MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

Minister	Hon Shane Jones	**Portfolio**	Resources
Title of Cabinet paper	Crown Minerals Act 1991: Ensuring security of gas supply and regulatory efficiency	**Date to be published**	10 July 2024

List of documents that have been proactively released		
Date	**Title**	**Author**
May 2024	Crown Minerals Act 1991: Ensuring security of gas supply and regulatory efficiency	Office of Minister for Resources
22 May 2024	Crown Minerals Act 1991: Ensuring security of gas supply and regulatory efficiency ECO-24-MIN-0077 Minute	Cabinet Office
15 May 2024	Regulatory Impact Statement: Amendments to the Crown Minerals Act 1991 relating to petroleum exploration and mining	MBIE
16 May 2024	Regulatory Impact Statement: Amendments to the Crown Minerals Act 1991 relating to small-scale non-commercial gold mining	MBIE
14 May 2024	Climate Implications of Policy Assessment disclosure sheet	MBIE

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.

- Legal professional privilege
- Confidential advice to Government
- Commercially sensitive information
- Confidential information entrusted to the Government
- International relations

In confidence

Office of the Minister for Resources

Economic Policy Committee

Crown Minerals Act 1991: Ensuring security of gas supply and regulatory efficiency

Proposal

1 This paper seeks Cabinet agreement to policy proposals and authority to issue drafting instructions for a Crown Minerals Amendment Bill to:

1.1 signal the Government's intent to reinvigorate investment in petroleum exploration in New Zealand;

1.2 remove the current ban on new petroleum (i.e., oil and gas) exploration outside onshore Taranaki;

1.3 make adjustments to the petroleum decommissioning regime in a way that does not materially increase risk to the Crown, but will provide greater certainty to the sector; and

1.4 increase investor confidence by reducing compliance and other costs for investors.

2 Reversing the ban and removing unnecessary cost and compliance burdens, as soon as possible, is my immediate priority. I am also progressing further changes to improve investor confidence alongside the Bill. Together, these changes are intended to secure our gas supply, to ensure we can keep the lights on as we transition towards Net Zero 2050.

3 This paper also seeks Cabinet agreement to a suite of proposals to improve regulatory efficiency and consistency within the Crown Minerals Act 1991 (CMA) that will benefit both the petroleum and minerals sectors.

Relation to Government priorities

4 These proposals relate to the following Government priorities:

4.1 the National-NZ First coalition agreement commitment to 'future-proof the natural gas industry by restarting offshore exploration' and the National-ACT coalition agreement commitment to 'repeal the offshore oil and gas exploration ban';

4.2 the National-ACT coalition agreement commitment to update the CMA to clarify its role as promoting the use of Crown minerals; and

4.3 National's 100-point economic plan 'Rebuilding the economy' which includes a commitment to repeal the ban on oil and gas exploration to

reduce New Zealand's reliance on imported coal and ensure gas can be used as a transition fuel as we move towards Net Zero 2050.

5 The Government's current action plan includes a commitment to take decisions on the removal of the ban on offshore oil and gas exploration by 30 June 2024.

Executive Summary

6 Gas is critical to New Zealand's energy security and is needed as a transition fuel until viable and cost-effective alternatives are in place. As we head towards Net Zero 2050 and seek to double renewable energy generation, without gas we would need to either rely on more coal or face security of supply issues and higher prices. Our current gas fields are in decline and without more investment in existing and new fields, modelling suggests that gas demand will soon exceed supply.

7 This paper seeks approval to a set of changes to the CMA to immediately improve the economics of petroleum investment in New Zealand and improve the regulatory efficiency of the Crown minerals regime, including:

7.1 Removing the ban on new petroleum exploration outside onshore Taranaki;

7.2 Providing greater flexibility and clarity around financial securities, and limit trailing liability to the person who last transferred their participating interest;

7.3 Replacing the current post-decommissioning requirement to provide a payment or financial security to cover post-decommissioning costs with perpetual liability for any decommissioning costs that arise;

7.4 Signalling New Zealand is 'open for business' by amending the CMA's purpose statement, introducing an optional Government Policy Statement, allowing for different and faster permit allocation methods, and extending the exclusive-use timeframe for existing prospecting datasets;

7.5 Creating a new Tier 3 permit for non-commercial gold mining operations.

8 I seek Cabinet's approval to issue drafting instructions to the Parliamentary Counsel Office to draft a Crown Minerals Amendment Bill, and delegated authority to take further decisions in line with the policy decisions agreed by Cabinet. I intend to return to Cabinet by October 2024 to seek approval to introduce the Bill.

Background

9 The CMA sets out the regulatory regime for allocating rights to prospect, explore and mine New Zealand's Crown-owned minerals.[1]

10 In 2018, the previous Government introduced a ban on new Petroleum Exploration Permits (PEPs) outside onshore Taranaki by amending the CMA as follows:

10.1 Limiting the area available for new petroleum prospecting, exploration and mining permits, other than as a subsequent right, to onshore Taranaki only ('the 2018 ban');

10.2 Prohibiting surface access to all conservation land (beyond conservation land already protected by Schedule 4 of the CMA[2]) for new permits in onshore Taranaki except for minimum impact activities;

10.3 Restricting applications for PEPs to the Block Offer (competitive tender) process; and

10.4 Preserving the rights of existing permit and licence holders (referred to as permit holders throughout this paper), including the right of an existing exploration permit holder to apply for a subsequent mining permit.

11 In 2021, the previous Government also introduced a decommissioning regime for petroleum permits and licences to ensure that the Crown and other third parties are not liable for the costs of clean up, as in the case of the Tui field. The decommissioning regime introduced:

11.1 An explicit statutory obligation to decommission petroleum wells and infrastructure;

11.2 Ongoing monitoring of financial capability and field development;

11.3 An obligation to obtain and maintain financial securities for the performance of the decommissioning obligation of a kind and amount set by the Minister;

11.4 Liability on former permit holders to meet decommissioning costs if the current permit or licence holder is unable or unwilling to do so;

11.5 A comprehensive civil penalty and criminal offence regime for non-compliance with decommissioning obligations; and

[1] Crown-owned minerals include all petroleum, gold, silver and uranium existing in its natural condition in land, as well as all minerals found in land owned by the Crown, in the Territorial Sea (except minerals conferred to iwi through customary marine title under the Marine and Coastal Area (Takutai Moana) Act 2011), the Exclusive Economic Zone (EEZ) and extended Continental Shelf. Minerals in the EEZ and Continental Shelf are vested in the Crown rather than 'owned'.
[2] Schedule 4 of the CMA identifies specific areas, including national parks and marine reserves, that are subject to access and use restrictions.

11.6 A post-decommissioning fund or financial security to cover any future risks and costs from wells and infrastructure left in-situ after decommissioning is complete.

The ban and decommissioning requirements have impacted investment in New Zealand's petroleum fields, creating risks to our gas supply

12 As a result of the 2018 ban, New Zealand's policy settings are now considered not just unfavourable, but unstable. The ban has resulted in a downturn in new exploration activity, especially offshore and, therefore, reduced investment in production. The decommissioning requirements introduced in 2021 have also increased the industry's compliance burden and costs. This has meant less capital to re-invest and some operators are considering bringing forward the decommissioning of existing fields.

