



COVERSHEET

Minister	Hon Shane Jones	Portfolio	Resources
Title of Cabinet paper	Including Crown Minerals Act 1991 Permitting in the Fast-track Approvals Bill	Date to be published	18 December 2024

List of documents that have been proactively released

Date	Title	Author
18 September 2024	Including Crown Minerals Act 1991 Permitting in the Fast-track Approvals Bill	Office of the Minister for Resources
23 September 2024	Including Crown Minerals Act 1991 Permitting in the Fast-track Approvals Bill ECO-24-MIN-0193 Minute	Cabinet Office
19 September 2024	BRIEFING-REQ-0003046 Adding Crown Minerals Act permitting to the Fast-track Approvals Bill: detailed policy choices	MBIE
11 September 2024	BRIEFING-REQ-0002687 Approval to lodge CMA permitting under the Fast-track Approvals Bill Cabinet Paper	MBIE
10 September 2024	Annex to the Supplementary Analysis Report for the Fast-track Approvals Bill: Including Crown Minerals Act 1991 Permitting	MBIE
22 August 2024	MfE BRF-5193, MBIE 2425-0789 Adding some Crown Minerals Act mining permit approvals to the Fast-track Approvals Bill	MBIE and Ministry for the Environment (MfE)
17 June 2024	2324-3842 Decisions on consultation and timing for including Crown mineral permitting in the fast-track process	MBIE
27 May 2024	2324-3600 Including mining permitting in the fast-track process	MBIE
2 May 2024	2324-3043 Options to align Crown Minerals Act permitting with the Fast-Track process	MBIE

Information redacted **YES** / **NO** (please select)

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reasons of Legal professional privilege and Confidential advice to Government.



BRIEFING

Adding Crown Minerals Act permitting to the Fast-track Approvals Bill: detailed policy choices

Date:	19 September 2024	Priority:	High
Security classification:	In Confidence	Tracking number:	BRIEFING-REQ-0003046

Action sought		
	Action sought	Deadline
Hon Shane Jones Minister for Resources Minister for Regional Development	<p>Agree to indicate in Annex One your decisions on key policy choices.</p> <p>Agree to sign this briefing so it can be provided to the Parliamentary Counsel Office alongside the Cabinet paper and drafting instructions by 1 October 2024.</p>	23 September 2024

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Vic Johns	Policy Director Building, Resources and Markets	Privacy of natural persons	✓
Joe Harbridge	Principal Policy Advisor Resource Policy	Privacy of natural persons	

The following departments/agencies have been consulted
The Ministry for the Environment, Department of Conservation, Te Arawhiti, Land Information New Zealand, Crown Law Office, Parliamentary Counsel Office.

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comments



BRIEFING

Adding Crown Minerals Act permitting to the Fast-track Approvals Bill: detailed policy choices

Date:	19 September 2024	Priority:	High
Security classification:	In Confidence	Tracking number:	BRIEFING-REQ-0003046

Purpose

This briefing seeks your agreement to detailed policy choices on adding Crown Minerals Act 1991 (CMA) mining permits to the Fast-track Approvals Bill (the Bill).

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

- a **Note** you have sought delegated decision-making authority from the Cabinet Economic Policy Committee (ECO) on technical or workability changes to give effect to the policy decision to add CMA mining permits to the Bill, in consultation with other relevant Ministers as necessary.
Noted
- b **Note** Cabinet is expected to confirm the decisions taken by ECO on 23 September 2024, with drafting instructions due to the Parliamentary Counsel Office (PCO) by 1 October 2024.
Noted
- c **Agree** to consult with any other relevant Ministers you consider necessary.
Agree / Disagree
- d **Agree** to indicate in Annex One your decisions on key policy choices.
Agree / Disagree
- e **Agree** to sign this briefing so it can be provided to the Parliamentary Counsel Office alongside the Cabinet paper and drafting instructions by 1 October 2024.
Agree / Disagree

Privacy of natural persons

Vic Johns
Policy Director,
Building, Resources, and Markets
MBIE

19 / 09 / 2024

Hon Shane Jones
Minister for Resources
Minister for Regional Economic
Development

26 / 09 / 2024

Context

1. Fast-track projects will either be listed in Schedule 2 of the Bill as eligible to lodge their substantive application directly with the Environmental Protection Authority (EPA) or referred into the process by the Minister for Infrastructure.
2. Prior to lodging their referral application (or for projects listed in Schedule 2 of the Bill their substantive application), the Bill requires applicants to consult with a range of parties including relevant iwi and hapū, and the relevant administering agency (e.g. MBIE where they are intending to apply for a mining permit).
3. You are seeking Cabinet agreement to adding some CMA approvals to the Bill. The Cabinet paper sets out the overall approach to including CMA permitting in the Bill, including that:
 - a. it will be possible for a CMA exploration permit holder (following a successful discovery) or the holder of an existing privilege (e.g. a pre-CMA mining licence) to apply for a mining permit through the fast-track process
 - b. it will not be possible to apply for an exploration or prospecting permit through the process, or to seek a mining permit if the applicant does not hold an exploration permit or pre-CMA licence for the area and mineral in question
 - c. existing privileges and exploration permits will remain in force while their application for a mining permit is under consideration, and
 - d. MBIE will have a role in assessing permit applications and providing a report to the expert panel, who will make the final decision on whether to approve or decline the permit.
4. You are seeking delegated decision-making authority from ECO on technical or workability changes to give effect to the policy decision to add CMA mining permits to the Bill, in consultation with other relevant Ministers as necessary.
5. Pending Cabinet's agreement to your proposals and delegated authority, there are some detailed design choices for you to make, which are set out in Annex One. They relate to:
 - a. what information is required for mining permits at the referral application stage
 - b. where in the fast-track process MBIE assesses the CMA approval applied for and how it feeds that assessment to the expert panel
 - c. the timing requirements for that assessment, and
 - d. how CMA provisions relating to consultation with iwi and hapū and the Treaty are treated in relation to the Bill.

Next steps

6. We seek your agreement to the key policy choices in Annex One by 23 September 2024. Subject to Cabinet approval and these further decisions, we intend to provide drafting instructions to PCO by 1 October 2024.
7. You and Minister Bishop will also receive a briefing from the Ministry for the Environment (MfE) regarding cost recovery for the fast-track process on 19 September 2024. These decisions will also apply to cost recovery for CMA permit applications. MBIE has fed into this briefing and will work with MfE and PCO to ensure the cost recovery process appropriately covers MBIE's costs under the Bill.

8. The timeframe we have been provided for Amendment Papers is:

Step	Key dates (2024)
ECO	18 September
Briefing on detailed design choices (this briefing)	19 September
Cabinet	23 September
Drafting instructions to PCO	1 October
PCO draft Amendment Paper	1 October – 31 October
Cabinet Legislation Committee (LEG)	7 November
Amendment paper tabled in the House	Week of 18 November
Committee of the Whole House	Week of 18 November

Annexes

Annex One: Key policy choices required to include mining permits in the Fast-track Approvals Bill

Annex One: Key policy choices required to include mining permits in the Fast-track Approvals Bill

Topic	Proposal	Advice	Recommendations	Decision
<p>What information is required for mining permits at the referral application stage?</p>	<p>There are two options: Option A: There are no specified matters for referral applications involving mining permits. Or Option B: The applicant must provide the information as specified in the next column.</p>	<p>Under the Bill, when making a referral application, the applicant must specify all of the approvals that the applicant intends to seek under the fast-track process. Section 14 sets out the requirements for what information must be included. The Minister for Infrastructure will then seek the views of various parties and make a decision on whether to accept the referral application. Once accepted, an applicant then is eligible to submit the relevant approvals to be considered by the expert panel.</p> <p>The expectation is that the applicant would only provide a general level of detail about each approval, sufficient to inform the Minister’s decision on the referral application. However, there is also an ability to specify matters relating to specific approvals. The Bill currently lists specific information requirements for resource consent or designations applications, certificates of compliance applications, and land exchange applications.</p> <p>Ministers have decided that once a project is referred to an expert panel, there will be limited grounds for the expert panel to decline it. As such, the referral decision for a mining project will need to ensure that appropriate projects are referred, and projects that are inappropriate (or not yet ready) are not referred.</p> <p>MBIE recommends the following matters are specified as information requirements if the proposed approval includes a mining permit under the CMA for petroleum:</p> <ol style="list-style-type: none"> 1. The proposed date on which a substantive mining permit application, if referred, is intended to be made; 2. A map of the area over which the mining permit application is intended to be made and the extent of the resource to which the development plan relates; 3. The resources and reserves relating to the project, estimated in accordance with the Petroleum Resources Management System; and 4. A high-level overview of the following: <ol style="list-style-type: none"> a. The proposed field development plan; b. The proposed date for the commencement of petroleum production; c. The economic model for the project; d. The proposed duration of the proposed mining permit; and e. Decommissioning plans. <p>MBIE recommends the following matters are specified as information requirements if the proposed approval includes a mining permit under the CMA for minerals other than petroleum:</p> <ol style="list-style-type: none"> 1. The proposed date on which a substantive mining permit application, if referred, is intended to be made; 2. A map of the area over which the mining permit application is intended to be made and the extent of the resource and/or reserves to which the mine development plan relates; 3. For minerals other than gold or silver, a report or statement confirming the ownership of the minerals targeted and where the applicant is not the owner and the minerals are not Crown owned, confirmation that the owner of the minerals provides their permission for the project; 4. Whether the application will be for a Tier 1 or Tier 2 permit; 5. For Tier 1 applications, the resources and reserves relating to the project, estimated in accordance with a recognised reporting code such as JORC or NI 43-101; 6. An indicative mine plan, and 7. A high-level overview of the following: <ol style="list-style-type: none"> a. The proposed mining method; b. The proposed date for the commencement of mining and estimated annual production; c. The economic model for the project; d. The status of or anticipated timing for completing any pre-feasibility or feasibility studies; e. The proposed methods for processing of mined material and handling and treatment of waste; f. The proposed duration of the proposed mining permit; and g. Anticipated plans for mine closure and rehabilitation. <p>Without the information above, it will be difficult for the Minister for Infrastructure to make an informed assessment of whether the project will be able to deliver significant regional or national benefits.</p>	<p>Recommendation 1: Agree to either: Option A: There are no specified matters for referral applications involving mining permits. or Option B: The applicant must provide the information as specified in the previous column (recommended).</p>	<p>Yes No</p> <p>Yes No</p>

