Trust; Ngāti Kearoa-Ngāti Tuara, Ngāti Tahu-Ngāti Whāoa, Te Arawa Lakes Trust, Tuhourangi-Ngāti Wāhiao, Te Rūnanga o Ngāti Ruanui Trust, Te Korowai o Ngāruahine Trust, Te Kotahitanga o Atiawa Trust, Te Kāhui o Taranaki Iwi, Te Rūnanga o Ngāi Tahu, Te Rūnanga o Ngāti Waewae.

[12] Including representatives from Te Ohu Kaimoana, Te Rūnanga o Ngāti Kuia Trust, Ngāti Tama ki te Waipounamu Trust, and Te Rūnanga o Ōraka Aparima.

While some groups indicated that they are not provided with enough information, others considered the information they are provided with to be sufficient. Some indicated that as a minimum they would like to be provided with an introduction and contact details.

Introduce a requirement in the programmes for NZP&M to support quality engagement between iwi and permit holders

While some indicated support for this requirement, it was not clear through engagement that NZP&M was not currently providing this support where requested.

Clarify in the programmes why engagement between hapū and iwi and permit holders is important

Most groups were supportive of this proposal. Te Rūnanga o Ngāti Ruanui submitted that sometimes permit holders come to iwi when something goes wrong, and that positive engagement in these instances can keep people safe, and provide better solutions for the community. Some groups emphasised the need to ensure permit holders are engaging as early as possible.