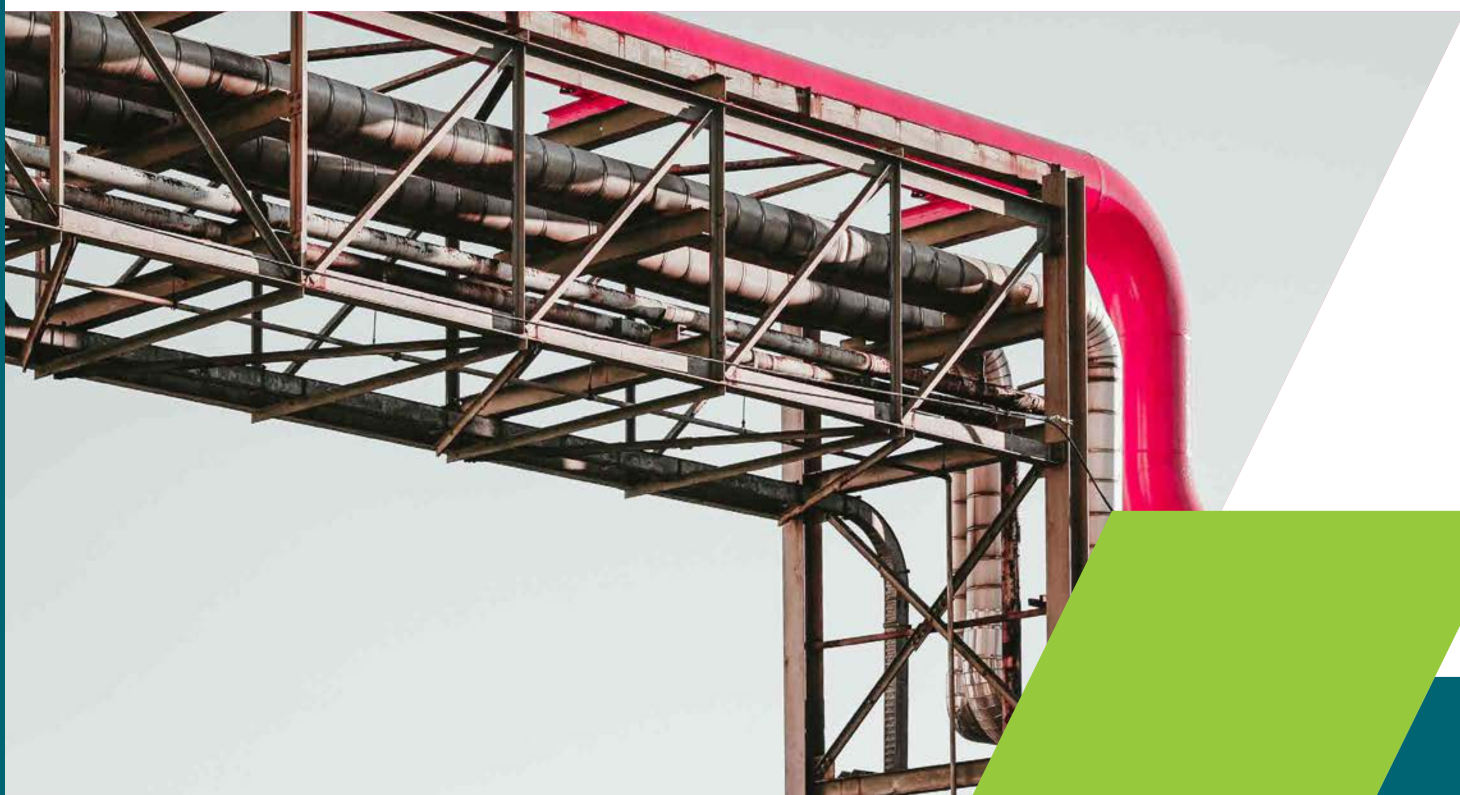
MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

DISCUSSION DOCUMENT

Proposed regulations to support the Crown Minerals (Decommissioning and Other Matters) Amendment Bill 2021

13 July 2021



New Zealand Government

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

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The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in this document by 5pm on Tuesday 7 September 2021 (extended from 5pm Tuesday 24 August 2021).

Your submission may respond to any or all issues. Where possible, please include evidence to support your views, for example, references to independent research, facts and figures, or relevant examples.

Please include your contact details in the cover letter or email accompanying your submission.

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Building, Resources and Markets
Ministry of Business, Innovation and Employment
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New Zealand

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Minister's Foreword

"Decommissioning is an issue that governments are grappling with the world over as we transition away from fossil fuels. As New Zealand's oil and gas fields approach the end of their productive lives it is imperative to have a regime that is up to the job."

This Government is committed to ensuring that those who undertook and profited from petroleum activities also carry out and fund the decommissioning of those fields.

The current regulatory requirements around decommissioning are inadequate. The issues surrounding the permit holder of the Tui oil field that led to the Crown stepping in as the provider of last resort to decommission Tui showed that things needed to change.

The Crown Minerals (Decommissioning and Other Matters) Amendment Bill has been introduced to Parliament to do just that. The Bill seeks to introduce a regime based on three pillars:

› A clear and consistent obligation to decommission,

› Greater monitoring powers, and

› A requirement to obtain and maintain a financial security for decommissioning.

This discussion document consults on regulations that will support implementation of the proposed changes in the Bill. These proposals for regulations are intended to provide certainty and clarity to petroleum permit and licence holders. This includes matters of detail and process, such as what information is needed and when, to provide the right balance between improved monitoring and oversight for the regulator, and proportionate requirements on regulated parties.

Introducing explicit requirements related to post-decommissioning payments is new territory and demonstrates this Government's intention to take a more strategic, long-term view of regulation. This discussion document provides greater detail on how I envisage this operating and is an opportunity for those interested to be part of developing our approach to implementation.

The regulations cannot be made until the Bill is enacted. But by consulting now, you have the opportunity to provide feedback on the proposed regime as a whole and at the same time.

We want to hear your views on the proposals in this document and how they can ensure that the regulatory requirements for decommissioning provide the best outcome for New Zealand. Thank you for taking the time to engage on these important issues, and I look forward to hearing your ideas on how regulations can best support the proposed new regime.

Hon Dr Megan Woods
Minister of Energy and Resources

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Section One: Overview of this Document

The Crown Minerals (Decommissioning And Other Matters) Amendment Bill

The Government is proposing to amend the Crown Minerals Act 1991 to strengthen the rules governing the petroleum sector's responsibility for decommissioning

1. In April 2018, the Government announced a new approach to managing Crown-owned petroleum exploration, aligned to its goal of transitioning New Zealand to a low-emissions economy. This began a two-stage legislative review of the Crown Minerals Act 1991 (CMA) to ensure that the sector's policy and regulatory settings remain relevant, fit-for-purpose, and enable the Government to achieve its goals.
2. Tranche One of the legislative review implemented those changes necessary to give effect to the Government's new offshore petroleum exploration policy and allow onshore block offers in Taranaki to be run until 2020. The changes were made via the Crown Minerals (Petroleum) Amendment Act 2018.
3. Tranche Two is intended to be a wider review of the CMA. It considers factors needed to enable New Zealand's petroleum and mineral resource sectors' contribution to a productive, sustainable and inclusive economy. In 2019, Cabinet agreed to the Terms of Reference for Tranche Two, which included considering the purpose statement of the CMA, as well as non-interference provisions, iwi and community engagement, petroleum permitting, a range of technical amendments, and liability and financial assurance.
4. In November 2019, the Government released a discussion document (Review of Crown Minerals Act 1991) for public consultation covering a wide range of issues. The document identified the need for more strategic and proactive government regulation of the petroleum sector's financial preparedness for decommissioning.
5. In June 2020 the Government decided to expedite changes to the CMA relating to decommissioning (liability and financial assurance) separately to other areas of the CMA Review.[1] In June 2021 Cabinet approved the introduction of a Crown Minerals (Decommissioning and Other Matters) Amendment Bill ("the Bill") to introduce decommissioning provisions in the CMA.

Decommissioning-related changes proposed in the Bill apply to current and future petroleum mining permit and licence holders

6. The Bill proposes to:
   - Introduce an explicit statutory obligation on all current and future petroleum permit and licence holders to carry out and meet the costs of decommissioning in accordance with relevant requirements set out in other legislation, standard-setting processes, or consents. Where those requirements do not exist, petroleum permit and licence holders must ensure all wells are plugged and abandoned and infrastructure is completely removed.
   - Require permit and licence holders to obtain and maintain a financial security to secure in full or in part the performance of their decommissioning obligations that can be accessed by the Crown if a permit or licence holder fails to carry out or fund decommissioning.
   - Empower the Minister to carry out more effective monitoring of a permit or licence holder's financial position and plans for field development, and to carry out assessments of a permit or licence holder's financial capability to complete decommissioning when needed.
   - Provide MBIE with additional enforcement powers to accept enforceable undertakings, issue compliance notices, and authorise the development of an infringement offence scheme.
   - Requiring permit or licence holders to make payments towards the cost of any residual liability.[2]

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[1] Work is on-going on other areas of the CMA Review, and any legislative changes will be taken forward as a separate programme of work.

[2] These costs associated with residual liability may include: remediation of plugged and abandoned wells; remediation of infrastructure left in situ; environmental clean-up in the case of a failure; and out of cycle investigations to assess wells and infrastructure in the event of a suspected failure.

The decommissioning obligations in the Bill are proposed to be applied jointly and severally

7. In cases where the permit or licence has multiple participants, the Bill proposes that the legal and financial responsibility for decommissioning would apply jointly and severally to all participants in the permit or licence. This means that each permit or licence participant could be held liable for ensuring that decommissioning obligations are met, including meeting decommissioning costs.
8. As with other joint and several liability regimes, the individual shares of financial responsibility would be a commercial matter. Permit and licence participants can determine and arrange responsibility among them as they see fit.
9. Under the proposals in the Bill, permit and licence holders would also not be released from their decommissioning obligations if they surrendered their permit or licence or if the permit or licence was revoked.

The decommissioning-related changes proposed in the Bill complement existing health, safety and environment legislation

10. Permit and licence holders are already required to comply with other enactments relevant for managing decommissioning. These include the Health and Safety at Work Act 2015 (HSWA) and its associated regulations for petroleum exploration and extraction; the Resource Management Act 1991 (RMA); the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act); and the Maritime Transport Act 1994 (MTA).
11. Permit and licence operators interact with the different regulatory regimes throughout the life of a field:
    - **Exploration and the start of production:** Operators must obtain the necessary environmental consents, either under the EEZ Act or RMA, before mining activities can commence.
    - **Production:** Operators must submit any necessary safety cases and develop and implement a well examination scheme under the HSWA and associated regulations. For offshore wells, under the MTA, operators must also receive approval for any necessary well control contingency and oil spill contingency plans and acquire any insurance.
    - **Planning for decommissioning and decommissioning:** For certain decommissioning activities in particular areas, operators must apply for consents under the EEZ Act or RMA. These can include conditions to address the effects of any activity on the environment and existing interests. For offshore fields in New Zealand's EEZ, proposed new regulations may require operators to prepare and consult on a decommissioning plan, which needs to be accepted by the Environmental Protection Authority (EPA). While activities are underway, operators need to ensure that any safety case, well control contingency plan, oil spill contingency plan, and well examination scheme are up to date and being implemented.

