

# Annex to the Supplementary Analysis Report for the Fast-track Approvals Bill: Including Crown Minerals Act 1991 Permitting Coversheet

Purpose of Document	
Decision sought/taken:	<i>Analysis produced to support an amendment to the Fast-track Approvals Bill to include some mining permit applications</i>
Advising agencies:	<i>The Ministry of Business, Innovation and Employment and Ministry for the Environment</i>
Proposing Ministers:	<i>Minister for Resources and Regional Development and the Minister Responsible for Resource Management Reform</i>
Date finalised:	<i>10 September 2024</i>
Problem Definition	
<p>Major project developers in New Zealand are required to obtain a suite of official approvals (such as permits and consents) before they can commit to delivering their projects. The Fast-track Approvals Bill (the Bill) provides a way for these approvals to be considered together.</p> <p>For mining projects involving Crown-owned minerals<sup>1</sup>, a mining permit under the Crown Minerals Act 1991 (CMA) is required before the resource can be mined. Typically, the mining permit follows on from a prospecting and/or exploration permit. While a mining permit can be obtained before or after other regulatory approvals, they are usually obtained before other regulatory approvals. Under the Bill as introduced, this is not an approval that can be sought through the fast-track process.</p> <p>The mining permit and associated work programme act as an agreement between the Crown (as the owner of the minerals) and the mining operator on how best to mine the resource to maximise the financial return to both parties. It does not provide any guarantee that other approvals (e.g. environmental consents or health and safety approvals) will be forthcoming. It is up to the permit holder to apply for all necessary approvals to operate the mine.</p> <p>It is difficult to compare mining approval regimes internationally. Some jurisdictions (including New Zealand prior to 1991) have a single licence that covers all the relevant matters (e.g. royalties, land access, health and safety, environmental requirements) while in other areas these matters are split between regulators (or can be loosely regulated). Feedback from stakeholders suggests that the process can take more than a decade in countries like Australia and the US with relatively robust regulatory requirements.</p>	

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<sup>1</sup> This includes all gold, silver and petroleum mining, plus the majority of other minerals where they are owned by the Crown, either as the land owner, or because the mineral rights have been reserved to the Crown (see section 11 of the CMA). Where minerals are privately owned, even on Crown-owned land, a mining permit under the CMA is not required but other regulatory approvals (e.g. resource consents and land access arrangements) are still required.

Excessive time taken to obtain mining permits has been raised by some industry stakeholders as leading to delays with mining projects. There are costs to the mining companies associated with these delays, which can impact their profitability (and in turn the level of royalties paid to the Crown).

There is increasing demand for critical minerals (e.g. those used to make microchips) internationally which has prompted China to restrict their export.<sup>2</sup> Given this, there may be economic and geopolitical opportunities for New Zealand if it can quickly begin production of these minerals.

Many existing mining projects in New Zealand already have their mining permit and are focused on seeking other approvals (or will be ready to do so shortly). Where this is not the case (for several existing exploration projects and any future exploration projects) there is an opportunity to bundle the subsequent mining permit with other approvals under the Fast-track Approvals Bill (the Bill) to expedite their consideration.

There are also several operators with existing privileges<sup>3</sup> to mine Crown-owned minerals, issued under previous legislation. In most cases these existing privileges cannot be extended. To continue or recommence mining, the operator will need to apply for and be granted a mining permit under the CMA (and any other necessary regulatory approvals covered by the licence like an access arrangement) prior to the licence expiry date. Consideration of mining permit applications for these applicants could also be included in the Bill.

There may be trade-offs in terms of complexity and risk management compared to the status quo to achieve this expediency. In particular, introducing mining permitting into the fast-track process will involve condensing a technically complex geological and economic assessment which can take around 6-12 months into a much shorter period (e.g. 20-50 working days). While this may be administratively possible, the quality of analysis and advice is likely to be affected if the period is too short. The expert panel may need to suspend the application process timeframes to manage these risks, which will reduce the benefits of including CMA permitting in the Bill, while adding complexity.

## Executive Summary

The Bill was introduced on 7 March 2024, as a 'one stop shop' fast-track consenting regime. The purpose of the Bill is to provide a single, fast-track decision-making process that facilitates the delivery of infrastructure and development projects with significant regional or national benefits.

The Ministry for the Environment (MfE) has published a Supplementary Analysis Report (SAR) for the Bill<sup>4</sup>. This report is an annex to that SAR and focuses on the additional impact of the proposal to include some CMA permitting decisions in the Bill. It is intended to be read with and supplement the analysis in MfE's SAR.

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<sup>2</sup> <https://asia.nikkei.com/Economy/Trade/China-tightens-export-restrictions-on-two-chipmaking-materials#:~:text=BEIJING%2FTOKYO%20%2D%2D%20China%20tightened,advanced%20semiconductor%20e%20xports%20to%20China>

<sup>3</sup> Transitional arrangements for existing mines (or exploration projects) operating under mining licences under various legacy Acts (e.g. the Coal Mining Act 1979) were put in place when the CMA was passed. The CMA defines these types of licences collectively as **existing privileges**. References to licences in this report refer to existing privileges, while references to permits refer to approvals under the CMA.

<sup>4</sup> <https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/supplementary-analysis-report-fast-track-approvals-bill/>



CMA permitting is not currently part of the fast-track approvals process. The Ministry of Business, Innovation and Employment's (MBIE) view is that the granting of mining permits under the CMA:

- requires a degree of technical assessment (e.g. geological and economic expertise specific to the mineral in question) that is not well suited to the procedural design of the Bill and standard expertise that will be needed and available for the expert panel under that process; and
- should ideally occur ahead of a fast-track process and is therefore more appropriately a factor to be considered in the Ministerial referral stage of the Bill.