13 Our current gas fields are in decline. Monthly gas production data collated by the Ministry of Business, Innovation and Employment (MBIE) shows that gas production in February 2024 was the lowest since the 1980s. Without more investment in existing and new fields, modelling undertaken by the gas industry regulator suggests that gas demand will exceed commercially viable gas supply between 2025 and 2027.[3]

Gas is critical to New Zealand's energy security

14 When our hydro lakes alone cannot service peak electricity demand, we rely on gas fuelled 'fast-start' electricity generation stations for "peaking". Gas is also essential to keeping the electricity grid, and electricity prices, stable as we add more intermittent renewable sources like wind, solar and hydro ("firming").

15 Gas reduces our reliance on coal for peaking and firming. Without gas, we would need to either rely more on coal for peaking and firming (increasing our emissions), or – until more renewable alternatives come online – face security of supply issues (blackouts) and higher prices.

16 Additionally, gas is currently vital for certain industrial and commercial activities. New Zealand is already facing shortages in this regard. For example, Methanex is currently operating one train out of two at its Motunui plant due to reduced supply and previously mothballed operations at Waitara Valley in 2021.

17 Gas is therefore needed as a transition fuel until viable and cost-effective alternatives are in place.

[3] https://www.gasindustry.co.nz/assets/CoverDocument/Gas-Supply-and-Demand-Study-December-2023.pdf
Even if contingent resources (which are not currently commercially viable to produce) come online, modelling still suggests that supply will not meet demand at some stage between 2028 and 2034. Consultancy Enerlytica estimated ongoing investment of approximately $200 million per year across all gas fields to maintain current levels of supply.

18 To respond to these challenges, my policy objectives are to:

18.1 ensure we have a secure and affordable supply of gas as we move to a lower-emissions economy and reduce New Zealand's reliance on coal; and

18.2 provide a strong signal that New Zealand wishes to attract international petroleum investment as part of a wider Government push that the country is open for business.

Attracting new investment in petroleum exploration will be challenging

19 Globally, investment in upstream oil and gas has been declining since 2014. Against these global trends, New Zealand is starting from a position of relative geographical and geological disadvantage. New Zealand is relatively underexplored, and we do not rank internationally as a world-class petroleum province. We are far from supply chains and export markets, making exploration and development relatively expensive, and we have a small and self-contained domestic gas market. We need to take strong steps to overcome these challenges and restore confidence in our market.

Reversing the 2018 ban is a first step towards attracting new investment

20 This paper seeks agreement to reverse the amendments made to the CMA in 2018 and remove the ban on new PEPs beyond onshore Taranaki. This will allow the Crown to receive and assess applications for petroleum prospecting, exploration and mining permits across New Zealand, including offshore. Exploration for petroleum on land listed in Schedule 4 will continue to be prohibited.

21 Removing the 2018 ban will send a strong signal that the Government supports the petroleum sector and recognises the importance of gas as a transition fuel. It is the first step in giving market incumbents greater confidence to invest in existing fields and in attracting new entrants.

22 As we increase renewable energy generation in New Zealand, it is estimated that gas use will decline over time, but will remain until a viable alternative is found that can substitute fully for the role of gas in the electricity sector.

Ending current restrictions on conservation land in onshore Taranaki

23 The amendments made to the CMA in 2018 also prevented new permit holders from accessing Taranaki conservation land[4] for petroleum activities other than for minimum impact activities.[5] This extended the restrictions on access to all conservation land, regardless of its classification.

[4] Defined in the CMA as land in the onshore Taranaki region that is held or managed under the Conservation Act 1987, or an Act listed in Schedule 1 of the Conservation Act

[5] Minimum impact activities include for example geological, geochemical, and geophysical surveying, taking samples by hand or handheld methods, and aerial surveying.

24 I propose removing this restriction to ensure conservation land for petroleum-related activities can be treated consistently across New Zealand once the 2018 ban is repealed.

25 Conservation land in Taranaki that is covered by Schedule 4 of the CMA (approximately 29 per cent) would still have protections in place, including Taranaki Maunga. For other conservation land in Taranaki, petroleum permit holders will require access arrangements to carry out activities in accordance with the current requirements of the CMA.

There may be overlaps with other users in the marine environment

26 Removing the ban on new PEPs beyond onshore Taranaki will not prevent other users (offshore renewables, seabed mining, aquaculture and fisheries) from seeking permits or resource consents in the same area. This means other users could gain a permit or consent, which prevents a potential petroleum mining project from going ahead (i.e., where competing uses cannot co-exist).

27 Given some of these competing uses are or will be regulated by the Crown, there may be an opportunity to resolve overlaps through a level of strategic planning in the marine environment. My officials intend to explore these opportunities further with other agencies.

Re-balancing New Zealand's financial liability regime for petroleum decommissioning

28 Decommissioning involves plugging and abandoning wells, removing all or parts of infrastructure, and undertaking any necessary site restoration. It is an inevitable phase in the life of a petroleum field. But the costs are substantial and, importantly, they are due at the end of a project's economic life, when there is little or no ongoing and future revenue to offset these costs.

29 Commercial Information

30 If a permit holder fails to decommission, responsibility may fall to the Crown and landowners. Although the Crown is not strictly liable for decommissioning, the health, safety and environmental risks coupled with the significant costs mean that there may be an expectation the Crown steps in and assumes responsibility. In 2017, the Crown assumed responsibility for decommissioning Tui at a budgeted cost of $443 million.[6]

[6] $443 million was the total amount appropriated. The decommissioning was completed in February 2024, and final costs are anticipated to come in under this, but still significantly more than the $154 million estimated by Tamarind Taranaki Ltd.

In responding to sector concerns I have investigated how our regime compares with the decommissioning regimes in similar jurisdictions.

31 Like New Zealand, Australia and the United Kingdom's offshore decommissioning regime also use financial assurance, trailing liability, and transfer/change of control approvals to manage the fiscal risk to government. But the way in which each jurisdiction uses these tools is different, accounting for different industry contexts. Annex One includes a comparison.

32 In New Zealand, financial securities are the primary risk mitigation tool. All permit holders must obtain and maintain one or more financial securities as security for performance of their decommissioning obligations in the event they fail to carry out or meet the cost of decommissioning. While they are mandatory for all permit holders there is flexibility as to the amount and kind based on risk.[7]

33 Our regime also uses trailing liability, which provides that if a current permit holder fails to carry out or fund decommissioning, liability for the cost of decommissioning can flow 'up the chain' to former permit participants. The most recent permit holder is the first to be liable, and then the previous permit holder, and so on. Permit holders are liable for the cost of decommissioning of wells and infrastructure that existed at the time the Minister approved the transfer away from them.

34 Trailing liability is only intended to be used as a last resort after other safeguards, including any financial securities, fail or are insufficient. It is consistent with the 'polluter pays' principle that it is more appropriate for a party who benefited from a permit to continue to carry liability to decommission, rather than the Crown, private landowners, and ultimately taxpayers.

35 In contrast, financial securities are optional in the United Kingdom, which relies on trailing liability as the primary risk mitigation tool.[8] Similarly, Australia currently relies mainly on trailing liability but is working towards moving to an approach more similar to New Zealand by 2027. In both jurisdictions, trailing liability is applied considerably more broadly than in New Zealand as it extends also to historical associated parties, i.e., non-permit holders.

I propose retaining financial securities and trailing liability, but with adjustments

36 New Zealand's flexible financial security requirements and limited trailing liability regime are in step with other comparable jurisdictions and appropriate for the commercial context in which they were introduced, that is, with many

[7] The CMA requires the Minister, when setting the kind and amount of security, to take into account a number of factors including the estimated cost of decommissioning, the circumstances of the particular permit holder, and any information relating to current or emerging risks to the permit holder's ability to comply with relevant obligations.

mature fields. However, to provide the industry with greater certainty, I am proposing adjustments to allow more flexibility in how financial securities are held and limiting trailing liability. I consider that these changes will not materially increase risk to the Crown.

