



COVERSHEET

Minister	Hon Shane Jones	Portfolio	Resources
Title of Cabinet paper	Further policy decisions for the Crown Minerals Amendment Bill 2024	Date to be published	19 November 2024

List of documents that have been proactively released		
Date	Title	Author
31 October 2024	Further policy decisions for the Crown Minerals Amendment Bill 2024	Office of Minister for Resources
6 November 2024	Further policy decisions for the Crown Minerals Amendment Bill 2024 ECO-24-MIN-0253 Minute of Decision	Cabinet Office
11 November 2024	Further policy decisions for the Crown Minerals Amendment Bill 2024 CAB-24-MIN-0439.01 Minute of Decision	Cabinet Office
30 October 2024	Supplementary Departmental Disclosure Statement – Crown Minerals Amendment Bill	MBIE
30 October 2024	Annex to Regulatory Impact Statement: Amendments to the Crown Minerals Act 1991 relating to petroleum exploration and mining	MBIE

Information redacted

YES

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 confidential advice to government, commercial information, free and frank opinions, and legal professional privilege.

Explanatory note

Note that the Minute of Decision ECO-24-MIN-0253 of 6 November 2024 is superseded by the Minute of Decision CAB-24-MIN-0439.01 of 11 November 2024.

For clarity, both Minutes of Decision have been included together in this proactive release.

In summary, Cabinet agreed to amend the recommendations in the Cabinet Paper *Further policy decisions for the Crown Minerals Amendment Bill 2024* to:

- extend and clarify the list of persons to whom trailing liability applies (paragraph 3 of ECO-24-MIN-0253 has been amended in CAB-24-MIN-0439.01); and
- remove the discretion for the Minister to apply trailing liability (paragraphs 5 and 6 of ECO-24-MIN-0253 are removed from CAB-24-MIN-0439.01).

CAB-24-MIN-0439.01 reflects the final policy decisions, which differ, as described above, from the Cabinet paper and ECO-24-MIN-0253.

In Confidence

Office of the Minister for Resources

Economic Policy Committee

Further policy decisions for the Crown Minerals Amendment Bill 2024

Proposal

- 1 This paper seeks agreement to policy proposals and approval to introduce an Amendment Paper to amend the Crown Minerals Amendment Bill 2024 (the Bill), to close a loophole in the petroleum decommissioning provisions.

Relation to Government priorities


- 2 Passing the Bill is part of the Government’s Q4 action plan. The Bill relates to the National-NZ First coalition agreement commitment to ‘future-proof the natural gas industry by restarting offshore exploration’ and the National-ACT coalition agreement commitment to ‘repeal the offshore oil and gas exploration ban’.

Executive summary

- 3 Decommissioning petroleum infrastructure is costly. If a permit holder fails to decommission, responsibility may fall to the Crown and landowners.
- 4 A current safeguard against this in the Crown Minerals Act 1991 (CMA) is trailing liability. This is liability for a former permit holder if the current permit holder fails in their decommissioning obligations.
- 5 The problem is that, while trailing liability applies if there is a transfer of a permit, it does not apply if the controlling shareholder in a permit holder changes. In such a case, the only risk mitigation for the Crown will be the current permit holder and any financial security that is required of them.
- 6 This could:
 - 6.1 expose the Crown to significant fiscal risk. Confidential advice to Government
 - 6.2 dampen investment activity, if Ministers make more conservative transfer approval decisions (for example, in deciding whether to approve a change in a controlling shareholding of a permit holder, or when determining an acceptable financial security arrangement).

- 7 I am seeking to ensure there is an enabling environment for the sale and purchase of petroleum assets, while ensuring the Crown's liability is covered.
- 8 This is particularly important as petroleum fields near end of life, and larger, more stable companies seek to sell petroleum assets to smaller companies that are willing to take on a higher level of risk and specialise in the ownership of later life assets. Such a sale could well be an efficient outcome and it is important that the Crown does not hinder sensible outcomes because of undue risk averseness over decommissioning.
- 9 To address this issue, I propose to extend trailing liability to:
- 9.1 person(s) with a controlling shareholding interest in a permit holder; and
 - 9.2 the immediately previous person(s) that had a controlling shareholding interest in the current permit holder.
- 10 As a backstop, I propose that the Minister responsible for the CMA have the discretion to extend trailing liability to related bodies corporate of the current permit holder, the previous permit holder, and the persons described in paragraph 9, on a case-by-case basis.
- 11 The proposal brings New Zealand further into alignment with Australia and the United Kingdom. Both jurisdictions extend trailing liability to a range of related bodies corporate.

