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

Section 1: General information

Purpose
The Ministry of Business, Innovation & Employment (MBIE) is solely responsible for the analysis and advice set out in this Regulatory Impact Assessment (RIA), except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing key policy decisions to be taken by Cabinet.

Key Limitations or Constraints on Analysis

The issues and options considered in this Regulatory Impact Summary **(RIS)** build on the issues and options considered in a full Regulatory Impact Analysis **(RIA)**[1] undertaken in June 2020. The RIA supported Cabinet's decision on a package of regulatory proposals to amend the Crown Minerals Act 1991 (CMA) to improve the Crown's ability to more effectively mitigate the risk of potentially having to undertake and fund petroleum infrastructure decommissioning[2].

Options have been considered in light of decisions taken by Cabinet in June 2020 to amend the CMA to strengthen the regime for petroleum decommissioning activities

In June 2020 Cabinet agreed to a package of regulatory proposals to amend the CMA to:

- **Establish a clear statutory obligation to decommission**: this will involve amending the CMA to impose an explicit statutory obligation on permit/licence[3] holders to undertake and fund decommissioning activities, as an integral part of the permit to mine petroleum resources; and extend it to former permit/licence holders in the case of a transfer.
- **Provide for more effective monitoring and regulatory oversight**: this will involve amending the CMA to: require permit/licence holders to provide the regulator with sufficiently detailed and up to date planning and financial information; and, enable the regulator to conduct periodic financial capability assessments.
- **Require financial security for decommissioning to be maintained and accessed, if/when necessary:** This will involve amending the CMA to empower the regulator to require permit and licence holders to establish and provide

[1] The RIA is available here: https://www.mbie.govt.nz/dmsdocument/11619-regulation-governing-legal-and-financial-responsibility-for-decommissioning-petroleum-infrastructure-and-enforcement-tools-under-the-crown-minerals-act-1991-proactiverelease-pdf.

[2] The Cabinet paper is available here: https://www.mbie.govt.nz/dmsdocument/11617-regulatory-framework-for-decommissioning-petroleum-infrastructure-and-enforcement-strengthening-the-crown-minerals-act-regime-proactiverelease-pdf.

[3] This document refers to permit/licence holders, because Cabinet agreed that changes to the regulation of decommissioning be extended to petroleum licences. This would replace and modernise the requirements for licences under that Act and align the decommissioning obligations under both the CMA and the Petroleum Act 1937 ensuring clarity and consistency.

adequate financial security for decommissioning purposes, based on permit and licence holders' individual circumstances and risk profiles.

- **Introduce a new penalty provision***:* this will involve amending the CMA to include a civil pecuniary penalty ($500,000 for individuals and up to $10 million for a permit of licence holder) in the event that a permit or licence holder fails to fund and carry out decommissioning**.**
- **Expand the current enforcement toolbox**: this will involve amending the CMA to: introduce new enforcement powers (including enforceable undertakings, compliance notices, and infringement fees); and introduce a new penalty provision.

These changes will be introduced through a CMA Amendment Bill (the **Bill**). The detailed requirements for each provisions will be set out in regulations. The options in this RIS build on these decisions.

Constraints on data on which to assess the risk

There are some constraints on the data available to assess the risk for the Crown of potentially having to step-in as a provider of last resort. The specific cost of decommissioning petroleum infrastructure in New Zealand is uncertain, and can vary significantly depending on the timing, location, extent of removal required, and other factors. Furthermore, due to the dynamic nature of the risk, the extent of the Crown's risk exposure can change significantly and unexpectedly. Given this uncertainty, in the RIA, and now in this RIS, we have based our analysis of the problem on a high-level estimate of a range within which the decommissioning costs could fall.

Limitations on consultation

We consulted publicly from 19 November 2019 to 27 January 2020 as part of the CMA Review discussion document, where we sought feedback on the high-level policy options that Cabinet agreed to in June 2020.

We have not consulted on the specific options we propose in this RIS with industry or other stakeholders, and we anticipate that there may be some concerns which are further detailed in this RIS. However, we note that all stakeholders will have a further opportunity to comment on those through the standard legislative change process.

Overall conclusion

Despite the above listed constraints and limitations, we consider that this RIS is sufficient for Cabinet to base its decisions on.

Responsible Manager (signature and date):
Michelle Schulz Manager, Resource Markets Policy Energy & Resource Markets Ministry of Business, Innovation & Employment

To be completed by quality assurers:

Quality Assurance Reviewing Agency:
MBIE's Regulatory Impact Analysis Review Panel (RIARP) has reviewed the Impact Summary "Additional options to address limitations with petroleum infrastructure decommissioning regime under the Crown Minerals Act 1991" produced by the MBIE and dated 30 March 2021.
Quality Assurance Assessment:
The review 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.
Reviewer Comments and Recommendations:

Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

An increasing number of petroleum fields will soon require decommissioning and there are significant risks that could arise if decommissioning is not undertaken, or, not undertaken as required

The New Zealand petroleum (oil and gas) sector has been built on the back of early exploration and development dating back to the 1950s. As the sector continues to mature, an increasing number of petroleum fields are nearing the end of their economic lives and will require decommissioning. This is consistent with global trends, where an increasing number of petroleum fields are nearing depletion, following decades of resource recovery.

Decommissioning is the process of removing or otherwise satisfactorily dealing with petroleum assets (such as platform installations and other structures, equipment, pipelines and cables) and wells, in a safe and environmentally responsible manner. There are significant health and safety, and environmental risks that could arise in the event that decommissioning is not undertaken, or, not undertaken as required.

Until recently there have been commercial incentives for petroleum companies to set aside sufficient financial means to undertake and fund decommissioning activities to secure social licence to operate and preserve options for future exploration and mining projects. Furthermore, petroleum assets have historically been owned by consortiums of large multinational publicly listed entities. Such firms normally have the ability to access sufficiently large and liquid funds for decommissioning purposes.

However, as economies increasingly transition away from fossil-fuels based energy sources, and petroleum fields approach the end of their economic life, the incentives for petroleum companies to undertake and fund decommissioning of their infrastructure may weaken.

Furthermore, recent experience in New Zealand and overseas has been that the ownership of late-life petroleum infrastructure tends to consolidate to fewer permit participants, with some being acquired by smaller companies, without joint venture partners, funded by private equity. Such firms are often less well-resourced, and therefore less able to access sufficiently large and liquid funds for decommissioning purposes, at the time decommissioning needs to take place. We also note that petroleum exploration and mining are high cost activities that further increase the risk of businesses becoming insolvent if market conditions change or if there are failed exploration campaigns.