Given this, MBIE's preferred approach is either to retain the status quo or to work on ways to reduce the timeframes for fast-track projects without including the approval in the Bill (e.g. an enhanced status quo).

That said, MBIE considers it is feasible to include some CMA permitting decisions in the Bill and that there is an additional efficiency gain in being able to apply for all necessary approvals at once for applicants.

MBIE acknowledges there have been delays around CMA permitting which have been frustrating for industry, and that speeding up the process from a discovery to mining will help to make New Zealand a more attractive place for mining companies to invest.

Including applications for subsequent mining permits and permits to replace existing privileges in the fast-track process could expedite the overall regulatory process and allow for suitable projects to progress more quickly. The ability of the Bill to achieve that aim will rely on high-quality applications from applicants and appropriate resourcing from MBIE to support the process while managing any project risks.

## Limitations and Constraints on Analysis

### *The Bill is subject to change*

The Bill is still under development at the time of writing this SAR, with changes expected when it was reported back from Select Committee. In general terms, MBIE has assessed the impact of the proposals against the version of the Bill as introduced but acknowledge that changes made by Ministers and the Select Committee may impact how the proposal is implemented.

### *There was limited time to develop the proposal for inclusion in the Bill*

The Government intends to pass the Bill in 2024. The proposal to include CMA permitting in the Bill was raised by some submitters to the Select Committee. To develop the proposal and draft the necessary changes within this timeframe, it was necessary to truncate the policy process. There is also unlikely to be further Select Committee consideration of these changes. This creates implementation risks as there will be less scrutiny on the drafting of the provisions, especially when introducing new approvals to a novel and complex process under the Bill.

These risks are somewhat mitigated by limiting the scope of the proposal to subsequent mining permits and mining permits to replace existing privileges, as these were seen to be the most relevant to projects ready for other regulatory approvals and most suitable for inclusion in a "one-stop shop" approach.

MBIE has an existing work programme to reduce the timeframes associated with consideration of permit applications under the CMA for all permit holders (not just those eligible for fast-track consideration). This work will progress independent of any decisions on this proposal.

### *Limited consultation*

In the time available, and in the context of the Bill still being under consideration by the Select Committee, there was limited opportunity to engage on the proposals. MBIE undertook targeted engagement with iwi and hapū, as Treaty partners. MBIE also undertook targeted engagement with the mining sector, as the potential applicants under the Bill.

Engagement with iwi and hapū consisted of five regional hui, with several follow-up one-on-one discussions or email exchanges where requested by iwi or hapū. Written feedback was received from nine iwi or hapū representatives following these hui. The feedback informed MBIE's advice to the Minister, and the written feedback was also provided to the Minister as an annex to our advice.

Industry engagement consisted of three meetings with representatives from the petroleum, minerals, and quarrying sectors respectively and one follow-up meeting at the request of an individual company.

### *Treaty of Waitangi considerations*

Beyond the targeted engagement above, it was not possible to engage widely with iwi/Māori on these proposals in the timeframes available, which would have better informed MBIE's analysis of Treaty impacts.

### *Limited evidence available to assess policy proposal and its impact*

Limited information was able to be gathered to assess the policy proposal and its impact in the time available. In particular, it is unclear how many projects (if any) will take advantage of the proposed changes. This is partly because it is currently unclear which projects will be able to use the fast-track process.

Of the projects MBIE is aware of that are interested in using the fast-track process, the majority already have a mining permit so would not need these additional provisions. For example, of the 41 mining and quarrying projects seeking to be listed in the Bill for fast-tracking, MBIE is aware of seven with exploration permits that will require a mining permit to proceed, and three with existing privileges which will need a mining permit. In some cases, they have already applied for a mining permit and may obtain this via the CMA before submitting their fast-track application.

## **Responsible Manager(s) (completed by relevant manager)**

*Hannah Keat*

*Manager*

*Resource Policy*

*Ministry of Business, Innovation and Employment*

Privacy of natural persons

*10 September 2024*

## **Quality Assurance (completed by QA panel)**

Reviewing Agency:	Ministry of Business, Innovation and Employment
Panel Assessment & Comment:	An MBIE Panel has reviewed the annex to the SAR prepared by MBIE's Resource Policy team and associated supporting material and consider that the information and analysis summarised in it partially meets the Quality Assurance criteria. This is due to the limited consultation undertaken on the policy proposal.

## Section 1: Diagnosing the policy problem

### What is the context behind the policy problem and how is the status quo expected to develop?

1. Major project developers in New Zealand are required to obtain a suite of official approvals (such as permits and consents) before they can commit to delivering their projects.
2. For mining projects involving Crown-owned minerals, a mining permit under the Crown Minerals Act 1991 (CMA) is required before the resource can be mined. The CMA includes permits for prospecting, exploration, and mining Crown-owned minerals. Generally speaking:
  - **prospecting** involves activities to identify land likely to contain mineral deposits,
  - **exploration** involves activities to identify specific mineral deposits and to evaluate the feasibility of mining them, and
  - **mining** means to extract, by whatever means, a mineral or resource in its natural state.
3. Once exploration activities have discovered a mineral deposit, subject to certain conditions, section 32(3) of the CMA provides that:

*...if the holder of an exploration permit satisfies the Minister that he or she has, as a result of activities authorised by the permit, discovered a deposit or occurrence of a mineral to which the permit relates, the permit holder shall have the right, on applying under section 23A of the CMA before the expiry of the exploration permit, to surrender the permit insofar as it relates to the land in which the deposit or occurrence exists and to be granted in exchange a mining permit for that land and mineral.*
4. There is still a need for the applicant to show the resource has been appropriately delineated and to agree on a work programme for how the resource will be developed. The mining permit and associated work programme act as an agreement between the Crown (as the owner of the minerals) and the mining operator on how best to mine the resource to maximise the financial return to both parties. These requirements allow the Crown, as the owner of the minerals, to have a say in how they are mined but they can also take a significant amount of time<sup>5</sup>.
5. While there is no set timeframe under the CMA, MBIE has recently released targets<sup>6</sup> of 480 working days for a subsequent petroleum mining permit application, and between 240-300 working days for a subsequent Tier 1<sup>7</sup> mineral mining permit. Other permit processes under the CMA (e.g. an extension to the duration of a permit) typically take less time as there are fewer factors for the regulator to work through.

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<sup>5</sup> The Minister has six months to approve the work programme or withhold approval. Where approval is withheld, the applicant is entitled to submit a modified work programme to the Minister within a reasonable period, as specified by the Minister, and the Minister shall then, within a further 6 months or receiving the modified work programme either approve it or withhold approval. In addition, when a work programme approval is withheld, the applicant has the right to refer the matter for binding arbitration (see sections 43-44 of the CMA).

<sup>6</sup> <https://www.nzpam.govt.nz/about/news/increasing-transparency-on-permit-application-timeframes>

<sup>7</sup> Tier 1 cover larger, more complex mining operations. More information on the types of permit is available here: <https://www.nzpam.govt.nz/permits/minerals/types>

6. A mining permit does not provide any guarantee that other approvals (e.g. environmental consents or health and safety approvals) will be forthcoming. It is up to the permit holder to apply for all necessary approvals to operate the mine.
7. Because of differences in how the various regulatory approvals are provided, it is difficult to compare mining approval regimes internationally. Some jurisdictions (including New Zealand prior to 1991) have a single licence that covers all the relevant matters (e.g. royalties, land access, health and safety, environmental requirements) while in other areas these matters are split between regulators (or can be loosely regulated). Feedback from stakeholders suggests that the process can take more than a decade in countries like Australia and the US with relatively robust regulatory requirements. Similar or longer timeframes occur in New Zealand for larger projects, but much of this time is not associated with obtaining a mining permit, but other approvals.
8. Excessive time taken to obtain mining permits (alongside other regulatory approvals) has been raised by some industry stakeholders as leading to delays with mining projects. There are costs to the mining companies associated with these delays, which can impact their profitability (and in turn the level of royalties paid to the Crown). In addition, particularly with strong demand for critical minerals (e.g. those used to make microchips) and recent moves from China to restrict their export, there may be economic and geopolitical opportunities for New Zealand if it can quickly begin production of these minerals.
9. The process under the Bill will provide an opportunity to expedite projects with significant regional or national benefits. This process allows for a range of approvals to be sought at the same time, with a strong focus on enabling projects once they are accepted into the fast-track process, and limited rights to appeal the outcome.
10. Of the projects MBIE is aware of that are interested in using the fast-track process, the majority already have a mining permit. For example, of the 41 mining and quarrying projects seeking to be listed in the Bill for fast-tracking, MBIE is aware of seven with exploration permits that will require a mining permit to proceed. In some cases, these companies have already applied for a mining permit under the CMA and may obtain this before submitting their fast-track application.
11. There are also several operators with existing privileges to mine Crown-owned minerals, issued under previous legislation. These existing privileges cannot be extended. MBIE is aware of three potential fast-track projects with existing privileges which will need a mining permit to continue or recommence mining.

### **Issues with existing privileges**

12. Transitional arrangements for existing mines (or exploration projects) operating under mining licences under various legacy Acts (e.g. the Coal Mining Act 1979) were put in place when the CMA was passed. The CMA defines these types of licences collectively as **existing privileges**. References to licences in this report refer to existing privileges, while references to permits refer to approvals under the CMA.
13. A key difference between existing privileges and permits is that an existing privilege will typically cover a range of approvals required to mine (e.g. separate land access and environmental approvals are not required) while a permit under the CMA does not.
14. Many of these existing privileges remain in effect. In most cases, the minerals have been extracted and there is no opportunity for further mining. In others, mining continues (e.g. Stockton (Coal Mining Licence (CML) 37150) or Rotowaro (CML 37155)). In the case of Sullivan (CML 37161), Bathurst has plans to mine this area as part of the Buller Project but will require a replacement mining permit under the CMA to do so given the amount of Crown-owned coal still to be mined in the previous licence area.



15. The duration of most existing privileges cannot be extended. For mining to occur beyond the expiry date of the licence, the licence holder will need to apply for and be granted a new mining permit under the CMA (and apply for any other necessary regulatory approvals covered by the licence like an access arrangement) prior to the licence expiry date.
16. Most of the existing privileges still in effect are coal mining licences and are due to expire on 1 March 2027. One mining licence for gold will expire in December 2024. An application under the CMA is currently being assessed by the regulator to extend the land of an existing mining permit to cover that licence. The four remaining existing privileges for minerals other than coal (or petroleum) will expire between 2031 and 2037.
17. The three existing privilege holders who have sought to be included in the fast-track process have licences which do not expire until at least 2027. As such, there is sufficient time for these to be considered outside of the fast-track process, provided the applicants themselves are ready to lodge the application. The main benefit of including them in the Bill is bundling up their CMA permit with other approvals (which could be more convenient for applicants) rather than time saving.
18. Given the interest from the minerals sector, MBIE considers that if CMA permitting is included in the Bill, applications to replace existing privileges would also be reasonable candidates for inclusion in the Bill alongside subsequent mining permits. This would be a relatively straightforward change to make to the Bill alongside the inclusion of subsequent mining permits.