Background

- 12 The Bill was reported back from Select Committee on 25 October 2024. Among other things, the Bill makes changes to the decommissioning regime.
- 13 Decommissioning includes plugging and abandoning wells, removing all or parts of infrastructure, and undertaking site restoration. Commercial Information

- 14 If a permit holder¹ fails to decommission, responsibility may fall to the Crown and landowners. Although the Crown is not strictly liable for decommissioning, the health, safety and environmental risks coupled with the significant costs mean that there may be an expectation that the Crown steps in and assumes responsibility, which comes with fiscal risk.

¹ This term is used in this paper to refer to petroleum exploration and mining permit holders under the CMA and licence holders under the Petroleum Act 1937. "Permit" has a corresponding meaning. A permit holder can be made up of one or more "permit participants", each with an undivided interest (a "participating interest") in a petroleum permit or licence (collectively in this paper, "permits"). Each permit holder has a "permit operator" who is the permit participant responsible for the day-to-day management of activities under the permit.

- 15 The decommissioning regime mitigates the fiscal risk to the Crown and other third parties. The regime includes:
- 15.1 **Primary obligations:** Permit holders are required to carry out and meet the costs of decommissioning.
 - 15.2 **Penalties:** Civil pecuniary penalties and criminal offences apply for failure to meet decommissioning obligations.
 - 15.3 **Approval for transfers:** There is a Ministerial approval process for permit transfers and for changes of control in persons that hold permits.²
 - 15.4 **Financial securities:** Permit holders must obtain and maintain financial securities to secure the performance of their decommissioning obligations. Financial securities are the primary risk mitigation tool in New Zealand's decommissioning regime.
 - 15.5 **Trailing liability:** If a permit holder fails to decommission, or meet the costs of decommissioning (either directly or through a financial security), the CMA places liability on all former permit holders. This is called "trailing liability". The Bill limits trailing liability to the most recent permit holder.³ Trailing liability is a backstop. It is intended to be used as a last resort after other safeguards (such as financial securities) fail.

Problem: Trailing liability for decommissioning can be avoided

- 16 A problem with the current CMA has emerged through the development of the Bill. The problem is that while trailing liability applies if there is a transfer of a permit,⁴ it does not apply if there is a change of control for a permit holder (that is, a change in the persons with the power (whether directly or indirectly, and alone or acting together with others) to exercise, or control the exercise of, 50 per cent or more of the voting rights in the permit holder).
- 17 An example of a change of control is a sale of majority shares. When shares are sold in a permit holder, the entity holding the permit stays the same and there is, therefore, no 'former permit holder' to trail. In such a scenario, the

² This paper uses the terms "change of control" and "change in controlling interest" to mean a person (or more than one person acting together) obtaining the power (directly or indirectly) to exercise 50 per cent or more of voting rights in the corporate body that is the permit holder or permit participant (for example, through a share transfer). Ministerial consent is required for permit transfers and changes of control of permit operators. There is a "highly likely" test for consent in relation to compliance with the decommissioning obligations under the CMA. For changes of control of permit participants that are not permit operators, the permit participant must notify the Minister of changes of control. The Minister may revoke the permit if he or she is not satisfied that the permit holder has the requisite financial capability following the change of control.

³ Liability also falls on persons with an undivided "participating interest" in a permit or licence. The Bill includes changes to the CMA to limit trailing liability to the most recent person who transferred their participating interest in the permit to another person.

⁴ Or a transfer of a participating interest (ie undivided interest) in a permit. For simplicity, this paper describes permit transfers, but the same reasoning applies to transfers of undivided participating interests in a permit.

controlling shareholder of a permit holder has no direct liability for decommissioning. Equally, a person who previously was the controlling shareholder of a permit holder will have no liability for decommissioning. The only risk mitigation for the Crown will be the current permit holder and any financial security that is required of them.