There is an increasing risk that the Crown or other third party will potentially have to undertake and fund decommissioning

In the event of a petroleum company not having the funds for decommissioning (e.g., because of financial default), there is a risk that the Crown or other third parties (such as private land owners and Regional Councils) will potentially have to undertake and fund decommissioning. The risk has recently materialised in relation to the Tui oil field (Tui), the first full petroleum field decommissioning project in New Zealand. In late 2019, Tamarind Taranaki Ltd (Tamarind), the operator Tui, went into receivership and liquidation following a failed exploration campaign. With Tamarind's liabilities far exceeding the value of its assets, it and the other Tui participants are not able to meet any part of the decommissioning costs. To protect the marine environment (which would otherwise be severely damaged), the Crown is stepping-in as the provider of last resort to decommission the Tui infrastructure. In February 2020 Cabinet agreed to fund NZ$155 million, and a project team has been set up within MBIE to undertake the decommissioning.

As discussed in Section 1, Cabinet's decisions in June 2020 addressed these risks by agreeing to significant changes to the CMA.

This RIS addresses specific limitations of current regulatory settings under the CMA that were identified as part of the drafting of the Bill

As work on the drafting of the Bill has progressed, we have identified the following limitations with the current regulatory settings under the CMA:

- Limited incentives on permit/licence holders to make adequate provision for decommissioning;
- Risk the permit applicant may not have the financial capability to undertake and fund decommissioning; and,
- Risk that decommissioning would be delayed even when production has ceased.

These limitations are further discussed below. We consider that these limitations also need addressing as part of the Bill, and that additional regulatory proposals are required to support the package of regulatory proposals already agreed to by Cabinet in June 2020.

Limited incentives on permit/licence holders to make adequate provision for decommissioning

Given the economic incentives described above, there may be circumstances where permit/licence holders wilfully disregard the law and choose not to decommission for commercial gain. The financial security that will be mandatory for all permit and licence holders to set aside for decommissioning purposes will be determined by the regulator on a case-by-case basis. Flexibility on the level of the financial security required and how it is provided is designed to make the arrangement workable across all existing permit and licence holders in consideration of their differing financial capabilities. However, there remains a risk that recourse to the financial security will not always be certain for example, when the financial security is not held as cash funds by the regulator.

In June 2020 Cabinet agreed to introduce a civil pecuniary penalty for permit/licence holders that failed to fund and carry out decommissioning.

However, following closer review of the serious financial and environmental harm created by the failure to decommission petroleum wells and infrastructure, we consider that the civil pecuniary penalties alone would not be sufficient to deter the most egregious breaches (fines could be factored in by companies/individuals as part of the cost of doing business).

Risk the permit applicant may not have the financial capability to undertake and fund decommissioning

The draft Bill will require that permit/licence holders establish and maintain a financial security for decommissioning purposes. However, a recent High Court judgement creates a risk that businesses without adequate financial security will still be able to acquire a permit.'

Sections 29A, 41, 41AE and 41C of the CMA deal with the acquisition of permits. In all provisions the Minister must be satisfied that the proposed permit/licence holder is 'likely' to comply with, and give proper effect to, the work programme and/or the conditions of the permit.

A recent High Court Judgment, Greymouth Gas Turangi Ltd v Minister of Energy and Resources [2020] NZHC 2712, interpreted 'likely' in the context of the process for considering an application (section 29A(2)(b)) as an "outcome that is reasonably in

prospect, that being an outcome that is a distinct possibility". We consider that the Court's interpretation of 'likely' as 'reasonably in prospect' sets too low a threshold for the acquisition of permits, and may result in greater risk of companies gaining a permit that may not have the financial and technical capability to undertake decommissioning.

In these circumstances, the regulator may not be able to require them to establish and maintain an adequate financial security for decommissioning, and there is higher risk that the company may become insolvent.

Risk that decommissioning would be delayed even when production has ceased

While in theory, permit/licence holders would decommission when production ceases, there may be reasons (e.g., wanting to use funds elsewhere in a business, expecting that decommissioning costs decrease over time, or not having funds available and wanting to defer the consequences) that they choose to defer this activity.

This is a concern as the delay increases uncertainty as decommissioning costs may increase, or a permit/licence holder's financial capability may change. Even when decommissioning might ultimately take place, it is important to be able to minimise uncertainty, given the Crown's potential exposure. There are also potential environmental and health and safety risks if infrastructure or wells are left a prolonged period of time.

Steps taken prior to this stage (for example, increased monitoring of financial capability, and the requirement to establish a financial security) should go a long way to mitigating this risk. If there was adequate funding available then there should be no barrier to permit/licence holders carrying out decommissioning at the appropriate time.

However, these steps do not provide a guarantee that decommissioning will happen. Currently under the proposed regime, permit/licence holders will be required to provide an estimated date for decommissioning, based on production profiles, but if a permit holder does not then start decommissioning, the Crown is limited in the action it may take.

2.2 Who is affected and how?

The proposals are mainly designed to change the behaviour of permit/licence holders. We seek to incentivise behaviours of permit/licence holders (companies or an individual) to plan, carry out and fund decommissioning in a timely manner.

From the consultation carried out on decommissioning in 2019, there appears to be broad support for incentivising better planning and funding for decommissioning by permit/licence holders. 55 submitters commented directly on the issues and high-level options that relate to decommissioning activities. All but one agreed that the CMA is currently unclear and possibly inconsistent in its application of the obligation to decommission.

Where decommissioning is not carried out and funded by permit/licence holders, the costs and responsibility would fall to the Crown (offshore and onshore), as well as landowners (onshore). Therefore, both these parties are motivated to mitigate permit/licence holders failing to undertake and fund decommissioning.

2.3 What are the objectives sought in relation to the identified problem?

The overall objective of the Amendment Bill will be to mitigate the risk to the Crown and other third parties of having to carry out and fund decommissioning.

The specific objectives of the proposals in this RIS seek to support this by aiming to:

- Create incentives on permit/licence holders to make adequate provision for decommissioning;
- Address the risk the permit applicant may not have the financial capability to undertake and fund decommissioning; and,
- Address the risk that decommissioning would be delayed even when production has ceased.