Other proposed changes in the Bill apply across the CMA, including to minerals permit holders

12. The Bill also proposes changes that are not specific to decommissioning and apply across the whole of the CMA, to both minerals permit holders and petroleum permit and licence holders. These include:
    - Amending the permit acquisition provisions (sections 29A, 41, 41AE and 41C) to require the decision-maker to have a higher level of confidence (consider it 'highly likely') that the proposed permit holder will comply with the work programmes or permit conditions, health and safety and environmental requirements, and obligations relating to fees and royalties.
    - Providing MBIE with the power to impose enforceable undertakings and issue compliance notices and infringement notices.
    - Making technical amendments to support effective implementation of the proposals and improve the general administration of the regulatory regime.

Overview of all proposed changes in the Bill

Decommissioning & Post-Decommissioning Subparts

New Obligations

Carry out and meet the costs of decommissioning petroleum infrastructure and wells

Obtain and maintain one or more financial securities to secure decommissioning obligations

Provide the Minister with certain information to enable monitoring and assessments relating to decommissioning

Pay MBIE's Chief Executive an amount to meet the cost of any post decommissioning work on infrastructure and wells

New Monitoring Tools

- New and updated Field Development Plans
- New and updated Asset Registers
- Ongoing Financial Monitoring
- Financial Capability Assessments

New Penalties

- Pecuniary penalties
- Criminal liability

Entire CMA

New Enforcement Tools

- Compliance notices
- Enforceable undertakings
- Infringement scheme offence

Strengthening the permit acquisition test

Minor and technical amendments

Your feedback on the Bill

13. The Bill was introduced in Parliament on 23 June 2021 and has been referred to the Economic Development, Science and Innovation Commitee. You will have an opportunity to submit responses to the Bill at Select Committee stage.
14. You can find more information on the Bill and the Select Committee submissions process here.
15. For information on the policy decisions that informed the design of the Bill, please see the MBIE website here.

The Purpose of This Discussion Document

16. The proposed changes in the Bill and existing CMA provisions enable regulations to be made.
17. Not all aspects of the proposed Bill require regulations to function as intended. However, we are proposing regulations where we consider that both the permit or licence holder and decision maker will benefit from clarity and certainty, and where prescribing regulations would result in more overall efficiency.
18. Section Two of this document sets out the context behind the proposed changes in the Bill. Section Three outlines the proposed regulations or options for regulations to support the obligation in the Bill to fund and carry out decommissioning. Section Four outlines the proposed regulations to support the obligation to provide funds to cover any residual liability for post-decommissioning work.
19. We seek your feedback on the proposed regulations:

Section of this document	Proposed changes in the Bill	Proposed regulations
Section Three: Part 1	Permit and licence holders must submit new and updated Field Development Plans (FDP) and Asset Registers to MBIE's Chief Executive.	› Information about decommissioning activities in FDPs. › Content of Asset Registers. › Timeframes in which new and updated FDPs and Asset Registers must be submitted.
Section Three: Part 2	The Minister may require information to monitor a permit and licence holder's financial position on an ongoing basis and assess, from time to time, a permit and licence holder's financial capability to meet their decommissioning obligations.	› Type of information required for ongoing monitoring of financial position. › Type of information required to carry out a financial capability assessment.
Section Three: Part 3	Permit and licence holders must hold one or more financial securities to meet their decommissioning obligations, and the Minister must set the kind and amount of such security.	› Criteria to apply when determining the kind of financial security.
Section Three: Part 4	Permit and licence holders must notify MBIE's Chief Executive of expected cessation of production.	› Timing for notification of expected cessation of production.
Section Four: Part 1	Permit and licence holders must pay MBIE's Chief Executive an amount to meet the cost of any post-decommissioning work required, and the Minister must set the amount to be paid.	› Criteria to determine the amount of post-decommissioning payment.

Section of this document	Proposed changes in the Bill	Proposed regulations
Section Four: Part 2	The Minister must require either a lump sum or payment in instalments.	› Criteria to determine when post-decommissioning payment is due.
Section Four: Part 3	The Minister may exempt permit or licence holders from the post-decommissioning obligation.	› Criteria to consider when granting exemptions.
Section Four: Part 4	The Minister may direct money to be given to specified persons within a prescribed class of persons or organisations.	› Agencies and groups who can apply to access the post-decommissioning fund.
Section Four: Part 5	MBIE's Chief Executive must ensure the money is managed in accordance with requirements in regulations.	› How the post-decommissioning fund will be held and managed.

Why are we consulting while the Bill is still being considered by Parliament?

20. The regulations cannot be made until the Bill is enacted. However, we are consulting now so that interested parties have an opportunity to consider the regime as a whole and provide feedback on both the Bill and regulations in parallel.

Criteria for assessing options

21. Where we propose options for regulations, we have assessed these options against the following criteria, which is consistent with how we assessed policy options to develop the Bill:
    - How **effective** regulations are to ensure that permit and licence holders can meet their decommissioning and post-decommissioning obligations when required to.
    - **Flexibility** to consider individual circumstances and risk profiles as needed.
    - The extent to which the compliance and opportunity costs on industry and administrative costs to the Crown are **proportional** to the expected benefits from regulation.
    - Whether the regulations provide **certainty** and clarity around requirements.

22. The overarching objective of the Bill is to mitigate the risk that permit and licence holders fail to fund and carry out decommissioning, and fund any required post-decommissioning work. Therefore, when assessing any options, effectiveness is given priority as we consider it the most important criteria to achieve this overarching objective. The remaining criteria are weighted equally.

Our Engagement with Treaty of Waitangi Partners

23. We communicated a summary of the proposed content in the Bill and a summary of the proposed scope of this document to the 39 iwi MBIE has Treaty settlement commitments with.

24. This includes all eight iwi located in the Taranaki region as they are geographically closest to the issue and because of their status as mana whenua (historical and territorial rights) of their rohe (territory) boundaries. We have offered all 39 iwi an invitation to meet to discuss the Bill and associated regulations.

25. To date feedback from iwi has focused on the importance of improving petroleum sector regulation. The 2019 discussion document (Review of the Crown Minerals Act 1991) detailed current engagement and involvement of Māori in the CMA regime; the issues in relation to involvement; the impacts of ineffective engagement; and some proposals to improve on the status quo.

26. We received submissions from 10 iwi on the 2019 discussion document, three of whom made specific submissions on the chapter of the document that set out proposals to improve petroleum sector regulations. These were supportive of the Government's proposals to introduce a statutory obligation for permit and licence holders to decommission and strengthen decommissioning regulations. Te Rūnanga o Ngai Tahu and Ngāti Ruanui also strongly supported increased powers for the Crown to assess the financial situation of permit and licence holders and ensure financial security using a risk-based approach.

27. Since 2019, we have continued engaging with a number of iwi in Taranaki including Te Rūnanga o Ngāti Ruanui Trust, Te Korowai o Ngāruahine, Te Atiawa and Te Kāhui o Taranaki Trust. We have organised hui with these iwi to hear their views on the proposed changes in the Bill and the proposed regulations.

Your Feedback on the Proposed Regulations

28. Your feedback is important to help us ensure that the proposed changes in the Bill are supported by regulations in a practical way. Each of our proposals has specific questions that we want your views on (see Annex One for a consolidated list).

29. Additionally, we are interested in your views on how we can best achieve a balance between designing an overall regulatory regime to allow flexibility for individual circumstances, while also providing regulatory certainty. We discuss this tension in the context of specific options, but we also want your views on the right mix of information provision and decision-making guidance that we allow more flexibility on, and the ones where we are proposing to be prescriptive.

Next Steps

30. We will collect and analyse all submissions received by the closing date, 5pm on Tuesday 7 September 2021 (extended from 5pm Tuesday 24 August 2021).

31. Your submissions will help us develop recommendations on regulations for the Government to consider, which is expected to occur towards the end of 2021.

Section Two: Context

What is Decommissioning and why is it Necessary?

Decommissioning is the process of permanently taking petroleum mining infrastructure and wells out of service, and restoring the site

32. Decommissioning is an inevitable activity in the lifecycle of an oil and gas field. It generally involves plugging and abandoning wells, removing or leaving infrastructure in place, and restoring the site if required. It is typically done when a producer permanently ceases production from a field. The timing of this is influenced by prevailing oil and gas market conditions, which are uncertain.

33. In this document, 'decommissioning' means the process of permanently taking out of service petroleum infrastructure and wells and undertaking any site restoration activities, in a safe and environmentally responsible manner, at the end of a petroleum field's economic life or when production ceases.

34. The term 'petroleum infrastructure' includes, but is not limited to, offshore and onshore installations, platforms, structures, cables, facilities, and pipelines used to explore or produce petroleum products as part of a Crown minerals permit or licence.

35. As an example of what decommissioning involves in the offshore context for a subsea development with a floating production, storage and offloading vessel, please see "Decommissioning the Tui oil field" on the MBIE website here.

Failure to decommission carries health, safety and environmental risks, and is inconsistent with New Zealand's international obligations

36. There are significant health, safety, and environmental risks if petroleum fields are not decommissioned.

37. Additionally, New Zealand has international obligations that require decommissioning activities. New Zealand is a party to the United Nations Convention on the Law of the Sea 1982 (UNCLOS), under which we are obliged to protect and preserve the marine environment and take all measures necessary to prevent, reduce and control pollution in the marine environment from any source. In relation to decommissioning, Article 60.3 of UNCLOS requires any abandoned or disused installations or structures in the sea be removed to ensure safety of navigation, considering any generally accepted international standards established by the International Maritime Organisation (IMO). IMO guidelines recommend standards to be followed by states when making decisions regarding decommissioning. The general premise is complete removal, except when special circumstances consistent with the IMO guidelines can be shown to apply.

38. New Zealand is also a party to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 and its 1996 Protocol (the London Protocol). The London Protocol stresses the need to protect the marine environment from all sources of pollution, and to promote the sustainable use and conservation of marine resources. It applies a precautionary approach and prohibits dumping any waste at sea unless explicitly permitted by the relevant authority in a country.

The problem in New Zealand

Decommissioning is expected to accelerate between now and 2050

39. In New Zealand, there are currently 27 active petroleum mining permits and licences. Five of these, including the soon to be decommissioned Tui oil field, are offshore, with the remaining 22 operations based onshore. These operations range in scale from large, multi-generational offshore fields to small onshore oil fields.

40. The latest wave of mergers and acquisitions in the global oil and gas market has seen a trend away from permit and licence holders with established brands in oil and gas.[3] In New Zealand the oil and gas industry is small. The ownership of some late-life petroleum assets has been consolidated, resulting in fewer permit and licence holders and participants, with some being acquired by smaller companies.[4]

Decommissioning can be a high-cost activity

41. Decommissioning, of offshore fields in particular, can cost hundreds of millions of dollars. Importantly, these costs are typically incurred at the end of a petroleum field's economic life, when production has ceased, with no further revenue to directly finance or offset these costs.

42. In 2020, the United Kingdom Oil and Gas Authority estimated the total cost of decommissioning all of the UK's remaining offshore oil and gas production, transportation and processing infrastructure at £51 billion.[5] In 2020 alone, the total spend on decommissioning in the UK was estimated to be around 10 per cent of annual oil and gas expenditure. This is projected to double by 2028.[6] In Australia, the industry expects to incur a total cost of US$40.5 billion over the next 50 years to decommission all wells and infrastructure.[7]

The liquidation of the Tui oil field permit holder is expected to be a significant cost to the Crown

43. The risk of failing to fund and carry out decommissioning recently materialised in the case of the Tui oil field (Tui). In late 2019, Tamarind Taranaki Ltd. (Tamarind), the operator of Tui, went into receivership and liquidation. With Tamarind's liabilities far exceeding the value of its assets, it and the other permit 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 Tui. This is a three-year project, which imposes significant costs on the Crown.

