



COVERSHEET

Minister	Hon Dr Megan Woods	Portfolio	Energy and Resources
Title of Cabinet paper	Crown Minerals Amendment Bill: Approval for Introduction	Date to be published	24 November 2022

List of documents that have been proactively released

Date	Title	Author
November 2022	Crown Minerals Amendment Bill: Approval for Introduction	Office of the Minister of Energy and Resources
17 November 2022	CAB-22-MIN-0525 Minute	Cabinet Office

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 reason of constitutional conventions.

In Confidence

Office of the Minister of Energy and Resources
Chair, Cabinet Legislation Committee

Crown Minerals Amendment Bill: Approval for Introduction

Proposal

- 1 This paper seeks approval for the introduction of the Crown Minerals Amendment Bill (the Bill).
- 2 The Bill introduces provisions to:
 - 2.1 enable a more flexible approach in the management and allocation of rights to Crown-owned minerals, including increasing discretion as to the timing and frequency of future block offers for allocating petroleum exploration permits in onshore Taranaki;
 - 2.2 improve permit/licence holder engagement with hapū and iwi; and
 - 2.3 clarify decommissioning-related provisions.

Policy

The Crown Minerals Act 1991 Review

- 3 This Government commenced a two-part review of the Crown Minerals Act 1991 (CMA) in 2018 [CAB-18-MIN-0306]. Tranche One gave effect to the policy to end future offshore petroleum exploration and confine any future onshore development to the Taranaki region only. As a result, the CMA was amended via the Crown Minerals (Petroleum) Amendment Act 2018.
- 4 In June 2019, Cabinet agreed to the Terms of Reference for Tranche Two of the CMA Review [DEV-19-MIN-0120]. It was intended as a wide-ranging review to consider the factors needed to enable New Zealand's petroleum and mineral resources sector's contribution to a productive, sustainable and inclusive economy.
- 5 In June 2020, Cabinet agreed to progress proposals on liability and financial assurance, and compliance tools ahead of other proposals under Tranche Two [DEV-20-MIN-0092]. The CMA was subsequently amended via the Crown Minerals (Decommissioning and Other Matters) Amendment Act 2021.
- 6 In November 2020, I decided to conclude Tranche Two by making incremental changes designed to align the CMA with wider Government policy while maintaining its current role, **Constitutional conventions**

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Constitutional conventions

8 The Bill proposes changes as part of Tranche Two of the CMA Review.

The CMA's promotional intent provides little flexibility as to how the Crown manages and allocates rights to Crown-owned minerals

- 9 In 2013, the CMA was amended to explicitly promote the prospecting for, exploration for, and mining of Crown-owned minerals for the benefit of New Zealand. It reflected the priorities of the Government at the time to increase investment in New Zealand's resources sector.
- 10 Since 2013, the strategic and wider regulatory environment in which the CMA operates has changed. Climate change is an increasing focus, as is the use of an intergenerational lens in decision-making that considers the longer-term and wider dimensions of well-being, such as environment, social and cultural outcomes.
- 11 In 2019, the Government set a domestic target to reduce our greenhouse gas emissions (other than from biogenic methane) to net-zero by 2050. Subsequently, in 2021, we updated New Zealand's first Nationally Determined Contribution under the Paris Agreement, which set a target of a 50 per cent reduction of net emissions below our gross 2005 level by 2030.
- 12 In 2019, we also announced New Zealand's Resource Strategy, *Responsibly Delivering Value – A Minerals and Petroleum Strategy for Aotearoa New Zealand: 2019-2029*, which is intended to lay the groundwork to help realise our vision for a responsible minerals and petroleum sector that delivers value for New Zealand, now and in the future.
- 13 New Zealand's first Emissions Reduction Plan was released in May 2022, which included strategies and actions to contribute to the global effort to limit global warming to 1.5 degrees Celsius above pre-industrial levels.
- 14 In this context, the CMA's focus on promoting the development of petroleum and minerals does not enable flexibility in the choices available to the Crown as resource owner. It limits the scope for decisions to achieve a managed and equitable transition away from fossil fuels, while also sustaining investor confidence to continue the development of Crown-owned minerals where required.

