



BRIEFING

Implementing the recommendations of the Murdoch Report

Date:	23 July 2019	Priority:	High
Security classification:	In Confidence	Tracking number:	0157 19-20

Action sought		
	Action sought	Deadline
Hon Megan Woods Minister of Energy and Resources	<p>Note that an external review into the way MBIE plans and operationalises its responsibilities under the non-interference provisions of the Crown Minerals Act has been completed</p> <p>Note that the final report (the Murdoch Report) has been received, and work is underway to implement its recommendations by December 2019</p> <p>Note the Murdoch Report is intended for release on Thursday 8 August</p> <p>Discuss with officials your preference for your ongoing role in plans to implement the Murdoch Report's recommendations, if any</p>	29 July 2019

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Phillippa Fox	General Manager, Energy and Resource Markets	04 474 2612	Privacy of natural persons	✓
Amy Moorhead	Director Group Operations, Building Resources and Markets	04 901 9884		

The following departments/agencies have been consulted
N/A

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



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Purpose

The purpose of this briefing is to:

- inform you of the recommendations made in Simon Murdoch's final report, following the external review into *How the Non-Interference Provisions of the Crown Minerals Act are Effected*
- advise you of the steps MBIE will take to implement the recommendations made in Murdoch Report, and over what timeframe
- advise you of the date that MBIE proposes Murdoch Report be released, and key elements of the plan that is in place to support the release
- seek an opportunity to discuss your preference for your ongoing role in plans to implement the Murdoch Report's recommendations, if any.

Executive summary

An external review into *How the Non-Interference Provisions of the Crown Minerals Act are Effected*, led by Simon Murdoch, has recently been completed.

The review was commissioned by MBIE Chief Executive Carolyn Tremain, after the State Services Commission's (SSC) inquiry into the use of external security consultants found that MBIE's management of its petroleum and minerals regulatory responsibilities contributed to a perception of bias and was evidence of poor regulatory practice.

Mr Murdoch's final report ("the Murdoch Report") is attached to this briefing.

Overall, the Murdoch Report indicates that the *National Plan to Implement the Non-Interference Provisions of the Crown Minerals Act 1991* ("the National Plan") has performed satisfactorily and was fit for purpose in the circumstances it has encountered to date. However, there are opportunities to address both the major issue identified by the SSC inquiry and other weaknesses in design identified by the external review. These can be grouped in three areas:

- The way in which risk is set, assessed and calibrated. The Murdoch Report recommends that the regime's risk framework be reviewed, particularly in light of recent developments within the national security system in how maritime risk is conceptualised and organised. This includes a focus on developing a social licence approach to risk management.
- The governance framework. The Murdoch Report recommends a clearer framework be outlined in the National Plan, which clearly allocates roles and responsibilities at each level.
- The knowledge and information gathering function. The Murdoch Report recommends this function be reviewed, with an overall focus on ensuring that knowledge and information gathering is operating properly and lawfully and that appropriate oversight and expectations about professional conduct are in place.

MBIE accepts and will implement all the recommendations of the Murdoch Report. A comprehensive plan is in place to have the majority of the work completed by December 2019, in time for the 2019/20 exploration season.

MBIE plans to publicly release the Murdoch Report on Thursday 8 August. We propose to release embargoed copies of the report to select non-government and industry stakeholders prior to release. Ms Tremain has agreed to an interview on Radio New Zealand's Checkpoint, and will accept requests from other media outlets if they are made.

MBIE would like to discuss with you the way in which you might like to be involved in the upcoming work programme.

