



COVERSHEET

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| Minister | Hon Dr Megan Woods | Portfolio | Energy and Resources |
| Title of Cabinet paper | Crown Minerals Act 1991 Review: Enabling flexibility in the management of Crown-owned minerals, improving engagement with hapū and iwi, and clarification amendments | Date to be published | 24 November 2022 |

List of documents that have been proactively released

| Date | Title | Author |
|--------------|--|---|
| June 2022 | Crown Minerals Act 1991 Review: Enabling flexibility in the management of Crown-owned minerals, improving engagement with hapū and iwi, and clarification amendments | Office of the Minister of Energy and Resources |
| 4 July 2022 | CAB-22-MIN-0256 Minute | Cabinet Office |
| 21 June 2022 | Regulatory Impact Statement: Enabling flexibility in the management of Crown minerals development under the Crown Minerals Act 1991 | Ministry of Business, Innovation and Employment |
| 21 June 2022 | Regulatory Impact Statement: Improving permit/licence holder and permit applicant engagement with hapū and iwi under the Crown Minerals Act 1991 | Ministry of Business, Innovation and Employment |

Information redacted

YES

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

Some information has been withheld for the reasons of constitutional conventions, legal professional privilege, free and frank opinions, confidential information entrusted to the Government and confidentiality.

Regulatory Impact Statement: Enabling flexibility in the management of Crown minerals development under the Crown Minerals Act 1991

Coversheet

| Purpose of Document | |
|---|---|
| Decision sought: | Analysis produced for the purpose of informing final Cabinet decisions. |
| Advising agencies: | Ministry of Business, Innovation and Employment |
| Proposing Ministers: | Minister of Energy and Resources |
| Date finalised: | 21 June 2022 |
| Problem Definition | |
| <p>The Crown Minerals Act 1991 (CMA) was amended in 2013 to define its purpose as promoting the development of Crown-owned minerals for the benefit of New Zealand. Since 2013, changes in the broader strategic and regulatory context relating to resource development mean that this promotional intent is inflexible and unable to accommodate evolving policy objectives as to whether and when rights to Crown-owned minerals are allocated. This inflexibility also detracts from the government’s ability to send clear signals to the market about the need for investment and development of Crown-owned minerals over the short, medium and longer-terms.</p> | |
| Executive Summary | |
| <p>The Crown Minerals Act 1991 operates in an evolving policy and regulatory environment</p> <p>The Crown Minerals Act 1991 (CMA) enables the Crown, as resource owner, to allocate rights to develop Crown-owned minerals. It operates alongside other legislation that regulates the health, safety and environmental aspects of prospecting for, exploring for and mining of Crown-owned minerals. It was designed in 1991 to neither support nor create impediments for allocating rights to the development of Crown-owned minerals.</p> <p>In 2013, the CMA was amended to include an explicit promotional intent and give effect to the policy objectives of the time, which were to increase investment in New Zealand’s petroleum and minerals sectors. Between the amendments in 2013 and now, there have been a number of strategic shifts in the wider regulatory environment in which the CMA operates. New Zealand has made international and domestic commitments to reduce greenhouse gas emissions to net-zero by 2050 for all non-biogenic methane greenhouse gases and New Zealand’s first Emissions Reduction Plan, released in May 2022, sets out the strategies, policies and actions for achieving our commitments. The Government has also announced the development of an Aotearoa New Zealand Energy Strategy and Gas Transition Plan by 2024 to support the managed transition to a low-carbon economy.</p> | |

Alongside these changes, the Government announced reviews of both the CMA and the Resource Management Act 1991 (RMA). The two-stage review of the CMA is intended to ensure it is fit-for-purpose now and in the future, and the RMA review will see its repeal and replacement with a wider wellbeing framework.

Tranche One of the CMA Review made legislative changes in 2019 to give effect to the Government's policy of no new petroleum exploration permits offshore and confining future exploration permits to onshore Taranaki only. Tranche Two of the CMA Review was initiated in June 2019 and is a wide-ranging review that considers incremental changes to future-proof the Crown minerals regime. Areas of review included the role and purpose statement of the CMA; petroleum permitting management; Māori engagement and involvement in Crown minerals; improving petroleum sector regulation; and compliance and enforcement. These proposals were consulted on in 2019/20.

In June 2020, the Government expedited proposals to improve petroleum sector regulation as it related to decommissioning obligations, and compliance and enforcement.

