MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

Minister	Hon Dr Megan Woods	**Portfolio**	Energy and Resources
Title of Cabinet paper	Additional proposals for the Crown Minerals (Decommissioning and Other Matters) Amendment Bill and Tui project update	**Date to be published**	23 June 2021

List of documents that have been proactively released		
Date	**Title**	**Author**
7 April 2021	*Additional proposals for the Crown Minerals (Decommissioning and Other Matters) Amendment Bill and Tui project update*	*Office of the Minister of Energy and Resources*
7 April 2021	*Residual liability for petroleum wells and infrastructure following decommissioning*	*MBIE*
7 April 2021	*Impact Summary: Additional options to address limitations with petroleum infrastructure decommissioning regime under the Crown Minerals Act 1991*	*MBIE*
7 April 2021	*Additional proposals for the Crown Minerals (Decommissioning and Other Matters) Amendment Bill and Tui project update – Minute of decision*	*Cabinet Office*

Information redacted **YES / NO** *[select one]*

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Some information has been withheld for the reasons of Confidentiality, Free and Frank advice, Legal professional privilege and commercial sensitivity.

Security classification – Sensitive

Office of the Minister of Energy and Resources

Cabinet Economic Development Committee

Additional proposals for the Crown Minerals (Decommissioning and Other Matters) Amendment Bill and Tui project update

Proposal

1 In June 2020 Cabinet agreed to amend the Crown Minerals Act 1991 (CMA) to strengthen legal and financial responsibility for decommissioning petroleum sector infrastructure and expand the current enforcement toolbox under the CMA [DEV-20-MIN-0092].

2 This paper seeks agreement to additional policy proposals to further strengthen the CMA through the Crown Minerals (Decommissioning and Other Matters) Amendment Bill (the Bill) which is currently being drafted. It also notes additional decisions I made on matters relating to the Bill.

3 In February 2020, Cabinet invited me to report back once decommissioning planning of the Tui Oil Field is completed and estimated costs are updated. This paper also provides you with that update.

Relation to government priorities

4 We have set a low emissions target for 2050, a target for 100 per cent renewable electricity by 2030, and there will be no further offshore exploration permits in New Zealand. The proposals in this paper in addition to the proposals approved by Cabinet in June 2020, are part of the regulatory framework for strengthening the petroleum sector's financial preparedness as this transition occurs.

5 The proposals are also part of the wider work programme the Government is undertaking in the recently released 10-year Resource Strategy 'Responsibly Delivering Value – A Minerals and Petroleum Resource Strategy for Aotearoa New Zealand: 2019-2029'. The Strategy is designed to drive a shift towards a 'world leading environmentally and socially responsible petroleum and minerals sector that delivers affordable and secure resources, for the benefit of current and future New Zealanders'.

Executive Summary

6 In June 2020 Cabinet agreed to amend the Crown Minerals Act 1991 (CMA) to strengthen legal and financial responsibility for decommissioning petroleum sector infrastructure and expand the current enforcement toolbox under the CMA [DEV-20-MIN-0092].

7 As work has progressed on the drafting of the Crown Minerals (Decommissioning and Other Matters) Amendment Bill (the Bill), a number of policy issues have been raised which I consider should be included to further strengthen the Bill. These are:

7.1 Making the provision to establish and maintain an adequate financial security for decommissioning costs a mandatory requirement;

7.2 Allowing the Minister of Energy and Resources to set timeframes within which decommissioning must be done;

7.3 Making failure to comply with the obligation to decommission a criminal offence;

7.4 Enabling the regulator to collect payments from permit and licence holders to cover the risk of failure after decommissioning has been completed;

7.5 Strengthening the decision making tests for permit acquisition provisions; and,

7.6 Requesting an exemption from the public notice and submission process for consequential changes to the minerals programmes.

8 The objective of the proposals in this paper, in combination with the package agreed to in June 2020, is to strengthen the CMA regulatory provisions to ensure that they are sufficiently robust to help mitigate the risk for the Crown and other third parties of having to undertake and fund decommissioning in the future. It is not possible to completely eliminate this risk.

9 In February 2020, Cabinet agreed to fund the decommissioning of the Tui field to protect the marine environment at an estimated cost of approximately $154.641 million [CBC-20-MIN-0008].

10 Cabinet invited me to report back once decommissioning planning was completed and estimated costs were updated.

11 The Ministry of Business, Innovation and Employment (MBIE) has started planning for the final stage of decommissioning, which includes obtaining environmental approval and procuring service providers to plug and abandon the wells and remove the remaining subsea infrastructure.

12 The estimated costs for decommissioning Tui has been updated and a Budget 2021 cost pressure bid has been submitted for the additional non-departmental and departmental appropriation required to complete decommissioning Tui.

Part A - Additional proposals for the Crown Minerals (Decommissioning and Other Matters) Amendment Bill (the Bill)

Context

13 Decommissioning of petroleum infrastructure, is an increasing concern as the New Zealand petroleum sector matures and an increasing number of petroleum fields are near the end of their economic lives.

14 Decommissioning costs can be substantial, with hundreds of millions of dollars typically required to decommission offshore infrastructure (see Annex One for estimated decommissioning costs and timings for New Zealand's petroleum fields). These costs are an ordinary component of petroleum field exploration and mining activities, and are expected to be provided for as part of good industry practice.

15 However, there is currently no explicit statutory obligation on permit and licence holders to fund and undertake decommissioning under the Crown Minerals Act 1991 (CMA). There is a risk that the Crown or other third parties will potentially have to undertake and fund decommissioning in the event of a petroleum company's financial default or where a permit or license holder is unable or unwilling to undertake decommissioning and site restoration.

16 The risk has recently materialised in relation to the first full field petroleum sector decommissioning project in New Zealand. In late 2019, Tamarind Taranaki Ltd (Tamarind), the operator of the Tui oil field (Tui), went into receivership and liquidation. With Tamarind's liabilities far exceeding the value of its assets, it and the other Tui participants were not able to meet any part of the decommissioning costs. To protect the marine environment, the Crown stepped in as the provider of last resort to decommission the Tui infrastructure. In February 2020 Cabinet agreed to appropriate funding of NZ$155 million [CBC-20-MIN-0008]. Additional funding is being sought through Budget 2021.

17 In June 2020, as part of the CMA review, Cabinet agreed to amend the CMA to [DEV-20-MIN-0092]:

17.1 Impose an explicit statutory obligation on all current and future petroleum permit and licence holders to undertake and fund decommissioning activities, as an integral part of a permit to mine petroleum resources;

17.2 Enable the regulator to periodically assess permit and licence holders' financial capability to meet their decommissioning obligations, based on sufficiently detailed and up to date planning and financial information disclosures;

17.3 Empower the regulator to require permit and licence holders to establish and provide adequate financial security for decommissioning purposes, based on permit and licence holders' individual circumstances and risk profiles;

17.4 Provide the regulator with additional enforcement powers to: accept enforceable undertakings, issue compliance notices, and authorise the development of an infringement offence scheme; and

17.5 Make some minor and technical amendments to support effective implementation of the above proposals and improve the general administration of the regulatory regime.

18 Cabinet also agreed to hold a former participant in a permit liable for decommissioning in the event that they transfer or sell their interest. The obligation on the former permit holder would apply only to the extent that the current permit holder (the transferee) fails to undertake and fund decommissioning, and would be limited to infrastructure and wells in place before the transfer has taken place. This approach is designed to prevent situations where a permit holder transfers its interests to another entity to avoid decommissioning obligations and/or costs, with no consideration or concern as to whether the transferee has financial capacity to ensure that decommissioning is carried out.