Greater flexibility and clarity around financial securities

37 The current provisions that govern how decommissioning financial securities are held do not allow arrangements that are sufficiently flexible to both mitigate the risk to the Crown while not being overly burdensome. I recommend the following amendments:

37.1 for joint ventures, where two or more parties hold a permit together, either directly or through a joint venture company, allowing these parties to provide securities separately and split as commercially agreed between the parties;

37.2 where a party holds interests in a number of permits, allowing a financial security as security for obligations across all permits to reduce costs from holding multiple securities;

37.3 allowing security arrangements between related parties both within a single permit and across permits; and

37.4 allowing for securities from permit participants where the permit participant and/or the permit holder is not a party to the financial security (e.g., a bank security, or parent company guarantees).

38 These changes will enable the sector to reduce costs by adopting measures that best suit their circumstances. However, they do not materially increase the risk profile to the Crown; it remains up to the Minister to determine the amount and kind of financial security based on risk factors.

39 To further increase certainty, I have asked officials to prioritise working with industry to develop clear and consistent guidelines for how financial security amounts and kinds will be determined. To the extent possible, these guidelines should deal with how decommissioning costs will be calculated when the final method of decommissioning has not yet been approved by a relevant regulator or authority.[9] I expect these guidelines to be based on the principles of risk-mitigation and not elimination, to provide flexibility, and to avoid unintended consequences, such as precipitating the risk the Crown is seeking to mitigate.

New Zealand's trailing liability provisions should remain as a last resort

40 New Zealand's trailing liability provisions are narrower than in other jurisdictions and are intended as a last resort.

[9] What infrastructure must be decommissioned by full removal and what can be decommissioned in-situ or re-purposed is usually decided closer to the time of decommissioning by relevant regulators and authorities. Requirements can also vary by regulator and authority.

41 I propose amending the provisions to only require trailing liability to apply to the most recent permit holders or participant who transferred out, so that liability would not flow further up the chain, noting this will further narrow New Zealand's trailing liability provisions in comparison to other jurisdictions. Together with a robust financial security from the current permit holder, and the requirement for the Minister to approve the transfer of a permit, which requires the Minister to be satisfied the new permit holder is highly likely to meet their decommissioning obligations, I consider this will provide sufficient risk mitigation for the Crown.

Confidential advice to Government

Aligning New Zealand's post-decommissioning requirements with other countries

44 In the United Kingdom and Australia, liability for decommissioned wells and infrastructure under, in and on the seabed remains in perpetuity with permit holders, even after decommissioning is complete and the permit or licence surrendered. Trailing liability can also apply to this post-decommissioning phase in certain circumstances. In the United Kingdom, there is also a period of post-decommissioning monitoring and maintenance, which can last years or decades where infrastructure is left in place. Neither jurisdiction has had an opportunity to test the practicality of enforcing its perpetual liability obligations.

45 New Zealand does not currently have perpetual liability and instead seeks a risk-based payment and/or financial security from permit holders to cover any post-decommissioning costs, including monitoring and remediation. How these costs are calculated is to be determined in regulations, which have not yet been set.

46 I propose the following amendments:

46.1 Remove the requirement to pay an amount and/or provide a financial security for any post-decommissioning liabilities;

46.2 Introduce perpetual liability for permit holders who decommissioned, for wells and infrastructure left in situ. Liability should cover any monitoring or remediation necessary;

46.3 Require permit holders who decommission to notify the regulator of any changes to company structure and domicile.

47 Replacing the requirement to pay an amount and/or provide a financial security for any post-decommissioning liabilities with perpetual liability ensures that permit holders will only be required to address actual risks, as opposed to contributing payments now in anticipation of difficult to quantify, future risks. This will reduce costs for permit holders, while ensuring they remain liable.

48 Whether or not perpetual liability can be enforced is uncertain and will likely vary depending on who the permit holder is. But as the risk of needing remediation in the post-decommissioning phase is considered low, I consider this an appropriate solution that aligns New Zealand with current international practice.

Signalling that New Zealand is 'open for business'

Amending the CMA purpose statement

49 Until 2023, the CMA's purpose was to 'promote prospecting for, exploration for, and mining of Crown owned minerals for the benefit of New Zealand'. The previous Government amended the purpose statement by replacing 'promote' with 'manage'. It also changed the Minister's functions from 'attract permit applications, including by way of public tender', to 'from time to time offer permits for application by way of public tender'.

50 I propose amending the CMA's purpose statement to clarify its role as promoting the use of Crown minerals. Reverting back to the previous purpose statement and associated Minister functions will send a clear signal that the Government intends to increase petroleum exploration and production for the purposes of managing our transition as we move towards Net Zero 2050.

Introducing an optional Government Policy Statement mechanism for the CMA

51 I propose amending the CMA to allow a mechanism for an optional Government Policy Statement (GPS) to cover petroleum and minerals. A GPS, if issued, would:

51.1 Establish the Government's medium to long-term vision and priorities for petroleum and minerals exploration in New Zealand. Currently, the Programmes[10] (which have an operational focus) include some of this policy signalling;

[10] The Programmes are secondary legislation that set out further detail, including how the Minister and Chief Executive will have regard to the principles of the Treaty of Waitangi for the purposes of the programme; how the Minister and Chief Executive will exercise specific powers or interpret and apply specific provisions in the CMA; general guidance on the CMA and associated regulations.

51.2 Highlight focus areas for the Government, for example, increasing natural gas production for energy security or critical minerals development for the transition to a lower emissions economy;

51.3 Provide strategic guidance to the regulator on how it should manage its functions and operations to support the Government's priorities, for example, around the timely running of permitting processes such as Block Offer; and

51.4 Inform the wider sector and the general public, including agencies and other entities involved in authorising petroleum and minerals-related activities, of the Government's objectives and priorities for the sector.

Allowing for faster allocation of PEPs

52 I propose broadening the ways in which PEPs are applied for and allocated to include competitive and limited competition methods. Currently the only way of allocating PEPs is through the competitive allocation process known as Block Offer. Before 2013, the Block Offer process was one of two ways that petroleum exploration permits were allocated. The other way was the 'priority in time' (PIT) method of allocation, where permits are granted to the first application that meets certain criteria.

53 A PIT-type process has benefits for smaller operators who can more rapidly evaluate an opportunity and execute investments, whereas block offer is more suited to larger operators and certain types of complex development areas, like offshore. Block offers offer more efficiency in a high-interest investment environment, whereas PIT-type methods are more suited to a low-interest environment.

54 I acknowledge that consultation with local communities and iwi could become burdensome for them under a PIT-type process, given it could happen at any time. But it I expect that it will be more meaningful as consultation would be based on an applicant's actual submitted work programme.

55 By having a choice of two allocation methods, the Government can select the best one based on the relative attractiveness of different prospective areas (offshore versus onshore), and to adapt to changing market interest and other objectives. I intend to amend the Petroleum Programme to set out the design of a limited competition method, like PIT, and how Block Offer and an alternative method will work together.

Extending the exclusive-use timeframe for existing speculative prospecting datasets

56 I propose extending the confidentiality period for speculative prospecting datasets that were impacted by the 2018 ban. The CMA currently provides speculative prospectors with a 15-year confidentiality period for the seismic data they collect, after which MBIE can release the data publicly. During the 15-year period, speculative prospectors on-sell the data to interested explorers. Before the ban, these companies played an active role in internationally promoting petroleum exploration in New Zealand.