The CMA could be clearer as to the Crown's expectations for engagement between permit/licence holders and hapū and iwi

- 15 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.

- 16 Feedback received from hapū and iwi suggest that engagement with permit/licence holders and permit applicants is variable. Engagement is not always prioritised, the quality of engagement is variable, and there can be a lack of transparency when sharing information.
- 17 The current approach to permit/licence holder and permit applicant engagement is largely voluntary, and expectations for good engagement can be unclear. Where relationships are poor, potential benefits resulting from positive relationships are foregone.

Minor amendments to the CMA are required to clarify provisions relating to decommissioning

- 18 The Crown Minerals (Decommissioning and Other Matters) Amendment Act 2021 introduced changes to strengthen the decision-making tests for permit acquisition, transfer and change provisions. These changes sought to ensure that only companies/individuals who have the financial and technical capability to give effect to the work programmes and permit conditions are able to acquire permits for petroleum and minerals in New Zealand [DEV-21-MIN-0058].
- 19 They were intended to reduce the likelihood of companies gaining permits in New Zealand that do not have the financial and technical capability to undertake and fund decommissioning.
- 20 Minor amendments are needed to clarify and make consistent the CMA's permit grant, transfer and change tests. These changes will ensure that assessments can be carried out not just on compliance with work programmes and permit conditions, but also in relation to the decommissioning and post-decommissioning-related obligations in the CMA.

Cabinet has agreed to policy proposals to address these issues

- 21 To address the issues outlined above, Cabinet agreed on 4 July 2022 to [CAB-22-MIN-0256]:
 - 21.1 amend the purpose statement to make neutral its promotional intent and enable increased flexibility as to the allocation of rights to Crown-owned minerals;
 - 21.2 amend associated provisions in the CMA that reflect its promotional intent, such as section 5 (functions of the Minister);
 - 21.3 amend relevant provisions of the CMA to allow greater flexibility in the frequency of public tenders for petroleum exploration permits;
 - 21.4 require, as part of certain application types, provision of contact information to be passed on by MBIE to hapū and iwi whose rohe

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- includes some or all of the permit area or who otherwise may be directly affected by the permit if granted;
- 21.5 introduce minimum content for iwi engagement reports currently required of permit and licence holders under the CMA;
 - 21.6 require permit and licence holders to share iwi engagement reports with hapū and iwi whose rohe includes some or all of the permit area or who otherwise may be directly affected by the permit for their feedback, prior to their submission;
 - 21.7 enable annual meetings between hapū and iwi, permit and licence holders and MBIE for the purpose of discussing the content of annual iwi engagement reports;
 - 21.8 that changes relating to iwi engagement reports should apply to both permit holders under the CMA and licence holders under the Petroleum Act 1937, the Coal Mines Act 1979, the Mining Act 1971, and the Iron and Steel Industry Act 1959;
 - 21.9 make explicit that decision-makers under the CMA may have regard to feedback from hapū and iwi on past permit/licence holder engagement when making permit allocation decisions;
 - 21.10 clarify and make consistent the permit grant, transfer, and change tests in the CMA to ensure assessments against the ability to give effect to work programmes, permit conditions, and decommissioning obligations in the CMA;
 - 21.11 simultaneously amend the minerals programmes to reflect changes consistent with those made to the CMA; and
 - 21.12 amend the CMA to disapply the normal consultation requirements for amendments to the minerals programmes for any amendments that are consequential to changes to the primary legislation proposed above.
- 22 In line with Cabinet's decisions, the Bill amends and introduces several new provisions to address the lack of flexibility in the management of Crown mineral development, to improve permit/licence holder engagement with hapū and iwi, and clarify provisions relating to decommissioning.