Crown Minerals (Decommissioning and Other Matters) Amendment Bill

19 Work is progressing on a draft of the Crown Minerals (Decommissioning and Other Matters) Amendment Bill (the Bill).As agreed to as part of the legislation bid for inclusion in the 2021 legislation programme, the Bill is a category 3 (that the Bill be passed in 2021 if possible). I intend for the Bill to be introduced no later than the end of May 2021 and to be passed no later than December 2021.

20 Policy development on the associated regulations is being progressed in parallel with the Bill. I intend to release a discussion document in May 2021 to seek public feedback on policy proposals for the regulations. We intend for the regulations to come into force shortly after the Bill is enacted.

21 The objective of the proposals in this paper, in combination with the package agreed to in June 2020, is to strengthen the CMA regulatory provisions to ensure that they are sufficiently robust to help mitigate the risk for the Crown and other third parties of potentially having to undertake and fund decommissioning in the future. It is not possible to eliminate this risk.

Additional proposals for inclusion in the Bill

22 During the drafting of the Bill, the Ministry of Business, Innovation and Employment (MBIE) has identified the following matters which I now seek agreement to include in the Bill:

22.1 Making the provision to establish and maintain an adequate financial security for decommissioning costs a mandatory requirement, for both permit and licence holders, and applicants involved in permit transfers;

22.2 Allowing the Minister of Energy and Resources to set timeframes within which decommissioning must be done;

22.3 Making failure to comply with the obligation to decommission a criminal offence with penalties of up to 2 years imprisonment for individuals and/or a fine of up to $1 million. The fine for businesses would be up to $10 million or up to three times the cost of decommissioning;

22.4 Enabling the regulator to collect a payments (i.e. cash funds) from permit and licence holders to contribute to the risk of failure after decommissioning has completed. The payments will be held in a pooled, central government account and accessed at the discretion of the Minister of Energy and Resources;

22.5 Strengthening the decision making tests for permit acquisition provisions;

22.6 Requesting an exemption from the public notice and submission process for consequential changes to the minerals programmes;

23 I consider these proposals will further strengthen the proposed decommissioning regime. These proposals are discussed in more detail below.

Making the provision to establish and maintain an adequate financial security for decommissioning costs a mandatory requirement for both permit and licence holders, and applicants involved in permit transfers

24 In June 2020, Cabinet agreed to empower the regulator to require petroleum permit and licence holders to establish a financial security to discharge their decommissioning obligations, if and when and, of a type and a financial value the regulator deems necessary.

25 The rationale for providing the regulator with discretion as to whether to require a financial security was to create a risk-based, outcomes-focussed regime, where the regulator had some flexibility to determine if the particular circumstances of a permit or licence holder warranted further assurance. Similar risk-based approaches are taken in other jurisdictions (e.g. UK, Canada).

26 Flexibility was also considered important to mitigate the risks of unintended consequences, such as an increase in financial burden for companies acting as a barrier to investment, or exacerbating existing financial issues that a company may be experiencing.

27 I now propose that it should be mandatory for permit and licence holders to provide a financial security.

28 I consider it necessary to require permit and licence holders to set funds aside while they are considered financially strong, and not only at the point the regulator has concerns about the permit or licence holder's financial capability to fund decommissioning (as by then it is usually too late).

29 This is because the New Zealand sector is smaller than comparable jurisdictions with a high proportion of fields nearing their end of life. Introducing a mandatory requirement to provide financial security would provide increased protection for the Crown from having to take on decommissioning costs, and encourage permit and licence holders to consider decommissioning earlier in the lifecycle.

30 I consider that making the provision to establish and maintain an adequate financial security a mandatory requirement provides greater consistency and clarity for permit and licence holders. It also reduces the administrative burden for the regulator, Legal professional privilege

31 If a permit or licence holder is unable to provide any or an adequate form of security, this will be an indication that they are unlikely to be able to fulfil the obligation to carry out and fund decommissioning. This will provide the regulator with an early indication of risk, at which point it will need to assess what further actions are possible and appropriate.

32 I note that this approach could increase the risk of unintended consequences. For example it could precipitate decommissioning of some permits or licences; or, in a worst case scenario, be the catalyst for a permit or licence holder to declare insolvency if they were unable to meet the requirements. If a permit or licence holder carried out decommissioning early there may be flow-on cost impacts to the Crown through reduced royalties and taxes and/or regional economies (through reduced investment and employment). The extent of these potential flow-on impacts is difficult to estimate. In the case that a permit or licence holder declared insolvency, the entire cost of decommissioning may still fall to the Crown.

33 I consider that this risk could be mitigated by maintaining a degree of flexibility and proportionality by giving the regulator discretion as to what type of financial security and how much is required in certain circumstances. For example, the most effective option for the Crown in the circumstances might be for the regulator to require only partial or incremental sums to be posted as security for existing permits with late life assets, and/or a parent company guarantee. To reduce the risk of legal challenge, I propose to set criteria that the regulator will follow to provide clarity as to how discretion will be applied.

34 I note that the Maritime Transport Act 1994 imposes a regime for financial compensation for oil spills from offshore installations and for operators to have insurance or other financial security available for claims, including claims by the Crown and maritime agencies for discharge prevention and clean-up costs. This regime is likely to apply, at least during the initial part of decommissioning. My officials will work with the Ministry of Transport and Maritime New Zealand to understand how this regime interacts with the requirement on permit and licence holders to establish a financial security for decommissioning purposes.

Allowing the Minister of Energy and Resources to set timeframes within which decommissioning must be done

35 Decommissioning must be completed by the end of the licence or permit (i.e., the date of expiry or surrender) at the latest, the exception being when a permit is revoked.

36 In the case of revocation, the permit or licence holder will have two years after the revocation notice within which to complete decommissioning, one year to plug and abandon wells, or as otherwise agreed with MBIE.

37 I propose to also allow the Minister of Energy and Resources to mandate timeframes earlier than the end of the permit or licence within which decommissioning of petroleum infrastructure or plugging and abandoning of a well must take place.

38 This is to address a particular concern that the regulator would not have the tools to manage a situation where production from a well or wells has ceased, but the permit or licence is operated at a loss, and decommissioning is inappropriately deferred until expiry. This may increase the uncertainty and risk that decommissioning is not ultimately carried out and funded by the permit or licence holder.

39 My intention is to disincentivise permit and licence holders deferring decommissioning, unless there is a good reason for doing so; it is not to interfere in commercial decision of private companies.

40 To provide clarity for permit and licence holders, I propose that when taking the decision to impose timeframes, the Minister will be required to consider the length of time a field or well had been inactive, along with other criteria

such as plans for re-use or further development and proposed timing of decommissioning. These criteria provide the flexibility to consider the different circumstances of permit holders, and decisions would be made on a case-by-case basis.

Making failure to comply with the obligation to decommission a criminal offence

41 In June 2020 Cabinet agreed to introduce civil pecuniary penalties for both permit and licence holders and individuals, including directors, who failed to undertake and fund decommissioning. At the same time, Cabinet also agreed to set the pecuniary penalties at up to $500,000 for individuals and up to $10 million for a corporate who failed to undertake and fund decommissioning.

42 I am however concerned that given the high costs of some decommissioning projects, fines could be viewed simply as the cost of doing business for some firms.

43 I consider there is a high level of public interest in permit and licence holders fulfilling their explicit duty to decommission given the potential for significant environmental and health and safety harm of failing to decommission, and the substantial cost to the Crown if left to pay and carry out decommissioning, particularly for offshore fields.