57 When the 2018 ban was introduced, there were seven sets of offshore data with public release dates between 2028 and 2033. [**Commercially sensitive**] A total of approximately Commercial Information was spent on acquiring these datasets, but the ban largely removed the demand for this data.

58 I am hopeful that extending the confidentiality period by six years (equal to the minimum period lost because of the ban) for these data sets may encourage these speculative prospectors to continue their activities in New Zealand, and to play a role in promoting New Zealand's petroleum sector overseas.

Outside of amending the CMA, I am investigating other ways to support investor confidence in the petroleum sector

Petroleum Royalties Review

59 I am instigating a review of the petroleum royalty regime, which was last reviewed in 2012. The review will consider how our royalty regime can incentivise more gas exploration and production, and ensure New Zealand's rates are internationally competitive for our commercial risk profile and provide the Crown with a fair financial return.

60 I intend to return to Cabinet to seek decisions from the review in Q3 of 2024.

Clarifying decommissioning information provision requirements

61 I intend to progress regulations to clarify the type of decommissioning-related information permit holders must provide and how frequently. For the risk-based decommissioning regime to function, the regulator needs certain types of information from permit holders. I acknowledge industry concerns about administrative burden and will work closely with them in developing the regulations.

Planning early for decommissioning to achieve certainty around its scope

62 One of the biggest challenges facing industry is obtaining certainty about what level of decommissioning is required for their infrastructure. In line with international best practice, the Act creates a backstop of full removal. However, it allows for another enactment, relevant standard, or requirement by a regulatory agency to require less. In practice, this means that industry participants need to obtain environmental regulatory approvals to confirm what level of decommissioning is required.

63 To address industry concerns, I intend to work with the Minister for the Environment to investigate ways of providing greater and earlier certainty for industry on what infrastructure they may need to completely remove, and what can be partially or fully abandoned in situ.

64 I also intend to work with industry to voluntarily make decommissioning plans public so they can receive feedback from local communities and serve as advance notice to local supply chains. This is an approach followed in the United Kingdom.

I am working with the Minister for Energy to explore carbon capture, utilisation and storage opportunities to reduce costs for upstream gas production

65 Carbon capture, utilisation and storage (CCUS) involves extracting and capturing carbon dioxide from industrial activity or directly from the air. Captured carbon dioxide can be injected into depleted oil and gas reservoirs for permanent storage.

66 Confidential advice to Government

Improving regulatory efficiency and consistency within the CMA

67 I am currently developing a Minerals Strategy for New Zealand. It will set direction for the New Zealand minerals sector, providing confidence for industry to invest. To support this, I am proposing changes to the CMA to address issues with inefficient regulatory processes.

Creating a Tier 3 permit for non-commercial gold mining

68 The CMA currently differentiates mining permits between Tier 1 permits (for petroleum and any mineral listed in Schedule 5 of the CMA that meets certain conditions), and Tier 2 permits (any permit that is not Tier 1).

69 I propose creating a new Tier 3 permit to cover small-scale, non-commercial gold mining operations. This is different from gold fossicking, where in designated areas hand tools can be used to collect gold in rivers and streams and motorised machinery is strictly prohibited. Applications related to these activities consistently represent 20 to 25 per cent of all applications processed by the regulator. A third tier will streamline processes and reduce regulatory requirements.

70 A permit for these activities remains necessary to ensure regulatory oversight, however I am proposing to significantly reduce the regulatory burden for them. This will improve administrative efficiency and ensure that backlogs of applications do not build up in the future.

71 A Tier 3 permit would be granted for up to 10 years; an area no greater than 50 hectares; gold only; and using only hand tools and suction dredge(s) of 10 horsepower or less (in rivers), or hand tools and a riffle box (on beaches).

72 Tier 3 permits will involve:

72.1 **A simpler and quicker application process**: the regulator would need to be satisfied that the applicant could comply with the conditions and obligations under the Act and regulations, pay the fees, and meet reporting requirements. They would not be required to demonstrate a

mineable resource and report on mine feasibility or project economics as Tier 2 permit holders are.

72.2 **Less onerous reporting requirements:** the permit holder would have to provide information on where they have mined, for how many days, and how much gold was recovered, significantly less than the full Annual Summary Reports required of Tier 2 permits.

73 The offences and penalties for Tier 3 permits will be the same as for Tier 2 and, like all other permits, a Tier 3 permit can be revoked, expire or be surrendered. The regulator will retain control over changes to the permit, such as sale (i.e., transfer of interest and change of operator) and extensions, but these mechanisms will involve a 'lighter touch' approach for the regulator and applicant.

74 The details of how Tier 3 applications will be assessed, the permit holder's reporting requirements, the fee rate, and change procedures will be set out in regulations and a revised Minerals Programme. The fee rates will be determined through a fees review that MBIE will undertake over the coming year. Tier 3 permits should generally not reach the threshold for royalties but if the price of gold continues to rise in future, Tier 3 permit holders would pay accordingly.

75 These proposals will not affect environmental and access arrangements that Tier 3 permit holders will need to obtain.

Other changes to improve regulatory efficiency

76 I also propose several changes to address known issues currently impacting the Crown minerals regulatory system (petroleum and others). These are detailed in Annex Two, and fall into three categories:

76.1 proposed changes that would have progressed through a Regulatory Systems Bill and have been consulted on with key industry stakeholders;

76.2 changes to ensure certain processes within the CMA are working as intended;

76.3 minor and technical changes, for example, fixing inconsistencies of terms, or drafting errors.

Treaty of Waitangi

Legal professional privilege

Legal professional privilege

Consultation with iwi and hapū

78 I have undertaken limited and specific engagement with iwi and hapū ahead of Cabinet decisions to satisfy my obligations as Minister for Resources as set out in Crown Minerals Protocols, Relationship Agreements and Accords.

79 The Minister for Māori Crown Relations: Te Arawhiti and I invited iwi and hapū who have a Crown Minerals Protocol, relationship agreement or significant relationship with me or MBIE to an online hui on 7 May 2024. I arranged a second online hui specifically with Ngā Iwi o Taranaki on 13 May 2024, reflecting the greater impact for iwi in this region because this is where New Zealand's petroleum industry is currently based. I asked those attending for written feedback on the proposals. Four written submissions were received.[11]

Concerns raised during consultation

80 The views I heard can be broadly categorised as principled opposition to the policy intent, and concerns regarding the operationalisation of the proposals.

81 Those who provided written feedback strongly oppose the reversal of the 2018 ban because of concerns regarding the general impacts of climate change and the contribution of oil and gas consumption to climate change. For similar reasons they oppose the change to the purpose statement from "manage" to "promote".

82 Some iwi and hapū in the hui acknowledged that gas is necessary as a transition fuel. One iwi emphasised the importance of continued extraction from existing fields for this purpose and supported continuing onshore exploration, but opposed the reintroduction of offshore exploration.

83 Other concerns raised include:

83.1 The change to conservation land in Taranaki potentially undermining cultural redress through conservation land provided in Treaty settlements.

83.2 Reversing the 2018 ban would interfere with applications for or existing customary titles recognised by the Marine and Costal Area (Takutai Moana) Act 2011 and other specific legislation.

83.3 Allowing both priority in time applications and the competitive tender "block offer" process would exacerbate existing issues including inadequate engagement from the Crown and a clear lack of information provided to support iwi and hapū during consultation; variable levels of

[11] A further written submission was received following specific engagement on the proposal to introduce a new Tier 3 permit

engagement between permit holders and applicants and iwi/hapū; and resourcing constraints that affect the capacity of iwi and hapū to engage meaningfully in consultation.