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

- a **Note** that, following the State Services Commission (SSC) inquiry into the use of external security consultants by government agencies, MBIE commissioned a separate inquiry into the way in which MBIE plans and operationalises its responsibilities under the non-interference provisions of the Crown Minerals Act
Noted
- b **Note** that Simon Murdoch, who was appointed to undertake the review, has delivered his final report ("the Murdoch Report")
Noted
- c **Note** the Murdoch Report finds that the National Plan that sets out how the non-interference provisions are operationalised is largely fit for purpose, with the exception of the one major issue exposed in the SSC inquiry and other weaknesses or shortcomings of design
Noted
- d **Note** that the main weaknesses identified relate to the way risk is managed, the regime's governance arrangements and the knowledge and information function; and the recommendations focus on how these areas could be strengthened
Noted
- e **Note** that work will occur to implement the Murdoch Report's recommendations between now and June 2020, with the majority of work completed by December 2019, in time for the 2019/20 exploration season
Noted
- f **Note** that MBIE plans to release Murdoch Report on Thursday 8 August, and recommends that Chief Executive Carolyn Tremain be the spokesperson
Noted
- g **Note** that Simon Murdoch is available to discuss the report and its recommendations with you, if required
Noted
- h **Discuss** with officials how you would like to be involved following the release of the Murdoch Report
- i **Forward a copy of this briefing** to your colleagues the Minister of Transport/for Economic Development, the Minister of Police, the Minister of Customs and the Minister of Defence for their information

j **Advise** whether you would like to forward this briefing to other parties



Phillippa Fox
**General Manager, Energy and Resource
Markets**
Building, Resources and Markets, MBIE

..... / /

Hon Megan Woods
Minister of Energy and Resources

..... / /

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Background

1. In March 2018 the State Services Commission (SSC) commissioned an inquiry into the use of external security consultants by government agencies. The findings of the inquiry were released in December 2018.
2. Although the inquiry found no evidence of widespread inappropriate surveillance by external security consultants on behalf of government agencies, it did find that the system was not operating in a way that New Zealanders would expect.
3. Among its agency-specific findings, the inquiry found that MBIE's management of its regulatory responsibilities in the petroleum and minerals area contributed to a perception of bias by some stakeholders, and was evidence of poor regulatory practice.
4. As part of MBIE's response, Chief Executive Carolyn Tremain commissioned an external review into the way in which MBIE plans and operationalises its responsibilities in relation to the non-interference provisions of the Crown Minerals Act.
5. Simon Murdoch was appointed in March 2019 to conduct the external review.
6. The review was set up to be forward-looking, and focussed on recommending how MBIE should reset the regime for the future. The terms of reference asked Mr Murdoch to review how the non-interference provisions set out in section 101B of the Crown Minerals Act are effected, including the appropriate roles of various agencies for the enforcement of those provisions. In particular, the terms of reference asked for recommendations on:
 - a. an approach as to how MBIE and other agencies might utilise the non-interference provisions and, if necessary and relevant, support their enforcement so that:
 - i. the provisions of the Crown Minerals Act are properly given effect; and
 - ii. State Sector entities operate in a manner that is consistent with good regulatory practice, including the guidelines released by the State Services Commission on Information Gathering and Public Trust;
 - b. an appropriate governance arrangement (including membership) for overseeing the work of MBIE and other agencies related to operationalising and enforcing the non-interference provisions.
7. Mr Murdoch has completed the review, and has provided Ms Tremain with his final report ("the Murdoch Report"). MBIE has started work to fully implement the recommendations.
8. MBIE proposes to publicly release the Murdoch Report on Thursday 8 August 2019 and has prepared a plan that will support us to do so. MBIE recommends Ms Tremain be the spokesperson for questions relating to the findings of the Murdoch Report following its release.

The Murdoch Report, its themes and recommendations

9. Murdoch Report is divided into five main sections, as follows.
 - a. An outline is provided that covers the reviewer's approach and methodology and an overview of the context in which the review has occurred.
 - b. The development and early performance of "Operation Exploration"¹ (2013-2014).

¹ Operation Exploration was the name given to the activities undertaken by agencies to address interference risks to the on-water activities of permitted exploration companies under the Crown Minerals Act 1991.

This section examines the activities that occurred to prepare for the 2013/14 exploration season, immediately following the non-interference provisions of the Crown Minerals Act having come into effect. This involved the establishment of Operation Exploration, through the design of a response regime and the development of a response plan (the National Plan to Implement the Non-Interference Provisions of the Crown Minerals Act 1991, "the National Plan") that would be overseen through a new governance structure.

- c. Implementation of the National Plan and the Operation Exploration regime (2015-2018).

This section explores the way in which the National Plan and response regime were embedded as business-as-usual and how various agencies and groupings undertook their roles and responsibilities.

- d. Information gathering and management by Minerals Exploration Joint Intelligence Group (MEJIG) for Operation Exploration.

