



COVERSHEET

Minister	Hon Dr Megan Woods	Portfolio	Energy and Resources
Title of Cabinet paper	Clarifying Energy Resources Levy Obligations for Fossil Gas Production Energy Resources Levy Amendment Bill: Approval for Introduction Energy Resources Levy Amendment Bill: Amendments to Policy Decisions and Approval for Introduction by Delegated Ministers	Date to be published	26 June 2023

List of documents that have been proactively released		
Date	Title	Author
8 March 2023	Clarifying Energy Resources Levy Obligations for Fossil Gas Production	Office of the Minister of Energy and Resources
13 March 2023	Clarifying Energy Resources Levy Obligations for Fossil Gas Production DEV-23-MIN-0018 Minute	Cabinet Office
4 May 2023	Energy Resources Levy Amendment Bill: Approval for Introduction	Office of the Minister of Energy and Resources
8 May 2023	Energy Resources Levy Amendment Bill: Approval for Introduction – Minute of Decision CAB-23-MIN-0162.01 Minute	Cabinet Office
15 May 2023	Additional Item: Energy Resources Levy Amendment Bill CAB-23-MIN-0179 Minute	Cabinet Office
17 May 2023	Energy Resources Levy Amendment Bill: Amendments to Policy Decisions and Approval for Introduction by Delegated Ministers	Office of the Minister of Energy and Resources
17 May 2023	Energy Resources Levy Amendment Bill: Amendments to Policy Decisions and Approval for Introduction by Delegated Ministers DEV-23-MIN-0089 Minute	Cabinet Office

Information redacted**YES / NO**

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

Some information has been withheld for the reasons of confidentiality, commercial information, free and frank opinion, and legal professional privilege.

[© Crown Copyright, Creative Commons Attribution 4.0 International \(CC BY 4.0\)](#)

[In Confidence]

Office of the Minister for Energy and Resources

Cabinet Economic Development Committee

Energy Resources Levy Amendment Bill: Amendments to Policy Decisions and Approval for Introduction by Delegated Ministers

Proposal

- 1 To note the decisions of the Prime Minister, the Minister of Finance and the Minister of Energy and Resources, acting under delegated authority from Cabinet, relating to the introduction of the Energy Resources Levy Amendment Bill (**the Bill**).

Relation to government priorities

- 2 This policy proposal relates to the Government's wider work programme under the 10-year Resource Strategy 'Responsibly Delivering Value – A Minerals and Petroleum Resource Strategy for Aotearoa New Zealand: 2019–2029'. The policy proposal is most relevant to Principle 8: The Crown receives a fair financial return for its minerals and petroleum in the strategy.

Background

- 3 On 8 May 2023, Cabinet approved the Bill for introduction and agreed that it be progressed through all parliamentary stages on Budget night subject to my ongoing discussions with the Minister of Finance and the Leader of the House [CAB-23-MIN-0162.01], which subsequently took place.
- 4 The Bill will amend the Energy Resources Levy Act 1976 (**the Act**) to clarify the exemption clause in the Act to ensure people holding gas licences granted in relation to pre-1 January 1986 discoveries (**pre-1986 licences**) must pay a top up levy on all their gas. As currently drafted, the Bill includes a retrospective provision to apply the amendment on and from 1 January 1986.
- 5 The fundamental basis on which Cabinet is making this amendment is to ensure the Crown receives a fair financial return on its fossil gas.
- 6 The amendment will ensure pre-1986 licences operating on five or ten per cent royalty rates must also pay the energy resources levy (**levy**), to ensure a fair financial return to the Crown. For context, most companies operate on post-1986 licences or permits and currently pay a royalty of 12.5 or 20 per cent for the production of fossil gas.

- 7 Confidential information entrusted to the Government

Confidential information entrusted to the Government

- 8 On 15 May 2023, I updated Cabinet with an oral item about this new information [CAB-23-MIN-0179].
- 9 On 15 May 2023, Confidential information entrusted to the Government MBIE identified a letter from the regulator (the then Ministry of Commerce) to the Natural Gas Corporation dated 21 November 1996. It reads:

“Your letter of 18 October 1996 requested confirmation that the Energy Resource Levy is not applicable to gas derived from the Maui F sand.

We have now checked our technical information on the F sands accumulation and can advise that as these sands were discovered after 1 January 1986 no Energy Resource Levy would be applicable to the gas derived from these sands.”

- 10 In the time available, we have not been able to confirm the grounds for this decision. Confidential information entrusted to the Government

- 11 These developments have:

- cast doubt on two statements in the 8 May 2023 Cabinet paper:
 - “the law has always required licence holders to either pay a low royalty rate as well as the levy, or pay a higher royalty rate without the levy”
 - “that [to MBIE’s knowledge], no claims of ‘discovery’ have resulted in production from a pre-1986 licence being exempt from the levy”.
- raised a question as to whether the law change should be applied retrospectively.

The fundamental basis for the amendment remains sound

- 12 Although there is now doubt about whether the regulator has applied the levy consistently in the past, the fundamental basis on which Cabinet agreed to the proposed amendment remains sound. This was to ensure the Crown receives a fair financial return on its fossil gas.
- 13 For this reason, I did not recommend any change to the previous Cabinet decision that the amendment should go ahead on Budget night.