83.4 Concerns that proposed changes could attract second-tier operators who are not technically and financially fit to New Zealand.

83.5 Submissions generally supported retaining decommissioning requirements including financial securities, trailing liability, and liability in the post-decommissioning period.

83.6 Iwi and hapū were also concerned with the limited time and level of engagement on the development of these proposals. I acknowledge the time of those who made themselves available to meet with me at short notice and who provided written feedback to officials. I intend to visit Taranaki to meet with iwi following Cabinet approval, and I understand officials intend to undertake further engagement ahead of Select Committee to provide iwi and hapū with detailed information to support their engagement with the Select Committee process.

Principled opposition

84 I acknowledge iwi and hapū have concerns regarding the environmental and climate impacts of these proposals. I recognise that many are actively engaged with the work to develop alternative carbon-free fuels. However, I consider the negative consequences of the status quo for both our energy security and the economy to be too great to warrant doing nothing.

Concerns relating to implementation

85 The intention with these changes is not to impact rights and interests that have been provided or recognised through the Treaty settlement process. The specific consultation requirements set out in many of the Protocols, Accords and Relationship Agreements will continue unchanged.

86 Further, officials will work with iwi and hapū to operationalise changes, specifically on the expectations and mechanisms for iwi and hapū consultation during decision-making processes under the Act. These are currently detailed in the Petroleum and Minerals Programmes, which will need to be updated to reflect changes to the Act.

Risks associated with removing the ban

Legal professional privilege

Legal professional privilege

Legal professional privilege

MFAT's advice on international relationship and reputational risks to promoting new fossil fuel exploration

93 At COP28 in 2023 countries recognised that global efforts to tackle climate change are not yet on track to limit warming to the 1.5 degree target in the Paris Agreement. A key pillar of the COP28 outcome was countries agreeing to contribute to a global transition away from fossil fuels.[13] This drew heavily on the outcome of the 2023 Pacific Islands Forum (PIF) Leaders meeting.[14]

94 Countries International relations championed the COP28 outcome, and while they continue fossil fuel exploration, they are committed to phase out of unabated fossil fuels – including the United States, United Kingdom, Canada, and Australia. Pacific Island countries have led a stronger still push for phase out of all fossil fuels, spearheaded by a "Fossil Fuel Free Pacific" region.[15] PIF Leaders including Australia and New Zealand,

[13] The COP28 decision called for "transition away from fossil fuels in energy systems, in a just, orderly and equitable manner, accelerating action in this critical decade, so as to achieve net zero by 2050 in keeping with the science".
[14]Leaders committed to "transition away from coal, oil and gas in our energy systems in line with IPCC pathways for limiting global average temperatures to 1.5°C above preindustrial levels with a peak in fossil fuel consumption in the near term."
[15] Including in the 2023 *Port Vila Call for a Just Transition to a Fossil Fuel Free Pacific* (Fiji, Niue, Solomon Islands, Tonga, Tuvalu and Vanuatu).

have supported the aspiration for a Fossil Fuel Free Pacific, while "acknowledging that **the pathway is not immediate nor is it one-size fits all**." International relations

International relations

Cost-of-living Implications

96 There are no immediate or direct cost-of-living implications arising from the proposals in this paper. However, there may be an indirect implication, as the proposed changes have the potential to have a positive impact on the price of gas and electricity, potentially leading to lower costs for end consumers, in comparison to no action being taken.

Financial Implications

97 There are no direct financial implications as a result of proposals in this paper. It is feasible that a change to the trailing liability provisions could result in future costs to the Crown. This could eventuate in a case where, at the time of decommissioning, a financial security fails or does not meet the full costs of decommissioning, and the trailing liability regime is unable to secure financial compensation from the persons captured by that regime. This risk exists currently but there is greater mitigation because the existing regime makes a broader pool of people potentially liable. Given the uncertainties however, the scale of this risk is not able to be modelled.

Legislative Implications

98 The proposals in this paper require changes to the Crown Minerals Act through an amendment bill.

99 The Crown Minerals Amendment Bill holds a Category 3 (a priority to be passed by the end of 2024) priority in the 2024 Legislation Programme.

100 The current CMA binds the Crown. This will not change.

Impact Analysis

Regulatory Impact Statement

101 Cabinet's impact analysis requirements apply to these proposals. A Regulatory Impact Statement (RIS) on the key proposals has been prepared and is attached to the Cabinet paper as Annex Three. A separate RIS has been prepared for the proposal to introduce a Tier 3 permit, as the rationale is quite distinct from the other changes, and is attached as Annex Four.

Amendments relating to petroleum exploration and mining

102 A Quality Assurance panel with representatives from the Ministry of Business, Innovation and Employment and the Ministry for Regulation has reviewed the RIS. The panel has determined that the RIS partially meets the quality assurance criteria.

103 The RIS provides a complete analysis of the impacts of amending the Crown Minerals Act to increase investment in the petroleum sector. However, in line with the Government's policy and subsequent constraint on the RIA, the problem definition and objectives are narrowly defined, which means the options analysed are highly constrained. In addition, there has been limited consultation undertaken on the proposals. Finally, although the emissions implications of the proposal are modelled in the separate Climate Implications of Policy Assessment (CIPA), the RIS could include more analysis of the consequences of the emissions implications.

Amendments relating to small scale non-commercial gold mining

104 MBIE's Regulatory Impact Assessment Review Panel has assessed this RIS as partially meeting the criteria necessary for Ministers to make informed decisions on the proposals.

105 The RIS sufficiently articulates the problems presented by the status quo and what the desired outcomes are. It sufficiently explains the inclusion or exclusion of the desired outcomes and criteria when undertaking options analysis, especially those in scope of other regulatory regimes and regulators. It sufficiently explains how the proposed new Tier 3 permit will work, and how this differs to the status quo.

106 The RIS also sufficiently articulates the limitations of the RIS, some of which are detailed below.

107 The RIS provides limited or insufficient information on:

107.1 The views of hobby miners. Only indirect and anecdotal information is held on the views of hobby miners.

107.2 The views of iwi/hapū on the proposed changes. While iwi/hapū have been informed and will be offered the opportunity to participate in the future development of the new Tier, their views on whether they support the direction of travel is unknown.

107.3 The views of other regulators that deal with the mining sector, in particular, local authorities and WorkSafe. Local authorities may also be able to provide information on the views of local communities and hobby miners, which is currently unknown.

107.4 The resources and time it takes to process permit applications, the nature of permit holders, and the possible numbers of those who would be interested in getting a new Tier 3 permit (both current Tier 2 holders and new entrants). This makes it difficult to accurately quantify the costs and benefits proposed in terms of introducing a new Tier 3 permit – particularly to MBIE – and whether the recommended option is the best option for MBIE in improving regulatory efficiencies and oversight of the non-commercial gold mining sector.

108 Despite these limitations we consider the RIS is a qualified partially meets. This is based on assurances in the RIS that the limitations identified above will be addressed through a full review of the permit fees being charged, and stakeholder feedback being sought through the Select Committee stage of the Amendment Bill. We also note that MBIE's intention to review the new arrangements within five years presents a further opportunity to ensure that the proposed Tier 3 permit is fit-for-purpose.

Amendments relating to regulatory efficiency

109 The Treasury's Regulatory Impact Analysis team has determined that the proposals to be included in the Crown Minerals Amendment Bill to increase regulatory efficiency (Annex Two) are exempt from the requirement to provide a RIS on the grounds that it has no or only minor impact on businesses, individuals, and not-for-profit entities.

