



COVERSHEET

Minister	Hon Dr Megan Woods	Portfolio	Minister of Energy and Resources
Title of Cabinet paper	Crown Minerals Act 1991 Review Tranche Two – Terms of Reference	Date to be published	12 August 2019

List of documents that have been proactively released

Date	Title	Author
26 June 2019	<i>Crown Minerals Act 1991 Review Tranche Two – Terms of Reference</i>	<i>Office of the Minister of Energy and Resources</i>
1 July 2019	<i>DEV-19-MIN-0120</i>	<i>Cabinet Office – Cabinet Economic Development Committee</i>

Information redacted

YES / NO (please select)

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Some information has been withheld for the following reasons:

- Free and frank opinions
- Negotiations.

IN-CONFIDENCE

Office of the Minister of Energy and Resources

Chair, Cabinet Economic Development Committee

Crown Minerals Act 1991 Review Tranche Two – Terms of Reference

Proposal

1. This paper seeks agreement to the Terms of Reference (ToR) for Tranche Two of the Crown Minerals Act 1991 Review.

Executive Summary

2. Tranche Two of the Crown Minerals Act 1991 (the CMA) review is the second stage of a two-stage legislative review. Tranche Two is intended as a wide ranging review that will consider factors that will impact the CMA, both now and into the future. It also provides an opportunity for public consultation.
3. This paper seeks agreement to the ToR attached in Annex One. The ToR addresses the principles, objectives and outcomes that will govern Tranche Two, as well as the in scope and out of scope issues. A summary of the ToR is provided below:
4. Issues proposed to be in-scope of Tranche Two:
 - Fundamental role of the CMA and the purpose statement;
 - Land access arrangements;
 - Non-interference provisions;
 - Liability and financial assurance;
 - Compliance tools;
 - Iwi engagement and community participation;
 - Petroleum permitting; and
 - Technical amendments.
5. Issues proposed as outside the scope of Tranche Two:
 - The Crown's ownership of existing Crown-owned minerals and petroleum;
 - The Crown's right to collect and use royalties;
 - Changes made as a result of the Crown Minerals (Petroleum) Amendment Act 2018; and
 - Removal of the Crown's ability to allocate new petroleum permits within onshore Taranaki.
6. The following objectives are proposed for Tranche Two (associated measures and outcomes are also available in Annex One):
 - New Zealand's petroleum and minerals resources sector should contribute to the country's productive, sustainable and inclusive economy.
 - Risks and downsides associated with the sector need to be appropriately managed.

- The sector needs to be governed by a regulatory regime that is clear, coherent and fair.
7. The following principles are proposed to govern Tranche Two:
- Support New Zealand's wellbeing;
 - Fairness;
 - Future-proofing; and
 - Responsible regulation.

Background

8. Tranche Two of the Crown Minerals Act 1991 review is the second stage of a two-stage legislative review. This review was agreed by Cabinet on 2 July 2018 [CAB-18-MIN-0306.01 refers], and was commenced following the Government's announcement on 12 April 2018 to limit the area available for future petroleum exploration permits to onshore Taranaki.

Tranche One

9. Tranche One of the review ran from 2 July 2018 until late 2018. The scope of Tranche One was limited to changes necessary to give effect to the new offshore petroleum exploration policy, and allow onshore block offers to run successfully until 2020. The necessary changes were made via the Crown Minerals (Petroleum) Amendment Act 2018.
10. Cabinet agreed that the high-level outcome of the Tranche One legislative changes was to "initiate a long-term transition away from petroleum exploration and production, in line with New Zealand's international commitments to transition to a low-carbon economy" [CAB-18-MIN-0417 refers].

Tranche Two

11. Unlike Tranche One which was limited in scope, Tranche Two is intended to be a wider review of the CMA. It will consider the key factors that will impact the CMA both now and into the future. It also provides for public consultation.
12. The Ministry of Business, Innovation and Employment (MBIE) has been progressing the Tranche Two review of the CMA since late 2018. MBIE has also been developing a Petroleum and Minerals Resource Strategy. This Strategy runs parallel to the CMA Review, and it will underpin the CMA Review with a broader strategy focused on the Government's long-term vision for the sector.