Topic	Proposal	Advice	Recommendations	Decision
<p>When does MBIE do its analysis on a mining permit application?</p>	<p>There are two options:</p> <p>Option A: Applicants can only submit their mining permit application to the EPA at the same time as other approvals.</p> <p>Or</p> <p>Option B: Applicants have the option to submit their mining permit application any time after the referral decision (or listing in the Bill) in advance of other approvals.</p>	<p>Under the Bill, an eligible project can submit all its approvals to the EPA to be considered as part of a ‘one stop shop’ where applications enter and exit through process as one whole application. Once the EPA is satisfied that the overall application is complete, then it would refer it to an expert panel.</p> <p>In keeping with this design, Option A would involve applicants submitting their mining permit to the EPA at the same time as other approvals. The expert panel would then refer the mining permit application to MBIE for analysis and MBIE would provide it with a report and a draft permit (e.g. a document with draft conditions and a map of the permit area).</p> <p>As part of assessing a mining permit under the CMA, MBIE provides a report to the decision-maker¹ which details how the various requirements of the CMA are addressed by the application and associated work programme. Under the fast-track, the process for drafting this report would be condensed to align with the fast-track process. Final decisions would be made by the expert panel alongside other approval decisions.</p> <p>The benefit of Option A is primarily that the whole project goes through the EPA completeness check (and the fee is paid) before work commences on the permit application. It also gives the expert panel greater flexibility to direct the process as it sees fit. There is also some flexibility built into the referral process by enabling the Minister for Infrastructure to specify restrictions for projects which could include a requirement to work with MBIE between the referral and substantive application but these would not apply to listed projects.</p> <p>There is an alternative option which would allow applicants who are ready to submit their mining permit application in advance of other approvals. Outside of fast-track, mining permits are typically sought in advance of other regulatory approvals. In some cases, the outcome of the permitting decision can have implications for other approvals (e.g. resource consents). Fast-track applicants will have up to two years² to submit their substantive application once they have been approved for fast-tracking by the Minister for Infrastructure. There is a precedent in the Bill for the Department of Conservation (DOC) to do some work (e.g. due diligence on the land exchange) between the referral and the substantive application so that it can prepare a report for the expert panel to sit alongside the substantive application.</p> <p>Given this, MBIE considers there may be benefits for applicants and expert panels in beginning the mining permit process before seeking other approvals. Option B could reduce the complexity and overall timeframes for the approval of fast-track mining projects where applicants are in a position to seek their mining permit in advance of other approvals.</p> <p>Under Option B, the Bill would allow applicants to submit a mining permit application from any time after they have been confirmed as eligible for the fast-track process (including at the same time as other approvals like Option A) until their eligibility expires. MBIE would then complete its report for the expert panel in advance.</p> <p>There are some risks where MBIE receives a mining permit application in advance, but a wider application does not eventuate or is lodged significantly (e.g. two years) later. These could include a change of facts or circumstances for an operator (e.g. a change of financial circumstances) which could mean MBIE’s report to the expert panel would be out of date. This risk could be mitigated by requiring an applicant to confirm that there is no new information relevant to the permit decision when submitting their other approvals (or to provide any new information relevant to the mining permit).</p> <p>MBIE could also charge its usual mining permit fee at the time the advance application is lodged instead of when the substantial application is received to mitigate a risk the work is carried out but cannot be cost recovered.</p>	<p>Recommendation 2:</p> <p>Agree to either:</p> <p>Option A: Applicants can only submit their mining permit application to the EPA at the same time as other approvals.</p> <p>or</p> <p>Option B: Applicants have the option to submit their mining permit application any time after the referral decision (or listing in the Bill) in advance of other approvals (recommended).</p> <p>Under Option B, where a mining permit application is submitted to MBIE for consideration before other approvals, the CMA permit application fee would need to be paid, and the applicant would need to confirm when submitting their other approvals that there is no new information relevant to the permit decision when submitting their other approvals (or to provide any new information relevant to the mining permit application).</p>	<p>Yes No</p> <p>Yes No</p>
<p>How much time does MBIE have to prepare its report on the mining permit application for the expert panel?</p>	<p>There are two options:</p> <p>Option A: The default timeframe of 20 working days applies for MBIE to provide its report.</p> <p>Or</p>	<p>The default timeframe under the Bill for the relevant administering agency to provide comments on a substantive application to the expert panel is 20 working days. This is Option A.</p> <p>Analysis of a mining permit is a technically complex geological and economic assessment which under the CMA can take around 6-12 months. Some of this time is usually associated with seeking additional information from applicants. MBIE is looking at ways to condense this process.</p>	<p>Recommendation 3:</p> <p>Agree to either:</p> <p>Option A: The default timeframe of 20 working days applies for MBIE to provide its report.</p>	<p>Yes No</p>

¹ Typically, this is the National Manager Petroleum and Minerals, under delegation from the Minister for Resources

² This is the default timeframe under the Bill, but the Minister for Infrastructure can set a timeframe for specific projects.

Topic	Proposal	Advice	Recommendations	Decision
	<p>Option B: The expert panel is empowered to set an appropriate timeframe on a case-by-case basis.</p>	<p>MBIE's intention is to work closely with applicants who will be seeking a mining permit through the fast-track process to front load as much of the work as possible, and Option B from recommendation 2 above would support this approach. However, there are limitations to this as MBIE can only advise the expert panel on a mining permit application once it has been finalised and submitted. As such, MBIE considers there to be a risk that 20 working days will not be sufficient time for it to provide robust analysis and a report for the majority of mining permit applications under the Bill.</p> <p>The expert panel does have discretion to consider comments provided outside of the default timeframe, but there is no right to seek a waiver of the time limit for written comments.</p> <p>Option B would empower the expert panel to set an appropriate timeframe for MBIE to complete its report on the CMA mining permit application. MBIE considers this approach provides flexibility to manage a range of scenarios for a mining permit.</p> <p>The decision on whether to consider the mining permit application first (Option B from recommendation 2 above) or at the same time as other approvals (Option A from recommendation 2 above) could have implications for the overall timing of a project. For example, where it is possible for MBIE to largely complete its report before other approvals have been lodged with the EPA, 20 working days would be sufficient as MBIE could focus on any relevant changes (e.g. to the applicant's financial capability) that might affect our advice to the expert panel on the mining permit.</p>	<p>or</p> <p>Option B: The expert panel is empowered to set an appropriate timeframe on a case-by-case basis (recommended).</p>	<p>Yes No</p>
<p>How should iwi / hapū consultation be undertaken for the mining permit application?</p>	<p>There are two options:</p> <p>Option A: The expert panel meets any consultation requirements for mining permits.</p> <p>Or</p> <p>Option B: MBIE carries out its normal consultation on a mining permit application.</p>	<p>Under the Bill, the expert panel will be required to invite comments on substantive applications. Relevant iwi and hapū will have 20 working days to provide their feedback across the range of approvals sought. Option A would be for the expert panel to cover off any consultation requirements for mining permits alongside other approvals.</p> <p>There are procedural differences between the approach MBIE uses under the CMA and the approach the expert panel would use:</p> <ol style="list-style-type: none"> 1. When MBIE consults with relevant iwi and hapū under the CMA, this does not involve sharing the whole application, just material relevant to the feedback MBIE is seeking. This in part reflects the technical nature of mining permit applications and the need to maintain confidentiality around commercially sensitive information. By comparison, the entire resource consent application is notified to affected parties (not just the relevant material). 2. Under the Bill, there is no ability for iwi and hapū to request additional time. The CMA regime provides iwi and hapū with 20 working days to provide their feedback, but with an ability to request a further 20 working days. <p>MBIE is a party to Treaty Settlements, Energy and Resources Accords and Crown Minerals Protocols (the Protocols) which create obligations on how we consider mining permit applications. Legal professional privilege</p> <p>The Bill provides discretion for the expert panel to consider feedback provided outside of the 20 working day timeframe, and to extend the overall timeframes for its deliberations. Combined, these could allow an expert panel to provide additional time to iwi and hapū for consultation if it is inclined to do so (or required by a Treaty Settlement). Clause 6 of the Bill provides that all persons performing and exercising functions, powers, and duties under the Bill must act in a manner that is consistent with obligations arising under Treaty settlements. The Treaty settlements report under the Bill will identify any relevant Protocol and inform the expert panel of any obligations under those arrangements.</p> <p>An alternative way to manage the complexities associated with CMA consultation would be for MBIE to carry out its normal consultation approach with iwi and hapū for permit applications (Option B). This could be managed in a way to ensure sufficient timeframes are provided for (e.g. the expert panel would need to factor this into the time given for MBIE to provide its report), particularly where there are procedural obligations under specific Treaty Settlements.</p> <p>There are potential benefits in managing this relatively technical consultation so the results can be interpreted for the expert panel in MBIE's report (particularly where this is occurring in advance of other approvals), however, the potential downside of this approach is it would create another round of consultation for iwi and hapū. There is a</p>	<p>Recommendation 4:</p> <p>Agree to:</p> <p>Option A: The expert panel meets any consultation requirements for mining permits. (recommended)</p> <p>or</p> <p>Option B: MBIE carries out its normal consultation on a mining permit application.</p>	<p>Yes No</p> <p>Yes No</p>

Topic	Proposal	Advice	Recommendations	Decision
		precedent in the Bill (for certain engagement processes of aquaculture applications) where the relevant agency carries out specialised consultation instead of the expert panel.		
The relationship between CMA Treaty provisions and the Bill.	<p>Section 4 requires all persons exercising functions and powers under the CMA to have regard to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).</p> <p>Section 29C of the CMA sets out the Minister's functions in relation to feedback from iwi or hapū when considering mining permit applications.</p>	<p>Ministers have previously considered and agreed to an approach on Treaty Principles clauses for other approvals under the Bill. For example, both the Resource Management Act 1991 and the Conservation Act 1987 have requirements to consider the principles of the Treaty of Waitangi. The Bill does not bring these requirements across. Instead, clause 6 of the Bill sets out obligations relating to Treaty Settlements and recognised customary rights for fast-track approvals. In accordance with these earlier decisions, MBIE will adopt this approach for CMA mining permits.</p> <p><i>Feedback from iwi and hapū on previous or existing permits or existing privileges</i></p> <p>The CMA has a requirement on the Minister, before granting a permit, to have regard to:</p> <ul style="list-style-type: none"> • feedback provided in iwi engagement reports and at annual review meetings about the quality of the applicant's previous engagement with iwi and hapū in the applicant's capacity as a previous or current permit holder or a previous or existing privilege holder, and • feedback from iwi or hapū about the quality of the applicant's previous engagement with iwi or hapū, in the applicant's capacity as a previous or current permit holder or a previous or existing privilege holder. <p>MBIE is not aware of a completely analogous provision in the Bill for Section 29C of the CMA. Including a requirement for expert panels to have regard to previous engagement under the CMA with iwi and hapū would create consistency with the CMA. This is also a relatively modest requirement, as it would be subject to the expert panel's consideration of the purpose of the Bill above other considerations. MBIE recommends this requirement is carried over into the Bill.</p> <p><i>Crown Minerals Protocols will also have an impact where they apply</i></p> <p>Where a mining permit application is made in an area subject to a Crown Minerals Protocol, the Bill already has a mechanism for giving effect to Treaty Settlements which would apply in these situations. Depending on their wording, the protocols will likely require decisions to be made by the expert panel with regard to feedback from the relevant iwi and/or the expert panel to consider the principles of the Treaty of Waitangi.</p>	<p>Recommendation 5:</p> <p>Agree to carry over to the Bill:</p> <p>Section 29C of the CMA: Minister's functions in relation to feedback from iwi or hapū when considering application. (recommended).</p>	<p>Yes No</p> <p>To be confirmed at a later date</p>



BRIEFING

Approval to lodge CMA permitting under the Fast-track Approvals Bill Cabinet Paper

Date:	11 September 2024	Priority:	High
Security classification:	In Confidence	Tracking number:	BRIEFING-REQ-0002687

Action sought		
	Action sought	Deadline
Hon Shane Jones Minister for Resources	Agree to lodge the attached Cabinet paper on 12 September 2024, for consideration by the Economic Policy Committee on 18 September 2024, and Cabinet on 23 September 2024.	12 September 2024

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Vic Johns	Policy Director, Building, Resources and Markets	Privacy of natural persons	✓
Joe Harbridge	Principal Policy Advisor, Resource Policy	Privacy of natural persons	

The following departments/agencies have been consulted
The Department of Conservation, Ministry for the Environment, and Te Arawhiti were consulted. The Department of Prime Minister and Cabinet and Treasury were informed of the content of this paper. The Crown Law Office has seen a copy of this Cabinet paper.