44 I consider a criminal sanction would be appropriate for the most egregious misconduct.

45 I propose a new criminal offence that would allow criminal penalties to be imposed against individuals and corporations for knowingly failing to make adequate provision for and carry out decommissioning (of wells or infrastructure). The criminal and civil sanctions will not be used against the same conduct. A *mens rea* element to the sanction would apply when the person (a body corporate, or individual including a director) ‘knowingly fails to make adequate provision for and undertake decommissioning’. Body corporates would be liable to a penalty linked to the cost of decommissioning and set by the Court. The new criminal penalty would carry a prison sentence of up to 2 years for individuals and/or a fine of up to $1 million. The fine for businesses would be up to $10 million or up to three times the cost of decommissioning.

46 The proposed offence is targeted given that the obligation to decommission will be a statutory obligation and clearly communicated to permit and licence holders through the regulatory regime. The harm to the public or private interests that would result from the conduct is deliberate and avoidable by the offender.

Enabling the regulator to collect payments from permit and licence holders to cover the risk of failure after decommissioning has completed

47 In June 2020, Cabinet agreed to direct officials to explore options for establishing a dedicated decommissioning fund to manage the financial risk to the Crown arising from decommissioning.

48 Officials have explored the establishment of a dedicated decommissioning fund in the context of managing the financial risk to the Crown arising from the failure of well plugged and abandoned or any facilities or pipelines decommissioned.

49 The CMA and the Bill are currently silent on how to deal with liability once a well has been accepted as properly plugged and abandoned and any facilities or pipelines decommissioned, and the permit or license has expired or been surrendered (i.e. residual liability).

50 Currently, liability for the remediation of onshore wells that have been abandoned generally falls on landowners if the permit of licence holder no longer exists. However, it is not always clear that the landowner is well placed or able to assume responsibility; for example, where the landowner is unaware of the legacy issue and / or the landowner has insufficient financial means. The cost may in practice, fall on the local government agency (council) as the regulating bodies for environmental effects.

51 For offshore fields, responsibility in the event of a well or infrastructure failure following decommissioning falls on a number of agencies depending on the specific circumstances including the local and/or regional Council, the Environmental Protection Authority (EPA), or WorkSafe.

52 The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act (the EEZ Act) allows the EPA to impose a condition on a marine consent, requiring the consent holder to provide a bond for the performance of any one of more conditions of the marine consent. However, this can only be required when a marine consent for decommissioning is applied for which is likely to be too late in the process to provide adequate financial assurance.

53 There are provisions in place to deal with the risk of an offshore well failure during the productive life of a field:

53.1 Amendments to the Marine Protection Rules Part 102 introduced last year require owners of offshore installations to have insurance or another form of financial security from a third party of up to $1.2 billion. This provides assurance that the money that would be needed is available to meet the costs of clean up and compensation for damage to property in case of an oil spill. However, this only applies to offshore installations that are anchored or attached to, the seabed. In practice, this means that once decommissioning is complete (or even part way

through decommissioning), operators will no longer be required to hold insurance to cover compensation in the event of an oil spill.

53.2 The Maritime Transport Act 1994 also requires Maritime New Zealand to establish and administer an Oil Pollution Fund (OPF). This is used amongst other things to cover the costs of the Oil Pollution Advisory Committee and of investigating, controlling, and cleaning up any marine oil spill. The OPL applies to all offshore oil installations, exploration wells and oil pipelines. Offshore petroleum producers pay into the OPF during the lifetime of the field but not after decommissioning has taken place. The OPF therefore does not cover liability for any failures to offshore wells after decommissioning has occurred.

54 The ability to hold permit and licence holders liable for future well and infrastructure failure is further complicated by the structure of how permits are held. Many permit holders, especially subsidiary companies and/or a collection of participants, cease to exist by the time remediation work is required to wells and infrastructure after decommissioning obligations have been met and are therefore not available to fund remediation.

55 In practice, it is likely that government agencies will be left to carry responsibility for remediation work post decommissioning on the grounds of environmental effects and/or health and safety concerns.

56 I consider that a permit or licence holder should make a contribution to the risk that future remediation work will be required in relation to wells and infrastructure that have been decommissioned. This approach is also consistent with the RMA and the ‘polluter pays’ principle.

57 I would like to pick up on a recommendation provided by the Parliamentary Commissioner for the Environment in 2014 that the oil and gas industry should bear the cost of ongoing remediation of abandoned wells and the remediation of future leaks.[1]

58 I propose to amend the CMA to allow the regulator to collect one or more payments (i.e. cash funds) from permit and licence holders to contribute to the risk of well failure and associated infrastructure after decommissioning has completed.

59 Payments would be collected from current and future petroleum permit and licence holders affected by the new explicit obligation to decommission and held in a pooled central government account, accessed at the discretion of the Minister of Energy and Resources by those government agencies, other

1 Parliamentary Commissioner for the Environment, ‘Drilling for oil and gas in New Zealand: Environmental oversight and regulation,’ 2014

bodies, including councils, responsible for decommissioned wells and infrastructure. The security would be used solely for the purpose of any future remediation work required for those wells and infrastructure where decommissioning has been accepted by the relevant regulatory bodies and held in perpetuity in recognition of the long term nature of the risk.

60 The size of the payment or payments for residual liability will be determined on a case by case basis by the regulator, in consultation with the relevant permit holder, alongside the calculation of the financial security required to meet decommissioning costs.

61 MBIE is progressing work with the proposed scope and design options for how the payment for residual liability will be assessed. Options for how the payments will be held will be included in a discussion document on associated regulations, which is being developed in parallel to the drafting of the Bill.

Strengthening the decision making tests for permit acquisition provisions

62 I consider that it is important that only the companies / individuals who have the financial and technical capability to give effect to the work programmes and the conditions of the permit are able to acquire permits for petroleum and minerals in New Zealand.

63 I am concerned that current holders of petroleum permits may apply to transfer the permit operator of a permit, or sell their company to a company that may not have the ability to fund, or undertake decommissioning of the oil field. This is of particular concern given the governments focus on the petroleum sector's financial preparedness for decommissioning activities and ensuring that the decommissioning of oil fields is carried out by permit holders and not left to the Crown, or other third parties, to fund and undertake.

64 Section 29A, 41, 41AE and 41C (process for considering application, transfer of interest in permit, change of control of permit operator of a Tier 1 permit and change of permit operator respectively) of the CMA deal with the acquisition of permits or participating interests in a permit. In these provisions the Minister of Energy and Resources must be satisfied that the proposed permit holder is 'likely' to comply with, and give proper effect to, the work programme and / or the conditions of the permit.

65 I consider that 'likely' sets too low a threshold for the acquisition of permits. It could result in a greater risk of companies gaining a permit in New Zealand that may not have the financial and technical capability to undertake activities, including decommissioning and puts the Crown at risk of having to fund and undertake decommissioning itself.

66 Legal professional privilege

Legal professional privilege

67 I consider that the test should be strengthened to require the decision maker to be satisfied that there is a higher level of confidence that the proposed permit holder will comply with the work programmes / permit conditions. I consider this would reduce the likelihood of companies gaining permits in New Zealand that do not have the technical and financial capability to carry out decommissioning.

68 I consider that the tests should be strengthened for both petroleum and minerals permits, as I consider it is also important that the decision maker has a higher level of confidence for both industries. The costs of mine closures can also be significant. Mine closure is important as it ensures both physical and chemical stability of the mine and associated infrastructure such as tailing facilities or waste rock storage facilities to prevent ground movement, unsafe incursion or the generation of acid or leaching of any toxic elements'.

69 Discretion exists within the current permit acquisition provisions. I consider that the discretion should be retained and only the threshold changed. I consider it important that the decision maker has the flexibility to weigh up relevant factors about measures a permit holder may have taken in order to address any issues, and make a balanced decision after weighing up the various factors and considerations on whether they are satisfied the proposed operator has the financial and technical capability to meet the work programme / conditions.