Proposed Terms of Reference for Tranche Two of the Review

13. I seek Cabinet's agreement to the proposed ToR attached in Annex One. The proposed ToR captures the main issues Tranche Two needs to address to ensure that the CMA is fit for purpose both now and for the foreseeable future. The key issues are laid out below.

What is proposed to be in scope of the Tranche Two review?

14. Tranche Two is intended to consider issues with the current legislative regime. Accordingly, I propose the following non-exhaustive list of issues to be included in the ToR:

15. **Fundamental role of the CMA and the purpose statement** - The CMA focuses primarily on economic considerations in terms of the allocation of permits and the purpose statement. Section 1A of the CMA currently reads: “To promote prospecting for, exploration for and mining of Crown-owned minerals for the benefit of New Zealand...” The use of the term ‘promote’ and the interpretation of ‘for the benefit of New Zealand’ may have to be addressed in light of changing government priorities.
16. I intend to consider whether the CMA should incorporate other broader wellbeing considerations while taking care not to duplicate functions provided by other regimes such as the Resource Management Act 1991.
17. Note that reviewing the fundamental role of the CMA presents risks to the overall timeline, however, this risk will depend on the scale of the options considered including:
- (smaller scale) a change in the word “promote” in the purpose statement only; or
 - (larger scale) a change in the word “promote” in the purpose statement alongside changes to the allocation criteria of permits to include environmental considerations for example.
18. **Land access arrangements** – Land access arrangements will be reviewed, in light of the overall objectives and outcomes of the review. Options resulting from the ‘No New Mines On Conservation Land’ policy work stream will also be addressed by Tranche Two.
19. **Non-interference provisions** – Provisions were introduced into the CMA in 2013 to prevent interference with vessels undertaking activities under an offshore CMA permit. I intend to evaluate whether the current provisions unnecessarily restrict free protest, and whether the CMA is the most appropriate Act for these provisions.
20. **Liability and financial assurance** – There is some concern that the CMA currently fails to appropriately identify and manage the risks of financial default:
- *Decommissioning* – Decommissioning is the removal of end-of-life infrastructure used in the production of oil and gas. The risk of non-compliance with decommissioning requirements is a concern because several petroleum fields in New Zealand are nearing their operational end-of-life. While the CMA is silent on decommissioning (the process itself is managed under other legislation for example the Resource Management Act 1991 and the Health and Safety at Work Act 2015), decommissioning is a condition placed on all permit holders, and the review could consider ways to protect the Crown against non-compliance (e.g. ways to identify risk of future non-compliance and ways to manage that risk with assurance products).
 - *Liability for current and future wells* – Permit holders who fail to appropriately abandon petroleum wells expose the Crown and third parties to health, safety, and environmental costs or risks. Currently, the Crown cannot compel permit holders to plug abandoned wells, nor is there any statutory timeline for plugging and abandoning wells. The CMA could be strengthened to protect third parties

and the Crown from risks arising from poor abandonment of wells, (e.g. through the inclusion of a financial assurance mechanism).

21. **Compliance** – The current compliance and enforcement tools in the CMA provide limited options for identifying and addressing non-compliance. Options to address this are being considered, alongside other compliance issues in Tranche Two.
22. **Iwi engagement and community participation** – There are a range of issues iwi have raised with the Crown which the review could address, including: the lack of assessment criteria in the CMA relating to the ability of permit applicants to engage with iwi; a concern regarding how iwi rights are considered by CMA decision makers; and whether the CMA could further protect wāhi tapu, or sacred and culturally significant sites
23. **Petroleum permitting** –Tranche Two could consider issues to ensure the CMA is still delivering competitive and efficient outcomes through its permit allocation and management methods. For example, we could consider onshore Taranaki petroleum permit allocation methods post 2020. The allocation of new exploration permits in the onshore Taranaki area is currently restricted to the Block Offer process. We could consider whether alternative allocation methods for onshore Taranaki are more appropriate to deliver on the Government's desired outcomes.
24. **Technical amendments** – I have identified a range of minor changes that could be made to the regime to improve its clarity, efficiency and coherency. For example:

Free and frank opinions

- d. ensuring there is consistency between sections 29A (granting a permit) and 41C (change of operator) regarding the provision that the Minister must be satisfied that the proposed permit operator has, or is likely to have, the capability and systems to meet the necessary health, safety and environmental requirements;

Free and frank opinions

What is proposed to be outside the scope of the Review?