This regulatory impact statement concerns another aspect of the Tranche Two Review, the promotional intent of the CMA. It will be considered alongside a separate regulatory impact statement covering proposals related to Māori engagement and involvement in Crown minerals.

The CMA's promotional elements make it inflexible to accommodate evolving policy objectives now and in the future

The promotional intent in the CMA makes it inflexible to respond to evolving policy objectives. This inflexibility is carried in the purpose statement of the CMA (introduced in 2013) to promote mining and the various components of the Act that refer to it, in the functions of the Minister of Energy (the Minister) to attract permit applications, and in the expectations for holding public tenders for petroleum exploration permits.

Maintaining this promotional intent may have unintended consequences. For example, it could lead to resource extraction that is not desirable for the long-term benefit of New Zealand. At the same time, tensions between the different objectives in the system could send mixed signals, preventing investment and development where this is needed.

Objectives, criteria and the scope of options

We are seeking to achieve the following objectives consistent with the CMA review:

- New Zealand's petroleum and minerals resources sector should contribute to the country's productive, sustainable and inclusive economy. Changes would ensure that the management of the sector supports the realisation of the Government's wider priorities. This includes a managed and equitable transition away from fossil fuels.
- The sector needs to be governed by a regulatory regime that is clear, coherent and fair. Changes would align with Government Expectations for Good Regulatory Practice by ensuring the CMA avoids duplicating functions provided for in other enactments in the wider Crown-minerals regulatory regime.
- Future-proofing the CMA regime to enable it to be interpreted in an enduring way, with sufficient flexibility to accommodate changes in policy objectives now and in the future.
- Mitigating any legal risks to the Crown.

Options are assessed against the same criteria used for other policy workstreams under the CMA review:

- Effectiveness: How effective is the option in addressing the policy problem within the scope provided?
- Proportionality: Does the option minimise costs, risks and potential unintended consequences?
- Regulatory certainty: Does the option make regulatory requirements clear and transparent, and outcomes more predictable?
- Practicality: Does the option minimise implementation risks, provide for administrative simplicity, and encourage timely decision-making?

Options were constrained by the scope of the CMA review. Any changes would need to be consistent with the existing emphasis on the role of the Crown as resource-owner, and its economic stewardship. Changes would not shift the original policy rationale underpinning the CMA and its fundamental role in the wider system i.e., to allocate development rights to Crown-owned resources in a manner that delivers a fair financial return to the Crown. Any changes should also not remove the Crown's ability to allocate new petroleum exploration permits within onshore Taranaki which are out of scope of Tranche Two of the CMA review.

Options were informed by the Legislation Design Advisory Committee's guidelines.

We considered three options

- Option 1 – The status quo and counterfactual. OR
- Option 2 – Replace the promotional intent of the CMA with neutral policy language. This would include changes to the purpose statement (e.g., from 'promote' to 'manage' or 'administer'), the functions of the Minister, and the flexibility as to the timing of public tenders for the allocation of petroleum exploration permits. The minerals programmes, which interpret the CMA, would also be amended to reflect changes to the underlying legislation. OR
- Option 3 – Replace the promotional intent of the CMA with nuanced policy language. This is similar to Option 2 except in relation to the purpose statement, where "promote" would be replaced by nuanced policy language that refers to "responsible" or "sustainable" mining.

We recommend replacing the promotional intent of the CMA with neutral policy language

The recommended option would enable flexibility while not necessarily promoting or inhibiting the ability of current or future governments to allocate rights in relation to Crown-owned minerals. It would emphasise the purpose of the CMA as the key legislative instrument in the strategic management of Crown-owned minerals for the benefit of New Zealand.

This option was also considered better than using nuanced policy language such as "sustainable" or "responsible" development of minerals. Such language is open to a range of interpretations and may imply wider wellbeing considerations, putting it outside the agreed scope of the CMA review and potentially duplicating functions in the wider system.

Costs and benefits

In assessing marginal costs and benefits, we assumed that the recommended option would only result in incremental change, especially in relation to discretion under the CMA, but that the fundamental focus of the CMA on economic stewardship would remain unaltered.

We consider there to be low to medium non-monetised costs to regulated parties and potential investors, the regulator, and the New Zealand public. This could be in the form of fewer opportunities to explore, prospect and mine for Crown-owned minerals if discretion were to be exercised in a certain way, and potential lost revenue to the Crown in the form of fees and royalties that come from such activities. However, the CMA is one aspect in a wider regulatory system. While it grants rights to mine Crown-owned minerals, whether any mining occurs, when and for how long depends on other parts of the system. Given the evolving status quo with regards to resource management and conservation regulatory reforms, any impacts from our recommended option are hard to quantify.