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comments



BRIEFING

Approval to lodge CMA Amendment Bill Cabinet Paper

Date:	11 September 2024	Priority:	High
Security classification:	In Confidence	Tracking number:	BRIEFING-REQ-0002687

Purpose

To provide you with a lodgement version of the Cabinet paper to amend the Fast-track Approvals Bill (the Bill) via an Amendment Paper to include a mining permit under the Crown Minerals Act 1991 (CMA) as an approval that may be granted under the Bill.

This paper also provides you with the supporting regulatory impact analysis and talking points.

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

- a **Agree** to lodge the attached Cabinet paper on 12 September 2024, for consideration by the Economic Policy Committee on 18 September 2024, and Cabinet on 23 September 2024.
Agree / Disagree
- b **Note** the attached annex to the Supplementary Analysis Report (SAR) for the Bill;
Noted
- c **Note** MBIE considers it is feasible to include some CMA permitting decisions in the Bill. However, consistent with our previous advice, MBIE's preferred approach in the annex to the SAR is either to retain the status quo or to work on ways to reduce the timeframes for fast-track projects without including the approval in the Bill (e.g. an enhanced status quo);
Noted
- d **Note** we intend to provide you with options for detailed design choices in the week of 16 September 2024, to inform the drafting of the amendments to the Bill;
Noted

Privacy of natural persons



Vic Johns
Policy Director
Building, Resources and Markets, MBIE

11 / 09 / 2024

Hon Shane Jones
Minister for Resources

..... / /

Background

1. You are taking a paper to the Economic Policy Committee on 18 September 2024 to amend the Fast-track Approvals Bill (the Bill), via an Amendment Paper, to include a mining permit under the Crown Minerals Act 1991 (CMA) as an approval that may be granted under the Bill.

Cabinet paper attached for your consideration and lodgement

2. We provided a draft of the Cabinet paper to you on 22 August 2024 for your feedback and Ministerial consultation [BR 2425-0789 refers]. There was no feedback from Ministerial consultation. We have now revised the Cabinet paper. The key changes are to:
 - a. ensure exploration permits and existing privileges will remain in force while an application is made to replace them with a mining permit under the Bill (in line with our previous discussion on this issue), and
 - b. include feedback from the MBIE Regulatory Impact Assessment (RIA) panel on the annex to the SAR for the Bill.
3. The MBIE RIA panel considered that the annex to the SAR for the Bill partially meets the RIA requirements due to the limited consultation undertaken on the policy proposal.
4. A final version of the Cabinet paper is attached as Annex One, and the annex to the SAR for the Bill (Annex Two) for your consideration. If you agree, your Office can lodge the paper on 12 September.

MBIE's position in in the annex to the SAR for the Bill

5. MBIE considers it is feasible to include some CMA permitting decisions in the Bill and that there is an additional efficiency gain for applicants being able to apply for all necessary approvals at once.
6. That said, consistent with our previous advice, MBIE's preferred approach in the annex to the SAR is either to retain the status quo or to reduce the timeframes for fast-track projects without including the approval in the Bill (e.g. an enhanced status quo).

Talking points and Q&As attached

7. Attached at Annex Three, we have provided talking points and potential questions and answers for Cabinet Committee.

Next steps

8. The next step is for you to lodge the Cabinet paper on 12 September, to be considered by the Economic Policy Committee (ECO) on 18 September 2024, and Cabinet on 22 September 2024. Officials will be available to support you at ECO.

9. We intend to provide you with options for detailed design choices in the week of 16 September 2024 to inform the drafting of the amendments to the Bill. The table below summarises the proposed next steps and indicative timing.

Step	Key dates (2024)
Lodgement for ECO	12 September
ECO	18 September
Briefing on detailed design choices	Week of 16 September
Cabinet	23 September
PCO draft Amendment Paper	24 September – 31 October
Cabinet Legislation Committee (LEG)	7 November
Amendment paper tabled in the House	Week of 18 November
Committee of the Whole House	Week of 18 November

10. On 18 September, ECO will also consider a paper proposing policy and workability amendments. The Ministry for the Environment is updating this paper following the Fast-track Ministers meeting on Tuesday 10 September.

Annexes

Annex One: Cabinet paper – Including Crown Minerals Act 1991 permitting in the Fast-track Approvals Bill

Annex Two: Annex to the Supplementary Analysis Report for the Fast-track Approvals Bill: Including Crown Minerals Act 1991 Permitting

Annex Three: Talking points and Q&As

**Annex One: Cabinet paper – Including Crown Minerals Act 1991
permitting in the Fast-track Approvals Bill**

Annex Two: Annex to the Supplementary Analysis Report for the Fast-track Approvals Bill: Including Crown Minerals Act 1991 Permitting

Annex Three: Talking points and Q&As

Talking points

Adding Crown Minerals Act mining permits to the Fast-track Approvals Bill

Free and frank opinions

Questions and answers

Free and frank opinions

Free and frank opinions



Briefing: Adding some Crown Minerals Act mining permit approvals to the Fast-track Approvals Bill

Date submitted: 22 August 2024

Tracking number: BRF-5193, MBIE 2425-0789

Security level: IN-CONFIDENCE

MfE priority: Urgent

Actions sought from ministers		
Name and position	Action sought	Response by
To Hon Shane Jones Minister for Resources and Regional Development	Agree to review and circulate the draft Cabinet paper for Ministerial consultation	27 August 2024

Actions for Minister's Office staff
<p>Forward this briefing to: Hon Chris BISHOP, Minister for Resource Management Reform</p> <p>Return the signed briefing to the Ministry for the Environment (RM.Reform@mfe.govt.nz and ministerials@mfe.govt.nz)</p>

Appendices and attachments
<ol style="list-style-type: none"> Draft Cabinet paper Draft annex to the Supplementary Analysis Report for the Fast-track Approvals Bill Examples of written feedback from iwi on the proposal

Key contacts at Ministry for the Environment			
Position	Name	Cell phone	First contact
Responsible Manager	Thomas O'Flaherty	Privacy of natural persons	
Acting General Manager	Martyn Pinckard	Privacy of natural persons	✓

Key contacts at Ministry of Business, Innovation and Employment			
Position	Name	Cell phone	First contact
Principal Policy Advisor	Joe Harbridge	Privacy of natural persons	
Acting General Manager	Susan Hall	Privacy of natural persons	✓

Minister's comments

Adding some Crown Minerals Act mining permit approvals to the Fast-track Approvals Bill

Key messages

- 1. You have requested MBIE consider how Crown Minerals Act 1991 (CMA) permitting decisions to obtain mining permits could be included in the Fast-track Approvals Bill (the Bill) via an Amendment Paper (AP).
- 2. Fast-track Ministers met on 19 August 2024 to discuss a range of potential changes to the Bill that could be included via an AP.
- 3. As an action from that meeting, you agreed to circulate a draft Cabinet paper for Ministerial consultation on 27 August 2024.

Recommendations

We recommend that you:

- a. **note** you have requested the Ministry of Business, Innovation and Employment (MBIE) to consider how CMA permitting decisions to obtain a mining permit could be included in the Bill via an AP,
- b. **note** you have previously agreed that CMA permitting decisions in the Bill be confined to subsequent mining permits (ie once the holder of an exploration permit satisfies the Minister that he or she has, as a result of activities authorised by the permit, discovered a deposit or occurrence of a mineral to which the permit relates),
- c. **note** MBIE has undertaken targeted engagement with Māori and with industry (workshops with Straterra the Aggregate and Quarrying Association (AQA) and Energy Resources Aotearoa (ERA)) on this proposal and have provided a summary of the feedback in this briefing,

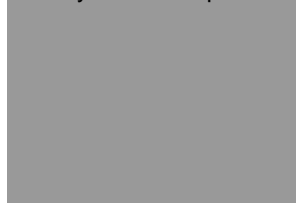
Free and frank opinions



m. **agree** to review and circulate the draft Cabinet paper for Ministerial consultation.


Yes | No

Privacy of natural persons



Martyn Pinckard
Acting General Manager,
Resource Management
System
**Ministry for the
Environment**
22/08/2024

Privacy of natural persons



Susan Hall
Acting General Manager,
Resources Markets
**Ministry of Business,
Innovation and
Employment**
22/08/2024

Hon Shane Jones
**Minister for Resources
and Regional
Development**
Date

Approval to consult on cost recovery fees for processing Fast-track Approval applications

Purpose

This paper:

- a. updates you on feedback from targeted engagement on the proposal to add CMA permitting decisions to the Bill,
- b. seeks your direction on including mining permits needed to replace existing privileges (e.g. a CML issued prior to the enactment of the CMA), and
- c. provides a draft Cabinet paper for your consideration attached as annex one.

Background

1. We briefed you, Minister Brown and Minister Lee in December 2023 regarding the design choices for the Bill, including which approvals would be included in the fast-track process (MBIE 2323-1382 refers). Following submissions to the Select Committee, you requested MBIE consider how relevant CMA permitting decisions could be included in the Bill via an AP and agreed MBIE could engage with iwi and industry on the proposal.
2. The overall policy intent of the new Fast-track Approvals regime is to provide a “one-stop shop” for various types of regulatory approvals within scope of the Bill, as required to deliver regionally and nationally significant projects.
3. While many mining projects will already have the necessary mining permit under the CMA, there are some scenarios where this will have to be obtained before the project can commence (or continue) mining, particularly in the minerals sector (e.g. coal or gold mining). There is potential to include these approvals in the “one-stop shop” under the Bill.
4. Fast-track Ministers met on 19 August 2024 to discuss a range of potential changes to the Bill that could be included via APs. You agreed to circulate a draft Cabinet paper for Ministerial consultation on 27 August 2024.

Summary of feedback received during targeted engagement

Feedback from iwi engagement

5. MBIE has undertaken targeted engagement with Māori and with industry on the proposal to add subsequent mining permits to the Bill. This included several hui with invites focused on iwi with Crown Minerals Protocols or Energy and Resources Accords (collectively referred to as CMPs in this briefing). Due to the short timeframes involved, we did not have a high number of participants at these hui. Many respondents were critical of the constrained timeframes and, so, our approach to this engagement.

- 6. Consistent with submissions received on the Bill, there was strong opposition from iwi participants to the inclusion of CMA permitting approvals under the Bill and a desire to see a range of changes made to the Bill to better provide for Māori rights and interests. One participant commented that they would like to see the same level of priority given to their feedback as the government is giving to Straterra's submission to include mining permits in the Bill.

- 7. In terms of feedback from iwi participants on specific elements of the proposal, there was support for MBIE to maintain the primary role in analysis on CMA permits and to have a role in advising on projects at the referral stage of applications, and support for ensuring consultation timeframes for permit applications under the CMA are maintained. There was some support for having a single point of contact for iwi in terms of consultation by government on the substantive permit applications, which could be the expert panel. We undertook to pass on feedback received through these hui and have included the written feedback received as annex three of this briefing.