70 While any term used to describe this new higher threshold will be subject to interpretation by the courts, I consider this approach is more practical than setting a decision-making test that seeks certainty. Officials advise that requiring the decision maker to be 100 per cent certain is not practical. It is difficult for the decision maker to be certain, for example, that in 10 years' time the applicant will be able to comply with the permit conditions / proposed work programme.

71 I note that the term 'likely' is used throughout the CMA. I consider that the use of 'likely' in these more general provisions remains appropriate at this time even in light of the recent interpretation in the Judgment.

72 These more 'general' provisions do not determine whether an application will be granted or not, and do not have high risks associated with them. For example, section 14(2)(b) of the CMA sets out the contents of minerals programmes. It states "A minerals programme may include any other information that the Minister considers is likely to be of assistance to any person wishing to use or understand the Act and the regulations…". In this circumstance 'likely' is appropriate, even if it is a lower standard, as I want the minerals programmes to be as helpful as possible.

Requesting an exemption from the public notice and submission process for consequential changes to the minerals programmes

73 The legislative changes I am proposing may require changes to be made to the Minerals Programme for Petroleum 2013 and the Minerals Programme for Minerals (Excluding Petroleum) 2013 (minerals programmes).

74 The minerals programmes sit beneath primary legislation and the associated regulations, and may set out or describe how the Minister or the chief executive will exercise any specified powers or discretions conferred on him or her by or under the CMA in relation to the mineral or minerals that are subject to the programme (amongst other things). It also may set out requirements for consultation with iwi and hapū, including the matters that must be consulted on (such as specified permit applications) and the consultation principles.

75 I propose to allow amendments to be made to the minerals programmes that are consequential to the changes made by the Bill without complying with the public notice and submission process that would otherwise apply. These public notice and submission processes are set out in sections 17 and 18 of the CMA. The changes are expected to be minor and technical in nature, rather than policy judgements.

76 I consider that further consultation on these changes will not be necessary, given that the Bill will have been through a public consultation process and any changes to the minerals programmes will be the result of amendments to the CMA made through the Bill. Therefore, I propose to override the statutory consultation requirements for these changes to the minerals programmes.

Other matters to note

77 In June 2020, Cabinet authorised me to make decisions consistent with the recommendations above and on any minor or technical matters that may arise during the legislative drafting process.

78 The following items do not represent changes to the proposals agreed to by Cabinet in June, but they clarify how these are intended to work:

78.1 Addressing the limitations of linking the obligation to decommission to requirements under other enactments;

78.2 Introducing a requirement on permit and licence holders to provide a Field Development Plan (FDP) and Asset Register throughout the field life; and,

78.3 Introducing an exemption process to manage shared infrastructure or different operator / owner scenarios.

Addressing the limitations of linking the obligation to decommission to requirements under other enactments

79 In June 2020, Cabinet agreed to create an explicit statutory obligation to carry out and fund decommissioning.

80 It is important that permit and licence holders and the regulator have sufficient clarity as to what is required under the obligation to decommission, so that both parties can refer to this when producing and considering the cost estimates that will form the basis of the financial security requirement. It is also important as there are penalties and enforcement actions associated with not complying with the obligation to decommission.

81 A definition of decommissioning is currently under development. The intent is that decommissioning will mean an activity undertaken to permanently take out of service petroleum infrastructure or a well. It could include removing infrastructure, plugging and abandoning a well, undertaking site restoration and any other prescribed activity.

82 These activities should be carried out in accordance with any requirements or standards set by or under other enactments. This would include resource and marine consents issued under the Resource Management Act 1991 (RMA) and EEZ Act.

83 In practice, if the Bill is passed into law, the CMA will provide an obligation to carry out and fund decommissioning, while the EEZ Act and RMA will establish a process for determining how activities, including decommissioning, must be carried out to achieve the best practicable environmental outcome.

84 This approach is consistent with the current fragmented legislative framework, where the CMA deals with allocating the right to explore or mine Crown owned minerals in exchange for a financial return, whereas the RMA and EEZ Act deal with environmental effects, and the Health and Safety at Work Act 2015 and associated regulations address safety risks.

85 There are however some limitations with this approach:

85.1 Resource consents under the RMA are set on a case-by-case basis and may not contain clear and consistent requirements for how activities, including decommissioning, must be carried out to achieve the best practicable environmental option;

85.2 Resource consents are not required when mining is a “permitted” activity in a council plan. This does not necessarily mean the activity is unconstrained, and it may still be subject to a number of standards, but could mean there are fewer levers for controlling the activity;

85.3 Marine consents under the EEZ Act cannot be applied for until a permit or licence holder holds a decommissioning plan that has been

accepted by the EPA, and any applications must be in accordance with that accepted plan. Proposed new decommissioning regulations under the EEZ Act will specify the scope of the information required as part of the plan, and criteria against which it will be assessed. Under the proposed regulations the plan would be developed as part of a public consultation process and a decision by the EPA about whether to accept or reject a plan would be made on a case-by-case basis. There is no timeframe for when permit and licence holders must submit a plan, but it is generally expected to be close to when decommissioning is planned to take place; and,

85.4 I note that the decommissioning regulations under the EEZ Act have not been made, so at the present time, marine consents associated with decommissioning can be applied for without an approved decommissioning plan.

86 In practice these limitations could result in:

86.1 Permit and licence holders arguing that they are not clear as to what is included in their obligation to decommission; and,

86.2 Permit and licence holders arguing that they are not required to set aside funds to carry out decommissioning to a particular standard until that standard has been decided by the relevant regulatory authority.

87 To address these limitations, I propose to specify that:

87.1 All wells drilled as part of activities authorised under a permit or licence, or under the prior permit or licence, must be plugged and abandoned as a non-negotiable requirement, which provides assurance that this important aspect of decommissioning will take place. Plugging and abandoning should be carried out in alignment with requirements under other enactments, including the EEZ Act where applicable, and the Health and Safety at Work Act 2015 and relevant regulations including the WorkSafe NZ well integrity acceptance process.

87.2 For the purposes of defining the obligation to decommission in relation to petroleum infrastructure, if for a specific permit and licence holder there are no requirements set under other enactments, relevant standard-setting processes or other consents as to how decommissioning must be undertaken, complete removal of infrastructure is required; and,

87.3 For the purposes of setting aside funds to carry out decommissioning, permit and licence holders are required to estimate the cost of decommissioning using complete removal of infrastructure as a benchmark, unless otherwise provided under other enactments,

relevant standard-setting processes or other consents. This is likely to result in the highest cost estimate of all decommissioning outcomes.

88 I will consider whether there needs to be flexibility in these requirements, particularly in whether to exclude pipelines, either as a class of infrastructure, or on a case-by-case basis.

Introducing an exemption process to manage shared infrastructure or different operator / owner scenarios

89 The obligation in the Bill is framed around use of infrastructure or wells. That is, a permit or licence holder is responsible for decommissioning any infrastructure or wells that they installed, drilled, or used, during the life of the permit or licence. This allows the obligation to capture all infrastructure related to a permit or licence.

90 However, I know there are some permits and licences using the same pipelines or production facilities. In these cases, both permit or licence holders would be captured under the obligation to decommission, and both would be required to establish a financial security to cover this infrastructure or well. This would cause duplication and confusion.

91 It also presents a potential situation where one permit is still producing and the other is at the end of its life, and there is disagreement over whether the shared facility should be decommissioned.