We consider there to be medium benefits to regulated parties and potential investors, the regulator, and the New Zealand public. Making neutral the promotional intent provides more clarity and resolves any issue of confusion as to policy signalling between the CMA's promotional intent, the strategic objectives for Crown-owned minerals (as expressed in the *Responsibly Delivering Value – A Minerals and Petroleum Strategy for Aotearoa New Zealand 2019-2029*) to contribute to the managed and equitable transition to a low-emissions economy, and the wider regulatory system. Development would be promoted where there is a need and any unintended extraction would be minimised. There are also potential benefits from costs saved as a result of less frequent activities such as public tenders for petroleum exploration permits.

Implementation

The recommended option is intended to be implemented through amendments to the CMA and to the minerals programmes. The recommended option will be implemented and its impact monitored by the Ministry of Business, Innovation and Employment (MBIE) as the relevant regulator for the CMA regime.

Limitations and Constraints on Analysis

The fundamental role of the Crown Minerals Act 1991 to allocate mineral development rights for economic benefit is out of scope

The Government initiated a review of the Crown Minerals Act 1991 (CMA) in July 2018 following the Government's announcement to limit new petroleum exploration permit applications to the onshore Taranaki region only. Tranche One of the CMA Review implemented these changes.

Tranche Two of the review was initiated in June 2019. It was intended as a wide-ranging review that would consider factors needed to enable New Zealand's petroleum and mineral resources sector's contribution to a productive, sustainable and inclusive economy.

In November 2020, the Minister of Energy and Resources (the Minister) agreed to conclude Tranche Two by considering incremental changes, such as whether the promotional aspects of the CMA and its purpose statement needed amending. Incremental changes were considered the best course of action to avoid duplicating reforms that were being progressed in the wider Crown-minerals regulatory system, such as resource management and conservation protection.

Any changes considered as part of Tranche Two would need to be consistent with the existing emphasis on the role of the Crown as resource-owner, and its economic stewardship. Changes would not shift the original policy rationale underpinning the CMA and its fundamental role in the wider system i.e., to allocate development rights to Crown-owned resources in a manner that delivers fair financial return to the Crown.

Out of scope of Tranche Two is also removing the Crown's ability to allocate new petroleum exploration permits within onshore Taranaki.

The public was consulted in 2019/20

MBIE publicly consulted on some proposals in this regulatory impact statement between 19 November 2019 and 27 January 2020. Specifically, the public were asked:

- How should the purpose of the CMA be expressed through its purpose statement?
- Should the purpose statement be amended from “promoting the prospecting for, exploration for, and mining of Crown-owned minerals for the benefit of New Zealand”? If yes, why? If not, why not?
- If the purpose statement should be amended, what alternative wording would most appropriately describe the purpose of the CMA (e.g., “administer, “manage”)?

Proposals around the other aspects of the promotional intent in the CMA, such as the functions of the Minister and the timing of public tenders for petroleum exploration permits, were not specifically consulted on.

No further public consultation has occurred since 2020.

Responsible Manager(s) (completed by relevant manager)

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Resource Markets Policy
Ministry of Business, Innovation and Employment



21 June 2022

Quality Assurance (completed by QA panel)

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| Reviewing Agency: | Ministry of Business, Innovation and Employment (MBIE) |
| Panel Assessment & Comment: | MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Impact Statement prepared by MBIE. The panel considers that the information and analysis summarised in the Impact Statement meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper. |

Section 1: Diagnosing the policy problem

What is the context behind the policy problem?

1. The Crown Minerals Act 1991 (CMA) enables the Crown, as resource owner, to allocate rights to develop Crown-owned minerals. Obtaining a permit under the CMA is necessary when the minerals are owned by the Crown, but it is not sufficient on its own to start to develop those minerals. This is because the CMA operates alongside other legislation that regulates the health, safety and environmental aspects of prospecting for, exploring for and mining of Crown-owned minerals.
2. For more information on the Crown-minerals regulatory system, see [Annex One](#).