Free and frank opinions

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Feedback from industry engagement

- 12. Feedback from industry was mixed. Participants in the Straterra workshop were most supportive of the change, which reflects MBIE's view that the minerals sector are the most likely to apply for CMA permits via the Fast-track process if the option is included in the Bill. While they supported adding subsequent mining permits for exploration permit holders, they also raised a potential issue with projects under existing privileges that are due to expire in 2027. This issue is discussed in the next section.

13. Quarrying and petroleum sector participants advised that while they supported the Bill, they were unlikely to seek CMA permit approvals if they are added to the Bill. They expressed concerns that the regulator (within MBIE) would need additional resources to ensure that permit processing times for other projects were not negatively affected.
14. Participants from the petroleum sector expressed interest in the potential to extend the duration of existing CMA mining permits under the Bill. This, combined with marine consents for additional wells, might support efforts to increase gas supply. When pushed on the benefits of fast-track for this, the feedback suggested the greatest benefits would be in terms of time saving around marine consents.
15. There is also a chicken and egg effect with a decision to extend the timeframes for a permit, as they are intended to match the production profile from the field, which in turn will depend on the outcome of the additional wells. Given this, MBIE considers it would be most appropriate for any fast-track applications to focus on the non-CMA approvals needed for new wells within the mining permit area, and once the new wells were complete an application to extend the duration of the permit could be made under the CMA based on the revised production profile for the resource. This would not delay the process to bring new gas supply online, given the expiry dates of existing permits.

Issue with existing privileges due to expire in 2027

16. Transitional arrangements for existing mines (or exploration projects) operating under mining licences under various legacy Acts (e.g. the Coal Mining Act 1979) were put in place when the CMA was passed. The CMA defines these types of licences collectively as **existing privileges**. References to licences in this briefing refer to existing privileges, while references to permits refer to approvals under the CMA.
17. Many of these existing privileges remain in effect. In most cases, the minerals have been extracted and there is no opportunity for further mining. In others, mining continues (e.g. Stockton (CML37150) or Rotowaro (CML 37155)). In the case of Sullivan (CML 37161), Bathurst have plans to mine this area as part of the Buller Project but will require a replacement mining permit under the CMA to do so.
18. The duration of most existing privileges cannot be extended. For mining to occur beyond the expiry date of a licence, the licence holder will need to apply for and be granted a new (e.g. replacement) mining permit under the CMA. They will also need to apply for any other necessary regulatory approvals covered by the licence like an access arrangement.
19. Most CML still in effect will expire on 1 March 2027. One mining licence for gold will expire in December 2024. An application under the CMA is currently being assessed by the regulator to extend the land of an existing mining permit to cover that licence. The four remaining existing privileges for minerals other than coal (or petroleum) will expire between 2031 and 2037.
20. There is sufficient time for mining permit applications for these projects to be considered outside of the fast-track process, provided the applicants themselves are ready to lodge the application. As such, the main benefit of including them in the Bill is bundling up their CMA permit with other approvals (which could be more efficient for applicants) rather than time saving.

21. Given the interest from the sector, we think that if CMA permitting is included in the Bill, applications to replace existing privileges would also be a reasonable candidate alongside subsequent mining permits. This would be a relatively easy addition to draft into the Bill alongside the inclusion of subsequent mining permits.

Risks and mitigation

22. There is a risk around the limited resources and expertise within the regulator to provide robust analysis on multiple fast-track applications within the timeframes required under the Bill. To some extent this is an issue regardless of whether or not the CMA permit applications are bundled with other approvals under the Bill, or made separately under the CMA around the same time, given many of the potential fast-track projects will need appropriate CMA permits either way.

23. Additional resources for the regulator (including additional legal support) could mitigate this risk. These resources could be cost recovered from applicants (e.g. through fees under the Bill)

Confidential advice to Government
[Redacted]

Legal professional privilege
[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Changes are needed to the permitting process for the Bill

28. You have previously agreed to include subsequent mining permits in the fast-track process to align these decisions with other fast-track approvals [MBIE 2324-3600].

MBIE has looked at the process for granting subsequent mining permits based on the right for exploration permit holders under 32(3) of the CMA to apply following a successful discovery of a deposit or resource where the requirements under the CMA to show that the discovery/deposit is economically and technically feasible are met. This requirement will remain a core part of the application process.

29. We are proposing to largely replicate the existing assessment requirements under the CMA for the Bill, but there will need to be some changes needed to account for the truncated timeframes and the decisionmaker being the expert panel and not the regulator (under delegation from the Minister).
30. For example, we are proposing that an applicant under the Fast-track process does not have the ability to go to arbitration if there is a disagreement about the appropriateness of the work programme. Instead, the expert panel would have the final say alongside other approvals.
31. Similar to the approach taken with some other approvals in the Bill, MBIE proposes to undertake analysis on the CMA permit application and make a report to the expert panel within the timeframes provided under the Bill. The Panel will then consider this and any other information it considers relevant alongside other regulatory approvals.
32. At its discretion, the expert panel can suspend the timeframes on the application process if there is no agreement on how to proceed (e.g. a proposed work programme under the permit is not acceptable to both the applicant and MBIE). This would allow for these issues to be worked through but would also delay the overall process (e.g. other approvals being sought under the Bill).

Regulatory and climate impact analysis

33. Cabinet has agreed [CAB-23-MIN-0468] that the Bill was exempt from Regulatory Impact Analysis (RIA) requirements under the 100 Day Plan, provided a Supplementary Analysis Report (SAR) was developed and a post implementation assessment undertaken. However, the Ministry for Regulation has since confirmed that additional policy proposals to amend the Bill via an AP are considered new proposals that trigger the RIA requirements, and will require an additional annex to the SAR on the Bill.
34. To comply with these requirements, MBIE has developed an annex to the SAR for the Bill (attached as annex two) and will be having this assessed by an MBIE-led RIA panel against the RIA requirements. We aim to have this assessment finalised in time to include an appropriate statement in the Cabinet paper when it is lodged. For now we have included a placeholder.

The climate implication assessment requirements do not apply

35. The Climate Implications of Policy Assessment (CIPA) requirements under CO (20) 3 do not apply to this proposal as the emissions impact is indirect. The Bill is designed to speed up projects, including mining projects that will generate emissions. However, a mining permit under the Crown Minerals Act itself does not generate emissions; it gives exclusive rights to the mineral in question.

Next steps

36. The current timeline officials are working to for the Bill overall is as follows:

STEP	DATEs (2024)
Draft AP Cabinet paper to Ministers	22 August
Ministerial consultation on draft AP Cabinet paper(s)	27 August to 5 September
AP Cabinet paper(s) lodged for Cabinet Economic Policy Committee (ECO) 18/09 and Cabinet 23/09	12 September
PCO drafting of the Bill and APs	16 September to 29 October
Ministers' decisions on draft Cabinet Legislation Committee (LEG) paper	17 October
AP Cabinet paper lodged for LEG 14/11 and Cabinet 18/11	31 October
AP to be tabled for Committee of the Whole House	(date TBC)

37. Given the timeframes are tight, we have drafted a separate Cabinet paper to support these proposals. Should Cabinet agree to them, MBIE will work directly with PCO to draft the AP (while continuing to work closely with the Ministry for the Environment on the Bill).

Annexes

38. Annex one – draft Cabinet paper (attached as separate document)

39. Annex two – draft annex to the Supplementary Analysis Report for the Bill

40. Annex three – written feedback from iwi **Free and frank opinions**

Annex three – written feedback from iwi Free and frank opinions

Free and frank opinions

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Free and frank opinions

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BRIEFING

Decisions on consultation and timing for including Crown mineral permitting in the fast-track process

Date:	17 June 2024	Priority:	High
Security classification:	In Confidence	Tracking number:	2324-3842

Action sought		
	Action sought	Deadline
Hon Shane Jones Minister for Resources	<p>Agree to either:</p> <ol style="list-style-type: none"> take an oral item to Cabinet as soon as possible to obtain agreement to targeted consultation with iwi, hapū and the mining sector on possible changes to Crown-minerals permitting under the Bill, or MBIE drafting a short Cabinet paper to obtain agreement to targeted consultation with iwi, hapū and the mining sector on possible changes to Crown-minerals permitting under the Bill, for consideration at Cabinet Economic Policy Committee (ECO) on 26 June 2024. <p>Agree to officials engaging with the Clerk of the Environment Select Committee regarding consultation on the proposal to include Crown Minerals Act permitting in the Bill.</p> <p>Agree to discuss possible timing for consultation with officials (see Annex One for high level options).</p> <p>Agree to forward this briefing to Minister Bishop as the Minister responsible for the Bill.</p>	18 June 2024

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Susan Hall	Policy Director, Resource Markets	Privacy of natural persons	✓
Joe Harbridge	Principal Policy Advisor Resource Policy	Privacy of natural persons	

The following departments/agencies have been consulted

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comments



BRIEFING

Decisions on consultation and timing for including Crown mineral permitting in the fast-track process

Date:	17 June 2024	Priority:	High
Security classification:	In Confidence	Tracking number:	2324-3842

Purpose

We briefed you on options to align Crown Minerals Act 1991 (CMA) permitting with the fast-track process on 2 May 2024 [MBIE 2324-3043] and 27 May 2024 [MBIE 2324-3600]. This briefing seeks your decisions on the proposed timing, consultation and next steps for possible changes to Crown-minerals permitting under the Fast-track Approvals Bill (the Bill).

Recommended action

The Ministry of Business, Innovation and Employment (MBIE) recommends that you:

- b **Note** you have previously agreed to include subsequent mining permits issued in accordance with section 32(3) of the CMA in the fast-track process, to align these decisions with other fast-track approvals [MBIE 2324-3600].

Noted
 - c **Note** in addition to broader Treaty of Waitangi responsibilities, there are specific Treaty of Waitangi settlement obligations on you and MBIE, set out in formal relationship agreements and Crown Minerals Protocols, to consult with relevant iwi and hapū on permit applications, and policy and legislative developments or reviews in relation to Crown-owned minerals.

Noted
 - d **Note** in addition to meeting these Treaty obligations, MBIE recommends targeted consultation with the mining sector on the proposed changes to the Bill.

Noted
 - e **Note** there is limited time to develop the policy, meet consultation obligations, seek Cabinet approvals, and have the provisions drafted by Parliamentary Counsel for inclusion in the Bill.

Noted
 - f **Agree** to either:
 - a. take an oral item to Cabinet as soon as possible to obtain agreement to targeted consultation with iwi, hapū and the mining sector on possible changes to Crown-minerals permitting under the Bill,

Agree / Disagree
- Or
- b. MBIE drafting a short Cabinet paper to obtain agreement to targeted consultation with iwi, hapū and the mining sector on possible changes to Crown-minerals permitting under the Bill, for consideration at Cabinet Economic Policy Committee (ECO) on 26 June 2024.

Agree / Disagree
 - g **Note** there will be limited time for ministerial consultation on the proposal before it is considered by Cabinet or ECO.