25. I propose the following issues should be outside the scope of the Tranche Two Review:
26. **The Crown's ownership of existing Crown-owned minerals and petroleum** - Given the size of Tranche Two, it would be unworkable to consider whether the

ownership of existing Crown-owned minerals and petroleum should be changed given how fundamental this is to the functioning of the CMA;

27. **The Crown’s right to collect and use royalties** – the Crown is in the best position to manage the development of its mineral resources and associated revenue in a way that ensures that they benefit all New Zealanders, in the long term. Accordingly, the Review will not consider any changes to the Crown’s right to collect royalty payments from Crown-owned petroleum and minerals and the right to use such funds in any way the Crown sees fit, on behalf of New Zealanders.
28. **Changes made as a result of the Crown Minerals (Petroleum) Amendment Act 2018.** - Tranche One of the Review limited new petroleum exploration to onshore Taranaki. Under the CMA, new permit allocation can, but is not required to, continue beyond 2020. Tranche One also included provisions to prohibit surface access to conservation land (except for minimum impact activities) for new petroleum permits, and protected existing rights and privileges for existing permit and licence holders. I propose that any further changes to these issues should be out of scope of Tranche Two.
29. **The Crown’s ability to allocate new petroleum permits within onshore Taranaki** – decisions regarding whether to continue allocating new petroleum permits will be for future governments to decide.

Proposed Principles, Objectives and Outcomes

30. The principles, objectives and outcomes proposed for inclusion in the ToR can be found below. Note that they will only apply to Tranche Two, not the sector as a whole. Note the forthcoming Petroleum and Minerals Resource Strategy may articulate principles, objectives and outcomes for wider application across the petroleum and minerals sector.

Objective	Outcomes
<p>1. New Zealand’s petroleum and minerals resources sector should contribute to the country’s productive, sustainable and inclusive economy.</p> <p><i>This should be done by:</i></p> <p>a. <i>growing and sharing New Zealand’s prosperity, and supporting thriving regions;</i></p> <p>b. <i>supporting the transition to a clean, green New Zealand; and</i></p> <p>c. <i>providing a secure and affordable supply of critical resources.</i></p>	<ul style="list-style-type: none"> - Crown-owned minerals are for the benefit of all New Zealanders; - The Crown will keep Māori informed, listen and acknowledge concerns and aspirations, and provide feedback on how their input influences decisions about the sector; - A sector that is contributing to the transition to a clean, green, carbon-neutral New Zealand - The management of the sector supports the realisation of the Government’s wider priorities (including affordable energy, housing, urban development and roading infrastructure).

<p>2. Risks and downsides associated with the sector need to be appropriately managed.</p> <p><i>Risks and downsides may include:</i></p> <p>a. <i>Harm to people and the environment; and</i></p> <p>b. <i>Financial loss to the Crown, businesses, individuals and third parties.</i></p>	<ul style="list-style-type: none"> - The likelihood of costs falling to the Crown or other third parties, when they are not liable or responsible, is minimised; and - Liabilities are clear and agreed upfront.
<p>3. The sector needs to be governed by a regulatory regime that is clear, coherent and fair.</p>	<ul style="list-style-type: none"> - The CMA regime aligns with the Government Expectations for Good Regulatory Practice; - The requirements of the regime are clear, fair and efficient for industry, the regulator and other affected parties; and - Compliance and enforcement tools are fit-for-purpose.

The following four principles are proposed to guide Tranche Two:

- Support New Zealand’s wellbeing – The Review will focus on making changes that benefit the long term well-being of New Zealanders
- Fairness – The Review will seek to ensure that legislative settings are fair for all affected parties. Fair legislative settings may affect the allocation of benefits, opportunities and risks associated with the sector;
- Future-proofing – The Review will seek to ensure that the legislative regime is able to accommodate new regulatory challenges as they arise; and
- Responsible regulation – The Review will seek to ensure that the CMA regime is clear, predictable and coherent.

Timeline and Next Steps

31. I intend to take a discussion document to Cabinet in early October ahead of releasing it publicly for consultation. ^{Negotiations}

In January 2020 I intend to report back to Cabinet with final findings of the Review and seek agreement to appropriate amendments to the CMA.