Section 3: Options identification

3.1 What options have been considered?

Context

The options discussed in this RIS are additional to the options already discussed in the June 2020 RIA which informed Cabinet's decision on amending the CMA to:

- Establish a clear statutory obligation to decommission;
- Provide for more effective monitoring and regulatory oversight;
- Require financial security for decommissioning to be maintained and accessed, if/when necessary;
- Introduce a new penalty provision; and,
- Expanding the current enforcement toolbox.

Assessment criteria

We assessed all of the options against the following assessment criteria, which have been given equal weighting as per the previous RIA in June 2020:

- **Effectiveness** (the extent to which the option contributes to the desired policy outcomes). Does the option address the problem identified with the current CMA regulatory settings effectively?
- **Proportionality** (the extent to which the costs/risks of implementing the option are proportional to the expected benefits). Does the option minimise the costs, risks and potential unintended consequences of addressing the problem identified with the current CMA regulatory settings?
- **Regulatory certainty** (the extent to which the option provides clarity of regulatory requirements and predictability of regulatory outcomes). Does the option address the problem identified with the current CMA regulatory settings in a way that makes the regulatory requirements more clear and transparent, and regulatory outcomes more predictable?
- **Practicality** (the extent to which the option reduces any implementation risks). Does the option minimise any implementation risks, provides for administrative simplicity, and encourages timely decision-making?

Limited incentives on permit/licence holders to make adequate provision for decommissioning

We have considered the following options, against the above criteria:

- **Option 1:** no change to Cabinet's decision to amend the CMA to include a civil pecuniary penalty ($500,000 for individuals and up to $10 million for a permit/licence holder) in the event that a permit or licence holder fails to fund and carry out decommissioning**.**
- **Option 2:** higher pecuniary penalties than Option 1.
- **Option 3:** in addition to the civil pecuniary penalties already agreed by Cabinet**,** introducing a criminal offence in the event a permit/licence holder knowingly fails to make adequate provision for decommissioning. The new criminal offence would carry a prison sentence of up to two years for individuals and/or a fine of up to $1 million. The penalty for businesses would be up to $10 million or up to three times the cost of

decommissioning. The civil and criminal sanctions would run parallel to each other allowing the regulator to choose which regime is most proportionate to the offence. Civil and criminal sanctions would not be used in relation to the same offence.

We excluded strict liability and negligence as options for increasing incentives to decommission as we are intending to capture knowledge-based offending where the permit or licence holder took deliberate steps to avoid decommissioning costs. We are not targeting a situation whereby decommissioning did not occur for reasons outside the permit/licence holder's control (which strict liability potentially captures) or where the permit/licence holder had been negligent, but not deliberate, in their actions which resulted in decommissioning not taking place.

Confidential advice to Government

The options discussed below (civil pecuniary penalties and criminal sanctions) would serve a different purpose to civil liability. Where civil liability would allow the Crown to sue for damages, the penalties would be used for contraventions of the obligation of undertake and fund decommissioning. In particular, the criminal offence would be used to provide a proportionate response to intentional behaviour that created significant financial costs for the Crown with potential damaging effects for the environment and health and safety.

Other options were assessed as part of the original Cabinet decision to include financial security requirements.

Effectiveness

For larger petroleum fields where decommissioning costs run into millions of dollars, the fine agreed by Cabinet (**option 1**) may be considered by permit/licence holders with little corporate responsibility as a relatively low cost of doing business.

The outcome of civil pecuniary penalties (**options 1** and **2**) may not be effective in the event the permit/licence holder had liquidated, leaving the regulator needing to pursue individual responsible officers. There is potential for firms to compensate individuals for financial penalties arising from civil proceedings especially when offending has been deliberate. For example, corporations could potentially pay an individual up front for taking measures to avoid decommissioning and associated costs, in anticipation of future penalties. Corporations might also arrange for payments to be made to the individual outside New Zealand. Furthermore, fines may be subject to evasion through the use of incorporated subsidiaries, asset stripping and/or returning profits to parent companies offshore

The combination of civil pecuniary penalties and a criminal sanctions (**option 3**) sends a clear message to permit/licence holders that failing to decommission is a very serious offence with the potential for a prison sentence for individuals. A prison sentence cannot be compensated by a body corporate in the same way as fines. This option can be expected to provide the most deterrence.

The combination of civil pecuniary penalties and a criminal sanctions (**option 3**) would also provide the regulator with a choice of enforcement tools. We propose that knowingly failing to provision for decommission would amount to a category 3 offence. 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 decommissioning'. Body corporates would be liable to a penalty linked to the cost of decommissioning and set by the Court. We propose the new criminal offence would carry a prison sentence of

up to two 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.

The threat of imprisonment to individuals would offer the sharpest deterrent for the most flagrant beaches of the decommissioning obligation where large financial and environmental costs were involved. Unlike civil penalties, the deterrent effect of imprisonment is not dependent on an individual's wealth, has a social stigma attached, and may affect opportunities for future employment.

The deterrent effect of criminalisation can be difficult to ascertain. The United States Department of Justice has much experience with using criminal sanctions against individuals who have participated in cartels and has said: 'Our investigations have found that nothing in our enforcement arsenal has as great an effect as the threat of substantial incarceration in the United States prison – nothing is a greater deterrent and nothing is a greater incentive for a cartels, once exposed, to cooperate in the investigation of his co-conspirators.'[4]

Proportionality

The level of civil pecuniary penalties agreed by Cabinet (**option 1**) is likely to offer a proportionate response and deterrent against low to mid-level breaches of the decommissioning obligation.

Increased civil pecuniary penalties (**option 2**) would offer a higher level of deterrence against permit/licence holders and complicit employees (including directors) from accepting the penalty as a cost of doing business. However, the imposition of fines for the most egregious offences that involve high financial costs, environmental effects and health and safety concerns is unlikely to be proportionate to the level of offending.

The combination of civil pecuniary penalties and a criminal sanction (**option 3**) would provide the regulator with an ability to determine which proceedings were most proportionate to both the nature of the conduct and the harm created. Safeguards would be put in place to avoid human rights issues (including the avoidance of double jeopardy). A well designed and targeted offence coupled with the high standard of proof required for criminal proceedings would help ensure criminal proceedings were only used for the most blatant offending.