There is a risk that operators fail to fund and carry out decommissioning

44. As petroleum fields mature and near the end of economic life, there is a risk that operators fail to fund and carry out decommissioning. This means that the Crown, as the provider of last resort, faces the possibility of undertaking decommissioning and at a significant cost to the taxpayer.

Operators also do not sufficiently plan for their residual liabilities

45. Even after wells have been plugged and abandoned and infrastructure decommissioned, there remains a risk that wells or infrastructure left in situ may fail at some point in the future. Such failures carry a risk of undesirable environmental outcomes and a risk to human health and safety.

46. There are currently no market incentives for petroleum permit and licence holders to factor such residual liability into their economic decision making.

The CMA does not explicitly include legal and financial responsibility for decommissioning

47. The CMA's focus to date has been on enabling efficient entry into and operation of the petroleum industry in New Zealand. New Zealand's rules on end-of-life decommissioning activities have evolved on a case-by-case basis and rely on the conditions set out in individual permits and licences.

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3 For commentary on this trend in the UK in particular, see Financial Times, "The new North Sea players riding the wake of the retreating majors," April 2021, www.ft.com/content/93d5f778-833c-4553-ae29-785e3aa3d4d3

4 In New Zealand, there are 27 current petroleum mining permits and licences and these are held by 9 different permit holders.

5 Oil & Gas Authority UK, "UKCS Decommissioning Cost Estimate 2020," August 2020, www.ogauthority.co.uk/media/6638/ukcs-decommissioning-cost-estimate-2020.pdf

6 OGUK, "Decommissioning Insight 2020," https://oguk.org.uk/product/decommissioning-insight-report/

7 Centre of Decommissioning Australia, "A Baseline Assessment of Australia's Offshore Oil and Gas Decommissioning Liability," 2020, https://12259-console.memberconnex.com/Attachment?Action=Download&Attachment_id=337

48. As a result, the CMA is currently silent on critical issues such as:
    - Who is legally and financially responsible for decommissioning?
    - To what extent are they responsible?
    - How long does their responsibility last?
    - What are the consequences for not complying with their responsibility?
49. The CMA does not provide sufficient assurance that permit and licence holders will fund and complete decommissioning, or sufficiently account for residual liabilities after decommissioning. Relying on permit or licence conditions to establish legal and financial responsibility for decommissioning means that the requirements may not necessarily be worded and applied consistently across permit and licence holders and time. This creates administrative complexity, raises potential questions about how consistently the rules are applied, and increases enforcement risks for the Crown or third parties.

Other countries are making sure oil and gas producers fund and carry out decommissioning

50. The more mature oil producing jurisdictions such as Norway, the United Kingdom, and the United States, who have experienced decommissioning large offshore oil and gas production operations, have developed specific rules for decommissioning.
51. They take a life-cycle approach to petroleum field developments and have clear rules around responsibility for decommissioning, as well as regulations that incentivise and require better planning. In these jurisdictions, petroleum field development projects are assessed, continually monitored, and mitigation measures (including decommissioning plans and financial reserves) are systematically adjusted to reflect changing conditions.
52. Australia recently reviewed policies and laws for the decommissioning of offshore oil and gas equipment in Australian Commonwealth waters. The government recently endorsed an enhanced framework and changes that will be implemented through a Bill. These include proposals to change approval rights in relation to changes of control of titleholders, introducing trailing liability for prior titleholders in respect of decommissioning, and enhancing the assessment criteria for entities applying to operate, or increase their activities, in offshore oil and gas.[8]

The Government's Proposed Response to the Problem

The proposed changes in the Bill are intended to lay the foundation for robust and outcomes-focused regulation of petroleum decommissioning

53. The November 2019 discussion document (Review of Crown Minerals Act 1991) sought views on a proposal to strengthen decommissioning rules to mitigate the risk that permit and licence holders fail to fund and carry out decommissioning resulting in the Crown, as the provider of last resort, potentially having to undertake and fund decommissioning.
54. We received 55 submissions and all but one were supportive or did not object to the proposal to include an obligation to decommission in the CMA. There was also broad support for introducing a power to carry out financial assessments and require a financial security.
55. The proposed provisions in the Bill are intended to lay the foundation for robust and outcomes-focused regulation of petroleum decommissioning. The proposed changes are intended to clarify existing obligations and strengthen the incentives for petroleum mining companies to undertake and fund decommissioning.

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8 Departmental of Industry, Science, Energy and Resources, "Offshore oil and gas decommissioning framework review," www.industry.gov.au/regulations-and-standards/regulating-offshore-oil-and-gas-in-australian-commonwealth-waters/offshore-oil-and-gas-decommissioning-framework-review

Government is also intending to establish a post-decommissioning fund through the proposed changes in the Bill

56. The Government is proposing to require permit and licence holders to pay into a post-decommissioning fund which will be used to remediate any decommissioned wells and infrastructure.

57. In the 2019 discussion document, we sought views on the suitability of the existing CMA provisions and the wider regulatory regime to address any residual liability in relation to any post-decommissioning work for onshore petroleum wells. Most submitters were supportive of strengthening the regime to address post-decommissioning liability.

58. The current proposal is intended to ensure that those who benefitted the most from petroleum production over many years are liable for any future failure of wells and infrastructure after decommissioning has completed. This aligns with the polluter pays principle on which the petroleum regulatory regime is based and provides an equitable outcome.

59. The Bill proposes this enabling power, with the details for how payments will be calculated and when and how payments will be collected to be set in regulations. This document seeks your views on these details in Section Four.

Section Three: Proposed Regulations on Decommissioning Obligations

Part 1: Field Development Plans and Asset Registers

What are Field Development Plans and Asset Registers and why do they matter?

60. A Field Development Plan (FDP) provides a description of the petroleum resource, geological settings, estimated field life, a description of the proposed development and projected decommissioning activities. FDPs are currently used to ensure efficient resource extraction to maximise economic recovery for the benefit of permit and licence holders and the people of New Zealand.
61. An Asset Register is expected to be a complete and accurate list of the petroleum infrastructure and wells that the permit and licence holder must decommission in order to provide a comprehensive view of the scope of decommissioning.

Current situation

We only have FDPs for some petroleum mining permit and licence holders

62. Currently, petroleum mining permit applicants are required to submit an FDP as part of their application. This is a one-off submission unless permit conditions require more frequent updates. FDP requirements are set out in permit or licence conditions, on a case-by-case basis, and have evolved over time. Therefore, the regulator has FDPs for some permit and licence holders and none for others.
63. Most comparable jurisdictions require an FDP to be submitted at specific points throughout a field's life. In Australia, a petroleum production licensee must have an accepted FDP in place to extract petroleum and, if there are proposed changes, must apply for a variation of the plan. The recent consultation on *Enhancing Australia's Decommissioning Framework* proposes to introduce a mandatory review period for FDPs.
64. We need more regular and detailed updates from petroleum permit and licence holders on how they plan to develop petroleum fields as this can significantly affect the nature of decommissioning and associated costs.
65. Clause 9 of Schedule 3 of the Crown Minerals (Petroleum) Regulations 2007 sets out the information that FDPs that are part of new petroleum mining permit applications must contain. This includes:
    - An estimate and range of field life.
    - Information on all existing and proposed well locations, pipelines, production and reinjection facilities, treatment facilities, and transportation and storage facilities.
    - A discussion on how facilities will be abandoned.
    - Proposed expenditure on activities covered by the FDP.
66. Currently, the level of information provided in FDPs on how facilities will be abandoned varies. Some petroleum mining permit and licence holders submit detailed decommissioning plans and projected costs, while others only provide limited details.
67. We need more information at a sufficient level of detail. For example, on what assets permit and licence holders intend to decommission, how (i.e., the engineering solutions), and over what period. This will provide us with an understanding of decommissioning planning and cost estimates. This would also help the Minister to conduct financial capability assessments.

Petroleum mining permit and licence holders do not currently supply Asset Registers

68. An Asset Register can be an important document to help us understand the scope of decommissioning for a particular field and to inform the Minister regarding where responsibility for decommissioning specific wells or infrastructure lies. It should provide a record of everything that will be decommissioned at a sufficient level of detail to help us understand and verify cost estimates. For example, details such as the location, size and weight of infrastructure is important as it may cost more to remove something that is bigger, heavier, or located on the seabed.

Proposed changes in the Bill

69. The Bill proposes that petroleum mining permit and licence holders must submit an FDP and an Asset Register to the Chief Executive of MBIE. Under the proposed changes in the Bill, FDPs and Asset Registers can be used by the Minister when carrying out financial capability assessments. The outcome of these assessments can inform the type and amount of financial security that permit and licence holders must provide to meet their proposed obligations in the Bill to carry out and fund decommissioning.
70. The Bill proposes that FDPs must detail the planned development of the field over its anticipated productive life and be accurate when submitted.
71. The Bill proposes that Asset Registers must be a complete and accurate list of the petroleum infrastructure and wells that petroleum mining permit and licence holders must decommission under the Bill.
72. Regulations can be made to set out the information that FDPs and Asset Registers must contain.
73. We are consulting on the proposed content of FDPs and Asset Registers to be set out in regulations. This will provide petroleum mining permit and licence holders with certainty on what is required and enable consistency in the information that is submitted across permit and licence holders.
74. The Bill also proposes that initial FDPs and Asset Registers be submitted at certain times or when certain events occur. These times and events must be set out in regulations.
75. After this initial submission, petroleum mining permit and licence holders may be required to submit updated FDPs and Asset Registers at times, intervals, or events set out in regulations.
76. We are also consulting on options for regulations that will set out when and how often new and updated FDPs and Asset Registers should be submitted.

Regulations on the content of FDPs

77. We propose introducing new and amending existing regulations[9] to require a description of decommissioning planning to a sufficient level of detail to allow the Minister and MBIE to understand the scope of decommissioning activities and costs. We also propose to make existing FDP requirements more specific with regards to the level of detail required, similar to the guidance established in the United Kingdom.[10]
78. We expect decommissioning descriptions in FDPs to develop detail over the life of the field, as petroleum mining permit and licence holders firm up their strategy and plans for decommissioning.
79. We propose that regulations should require descriptions to include:
    - A summary of decommissioning activities, including the proposed end state and proposed decommissioning solution for each item.
    - The times at or within which the measures proposed in it are to be taken or how those times are to be determined.

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9 Clause 9 of Schedule 3 of the Crown Minerals (Petroleum) Regulations 2007
10 UK Oil and Gas Authority, “Guidance on the preparation and content of offshore oil and gas field development plans,” May 2018, www.ogauthority.co.uk/media/4868/fdp-guidance-may-2018.pdf

- A summary of adjacent fields and interdependencies.
- A summary of any installation or pipeline intended to be left in position or not completely removed.
- Details of relevant current marine or resource consents and any plans to acquire marine or resource consents in the future.