Retrospective application

- 14 However, law changes should only be applied retrospectively in rare circumstances. The justification for the retrospective application of this law

change had been that it reflected a clarification of how the Crown had always been understood the law to be.

15 Confidential information entrusted to the Government

16 As a result, I considered that the appropriate approach was to amend the Bill to remove its retrospective application.

17 To ensure the proposed amendment applies only prospectively, I also considered the Bill should provide for validation of past levy payments (or lack of payments). This validation ensures that those who have paid in the past are not entitled to a refund, and that the Crown was acting lawfully by receiving any levies paid.

18 The impact of removing the retrospective application is that some potential levy revenue would be forgone Commercial Information

19 Advancing the amendment prospectively from the date of enactment of the amendment will, however, ensure a fair financial return for the Crown in future years. This would amount to approximately \$50 million revenue Commercial Information and potentially more from other “discoveries”.

Delegated power to act

20 On 15 May 2023, Cabinet authorised the Prime Minister, the Minister of Finance and me in my capacity as the Minister of Energy and Resources (the **delegated ministers**) the power to act to take further decisions on matters relating to the Bill, prior to its introduction in the House [CAB-23-MIN-0179].

Delegated policy decisions

21 On 16 May 2023, the delegated ministers agreed:

21.1 to remove the retrospective application of the amendment by rescinding recommendation 5.2 from CAB-23-MIN-0162.01

21.2 to validate past levy payments (or lack of payments)

21.3 to approve the Energy Resources Levy Amendment Bill for introduction, to be passed through all stages on Budget night

21.4 that the Minister of Energy and Resources make minor changes to the Bill that are not inconsistent with the policy recommendations in this paper up until the time that the Bill is introduced, to allow Parliamentary Counsel Office to finalise the Bill.

22 The near-final Bill, giving effect to the above decisions, is attached.

Financial Implications

23 There are no financial implications to the Crown in undertaking this policy.

Legislative Implications

24 Cabinet has agreed that the Bill should have a category of 3 on the Government's Legislation Programme – to be passed if possible before the 2023 general election.

25 The principal Act is already binding on the Crown. This is not proposed to change.

Impact Analysis

Regulatory Impact Statement

26 The Treasury's Regulatory Impact Analysis team has determined that the proposed amendment to clarify obligations relating to the fossil gas levy exemption in the ERL Act is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

Climate Implications of Policy Assessment

27 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met. While this proposal will clarify existing obligations on levy payments for specific petroleum licences, this is not expected to have an impact on fossil gas production or greenhouse gas emissions.

Population Implications

28 There are no population implications arising from this policy.

Human Rights

29 This policy is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

30 No consultation took place on this paper. The Treasury and Inland Revenue Department were consulted and the Department of Prime Minister and Cabinet was informed on the previous Cabinet papers.

Communications

- 31 An appropriate communications approach has been developed for the legislative amendment.

Proactive Release

- 32 Following the Bill's introduction, I intend to release this paper with appropriate redactions.

Recommendations

I recommend that the Cabinet Economic Development Committee:

- 1 **note** that on 8 May 2023 Cabinet approved the Energy Resources Levy Bill for introduction and agreed that the Bill be progressed through all parliamentary stages under urgency on Budget night 18 May 2023
- 2 **note** approval to introduction was subject to ongoing discussions with the Minister of Finance and the Leader of the House [CAB-23-MIN-0162.01], which the Minister of Energy and Resources has now had
- 3 **note** that on 11 May 2023 Confidential information entrusted to the Government to the Ministry of Business, Innovation and Employment (MBIE) that cast doubt over one of the reasons for which Cabinet agreed to apply the amendment retrospectively
- 4 **note** that on 15 May 2023 MBIE identified a letter from the regulator (the then Ministry of Commerce) to the Natural Gas Corporation dated 21 November 1996 that advised "*that as these [Māui F] sands [within the 1973 Māui licence] were discovered after 1 January 1986 no Energy Resource Levy would be applicable to the gas derived from these sands*"
- 5 **note** that this letter suggests the Crown may have taken an inconsistent approach to the application of the levy
- 6 **note** that:
 - 6.1 the fundamental basis on which Cabinet is making this amendment is to ensure the Crown receives a fair financial return on its fossil gas
 - 6.2 the retrospective application of the law should be rarely applied, and Confidential information entrusted to the Government shows there has been inconsistent applications of the law in the past
- 7 **note** that on 15 May 2023, Cabinet authorised the Prime Minister, the Minister of Finance and the Minister of Energy and Resources the power to Act to take further decisions on matters relating to the Bill, prior to its introduction in the House [CAB-23-MIN-0179]
- 8 **note** that the Prime Minister, Minister of Finance and the Minister of Energy and Resources:

I N C O N F I D E N C E

- 8.1 agreed to remove the retrospective application of the amendment by rescinding recommendation 5.2 from CAB-23-MIN-0162.01
- 8.2 agreed to validate past levy payments (or lack of payments)
- 8.3 approved the Energy Resources Levy Amendment Bill for introduction, to be passed through all stages on Budget night
- 8.4 agreed that the Minister of Energy and Resources make minor changes to the Bill that are not inconsistent with the policy recommendations in this paper up until the time that the Bill is introduced, to allow Parliamentary Counsel Office to finalise the Bill.

Authorised for lodgement

Hon Dr Megan Woods

Minister of Energy and Resources

I N C O N F I D E N C E