The Bill amends the CMA's promotional intent

- 23 The Bill is designed to amend the purpose statement and associated provisions in the CMA to provide for more discretion as to how the Crown manages and allocates rights to petroleum and minerals for the benefit of New Zealand and New Zealanders. Key to this is the replacement of the word "promote" in the CMA's purpose statement with the word "manage".
- 24 The provisions are intended to provide increased flexibility in decision making to accommodate changes to policy objectives in an enduring way. They will

also have the intended effect of increasing flexibility in relation to when and how often future public tenders for petroleum exploration permits take place.

The Bill creates more certainty around expectations for hapū and iwi engagement and potential consequences for poor engagement

- 25 The Bill introduces new provisions to give effect to Cabinet's policy decisions relating to enhancing permit/licence holder and permit applicant engagement with hapū and iwi. The Bill has been designed so that engagement remains discretionary for hapū and iwi, and where hapū and iwi choose not to engage, permit/licence holders do not face disadvantages.
- 26 Some Cabinet policy decisions relating to industry engagement with hapū and iwi will be progressed separately to the Bill. This includes the requirement for provision of contact information to be passed on to hapū and iwi as part of certain application types, and the specification of content requirements for iwi engagement reports. These changes will require amendments to the Crown Minerals (Petroleum) Regulations 2007, the Crown Minerals (Minerals Other than Petroleum) Regulations 2007.

The Bill makes minor amendments to clarify provisions relating to decommissioning

- 27 The Bill amends the CMA to clarify and make consistent the CMA's various permit grant, transfer and change provisions. This will ensure that assessments can be carried out not just in relation to compliance with work programmes and permit conditions, but also on the decommissioning and post-decommissioning-related obligations in the CMA.

Impact analysis

- 28 The regulatory impact analysis requirements apply to proposals that seek to enable a more flexible approach in the management of Crown-owned minerals and improve permit holder engagement with hapū and iwi.
- 29 Two Regulatory Impact Assessments were prepared in relation to those proposals and were reviewed by MBIE's Regulatory Impact Analysis Review Panel. The Panel considered that the information and analysis summarised in the Impact Statements meets the criteria necessary for Ministers to make informed decisions on the proposals.
- 30 The Treasury's Regulatory Impact Analysis team has determined that the proposal to clarify permit grant, transfer and change tests in relation to decommissioning and post-decommissioning obligations in the Crown Minerals Act 1991 is exempt from the requirement to provide a Regulatory Impact Statement. This is on the grounds that it has been addressed by existing impact analysis.

Compliance

- 31 The Bill complies with each of the following:

- 31.1 the principles of the Treaty of Waitangi;
- 31.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
- 31.3 the Departmental Disclosure Statement requirements;
- 31.4 the principles and guidelines set out in the Privacy Act 1993;
- 31.5 relevant international standards and obligations; and
- 31.6 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee (LDAC).

Consultation

Public consultation

- 32 MBIE consulted publicly from 19 November 2019 to 27 January 2020 as part of the Government's 2019 *Discussion Document - Review of the Crown Minerals Act 1991* (2019 discussion document)
- 33 Chapter 1 of the 2019 discussion document included five questions on the purpose statement in the CMA, and whether this should be changed. 167 submissions were received on the purpose statement, of which 57 were from the online survey. Proposals around the other aspects of the promotional intent in the CMA, such as the functions of the Minister and the timing of public tenders for petroleum exploration permits, were not specifically consulted on.
- 34 Chapter 5 of the 2019 discussion document (the Māori engagement chapter) 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. The Māori engagement chapter received 31 substantial submissions, 10 of these were from iwi groups and Māori organisations. 28 submissions were also received via the online survey on the Māori engagement chapter.