Given the element of intent and the potential for high financial costs and environmental effects, we consider a criminal sanction against both the permit/licence holder (company and individual employees, such as directors) to be proportionate to the offence. Inadvertent behaviour would not give rise to the criminal sanction but would likely fall foul of the civil prohibition, as agreed by Cabinet in June 2020.

The availability of both civil and criminal proceedings, and the provision of a category 3 offence would align with other crimes of a corporate nature including the criminal cartel offence provided in the Commerce Act 1986, and offences in the Financial Markets Conduct Act 2013 such as those relating to financial reporting standards.

Regulatory certainty

Civil pecuniary penalties (**options 1** and **2**) provide predictable, clear and transparent outcomes. The standard of proof required is lower (balance of probabilities) and likely to be less burdensome for the regulator to establish.

The combination of civil pecuniary penalties and a criminal sanctions (**option 3**) may be more resource intensive to prosecute as the standard of proof, 'beyond reasonable doubt', is higher.

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[4] US Department of Justice 'Seven Steps to Better Cartel Enforcement,' 2 June 2006

The prohibited conduct associated with the criminal sanction would be well targeted and clear in legislation and apply where a permit or licence holder knowingly fails to carry out decommissioning for example, for commercial gain.

All three options involve very simple and clear consequences.

Practicality

Civil proceedings (**options 1** and **2**) offer a practical enforcement tool. They are relatively straight forward to apply using the regulator's existing enforcement procedures and require a lower standard of proof 'on the balance of probabilities'. However, a penalty will be less effective when enforcing against a permit/licence holder that has already liquidated. Therefore, it may be only practical to enforce against an individual such as a director who facilitated the offending.

The legal burden of proof for the criminal sanction (**option 3**) would fall on the regulator. The prosecution must prove the physical element of the defence (i.e. decommissioning did not occur), and the *mens rea* element (knowingly failing to make adequate provision for decommissioning). This differs from the civil sanction where the prohibited conduct would be failing to fund and carry out decommissioning in situations where the element of intent is not apparent.

The *mens rea* element of the criminal offence may be more difficult and costly to prove particularly as given the higher criminal standard of proof. However, a criminal sanction and the threat of imprisonment can be expected to serve as an increased deterrent, as has been assessed with other regimes in New Zealand for example, the introduction of criminal sanctions for the cartel offence under the Commerce (Criminalisation of Cartels) Amendment Act 2019 and the introduction of criminal sanctions for corporate offences under the Financial Markets Conduct Act 2013. There are challenges to enforcing any penalty where companies and directors are based overseas, however, under Company Law, one company director is always required to be based in New Zealand, which could be an important incentive for that director to comply themselves, and encourage others to.

Risk the permit applicant may not have the financial capability to undertake and fund decommissioning

We have considered the following options, against the above criteria:

- **Option 1:** Continue with the status quo where the decision maker must be satisfied that the proposed permit/licence holder is 'likely' as in 'reasonable in prospect' to comply with, and give proper effect to, the work programme and/or the conditions of the permit; and

- **Option 2:** Amend the CMA to raise the threshold to a higher level of confidence but allow the decision maker discretion to weigh up various factors to establish whether they are satisfied the applicant has the financial and technical capability to meet the work programme/conditions.

We did not consider an option requiring the applicant to demonstrate certainty, as we consider that requiring the decision maker to be 100 per cent certain is not practical. It is difficult to remove subjectivity from any test, and it could be 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.

Effectiveness

Amending the CMA to strengthen the decision making tests (**option 2**) for the permit acquisition permits is an improvement on the status quo (**option 1**), in which we consider the threshold is too low and there is a greater risk of companies gaining a permit in New Zealand that may not have the financial and technical capability to undertake activities. Raising the threshold will reduce the likelihood of companies gaining permits in New Zealand that do not have the technical and financial capability to carry out decommissioning.

Proportionality

If we continue with the status quo (**option 1**), there is a greater risk of companies gaining a permit in New Zealand that may not have the financial and technical capability to undertake activities. This is not a proportional response and the risk from higher risk applications is much greater than lower risk application.

Raising the threshold to require a higher level of confidence but still allowing discretion (**option 2**) is suitable for both low and high risk applications as it is still a judgement call based on the technical and financial capability requirements (of which there is a considerable variability across the different operation and permit types) and previous compliance history. There would be little impact on potential permit/licence holders who do have the technical and financial capability to meet work programme/permit conditions.

Regulatory certainty

Legal professional privilege

Raising the threshold to require a higher level of confidence but still allowing discretion (**option 2**) makes outcomes clear and transparent for applicants, and works equally for both tier 1 and tier 2 permits.

Practicality

If we continue with the status quo then there is a greater risk of companies gaining a permit in New Zealand that may not have the financial and technical capability to undertake activities (**option 1).**

While any term used to describe a new higher threshold will be subject to interpretation by the courts, we consider that raising the threshold to require a higher level of confidence but still allowing discretion (**option 2**) is more practical than setting a decision-making test that seeks certainty. Discretion enables the decision maker the flexibility to weigh up relevant factors about measures a permit/licence holder may have taken in order to address previous non-compliance issues.

Risk that decommissioning would be delayed even when production has ceased

We have considered the following options, against the above criteria:

- **Option 1:** The status quo under Cabinet's earlier decision: amend the CMA to introduce an obligation on permit and licence holders to carry out and fund decommissioning before the end of a permit; and,
- **Option 2:** In addition to option 1, amend the CMA to introduce a power for the Minister to set conditions as to when decommissioning or plugging and abandoning must take place**.**

Effectiveness

Stating that decommissioning must take place prior to permit expiry (**option 1**) clarifies that decommissioning must be complete by the end of the permit at the latest, after which compliance action can be taken.

In addition to setting a standard timeframe within which decommissioning should be complete, enabling the Minister to set timeframes (**option 2**) provides the regulator with an additional tool to incentivise good planning for decommissioning, and sets the expectation that decommissioning should be carried out at the earliest opportunity. If a field ceases production, but is not decommissioned, there is a risk that wells or infrastructure could become more complex (and expensive) to decommission. Allowing the Minister to set timeframes in certain circumstances (**option 2**) provides allows the regulator to further minimise the risk that decommissioning will not be carried out or funded.

Proportionality

Stating that decommissioning must take place prior to permit expiry (**option 1**) is a proportionate response to the risk of decommissioning not being carried out or funded by permit/licence holders. However, this option applies the same rule to all permit and licence holders, and does not take into account individual circumstances.