92 I propose to mitigate this by giving the regulator the ability to grant an exemption to the obligation to decommission. The regulator would make these decisions on a case-by-case basis, and allow a permit holder or licence holder not to decommission infrastructure that would ordinarily be part of their obligation.

93 I propose the regulator would be guided in their decision-making by who owns the infrastructure, whether there is a clear plan for another permit holder or licence holder to take responsibility for it, whether the infrastructure will be or is used for non-petroleum purposes and any other relevant factors.

94 I consider this to be technical amendment that is required in order to clarify responsibility for decommissioning, and to make this workable in different circumstances.

95 I acknowledge that there are limitations with this approach. For example, it introduces discretion into decision-making, and may result in the regulator being challenged over decisions. There are also possible complexities in this approach and using resource and marine consents to define what is required as part of decommissioning.

96 However, I consider this an important component of the overall regime, and other provisions will ensure the regulator has the information available to make these decisions.

Introducing a requirement on permit and licence holders to provide a current FDP and Asset Register throughout the field life

97 In June 2020, Cabinet approved amendments to the CMA that would enable the regulator to periodically assess permit and licence holders' financial capability to meet their decommissioning obligations, based on sufficiently detailed and up to date planning and financial information disclosures.

98 To support this objective, the Bill will require permit and licence holders to provide the regulator with a FDP for the life of the field, and introduce a new requirement for an Asset Register.

99 An FDP is an existing requirement for an application for a mining permit. It sets out the process and timing for field development, and would typically include information about projected decommissioning activities.

100 The way a field is developed significantly affects the nature of decommissioning activities and associated costs; the scope of what is ultimately decommissioned is directly related to how the resource is developed.

101 Currently, requirements around the submission of FDPs vary: some permit holders only need to submit an FDP at the application stage, others provide the regulator with an updated FDP regularly, and some older permit and licences have never had to submit and FDP. This is because requirements are set out in permit conditions, on a case-by-case basis, and have evolved over time. Therefore, for some permit/licence holders, the regulator currently has little oversight over what may be significant changes in intended field development.

102 I intend to amend the CMA to require FDPs to be submitted at a prescribed time after the Bill commences, and subsequently if/when material changes to the FDP are contemplated, and / or in any event at regular time intervals. The requirement to provide an FDP currently only applies to mining permits.

103 Permit and licence holders will also be required to provide an Asset Register at a prescribed time after the Bill commences, and at regular intervals or as required by the regulator. An Asset Register will be a list of all infrastructure and wells on a field. It will be a key document that will be used in understanding the scope of what each permit or licence holder is responsible for decommissioning. .

104 I propose that the regulator must be satisfied that the Asset Register, accurately reflects all infrastructure and wells on a field. This requirement will apply to all mining permit and licence holders, and in some circumstances

holders of exploration permits may also be required to provide an Asset Register.

105 The precise requirements around timing and content of the FDP and Asset Register will be developed in regulations, and will be subject to full public consultation in the form of a discussion document.

106 I consider it important that the regulator has an accurate and current view of the infrastructure and wells in a field, and plans to change this, as part of carrying out financial capability assessments.

107 I ask Cabinet to note that in order to proceed with this approach the Bill will need to include provisions around requiring petroleum field operators to maintain a current FDP and approved Asset Register, which was not explicitly stated in the June 2020 Cabinet paper.

Risks and Mitigations

The inclusion of more stringent provisions in the Bill creates a risk of unintended consequence

108 I am focussing on introducing measures that provide the highest degree of certainty for the Crown that decommissioning will be funded by permit / licence holders.

109 MBIE analysed the proposals to make a financial security a mandatory requirement and to make the failure to decommission a criminal penalty against the same criteria as the original proposals, and considers they deliver the most effective options in mitigating the risk to the Crown of having to undertake and fund decommissioning.

110 However, they are stricter than the original Cabinet decisions and impose a greater burden on industry. This could result in unintended consequences.

111 For example, it may precipitate decommissioning of some permits or licences; or, in a worst case scenario, be the catalyst for a permit or licence holder to declare insolvency if they were unable to meet the requirements.

112 If a permit or licence holder carried out decommissioning early there may be flow-on cost impacts to the Crown through reduced royalties and taxes and/or regional economies (through reduced investment and employment). The extent of these potential flow-on impacts is difficult to estimate. In the case that a permit or licence holder declared insolvency, the entire cost of decommissioning may still fall to the Crown.

113 This risk will be mitigated through careful development and design of regulations. I also propose to include criteria in the Bill as to how discretion will be applied in some circumstances, which may further mitigate the risk of adverse effects on industry.

The inclusion of residual liability in the Bill has not been explicitly consulted on

114 There is a risk that there will be strong push-back from industry on the regulator being able to collect a security to cover the risk of failure after decommissioning has completed (i.e. residual liability).

115 I intend to mitigate the risk of industry averseness through consultation with permit and licence holders and careful design of the regulations that will implement how the payments will be calculated and held.

Legal professional privilege

[redacted]

[2]

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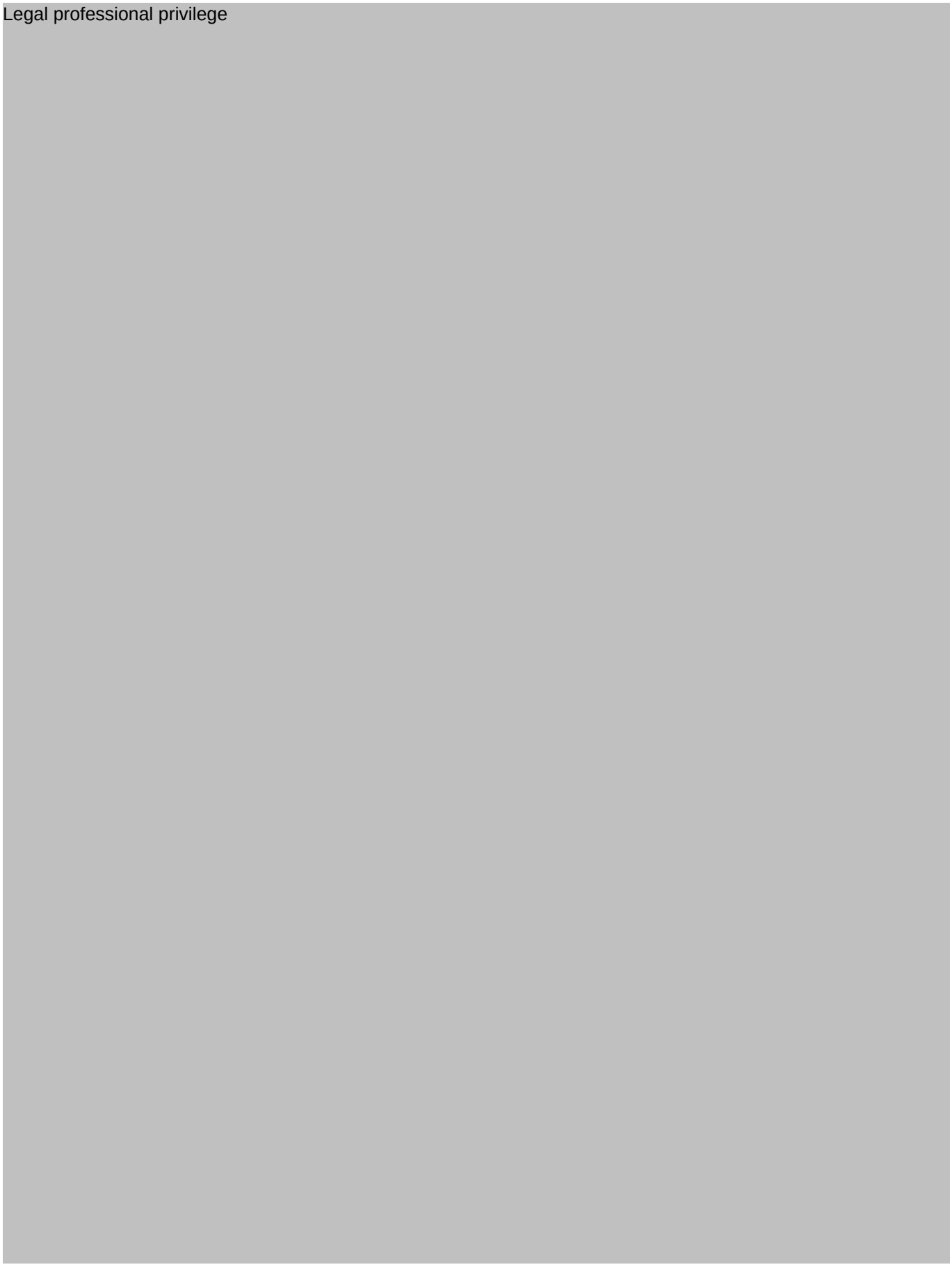
[redacted]