- 18 There are two issues with the status quo that are negatives for both the Crown and the industry. First, it could lead to the industry structuring businesses and transactions in a way that avoids trailing liability for decommissioning. Confidential advice to Government
- 19 In addition to the fiscal risk, it could result in the regulatory decision-maker being overly risk-averse when considering applications to change a controlling shareholding, or when determining an acceptable financial security arrangement. This may dampen investment activity in New Zealand's upstream petroleum sector. I am seeking to ensure there is an enabling environment for the sale and purchase of petroleum assets, while ensuring the Crown's liability is covered.
- 20 This is particularly important as petroleum fields near end of life, and larger, more stable companies seek to sell petroleum assets to smaller companies that are willing to take on a higher level of risk and specialise in the ownership of later life assets. Such a sale could well be an efficient outcome and it is important that the Crown does not hinder sensible outcomes because of undue risk averseness over decommissioning.

I propose strengthening the obligation meet the costs of decommissioning

- 21 I propose that New Zealand's decommissioning regime be brought further into alignment with Australia and the United Kingdom. Both jurisdictions extend trailing liability to a range of related bodies corporate.
- 22 The Bill already provides for decommissioning liability to apply to:
- 22.1 the current permit holder (or licence holder or person with a participating interest in a permit or licence);
 - 22.2 the immediately former permit holder (or licence holder or permit participant who last transferred their participating interest in a permit or licence), in the form of trailing liability.⁵
- 23 I propose extending trailing liability to:

⁵ For permit participant transfers, each participating interest would be treated separately. For example, take a permit with four permit participants, each with a 25 per cent undivided interest. If two of the permit participants sold their interest one after the other, both would be subject to trailing liability.

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- 23.1 a person with a controlling interest⁶ in a permit holder (or licence holder or person with a participating interest in a permit or licence); and
- 23.2 the immediately previous person that had a controlling interest in the current permit holder (or licence holder or person with a participating interest in a permit or licence);
- 24 This proposal would ensure that trailing liability remains with a controlling shareholder that disposes of a permit, regardless of whether that is by permit transfer or by way of share sale.
- 25 I considered limiting the extension of trailing liability to the immediately previous person that had a controlling interest in the current permit holder, (and not extending it to other parties) but this would create unfair inconsistency. For example, the current parent of the current permit holder would not be liable but the former parent of the current permit holder would be liable.

I propose an additional backstop measure in relation to related bodies corporate

- 26 There may be situations in which a related body corporate is the more appropriate person to have “on the hook”. I propose that, as a backstop measure, the Minister responsible for the CMA has the discretion to apply trailing liability to related bodies corporate of the persons described in paragraphs 22 and 23, on a case-by-case basis. This would include parents, subsidiaries, and subsidiaries of parent companies.
- 27 I propose that the Minister would be able to exercise this discretion if the related body corporate:
 - 27.1 is capable of significantly benefiting financially, or has significantly benefited financially, from the operations authorised by the permit or licence;
 - 27.2 is, or has been at any time, in a position to influence the way in which, or the extent to which, a person is complying, or has complied, with the permit holder or licence holder’s obligations;
 - 27.3 acts or acted jointly with any of the persons described in paragraphs 22 or 23 in relation to the operations authorised by the permit or licence.

Likely industry reaction to the proposals

- 28 Some companies may push back on these proposals, especially given the change comes at a late stage in the Bill’s development. A greater number of companies will need to manage contingent liability. However, I consider the proposal is warranted, as the alternative of implicitly allowing the fiscal risk to the Crown is not appropriate.

⁶ meaning the power (whether directly or indirectly, and alone or acting together with others) to exercise, or control the exercise of, 50 per cent or more of the voting rights in a corporate body.

Treaty of Waitangi

- 29 There has not been any consultation with iwi and hapū on the specific proposals in this paper. However, consultation with iwi and hapū on the Bill to date has highlighted support for a strong decommissioning regime. I consider that the proposal further strengthens the decommissioning regime.

Cost-of-living Implications


- 30 There are no immediate or direct cost-of-living implications arising from the proposals in this paper.

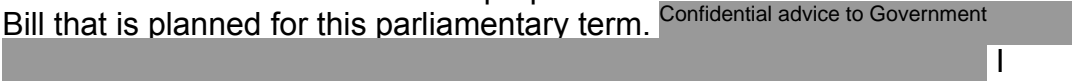
Financial Implications

- 31 There are no direct financial implications as a result of the proposals in this paper. Not proceeding with the proposal could potentially result in future costs to the Crown, but this has not been quantified.
- 32 The proposal results in liability for a wider range of companies, which will need to manage that liability.

Legislative Implications

- 33 I intend to introduce an Amendment Paper to amend the Crown Minerals Amendment Bill, that was reported back to the House on 25 October 2024. The Bill holds a Category 2 priority on the 2024 Legislation Programme (must be passed by the end of 2024).