80. The advantage of setting out the proposed content requirements in regulations is that it ensures that petroleum mining permit and licence holders provide sufficient detail about decommissioning, and that this information is consistent across petroleum mining permits and licences.
81. The disadvantage is that it could create additional overhead costs for petroleum mining permit and licence holders. However, we expect permit and licence holders to have field development plans, no matter how developed, as part of taking a whole-lifecycle approach to field development.
82. Requiring such detail on decommissioning plans may also risk creating confusion for petroleum mining permit and licence holders who also need to submit a decommissioning plan under the currently proposed regulations under the EEZ Act. We intend to work with the relevant regulators to ensure consistency, to the extent we can, on the information that MBIE requires from petroleum mining permit and licence holders.
83. For more information on the proposed regulations under the EEZ Act see here.

QUESTION 1: What information do you think petroleum mining permit and licence holders should include in an FDP to give the Minister sufficient detail to assess financial capability to meet decommissioning obligations?

QUESTION 1A: Do you envisage any issues arising because of potential overlaps between these proposed regulations and other proposed changes such as under the EEZ Act?

QUESTION 1B: Do you have any other feedback on FDPs and their content?

Regulations on the content of Asset Registers

84. The Bill proposes that Asset Registers must be a complete and accurate list of the petroleum infrastructure and wells that petroleum mining permit and licence holders must decommission. This includes:
    - Infrastructure put in place for carrying out activities authorised by a petroleum mining permit or licence, and all relevant older infrastructure. This will include infrastructure that a permit or licence holder owns and may include infrastructure they share, depending on the arrangements reached with other permit and licence holders on shared infrastructure.
    - Wells drilled or operated for carrying out activities authorised by a petroleum mining permit or licence, and all relevant older wells.
85. We propose that regulations should require an Asset Register to include:
    - An inventory list: A full inventory of petroleum infrastructure and wells including production facilities and wells to be decommissioned.
    - A schematic of field layout.
86. For each of the items on the inventory list, we consider that regulations should require the following details:
    - The type, size, arrangement, and weights of installations.
    - Status of all listed wells (e.g., active, shut-in, suspended or plugged).
    - The type, location, depth, purpose and completion of all listed wells.
    - Offshore loading facilities.
    - The length, diameter and construction type for pipelines, flowlines, and umbilicals.
    - Materials on the seabed (e.g., debris, drill cuttings).

QUESTION 2: Is the level of detail we are proposing sufficient to provide a comprehensive view of the assets that need to be decommissioned in a particular field? If you think there should be less detail, why? If you think there should be more detail, why and what further information do you suggest?

Regulations on when and how often FDPs and Asset Registers are submitted

87. The proposed obligation on petroleum mining permit and licence holders to submit an FDP and Asset Register is expected to be effective from when proposed regulations take effect.

88. We propose that regulations require all permit and licence holders to submit their initial FDP and Asset Register within six months of the regulations taking effect. We consider this timeframe appropriate as permit and licence holders are likely to have this information at hand as part of their internal planning, although some details may be different and need to be updated.

QUESTION 3: Do you consider that requiring initial FDPs and Asset Registers six months after the regulations take effect provides permit and licence holders with enough time to comply with the new regulations? Why or why not?

89. After the first submission, we are seeking your views on two options for when petroleum mining permit and licence holders should be required to submit updated FDPs and Asset Registers:
    - **Option 1:** Submit an updated FDP and Asset Register only when there is a significant change.
    - **Option 2:** Submit an updated FDP and Asset Register at regular intervals and when there is a significant change.

90. For FDPs, both options represent a change from the current situation where only new petroleum mining permit applicants must submit FDPs, and updated FDPs are submitted as per some permit and licence conditions. The options we propose mean that all petroleum mining permit and licence holders would be required to submit FDPs and to update them regularly.

Option 1: Submit an updated FDP and Asset Register only when there is a significant change

91. Under this option, an updated FDP and Asset Register would only be required when there is a significant change to the development of the field.

92. The intention is that the Minister will be kept aware of any changes that could significantly impact the timing, scale, or cost of decommissioning.

93. The advantage of this option is that it presents the lowest regulatory burden for permit and licence holders, and information is only collected when there is a change.

94. The disadvantage of this option is that it relies on permit and licence holders to proactively submit information about significant changes. There is also a risk that permit and licence holders are not clear on what constitutes a 'significant change', and this is applied inconsistently across fields, permits and licences.

95. To mitigate this, if we proceed with Option 1, we propose setting out in regulations that a 'significant change' includes:
    - Reserves re-determination.
    - Adding or removing structures in a field.
    - Drilling a new well.
    - Plugging and abandoning existing well(s).
    - Side-tracking or re-purposing an existing well.

Option 2: Submit an updated FDP and Asset Register at regular intervals and when there is a significant change

96. Under this option, petroleum mining permit and licence holders would submit FDPs and Asset Registers at regular intervals, and when there has been a significant change as described in Option 1 above. We believe every three years is an appropriate interval in which FDPs and Asset Registers must be provided.
97. The intention is to provide a balance between proportionate requirements and regular touchpoints so that there is adequate oversight.
98. The advantage of this option is that it provides greater certainty of information as FDPs and Asset Registers would be received every three years, regardless of whether there is a significant change.
99. The disadvantage is that there may be increased costs to the permit and licence holder. To address this, we propose that where there has been no change, the permit or licence holder may re-submit a previous FDP and Asset Register with a declaration stating there has been no change.

Assessing both options against our criteria

	Effectiveness	Flexibility	Proportionality	Regulatory Certainty
Option 1: Submit an updated FDP and Asset Register when there is a significant change	+ Provides the Minister with oversight of changes that may impact the scope and cost of decommissioning	+ Permit or licence holder submits information only when there has been a change in circumstance, meaning the frequency can be tailored according to what is needed	+ There is a balance between the Minister's need to view information, and the burden on the permit or licence holder to provide it	- Provides less certainty and relies on the permit or licence holder informing the Minister of changes in a timely manner
Option 2: Submit an updated FDP and Asset Register at regular intervals and when there is a significant change	++ Provides a regular update with minimal chance that changes will be missed	- Less flexibility as the permit or licence holder must submit information even when there has not been a change	- Permit and licence holders can meet requirements by declaring no change	++ Provides permit and licence holders with regular timeframes so they can plan

QUESTION 4: Which option do you prefer for FDPs and Asset Registers and why? Your answer can be different for the FDP and Asset Register.

QUESTION 4A: Do you agree with the impact analysis of these options? If not, why not? Please provide evidence to support your answer.

QUESTION 4B: If we were to require FDPs and Asset Registers at regular intervals, how frequent should it be and why? Your answer can be different for the FDP and Asset Register.

QUESTION 4C: Are there any other circumstances that you think the regulations should include as a 'significant change'?

Part 2: Financial Capability Monitoring and Assessments

Current situation

100. Under existing legislation, the Minister undertakes a financial capability assessment when an applicant applies for a petroleum exploration or mining permit or applies for a change in control.

101. However, a petroleum mining permit or licence holder's financial capability across the life of a permit or licence can change significantly. The Minister lacks the ability to proactively and periodically seek and assess specific information about a permit or licence holder's financial capability to meet obligations.

Proposed changes in the Bill

Ongoing financial monitoring and associated information requirements

102. The Bill proposes that the Minister may, by written notice, require petroleum mining permit or licence holders (which includes permit and licence participants) to provide information so that their financial position can be monitored. The type of information may be set out in regulations.

103. We propose regulations for the type of information required. We consider that accessing a baseline level of financial information at regular intervals will enable the Minister to carry out basic monitoring and decide whether a financial capability assessment is required.

Financial capability assessments and associated information requirements

104. To be effective, financial capability assessments need to be conducted at a frequency that is sufficient to provide reasonable understanding of a permit or licence holder's capability to carry out and fund decommissioning.

105. The proposals in the Bill do not require the Minister to carry out assessments at particular times or intervals. Instead, the Bill proposes that the Minister may, at any time while the petroleum mining permit or licence is in force, assess whether a permit or licence holder is highly likely to have the financial capability to carry out and meet the costs of decommissioning.

106. The proposed approach to implementation is for the Minister to carry out an initial financial capability assessment for all permit and licence holders within two years of the proposed changes in the Bill and regulations being made. Thereafter, the Minister can take a risk-based approach to assessing financial capability.

107. Under a risk-based approach, the Minister can establish an adequate monitoring timetable, where higher-risk projects would be subject to higher levels of oversight. This may be appropriate for permits or licences that are scheduled to decommission sooner than others; for permits or licences with a lower value financial security; or where permit or licence holders do not demonstrate adequate planning for decommissioning. The intention is to allow the Minister to tailor requirements and carry out more frequent monitoring where necessary.

108. The Bill proposes requiring permit and licence holders (which includes permit and licence participants) to keep a record of certain information set out in regulations that may be necessary to enable the Minister to carry out a financial capability assessment. The information must be provided to the Minister on or before times set out in regulation or when requested by the Minister within any reasonable time set out in the request.

109. We have identified four key categories of information that may inform a financial capability assessment:
    - **Scope of decommissioning:** This includes details on what needs to be decommissioned and how.
    - **Timing of decommissioning:** This is an estimated date for when production is expected to cease and when decommissioning will start.
    - **Decommissioning cost estimates:** This is the estimated costs for all decommissioning activities. We expect cost estimates to be in accordance with the proposed requirements set out in regulations.
    - **Financial information:** This includes details of how the permit or licence holder intends to fund decommissioning and details on the financial security.
110. We expect that information on the scope of decommissioning will be provided to the Minister in accordance with proposed regulations relating to the content of the FDP and Asset Register (see Part 1: Field Development Plans and Asset Registers above).
111. We expect that information on the timing of decommissioning will be provided through the proposed notice of expected cessation requirements in the Bill (see Part 4: When Production Ceases below).
112. In this part we also propose regulations for the following categories of information that permit and licence holders must submit – decommissioning cost estimates (including the requirements that they must meet) and financial information.
113. We are not proposing to set out in regulations the times in which permit and licence holders submit such information. A reasonable time will be set out in the Minister's written notice to the permit or licence holder.

Dealing with commercially sensitive information

114. We understand that some of the information that will be required to be disclosed to the Minister and MBIE is likely to contain information that is confidential to permit and licence holders.
115. The Minister and MBIE routinely receive and store confidential information in accordance with robust and well-tested information security policies which take account of commercial sensitivity.
116. While such information could be sought under the Official Information Act 1982, there are grounds for withholding the information where it would be likely to unreasonably prejudice the commercial position of the person who supplied the information.

Regulations on types of information for ongoing financial monitoring

117. We propose setting out in regulations that permit and licence holders should provide the Minister with a copy of each permit or licence holder's most recent audited financial statements on an annual basis. As the purpose of requiring audited financial statements is to help the Minister decide when to carry out a financial capability assessment, the Minister would need this baseline information more or as often as any planned financial capability assessment.
118. We propose that the regulations would require annual financial statements (and/or group financial statements for multi-tiered corporate structures) that comply with New Zealand Generally Accepted Accounting Practices (NZ GAAP), or that comply with a foreign accounting standard if permitted by applicable financial reporting legislation in New Zealand.
119. We consider that these financial statements should be signed by one or more director and be audited by a qualified auditor in accordance with auditing and assurance standards. This will provide assurance that the financial statements have been carefully prepared.
120. We understand that many permit and licence holders will already be required to have their financial statements signed by a director and audited. Therefore, these requirements should not impose a high additional burden on permit and licence holders. However, we welcome your views if this is not the case.

QUESTION 5: Do you consider that requiring permit and licence holders to provide audited accounts is appropriate to carry out ongoing financial monitoring? If no, what information do you propose we seek and why?

QUESTION 5A: Do you agree that financial information should be required to be signed by at least one director and audited?