## Policy context

19. The Bill establishes a separate process for several approvals under different legislation including:
  - resource consents, notices of requirement, and certificates of compliance (Resource Management Act 1991)
  - concessions (Conservation Act 1987)
  - authority to do anything otherwise prohibited under the Wildlife Act 1953
  - archaeological authority (Heritage New Zealand Pouhere Taonga Act 2014)
  - marine consents (Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012)
  - land access (Crown Minerals Act 1991)
  - aquaculture activity approvals (Fisheries Act 1996).

## What is the policy problem or opportunity?

20. The issues for major projects are set out in the main SAR, including slow and costly decision-making and insufficient value placed on the economic and social benefits of projects, relative to other considerations.

### *Slow and costly decision-making*

21. The Infrastructure Commission/Te Waihangā estimates that current consenting processes cost infrastructure projects \$1.29 billion every year, and the time taken to get a resource consent for key projects nearly doubled between 2014/15 and 2018/19.<sup>8</sup> These delays and high costs suggest waste and inefficiency, and a delay in the flow of benefits to the environment and the community. This analysis focused on the direct costs to consent infrastructure projects under the Resource Management Act 1991 (RMA) and does not include the costs of wider approvals needed to progress these developments.

### *Insufficient value placed on the economic and social benefits of development relative to other considerations.*

22. Ensuring a flow of benefits from development will require more than increased efficiency and quicker processes. Decision-makers also need to give more weight to the benefits of development and not be held back by out-of-date national direction or regional/district planning provisions.

23. An example of an out-of-date regional plan is the Southland Regional Coastal Plan, which was originally notified under the RMA in 1997, and is still the operative direction for the Southland coastal environment. Another example is the Clutha District Plan which was notified in 1995 and is still operative.

24. The existing system focusses on managing the adverse environmental effects of development, with less concern for positive outcomes such as increasing housing supply, raising incomes through economic development, or switching to renewable energy.

25. The resource management system focuses on managing adverse effects but does not sufficiently recognise the benefits associated with an activity, such as improvements in the state of the natural environment or for economic, social, or cultural wellbeing. Rather, resources must be “sustained,” life-supporting capacity “safeguarded” and adverse effects “avoided, remedied and mitigated.”

26. There is a lack of future focus and a bias towards the status quo. This does not recognise that our society, including how and where we live, is dynamic and constantly evolving, or the need to adapt to the effects of climate change. This is because of an emphasis on avoiding or remedying adverse “effects”, the protection of existing use rights and a focus on preserving amenity for current land-owners.

### *There are specific barriers for significant mining projects*

27. Mining projects of the scale necessary to deliver significant regional or national benefits are capital intensive projects. There is a lot of work that is required upfront before mining can commence to ensure that the project is viable.

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<sup>8</sup> *The Cost of Consenting Infrastructure Projects in New Zealand*, July 2021, Sapere report commissioned by Te Waihangā



28. It is typically many years from prospecting or exploration to a point where a mine becomes financially self-sustaining. There can be significant risks (both downside and upside) associated with changes in resource demand and prices between the conception and mining phases the longer this process takes.
29. Regulatory approvals for large mining projects can take more than a decade to complete, require upfront investment sometimes in the tens of millions of dollars, and have no certainty of outcome. While the CMA permitting process is a small part of this timeframe and cost, improvements across the range of regulatory approvals required are cumulative in nature, so can contribute to an overall timeframe reduction for these projects.
30. There are a range of regulatory approvals required for mining projects, some of which are managed by central government and others local government. The ability to bundle these processes together and provide a definitive, quick response will ensure that capital investment in the mining industry is efficiently directed to the most viable projects with wider flow on economic and social impacts. Adding CMA permitting to the other regulatory approval processes under the Bill could further speed up the process for appropriate mining projects.
31. There are two broad problems which the fast-track regime aims to address, both arising from the complexity of the existing approvals processes:
- The time and costs associated with the existing processes are delaying approvals being granted creating a barrier for major projects to proceed.
  - The approval processes place insufficient value on the positive economic and social benefits of development.
32. The proposal to add subsequent mining permits to the Bill relates to the first problem. The CMA already places appropriate value on the positive economic and social benefits of development.
33. For existing privileges which do not expire until at least 2027, mining can continue. There is sufficient time for any associated permit applications to be considered outside of the fast-track process, provided the applicants themselves are ready to lodge an application. However, there are still potential benefits in bundling up the CMA permit with other approvals already in the Bill (see paragraph 19), notably it could be more efficient for applicants and consulted parties.

### **What objectives are sought in relation to the policy problem?**

34. The primary objectives for adding mining permits to the Bill are to:
- speed up regulatory approvals on significant mining projects, and
  - speed up the process from making a discovery to mining the resource.
35. These support the primary objectives for the Bill:
- more rapid and less costly consenting processes for major projects;
  - simpler and less burdensome application processes, across several regulatory systems;
  - an increase in favourable decisions for major projects that have regionally or nationally significant benefits; and
  - to uphold all Treaty settlements, and other arrangement<sup>9</sup> obligations.