- 34 Free and frank opinions; Legal professional privilege
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- 35 I considered whether to defer this proposal to the second CMA Amendment Bill that is planned for this parliamentary term. Confidential advice to Government
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I recommend that the proposal not be deferred.

Compliance

- 36 The Amendment Paper complies with:
- 36.1 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 36.2 the disclosure statement requirements (Annex One);
 - 36.3 the principles and guidelines set out in the Privacy Act 2020;

36.4 relevant international standards and obligations;

36.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

37 Compliance with the principles of the Treaty of Waitangi is addressed above.

Regulatory Impact Statement

38 A regulatory impact statement (RIS) was completed for the policy decisions for the Bill, including the decommissioning amendments. An Annex to the RIS is attached to this paper as Annex Two.

39 MBIE's Quality Assurance Panel consider that the Regulatory Impact Statement in the Annex meets the Quality Assurance criteria.

Climate Implications of Policy Assessment

40 There are no direct emissions impacts as a result of the policy proposal.

Population Implications

41 The proposals in this paper will not disproportionately impact distinct population groups.

Use of External Resources

42 These proposals have been developed without the use of external resources.

Consultation

43 The Treasury, Department of Conservation, Ministry for the Environment, Ministry of Foreign Affairs and Trade, and Te Arawhiti were consulted. The Department of the Prime Minister and Cabinet has been informed.

Communications

44 I do not intend to release a statement following Cabinet approval.

Proactive Release

45 I intend to release the Cabinet paper proactively within 30 business days of decisions being confirmed by Cabinet.

Recommendations

The Minister for Resources recommends that the Committee:

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

- 1 **note** that trailing liability applies to permit transfers, but does not apply when there is a change of controlling interest in a permit holder, potentially exposing the Crown to significant fiscal risk and dampening investment activity;
- 2 **note** that the Crown Minerals Amendment Bill (the Bill) applies decommissioning liability to:
 - 2.1 the current permit holder (or licence holder, or persons with a participating interest in a permit or licence);
 - 2.2 the immediately former permit holder (or licence holder or person who last transferred a participating interest in a permit or licence), in the form of trailing liability;
- 3 **agree** to recommend that Cabinet extend trailing liability, to:
 - 3.1 a person with a controlling interest in a permit holder (or licence holder or person with a participating interest in a permit or licence);
 - 3.2 the immediately previous person that had a controlling interest in the current permit holder (or licence holder or person with a participating interest in a permit or licence);
- 4 **agree** that for the purposes of recommendation 3, “controlling interest” means the power (whether directly or indirectly, and alone or acting together with others) to exercise, or control the exercise of, 50 per cent or more of the voting rights in a corporate body;
- 5 **agree** for the Minister responsible under the Crown Minerals Act 1991 to have discretion to apply trailing liability to related bodies corporate of the persons described in recommendation 2 and 3, including parent companies, subsidiaries and related companies;
- 6 **agree** that the Minister may exercise the discretion in recommendation 5 if the Minister considers that:
 - 6.1 the person is capable of significantly benefiting financially, or has significantly benefited financially, from the operations authorised by the permit or licence;
 - 6.2 the person is, or has been at any time, in a position to influence the way in which, or the extent to which, a person is complying, or has complied, with the permit holder or licence holder’s obligations;
 - 6.3 the person acts or acted jointly with any of the persons described in recommendation 2 or 3 in relation to the operations authorised by the permit or licence.
- 7 **authorise** the Minister for Resources, in consultation with the Leader of the House, the Deputy Leader of the House and the Attorney-General, to finalise the Amendment Paper ahead of Cabinet;

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- 8 **note** a draft Amendment Paper will be attached prior to Cabinet consideration;
- 9 **authorise** the Minister for Resources to take further decisions, in line with the policy decisions agreed by Cabinet, on any minor or technical issues that arise prior to the introduction of the Amendment Paper;
- 10 **approve** the introduction of the Amendment Paper to the Bill, subject to final approval of the government caucus and sufficient support in the House of Representatives;
- 11 **agree** the Amendment Paper be introduced by 13 November 2024.

Authorised for lodgement

Hon Shane Jones

Minister for Resources

Annex One: Supplementary Departmental Disclosure Statement

Annex Two: Annex to Regulatory Impact Statement: Amendments to the Crown Minerals Act 1991 relating to petroleum exploration and mining