Noted

- h **Note** that, because the Bill is before Select Committee, we recommend seeking the Select Committee's approval for consultation on the proposal to include CMA permitting in the Bill. *Noted*
- i **Agree** to officials engaging with the Clerk of the Select Committee regarding consultation on the proposal to include CMA permitting in the Bill. *Agree / Disagree*
- j **Agree** to discuss timing options with officials (see Annex One for options). *Agree / Disagree*
- k **Agree** to forward this briefing to Minister Bishop as the Minister responsible for the Bill. *Agree / Disagree*

Privacy of natural persons



Susan Hall
Policy Director, Resource Markets
 Building, Resources and Markets, MBIE
 17 / 06 / 2024

Hon Shane Jones
Minister for Resources
 / /

Background

1. You have previously agreed to include subsequent mining permits issued in accordance with section 32(3) of the CMA in the fast-track process, to align these decisions with other fast-track approvals [MBIE 2324-3600].
2. You have also requested further information on your obligations to consult with iwi/Māori under the Treaty of Waitangi settlement obligations on you and MBIE, specifically in relation to both the consultation on upcoming CMA amendments to repeal the offshore petroleum exploration ban and the proposal to include CMA permitting in the Bill.

Treaty of Waitangi responsibilities and obligations to consider

3. There are broad Treaty of Waitangi responsibilities, and specific Treaty of Waitangi settlement obligations on you and MBIE, set out in formal Energy and Resources Accords (Accords), Crown Minerals Protocols (CMPs) and relationship agreements.

Broad Treaty of Waitangi responsibilities

4. The basis for including the Treaty in Crown policy making, as affirmed by Court and Waitangi Tribunal decisions, is to ensure:
 - a. Māori groups are appropriately involved throughout policy processes, consistent with their level of interest in the policy area, and
 - b. Policy decisions are made with clear consideration of Māori interests, in the context of the Crown's Treaty responsibilities.
5. Where Māori rights and interests are engaged, as is the case both with the management of Crown-owned minerals and in relation to the fast-tracking of significant projects, the responsibility is on the Crown to both appropriately involve Māori in the policy process and to take decisions with a clear consideration of how Māori groups consider the issues and how their rights and interests could be affected.
6. Guidance on how to achieve this is set out in Cabinet Office Circular CO (19) 5 and in guidance for agencies provided by Te Arawhiti. While the specifics will vary depending on the proposal, there are core values that underpin appropriate consultation:
 - a. **Partnership** - the Crown and Māori will act reasonably, honourably and in good faith towards each other as Treaty partners.
 - b. **Participation** - the Crown will encourage, and make it easier for Māori to more actively participate in the relationship.
 - c. **Protection** - the Crown will take active, positive steps to ensure that Māori interests are protected.
 - d. **Recognition of Cultural Values** – the Crown will recognise and provide for Māori perspectives and values.
 - e. **Use Mana Enhancing Processes** - recognising the process is as important as the end point; the Crown will commit to early engagement and ongoing attention to the relationship.
7. Section 4 of the CMA also confers a responsibility on all persons exercising functions and powers under the CMA to have regard to the principles of the Treaty of Waitangi.

Specific Treaty of Waitangi settlement obligations

8. In addition to broad Treaty of Waitangi responsibilities, MBIE has over 70 Treaty settlement relationships, including 57 Crown Minerals Protocols (CMPs), 10 Iwi-Crown Accords and eight relationship agreements flowing from Treaty Settlements. MBIE is also involved in 12 active settlement negotiations with iwi groups who are progressing towards settlement of their historical Treaty claims, four of which are expected to include Crown Minerals Protocols.
9. While some consultation requirements under the CMA have set timeframes, for example, iwi and hapū will have 20 working days to comment on new permit applications and can request a further 20 working days, these timeframes are generally set in the Minerals Programmes and relate to operational matters rather than policy or legislative changes.

Legal professional privilege

[Redacted text block]

Legal professional privilege

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Based on this advice, we recommend consulting with Māori on the proposal to add CMA permitting to the Bill

19. As indicated above, the obligation to consult is engaged by the proposal to add CMA permitting to the Bill. We therefore recommend engagement with Māori and are developing an engagement plan accordingly.

We also recommend engagement with the mining sector

20. We anticipate interest from the mining sector on including CMA permitting decisions in the Bill, and specifically the process they would need to follow as applicants under the Bill. As the amendments would be introduced after Select Committee consideration, there will not be any further opportunity for the sector to engage on the proposals once the changes have been drafted.
21. To minimise any potential issues, we recommend engaging with the sector on the proposed process and information requirements. This will allow us to test the feasibility of the proposed timeframes, and identify any issues from the sector's perspective.

Legal professional privilege

We are seeking your direction on how you would like to proceed

22. We are seeking several decisions from you on how to proceed.

Obtaining Cabinet approval for consultation

23. Given the limited amount of time to obtain Cabinet policy approvals and draft an Amendment Paper needed to give effect to the proposal, engagement needs to start soon. If you wish to seek Cabinet's approval for this engagement, it is advisable to do this as soon as possible.
24. This could be done either by taking an oral item to Cabinet or taking a short Cabinet paper.
25. To allow as much time as possible for engagement, the fastest option is to take an oral item to Cabinet on 24 June 2024. Alternatively, you could take a paper to the Economic Policy Committee on 26 June and Cabinet on 1 July 2024. This would require lodgement on Thursday this week (20 June 2024). These options allow very little time for Ministerial consultation.

Engagement with the Select Committee on consultation

26. The Bill is currently before the Environment Select Committee (the Committee) for consideration. It is appropriate to seek the Committee's approval to engage with or seek further information from submitters on the Bill. The consultation we are proposing is not directly in relation to the form of the Bill currently before the Committee. However, it is likely that we will engage with iwi, organisations or people who have submitted on the Bill, and that matters relating to the Bill will be raised.
27. We therefore seek your agreement to us engaging with the Clerk of the Committee to alert them to the intention to consult. We expect the Clerk will advise that the Committee's approval should be sought.

Timing options for advancing this work

28. Annex One contains options for how to advance this work. The options allow for a lesser or greater amount of time for engagement with Māori on the proposals.
29. The Bill is currently due to be reported back from the Committee on 7 September 2024, however, we understand this is likely to be extended to 18 October 2024. The Amendment Paper would ideally be introduced before the Committee of the Whole House on the Bill, which is expected mid-November 2024 (exact dates are still to be determined). This creates a significant constraint on the amount of time available for consultation.
30. We will discuss the options below with you at your Officials' meeting on Thursday, 20 June 2024.
31. Finally, we also recommend you forward this briefing to Minister Bishop as the Minister responsible for the Bill.

Annexes

Annex One: Timing options for including CMA permitting in the Bill

Annex One: Timing options for including CMA permitting in the Bill

There is limited time to make changes to the Bill before it is passed this year

The following timetable sets out the timing options for including CMA permitting in the Bill by way of an Amendment Paper before passage of the Bill.

We are seeking your direction on how long you would like to consult for.

Task	Option 1: Allows approximately 1 week for consultation	Option 2: Allows approximately 4 weeks for consultation	Option 3: Allows approximately 6 weeks for consultation
Cabinet agreement to consult iwi, hapū and the mining sector on possible changes to CMA permitting under the Bill	ECO meeting 26 June 2024 Cabinet 1 July 2024	ECO meeting 26 June 2024 Cabinet 1 July 2024	ECO meeting 26 June 2024 Cabinet 1 July 2024
Notify Select Committee regarding consultation	1 July 2024	1 July 2024	1 July 2024
Consult iwi, hapū and the mining sector on possible changes to CMA permitting under the Bill	8 July 2024 to 12 July 2024	8 July 2024 to 2 August 2024	8 July 2024 to 16 August 2024
Ministerial and agency consultation on policy proposals	25 July 2024 to 31 July 2024	14 August 2024 to 20 August 2024	30 August 2024 to 5 September 2024
Final Cabinet decisions on policy Note: Option 1 requires a tight turnaround on ministerial consultation due to the non-sitting week of 12 August 2024	ECO 7 August 2024 Cabinet 12 August 2024	ECO 28 August 2024 Cabinet 2 September 2024	ECO 11 September 2024 Cabinet 16 September 2024
Drafting instructions for Parliamentary Counsel Office issued	21 August 2024	11 September 2024	26 September 2024
Cabinet Legislation Committee consideration	26 September 2024	17 October 2024	7 November 2024
Amendment Paper introduced	Early October 2024	Late October 2024	Mid November 2024



BRIEFING

Including mining permitting in the fast-track process

Date:	27 May 2024	Priority:	Urgent
Security classification:	In Confidence	Tracking number:	2324-3600

Action sought		
	Action sought	Deadline
Hon Shane Jones Minister for Resources	<p>Agree, if you wish to include Crown Minerals Act (CMA) permitting decisions in the fast-track process, to seek Cabinet approval for targeted consultation on an extension of the scope of the Bill to include subsequent mining permits issued in accordance with section 32(3) of the CMA.</p> <p>Agree to forward this briefing to the Fast-track Approvals Bill Ministers Group in advance of their meeting on 29 May 2024.</p>	28 May 2024

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Susan Hall	Policy Director, Resource Markets	Privacy of natural persons	✓
Joe Harbridge	Principal Policy Advisor Resource Policy	Privacy of natural persons	

The following departments/agencies have been consulted
Ministry for the Environment

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



BRIEFING

Including mining permitting in the fast-track process

Date:	27 May 2024	Priority:	Urgent
Security classification:	In Confidence	Tracking number:	2324-3600

Purpose

We briefed you on options to align Crown Minerals Act 1991 (CMA) permitting with the fast-track process on 2 May 2024 [MBIE 2324-3043 refers]. This briefing responds to your request for further advice on how inclusion of mining permitting decisions would be implemented.

Recommended action

The Ministry of Business, Innovation and Employment (MBIE) recommends that you:

- a **Note** our recommendation in MBIE 2324-3043 was not to include CMA permitting decisions in the fast-track process.

Noted

- b **Agree**, if you wish to include CMA permitting decisions in the fast-track process, that these should be confined to subsequent mining permits issued in accordance with section 32(3) of the CMA (ie once the holder of an exploration permit satisfies the Minister that he or she has, as a result of activities authorised by the permit, discovered a deposit or occurrence of a mineral to which the permit relates).

Agree / Disagree

- c **Note** there are specific Treaty of Waitangi settlement obligations on you and MBIE, set out in formal relationship agreements and Crown Minerals Protocols, to consult with relevant iwi and hapū on permit applications, and policy and legislative developments or reviews in relation to Crown-owned minerals.

Noted

- d **Note** there is limited time to develop the policy, meet consultation obligations, seek Cabinet approvals, and have the provisions drafted by Parliamentary Counsel for inclusion in the Fast-track Approvals Bill (the Bill) if it is intended to be passed this year.

Noted

e **Agree**, if you wish to include CMA mining permitting decisions in the fast-track process, to seek Cabinet approval for targeted consultation on this extension of the scope of the Bill in order to meet these Treaty of Waitangi settlement obligations.

Agree / Disagree

f **Agree** to forward this briefing to the Fast-track Approvals Bill Ministers Group in advance of their meeting on 29 May 2024.

Agree / Disagree

Privacy of natural persons



Susan Hall

Policy Director, Resource Markets

Building, Resources and Markets, MBIE

27 / 05 / 2024

Hon Shane Jones

Minister for Resources

..... / /

Background

1. We briefed you, the Minister for Energy, and the Minister for Economic Development in December 2023 regarding the design choices for the Fast-track Approvals Bill (the Bill), including which approvals would be included in the Bill (MBIE 2323-1382 refers).
2. The Bill was introduced 7 March 2024, as a 'one stop shop' fast-track consenting regime. You asked for advice on whether CMA permitting decisions should also be included in the Bill. We briefed you on options to align Crown Minerals Act 1991 (CMA) permitting with the fast-track process on 2 May 2024 (MBIE 2324-3043 refers).
3. You have subsequently requested further advice on how to include mining permitting decisions in the Bill. This briefing responds to that request.