Legal professional privilege



Legal professional privilege

Financial Implications

Proposals may impose additional costs on petroleum companies

133 The proposals in this paper form a package with the proposals agreed to in June 2020. Together these proposals may impose additional costs on petroleum companies that do not currently follow good industry practice and do not provide for an adequate discharge of their decommissioning obligations.

134 In addition, the proposals will result in some increase in compliance costs for all petroleum companies (including those who already follow good industry practice), depending on their existing business systems and practices.

135 The proposal to require a financial security for decommissioning costs will generate additional costs for permit and licence holders, as there will be costs involved in establishing the security, and then potential costs through lower available cash-flow for companies, if an escrow is required. Petroleum companies may ultimately pass some of the additional costs to the Crown (through reduced royalties and taxes) and/or regional economies (through reduced investment and employment). The extent of these potential flow-on impacts is difficult to estimate. It would depend on whether the alternative uses of permit and licence holders' funds (e.g. reinvestment in business operations, repayment of debt, or distributions to shareholders) could generate higher rates of return; and therefore, requiring those funds to be set aside for decommissioning purposes could lead to opportunity costs.

136 Estimating these opportunity costs would require complex future scenario modelling. There are high levels of uncertainty associated with the many international and domestic factors that drive petroleum companies' short and long term rates of return. These include the cyclical nature of the oil and gas industries, fluctuations in global and domestic commodity prices, and other changing conditions of the world economy, such as the economic impact of the global Covid-19 response. When considered in combination, these factors may compound or offset each other. Given these levels of uncertainty, scenario modelling is unlikely to provide reliable insights into how the petroleum sector as a whole, and permit and licence holders individually, may perform in the future.

Proposals may also result in additional administration, monitoring, enforcement, and litigation costs

137 In June 2020 Cabinet noted that in strengthening the decommissioning regime under the CMA MBIE, as the regulator, will incur additional administration, monitoring, enforcement, and litigation costs. The scope of MBIE's new functions will be developed as part of the future design of the supporting regulations. Confidential advice to Government

138 These are preliminary estimates and some of the costs may be directly recoverable through fees and levies. The more detailed costings and potential funding sources will become clearer during the policy development process for the supporting regulations. I will report back on this at the time of seeking policy approval on the regulations.

139 Proposals for the final regulations will be developed following public consultation on options in the form of a discussion document. The options proposed in this paper will help deliver the policy intent behind the decisions approved in June 2020, they are not expected to pose too much additional burden on the regulator.

Decommissioning regulations should have little impact on the Crown's tax liability but may impact the timing of tax credit refunds

140 There are petroleum-specific tax rules under which decommissioning expenditure can effectively be offset against income from previous periods, rather than carried forward as a loss against future income. This is because decommissioning costs occur near or after the end of production, where a permit holder has little or no future income. In practice, a permit holder can claim this from the Crown as a lump-sum amount in the form of a refundable tax credit when decommissioning expenditure results in a tax loss. The application of this rule sits with the Inland Revenue Department (IRD).

141 The Crown would be liable to pay this tax credit regardless of implementing the new decommissioning regulations. However, if the new decommissioning regime resulted in permit and licence holders carrying out decommissioning earlier than planned, the Crown would be exposed to this liability sooner than expected.

Decommissioning regulations should have little impact on the Crown's royalty liabilities but may impact the timing of royalty refunds

142 A similar situation exists for royalties. Because decommissioning expenditure is a normal part of field development costs, it may be claimed back against royalties paid to the Crown by permit holders. At the end of the permit or license, permit holders submit a final royalty return to the regulator, along with evidence of decommissioning expenses. These are used to determine the extent to which royalties will be refunded.

143 Confidential advice to Government

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Legislative Implications

145 The policy decisions in this paper will require legislative change, I am proposing these proposals are progressed through the Bill. It is a category 3 Bill (to be passed in 2021 if possible) in the 2021 Legislation Programme.

Impact Analysis

Proposals exempt from Regulatory Impact Statement

146 The Regulatory Impact Analysis Team at the Treasury has determined that there are no regulatory proposals for the following:

146.1 addressing the limitations of linking the obligation to decommission to requirements under other enactments, by requiring permit holders to estimate the cost of decommissioning using complete removal of infrastructure as a benchmark, unless otherwise provided for under other enactments;

146.2 introducing a requirement on permit and licence holders to maintain and provide a current FDP and Asset Register throughout the field life; and,

146.3 exempting amendments to the minerals programmes that are consequential to the changes made by Bill from the public notice and submission process that would otherwise apply.

147 Therefore Cabinet's Regulatory Impact Analysis requirements do not apply to the above.

148 The Regulatory Impact Analysis Team at the Treasury has determined that the regulatory proposal in this paper in relation to making the provision of a financial security to cover decommission costs a mandatory requirement is exempt from the requirement to provide a Regulatory Impact Statement on the basis that the substantive issues have been addressed by previous impact analysis

Additional options to address limitations with petroleum infrastructure decommissioning regime under the Crown Minerals Act 1991

149 The Regulatory Impact Analysis Team at the Treasury has determined that an Impact Summary would be appropriate for regulatory proposals in relation to making the failure to carry out and fund decommissioning a criminal offence; allowing the Minister of Energy and Resources to set timeframes within which decommissioning must be done strengthening the decision making test for permit acquisition provisions in the CMA. The Quality Assurance is to undertaken by the RIA Panel at MBIE.

150 MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Impact Summary prepared by MBIE.

151 The Panel considers that the information and analysis summarised in the Impact Summary meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

Residual liability for petroleum wells and infrastructure following decommissioning

152 The Regulatory Impact Analysis Team at the Treasury has determined that as this proposal seeks to create a new regulatory power to collect payments from permit holders, there is a cost recovery element involved in the proposal and a full Impact Statement is required.

153 MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Impact Assessment prepared by MBIE.

154 The Panel considers that the information and analysis summarised in the Impact Summary meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

Climate Implications of Policy Assessment

155 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

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

Human Rights

157 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. The Ministry of Justice has been consulted on the design of the proposed criminal sanction.

Consultation

158 The following departments were consulted on the proposals in this paper: Inland Revenue Department, the Environmental Protection Authority, the Department of Conservation, Maritime NZ, the Ministry of Justice, the Treasury, the Ministry for the Environment, the Ministry for Foreign Affairs and Trade, and the Ministry of Transport.

Communications

159 I do not intend to publicly announce decisions on this paper following Cabinet approval. I propose to make a public announcement on the entire Bill following the introduction of the Bill.