Allowing the Minister to set timeframes (**option 2**) builds on this by providing the option to take targeted action to achieve the outcome. We also propose setting out criteria the Minister must consider when coming to a decisions. This will include factors such as plan for re-use, and how long a field or well has been inactive. This means that there will be flexibility in the application of these conditions, and timeframes will not be imposed where there would be a commercial impact.

Regulatory certainty

Stating that decommissioning must take place prior to permit expiry (**option 1**) provides a high level of certainty for permit and licence holders, as they would know when their permit or licence expires and could plan accordingly. The requirement is clear and transparent, and provides predictable outcomes for the regulated party.

Also allowing the Minister to set timeframes (**option 2**) provides less regulatory certainty for the permit or licence holder, as the regulator has power to impose timeframes for decommissioning prior to the expiry of the permit. However, the criteria that the Minister

will consider when setting timeframes will be set out in legislation, creating transparency in decision-making.

Practicality

Stating that decommissioning must take place prior to permit expiry (**option 1**) provides administrative simplicity by applying the same rule to all permits and licences. It would be relatively simple to apply and would provide a clear demarcation for when enforcement action would take place.

Also allowing the Minister to set timeframes (**option 2**) involves a greater administrative burden on the regulator, as it involves a degree of discretion and taking a proactive approach to decision-making. However, setting out the criteria in legislation provides for a process being established and consistency in the way they are applied.

The information the regulator would require would be provided as part of other processes (such as financial capability assessments or the annual summary reporting process), so there would not be a considerable additional burden on permit/licence holders. There is at least one permit that already has a similar condition around plugging and abandoning an inactive well[5] which indicates that the regulator has the existing capacity to carry out this function.

3.2 Which of these options is the proposed approach?

Preferred approach to addressing limited incentives on permit/licence holders to make adequate provision for decommissioning

Our overall assessment is that the combination of civil pecuniary penalties and a criminal sanctions (**option 3**) will provide the regulator with a wider range of enforcement tools that can be tailored to the nature of the offence and the circumstance.

The existing level of civil pecuniary penalties, as agreed by Cabinet in June 2020, provide an effective and proportionate response against low to mid-level offending. However, civil pecuniary penalties, even if increased to levels much higher than agreed by Cabinet in June 2020, are not a proportionate response when a permit/licence holder's failure to decommission involves an element of fault or blameworthiness and when high financial and/or environmental costs are involved. A prison sentence cannot be avoided or mitigated in the same way as financial penalties.

The availability of a criminal sanction for circumstances where permit/licence holders knowingly failed to decommission provides an effective and proportionate response to high level breaches. In particular, criminal sanctions can be expected to offer a higher level of deterrence against individuals, such as directors, than fines alone.

We have engaged with the Ministry of Justice in the development of the design of the criminal offence to ensure the provision is consistent with the rule of law. This includes ensuring that the proposed criminal offence and penalty isa rational and proportionate approach to punishment and deterrence of the offending behaviour, appropriate safeguards are provided and that criminal sanctions are used consistently across the statute book.

Confidential advice to Government

The criminal sanction may be more difficult to apply in practice given the higher standard of proof and inclusion of a *mens rea* element. Nonetheless, a prison sentence for key complicit employees may offer the most practical enforcement tool in circumstances where a permit held by a joint venture has already liquidated, or returned profits back to parent companies and/or shareholders, and where high penalties offer insufficient deterrence to high net worth individuals and/or where penalties can be evaded or mitigated (set out above).

We consider the availability of civil pecuniary penalties and a criminal penalty would provide the regulator with an appropriate range of enforcement mechanism, and incentivise permit/licence holders to carry out and fund decommissioning.

Preferred approach to addressing the risk the permit applicant may not have the financial capability to undertake and fund decommissioning

Our overall assessment is that amending the CMA to raise the threshold to require a higher level of confidence for the decision making test for permit acquisition provisions (**option 2**), would reduce the likelihood of companies gaining permits in New Zealand that do not have the technical and financial capability to carry out decommissioning.

We consider that the tests should be strengthened for both petroleum and minerals permits, as we consider it are also important that the decision maker has confidence mine closure requirements, which includes rehabilitation, will be complied with. These costs can also be significant[6]. Mine closure is important as it ensures both physical and chemical stability of the mine and associated infrastructure such as tailing facilities[7] or waste rock storage facilities to prevent ground movement, unsafe incursion or the generation of acid or leaching of any toxic elements.

Retaining some discretion will allow the decision maker the flexibility to weigh up relevant factors about measures a permit/licence holder may have taken in order to address any issues. While any term used to describe this new higher threshold will be subject to interpretation by the courts, we consider this approach is more practical then setting a decision-making test that seeks certainty.

We consider that this option provides the greatest levels of effectiveness and proportionality, as in raising the threshold to require a higher level of confidence but still allowing discretion, this option is suitable for both low and high risk applications as it is still a judgement call based on the technical and financial capability requirements (of which there is a considerable variability across the different operation and permit types) and previous compliance history. There would be little impact on potential permit/licence holders who do have the technical and financial capability to meet work programme/permit conditions.It also makes outcomes clear and transparent for applicants, and works equally for both tier 1 and tier 2 permits.

Preferred approach to addressing the risk that decommissioning would be delayed even when production has ceased

Our overall assessment is that stating that decommissioning must take place prior to permit expiry and also allowing the Minister to set timeframes (**option 2**), provides an effective and proportionate response to the need to specify when decommissioning must be carried out, and provides a balance between certainty for the Crown and the ability to tailor the requirement to a permit or licence holder's particular circumstances.

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[6] Closure costs vary widely, it depends on the nature and footprint of the mine and the nature of materials produced from it, in terms of waste (both rock and tails). Tier 1 operations can cost in the 10's of millions.

[7] A tailings storage facility (TSF) is a structure made up of (one or more dams) built for the purposes of storing the uneconomical ore (ground up rock, sand and silt) and water from the mining process.

We consider that this would reduce the likelihood of a permit or licence holder operating their field at a loss in order to defer decommissioning costs, with the potential eventual result being that they cannot fund decommissioning.

We propose to include criteria the Minister must consider when deciding whether to set timeframes related to decommissioning, which provides more flexibility to tailor the timeframes to individual circumstances, compared to using 'by cessation of production' as a deadline.