Context

MBIE's first best advice is that mining permits should be obtained before lodging fast-track applications

4. MBIE's view is that the granting of permits under the CMA:
 - a. requires a degree of technical assessment (eg geological and economic expertise specific to the mineral in question) that is not well suited to the procedural design of the Bill and standard expertise that will be needed and available for the expert panel under that process; and
 - b. should ideally occur ahead of a fast-track process and is therefore more appropriately a factor to be considered in the Ministerial referral stage of the Bill.
5. Fundamentally, while we acknowledge there have been delays around CMA permitting which have been frustrating for industry, we consider that the potential benefits for including CMA permitting in the Bill for industry are limited and come with risks to both industry and the Crown. In particular, introducing mining permitting into the fast-track process will involve condensing a technically complex geological and economic assessment which can take around 6-12 months. While this may be administratively possible, the quality of analysis and advice is likely to suffer.
6. As a middle ground, we could establish a process that aligns CMA permit approvals with the fast track process, but outside of that Bill. This aligned process could meet the policy aim – to speed up approvals for regionally and nationally significant projects – in line with the new fast-track process.
7. Notwithstanding this preferred approach, we have identified a process by which certain CMA permit approvals could be incorporated into the fast-track process. Our proposed approach is similar to the approaches proposed by the Department of Conservation and Ministry for Primary Industries for conservation and aquaculture approvals, respectively.
8. In both of those cases, it is proposed that, while an application will advance through the fast-track process, those agencies retain responsibilities for advising on certain matters where they hold:
 - a. particular expertise that is unlikely to be available to an expert panel, and
 - b. continuing legal, regulatory and management responsibilities.
9. Given the regulatory oversight role held by New Zealand Petroleum and Minerals, we propose a similar approach. This is described below.

Options to include mining permitting in the fast-track process

Which permits to include?

10. One of the key choices is which decisions under the CMA should be included in the Bill to create a “one-stop” approvals process. We propose this is limited to mining permit decisions (rather than prospecting or exploration permits).
11. As Straterra noted in paragraphs 54 and 55 of its submission¹ on the Bill, there could be potential conflicts between permit applications associated with the Bill and made under the CMA where they are seeking access to new areas that are not currently allocated to an existing permit. We note that various methods under the CMA to resolve these conflicts involve allocating the rights to Crown-owned minerals in a competitive way to ensure they are allocated to the party best placed to provide an economic return to the Crown.
12. Options like running a competitive tender under the Bill and CMA are unlikely to be workable. We also do not think it would be appropriate (or consistent with the Bill’s purpose) for an application for a mining development under the Bill to proceed to an expert panel where an important component of the proposal (eg obtaining the exclusive rights to Crown minerals) has not already been secured through holding the precursor prospecting and/or exploration permit under the CMA.
13. Given this, we consider the most appropriate way to include CMA permitting in the fast-track process is to make it available where the relevant provisions of s 32 of the CMA (right of permit holder to subsequent permits) have been met. This would mean once the holder of an exploration permit has discovered a deposit or occurrence of a mineral to which the permit relates, they would have the option to use the fast-track process for their CMA mining permit alongside the environmental approvals they may need.
14. We recognise that there is a benefit in including these approvals in the fast-track process. It would ensure, where an applicant had an exclusive right to seek the subsequent mining permit but had yet to obtain that permit, that this process could be expedited so they are not waiting on mining permit approvals while their other approvals have been granted under the Bill.

How subsequent mining permits should advance through the fast-track process

15. There are choices in how to process subsequent mining permits through the fast-track regime.
16. As described in MBIE 2324-3043, the time consuming and often iterative aspects of subsequent mining permits include analysis of project economics; financial capability; and technical considerations (including the duration of permit, agreement of area, and confirmation of reserves). The process requires highly specialised expertise. Once the regulator deems these elements acceptable, the subsequent mining permit and associated work programme can be approved.
17. Even for subsequent mining permits, these elements and the associated work programmes are typically developed through discussions between MBIE and the applicant to get to an approach on how to extract the Crown’s minerals and to ensure they provide an economic return to the Crown.
18. It is typical for applications to be submitted with supporting information, the initial application to be assessed and further information sought, and then based on this further information, an

¹ [Submission-Fast-track-Approvals-Bill.pdf \(straterra.co.nz\)](https://www.straterra.co.nz/submission-fast-track-approvals-bill.pdf)

acceptable outcome reached. We are not aware of a single tier 1 mining permit issued to date that didn't require further information to be provided.

19. We therefore recommend that MBIE supports the expert panel by providing advice on whether the permit meets the requirements of the CMA, and retains responsibility for assessing and negotiating an acceptable work programme associated with the subsequent mining permit. We recommend that MBIE would evaluate and then put forward a recommendation to the panel, who would consider this advice alongside other approvals and make a combined recommendation to Ministers on the substantive application.
20. This approach reflects the approach being proposed for non-environmental approvals in relation to conservation land (for example, those relating to commercial aspects of a negotiation). It achieves the outcome of including certain CMA approvals within the fast-track process, while maintaining regulator involvement in the assessment and decision-making on those approvals.
21. We propose this approach because we do not consider that an expert panel could engage the appropriate independent expertise (outside of MBIE and without raising issues around conflicts of interest) to carry out the assessments above, or that this could be achieved to an acceptable level in the timeframes available (even with MBIE's support). We note that once an application has been referred, there is currently no option to split it out and refer aspects (for example, CMA permitting) back to a relevant agency if it is too complex.
22. There are also sequencing issues that will be problematic for the expert panel to resolve. For example, in consulting with iwi and hapū on the permit approval, the panel will need to consider requests by iwi and hapū to exclude any land from a permit, or to subject activities in certain areas to additional requirements.
23. Where the work programme is not approved or other CMA requirements are not met, MBIE will recommend the substantive application is declined or that the matter is referred back to the expert panel for further consideration (cl 25(5) of the Bill). We note that, as the Bill is drafted, the expert panel would still be able to recommend the permit is granted in line with the purpose of the Bill.
24. The table below sets out a potential approach for how MBIE's regulatory role could be incorporated into the fast-track process, as it is reflected in the Bill as introduced. If changes are made to the process in the Bill, this will need to change accordingly.

Step	MBIE's role (as regulator under the CMA)	Timing as set out in Bill (WD = working day)
Referral process		
Completeness assessment (cl15(4) of the Bill) by responsible agency	Is advised of the application and provides an early assessment of the CMA permit application for completeness.	10 WD (including 5 WD for Ministers to respond on Treaty settlement and other obligations).
Invitation to comment (cl 19(1) of the Bill)	May be invited to provide comment.	10 WD to provide comment.
Decision on referral	Feeds into advice on relevant projects.	N/A
Substantive application process		
Completeness assessment (Sch4 cl5(1) of the Bill) by the Environmental	Is advised of the CMA permit application and provides an assessment for completeness.	5 WD

Step	MBIE's role (as regulator under the CMA)	Timing as set out in Bill (WD = working day)
Protection Authority (EPA).		
Expert panel assessment	<p>Is appointed as special or technical advisor on panel establishment for relevant projects, and is tasked with considering iwi and hapū feedback, providing a recommendation on the CMA permit outcome, and negotiating an acceptable work programme with the applicant.</p> <p>Notifies relevant iwi and hapū under CMA Minerals Programme requirements for permit applications (e.g. allow 20 WD for a response, plus allow for an additional 20 WD on request where the expert panel agrees).</p> <p>MBIE provides recommendation to expert panel.</p>	Default 25 WD (or the time specified in a referral decision), plus an additional 25 WD if panel considers it is needed.
Expert panel recommendation provided to Ministers for final decision	Includes MBIE's recommendation on the CMA permit and whether there is an acceptable work programme approved.	N/A
Substantive decision on fast-track approvals (including CMA permitting)	MBIE provides advisory support to joint Ministers on relevant projects.	N/A

There are specific Treaty of Waitangi obligations to consider

25. There are specific Treaty of Waitangi settlement obligations on you and MBIE, set out in formal relationship agreements and Crown Minerals Protocols,² to consult with relevant iwi and hapū on permit applications, policy and legislative developments or reviews in relation to Crown-owned minerals.
26. Currently, s4 of the CMA requires all persons exercising functions and powers to have regard to the principles of the Treaty of Waitangi. This is not currently a requirement for decision-makers under the Bill. As such, any shift from taking decisions under the CMA to the Bill could affect Māori rights and interests and there is an obligation to consult on the change before policy decisions are made and to maintain the consultation requirements for permit applications.
27. The CMA Minerals Programmes set out consultation requirements for permit applications, which include allowing 20 working days for iwi and hapū to comment on applications within

² There are currently 57 such agreements with iwi flowing from Treaty Settlements. For example, the Ngaa Rauru Kitahi Deed of Settlement: Relationships Schedule includes a protocol with the Ministry of Economic Development (now MBIE) which sets out specific consultation requirements in relation to changes to policy and permits within an area specified in the protocol.

their rohe, and allows a further 20 working days to be requested. These timeframes will need to be accounted for under the Bill to ensure compliance with these protocols.

Risks and mitigations

28. As previously highlighted, as well as broad obligations under the Treaty of Waitangi to engage with Māori on matters that affect them, the Crown has specific commitments through Treaty settlements to engage with post-settlement governance entities on relevant policy and operational matters under relationship agreements, protocols and accords relating to Crown-owned and other minerals. Legal professional privilege
29. You can mitigate this risk by engaging with relevant iwi and hapū on this proposal before Cabinet decisions are made. If you wish to proceed, we recommend taking an oral item to Cabinet to seek approval for targeted consultation on this extension of the scope of the Bill in order to meet these Treaty of Waitangi settlement obligations.
30. Limiting application of the Bill to subsequent mining permits, and maintaining the requirements in the CMA to comply with the Minerals Programmes, including consultation with iwi and hapū, could limit the potential impact on Māori rights and interests, because this could effectively maintain the status quo of the CMA in relation to Māori rights and interests but truncate other parts of the process. However, the Bill is being revised extensively and if the purpose of the Bill is meant to be a primary consideration for all decisions, then this would have an impact on Māori rights and interests.
31. Compared to the status quo, there are potential risks where MBIE and/or the expert panel recommends a permit is declined and joint Ministers decide to accept it. These could include Free and frank opinions
- These kinds of concerns around Free and frank opinions would be raised by MBIE in its advice on any particular permit, and would need to be managed by putting appropriate conditions on any approvals.
32. Another risk is that many operators to choose not to use the fast-track process for their mining permits, as that would reduce the complexity of the fast-track application process for them and reduce risks around challenges to collective approvals under the Bill. If it becomes possible to apply for subsequent mining permits through the Bill, we would expect that many applications will choose to have their CMA permits in place before entering the process.

Next steps

There is limited time to make changes to the Bill

33. The Government is committed to passing the Bill this year.
34. Broadly speaking, there are two possible pathways for seeking a change to the Bill:
- As part of the departmental report to the Select Committee, for its consideration in the version of the Bill that gets reported back to the House, or
 - Through an Amendment Paper after Select Committee has reported back to the House.
35. To be available for the first option, policy decisions and drafting instructions would likely need to be complete in July. There is more time available for the second option, but decisions would still need to be taken by early September to allow for drafting before the Committee of the Whole House.