Part B - Update on decommissioning the Tui Oil Field

Context

160 The Tui oil field is located 50 km off the Taranaki coast in New Zealand's Exclusive Economic Zone and was operated by Tamarind Taranaki Limited (Tamarind) since 2017. Tui is a subsea development, featuring eight wells and associated infrastructure on the seafloor connected to a floating production, storage and offloading vessel (FPSO), the *Umuroa*. The FPSO is owned by BW *Umuroa* Pte. Ltd. (BWU).

161 In 2017, the Tui field was nearing the end of its life and after a drilling campaign failed to find additional resources, Tamarind entered into voluntary administration in November 2019 and was placed into liquidation and receivership in December 2019.

162 In February 2020, Cabinet agreed to fund the decommissioning of the Tui field to protect the marine environment at an estimated cost of approximately $154.641 million [CBC-20-MIN-0008]. This figure represented the best estimate of costs at the time and is comprised of:

162.1 Non-departmental - $151.841 million appropriated in FY19/20, and

162.2 Departmental - $2.800 million over three years until FY21/22.

163 Cabinet invited me to report back once decommissioning planning was completed and estimated costs were updated.

The Tui Project was established in MBIE to plan and execute the three stages of decommissioning

164 The Tui Project was established within MBIE in early 2020 to plan and execute decommissioning activities. Although an inevitable activity in the lifetime of an oil and gas project, decommissioning is typically a complex and costly exercise. Decommissioning an offshore field such as Tui is a first for New Zealand and managing this process is a new role for the Crown. This unique set of circumstances adds complexity to the Tui Project.

165 The Project has three stages:

165.1 **STAGE ONE: Planning and compliance –** project planning; ensuring compliance with regulations and insurance requirements to minimise health, safety and environmental risks.

165.2 **STAGE TWO: Demobilisation** – undertaking activity to safely disconnect the FPSO and allow it to depart the site, while minimising environmental risk.

165.3 **STAGE THREE: Decommissioning** – plugging and abandoning the wells, and removing subsea infrastructure in line with Environmental Protection Authority (EPA) requirements.

Stage One planning and compliance activities are complete

166 MBIE has submitted and received approval for the Tui Oil Spill Response Plan from Maritime New Zealand (MNZ) and the EPA. MBIE has lodged an updated Tui Emergency Management Plan and submitted an updated Tui Field Safety Case to WorkSafe New Zealand for approval.

167 MBIE has obtained insurance to cover pollution liability in relation to offshore installations and received a Certificate of Insurance from MNZ, a requirement on owners of offshore installations under the Maritime Transport Act 1994.

168 In December 2019, MBIE completed a remote operated vehicle survey of the subsea assets and in February 2021 completed a benthic (ecological zone near the seabed) survey. Both are current regulatory requirements, and results from the surveys will also be useful in the next stage of decommissioning.

Stage Two demobilisation activities commenced in January 2021

169 Demobilisation is a complex set of activities that involve re-crewing the FPSO systems, ensuring the flow-lines and control lines are clean and lowered safely to the sea floor, disconnecting the anchors and leaving the field and New Zealand waters.

170 In November 2020, MBIE entered into an agreement for the demobilisation of the FPSO *Umuroa* (the Demobilisation Agreement). Under the terms of the Demobilisation Agreement, MBIE has agreed to meet all actual costs associated with the demobilisation of the FPSO Commercial Information

171 The timeframe for completing the demobilisation stage is June 2021, Commercial Information

172 In order to safely and successfully demobilise by the end of the 2020/21 summer season, MBIE works closely with BWU to ensure that health, safety and environment risks are identified and managed and, where required, there is early and consistent engagement with regulators on upcoming activities.

173 Certain events and risks are likely to materialise, for example, inclement weather and sea conditions that can delay offshore activities. The Tui subsea equipment has also been dormant for a year, which means that technical challenges are likely to arise during the execution of the work. COVID-19 restrictions, both within New Zealand and at the border, remain a risk.

174 As of February 2021, BWU had successfully flushed all flow-lines. The next phase of offshore demobilisation activities involves their disconnection from the FPSO, along with the mooring system. The FPSO's departure from the field requires specialised construction and anchor handling vessels, and crew from overseas. BWU has procured the necessary four vessels and two have already arrived in New Zealand in compliance with New Zealand's COVID-19 border requirements.

Planning for Stage Three decommissioning has commenced

175 Once the FPSO is demobilised from the field, Stage Three decommissioning will involve two further phases of offshore activity:

175.1 Removing all subsea infrastructure, and

175.2 Plugging and abandoning the eight wells.

176 There is an expectation that the Crown completes these activities consistent with good industry practice. This means undertaking decommissioning as expeditiously as possible to avoid risks that may materialise from deteriorating infrastructure on the seabed.

177 To undertake these activities, MBIE will require a decommissioning marine consent from the EPA and negotiated contracts with suppliers for the provision of decommissioning services.

Procurement for Stage Three activities

178 While offshore activities are not planned until the summer of 2021/22 (or, if determined to be a better solution, the summer of 2022/23), early engagement with the global market for offshore oil and gas services is critical to securing contractors at competitive prices.

179 In February 2021, MBIE invited Registrations of Interest to identify contractors in New Zealand and overseas with a genuine commitment and the resources to execute the work. Selected Request of Information (ROI) respondents will be invited to apply for a closed Request for Proposals.

180 ROI respondents will be evaluated on their capability (management systems, prior experience and financial robustness), capacity to deliver on time, and their plans to meet the Government's broader procurement outcomes such as a commitment to utilise local suppliers and service providers.

Obtaining a decommissioning marine consent

181 The marine consent required for decommissioning Tui will be publicly notified and can take up to 11 months from lodgement to a decision. Work cannot commence unless consented. MBIE has notified the EPA of its intention to submit a decommissioning marine consent application by May 2021.

Partnering with iwi in Taranaki

182 The Tui Project has attracted significant stakeholder interest in the Taranaki region, particularly from iwi, who have a shared interest in protecting, enhancing and sustaining the environment surrounding the Tui oil field. I am committed to ensuring that the way in which the Tui decommissioning is delivered gives effect to the Crown's responsibilities as Treaty partner under Te Tiriti o Waitangi.

183 Tui is the first offshore decommissioning in New Zealand, but not the last. I am seeking to ensure that iwi in Taranaki can be informed stakeholders in future decommissioning activities. I have instructed officials to provide iwi in Taranaki every opportunity to input into Tui's decommissioning plans and activities, and to share with iwi the Crown's technical knowledge of offshore decommissioning from the perspective of an operator. This includes a partnership agreement with Te Kāhui o Taranaki Trust (representing Taranaki Iwi and the most affected party in relation to Tui) to support such engagement.

Contributing to broader outcomes in Taranaki

184 The Tui Project is unique, high-profile, and critically important to New Zealand and the Taranaki region. It is important to me that the Project delivers value to the Taranaki region, in particular, increasing access for New Zealand businesses in line with Government Procurement Rules, and maintaining existing capability and re-directing it to the challenge of decommissioning.

185 To date, the Project has awarded contracts for Stage One regulatory compliance activities to New Zealand businesses. This includes Offshore Solutions Ltd. of New Plymouth for the Remote Operated Vehicle survey; Elemental Group Ltd. of New Plymouth for well examination; and SLR of Nelson for marine consenting services.

186 For Stage Two activities, the Demobilisation Agreement with BWU has seen sub-contracts awarded to approximately 18 different New Zealand businesses for planning, support and technical activities. This includes crewing, helicopters, supply vessels, flushing, engineering and diving. For the next two phases of offshore work, there are similarly likely to be multiple New Zealand service providers involved in activities offshore.