We consider that option would be the most effective in providing assurance that decommissioning will be completed by the end of the permit at the latest. It provides the regulator with an additional tool to incentivise good planning for decommissioning, and sets the expectation that decommissioning should be carried out at the earliest opportunity. It would not be a significant additional burden on permit/licence holders or the regulator, but would provide a useful tool for the particular circumstances where it may be required.

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits

Preferred approach to addressing the limited incentives on permit/licence holders to make adequate provision for decommissioning

Affected parties *(identify)*	**Comment**: nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks.	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts*
Additional costs of compared to taking no action		
Regulated parties	The introduction of a criminal penalty is unlikely to create significant costs for responsible and compliant corporations and responsible officers.	N/A
Regulators	The regulator has indicated that it would incur some costs for upskilling and developing processes and procedures for undertaking criminal investigations. Criminal prosecutions may make longer than civil proceedings because there is greater use of oral evidence. This is likely to result in additional costs, particularly if cases proceed by way of jury trial. However, there are likely to be only a very small number of prosecutions.	\$20,000 - \$40,000 set-up costs for upskilling and developing processes and procedures for criminal investigations. \$90,000 ongoing annual staff salary expenses to increase the regulator's expertise and resources and carry our investigations.
Wider government	Imposing criminal sanctions such as jail terms would have a cost. However, very few people are expected to be convicted with a jail sentence and this will have a minimal effect on the overall prison population. There is also potential for stricter measures around decommissioning to reduce New Zealand's appeal as a minerals and petroleum investment destination.	Low
Other parties	Potential effects on workers and investors in the oil and gas sector	N/A

Total Monetised Cost	*No significant cost.*	$20,000-$40,000 set-up costs (one off). $90,000 annual ongoing cost.
Non-monetised costs		*low*

Expected benefits of proposed approach, compared to taking no action		
Regulated parties	No expected benefits for the regulated parties.	*None*
Regulators	The ability to select an effective enforcement tool that is also proportionate to the level of the misconduct and environmental and health and safety harm created.	*High*
Wider government	Criminal sanctions will place a firm incentive effect on permit/licence holders to decommission. We can expect fewer permit/licence holders to fail to complete decommissioning as a result.	*High* Depending on the location and nature of the petroleum infrastructure, this could save central government hundreds of millions (using the Tui field as a cost comparison).
Other parties	Other parties that could benefit from greater incentives on permit/licence holders to decommission include the general public (environmental effects such as toxic substances polluting ground and/or waterways) and economic sectors including commercial shipping, fisheries, agriculture.	*High* It is difficult to quantify the wider benefit to the general public and marine users. However, the effect of deterring failure to decommission could be high.
Total Monetised Benefit	Avoidance of the Crown paying decommissioning costs.	*N/A*
Non-monetised benefits	Widespread benefits of deterring environmental and health and safety impacts from unplugged wells and properly abandoned infrastructure.	*High*

Preferred approach to addressing the risk the permit applicant may not have the financial capability to undertake and fund decommissioning

Affected parties *(identify)*	**Comment**: nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts*
Additional costs of proposed approach, compared to taking no action		
Regulated parties *Potential permit/licence holders*	Little cost to potential permit/licence holders who can demonstrate they have the technical and financial capability to meet work programme/permit conditions. Potential permit/licence holders may have to provide more information to demonstrate they have the technical and financial capability to meet work programme/permit conditions, this could increase administrative costs on potential permit/licence holders.	*Low*
	It will impact potential permit/licence holders who cannot demonstrate they have the technical and financial capability to meet work programme/permit condition as they will not be able to acquire a permit. The proposal may raise the costs of acquiring late life assets, resulting in a field being decommissioned in a state where economic reserves are still available.	*High*
Regulators - *MBIE*	No expected cost on the regulator. The regulator already performs a capability assessment, this will continue.	*None*
Wider government *the Crown*	Minimal cost to the Crown.	*Medium*
Other parties *(i.e. private land owners and Regional councils)*	Potential effects on workers and investors in the oil and gas sector	*low*

Total Monetised Cost	N/A	*N/A*
Non-monetised costs	We anticipate a small increase in costs, mainly for potential additional administrative burden on applicants and regulators.	*Low*

Expected benefits of proposed approach, compared to taking no action		
Regulated parties – *Potential permit/licence holders*	No expected benefits for the regulated parties.	None
Regulators - *MBIE*	The regulator will benefit from clearer provisions for the acquisition of permits. Reducing the likelihood of companies gaining permits in New Zealand that do not have the technical and financial capability to meet work programme/permit conditions should reduce compliance costs to the regulator in the long run.	*Medium*
Wider government – *the Crown*	Benefits would arise from potential avoided costs to the Crown of potentially having to undertake and fund decommissioning activities/site rehabilitation in the event of a permit/licence holders' financial default.	*High* The avoided costs of decommissioning/site rehabilitation can be significant.
Other parties *(i.e. private land owners and Regional councils)*	Reduces the likelihood of companies gaining permits in New Zealand that do not have the technical and financial capability to meet work programme/permit conditions, including decommissioning and site rehabilitation. Benefits would arise from potential avoided costs to other third parties of potentially having to undertake and fund decommissioning activities/site rehabilitation in the event of a permit/licence holders' financial default.	*High* The avoided costs of decommissioning/site rehabilitation can be significant.
Total Monetised Benefit	Without accurate quantifiable evidence, it is difficult to provide an estimate.	*N/A*

Non-monetised benefits	We anticipate a high level of benefits from avoided costs for the Crown and other third parties from potentially having to fund decommissioning activities.	*High*

Preferred approach to addressing the risk that decommissioning would be delayed even when production has ceased

Affected parties *(identify)*	**Comment**: nature of cost or benefit (e.g., ongoing, one-off), evidence and assumption (e.g., compliance rates), risks	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts*
Additional costs of compared to taking no action		
Regulated parties	There should be limited impact overall, as permit/licence holders would not be required to decommission prior to cessation of production. There might be a cost to permit/licence holders if they were required to plug and abandon a well ahead of the decommissioning of the whole field, as there may be cost efficiencies in plugging and abandoning multiple wells at the same time.	Low
Regulators	Some additional burden on the regulator to monitor production profiles and take proactive decisions, but information should already be available as part of existing reporting processes and proposed financial capability assessments.	Low
Wider government	Minimal cost to the Crown.	Minimal
Other parties	N/A	N/A
Total Monetised Cost	*No significant cost*	N/A
Non-monetised costs	*low*	*low*