Regulations on types of information required for financial capability assessments

Decommissioning cost estimates

121. Decommissioning cost estimates are intended to inform the proposed financial capability assessment, which in turn will inform the decision on the kind and amount of financial security that is proposed under the Bill.

122. We propose seeking decommissioning cost estimates from permit and licence holders and setting out in regulations the requirements that estimates must meet.

123. We propose that regulations should require decommissioning cost estimates to:
    - Account for the decommissioning of all petroleum infrastructure and wells on a petroleum mining permit or licence holder's Asset Register.
    - Be aggregated to the level of and linked to the decommissioning phases detailed in the FDP.
    - Be less than three years old when decommissioning is estimated to be more than five years away.
    - Be less than 12 months old when decommissioning is estimated to be less than five years away.
    - For all petroleum fields, when decommissioning is estimated to be less than five years away, use Class 3 or better estimates consistent with the Association for the Advancement of Cost Engineering Cost Estimate Classification System.

124. When decommissioning is estimated to be more than five years away, we propose that regulations should require decommissioning cost estimates be submitted at the same time as FDPs, which is either every three years and when there is a significant change, or just when there is a significant change (see discussion in Part 1 above).

125. When decommissioning is estimated to be less than five years away, we propose that decommissioning cost estimates should be provided annually. This will enable ongoing monitoring of the permit or licence holder's financial position, including its decommissioning obligations.

126. In terms of the standards used for developing cost estimates, the Association for the Advancement of Cost Engineering publishes internationally recognised guidance.[11] Cost estimates can range from Classes 1 to 5, with Class 1 estimates having higher certainty than Class 5 estimates.

127. The United Kingdom Oil and Gas Authority, which monitors decommissioning costs in the UK, expects to see cost estimation quality of Class 3 or better if decommissioning is expected within three years. As the purpose of requiring decommissioning cost estimates is to help inform the proposed financial capability assessment and the amount of financial security, the more certain the estimate the better. We therefore propose that cost estimates for both onshore and offshore fields be Class 3 or better when decommissioning is estimated to be less than five years away.

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11 For more information, see https://web.aacei.org/docs/default-source/toc/toc_87r-14.pdf

QUESTION 6: Do you agree with our proposed requirements? Do you think they are sufficient to generate cost estimates that can be relied on for the scope of decommissioning activities and costs required? Why or why not? Are there any other requirements that you think cost estimates should meet?

128. Additionally, offshore decommissioning compared with onshore can be impacted by different environmental variables that add complexity and increase costs. The Minister will need assurance that such estimates are reasonable and account for the heightened risks in an offshore environment. We propose two options for requirements for offshore decommissioning cost estimates that we would like your feedback on:
    - **Option 1:** No additional requirements for decommissioning cost estimates for offshore petroleum fields.
    - **Option 2:** For offshore petroleum fields, decommissioning cost estimates are developed by or verified by an independent third party.

Option 1: No additional requirements for decommissioning cost estimates for offshore petroleum fields.

129. Under this option, permit and licence holders of offshore petroleum fields could produce decommissioning cost estimates in a manner that best suits them. They could be developed internally or be produced by a third party for the permit or licence holder. There would be no additional requirements other than those proposed above.

130. The advantage of this option is that there is no imposed additional cost on the permit or licence holder from requiring some kind of third-party involvement in producing cost estimates. The disadvantage is that it may not provide the Minister with as much assurance that the estimate is reasonable and incorporates risks specific to the offshore environment. This may have a flow-on impact on a decision on the amount of financial security that a permit or licence holder is required to hold.

Option 2: Decommissioning cost estimates for offshore petroleum fields are developed by or verified by an independent third party.

131. Under this option, permit and licence holders of offshore petroleum fields would submit decommissioning cost estimates that have been developed by or verified by an independent third party, and would meet the other requirements proposed above.

132. The advantages of this option are that it provides more assurance that offshore decommissioning costs are reasonable and of consistent quality. The disadvantage is the potential added cost to those permit and licence holders who may have existing internal capability to produce estimates. However, given the significant sums involved in offshore decommissioning and the reliance on cost estimates to set the amount of financial security under the proposed changes in the Bill, independent verification in some form could ultimately benefit the permit or licence holder.

Assessing both options against our criteria

	Effectiveness	Flexibility	Proportionality	Regulatory Certainty
Option 1: No additional requirements for offshore decommissioning cost estimates	+ Does not provide the degree of assurance that estimates are reasonable and account for offshore-specific risks	+ Permit or licence holder can develop estimates as appropriate to their individual circumstances	+ No minimum requirement means the Minister may need to independently verify estimates at a cost to the Crown	- Provides less certainty and relies on the permit or licence holder informing the Minister of changes in a timely manner
Option 2: Offshore decommissioning cost estimates developed by or verified by an independent third party	++ Provides assurance that costs are reasonable and comprehensive	- Some flexibility as the permit or licence holder can still develop costs internally and have them independently verified	- Potential costs to permit and licence holders of independent development or verification. Costs could be considered proportional given the reliance on cost estimates to set the amount of financial security	++ Provides permit and licence holders with certainty that cost estimates will be accepted and can be relied on

QUESTION 7: Which option do you prefer for offshore decommissioning cost estimates and why? Are there alternative options that we should consider and why?

QUESTION 7A: Do you agree with the impact analysis of these options? If not, why not? Please provide evidence to support your answer.

Financial information

133. We propose two options for the types of financial information required to enable financial capability assessments.

Option 1: Permit and licence holders provide a statement of financial capability

134. Under this option regulations would specify that the permit or licence holder would be asked to provide similar information to what is currently required during a permit transfer or change of control.

135. Under section 41 of the CMA, if requested by the Minister, parties transferring into a permit must provide a statement, signed by or on behalf of the transferee, in which the person signing the statement must confirm that the transferee has the financial capability to meet its obligations under the permit (a statement of financial capability).[12]

136. For the purposes of the decommissioning financial capability assessment, we propose that permit and licence holders provide:

› A statement, signed by or on behalf of the permit or licence holder, in which the person signing the statement must confirm that they have and will maintain the financial capability to meet their obligation to carry out and fund decommissioning.

› Any sufficient supporting information.

12 See sections 29A and 41AE of the Crown Minerals Act 1991.

137. The advantage of this option is that it gives the permit and licence holders the flexibility to provide the information they consider most relevant. The onus would be on the permit and licence holder to demonstrate that they are financially planning to meet decommissioning costs. Under the changes proposed in the Bill, the Minister will have the power to request further targeted information if needed.

138. The disadvantage is that this might result in an iterative approach, where the Minister requests further information multiple times, creating additional work for both parties.

Option 2: Permit and licence holders provide categories of financial information

139. Under this option, regulations would specifically set out the types of financial information that the Minister will require for a financial capability assessment. This is different from option 1 in that under option 2, permit and licence holders must submit the information listed in regulations, whereas in option 1 they can choose what supporting information to provide.

140. We propose that permit and licence holders would provide:

› Audited financial statements (see 'Regulations on types of information for ongoing financial monitoring' above)

› Annual corporate reports and supporting material for the past two years.

› Profit after tax and amortisation in the last financial year.

› Details of existing debt obligations and security provided.

› Forecast earnings for the next three years and assumptions underpinning those forecasts.

› Details, including costs and scheduling, of any current or known future financial commitments (New Zealand and international) and a statement on whether these are likely to affect their ability to meet decommissioning costs in New Zealand.

141. Much of this information could be provided by sharing the permit or licence holder's financial model.

142. By providing this information, the permit or licence holder can demonstrate that they can provide for decommissioning costs, either through permit or licence activities, the value of the permit or licence holder entity, or the funds held in the financial security. Once again, under changes proposed in the Bill, the Minister will have the power to request further targeted information if needed.

143. The advantage of this option is that it provides the Minister with the opportunity to build an understanding of what role individual permit or licence participants play in the capability of the permit or licence holder to fund decommissioning, and whether dependence on a particular participant presents a potential risk. It also provides permit and licence holders with a clear expectation of the types of financial information to provide the Minister.

144. The disadvantage is that in specifying examples, it creates a 'minimum hurdle', and may not incentivise permit and licence holders to provide other information that may be more relevant.

Assessing both options against our criteria

	Effectiveness	Flexibility	Proportionality	Regulatory Certainty
Option 1: A statement of financial capability and supporting information	- The onus is on the permit or licence holder to provide information they think demonstrates financial capability, but this may not provide the Minister with sufficient information	+ Greater freedom for permit and licence holders to tailor the information they provide to their circumstances	++ Less onerous on the permit or licence holder, rather than complying with a prescribed list	- Does not provide clarity as to exactly what information the Minister requires for an assessment, so could turn into an iterative process
Option 2: Prescribed categories of financial information	++ Detailed financial information provides more complete information about companies in a permit or licence, and their obligations elsewhere	- Limited flexibility as minimum information requirements are set out in regulations; however, permit and licence holders can submit more information if relevant and further information could be required by the Minister	+ Depending on the type and value of the financial security required, it could be onerous on some permit and licence holders and some information may not be as relevant	+ Information requirements provide clarity on what is expected

QUESTION 8: Which option do you prefer for financial information requirements and why?

QUESTION 8A: Do you agree with the impact analysis of these options? If not, why not? Please provide evidence to support your answer.

QUESTION 8B: Are there other types of financial information that could or should be used to assess financial capability? If yes, what are they and why should we consider them?

Part 3: Financial Securities

Current situation

145. Financial securities are necessary to minimise the risk that decommissioning liabilities are transferred to the Crown or other third parties. The Crown cannot currently require a security if it has concerns over a petroleum mining permit or licence holder's ability to meet decommissioning costs.

146. Financial securities are common in other jurisdictions. In the United States and Canada, applicants must provide a financial security prior to mining. In the United Kingdom and Norway, the regulator can enter discretionary arrangements where operators are required to provide a financial security if the regulator considers there is a risk that the cost of decommissioning will not be met.

Proposed changes under the Bill

147. The Bill proposes that permit and licence holders must obtain and maintain one or more financial securities to secure in full or in part their obligation to carry out and fund decommissioning.

148. As soon as practicable after commencement, the Bill proposes that the Minister write to permit and licence holders setting out the time by which they must obtain one or more financial securities and require them to advise MBIE's Chief Executive of the kind and amount of security that the permit or licence holder considers appropriate.

149. The Bill proposes that the Minister will ultimately determine the kind and amount of security that the permit or licence holder must obtain and maintain. The amount must be sufficient to meet all or a proportion of estimated decommissioning costs if a permit or licence holder fails to carry out and separately meet these costs. The Minister's decision will be communicated to permit and licence holders via a notice.

150. When making this decision, the Bill proposes a range of considerations that the Minister must take into account consistent with a risk-based approach, including any proposals from permit and licence holders on the kind and amount of security. For example, it might be more appropriate to require cash funds from a permit or licence holder who has sufficient time until decommissioning to gradually accumulate funds. Similarly, a parent company guarantee, or letter of credit may be more appropriate from permit or licence holders who are in strong financial positions and have a consistent track record internationally and in New Zealand of meeting their obligations.

151. Although these considerations are set out in the Bill, there is flexibility to include further matters in regulations, if they are necessary. We propose regulations on additional criteria that the Minister must consider when determining the kind of financial security.

152. The Bill also allows regulations to be made on how permit and licence holders will hold and manage certain types of securities. We propose regulations that set out how cash reserves (a kind of financial security) must be held.