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<sup>9</sup> Cabinet agreed that, in addition to Treaty settlements, other legislative arrangements would be upheld including those under the Marine and Coastal Area (Takutai Moana) Act 2011, Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, Mana Whakahono ā Rohe and joint management agreements under the RMA

## Section 2: Deciding upon an option to address the policy problem

### Focus of this regulatory impact assessment

36. This SAR considers the options to include CMA permitting in the Bill. The aim of the analysis is to recognise high-level costs and benefits, and does not monetise the costs or benefits due to the timeframe constraints preparing this SAR.

### What scope will options be considered within?

37. Reduced timeframes for policy development have limited our ability to assess the feasibility of a broader range of options, including non-regulatory options. As previously noted, work is underway to address the timeliness of permit applications under the CMA which will apply to all permit applications (not just those with significant regional or national benefits), and this work will continue.

38. Both prospecting and exploration permits are outside the scope of CMA permitting in the Bill, alongside a range of decisions on existing permits (e.g. an extension of land or duration of the permit). The reasons for not including these permits in the Bill are:

- allowing the initial allocation of rights to Crown-minerals to be allocated under the CMA which has methods for managing interest from multiple parties,
- avoiding potential conflicts between permit applications lodged by other parties under the CMA over land that is at the same time subject to a fast-track application,
- reflecting the reality that, generally speaking, mining projects capable of delivering significant regional and national benefits (which the Bill aims to facilitate) take significant time from the initial prospecting or exploration phase to mining. It is not feasible to anticipate the extent and nature of other regulatory approvals, or the level of regional or national benefits that will result until this prospecting and exploration work is complete, and
- including a wider range of permitting decisions increases the complexity involved in adapting CMA processes under the Bill and would be challenging given the legislative timeframes for the Bill without creating unintended consequences.

39. MBIE has focused on subsequent mining permits and existing privileges because mining permits are a necessary step to commence or recommence mining the resource. If a fast-track application were approved without a mining permit for these projects, the operation could not begin until the mining permit were also granted.

40. Not all fast-track mining applications will require a mining permit as part of the combined application. Many operators will have already obtained a mining permit prior to lodging consents, or other applications under fast-track. Some mining projects will not require a mining permit if the minerals involved are not Crown-owned.

### What options were considered by Cabinet?

41. Two broad options for have been identified in addition to the Status quo:

- **Option A:** Status quo.
- **Option B:** Enhanced status quo – working to prioritise and spend up CMA permits associated with fast-track projects under the current legislative framework.
- **Option C:** Including subsequent mining permit applications under the Bill.

## **Option A – Status Quo (SQ)**

42. The status quo provides a process under the CMA for mining permits to be obtained. This can be done in advance of other regulatory approvals or in parallel, but is typically done in advance. While there is no legislated timeframe under the CMA, MBIE has recently set reporting targets of 480 working days for a subsequent petroleum mining permit application, and between 240-300 working days for a Tier 1<sup>10</sup> minerals mining permit.
43. The benefit of the status quo is that it allows for a full and robust consideration of the CMA permit application, and for an appropriate work programme to be agreed between the applicant and the Crown before other approvals are sought.
44. This minimises the risk of projects progressing where MBIE as the regulator has concerns about the capability of the operator, the size, location and economic viability of the discovery, or the suitability of the proposed mining methods.
45. Because the CMA permit application process can be carried out in parallel to other preparatory work, it is not possible to tell how much time it adds to the overall process of a mining project. In practice, it varies on a case-by-case basis.
46. MBIE acknowledges concerns from some industry participants that the current permitting processes are taking too long and causing delays for some mining projects. MBIE has been working to address these concerns with an established work programme. This work programme is already delivering time savings through the focusing of resources (e.g. permit processing sprints) and upcoming changes to the CMA (expected to be passed this year) to create a new permit tier for hobby gold-mining. The creation of a new process and permit tier for hobby gold-mining will reduce the regulatory burden on smaller, less impactful mining operations, while freeing up resources at MBIE and allow for a reduction in overall processing timeframes across the CMA.

## **Option B: Enhanced status quo – working to prioritise and speed up CMA permits associated with Fast-track projects under the current legislative framework**

47. This option would not include legislative change (e.g. including CMA permitting in the Fast-track Approvals Bill) but would involve MBIE developing internal processes and prioritising resources for projects that are either listed in the Bill as fast-track projects or have been referred by Ministers to the fast-track process.
48. MBIE would work with applicants to progress the permitting decision under the CMA at pace to meet the policy aim – to speed up approvals for regionally and nationally significant projects. This would essentially be a middle ground between the status quo and the proposed approach. MBIE would not be required to meet a specific timeframe but would be setting significantly reduced processing targeted timeframes for mining permits associated with fast-track applications.

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<sup>10</sup> A tier 1 permit applies for complex, higher risk and return mineral operations requiring a more hands-on, proactive management and regulatory regime. Given the threshold for fast-track is that a project delivers significant regional or national benefits, they are a reasonable proxy for mining projects that will meet this threshold. More information on permit types is available here: <https://www.nzpam.govt.nz/permits/minerals/types>

49. The ability to deliver on this objective would depend on both MBIE's ability to resource it effectively, and the applicant's ability to provide the required information in a timely way to facilitate the permit assessment process.

### **Option C: Including subsequent mining permit and existing privilege mining permit applications under the Bill**

50. Adding subsequent mining permits and mining permits to replace existing privileges would provide applicants with the option of bundling their CMA permit approval with other regulatory approvals. This is more likely to be attractive for projects that are currently at the exploration phase and have not yet obtained their mining permits off the back of a discovery. MBIE is aware of seven projects at this stage (e.g. with an exploration permit or an existing licence that will expire soon) with interest in the Fast-track process.