36. If you want to proceed, we recommend the second option, as per the following timetable:

Task	Date
Share this briefing with Fast-track Approvals Bill Ministers in advance of the meeting on 29 May 2024 for discussion	28 May 2024
Cabinet agreement to consult iwi and hapū on possible changes to CMA permitting under the Bill	Oral item 3 June
Notify Select Committee regarding consultation	Before 10 June
Consult iwi and hapū on your intention to make changes to CMA permitting under the Bill	10 June to 6 July (20 working days)
Targeted consultation with Tier 1 permit holders and industry bodies	10 June to 6 July
Final Cabinet decisions on policy	Early August
Drafting instructions for Parliamentary Counsel Office issued	Mid August
LEG consideration of changes	Early September
Supplementary Order Paper introduced	Mid September

37. Annex One provides our initial thinking of proposed changes to the Bill to enable this to occur.

Annex One: Possible changes to the Bill

Note: We are aware that changes to the Bill at Select Committee are likely, which may have implications for the proposed changes below. They are intended to give a sense of the scale and complexity required, but final implementation will need to align with the Bill as reported back to the House.

- Amend Schedule 10 of the Bill, to allow applications for subsequent mining permits (as per s32 of the CMA) to be considered by the fast-track expert panel. Note: MBIE are considering some amendments to the process in s32 of the CMA, which would potentially also need to be carried over into the Bill, if enacted, for consistency.
- Amend the Bill to allow MBIE to support the expert panel on CMA permit applications.
- Keep key elements of the existing CMA process under the Bill but apply it to joint ministers: it is subject to s22 (Minister and chief executive must act in accordance with Minerals Programmes), s27 (Permit holder must have permit operator), 29A (Process for considering application) and s43 (Work programmes to be approved by Minister).
- May need to consider how to manage expiry and/or surrender of existing permits while fast-track approvals are sought (and any appeals considered).
- Timing work programme approvals under s43 of the CMA (eg six months) adjusted so they align with the fast-track process.
- The Government is required to consult with iwi as per the status quo in Treaty settlement protocols and the Minerals Programme but triggered on MBIE's receipt of a substantive application.
- Need to ensure cost recovery/fees are collected for MBIE's contribution to the process.
- Iwi and hapū can request additional 20WD from the expert panel, and allowing more time for iwi consultation in this context is considered a valid reason to extend timeframes under the Bill (see Schedule 4, cl 39(4) of the Bill).
- Will need to consider how a requirement to act in accordance with the Minerals Programmes which reference the principles of the Treaty of Waitangi would work in terms of the expert panel and joint Ministers' having regard to these principles.
- Provide for the confidentiality of commercial material in proposed work programme and permit application to be maintained.
- Section 32(8) of the CMA is maintained but includes appeals as necessary under the Bill.
- If additional changes are required, eg an extension of land or a change of operator, these applications are made and approvals are sought outside of the fast-track process (ie under the CMA).



BRIEFING

Options to align Crown Minerals Act permitting with the Fast-Track process

Date:	2 May 2024	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2324-3043

Action sought		
	Action sought	Deadline
Hon Shane Jones Minister for Resources	Agree to discuss the policy options in this briefing with officials.	10 May 2024

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Susan Hall	Policy Director, Resource Markets	Privacy of natural persons	✓
Conor Paul	Acting Manager, Resource Policy	Privacy of natural persons	
Joe Harbridge	Principal Policy Advisor Resources Policy	Privacy of natural persons	

The following departments/agencies have been consulted

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comments



BRIEFING

Options to align Crown Minerals Act permitting with the Fast-Track process

Date:	2 May 2024	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2324-3043

Purpose

To provide advice on ways to ensure permitting decisions under the Crown Minerals Act 1991 (CMA) can align with the fast-track approvals process currently under development.

Recommended action

The Ministry of Business, Innovation and Employment (MBIE) recommends that you:

- a **Note** the separation between powers and functions (and rights and obligations) under the CMA and under other legislation is intended to ensure clear accountability, avoid conflicting interests, and provide assurance of the viability of permitted mining activity. *Noted*
- b **Note** the nature of permitting decisions under the CMA and the skillsets required to evaluate applications are fundamentally different to, and typically a precursor of, other regulatory approvals required to progress mining operations. *Noted*
- c **Note** of the 10 possible fast-track mining projects previously identified, 6 already have mining permits, 2 have a mining permit but are waiting on approvals for an extension of area and/or duration, and the other 2 have an exploration permit and are anticipated to submit an application and supporting material on feasibility to convert this to a mining permit in late 2024. *Noted*
- d **Agree** to discuss the policy options in this briefing with officials. *Agree / Disagree*

Privacy of natural persons



Policy Director, Resource Markets

Building, Resources and Markets, MBIE

2 / 05 / 2024

Hon Shane Jones

Minister for Resources

..... / /

Background

1. We briefed you, Minister Brown and Minister Lee in December 2023 regarding the design choices for the Fast-Track Approvals Bill (FTAB), including which approvals would be included in the Bill (MBIE 2323-1382 refers).
2. The FTAB was introduced 7 March 2024, as a one stop shop fast-track consenting regime. You have recently asked for advice on whether CMA permitting decisions should also be included in the FTAB.

Context

3. The purpose of the Crown Minerals Act 1991 (CMA) is to manage prospecting for, exploration for, and mining of Crown owned minerals for the benefit of New Zealand. Within the context of the CMA, “the benefit of New Zealand” is best achieved by increasing our wealth through maximising the economic recovery of Crown-owned mineral resources.
4. The separation of powers and functions (and rights and obligations) under the CMA and under other legislation is intended to ensure clear accountability, avoid conflicting interests, and provide assurance of the viability of permitted mining activity.
5. The rights to mine Crown owned minerals are allocated to the best person to undertake the work in accordance with good industry practice, to maximise the potential return to the Crown.
6. A key focus of The Ministry of Business, Innovation and Employment (MBIE) as the regulator under the CMA (the regulator) is on ensuring the proposed work programme will deliver a fair return to the Crown on its minerals; is appropriate for the resource in question; economically and technically feasible; and that the Crown’s Treaty settlement obligations are met.
7. The FTAB is intended to be a “one stop shop” for approvals, but as drafted its focus is on providing for approvals relating to managing the environmental effects of activities. You have asked for advice on whether the FTAB should be extended to provide for CMA approvals. This briefing sets out substantive and procedural factors that we consider are relevant to this issue, and provides options for your consideration and decision.

MBIE’s preference is to not include CMA approvals in the FTAB

8. MBIE’s view is that the granting of permits under the CMA:
 - a. require a degree of technical assessment that is not well suited to the procedural design of the FTAB and standard expertise that will be needed and available for the expert panel under that process; and
 - b. is more appropriately a factor to be taken into account in the Ministerial referral stage of the FTAB because of the information and assurance obtained at that stage of a minerals project.

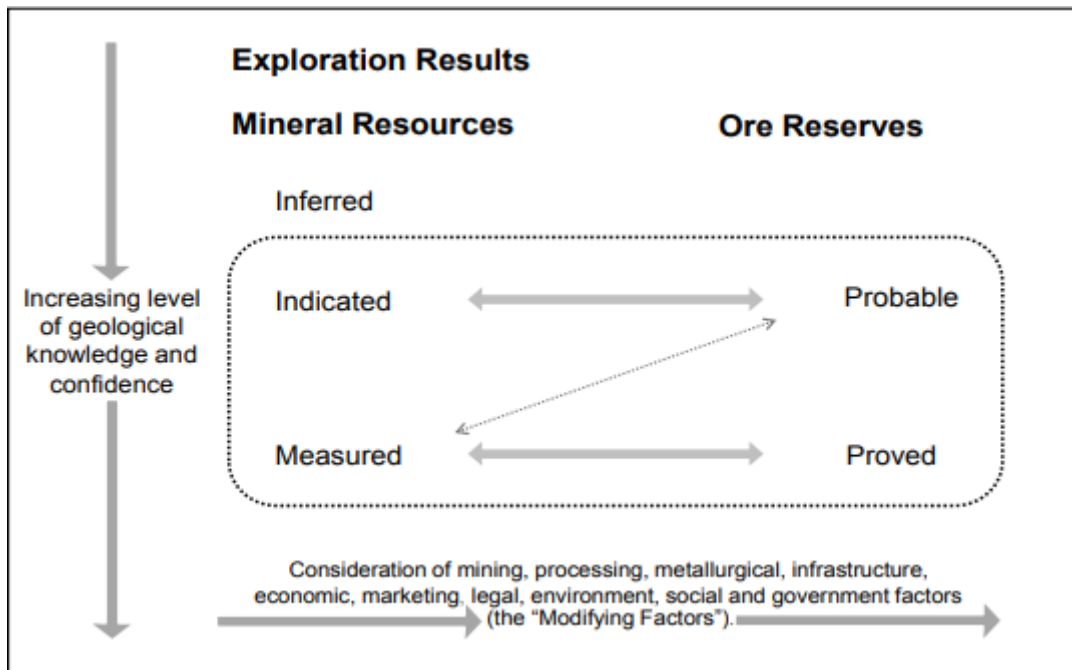
Exclusive rights to minerals are key to investment certainty

9. Significant mining projects (e.g. those that are likely to have regional or national benefit) are long-term investments. Obtaining exclusive mineral rights is usually one of the first stages in developing a mining project. These rights allow for capital to be invested in the scoping or pre-feasibility stage of a project with confidence (before other forms of consent are sought).

10. The CMA permitting system recognises this process by allowing exclusive prospecting and exploration mineral rights to be obtained relatively early in the process. These rights can then be converted to a mining permit once the applicant has shown an identified and delineated minerals resource (e.g. the location and size of proved and probable ore reserves) and that the project is technically and economically feasible.
11. Of the 10 possible fast-track mining projects previously identified, 6 already have mining permits, 2 have a mining permit but are waiting on approvals for an extension of area and/or duration, and the other 2 have an exploration permit and are anticipated to submit an application to convert this to a mining permit in late 2024.
12. We are not aware of any potential projects without some form of CMA permit that secures exclusive rights to the relevant mineral (or petroleum) but acknowledge that such a scenario could occur once the FTAB is enacted. However, we consider that, in practice, these rights are a necessary precursor to seeking resource or marine consents and land access arrangements for the activity. They provide the assurance of rights and permitted activity to investors, the Crown and other regulators.

The CMA process ensures the viability of mining projects to deliver significant regional and national benefits

13. A resource estimate is the first large step for determining if there is an economic project to be developed. Pre-feasibility studies allow the first estimation of reserves to be made and therefore allow a rough estimate of the economic return of the project. These are usually associated with a prospecting or exploration permit. To convert this to a mining permit, the regulator normally requires ore or petroleum reserves to be estimated (rather than resources) and therefore project economics to be assessed before granting a Tier 1 mining permit:















14. Without sufficient understanding of the proven and probable ore or petroleum reserves, it would be challenging to say that a particular mining project would have significant regional or national benefits.
15. Because the economic feasibility of a mining project is strongly linked to its ability to deliver significant regional or national benefits, MBIE's considers that having a CMA mining permit fits more appropriately as a factor to be taken into account at the Ministerial referral stage of the fast-track process.