Climate Implications of Policy Assessment

110 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements apply to the proposal to remove the current ban on new petroleum exploration and measures to improve investor confidence. The associated disclosure sheet is attached to this Cabinet paper at Annex Five.

Estimated emissions impact of the proposals is 14.2 million tonnes to 2035

111 The proposal to remove the current ban on new petroleum exploration alongside measures to improve investor confidence is expected to lead to a substantial increase in emissions. This increase, projected to be approximately 14.2 $MtCO_2e$ cumulative to 2035, stems largely from prolonged gas usage in the electricity, commercial and industrial sectors.

112 This is as compared with a counterfactual "supply headwinds" scenario where current gas supply is challenged, and future supply is limited. In that world, industrial production and economic activity reduce due to lack of supply of gas.

113 When compared the Climate Change Commission's (CCC) demonstration path, the proposals are expected to result in an increase in emissions of approximately 3 $MtCO_2e$ cumulative to 2035. This equates to a decrease in emissions of 1 $MtCO_2e$ within the first emissions budget period (2022-2025), and an increase in emissions of 650 $KtCO_2e$ within the second emissions budget period (2026-2030), and 3 $MtCO_2e$ within the third emissions budget period (2030-2035).

114 While also a modelled pathway based on assumptions, given the sector sub-targets in ERP1 were based on the CCC's demonstration pathway, this comparison can give a sense of the potential impact of the proposals as compared to how we had planned to be tracking.

115 Officials believe comparing emissions against the "supply headwinds" counterfactual, rather than the CCC demonstration path, more accurately reflects the realistic constraints of the current gas supply.

116 It should be noted that these proposals address the other two parts of the energy trilemma – security of supply and affordability. We are now in a situation where our annual natural gas production is expected to peak this year and undergo a sustained decline, creating a pressing security of supply issue. This could affect schools, hospitals, businesses, and jobs.

117 The 14.2 million tonnes is the estimate for direct gas impacts. It does not model the potential emissions impact for displaced coal-fired electricity generation as a result of gas availability. These emissions savings could be significant. In 2022, electricity emissions from coal generation were 2.7 $MtCO_2e$, with an average of 3.5 $MtCO_2e$, over the previous five years and a peak of 6.4 $MtCO_2e$ in 2012.

118 Neither does the CIPA factor in the full range of potential emissions reductions that may result from increased renewable energy generation, stabilised by a secure supply of gas, and increased electrification (for example, process heat electrification, EV uptake).

119 ERP2 (due at the end of 2024) provides an opportunity to develop a system-wide package of options that collectively contribute to the Government's long-term objectives for the energy transition and for meeting our climate change targets.

Officials consider this counterfactual, which has a steeper decline in gas supply, to be realistic

120 The counterfactual has a steeper decline in gas supply as compared with the CCC's demonstration pathway. There has been some public commentary that the CCC's modelling underlying its current consultation processes may not

realistically reflect the gas security situation. The CCC is currently preparing advice on settings for the fourth emissions budget.

121 The chosen counterfactual is realistic and reflects the seriousness of the gas security situation. Gas production has fallen by 51 petajoules between the years 2018 and 2023, and some large gas consumers are expressing concern about their ability to secure gas contracts.

122 The counterfactual also has a steeper decline in gas supply to the modelling being used for the ERP2 interim projections. The ERP2 modelling makes assumptions based on our understanding of expected gas supply at 1 January 2023 and does not currently reflect recent developments. For example, it does not take in to account the most recent reserves estimates, which are expected to be lower than previously estimated. In comparison, gas supply is constrained in the counterfactual by assuming that only 30 per cent of reserves are developed and then increases this level to 60 per cent in the factual.

123 Due to the timing of this Cabinet paper relative to the work being undertaken to support development and socialisation of the interim projections, it was not possible to align this work in time for the Cabinet paper. Officials are continuing to engage on how to incorporate this updated understanding of gas supply into the ENZ model and future projections of how we are tracking using that model.

Quality statement from MfE CIPA team

124 The CIPA team has reviewed the estimates at a high level and considers the modelling for this proposal to follow good practice and use reasonable assumptions.

Tier 3 permit for non-commercial gold mining and other proposals to improve regulatory efficiency

125 The CIPA team has been consulted and confirms that the CIPA requirements do not apply to any of the regulatory efficiency proposals (Annex Two).

126 The CIPA team acknowledges the environmental impact of mining. The proposal to establish a Tier 3 permit relates to non-commercial and recreational gold mining activities, which do not meet the CIPA emissions threshold for significance.

Population Implications

127 The proposals in this paper will not disproportionately impact distinct population groups. However, any exploration or mining enabled by these changes may disproportionately impact regions where this activity occurs.

Human Rights

128 There are no human rights implications arising from the proposals in this paper.

Use of External Resources

129 External resources were engaged for the purposes of modelling the impacts of the proposed changes to provide a quantitative assessment of the amount of gas that may be developed and an estimate of emissions. These results are used in the RIS and the CIPA. This modelling was undertaken by developing a new scenario that reflected the likely outcome of this policy in the gas regulator's supply and demand model.

Consultation

130 MBIE consulted with the following agencies in the development of the proposals outlined in this paper: the Treasury, Ministry of Foreign Affairs and Trade, Department of Conservation, the Ministry for the Environment and Te Arawhiti. The Department of the Prime Minister and Cabinet has been informed.

Communications

131 I expect proposals in this paper to generate significant public interest. I intend to release a statement confirming the Government's decision to remove the ban on offshore oil and gas exploration, following Cabinet approval.

Proactive Release

132 I intend to release the Cabinet paper proactively within 30 business days.

Recommendations

The Minister for Resources recommends that the Committee:

Background

1 **note** in 2018 the previous Government introduced a ban on new petroleum exploration outside onshore Taranaki by making changes to the Crown Minerals Act 1991 (CMA);

2 **note** New Zealand faces risks to our supply of gas, which is critical to New Zealand's energy security;

3 **note** the National-NZ First coalition agreement includes a commitment to 'future-proof the natural gas industry by restarting offshore exploration' and the National-ACT coalition agreement includes a commitment to 'repeal the offshore oil and gas exploration ban';

4 **note** reversing the ban on new petroleum exploration is the first step in encouraging investments in existing gas fields, but further work is required to attract new investment;

Signalling New Zealand's commitment to transition away from fossil fuels

5 **note** that gas plays a critical role as a transition fuel to support New Zealand's transition to Net Zero by 2050;

6 **agree** to direct officials to prepare advice on an energy transition plan to transition New Zealand away from fossil fuels;

Removing the ban

7 **agree** to reverse the amendments to the CMA made by the Crown Minerals (Petroleum) Amendment Act 2018;

Decommissioning obligations

8 **note** the CMA was amended in 2021 to introduce requirements for financial securities to decommission oil and gas fields, to reduce the risk of decommissioning costs falling to the Crown;

9 **note** the majority of current permits are set to expire in the next 25 years, with an estimated total decommissioning cost of almost Commercial Information ;

10 **note** New Zealand's decommissioning regime is internationally comparable with differences that account for our different industry context;

11 **note** New Zealand's decommissioning regime uses trailing liability, as a last resort after other safeguards, including any financial securities, fail or are insufficient;

12 **note** in Australia and the United Kingdom, trailing liability is applied more broadly than in New Zealand;

13 **note** amendments can be made to the decommissioning obligations to reduce costs for investors, while still minimising risk to the Crown;

14 **agree** to amend the CMA to allow for greater flexibility in obtaining financial security, by allowing:

14.1 for joint ventures, where two or more parties hold a permit together, either directly or through a joint venture company, allowing these parties to provide securities separately and split as agreed between the parties;