51. CMA permitting requires a degree of technical assessment (e.g. geological and economic expertise specific to the mineral in question) that is not well suited to the procedural design of the Bill and standard expertise that will be needed and available for the expert panel under that process. There are also continuing legal, regulatory and management responsibilities for the regulator for any permits granted (e.g. annual reviews and general oversight of the ongoing permit activity).

52. Given this, MBIE does not consider an expert panel would be best placed to carry out analysis on the application without a function under the Bill for MBIE to support the expert panel with analysis. The proposal would see MBIE largely condense its existing process under the CMA and report to the expert panel on any CMA applications received.

53. In this way this option is similar to Option B, but the key difference is that MBIE would likely have set timeframes to provide its report to the expert panel, and the expert panel would be the final decision-maker. While a decision on timeframes has yet to be confirmed, MBIE considers that 50 working days would be sufficient to provide robust analysis on an application.

54. The main advantage of this approach for subsequent mining permits is the potential to speed up the whole regulatory approvals process associated with moving from discovery of a deposit under an exploration permit to mining it under a mining permit. For existing privileges, the main advantage would be more about efficiency and/or convenience for the applicant. As with Option B, the ability to deliver time savings would depend on both MBIE's ability to resource it effectively, and the applicant's ability to provide the required information in a timely way to facilitate the permit assessment process.

### **What was the Government's preferred option, and what impacts will it have?**

55. The Government's preferred option is Option C, including subsequent mining permit applications and existing privilege mining permit applications in the Fast-track Bill.

56. MBIE's view is that the granting of mining permits:

- requires a degree of technical assessment (eg geological and economic expertise specific to the mineral in question) that is not well suited to the procedural design of the Bill and standard expertise that will be needed and available for the expert panel under that process; and



- should ideally occur ahead of a fast-track process and is therefore more appropriately a factor to be considered at the Ministerial referral stage of the Bill.
57. Given this, MBIE's preferred approach is either to retain the status quo (Option A) or to work on ways to reduce the timeframes for fast-track projects without bringing the decision into the Bill (Option B). Option A is preferred when greater weight is given to managing risks associated with permits, and Option B when preference is given to expediting significant projects.
  58. That said, MBIE considers Option C, while not MBIE's preferred option, is feasible with the right legislative design and that there is an additional efficiency gain in being able to apply for all necessary approvals at once for applicants which aligns with one of the primary objectives for the Bill (a simpler and less burdensome application processes, across several regulatory systems).
  59. To mitigate risk, MBIE is proposing that the expert panel can suspend the timeframes on the application process if there is no agreement on how to proceed (e.g. a proposed work programme under the permit is not acceptable to both the applicant and MBIE). This would allow for these issues to be worked through but could also delay the overall process (e.g. other approvals being sought under the Bill).
  60. Stakeholder experiences of the COVID-19 Fast-track process shared with MBIE suggest the potential for mining projects to experience multiple suspensions of timeframes (e.g. while additional information or work is undertaken by the applicant to satisfy the expert panel). Because of the limited appeal rights under the Bill, even with delays to address issues, fast-tracking is likely to lead to a shorter timeframe from discovery to mining, while managing the risks.
  61. The onus under the Bill will be on the expert panel to manage risks and decide how to proceed, in the context of the purpose of the Bill to facilitate the delivery of projects with significant regional or national benefits.
  62. MBIE considers that the benefits from Option C were largely for the permit or licence holder but would require appropriate resourcing from MBIE and the applicant to realise. Indirect benefits would include additional employment opportunities and economic activity associated with an increase or accelerated start in mining operations.
  63. Costs associated with the preferred option (Option C) were around additional complexity for the expert panel and other participants (particularly iwi) in the fast-track process. Costs for agencies and the expert panel can be cost recovered under the Bill. It is likely that the application costs for applicants under the Bill will be higher than if the application were lodged under the CMA, where a set fee applies. Feedback from industry was that the permitting costs were relatively insignificant in comparison to the overall level of costs associated with projects. MfE is leading the work for cost recovery under the Bill and it is outside of the scope of this proposal.

#### *Impacts on iwi/Māori as Treaty of Waitangi partners*

64. We received consistent feedback from Māori that the engagement timeframes were inadequate for them to fully understand and consider the proposal. Where MBIE did receive feedback from iwi, there was generally opposition to the proposal. This is consistent with feedback from Māori submissions on the Bill.

65. MBIE's engagement with Māori included five regional hui with invites focused on iwi with Crown Minerals Protocols or Energy and Resources Accords. Due to the short timeframes involved, there were not a high number of participants at these hui. Where iwi or hapū were unable to attend the regional hui, MBIE provided additional information by email and offered to hold one-on-one discussions. Several one-on-one discussions were held as a result. Notwithstanding this, many respondents were critical of the constrained timeframes and, so, MBIE's approach to this engagement. MBIE acknowledged this feedback when it was provided.
66. Consistent with submissions received by the Select Committee from Māori on the Bill, there was strong opposition from iwi participants to the inclusion of CMA permitting approvals under the Bill and a desire to see a range of changes made to the Bill to better provide for Māori rights and interests.
67. In terms of feedback from iwi participants on specific elements of the proposal, there was support for MBIE to maintain the primary role in analysis on CMA permits and to have a role in advising on projects at the referral stage of applications, and support for ensuring consultation timeframes for permit applications under the CMA are maintained. There was some support for having a single point of contact for iwi in terms of consultation by government on the substantive permit applications, which could be the expert panel. MBIE undertook to pass on feedback received through these hui or in writing to the Minister for Resources.
68. Given this feedback, there is a risk that proceeding with the proposal will have a negative impact on Crown-Māori relationships. MBIE has provided more detail on this risk in its advice to the Minister for Resources. Te Arawhiti and other agencies have also been providing advice to Ministers on the impacts for Māori associated with the fast-track Bill.