The CMA requires financial, economic and technical due diligence before granting a permit

16. Applications for CMA permits must include a proposed work programme. For exploration permits, the work programme requirements will typically cover the steps needed to go from scoping to pre-feasibility and then to a feasibility assessment. The feasibility information is then submitted to the regulator alongside a mining permit application and proposed work programme.
17. The CMA requires the Minister to be satisfied (among other things) that the work programme is consistent with the purpose of the CMA and the proposed permit and that the applicant is highly likely to comply with the proposed work programme, taking into account financial capability, technical capability and compliance history.
18. A full feasibility study is a key study that tests the finalised mine / project plan in detail to ensure that it is likely to succeed. The Crown has a direct interest in the quality and completeness of these studies because the granting of a mining permit is effectively a form of due diligence on the economic and technical soundness of the project – as well as the financial and technical capability of the applicant – in recognition that it is a grant of an exclusive right over the Crown’s minerals.
19. The requirements for feasibility studies are set out in guidance¹ on the New Zealand Petroleum and Minerals website, and reference the Joint Ore Reserves Committee (JORC) of The Australasian Institute of Mining and Metallurgy, Australian Institute of Geoscientists and Minerals Council of Australia’s Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves².
20. The ASX and NZX require listed companies to report exploration results, mineral resources and ore reserves in accordance with the JORC code. This also covers any public disclosure of reporting and mining studies / feasibility studies. This matrix, prepared to support the JORC code, sets out what should be considered, in what detail at each stage of the feasibility study process:

STUDY PROCESSES MATRIX

	SCOPING STUDY	PRE-FEASIBILITY STUDY (PFS)	FEASIBILITY STUDY (FS)
 INTRODUCTION	Scene setting/basis for study. Basic maps and property claims.	Scene setting/basis for study. Preliminary maps and property claims.	Scene setting/basis for study. Detailed maps and property claims.
 ENVIRONMENT, SOCIAL AND PERMITTING	Conceptual. Permitting pathway and requirements defined. Reference to international, national requirements.	Data collection, monitoring program to international, national requirements.	Detailed and ongoing, ESIA, permitting to international, national requirements.
 DEPOSIT DEFINITION	Limited drilling, sampling and assaying.	Preliminary drilling, sampling and assaying.	Defined/extensive drilling, sampling and assaying.
 RESOURCES AND RESERVES	Predominantly Inferred Resources. Reserves not reported.	Predominantly Indicated Resources. Typically Probable Reserves.	Indicated and Measured Resources. Probable and Proved Reserves.
 MINING (Open pit / Underground / Other)	Assumptions. Simplified designs.	Methodology identified. General equipment selection. Preliminary mine design.	Methodology selected. Mine planning optimised. Equipment selected. Geotechnical investigations.
 METALLURGY (Sampling / Test work)	Limited definition of geometallurgy. Process benchmarking to inform to recovery and throughput.	Preliminary geometallurgy definition. Preliminary ore characterisation, bench scale test work, trade-off studies.	Detailed geometallurgy definition. Sample selection across major and minor domains. Detailed variability test work. Piloting for novel flowsheets. Confirmed recovery and throughput.
 ENGINEERING	Preliminary processing plant flowsheet. Estimates, assumptions. <5% discipline engineering.	Processing plant flowsheet options assessed. Preliminary engineering methods. Preliminary studies, power and water identified. 5–25% detailed engineering.	Detailed processing plant flowsheet, pre-Engineering Design. Power and water confirmed. 20–50% detailed engineering.
 PROJECT DEVELOPMENT PLAN	General, estimates based on assumptions.	Preliminary.	Detailed.
 CAPITAL COST ESTIMATE	Accuracy -25%+50%, Contingency ±30%	Accuracy -15%+25%, Contingency 15–30%	Accuracy -10%+15%, Contingency 10–15%
 OPERATING COST ESTIMATE	Accuracy -25%+50%, Contingency ±25%	Accuracy -15%+25%, Contingency ±15%	Accuracy -10%+15%, Contingency ±10%
 ECONOMIC EVALUATION	Assessment, budget quotes, simple analysis.	Preliminary analysis.	Detailed assessment and analysis.
 RISK	General overview.	Fatal flaw, risk workshop.	Fatal flaw, risk workshop, simulations.

¹ <https://www.nzpam.govt.nz/assets/Uploads/permits/minerals-guidelines/guideline-scoping-pre-feasibility.pdf>

² https://www.jorc.org/docs/JORC_code_2012.pdf

21. The factors in the JORC code speak to the economic viability and technical feasibility of a mining project, which are important considerations in granting a mining permit. There is a significant amount of technical expertise required to interpret this information, which is not easily transferable. For some permit applications, there may also be complex competitive considerations (e.g. where acreage is newly available and multiple firms are seeking the exclusive right to mine the minerals).
22. **Free and frank opinions**
Even within the regulator, different background knowledge and expertise is required to process petroleum and other mineral permits and at different stages (e.g. exploration vs mining) due to the differences in how these resources are developed.
23. This reinforces our view that it is more appropriate for these assessments to take place, and relevant information presented to Ministers, before a project is referred to a Fast-Track expert panel.

Ensuring CMA permitting timeframes are not a barrier for fast-track applicants

24. We acknowledge that current timeframes for permitting decisions have created frustration for the mining industry. We have been working to improve the permitting process to address this feedback and reduce the backlog of applications.
25. While we do not recommend including CMA permitting in the Fast-Track process, we have considered how to ensure CMA permitting is not acting as an unnecessary barrier for relevant projects. We consider there is much we can do to work with potential applicants in advance of the formal fast-track application process, provided they inform us of their intentions early in the process.
26. The CMA is well set up to support this, as applications for prospecting and exploration permits will give a sense of the scale of a project, with better understanding as the project moves from scoping to pre-feasibility study as part of the work programme commitments. As part of this, we would be supporting potential fast-track applicants with exploration or prospecting permits to ensure they understand the mining permit requirements and advising them to apply at an appropriate timeframe (e.g. ideally well before the Fast-Track application is lodged).

Options to align permitting decisions with the Fast-Track process

27. We have considered the following options to align the CMA with the Fast-Track process for projects that involve mining Crown owned minerals:
 - a. Option 1 – MBIE adjusts its existing processes to account for Fast-Track applications. This would involve working with the industry to ensure they are aware of the CMA requirements so that a mining permit can be issued without delay once the CMA requirements are met.
 - b. Option 2 – would involve amending the FTAB so that a Tier 1³ mining or exploration permit is a pre-requisite for relevant Fast-Track applications.
 - c. Option 3 – would bring CMA permitting decisions necessary to begin mining operations into the scope of the Fast-Track process so that they would be considered alongside regulatory approvals by joint ministers (on the advice of a Fast-Track panel).

³ All petroleum exploration and mining permits are Tier 1. For other minerals, exploration permits will be Tier 1 if they are offshore, or if the 5-year work programme expenditure will be more than \$1.25M.

28. Option 2 is similar to option 1 in terms of how we would work with potential applicants, but would specifically exclude Tier 2 mining projects because they're unlikely to meet the significance threshold for the FTAB. It also would ensure exclusive rights to Crown owned minerals have been obtained before a Fast-Track application can be lodged.
29. Under Option 2, the Fast-Track process could be used for resource consents associated with new Tier 1 exploration projects and then, if exploration is successful, again for subsequent resource consents. It would also allow a Fast-Track Application for resource consents to be considered for existing projects where the exploration stage has already occurred.
30. Option 3 would bring CMA permitting decisions necessary to begin mining operations into the scope of the Fast-Track process so that where exploration is successful the subsequent mining permit decisions would be considered under the Fast-Track process alongside other regulatory approvals to create a "one stop" process. This isn't explicitly ruling out the use of fast-track for exploration work, but it would only be available to existing exploration permit holders for their other consents where exploration would provide a regional and/or national benefit.

Option 1 (status quo): MBIE adjusts its existing processes to account for Fast-Track applications.	Option 2: a Tier 1 exploration or mining permit is a pre-requisite for relevant Fast-Track applications. (Recommended)	Option 3: CMA permitting decisions necessary to begin mining included in the Fast-Track process. (Not recommended)
<p>Pros:</p> <ul style="list-style-type: none"> • MBIE will run a process in a timeframe consistent with the fast-track process to the extent possible, but without adding additional work and expertise requirements on the Fast-Track panel. • Maintains separation of financial, economic and technical due diligence in allocating mineral rights from decision-making to grant regulatory approvals. 	<p>Pros:</p> <ul style="list-style-type: none"> • Provides confidence that the exploratory work or mining project is viable, and that the operator has the capabilities to mine successfully and deliver national or regional benefits, before fast-tracking other consents. • Ensures that Fast-Track process is not initiated until mineral rights have been secured and allows for competitive allocation of these rights where appropriate. <p>Provides greater clarity around the potential for which Crown mineral mining projects can use the Fast-Track process and avoids subjective assessments of what "regional or national benefit" means in the context of a mining application.</p>	<p>Pros:</p> <ul style="list-style-type: none"> • Provides the Fast-Track process is a "one stop" government / regulatory approval process. • Ensures strong timing alignment between CMA permitting and other regulatory approvals.
<p>Cons:</p> <ul style="list-style-type: none"> • Reduces the perception of a "one-stop" approach to regulatory approvals under the Fast-Track process in this one area. 	<p>Cons:</p> <ul style="list-style-type: none"> • Could be perceived as increasing bureaucracy / regulatory hurdles. 	<p>Cons:</p> <ul style="list-style-type: none"> • Adds significant complexity to the FTAB and Fast-Track process, creating high risk of errors and/or need for future amendments.

<ul style="list-style-type: none"> • Perception risk of special treatment for Fast-Track projects under the CMA, impacting other applicants and permit holders. 		<ul style="list-style-type: none"> • Removes separation of decision-making on financial, economic and technical matters in allocating mineral rights and the granting of other regulatory approvals. • Puts additional workload and expertise requirements on Fast-Track panels, especially those relating to the economic viability of a project. • Creates sequencing issues where work determining the feasibility (or otherwise) of mining activity takes place at the same time as seeking and receiving other consenting for that undetermined activity. • Would exclude fast-track consideration of consenting for exploration activities.
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Risks and mitigations

31. There are likely to be perception risks around any of the options, that they will divert the regulator's resources away from making the CMA permitting process more efficient into prioritising Fast-Track projects at the expense of other mining projects. This is likely to be more of a concern for smaller scale mining companies as they are unlikely to qualify for consideration under the FTAB. This can be partially mitigated by parallel work to streamline permitting decisions for smaller permits.
32. If your preference is option 3, we consider there is a risk that decisions of the fast-track expert panel may fail to deliver on the purposes of the CMA and thereby prevent or hinder effective regulation of the mining activity over the permit life. This risk could be mitigated if relevant expert panels have appropriate expertise in CMA permitting. While provisions of the FTAB could provide for this, we have not yet undertaken work to assess where this expertise would be found. Free and frank opinions [REDACTED] We can obtain legal advice on this question if needed.

Next steps

33. Officials are available to discuss the content of this briefing. We will need to progress any option other than the status quo quickly to ensure time for the appropriate amendments to be developed and included in the FTAB.
34. If you wish to advance options 2 or 3, we will provide you with timing and options on how best to have the relevant changes to the FTAB introduced. If you're interested in advancing option 3, we can come back with more detailed advice on how to implement it.