153. The Minister's decision on the kind and amount of security is not a one-off. The Bill also proposes allowing the Minister to alter the kind of security or amount secured over the life of the permit or licence.

Regulations on criteria for kinds of securities

154. We propose to set out in regulations some specific considerations relating to the kind of security that the Minister must take into account.

155. To better satisfy the Minister that the permit or licence holder can meet its obligations, we propose the Minister consider whether the financial security is:
    - Irrevocable.
    - Under New Zealand jurisdiction.

156. Irrevocable means that the security provider is not able to change the security or take it back, and under New Zealand jurisdiction means that the security can be enforced by the Crown in New Zealand when required.

157. In considering whether something is irrevocable, the minister could look to things such as whether the instrument can be terminated by the permit or licence holder or third party, how the instrument would perform in the event of insolvency, and what circumstances may render the security void.

158. In considering whether something is enforceable in New Zealand, the Minister would consider whether specific terms are needed to achieve this and whether the financial institution or third party (in the case of a guarantee) is authorised to issue a security in New Zealand.

Advantages and disadvantages of a range of securities

159. We are not proposing to set out a list of securities instruments that would be deemed 'acceptable' in regulations. This is because the securities available in New Zealand may change over time, and because we know that not all instruments will be appropriate in every circumstance.

160. We have explored the range of financial securities available in the New Zealand market to gain a better understanding of some common financial securities and the potential advantages and disadvantages of each. We seek your views on whether any of the securities below should be considered a 'preferred' security, in that it would be more likely to deliver assurance that the decommissioning would be funded, or whether some securities may be better suited to certain situations.

Financial institution guarantee

161. A bank (or other financial institution) would guarantee payment of a specified amount to the Crown. This includes 'bank guarantees' and 'letters of credit'.

162. The key difference between a letter of credit and a bank guarantee (also referred to as a performance bond) is that under a letter of credit, the bank's obligation to pay is only triggered if the Crown presents evidence to the bank that certain events have occurred (i.e., that the permit or licence holder has become insolvent, or has not met its decommissioning obligations when required). On the other hand, the Crown can call upon a bank guarantee anytime in the event of a default.

163. The advantage of a financial institution guarantee is that it would be available from the time it is issued, which means that we avoid the risk of waiting for funds to accumulate. It is also less likely to be affected by negative changes in the permit or licence holder's financial strength or its dissolution.

164. The disadvantage is that it must generally be renewed on a regular basis, and there is a risk that it may not be entirely irrevocable, in the sense that a permit or licence holder may not be able to renew it if their financial circumstances have worsened.

165. Banks are also likely to ask for an upfront premium and/or a cash deposit, securities or other assets for all, or a percentage of, the value of the guarantee. This means that such assets would not be available to the permit or licence holder for ordinary commercial purposes. There could also be delays and legal expenses if there is challenge when the Crown calls on the guarantee, meaning it may not always be immediately accessible.

Third party guarantee

166. A third party (such as the permit or licence holder's parent or other related company, or a credit-worthy entity acceptable to the Crown) would guarantee payment of a specified amount to the Crown.

167. The guarantee could be on-demand (i.e., the guarantor would need to make payment when the Crown demands it), or be triggered by certain events (i.e., the permit or licence holder becomes insolvent or does not meet its decommissioning obligations when required).

168. The advantage of a third-party guarantee is that it does not oblige the permit or licence holder to set aside funds and therefore does not tie up capital. A parent company guarantee would override the parent's immunity under corporate law (e.g., the separate legal personality of companies and the limited liability of their shareholders) from responsibility for the permit or licence holder's liabilities and may incentivise the parent to reduce the size of its decommissioning liabilities. It can also be written in a way that makes it enforceable in New Zealand.

169. A risk with parent company guarantees is that the guarantee could become devalued or worthless if the financial strength of the parent/group declined alongside that of the permit or licence holder or the assets were rearranged and no longer obtainable. It is also only available to permit and licence holders with parents that the Minister considers has the requisite financial strength.

Cash deposit

170. A cash deposit is money deposited by a permit or licence holder with a third party (e.g., in a bank account) and legally secured so that it can only be used for its intended purposes.
171. This includes escrow accounts. An escrow arrangement involves the permit or licence holder paying into an account held by an independent third party (typically a trustee company), who acts as the escrow agent, releasing funds from the account in accordance with the escrow agreement.
172. Another form of cash funds is a security deposit. This is where a permit or licence holder would agree to deposit cash at its bank or other financial institution, and to grant the Crown security over that cash. For the Crown's security to be effective, the bank or financial institution would need to be party to the security arrangement in order to waive certain rights that it would otherwise have in respect of the cash deposit.
173. The advantage of cash deposits is that the Crown has immediate access to funds when required, and funds will not be affected by negative changes in the permit or licence holder's financial position or its insolvency or dissolution, provided that the underlying instrument is drafted appropriately. Cash funds may be appropriate where there is a longer period left before they need to be accessed, as this allows time for funds to be built up gradually. When held in an escrow or deposit, cash funds are irrevocable in that permit and licence holders cannot access them for purposes other than decommissioning.
174. The downside is that the associated money is not available to the permit or licence holder for ordinary commercial purposes. There is also a risk that, if a permit or licence holder entered liquidation, the funds may be allocated to other secured creditors. Additionally, if the deposit is also gradually built up without additional security to cover the gap, there may be insufficient money if it needs to be called on earlier than anticipated.

Security over asset

175. This involves the permit or licence holder granting the Crown security over land or other assets, which would secure its decommissioning obligations. If the permit or licence holder failed to meet its decommissioning obligations when required, the Crown could enforce its security over the relevant assets. To be effective, the Crown would need first ranking charge on the asset to protect against insolvency or dissolution of the permit or licence holder and the asset would need to be protected from devaluation.
176. The advantage is that a security over assets has the capacity to release capital from an illiquid asset (i.e., real estate) to use as evidence of financial security, while enabling the operator to continue using the asset. It does not oblige the operator to set aside funds, so does not tie up capital, and has the capacity to ensure that funds will be available to cover liabilities arising in the mid to long term. It may not be affected by negative changes in the operator's financial viability, and there is a potential for the value of the asset to increase.
177. The disadvantage is that because most permit and licence holders will already have granted security over assets in favour of their bank or other lenders, the Crown would need to enter into an inter-creditor agreement or deed of priority and subordination with the permit or licence holder and every other higher-ranking creditor. This agreement would establish the ranking of each party's security and each party's rights to enforce their security.
178. If we required the asset to be unencumbered (that is, it must not have any other interests registered against it, such as a charge in favour of a lender) before it can be utilised as financial security, it is likely that many high-value assets would not be suitable.

179. Assets in the form of real estate are not liquid, meaning funds would not be immediately available to the Crown if needed. It may take some time to sell and transfer legal ownership, which means a delay in realising its value. This could be a particular issue for specialist assets for which the market may be small. The value of the asset could also potentially reduce.

180. Granting security over assets would also mean the asset is not available to the permit or licence holder for ordinary commercial purposes.

Insurance

181. We understand that decommissioning insurance products are available in overseas markets, but we are not aware of decommissioning insurance for the petroleum sector in New Zealand (although insurance in respect of environmental remediation more generally is available).

182. We anticipate that decommissioning insurance would involve a permit or licence holder taking out insurance for its expected decommissioning costs, with the Crown noted as an interested party on the policy.

183. Where insurance is available, it has the benefit of not requiring collateral so may be more accessible to small and medium permit and licence holders and does not tie up capital. It should not be affected by negative changes in the operator's financial strength or its dissolution, and funds would be available from the start of the policy.

184. The disadvantage is that it must be renewed to be effective, meaning it is not necessarily irrevocable. Cover may be invalidated for various reasons, and there would also be limits to indemnity. When a claim is made, delays and legal expenses could also be incurred.

QUESTION 9: Do you think the two considerations identified above (irrevocable and under New Zealand jurisdiction) are appropriate to help identify securities that provide assurance that funds are available when required? Are there other matters that we should include and why?

QUESTION 9A: Are you aware of other securities currently available in New Zealand that would be irrevocable and under New Zealand jurisdiction? Please provide details.

QUESTION 9B: Should the Minister require certain types of securities in certain situations? For example, should new permit and licence holders provide a security that is different to existing permit and licence holders? Why or why not?

QUESTION 9C: Do you think we should specify a hierarchy of securities required from permit and licence holders? Why or why not?

Regulations to manage cash reserves

185. If a permit or licence holder opted to, or was required to, establish a cash reserve, we would need to consider how and where the funds are held. We propose to set out in regulations that financial security in the form of cash would be held by an external organisation on behalf of the Crown.

186. By specifying that the responsibility of fund management sits with a third party in an escrow arrangement, with the Crown being able to access the funds, the risk to the Crown is further mitigated. This mechanism is already in place with some existing financial securities where the New Zealand Guardian Trust manages the financial instrument until decommissioning begins.

QUESTION 10: Do you agree that an escrow managed by a third party is an appropriate mechanism for managing cash funds? Why or why not?

Part 4: When Production Ceases

Current situation

187. Currently, the CMA does not specify when the obligation to decommission arises, although this is expected to happen at the end of field life or when production ceases. Some existing permits have the following conditions which relate to notifying MBIE's Chief Executive of cessation of production:
    - The permit holder will give the Chief Executive 12 month's prior written notice of the anticipated date for the cessation of petroleum production in the permit area.
    - The permit holder will notify the Chief Executive in writing of the date on which petroleum production in the permit area ceased (Date of End of Production) within three months after that date.
188. However, these conditions are not consistent across permits and licences.

Proposed changes in the Bill

189. The Bill proposes requiring permit and licence holders to notify MBIE's Chief Executive of expected cessation of production. This must be submitted at certain times, at regular intervals or when certain events occur, which must be set out in regulations.
190. Knowing when a permit or licence holder plans to cease producing from a field is important as it informs any decisions the Minister may take around mandating when a permit or licence holder decommissions under proposals in the Bill.

Regulations on when a permit or licence holder must notify MBIE's Chief Executive of expected production cessation

191. We seek your feedback on when regulations should require permit and licence holders to notify MBIE's Chief Executive of the expected date for when they plan to cease producing from the field.
192. Where end-of-life is sometime in the future, we propose that permit and licence holders notify MBIE's Chief Executive of an expected date for production cessation annually. The production cessation date would be expected to reflect the production profiles submitted during the current Annual Summary reporting process. This date could be used to inform timeframes for decommissioning and would be considered in the financial capability assessments and determinations around the financial security.

QUESTION 11: What timeframe would be appropriate and practical for permit and licence holders to notify MBIE's Chief Executive of expected production cessation dates, in order to achieve our aim of allowing MBIE as the regulator to increase engagement?

Section Four: Proposed Regulations on a Post-Decommissioning Fund

Context

Decommissioned wells and infrastructure carry future risks

193. There remains a risk (i.e., residual liability) that wells and infrastructure may need maintenance and remediation over the years and decades to come.

194. There is currently no statutory mechanism to require petroleum mining permit and licence holders to contribute financially to the remediation of wells and infrastructure after decommissioning has been completed. Most of New Zealand's petroleum fields are held by limited liability companies that exist for the purposes of the permit or licence and comprise multiple participants. Once the permit or licence has been relinquished, the company is often disestablished, and parent companies are usually based overseas. In this situation, it can be difficult to hold these former permit and licence participants responsible for any failure to decommissioned wells and infrastructure.