Consultation

32. The Department of Conservation, Ministry for the Environment, Office for Maori Crown Relations - Te Arawhiti, Ministry of Transport, Ministry for Primary Industries, and the Treasury have been consulted. The Department of Prime Minister and Cabinet have been informed.

Financial Implications

33. There are no immediate financial implications as a result of this paper. The costs of undertaking this Review will be met from within MBIE's baseline. There may be financial impacts as a result of amendments recommended by the Review – analysis of these impacts will be provided when I report back to Cabinet in January 2020.

Legislative Implications

34. There are no immediate legislative implications as a result of this paper. I will report to Cabinet in January 2020 with proposed amendments to the CMA following public consultation.

Impact Analysis

35. This paper does not seek final policy decisions; accordingly a Regulatory Impact Statement has not been prepared. A Statement will be prepared ahead of my report back to Cabinet in January 2020 with final options.

Human Rights

36. The proposals in this paper are not inconsistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Gender Implications

37. There are no gender implications in this paper.

Disability Perspective

38. There are no disability implications in this paper.

Publicity

39. I propose to publish the finalised ToR agreed by Cabinet.

Proactive Release

40. I intend to proactively release this paper within 30 days of Cabinet making a final decision.

Recommendations

The Minister for Energy and Resources recommends that the Committee:

1. **Note** that Cabinet agreed to undertake a two stage review of the Crown Minerals Act 1991 (CAB-18-MIN-0306.01 refers);
2. **Agree** to the Terms of Reference proposed for Tranche Two of the Crown Minerals Act 1991 review, as attached in Annex One;

3. **Note** that the following issues are proposed to be in scope of the Tranche Two review:
- a) The fundamental role of the CMA and the purpose statement;
 - b) Land access arrangements;
 - c) Non-interference provisions;
 - d) Liability and financial assurance;
 - e) Compliance tools;
 - f) Iwi engagement and community participation;
 - g) Petroleum permitting; and
 - h) Technical amendments.
4. **Note** that a review involving the fundamental role of the CMA present risks to the overall timeline, however, this risk will depend on the scale of the options considered including:
- a) (smaller scale) a change in the word “promote” in the purpose statement only
 - b) (larger scale) a change in the word “promote” in the purpose statement alongside a change to the allocation criteria for permits include environmental considerations for example.
5. **Note** that the following issues are proposed to be outside the scope of the Tranche Two review:
- a) The Crown’s ownership of existing Crown-owned minerals and petroleum;
 - b) The Crown’s right to collect and use royalties;
 - c) Changes made as a result of the Crown Minerals (Petroleum) Amendment Act 2018; and
 - d) The Crown’s ability to allocate new petroleum permits within onshore Taranaki.
6. **Note** that the following objectives are proposed to guide the Tranche Two review:
- a) New Zealand’s petroleum and minerals resources sector should contribute to the country’s productive, sustainable and inclusive economy.
 - b) Risks and downsides associated with the sector need to be appropriately managed.
 - c) The sector needs to be governed by a regulatory regime that is clear, coherent and fair.
7. **Note** that the following principles are proposed to guide the Tranche Two review:
- a) Support New Zealand’s wellbeing;
 - b) Fairness;
 - c) Future-proofing; and
 - d) Responsible regulation.
8. **Agree** to publish the Terms of Reference agreed in recommendation 2;

9. **Note** that the Minister of Energy and Resources will report back to the Cabinet Economic Development Committee in October 2019 with a discussion document ahead of public release;

Negotiations

10. [REDACTED]
11. **Note** that the Minister of Energy and Resources will report back to the Cabinet Economic Development Committee in January 2020 with final options responding to findings of the Crown minerals Act 1991 Tranche Two review.

Authorised for lodgement

Hon Dr Megan Woods

Minister of Energy and Resources

PROACTIVELY RELEASED

Annex One: Terms of Reference – Tranche Two of the Crown Minerals Act 1991 Review

Context

The Crown Minerals Act 1991 (CMA) plays a primary role in the management of Crown-owned mineral resources in New Zealand. It is part of a wider legislative framework which supports, manages and regulates New Zealand's resources sector.

On 12 April 2018, the Government announced that there would be no new offshore oil and gas exploration permits. Tranche One of the CMA review followed this announcement which considered the issues necessary to implement the announcement. The Tranche Two review will consider wider issues under the CMA and will help ensure that the regime is fit for purpose, both now, and for the foreseeable future.