14.2 where a party holds interest in a number of permits, allowing a financial security as security for obligations across all permits;

14.3 security arrangements between related parties both within a single permit and across permits;

14.4 securities from permit participants where the permit participant and/or the permit holder is not a party to the financial security;

15 **note** to further increase certainty, I have asked officials to prioritise working with industry to develop clear and consistent guidelines for how financial security amounts and kinds should be determined;

16 **note** trailing liability is an important backstop, to be used when other safeguards fail, and is consistent with the 'polluter pays' principle that it is appropriate for a party who benefited from a permit to continue to carry liability to decommission;

17 **agree** to retain trailing liability within the CMA, but limit it to the person who last transferred their participating interest;

18 Confidential advice to Government

19 **agree** to align New Zealand's post-decommissioning requirements with other countries, by making the following amendments to the CMA:

19.1 remove the requirement to pay an amount and/or provide a financial security for any decommissioning liabilities;

19.2 introduce perpetual liability for permit holders for wells and infrastructure left in situ;

19.3 require permit holders who decommission to notify the regulator of any changes to company structure and domicile;

Signalling New Zealand is 'open for business'

20 **agree** to amend the purpose statement of the CMA to replace the word 'manage' with 'promote';

21 **agree** to amend associated provisions in the CMA that reflect the change in purpose statement, such as section 5 (functions of the Minister);

22 **agree** to amend the CMA to allow a mechanism for an optional Government Policy Statement to cover petroleum and minerals;

23 **agree** to amend the CMA to allow for both competitive (Block Offer) and limited-competition methods (Priority in Time) of applying for and allocating petroleum exploration permits (PEP);

24 **note** that prior to 2013, the 'Priority in Time' method was one of two ways that Petroleum Exploration Permits (PEPs) were allocated;

25 **agree** that the Petroleum Programme will set out the design of alternative PEP allocation methods and how they will work together;

26 **note** the CMA currently provides speculative prospectors with a 15-year confidentiality period for the seismic data collected, after which MBIE can release the data publicly;

27 **note** the 2018 ban largely removed the demand for seven existing datasets that have public release dates between 2028 and 2033;

28 **agree** to amend the CMA to extend the exclusive-use timeframe by six years for the seven datasets that were impacted by the 2018 ban;

Further changes to support investor confidence in petroleum exploration and production

29 **note** I intend to undertake a review of the petroleum royalty regime, to consider how a royalty regime can incentivise more gas exploration and production, and ensure New Zealand's rates are internationally competitive and provide the Crown with a fair financial return;

30 **note** I intend to return to Cabinet in Q3 2024 to seek decisions based on the outcome of the review;

31 **note** I intend to progress regulations that will clarify the type of decommissioning-related information permit holders are required to provide and how frequently;

32 **note** I intend to work with Ministry for the Environment to investigate ways of providing greater and earlier certainty for industry on what infrastructure they may need to completely remove, and what can be partially or fully abandoned in situ;

33 **note** I am working with the Minister for Energy to explore potential carbon capture, utilisation and storage opportunities to reduce costs for upstream gas production;

Improving regulatory efficiency and consistency within the CMA

34 **note** further changes to the CMA are required to improve regulatory efficiency and fix inconsistencies or drafting errors;

35 **agree** to amend the CMA to reflect the changes detailed in Annex Two;

36 **agree** to the creation of a new Tier 3 permit for small-scale, non-commercial gold mining operations;

37 **agree** the CMA includes a definition of what a Tier 3 permit is, which would require:

37.1 a duration of no longer than 10 years;

37.2 an area no greater than 50 hectares;

37.3 the target mineral of gold (only);

37.4 using equipment that can only be hand tools and suction dredge(s) of 10 horsepower or less (in rivers), or hand tools and a riffle box (on beaches);

38 **agree** the Tier 3 permit will have the same key features and rights of Tier 2 permits, except for the following reduced requirements:

38.1 for Tier 3 applications, the regulator must be satisfied the applicant could:

38.1.1 comply with the obligations under the Act and regulations;

38.1.2 pay the necessary fees;

38.1.3 meet reporting requirements;

38.2 reporting requirements for Tier 3 will include providing information on:

38.2.1 where they have mined;

38.2.2 how may days they have mined;

38.2.3 how much mineral they have obtained;

39 **agree** the Tier 3 permit will be subject to the same offences and penalties as Tier 2 permits where relevant;

40 **agree** the Tier 3 permit will be subject to fees, to be set in regulations;

41 **agree** that other elements of the new Tier 3 will be covered in regulations including application and reporting requirements, and royalty thresholds;

42 **agree** to authorise the Minister for Resources to make further decisions on implementation and transition for the regime, including operational decisions for the new Tier 3 consistent with good industry and regulatory practice;

Legal professional privilege

Legal professional privilege

Financial implications

46 **note** there are no direct financial implications as a result of the proposals in this paper;

Legislative implications

47 **agree** that the proposals will be given effect through a Crown Mineral Amendment Bill, which holds a category 3 priority on the 2024 Legislation Programme (to be passed by the end of 2024);

48 **note** that the CMA currently binds the Crown and that the Bill will also bind the Crown;

49 **invite** the Minister for Resources to issue drafting instructions to the Parliamentary Counsel Office for the Bill;

50 **authorise** the Minister for Resources to take further decisions, in line with the policy decisions agreed by Cabinet, on any minor or technical issues that arise during drafting of the legislation and its passage through the House.

Authorised for lodgement

Hon Shane Jones

Minister for Resources

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Annex One: Comparing New Zealand's current decommissioning regime

	New Zealand	United Kingdom	Australia
Financial requirements	✓ *Mandatory securities, amount and kind based on risk.*	✓ *Discretionary securities based on risk for 100 per cent of costs. Parent Company Guarantees prohibited.*	✓ *Financial Assurance policy in development.*
Transfer and change of control approval	✓	✓	✓
Trailing liability	✓ *Narrow, former permit holders only.*	✓ *Broad, former licensees, parents and associates.*	✓ *Broadest, former titleholders, parents and associates, and non-titleholders who benefitted.*
Criminal penalties	✓	✓	✓
Post-decommissioning requirements	✓ *Quantified contribution to managed fund or financial security.*	✓ *Residual liability in perpetuity.*	✓ *Trailing liability in perpetuity.*

Annex Two: Proposed changes to the Crown Minerals Act 1991 to improve regulatory efficiency