195. The Crown and third parties, such as landowners, are currently exposed in the absence of an accountable permit or licence holder especially where no conditions relating to residual liability are included in environmental consents.

196. We want to ensure that those parties who have benefitted most from petroleum production activities, over many years, contribute to costs associated with the ongoing maintenance and remediation of decommissioned wells and infrastructure. This aligns with the polluter pays principle and reduces (but does not eliminate) the financial exposure of local communities and the Crown. We also want to ensure permit and licence holders are incentivised to mitigate the residual liability of wells that have been plugged and abandoned and any infrastructure left in place once decommissioning has been completed.

197. With the introduction of new financial capability assessments and financial security requirements to help ensure permit and licence holders fund and carry out decommissioning, there is an opportunity to also include financial arrangements for residual liability after decommissioning has completed.[13]

International best practice

198. While some of New Zealand's petroleum fields are nearing maturity and we have little experience in dealing with petroleum fields that have been decommissioned to a quality accepted by regulators.

199. Overseas jurisdictions that set the benchmark for international best practice for decommissioning petroleum fields impose ongoing responsibilities on permit and licence holders after decommissioning has been completed.

200. The United Kingdom imposes a liability in perpetuity on owners of any infrastructure left in place after decommissioning has completed. For infrastructure left in situ, guidance states that liability for costs associated with problems arising after an oil field is decommissioned, such as degradation of infrastructure left at sea, rests with the owner or notice holder at the point of decommissioning.

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13 The CMA requires petroleum permit and licence holders to pay fees and royalties to the Crown in return for a permit or licence. NZP&M's role includes monitoring operator's compliance with their permits or licence to make sure New Zealand is getting a fair financial return for the nation's resources. With the Crown Minerals (Decommissioning and Other Matters) Bill establishing a regulatory regime to help ensure permit and licence holders fund and carry out decommissioning, it was considered appropriate for the Bill to also include funding arrangements for the ongoing maintenance and remediation of wells and infrastructure after decommissioning has completed.

201. Likewise, in Alberta, Canada, decommissioned wells remain the responsibility of the former permit or licence holder and the oil and gas regulator has a team in place to identify and communicate with owners of abandoned wells to fulfil their remediation obligations. Canada also requires the oil and gas industry to pay into a fund to remediate orphaned wells (i.e., wells and infrastructure that do not have a legally or financially responsible party that can be held accountable).

202. The Norwegian Government requires licensees and owners of decommissioned petroleum facilities to take ongoing responsibility for residual liability through a legal arrangement except where there is an agreement with the state whereby payments may be accepted by the state to assume this liability.

203. From our engagement with overseas regulators who seek to engage former owners with the purpose of ensuring they remediate leaking wells, we have learned that the process is resource intense, litigious, and cannot always be assured of delivering successful outcomes.

204. Furthermore, in New Zealand, most permit and licence participants and their parent companies are based overseas. Even if they remain in existence in the years following decommissioning, in many scenarios, it is not altogether clear that the Crown would have the jurisdictional reach to make these agreements legally enforceable. This is especially the case when businesses no longer have any operations in the New Zealand market.

205. For more detailed context, you can read the Regulatory Impact Statement on the options we considered and the proposed change in the Bill on our website here.

Proposed changes in the Bill

206. The Bill includes provisions that enable the Crown to collect payments from permit and licence holders to contribute to the residual liability presented by decommissioned wells and infrastructure after decommissioning has completed.

207. The Bill proposes that the Minister may determine whether payments are made in a lump sum or in instalments. Regulations will specify criteria that will guide how payments are determined.

208. The Bill also proposes allowing the Minister to grant exemptions to these payments if the Minister is satisfied that the requirement is unreasonable or inappropriate in the particular case, or events have occurred that make the requirement unnecessary or inappropriate in the particular case. Regulations will set out key criteria for granting an exemption from the requirement to make a post-decommissioning payment.

209. The payments will be held in a central pooled government fund where access can be granted at the discretion of the Minister of Energy and Resources. The advantage of holding individual payments in a pooled fund is that it spreads the risk of failure across multiple fields and thereby decreases the amount required from each permit or licence holder. Pooling the funds also decreases the exposure of the Crown from the costs of any medium-to-high impact failure in the event these costs were greater than the individual contribution made.

210. The Bill enables regulations to set out how the post-decommissioning fund will be managed. We also seek feedback on who can apply to access funding.

Matters falling outside the scope of this proposal

211. The proposed post-decommissioning obligations in the Bill relate only to current and future permit and licence holders required to carry out and meet the costs of decommissioning under the changes proposed in the Bill. The liability for any maintenance and remediation of historic wells falls outside the scope of the current proposal i.e., wells that have been plugged and abandoned but need remediation, and where former permit or licence holders no longer exist and cannot be held legally responsible.

212. The scope of the proposed post-decommissioning fund excludes any ongoing monitoring of both wells that have been plugged and abandoned and infrastructure left in situ.

Part 1: Criteria Relating to the Post-Decommissioning Payment

Regulations to set out criteria for assessing Post Decommissioning residual risk

213. The Bill describes post decommissioning work as activities carried out in relation to the remediation of:
   - Petroleum infrastructure that has been decommissioned but not removed.
   - A well that has been plugged and abandoned.
   - Environmental damage or health and safety risks caused by a failure of the decommissioning of petroleum infrastructure or a well.

214. We propose to use a risk-based approach to determine the amount of post-decommissioning payments required from permit and licence holders. It is proposed that the overall payment be divided into the following three separate components (i.e., in the event all three components apply to the decommissioned petroleum field in question). Key criteria will serve to guide how each component is set and calculated under each component based on the risk of potential failure and the costs involved.

Component One: Payment based on a risk assessment of well integrity

215. The first part of the payment will comprise costs associated with the demonstrated probability of risk of work being required to a well after decommissioning has completed. The overall assessment of costs will be determined through the following key criteria:
   - The main features of the well and any corresponding risk of future failure (see Figure 1 below). We propose that risk models used by overseas jurisdictions for well integrity will help guide the assessment.
   - Data from overseas jurisdictions that monitor wells that have been decommissioned to comparable requirements as that used by WorkSafe New Zealand will help provide an indication of the scale of any potential failure.
   - The cost, or estimated cost, of plugging and abandoning the well (with allowances being made for shifts in market values).

216. Figure 1 below sets out the key features of wells that have been identified to help predict the likelihood of any future failure, after decommissioning has been completed.

Risk rating proposed for each individual feature	Features of a well							
	Well Type	**Abandonment Complexity**	**True Vertical Depth**	**Well age**	**Integrity Issues**	**Barriers set**	**Annular cement[14]**	**Hydro-carbons present**
Highest Risk	HPHT Multilateral / Complex	Multiple zones / Different Pressures	TVD >300m	Pre 1959	Well Control event occurred on this well due to integrity issues	Single mechanical barrier	No cemented annuli	Oil/condensate moveable
High Risk	HPHT	Multiple zones	TVD 2000 – 3000m	1959-75	Primary and secondary Barriers failed during production	Single cement barrier, not verified	Partially cemented annuli – not verified	Gas/ condensate moveable
Medium Risk	Normal Pressured	Two zones (deep / shallow)	TVD 1000-2000m	1975-91	Primary barrier failed during production	Two Cement barriers per zone, not verified	Cemented annuli – not verified	Gas moveable
Low Risk	Sub hydrostatic	Single Hydrocarbon zone	TVD 500m – 1000m	1991-2016	No integrity issues, well not designed to current best industry standards	2 verified Cement barriers per zone	Cemented annuli – confirmed by volumes/ calcs	Hydrocarbon show
Lowest Risk	Water Well	No Hydrocarbon zones	TVD <500m	Post 2016	No integrity issues	Multiple verified barriers	Verified cemented annuli	Dry

Figure 1: *A risk assessment of well failure after decommissioning has completed. A risk assessment will be conducted for each individual feature of a well. For example, the grey areas in Figure 1 provide an example of how a well may demonstrate different risk ratings for the different features (the same is relevant for infrastructure). The risk ratings from each feature will be combined to provide an overall risk rating for the well.*

14 Well cementing is the process of introducing cement to the annular space between the well-bore and casing or to the annular space between two successive casing strings.

217. In addition to the well integrity factors set out in Figure 1, the risk assessment may also be affected by the availability of complete documentation about the well structure, any modifications made and how the well has been maintained.

Component Two: Payment based on risk assessment of any infrastructure left in place

218. The second key component of the post decommissioning payment relates to risks and costs associated with the potential failure of any infrastructure left in situ. We propose to determine the risk and cost based on the following criteria:

› Risk or likelihood of failure, of infrastructure that has been decommissioned, and the type of possible failure mode(s) (see Figure 2 below).

› Estimated cost of any remediation work required and/or the estimated cost of any ongoing maintenance.

219. Figure 2 below sets out the proposed key considerations in assessing the risks posed by any future infrastructure failure after decommissioning has been completed.

Risk rating proposed for each individual	Features of infrastructure				
	Type of Infrastructure left in place	**Environmental risk**	**Health & Safety risk**	**Material and capacity for degradation**	**Residual hydrocarbons present**
Highest Risk	Offshore production platform facility	Offshore – Close to shore	Onshore Rural	High toxic release on degradation	Low-medium
High Risk	Offshore pipelines	Offshore – Deep water	Onshore Urban	Medium toxic release on degradation	Low
Medium Risk	Onshore production facility and onshore pipelines	Onshore Rural	Offshore – close to shore	Low toxic release on degradation	Trace
Low Risk	Secured wellsite and manifolding	Onshore Urban	Offshore – Deep water	none	none

Figure 2: Risk of infrastructure failure post-decommissioning

Component Three – payments based on environmental and health and safety impacts of any failure to wells

220. Component Two includes environmental and health and safety risks associated with any failure to infrastructure left in place. Component Three is proposed to cover the environmental and health and safety impacts of failures in relation to decommissioned wells. We propose to assess this risk on the location of the decommissioned well.

221. Figure 3 below sets out the proposed risk rating approach and how this would work. Offshore wells are identified as presenting the most risk given the potential for the environmental effects of wells leaking into the sea and potential for damage and clean-up required.

222. Onshore wells that are in close proximity to waterways also present a higher level of risk given the impact of any leaking hydrocarbons into the water supply. An urban setting is also rated as presenting a higher risk given the higher density impact on a higher number of people.

	Location
Highest Risk	Offshore – Subsea
High Risk	Offshore – Platform / Jackup
Medium Risk	Onshore Urban / close to waterways
Low Risk	Onshore Rural

Figure 3: Environmental and health and safety impacts of a failure to decommissioned wells

Bringing together the three component parts to determine the final post-decommissioning payment

223. We propose the final post-decommissioning payment will be made up of the three components set out above in the event all three components apply to a particular permit or licence holder's situation.

QUESTION 12: Do you agree with our proposed criteria to be used to determine the post-decommissioning payment for wells that have been plugged and abandoned? Are there any other criteria that you think we should consider? What are they and why do you think we should consider them?

QUESTION 12A: Do you agree with our proposed criteria to be used to determine the post-decommissioning payment for any infrastructure left in place? Are there other criteria that you think we should consider? What are they and why do you think we should consider them?

QUESTION 12B: Do you agree with our proposed criteria to be used to determine the post-decommissioning payment for environmental and health and safety effects based on location (as set out in Figure 3)? Are there any other criteria that you think we should consider? What are they and why do you think we should consider them?