Expected benefits of proposed approach, compared to taking no action		
Regulated parties	No expected benefits for the regulated parties.	No expected benefits for the regulated parties.
Regulators	The regulator would benefit from clear expectations being set for permit and licence holders, and having an additional tool to ensure decommissioning is carried out in a timely manner.	High
Wider government	There would be some benefit to other government agencies with an interest in decommissioning, for example the Ministry for the Environment and Environmental Protection Authority, in knowing that deadlines for decommissioning could be set where production had ceased for particular assets. This would help with the requirement to submit a decommissioning plan under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 regulations.	Medium
Other parties	Other parties that could potentially benefit from timeframes being set for decommissioning, thereby providing assurance that decommissioning will be carried out at the right time, include marine users the general public and the agriculture sector in relation to polluted ground or waterways.	It is difficult to quantify the wider benefit to the general public and marine users.
Total Monetised Benefit		N/A
Non-monetised benefits	Some benefit in the assurance that decommissioning will be carried out at the point when cost estimates are current and permit/licence holders have funds available. There is a benefit to the Crown in having assurance that in the event that production has ceased but the permit is not set to expire in the near future, timeframes can be set requiring the permit/licence holder to decommission. This means that a field will not be idle with wells unplugged or infrastructure that should be taken out of service.	Medium

4.2 What other impacts is this approach likely to have?

Preferred approach to addressing the limited incentives on permit/licence holders to make adequate provision for decommissioning

The combination of civil pecuniary penalties and a criminal penalties, alongside the proposed package in the Bill may have a marginal impact of reducing New Zealand's appeal as a minerals and petroleum investment destination. This could potentially impact the Crown and workers and investors in the oil and gas sector.

Preferred approach to addressing the risk the permit applicant may not have the financial capability to undertake and fund decommissioning

Strengthening the decision making tests for permit acquisition provisions may impact those applicants looking to acquire a permit in the future or permit operators who may in the future look to transfer their permit or change control/operator. They may see the proposal as making it harder to acquire permits in New Zealand.

This is not what the proposal is designed to do. It is designed to reduce the likelihood of companies gaining a permit in New Zealand that may not have the financial and technical capability to undertake activities, including decommissioning/site rehabilitation and puts the Crown at risk of having to fund and undertake decommissioning/site rehabilitation itself. These proposals should have no impact on competent, compliant companies, who do have the capability to undertake their work programme and permit conditions.

Preferred approach to addressing the risk that decommissioning would be delayed even when production has ceased

It is possible that industry will perceive the power to mandate timeframes for decommissioning as overreach by the regulator. In the 2019 CMA Tranche Two discussion document, we consulted on a proposal to include an obligation that a permit/licence holder must obtain approval from the Minister of Energy and Resources to cease petroleum production, and for the associated timeline for doing so. This aimed to make sure that the cessation of production of a field was aligned with the objectives of the CMA (including to maximise the economic recovery of resources to the benefit of New Zealand and ensure the Crown can earn a clear financial return for its resources). We decided not to proceed with this proposal as the decision to cease production is a commercial one, rather than something that should mandated by the Crown. However, the introduction of a power to introduce timeframes for decommissioning could be seen as a similar power. To ensure this is not the case, we would include criteria setting out the parameters the Minister would consider in setting timeframes, one of which would be cessation of production.

There is also a risk that imposing timeframes around when plugging and abandoning of wells may be carried out could reduce the potential for cost efficiencies for permit/licence holders, who may want to carry out all activities all at the same time. However, the regulator will have a range of information available when recommending that the Minister impose timeframes, including the time left before full decommissioning of the field, and any plans for field development.

Overall risks and mitigations

The full risks and mitigations of the overall package of proposals was analysed in the RIA provided in June 2020. We have analysed the additional proposals set out in this RIS and

we do not consider these materially change the risks or mitigations.

The risks included:

There is an inherent risk of unintended consequences. The proposals will need to be implemented in a way that does not precipitate or exacerbate the very financial problems that they are designed to safeguard against (e.g., imposing a stringent financial security requirement on a company that is struggling financially could potentially lead to its default, therefore inability to undertake and fund its decommissioning obligations). To some extent, this risk will be mitigated through careful development and design of regulations, which will be subject to further policy development, impact analysis and industry consultation, and the proposed risk-based implementation approach. We do not consider that the extent of any residual risk of unintended consequences warrants a different regulatory design or form of government regulation.

The proposed package of options may also have a marginal impact of reducing New Zealand's appeal as a petroleum investment destination, as the regulatory regime may appear more onerous. The proposed package is not designed to impose more onerous obligations or set new standards for decommissioning than is currently provided for. Instead, it is intended to provide more effective means of ensuring that existing obligations are discharged to the existing standards by those who undertake the mining and production activities, not the Crown or other third parties. However, the package will impact existing permits and licences, some of which have been in place for a number of decades. These businesses may view the proposals as an unjustified intervention in long-settled rights, and perceive an increase in the sovereign risk in New Zealand.

Legal professional privilege

The proposals in the RIA may increase the sectors social licence to operate by providing greater public confidence in the regulatory system and stewardship of New Zealand's petroleum resources.

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

Stakeholder consultation

We consulted publicly on issues and high-level options to (among other things) clarify and strengthen the current CMA regulatory settings as they relate to decommissioning, compliance, and enforcement provisions, and some of these are relevant to the changes we're now proposing. The consultation process took place between November 2019 and January 2020 and attracted 167 written submissions.

55 submitters commented directly on the issues and high-level options that relate to decommissioning activities. All but one agreed that the CMA is currently unclear and possibly inconsistent in its application of the obligation to decommission. There was also general support for ensuring that permit/licence holders have access to sufficient funds available for decommissioning to mitigate the risk of these activities and their associated costs being passed on to the Crown or other third parties. Some submitters were concerned about the use of some financial instruments (e.g., bonds) as they are seen as unproductive use of capital.

75 submitters commented on the current compliance enforcement tools. Most agreed that the CMA's current enforcement toolbox needs expanding. The additional compliance tools and penalties were largely supported, or supported with caveats. Non-industry submitters, particularly environmental groups, were of the view that penalties for non-compliance needed to be more stringent to incentivise compliance. They want to see MBIE more proactive in monitoring, ensuring compliance, enforcing, and when needed, prosecuting.