Iwi engagement

- 35 Subsequent to engagement on the 2019 discussion document, MBIE undertook further engagement with hapū and iwi from November 2021 to February 2022 on draft proposals in relation to the Māori engagement chapter. MBIE ran four *huitopa* (online hui), at which participants represented at least 11 hapū and iwi. MBIE also received seven written submissions, with three of these coming from representatives who also attended a *huitopa*, and four from other groups.

Inter-agency consultation

- 36 Ministry of Justice, the Treasury, Ministry for the Environment, Te Arawhiti, Treaty Provisions Oversight Group, Privacy Commission. The Department of Prime Minister and Cabinet was informed.

Binding on the Crown

- 37 The CMA already binds the Crown. The Bill does not change this.

Creating new agencies or amending law relating to existing agencies

- 38 The Bill does not create any new agencies.

Allocation of decision-making powers

- 39 The Bill does not create any new decision-making powers for the Minister. However, the amendment to the purpose statement will increase the Minister's/delegated decision-maker's discretion when making decisions under the CMA, including as to the timing of block offers.
- 40 The changes to section 29A also explicitly authorise the Minister/delegated decision-maker to have regard to feedback from iwi/hapū as to the quality of permit applicant engagement when considering granting a permit.

Associated regulations

- 41 The changes in the purpose statement will require consequential amendments to the Crown Minerals (Petroleum) Regulations 2007, the Crown Minerals (Minerals Other than Petroleum Regulations 2007, the Minerals Programme for Petroleum 2013 and the Minerals Programme for Minerals (Excluding Petroleum) 2013.
- 42 The changes to hapū and iwi engagement requirements will require consequential changes to the Minerals Programme for Petroleum 2013 and the Minerals Programme for Minerals (Excluding Petroleum) 2013.
- 43 Further amendments to the regulations will also be progressed alongside this Bill based on Cabinet decisions to:
- 43.1 require, as part of certain application types, provision of contact information to be passed on by MBIE to hapū and iwi whose rohe includes some or all of the permit area or who otherwise may be directly affected by the permit if granted, and
- 43.2 introduce minimum content for iwi engagement reports currently required of permit and licence holders under the CMA.
- 44 I will report back to the Cabinet Legislation Committee at a later date on progressing these supporting changes.

Other instruments

- 45 The proposed Bill does not include provisions empowering the making of other instruments that are deemed to be legislative instruments or disallowable instruments.

Definition of Minister/department

- 46 The proposed Bill does not contain a definition of Minister, department, government agency or chief executive of a department.

Commencement of legislation

- 47 The Bill will come into force on the day after it receives Royal Assent.

Parliamentary stages

- 48 I propose the Bill be introduced in the week commencing on 14 November 2022 and be passed by mid-2023. The Bill should be referred to the Economic Development, Science and Innovation Committee.

Proactive Release

- 49 Consistent with the Government's proactive release policy, I intend to release this paper within 30 business days from the date that Cabinet considers the paper.

Recommendations

The Minister of Energy and Resources recommends that the Committee:

- 1 **note** that the Crown Minerals Amendment Bill 2022 holds a category four priority (to be passed if possible by July 2023) on the 2022 Legislation Programme;
- 2 **note** that the Bill amends provisions in the CMA to enable flexibility in the management of Crown mineral development;
- 3 **note** that the Bill introduces new provisions to improve the quality of permit/license holder engagement with hapū and iwi under the CMA;
- 4 **note** that the Bill makes minor amendments to clarify provisions relating to decommissioning and post-decommissioning;
- 5 **approve** the Crown Minerals Amendment Bill 2022 for introduction, subject to the final approval of the Government caucus and sufficient support in the House of Representatives;
- 6 **agree** that the Bill be introduced in the week commencing on 14 November 2022;

- 7 **agree** that the Government propose that the Bill be:
- 7.1 referred to the Economic Development, Science and Innovation Committee for their consideration;
 - 7.2 enacted by July 2023.

Authorised for lodgement

Hon Dr Megan Woods

Minister of Energy and Resources