Scope

Tranche Two of the CMA review will canvas the issues currently affecting the CMA. It will address both regulatory and operational aspects of the Act. It will consider the changes required to ensure that the CMA continues to fulfil its functions as part of the wider legislative framework, in a way that is fit-for-purpose in the current context and consistent with Government priorities. In addition, it will seek to address areas where the legislative system could be improved to better manage risk and downsides associated with the sector, and to provide further clarity and efficiency. Amendments may also extend to historical licences under the Petroleum Act 1937 to ensure older installations are covered by CMA changes, where appropriate.

The following components will be explicitly addressed by the review:

- The fundamental role of the CMA and purpose statement;
- Land access arrangements;
- Non-interference provisions;
- Liability and financial assurance;
- Compliance tools;
- Iwi engagement and community participation;
- Petroleum permitting; and
- Technical amendments.

Out of scope

The following issues are deemed **outside the scope** of this review:

- The Crown's ownership of existing Crown-owned minerals and petroleum.
- The Crown's right to collect royalty payments from Crown-owned petroleum and minerals, and to use royalty revenue in any way the Crown sees fit on behalf of New Zealanders.
- Changes made as a result of the Crown Minerals (Petroleum) Amendment Act 2018.
- The Crown's ability to allocate new petroleum permits within onshore Taranaki.

Objectives and outcomes

The Review will work towards three objectives, and will seek to achieve the following outcomes:

Objective	Outcomes
<p>1. New Zealand’s petroleum and minerals resources sector should contribute to the country’s productive, sustainable and inclusive economy.</p> <p><i>This should be done by:</i></p> <p>d. <i>growing and sharing New Zealand’s prosperity, and supporting thriving regions;</i></p> <p>e. <i>supporting the transition to a clean, green New Zealand; and</i></p> <p>f. <i>providing a secure and affordable supply of critical resources.</i></p>	<ul style="list-style-type: none"> - Crown-owned minerals are for the benefit of all New Zealanders; - The Crown will keep Māori informed, listen and acknowledge concerns and aspirations, and provide feedback on how their input influences decisions about the sector; - A sector that is contributing to the transition to a clean, green, carbon-neutral New Zealand - The management of the sector supports the realisation of the Government’s wider priorities (including affordable energy, housing, urban development and roading infrastructure).
<p>2. Risks and downsides associated with the sector need to be appropriately managed.</p> <p><i>Risks and downsides may include:</i></p> <p>c. <i>Harm to people and the environment; and</i></p> <p>d. <i>Financial loss to the Crown, businesses, individuals and third parties.</i></p>	<ul style="list-style-type: none"> - The likelihood of costs falling to the Crown or other third parties, when they are not liable or responsible, is minimised; and - Liabilities are clear and agreed upfront.
<p>3. The sector needs to be governed by a regulatory regime that is clear, coherent and fair.</p>	<ul style="list-style-type: none"> - The CMA regime aligns with the Government Expectations for Good Regulatory Practice; - The requirements of the regime are clear, fair and efficient for industry, the regulator and other affected parties; and - Compliance and enforcement tools are fit-for-purpose.

Principles

The following four principles define the direction and fundamental values that underpin the Review. They form a framework that will be used to guide decisions made under the Review.

- **Support New Zealand’s wellbeing** – The Review will focus on making changes that benefit the long term well-being of New Zealanders;
- **Fairness** – The Review will seek to ensure that legislative settings are fair for all affected parties. Fair legislative settings may affect the allocation of benefits, opportunities and risks associated with the sector;
- **Future-proofing** – The Review will seek to ensure that the legislative regime is able to accommodate new regulatory challenges as they arise; and
- **Responsible regulation** – The Review will seek to ensure that the CMA regime is clear, predictable and coherent.

Consultation

The Review process will provide opportunities for input. Iwi partners will be engaged and consultation will allow industry and the public to provide feedback on potential changes.

Timeframe

The key dates for the Review are noted below:

Date	Action
Early October 2019	CMA Tranche Two discussion document is released to the public.
Negotiations	
December-January 2020	Submissions are analysed and findings are presented to Cabinet.
Feb-April 2020	Bill reflecting findings of the Review is drafted.
May-Aug 2020	Select Committee Process.
September 2020	Bill receives Royal Assent.