While criminal penalties were not explicitly discussed, there was strong support for a robust enforcement and penalties regime form a range of stakeholders (iwi and NGOs). However, the inclusion of a criminal offence will, by definition, not sit comfortably with permit holders seeking to avoid decommissioning costs for their own commercial gain. The additional liability of individuals, such as directors, to a prison sentence for knowingly failing to decommission can be expected to gain push back from industry. However, the addition of a criminal offence should be supported by responsible permit holders who are planning for decommissioning costs throughout the life of the permit and fulfil their statutory obligations.

The changes proposed around decision-making tests were not part of the 2019 discussion document, and we have not consulted directly publicly with the options proposed in this paper. This is due to the timing of the policy work (the Bill is already being drafted) and because they are changes to existing policy decisions, or relate to existing policy decisions.

Strengthening the decision making tests for permit acquisition provisions may not be supported by permit holders who are looking to sell on to third parties who may not have the financial and technical capability to give proper effect to the work programme, conditions of the permit, including decommissioning. Potentially making it harder for permit holders to transfer, change operator/control of their permits. However, it should be supported by permit holders/potential permit holder who have a broadly strong capability and compliance record.

The purpose of strengthening the decision making test is not to make it more difficult for largely compliant companies to gain permits, but to reduce the risk of companies gaining permits that may not have the financial and technical capability to undertake activities, including decommissioning/site rehabilitation and puts the Crown at risk of having to fund and undertake decommissioning/site rehabilitation itself. These proposals should have no

impact on competent, largely compliant companies, who do have the capability to undertake their work programme and permit conditions. Therefore, we do not expect strong opposition to this proposal.

There could be some resistance from permit and licence holders to the Minister having the power to set conditions around when decommissioning must start, particularly to the idea that the regulator would be placing itself in a position to make decisions around whether production should cease or continue. There may also be push-back around the requirement to plug and abandon a well after a certain period of inactivity as there could be cost efficiencies to plugging and abandoning several wells on a field at one time, which permit holders would not be able to wait to do if they were required to plugging and abandoning a particular well.

We propose to mitigate these concerns by setting out criteria the Minister and regulator must consider when deciding whether to set timeframes related to decommissioning, and making clear that the timeframes will not be imposed that lead to premature decommissioning of a field. The intent is not to allow the Minister or delegated authority to make commercial decisions around when production should cease or continue.

Although we have not consulted directly with non-industry groups on these proposals, we have discussed these broad issues with non-industry groups (particularly NGO's), through the consultation paper and workshops previously, and we do not expect these proposals to be contentious.

We have consulted with other agencies on these proposals. These are the Ministry of Justice, the Treasury, the Inland Revenue Department, the Environmental Protection Authority, the Department of Conservation, Maritime NZ, the Ministry for the Environment, the Ministry for Foreign Affairs and Trade, and the Ministry of Transport. They were comfortable and supportive of all of the proposals outlined in this RIS.

Iwi Consultation

We received three iwi submissions[8] on Chapters 6 and 7 of the discussion document released in November 2019, which dealt with issues around decommissioning and compliance and enforcement. We informed all iwi groups in New Zealand of the release of the discussion document, so all iwi had the opportunity to submit on the consultation paper, it was not limited to iwi in the Taranaki region.

Iwi were not consulted directly on the specific proposals in this paper but were consulted on strengthening the decommissioning and enforcement tool box in the CMA.

There was support for an explicit statutory obligation on permit holders under the CMA, as well as for enhanced monitoring of financial capability and regulatory powers relating to the provision of a financial security.

The iwi who submitted made it clear that they thought stronger enforcement tools were needed and re-enforced the need for a compliance framework that is bold, clear and disincentives poor performance.

The iwi who submitted were strongly supportive of strengthening the regulatory requirements to decommission. Decommissioning is seen as a critical issue for iwi and iwi are deeply concerned about obligations not being fulfilled and left to the landowners. Iwi were strongly supportive of any measures to make sure that permit/licence holders are financially capable to discharge decommissioning and plugging and abandonment obligations to reduce the risk of transferring financial risk to the Crown or third parties.

[8] Ngāruahine, Ngāi Tahu and Ngati Ruanui.

Although iwi were not consulted directly on the proposals in the paper, we have discussed these broad issues with iwi, through the consultation paper and workshops previously and we do not expect these proposals to be contentious.

Limits on consultation

Due to the timing of policy development work, we have not consulted publicly on the detailed design of the Bill. We note that stakeholders will have a further opportunity to comment on those through the standard legislative change process.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

We propose to add these additional proposals to the existing 'Crown Minerals (Decommissioning and Other Matters) Amendment Bill'. This Bill which strengthens the regulatory regime of petroleum decommissioning activities, is currently being drafted by PCO.

Regulations will be required to provide further detail on the monitoring and regulatory oversight options, along with additional guidance from the regulator. These are subject to further policy work, consultation with stakeholders, and Cabinet decisions, at a later date.

Consideration will be given to the timing of when the amendments should be brought into effect, and exact timing will be confirmed on introduction of the legislation to Parliament. The implementation of the options may also involve some transitional period to allow permit/licence holders to make necessary changes to their practices.

The preferred options will be enforced by MBIE as the relevant regulator for the CMA regime. MBIE is an experienced regulator. As set out in that RIA, we expect the initial package to impose additional administrative cost on MBIE as the regulator. The options proposed in this paper will help deliver the policy intent behind the decisions sought in the July 2020 RIA.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

The regulator routinely monitors permit holders' compliance and planning for decommissioning. This monitoring will increase with the introduction of an explicit obligation to decommission and related provisions being introduced by the Bill. As the proposed changes are to strengthen enforcement within a wider system, no new data collection activities are expected to be created.

The anticipated impacts will be clearly able to be identified as the package of options in already included in the Bill will involve greater monitoring and oversight of the regulated entities. As the relevant regulator, we will be able to monitor to what extent permit/licence holders are complying with the new requirements.

7.2 When and how will the new arrangements be reviewed?

There is no plan to conduct a formal review of the proposed options within a particular timeframe. However, the interaction with stakeholders following implementation of the amendments, as well as the regulator's ongoing monitoring and enforcement functions, should assist to uncover whether there are any issues that need addressing.

MBIE regularly evaluates and reviews amendments to the law it administers. The changes could, for example, be reviewed and evaluated two to three years after coming into force (subject to resource constraints). An evaluation or review at this time would allow the changes to have bedded in and any initial impacts to show.