This section outlines the purpose of joint intelligence groups more generally, the development of SSC's model standards for information gathering and how an appropriate knowledge management function might be developed to support the response regime in the future.

- e. Summary of recommendations (see Appendix One for a full outline).

This section outlines the recommendations made throughout the main body of the report.

Four recommendations are made in respect of governance arrangements, and an enhanced governance framework is proposed.

Four recommendations are made in respect of the National Plan. In particular, it is recommended that a refined risk management framework be adopted and embedded in the plan, and that the "social licence"² section of the plan be reviewed.

Five recommendations are made in respect of knowledge management, in order to better define it as a function under the National Plan and to put in place appropriate oversight and expectations about professional conduct.

- 10. The overall view of the Murdoch Report is that the National Plan itself has performed satisfactorily and was fit for purpose in the circumstances that it has encountered to date. There are a number of areas the Murdoch Report highlights as having been well done, in particular the Readiness and Recovery aspects of the plan. The Response function, led by Police, was also highlighted as an area that was supported by a high level of underlying institutional knowledge and well-developed and practised response arrangements.
- 11. The positive aspects are counterbalanced by the one major issue exposed in the SSC inquiry and several other weaknesses or revealed shortcomings of design of the regime. The Murdoch Report focuses on these weaknesses and makes recommendations to correct them.
- 12. The main themes of the Murdoch Report are as follows.

² Social licence, in the context of the National Plan, refers to active communication and engagement with local communities and other stakeholders who are directly or indirectly interested in or affected by the (exploration) activity, to reduce risk and maintain a "social licence to operate".

Overall risk settings were precautionary, which set the tone for the regime and plan

13. The Murdoch Report makes a number of observations about the context in which the response regime and the National Plan were created and the inherently complex nature of the response activities envisaged. Risk is a key theme.
14. The risks that needed to be managed by the response regime (to the environment, to the safety of operators and those who might seek to interfere with exploration, and to the economic and commercial interests of New Zealand and operators) were not insignificant. Combined with the fact that they were also occurring at sea meant it was difficult to assess and calibrate risk levels in a way that would produce a proportionate response.
15. This led to an overly-cautious approach to risk at the beginning, which set the tone for the way in which the response regime was designed and the National Plan set. It was assumed that all water-based protest had serious impacts on national security, and mitigation plans were set accordingly. This meant the risk mitigations put in place were themselves overly-cautious, such as the monitoring of potential "risk actors" to enable the preparation of scenario and operational plans.
16. This overall sense of precaution remained as the regime and National Plan was operationalised and embedded as business-as-usual, and continued to influence the way in which the regime worked. The fact that the non-interference provisions became a motivator for some organised protest entities led to a prevailing concern that protests against large, non-stationary vessels with limited evasive manoeuvrability could create risks with significant economic and environmental impacts (i.e. an incident with major environmental and fiscal impacts, such as the Rena grounding).
17. The Murdoch Report observes that the context now is much different. Most notably, there has been significant progress within the national security system in how maritime risk management is conceptualised and organised. In working to correct issues with the design of the regime and the plan, MBIE has the opportunity to leverage off more mature thinking and practical response experience.
18. In addition, the Murdoch Report highlights that a social licence approach to risk management is perhaps more appropriate as a way to address the risks present in the New Zealand context. This will be a key, ongoing focus of MBIE's work to implement the report's recommendations.

Governance roles and responsibilities were unclear, and the framework was rarely engaged

19. The Murdoch Report notes that the response regime needed to operate by organised collaboration. A number of agencies, groups and committees were involved.
 - a. Five agencies (MBIE, Police, Customs, Maritime NZ and Defence) had roles or functions in the planning and/or operational aspects of the response regime.
 - b. MBIE and Police had specific responsibilities for leading specific aspects of the response regime, with MBIE retaining an overall lead role for the response regime itself.
 - c. An interagency Steering Group and Operational Planning Group were set up to design the regime and had governance responsibilities under the National Plan.
 - d. There were also other groupings that had involvement, such as ODESC (from an overarching national security perspective) and the Maritime Security Oversight Committee (MSOC; who have a mandate for maritime strategic risk management within the overarching national security system).