187 The Tui Project regularly engages with stakeholders in Taranaki, including local government, the oil and gas industry, service companies and non-government organisations to ensure they are informed and involved in their relevant capacities.

Update on estimated Tui decommissioning costs

188 Funding for the Tui Project was based on the *Tui Field Abandonment and Decommissioning Feed Study* conducted in July 2015. This study was commissioned by the then owner of Tui and represented the best modelling of estimated costs available at the time funding was sought from Cabinet in February 2020.

189 Cabinet noted that the actual cost may differ depending on a range of factors. This includes foreign exchange and market movements that are likely over a multi-year planning horizon, and costs associated with delays when implementing procured services. Delays could occur due to the availability of decommissioning equipment such as rigs and vessels at the time of requirement; the time taken to obtain regulatory consent; COVID-19 restrictions; and unexpected changes in the scope due to technical issues.

190 Following the Demobilisation Agreement with BWU and planning for Stage Three decommissioning, MBIE has updated its best estimate. In December 2020, I was invited to submit a cost pressure bid for additional appropriation to complete decommissioning Tui.

Financial Implications

191 Estimates for decommissioning Tui have been updated and I have submitted a Budget 2021 cost pressure bid.

Legislative Implications

192 There are no legislative implications

Impact Analysis

193 No regulatory impact statement is required as the update does not include any policy proposals.

194 The CIPA requirements do not apply as the update includes no policy proposals.

Population Implications

195 There are no population implications in regards to the Tui update in this paper.

Human Rights

196 The Tui update has no implication for human rights.

Consultation

197 No consultation took place on the update on the decommissioning of Tui.

Communications

198 Updates on MBIE's progress with decommissioning Tui are publicly available on the New Zealand Petroleum and Minerals website.

Proactive Release

199 I propose to proactively release this Cabinet paper and minutes within 30 business days, subject to redaction as appropriate consistent with the Official Information Act 1982.

Recommendations

The Minister of Energy and Resources recommends that the Committee:

Part A - Additional proposals for the Crown Minerals (Decommissioning and Other Matters) Amendment Bill (the Bill)

1 **note** in June 2020, Cabinet agreed to strengthen legal and financial responsibility for decommissioning petroleum sector infrastructure and expand the current enforcement toolbox under the Crown Minerals Act 1991;

2 **note** that the Parliamentary Counsel Office is currently drafting the Crown Minerals (Decommissioning and Other Matters) Amendment Bill and it is a category 3 Bill (to be passed if possible in the year);

3 **note** that I consider that there are a number of outstanding policy issues that I consider should be included in the Bill to further strengthen the proposed decommissioning regime;

Additional proposals for inclusion in the Bill

4 **note** Cabinet previously agreed [CAB-20-MIN-0294] to empower the regulator to require petroleum permit and licence holders to establish and maintain adequate financial security to discharge their decommissioning obligations, if and when and of a type and a financial value the regulator deems necessary, based on individual circumstances and risk profiles;

5 **agree** that Cabinet rescind the decision referred to in recommendation four, and instead agree that the Bill should provide that it is mandatory requirement for permit and licence holders, and applicants for transfers to provide a financial security;

6 **agree** that the Bill should enable the Minister of Energy and Resources to mandate timeframes earlier than the end of the permit or licence within which decommissioning of petroleum infrastructure or plugging and abandonment of a well must take place;

7 **agree** that a criminal sanction should be available for circumstances where permit holders knowingly failed to make adequate provision for and undertake decommissioning with penalties of up to 2 years imprisonment for individuals and/or a fine of up to $1million. The fine for businesses would be up to $10 million or up to three times the cost of decommissioning;

8 **agree** that the permit acquisition provisions provide that the decision-maker must be satisfied that there is a higher level of confidence that the proposed permit holder will comply with the work programmes / permit conditions;

9 **agree** that the Bill should allow the regulator to collect payments (i.e. cash funds) from permit and licence holders to contribute to the risk of well failure and associated infrastructure after decommissioning has completed. The payments will be held in a pooled, central government account and accessed at the discretion of the Minister of Energy and Resources;

10 **agree** that amendments are able to be made to the minerals programmes that are consequential to the changes made by the Bill without complying with the public notice and submission process that would otherwise apply;

11 **note** that the Ministry of Business, Innovation and Employment officials are to work with other agencies, including the Ministry for the Environment, Environmental Protection Authority, the Ministry of Transport and Maritime New Zealand to understand how the proposed regime interacts with existing requirements and might be aligned;

Other matters to note

12 **note** I propose to include in the Bill that, for the purposes of defining the obligation to decommission, all wells must be plugged and abandoned; and, in relation to petroleum, infrastructure complete removal is required if for a specific permit and licence holder there are no requirements set under other enactments as to how decommissioning must be undertaken;

13 **note** I propose the Bill should also provide that for the purposes of estimating costs, permit and licence holders must use 'complete removal' of infrastructure as a benchmark unless it is known at the time of estimating these costs that requirements under other enactments provide otherwise;

14 **note** I propose the Bill provides the regulator with the ability to grant exemptions to the obligation to decommission on a case-by-case basis;

15 **note** that I propose to require all petroleum mining permit and licence holders to submit a Field Development Plans at a prescribed time after the Bill commences, and subsequently if/when material changes are made, and / or in any event at regular time intervals, and permit and licence holders will be required to provide an Asset Register that meets the satisfaction of the regulator, and this requirement may also extend to exploration permit holders if necessary;

16 **note** that some elements of the proposed decommissioning regime may not be consistent with New Zealand's international investment obligations. The Ministry of Foreign Affairs and Trade has assessed each of the proposed changes and has also identified ways to mitigate this risk.

Legislative drafting

17 **invite** the Minister of Energy and Resources to issue drafting instructions to the Parliamentary Counsel Office to give effect to the recommendations above; and

18 **authorise** the Minister of Energy and Resources to make decisions consistent with the recommendations above and on any minor or technical matters that may arise during the legislative drafting process.

Part B - Update on decommissioning the Tui Oil Field

19 **note** that in February 2020, Cabinet invited the Minister of Energy and Resources to report back to Cabinet once decommissioning planning is completed and updated estimated cost figures are made [CBC-20-MIN-0008];

20 **note** that in February 2020, Cabinet approved expenditure of $154.641 million to meet estimated departmental and non-departmental costs associated with decommissioning the Tui oil field;

21 **note** that decommissioning will take place in three stages. Stage One is complete, and Stage Twowo is underway.

22 **note** that MBIE submitted emergency response plans to regulators and obtained insurance to cover pollution liability in relation to offshore installations;

23 **note** that in November 2020, MBIE signed a reimbursable contract with BW Umuroa Pte Ltd to complete demobilisation of the floating production, storage and offloading vessel, the Umuroa, connected to the Tui subsea assets Confidential advice to Government

24 **note** that MBIE has started planning for Stage Three of decommissioning, which includes obtaining environmental approval and procuring service providers to plug and abandon the wells and remove the remaining subsea infrastructure;

25 **note** the estimated costs for decommissioning Tui have been updated following the execution of the Demobilisation Agreement with BW Umuroa Pte Ltd and further planning;

26 **note** that a Budget 2021 cost pressure bid has been submitted for the additional non-departmental and departmental appropriation required to complete decommissioning Tui.

Authorised for lodgement

Hon Dr Megan Woods

Minister of Energy and Resources

Commercial Information

[3] This table does not include the Hamner Springs (PMP 60215) permit (a small methane recover project) or the Comet Ridge permit (PMP 50100) (decommissioning is almost completed) as they were not included in the work undertaken to assess decommissioning costs.

Legal professional privilege

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