## How do the options compare to the Satus Quo/counterfactual?

### Subsequent mining permits:

	Option A – SQ	Option B – Enhanced SQ	Option C – Add subsequent mining permits to the Bill
<p><b>Expediency</b></p> <p>To achieve the outcome sought in the quickest timeframe.</p>	<p>0</p> <p>Excessive time taken to obtain mining permits has been raised by some industry stakeholders as leading to delays with mining projects.</p>	<p>++</p> <p>Could reduce time taken to process permits for regionally and nationally significant projects leading to faster timeframes for projects to go from discovery to mining.</p>	<p>++</p> <p>Could reduce time taken to process permits for regionally and nationally significant projects leading to faster timeframes for projects to go from discovery to mining.</p>
<p><b>Simplicity</b></p> <p>To reduce bureaucracy needed to support decision-making and minimise the number of decisions needed to achieve an outcome.</p>	<p>0</p> <p>The SQ will largely involve applicants applying for mining permits prior to lodging their substantive applications under the Bill.</p>	<p>-</p> <p>Where mining permits are being sought at the same time as other approvals, potentially adds complexity for the applicant and regulator.</p>	<p>-</p> <p>Potentially adds complexity for the expert panel and regulator, particularly in terms of meeting specified timeframes under the Bill alongside other approvals.</p>
<p><b>Uphold Treaty obligations</b></p> <p>To honour the Treaty and uphold Treaty settlements and other arrangements.</p>	<p>0</p> <p>Maintains the consultation requirements under the CMA or Crown Mineral Accords.</p>	<p>0</p> <p>Similar to the SQ, MBIE would meet CMA and Crown Mineral Accords consultation requirements.</p>	<p>0</p> <p>Timeframes in the CMA for consultation on permit applications can be replicated under the Bill.</p>
<p><b>Manage risks</b></p> <p>The potential of the option to result in unintended consequences.</p>	<p>0</p> <p>Risks are managed through the permitting process. This can often require additional information from applicants.</p>	<p>-</p> <p>Similar to the SQ, but with the potential for trade-offs between risk management and expediency to be made.</p> <p>MBIE will retain decisions around these trade-offs, and as the regulator is incentivised to focus on the long-term risks.</p>	<p>--</p> <p>Truncated timeframes are likely to lead to trade-offs between risk management and expediency.</p> <p>The expert panel will ultimately drive decisions around these trade-offs, who will have less incentive to focus on the long-term risks.</p>

<p><b>Overall assessment</b></p> <p>The scores here are based on equal weighting of criteria, but would change if greater weight is given to expediency or risk management.</p>	<p>0</p> <p>The SQ is expected to be acceptable to the majority of Fast-track mining applicants, many of whom will already have mining permits.</p>	<p>0</p> <p>This option would prioritise expediency over simplicity and risk management.</p>	<p>-</p> <p>While delivering expediency, this option would add complexity for the expert panel in having to manage an additional approval and would require the panel to manage trade-offs around risk within the context of a framework that is weighted towards approving projects.</p>
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**Existing privileges:**

	Option A – SQ	Option B – Enhanced SQ	Option C – Add subsequent mining permits to the Bill
<p><b>Expediency</b></p> <p>To achieve the outcome sought in the quickest timeframe.</p>	<p>0</p> <p>Based on MBIE’s target processing timeframes, there is sufficient time for a permit application to be considered and granted by 2027.</p>	<p>+</p> <p>Could reduce time taken to process permits where the applicant is not yet in a position to submit their application.</p>	<p>+</p> <p>Could reduce time taken to process permits where the applicant is not yet in a position to submit their application.</p>
<p><b>Simplicity</b></p> <p>To reduce bureaucracy needed to support decision-making and minimise the number of decisions needed to achieve an outcome.</p>	<p>0</p> <p>The SQ will largely involve applicants applying for mining permits prior to lodging their substantive applications under the Bill.</p>	<p>0</p> <p>Similar to the SQ.</p>	<p>+</p> <p>Bundling approvals is appealing to potential applicants in the mineral sector. May add additional complexity for the expert panel or other participants.</p>
<p><b>Uphold Treaty obligations</b></p> <p>To honour the Treaty and uphold Treaty settlements and other arrangements.</p>	<p>0</p> <p>Maintains the consultation requirements under the CMA or Crown Mineral Accords.</p>	<p>0</p> <p>Similar to the SQ, MBIE would meet CMA and Crown Mineral Accords consultation requirements.</p>	<p>0</p> <p>Timeframes in the CMA for consultation on permit applications can be replicated under the Bill.</p>