20. The main issue identified in the Murdoch Report is that, although the National Plan specified governance responsibilities (commonly referred to as overwatch and oversight roles, to MSOC and the Steering Group respectively), there was not much specification of what either should do or how they should interact with each other.
21. The Murdoch Report also considers internal roles and responsibilities. It notes that statutory powers under the regime were delegated to third and fifth tiers within MBIE and, while this is not necessarily a good or bad thing in an agency the size of MBIE, it did mean that senior participation in the Steering group was affected. The Murdoch Report suggests that this, combined with no active participation by MSOC, meant that regime oversight was not exercised at the level required by some of its inherent complexities.
22. As such, the main recommendation made by the Murdoch Report in respect of governance arrangements is that the National Plan more clearly specify the governance framework for the regime, including clearer allocation of roles and responsibilities at each level.

Knowledge and information gathering are necessary for the regime to operate, but changes are required to bring the function in line with new model standards

23. The Murdoch Report notes that joint intelligence groups are a standard feature of national law enforcement and national security architecture.
24. The Minerals Exploration Joint Intelligence Group (MEJIG) was employed as part of the response regime to ensure that information and knowledge gathered from a variety of sources could be aggregated to form a coherent, common picture from which a potential response could be built. It was the degree to which security consultants were involved with MEJIG that has been most faulted.
25. The Murdoch Report does not further traverse the ground covered by the SSC inquiry in respect of the way in which information gathering was conducted as part of the response regime.
26. It does, however, consider that the response regime needs a knowledge and information function, and that such a function is required because it enables effective risk management. As such, the Murdoch Report highlights that giving effect to SSC's new *Model standards for information gathering associated with regulatory compliance* will be an important consideration for MBIE in its role in the response regime.
27. The Murdoch Report goes into some detail about how a knowledge and information function might be developed and what processes and protocols might be put in place to provide overall assurance that such a function is operating properly and lawfully.
28. It is recommended the National Plan be amended to more formally set out the knowledge and information function, including the allocation of specific roles at various levels of the governance model for supervising its delivery.
29. MBIE has already undertaken considerable work to put in place organisational policies and procedures that embed the expectations outlined in SSC's model standards across its various regulatory functions. Further work will be required to put in place policies and procedures specific to the response regime via the National Plan.

Implementing the report's recommendations

30. MBIE accepts and will implement all the recommendations made by Mr Murdoch in his report.
31. A formal project structure has been established to deliver the work required to implement the recommendations. This will occur across three phases and cover eight workstreams. MBIE

is aiming to deliver the majority of the work by December 2019 in time for the 2019/20 exploration season.

32. MBIE's plans are summarised as follows.

Phase	Workstreams
<p>Phase one: Project initiation (Jul-Aug 2019)</p> <p>Define and establish project governance structure, resources, scope and outcomes</p> <p>Produce detailed delivery plan</p>	<p>1. Establish Project Governance, Steering Group and Delivery</p> <p>2. Establish Project Communications Plan</p> <p>3. Project Planning and Initiation</p>
<p>Phase two: Project Delivery (Aug 2019 - Feb 2020)</p> <p>Implement report recommendations</p> <p>Test operational "proof of concept"</p>	<p>4. Governance Framework <i>To implement recommendations 1-4</i></p> <p>5. Risk Management <i>To implement recommendations 5, 6, 11</i></p> <p>6. Knowledge and Information Management implement <i>To implement recommendations 9, 10, 12, 13</i></p> <p>7. National Plan Review and Enhancement <i>To implement recommendations 7 and 8</i></p> <p>8. Regime Enhancement – Proof of Concept <i>Test enhancements during upcoming exploration season</i></p>
<p>Phase three: Transition to BAU (Jan-Jun 2020)</p> <p>Ensure all relevant enhancements and changes are implemented into BAU documents, processes and policies</p>	

33. MBIE plans to publicly release the Murdoch Report on Thursday 8 August. A plan has been prepared to support the release. The key components are as follows.