QUESTION 12C: Are the key factors for assessing the future risk of well integrity correct (as set out in Figure 1)? Why or why not? Are some factors more important than others? If so, what weight should the risk rating of each feature contribute to the overall risk rating for the well?

QUESTION 12D: Are the key factors for assessing future risk relating to infrastructure left in place correct (as set out at Figure 2)? Why or why not? Are some factors more important than others? If so, what weight should the risk rating of each feature contribute to the overall risk rating for infrastructure left in place?

Question 12E: Do you agree with determining the final post-decommissioning payment based on bringing together component parts one (wells) and two (infrastructure) and component three (environmental clean-up and health and safety impacts of any failure)? Are there any further considerations we should allow for? Why or why not?

Part 2: Making Payments

Regulations to determine when payments should be made

224. The Bill proposes that the Minister must direct that post-decommissioning payments be made to MBIE's Chief Executive as either a lump sum payment by a certain date or payment by instalments according to a schedule.

225. In deciding which approach to take, the Minister must consider the most recent financial capability assessment report (if there is one) and any criteria prescribed in regulations. The time or schedule by which payments are due can/must be set out in regulations. The financial strength of the permit or licence holder is important to the Minister's decision as to when payments should be made due to the varying risk of permit and licence holders defaulting on payments.

226. In addition to the most recent financial capability assessment, we propose that the Minister should also consider the remaining life left in the field (i.e., expected timing of decommissioning) to assess whether payments should be made in a lump sum or in instalments, and how frequently instalments must be made. This is important to consider as the time left before decommissioning occurs will affect the permit or licence holder's ability to build up the fund over time and inform how frequently payments would be required.

227. For example, if a permit or licence holder was financially weak and had little time left in the permit or licence (e.g., five years) then the Minister may require more frequent payments. If there was a longer period left in the permit or licence (e.g., 15 years) the Minister may still require payment in instalments, but at less frequent intervals.

228. Therefore, we propose that the following criteria will inform the Minister's decision as to when payments to the post-decommissioning fund should be made:
    - An assessment of the most recent financial capability assessment (if there is one).
    - An assessment of the time left before decommissioning takes place.
    - The ability of the permit or licence holder to build up the fund overtime by payment of instalments.

QUESTION 13: Do you agree with the proposed criteria for assessing when payments will be due? Are there any other factors that we should consider when deciding when payments are due?

Part 3: Granting Exemptions

Regulations on criteria to determine if we grant an exemption from post-decommissioning payments

229. The Bill proposes allowing the Minister to grant permit and licence holders exemptions from post-decommissioning payments. We propose that it is reasonable to assume that there may be scenarios where there is no residual liability remaining from the permit or licence once decommissioning has occurred. In these cases, it would be unreasonable to collect funds for non-existent liability and an exemption may be granted. These decisions can be made by considering criteria set out in regulations.

230. We propose that the following criteria will be assessed by the Minister to determine whether we grant an exemption from post-decommissioning:
    - Hydrocarbons never being present in the well
    - Whether infrastructure has been removed in its entirety

231. The key criteria in assessing when an exemption may be approved for a well that has been plugged and abandoned is whether there were any hydrocarbons present in the well. For example, if no hydrocarbon was ever present, such as with an unsuccessful exploration well, the permit or licence holder may be exempt from paying into a post-decommissioning fund.

232. The key criteria in assessing when an exemption may be appropriate for infrastructure would be when the infrastructure has been removed in its entirety. In this scenario there would be no risk to the environment or health and safety from potential degradation.

QUESTION 14: Do you agree with our approach to granting exemptions? Why or why not? Are there other scenarios or criteria to consider that may justify an exemption?

Part 4: Accessing the Fund

Regulations on who can apply for funding

233. We seek feedback on developing regulations for who can apply to the post-decommissioning fund to undertake remediation, associated clean-up, or investigative activities.

234. We have identified the following agencies and groups that may need to apply for post-decommissioning funding to cover costs of out-of-cycle investigations and any potential remediation and clean-up activities in the event of the failure of a well or infrastructure left in situ:
    - Government agencies
        - MBIE
        - Environmental Protection Authority (EPA)
        - Ministry for the Environment (MfE)
        - WorkSafe
    - Regional and District Councils
    - Other third parties (e.g., private landowners)

235. We propose that these groups would need to make an application to the Minister of Energy and Resources for an investigation into any suspected post-decommissioning failures of wells and infrastructure. MBIE will then put together a report and recommend actions including a view on which party is best placed to oversee the remediation work.

236. Third parties (e.g., private landowners) would need to apply to their local Council who would conduct an environmental assessment and if needed make an application to the Minister of Energy and Resources on their behalf.

QUESTION 15: Do you agree with the process for accessing the post-decommissioning fund? Why or why not?

QUESTION 15A: Are there other groups that may require access to the fund?

QUESTION 15B: What process should third parties follow to access the post-decommissioning fund?

Part 5: Managing the Fund

Regulations on how the post-decommissioning fund will be managed

237. We propose that the post-decommissioning fund will be a pooled fund and that funds from offshore and onshore permits and licences will be ring-fenced as the quantum of the risks differ significantly.

238. Costs associated with remediation and investigation of onshore versus offshore wells and infrastructure can differ significantly. The nature of environmental impacts can also differ depending on location and the costs of any required environmental clean-up may be very different.

239. Who is involved in investigations, remediation and clean-up activities could also be different depending on whether the wells and infrastructure are onshore or offshore.

240. To provide for these differences and avoid any disproportionate impacts on permit and licence holders, we propose to establish separate onshore and offshore expense accounts. This will ensure equity in the distribution and use of the fund, and clear applications to the Minister of Energy and Resources.

QUESTION 16: Do you agree with our proposed approach to managing the post-decommissioning fund? Why or why not?

QUESTION 16A: Are there any other factors that we should consider when managing the post-decommissioning fund?

Annex One: List of Consultation Questions

Regulations on the obligation to fund and carry out decommissioning

Themes	Consultation questions
Field Development Plans and Asset Registers	**QUESTION 1:** What information do you think petroleum mining permit and licence holders should include in an FDP to give the Minister sufficient detail to assess financial capability to meet decommissioning obligations? **QUESTION 1A:** Do you envisage any issues arising because of potential overlaps between these proposed regulations and other proposed changes such as under the EEZ Act? **QUESTION 1B:** Do you have any other feedback on FDPs and their content? **QUESTION 2:** Is the level of detail we are proposing sufficient to provide a comprehensive view of the assets that need to be decommissioned in a particular field? If you think there should be less detail, why? If you think there should be more detail, why and what further information do you suggest? **QUESTION 3:** Do you consider that requiring initial FDPs and Asset Registers six months after the regulations take effect provides permit and licence holders with enough time to comply with the new regulations? Why or why not? **QUESTION 4:** Which option do you prefer for FDPs and Asset Registers and why? Your answer can be different for the FDP and Asset Register. **QUESTION 4A:** Do you agree with the impact analysis of these options? If not, why not? Please provide evidence to support your answer. **QUESTION 4B:** If we were to require FDPs and Asset Registers at regular intervals, how frequent should it be and why? Your answer can be different for the FDP and Asset Register. **QUESTION 4C:** Are there any other circumstances that you think the regulations should include as a 'significant change'?

Financial Capability Monitoring and Assessments	**QUESTION 5:** Do you consider that requiring permit and licence holders to provide audited accounts is appropriate to carry out ongoing financial monitoring? If no, what information do you propose we seek and why? **QUESTION 5A:** Do you agree that financial information should be required to be signed by at least one director and audited? **QUESTION 6:** Do you agree with our proposed requirements? Do you think they are sufficient to generate cost estimates that can be relied on for the scope of decommissioning activities and costs required? Why or why not? Are there any other requirements that you think cost estimates should meet? **QUESTION 7:** Which option do you prefer for offshore decommissioning cost estimates and why? Are there alternative options that we should consider and why? **QUESTION 7A:** Do you agree with the impact analysis of these options? If not, why not? Please provide evidence to support your answer. **QUESTION 8:** Which option do you prefer for financial information requirements and why? **QUESTION 8A:** Do you agree with the impact analysis of these options? If not, why not? Please provide evidence to support your answer. **QUESTION 8B:** Are there other types of financial information that could or should be used to assess financial capability? If yes, what are they and why should we consider them?
Financial Securities	**QUESTION 9:** Do you think the two considerations identified above (irrevocable and under New Zealand jurisdiction) are appropriate to help identify securities that provide assurance that funds are available when required? Are there other matters that we should include and why? **QUESTION 9A:** Are you aware of other securities currently available in New Zealand that would be irrevocable and under New Zealand jurisdiction? Please provide details. **QUESTION 9B:** Should the Minister require certain types of securities in certain situations? For example, should new permit and licence holders provide a security that is different to existing permit and licence holders? Why or why not? **QUESTION 9C:** Do you think we should specify a hierarchy of securities required from permit and licence holders? Why or why not? **QUESTION 10:** Do you agree that an escrow managed by a third party is an appropriate mechanism for managing cash funds? Why or why not?
When production ceases	**QUESTION 11:** What timeframe would be appropriate and practical for permit and licence holders to notify MBIE's Chief Executive of expected production cessation dates, in order to achieve our aim of allowing MBIE as the regulator to increase engagement?

Regulations relating to the post-decommissioning fund

Themes	Consultation questions
Criteria Relating to the Post-Decommissioning Payment	**QUESTION 12:** Do you agree with our proposed criteria to be used to determine the post-decommissioning payment for wells that have been plugged and abandoned? Are there any other criteria that you think we should consider? What are they and why do you think we should consider them? **QUESTION 12A:** Do you agree with our proposed criteria to be used to determine the post-decommissioning payment for any infrastructure left in place? Are there other criteria that you think we should consider? What are they and why do you think we should consider them? **QUESTION 12B:** Do you agree with our proposed criteria to be used to determine the post-decommissioning payment for environmental and health and safety effects based on location (as set out in Figure 3)? Are there any other criteria that you think we should consider? What are they and why do you think we should consider them? **QUESTION 12C:** Are the key factors for assessing the future risk of well integrity correct (as set out in Figure 1)? Why or why not? Are some factors more important than others? If so, what weight should the risk rating of each feature contribute to the overall risk rating for the well? **QUESTION 12D:** Are the key factors for assessing future risk relating to infrastructure left in place correct (as set out at Figure 2)? Why or why not? Are some factors more important than others? If so, what weight should the risk rating of each feature contribute to the overall risk rating for infrastructure left in place? **QUESTION 12E:** Do you agree with determining the final post-decommissioning payment based on bringing together component parts one (wells) and two (infrastructure) and component three (environmental clean-up and health and safety impacts of any failure)? Are there any further considerations we should allow for? Why or why not?
Making payments	**QUESTION 13:** Do you agree with the proposed criteria for assessing when payments will be due? Are there any other factors that we should consider when deciding when payments are due?
Granting Exemptions	**QUESTION 14:** Do you agree with our approach to granting exemptions? Why or why not? Are there other scenarios or criteria to consider that may justify an exemption?
Accessing the fund	**QUESTION 15:** Do you agree with the process for accessing the post-decommissioning fund? Why or why not? **QUESTION 15A:** Are there other groups that may require access to the fund? **QUESTION 15B:** What process should third parties follow to access the post-decommissioning fund?
Managing the Fund	**QUESTION 16:** Do you agree with our proposed approach to managing the post-decommissioning fund? Why or why not? **QUESTION 16A:** Are there any other factors that we should consider when managing the post-decommissioning fund?

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