<p><b>Manage risks</b></p> <p>The potential of the option to result in unintended consequences.</p>	<p>0</p> <p>Risks are managed through the permitting process. This can often require additional information from applicants.</p>	<p>-</p> <p>Similar to the status quo, but with the potential for trade-offs between risk management and expediency to be made.</p> <p>MBIE will retain decisions around these trade-offs, and as the regulator is incentivised to focus on the long-term risks.</p>	<p>--</p> <p>Truncated timeframes are likely to lead to trade-offs between risk management and expediency.</p> <p>The expert panel will ultimately drive decisions around these trade-offs, who will have less incentive to focus on the long-term risks.</p>
<p><b>Overall assessment</b></p> <p>The scores here are based on equal weighting of criteria, but would change if greater weight is given to expediency or risk management.</p>	<p>0</p> <p>The SQ is expected to be acceptable to the majority of Fast-track mining applicants, many of whom will already have mining permits.</p>	<p>0</p> <p>This option would prioritise expediency over simplicity and risk management.</p>	<p>0</p> <p>While delivering expediency and simplicity for the applicant, this option would add complexity for the expert panel in having to manage an additional approval and would require the panel to manage trade-offs around risk within the context of a framework that is weighted towards approving projects.</p>

<p><b>Example key for qualitative judgements:</b></p>	
<p>++</p>	<p>much better than doing nothing/the status quo/counterfactual</p>
<p>+</p>	<p>better than doing nothing/the status quo/counterfactual</p>
<p>0</p>	<p>about the same as doing nothing/the status quo/counterfactual</p>
<p>-</p>	<p>worse than doing nothing/the status quo/counterfactual</p>
<p>--</p>	<p>much worse than doing nothing/the status quo/counterfactual</p>

## Section 3: Delivering an option

### How will the new arrangements be implemented?

69. There are arrangements underway to operationalise the Bill including establishing expert panels, cost recovery, and processes for considering applications at various stages. MBIE is participating in a cross-agency approach coordinated by MfE across the range of approvals and processes available through the Bill. This wider implementation process for the Bill is outside of the scope of this proposal.
70. To include mining permits as an approval available under the Bill, an Amendment Paper (previously called a Supplementary Order Paper) will be drafted and introduced at the Committee of the Whole House stage. This will allow applicants to apply for mining permits under the Bill and create a role for MBIE in considering these applications. The Bill will set out assessment criteria and information requirements based on the existing process under the CMA, but with adjustments to account for the fast-track process and purpose.
71. Subject to the views of the Parliamentary Counsel Office, detailed requirements may be set out in regulations under the Bill rather than in a schedule. This would be consistent with the approach taken under the CMA and would allow for them to be updated over time to reflect any lessons from the initial projects.
72. While the overall implementation approach is still being developed to include any changes made through the Select Committee process, MBIE has begun work to develop bespoke processes and guidance material for applicants, iwi and hapū, and expert panels to support the proposal. The information below is subject to change and is indicative only.
73. Guidance will set out clear expectations for applicants on pre-application engagement requirements and expectations, as well as cover off any procedural requirements that could be completed prior to formally lodging an application. For example, MBIE would typically develop a map of the proposed permit after the application is lodged, but this could be done and agreed with the applicant at the pre-application stage if the applicant is in a position to do so.
74. Guidance for iwi will be based on the existing information sent out when MBIE consults on a permit application but will be updated to reflect the all-in-one nature of the fast-track approvals process. For example, being clear about what MBIE is consulting on and what they can expect to be contacted on by the expert panel. Notwithstanding this, where information is provided to MBIE that is more relevant to other approvals sought, MBIE will develop a process to ensure that this is passed on to the expert panel.
75. MBIE will also develop some guidance for expert panels on the nature of permitting decisions and the outcomes the Crown typically seeks. This will be relatively high-level but will also ensure that the expert panel is aware of ways MBIE can support it outside of providing a report on the CMA application (e.g. as technical advisers, or our ability to provide additional information to the expert panel on request).
76. One of the unique elements of a CMA permit is the level of financial and economic information required. Typically, this information is not disclosed to third parties except in limited situations set out in the CMA. MBIE is looking to build in similar considerations for the fast-track process so that applicants can indicate in their application where commercially sensitive information is provided and MBIE can likewise indicate this in its report to the expert panel. Where indicated, commercially sensitive information would not be shared with third parties without a compelling reason.

77. Guidance material will be developed in time for the commencement of the Bill (expected later this year), but MBIE will also look to revisit it after the first few applications are processed to refine it. MBIE considers refinements may be necessary given this is the first time CMA permitting decisions have been included in a fast-track process so will adopt an adaptive management approach.

### **Transitional arrangements**

78. The Bill will need to include provisions to manage the transition from holding an exploration permit or existing privilege under the CMA, to seeking a mining permit under the Bill to ensure that these permits do not expire while the replacement mining permit is under consideration (consistent with how they would be treated if they were to lodge a mining permit application under the CMA).

### **How will the new arrangements be monitored, evaluated, and reviewed?**

79. A post-implementation assessment will be undertaken jointly by MfE and MBIE one year after enactment of the legislation. This post-implementation assessment should provide approach assurance from MfE and MBIE that on-going system performance monitoring establishes appropriate system indicators which are integrated into the regulatory stewardship obligations of these agencies. MBIE will feed into this post-implementation assessment from a CMA perspective.

80. Because the proposal is to create a new approval (e.g. mining permits) as part of a new process (e.g. fast-track), there may be issues to work out or insights gained from the initial applications. MBIE will adopt an adaptive management approach, and seek to update guidance for applicants, iwi and hapū, and the expert panels that incorporates lessons learnt from early applications. If issues are identified that require legislative amendments these will be fed into the post-implementation review of the Bill.

81. Once a permit is approved under the Bill, it will be treated as granted under the CMA, and the ongoing obligations (e.g. annual reporting requirements) will apply. MBIE will apply the monitoring and enforcement framework under the CMA to ensure the permit holder's obligations are met. Other approvals under the Bill (e.g. consents) will also have monitoring and enforcement provisions, but these are outside of the scope of this proposal.