- a. A letter will be sent to State Services Commissioner Peter Hughes, confirming the review has been completed and the actions that MBIE plans to take in respect of its recommendations.
- b. The release pack will be provided to your office 2-3 days prior to release, on a no surprises basis.
- c. A copy of the report and an invitation to meet with Mr Murdoch will be provided to the Office of the Privacy Commissioner, the day prior to release.
- d. An embargoed copy of the Murdoch Report and MBIE's media release will be provided to Radio New Zealand (an agreement was made to do this following the release of SSC's inquiry) and select non-government and industry organisations with an interest in the review and its outcomes, on the morning of the day of release.
- e. MBIE Chief Executive Carolyn Tremain will interview on Radio New Zealand's Checkpoint on the evening of the day of release; and will be available for interviews with other outlets as requested.

34. Simon Murdoch has indicated that he is available to discuss the report and its recommendations in more detail. MBIE can arrange for him to meet with you if you would like.
35. The release of the report and its recommendations may generate interest – in particular among non-government organisations (e.g. Greenpeace) and industry organisations (e.g. PEPANZ).
36. MBIE is keen to engage on the report and the work that we will be doing over the coming months to implement the recommendations. In particular, we have identified that a reset of the relationship and continued engagement with all our stakeholders is required in order to review the social licence section of the National Plan and embed it as a central aspect of the response regime's risk management approach.
37. The majority of recommendations in the Murdoch Report are relatively operational and straightforward to implement. MBIE would welcome the opportunity to discuss with you what you would like your role to be, if any.

Next steps

38. MBIE is available to discuss this briefing at our scheduled weekly meeting with you on Monday 29 July.

Annexes

Annex One: Full recommendations

Annex Two: Independent Review; How the Non-Interference Provisions of the Crown Minerals Act are effected

Annex One: Full recommendations

(a) GOVERNANCE

- 1 National Plan governance, meaning system overwatch, should remain with the Maritime Security Oversight Committee (MSOC) as point of escalation to the Officials Domestic and External Security Committee (ODESC) system for matters arising from the oversight body and for strategic policy guidance about exploration risk management and Operation Exploration (OpEx) resourcing needs in the broader maritime national security context.
- 2 OpEx governance, meaning regime oversight, should be assigned formally to a new body comprising the two lead agency senior managers (Deputy Chief Executive of MBIE and Deputy Commissioner of Police) and, on a rotational basis, one other senior manager of an OpEx member agency with maritime safety capabilities.
- 3 Police and MBIE should conclude a formal agreement about their leadership and governance roles in OpEx and mutual performance expectations. This may require a review of the present division of lead responsibilities in the National Plan, both in terms both of risk management domains (5Rs) and regime (CIMS) functions for OpEx.
- 4 There should be a record kept of proceedings between the Steering Group and both governance entities.

(b) NATIONAL PLAN

- 5 MBIE should refine the existing (internal) OpEx risk register, and lead a process to embed it in the National Plan. A process for risk assessment and threat level setting should be specified in the National Plan and assigned to the Steering Group. This process should incorporate the step of testing proposed risk mitigation or threat reductions for proportionateness.
- 6 MBIE in its Steering Group lead role should take responsibility for maintaining the register and supervising risk mitigation. The register should become the core tool for governance, at both entity and system levels.
- 7 The "social licence" section of the National Plan should be reviewed and a wider engagement about interference risks with environmental or other civil society groups should be considered, including the possibility of negotiated protest parameters.
- 8 Any changes resulting from review and carried into the National Plan should also be captured in subsidiary OpEx and agency instructions.

(c) KNOWLEDGE MANAGEMENT

- 9 Knowledge management should be defined as a specific function in the National Plan with a descriptive framework for OpEx knowledge generation and information-sharing which incorporates key deliverables to enable fusion and key relationships.
- 10 Supervisory and oversight responsibilities should be assigned.
- 11 Risks to effective knowledge management and mitigations should be included in the new risk register.
- 12 Expectations about professional conduct should be addressed explicitly in knowledge generation and information-sharing protocols based on departmental best practice and the adaptations to codes of conduct made by MBIE, in light of the Model Standards and Police, in light of the Police internal review.
- 13 Options for the fusion of open source and other information, including treatment of indicator information about interference threat should be discussed by MBIE and Police as relating to the present role and structure of Minerals Exploration Joint Intelligence Group (MEJIG).

Annex Two: Independent Review; How the Non-Interference Provisions of the Crown Minerals Act are effected

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