Proposal	Description
Already proposed in Regulatory Systems Bill	
Allow extensions to permit duration for all mine closure activities	Section 36 of the CMA allows minerals permit holders to apply for an extension of duration to their permit in order 'to complete rehabilitation activities' required by environmental or health and safety legislation when a mine is closed. However, some activities may fall outside the definition of 'rehabilitation' and would not be covered. The change would remedy this.
Allow prospecting and mining licence holders to apply for a non-interference zone, not just permit holders	At the request of a permit holder, the Chief Executive of MBIE can specify a non-interference zone up to 500m around a relevant structure, ship or equipment such as a towed seismic streamer. But the CMA's wording (sections 101B and 101A) effectively means a NIZ can only be specified in relation to areas subject to a permit and not a licence, which is like a permit, but issued under regimes that predate the CMA.
Allow geophysical surveys to be undertaken where a non-exclusive prospecting permit exists	The Minister may, under section 42A of the CMA, authorise an exploration or mining permit holder to carry out geophysical surveys on land adjacent to their permit, but only if there is no permit in force over that adjacent land. This can include a non-exclusive prospecting permit, which was not the original intent.[16]
Amend cross-reference in relation to the serving of a notice with the intention to revoke or transfer a permit	Section 39(8) of the CMA, which requires the Chief Executive to lodge, with the Registrar-General of land, a copy of the permit revocation notice served on a permit holder, refers incorrectly to section 39(2) and excludes section 39(3A). It should refer to section 39(3), as 39(2) deals with notices of the Minister's intention to revoke or transfer a permit, not notices to actually revoke, and include 39(3A).
Align the assessment of environmental capability and systems of a change of permit operator and change of control of a permit operator for Tier 1 permits with that required for new applicants for Tier 1 permits	Requirements around environmental capabilities and systems in the case of applications for change of permit operators and change of control of a Tier 1 permit operator are inconsistent with requirements for new Tier 1 exploration and mining permit applicants. They need to be aligned so that all are required to have the capability and systems that are 'highly likely' to be required to meet environmental requirements of all specified Acts for the types of activities proposed under the permit (per section 29A(2)(d) of the CMA).
Align technical capability requirements for a change of control of a Tier 2 permit operator with what is	Requirements to check the technical capability for change of control of a Tier 2 permit operator (section 41A(5) of the CMA) are inconsistent with requirements for new permit applicants (section 29A). They need to align so that the

[16] These permits give the holder the right to look for minerals owned by the Crown using surveying activities to assess the area. They are generally the first step in a possible mining operation and are followed by an 'exploration permit', which give the holder the right to explore for mineral deposits and evaluate the feasibility of mining, and then finally a permit to mine once a discovery is made.

required for new Tier 2 permit applicants	standard for change of control is not lower than for new permit applicants.
Include service of notification and documentation requirements within the CMA, which are currently not specified, to ensure efficient and effective notice	The CMA does not currently contain service of documentation provisions, instead it points to the relevant sections of the Resource Management Act 1991 (RMA) to define these requirements. Including service of notification and documentation requirements in the CMA will ensure efficient and effective notice and provide clarity. It will include requirements that documentation be served by methods such as: • PO Box • Email • Delivering or posting to their registered office (if a company) • Sending it via document exchange to a specified document exchange box • In person (if an individual) • Delivering it or posting it to a usual or last known place of residence or business.
Introduce a requirement for the permit holder to notify the Registrar-General that an access arrangement has ended and empower the Registrar to remove the notice from the property title	Section 83 of the CMA requires a permit holder with an access arrangement that is longer than six months to lodge a notice of this arrangement with the Registrar-General of Land on the property title. But there is no requirement to remove this notice once the access arrangement has ended, increasing enquiries to Land Information New Zealand when land is sold.
Changes to ensure certain processes are working as intended	
Remove the 90-day grace period for permit revocations, to shorten and simplify the revocation process	The current permit revocation process for non-payment of money (section 39) can take up to nine months because of the 90-day grace period from the payment due date, which permit holders are gaming. by waiting until the last day to pay. Once the Minister serves a notice of intention to revoke, permit holders have another 40 working days to pay. The 90-day period was introduced in 2013 to enhance fairness for permit holders. In practice, it has led to abuse and limited the responses available to the regulator. It is no longer considered to be necessary or appropriate.
Allow Section 29B "conditional exploration permits" to be granted as intended	Section 29B of the CMA provides for a 'conditional exploration permit' intended as a type of 'promotor permit'. The policy intent is to allow for a company that does not yet have the technical expertise and/or financial ability to undertake more expensive activities that occur later in a permit's work programme to receive a conditional permit. The permit is "conditional" because it is granted on the condition that the permit holder is subjected to a deferred capability assessment before committing to the later parts of the work programme. The permit holder then has the opportunity to raise funds or farm out its interest in the permit before they commit to the more expensive work under the permit. However, section 29B does not work in practice because, as currently drafted, it requires applicants to demonstrate

	capability for all pre-drilling work before receiving a permit, which may include expensive seismic surveying and other work that would not typically be funded solely on a standalone basis by a promoter. Since 2013, the regulator received [redacted] applications for section 29B permits and only granted one, which has since been surrendered. Section 29B should be changed to replace the "exploration committal drilling date" to "date specified by the Minister in the tender notice". This would enable the Minister to determine the date by which work will be assessed for the purposes of section 29B(2), which could be early in the work programme. It would not change the threshold of capability that a permit holder must eventually demonstrate before being allowed to commit to work under the permit.
Make the requirements for mining permit applications consistent	Subject to certain provisions, section 32(3) gives an exploration permit holder the right to surrender part or all of that permit in exchange for a mining permit if they discover either a 'deposit' or an 'occurrence' of a mineral to which the permit relates. In this scenario sections 43 and 44 of the CMA apply, which sets out a process to approve (or not approve) a work programme. The key problem is that demonstrating the 'occurrence' of a mineral is a very low bar, and while demonstrating a 'deposit' is much harder, the current reference to both tests in section 32 invokes a protracted process under sections 43 and 44. In contrast, if a mining permit application is not a subsequent application, then sections 32, 43 and 44 do not apply. These applications can be declined on the basis that a deposit (i.e., a commercially mineable resource) has not been demonstrated, which is a much more simplified and streamlined process. Removing "or occurrence of a mineral" from section 32(3) would mean that the regulator does not have to go through a lengthy process when it is clear that a deposit has not been meaningfully identified for a subsequent application. The tests and processes for subsequent and other mining permits would be consistent.
Minor and technical changes	
Make the definition of Minister consistent in older resources portfolio-related legislation through consequential changes so that delegations can be made simply and clearly	Instead of using neutral language to define the Minister responsible, older legislation, some parts of which are still in force (e.g., the Petroleum Act 1937, Mining Act 1971 and Coal Mines Act 1979), uses portfolio titles that have changed over time (Minister of Energy, Minister of Energy and Resources, Minister of Mines etc.). Therefore, when delegations are made, the regulator must rely on a letter from the Prime Minister to make it clear which legislation is include in the Resources portfolio, adding complexity and risk that legislation is overlooked. Consequential changes need to be made to the relevant Acts to amend the problematic definitions.
Ensure that permit details can be removed from land titles when a permit expires,	Permit details need to be removed from land titles where the permit(s) are no longer valid. Currently, permit details

not just when it is revoked or surrendered	can only be removed in the case of revocation or surrender, but not when a permit expires.
Amend technical drafting errors from the Crown Minerals (Decommissioning and Other Matters) Amendment Act 2021	Amend two drafting errors: • Section 89ZQ must refer to section 89ZN(6), not section 89ZN(4) • Section 89ZO refers to a subsection that does not exist. It should refer to 89ZM(1)(B) to (i), and not 89ZM(1)(b) to (j).
Allow the permit commencement date to be amended due to delays in obtaining land access, not just delays in obtaining consents	A permit holder can apply for a change of commencement date under section 35(9)(a) due to delays with obtaining consents under other Acts. This does not include delays in obtaining land access.
Ensure consistent use of "change *of* control"	Section 41AE(1)(a) has a drafting error. It refers to "change in control" rather than "change of control".
Ensure consistent use of "a permit or licence holder"	A few sections of the CMA refer to "a person" or "a permit holder" rather than "a permit or licence holder" (e.g., sections 89ZL(1) and 89ZL(4)).

Annex Three: Regulatory Impact Statement: Amendments to the Crown Minerals Act 1991 relating to petroleum exploration and mining

Annex Four: Regulatory Impact Statement: Amendments to the Crown Minerals Act 1991 relating to small-scale non-commercial gold mining

Annex Five: Climate Implications of Policy Assessment disclosure sheet