The CMA was designed in 1991 to allow for the allocation of rights to develop Crown-owned minerals

3. As described by the then Ministry of Energy in 1989, the primary objectives, or functions of the CMA were as follows:¹
 - To define the Crown's rights of ownership of, and control over the development rights to, mineral and energy resources;
 - To establish certain classes of exclusive and non-exclusive property rights to mineral and energy resources;
 - To provide means for the allocation, transfer, and registration of these property rights, and for the pricing of Crown-owned resources;
 - To provide mechanisms for the collation, storage and dissemination of information pertaining to mineral and energy resources;
 - To provide clear objectives against which the management of energy and mineral resources must be considered;
 - To provide a public process of resource development planning (through consultation of the Programmes);
 - To provide a mechanism for balancing the rights of resource owners and surface landowners and compensation for those detrimentally affected by the exercise of non-exclusive rights (a later policy change gave landowners an effective right of veto for minerals development but not for petroleum development); and
 - To regulate the health and safety of mineral and energy exploration and development operations.

In 2013, the CMA was amended to include an explicit promotional intent and give effect to the policy objectives of the time

4. The 2013 changes to the CMA and minerals programmes included the following amendments to reflect the intent of government policy for the Crown minerals estate at the time:
 - Section 1A of the CMA was added to introduce a purpose "to promote prospecting for, exploration for, and mining of Crown owned minerals for the benefit of New Zealand."

¹ Report from the Ministry of Energy to the Minister of Energy on the framework for the new legislation: *Energy and Minerals Legislation Reform*, 1989.

- The 2013 minerals programmes interpret the purpose statement. “Promote prospecting for...” is interpreted as requiring the Minister of Energy and Resources (the Minister) and relevant Chief Executive to publicise and encourage interest and investment in New Zealand petroleum and minerals development, and ensure that interested parties are able to prospect, explore and mine as readily as possible.
 - Section 5 of the CMA, which sets out the functions of the Minister, was amended to include “to attract permit applications, including by way of public tender.”
 - The Minerals Programme for Petroleum 2013 set an expectation for an *annual* petroleum exploration permit round or ‘Block Offer’, a proactive competitive tender process that prior to 2013 had been one among two ways in which petroleum exploration permits were allocated.² Prior to 2013, there was no expectation as to the regularity of Block Offers.³
5. The purpose statement of the CMA is linked to the following specific sections in the CMA:
- section 28A declarations that permits are not to be issued or extended for specified land for specified periods;
 - section 29A process for considering permit applications;
 - section 61 criteria for determining access arrangements in respect of Crown land and land in the common marine and coastal area;
 - section 61C public notification of certain access arrangements; and
 - section 36 change to permit conditions.
6. For other components of the CMA, the purpose statement guides statutory decisions and/or discretion in the absence of specific criteria.
7. Public submitters objected to the introduction of the purpose statement in 2013, especially on the purpose to “promote” the sector. Individual submissions recommended that “promote” be replaced with “manage” or “administer” and that the purpose statement should reflect a wider range of considerations.⁴ But the promotional element was included to give effect to the policy objective at the time. As the Select Committee report noted, “the majority of us recommend retaining the promotional element of the purpose statement, as New Zealand competes internationally for investment in exploration and mining of petroleum (oil and gas) and minerals, and this sends a strong signal to potential investors.”⁵

² Prior to 2013, the other method used was a reactive one called ‘priority in time’ where the regulator publicly notified when an exploration application was received, providing an opportunity for competing bids to be submitted. In 2013, the primary allocation method for petroleum exploration permits became Block Offers and in 2018, the CMA was amended so that the only way in which exploration rights can be allocated for petroleum in New Zealand is through Block Offer (see sections 23A and 24 of the CMA).

³ The 2005 Minerals Programme for Petroleum stated that “from time to time, the Minister of Energy will advertise a Petroleum Exploration Permit Block Offer in an appropriate publication(s)”.

⁴ https://www.parliament.nz/resource/en-NZ/50SCCO_ADV_00DBHOH_BILL11798_1_A318898/b504c8e3df5ddf3a15c0f9a3ab2a99f5aea92f84

⁵ https://www.parliament.nz/resource/en-NZ/50DBSCH_SCR5782_1/800a7ddcb83ff763893efe3fd74505c83ac3a492

The CMA currently operates in an evolving policy and regulatory environment

8. Between the introduction of the purpose statement in 2013 and now, there have been a number of strategic shifts in the wider regulatory environment in which the CMA operates:

- The Government's Economic Plan, released in 2019, identifies key shifts and policy action needed **to transition New Zealand to a more productive, sustainable and inclusive economy**. It prioritises growing and sharing New Zealand's prosperity, supporting thriving and sustainable regions, transitioning to a clean, green and carbon-neutral New Zealand, and delivering responsible governance with a broader measure of success. The Treasury's Living Standards Framework and its four capitals (financial/physical, human, natural and social) are now the measures of success.
- New Zealand has made **international and domestic commitments to reduce greenhouse gas emissions**. In 2016, New Zealand ratified the Paris Agreement and in 2019 the Climate Change Response Act 2002 (CCRA) was amended to enable changes that implement this commitment. The CCRA sets a new emissions reduction target for New Zealand to net-zero by 2050 for all non-biogenic methane greenhouse gases.
- In 2019, the Government launched *Responsibly Delivering Value – A Minerals and Petroleum Strategy for Aotearoa New Zealand 2019-2029* (the Resource Strategy). This strategy envisions **a resources sector that supports a productive, sustainable and inclusive economy**, supports New Zealand's transition to a carbon neutral economy, is productive and innovative, and is effectively regulated.
- In 2019, the Government announced **a wide review of the Resource Management Act 1991 (RMA)** and in 2021, it announced it would repeal the RMA and enact new legislation based on the recommendations of the Resource Management Review Panel. The exposure draft of the Natural and Built Environments Bill, the main replacement for the RMA, sets out a purpose clause that includes supporting the well-being of present generations without compromising the well-being of future generations. Well-being is defined as the social, economic, environmental, and cultural well-being of people and communities, and includes their health and safety.
- In 2021, Cabinet agreed to develop a **Gas Transition Plan** to articulate the transition pathway for the phase-out of fossil gas over time, including where and when renewable gasses may be required to offset fossil gas use and associated emissions.
- In 2022, the Government released **New Zealand's Emissions Reduction Plan**, which contains strategies, policies and actions for achieving our first emissions budget as required by the CCRA. There are specific sector plans for transport, energy and industry, building and construction, agriculture, forestry, waste, and fluorinated gases.
- The Government announced the development of an **Aotearoa New Zealand Energy Strategy** by 2024. This Energy Strategy is intended to support the transition to a low-carbon economy, address strategic challenges in the energy sector, and signal pathways away from fossil fuels. It is intended to be informed by the Gas Transition Plan.

Alongside these changes, the Government announced a Review of the CMA and consulted on it

9. In 2018, the Government announced a Review of the CMA.⁶ Tranche One of the Review focused on the changes necessary to give effect to the Government's new policy to end future offshore petroleum exploration and confine any future onshore development to the Taranaki region.
10. Tranche Two of the Review is intended to be wider to ensure the CMA is fit-for-purpose now and in the future. In scope of Tranche Two were the following issues:
 - 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.
11. One of the objectives of the Review is that New Zealand's petroleum and minerals resources sector should contribute to the country's productive, sustainable and inclusive economy, including by supporting the transition to a clean, green New Zealand, and providing a secure and affordable supply of critical resources. For more information on the principles, objectives and outcomes of Tranche Two see [Annex Two](#).
12. The proposals in Tranche Two were consulted on publicly from November 2019 to January 2020 and received 167 submissions. One of the proposals consulted on was whether the promotional aspect of the purpose statement should be amended and what alternative wording would most appropriately describe the purpose of the CMA.
13. A majority of those who submitted on the purpose statement strongly agreed that the promotional purpose of the CMA should be amended. Iwi and environmental submitters, for example, submitted that promotion undermined the intent of other elements of wellbeing being considered in other legislation, and that it sat in conflict with other policies. Industry submitters, on the other hand, considered that moving away from promotion could have unintended consequences, such as for the development of clean-tech minerals, and may reduce confidence in the regime. Submissions were also received online and, of the total of 57 received, 81 percent strongly agreed that 'promote' should be changed. 51 per cent of those considered 'manage' to be a suitable alternative.
14. For more detail on the submissions received on the promotional aspects of the purpose statement see [Annex Three](#).
15. In June 2020, the Government expedited proposals to improve petroleum sector regulation as it related to decommissioning obligations, and compliance and enforcement. The Crown Minerals (Decommissioning and Other Matters) Amendment Act was passed in 2021.
16. In November 2020, the Minister decided to conclude Tranche Two of the CMA Review by considering incremental changes, such as whether the promotional aspects of the CMA and its purpose statement needed amending. Incremental changes were considered the best course of action to avoid duplicating reforms that were being progressed in the wider Crown-minerals regulatory system, such as resource

⁶ <https://www.mbie.govt.nz/dmsdocument/6603-crown-minerals-act-1991-review-tranche-two-terms-of-reference-proactiverelease-pdf>

17. This regulatory impact statement concerns one aspect of the Tranche Two Review, the promotional intent of the CMA. It will be considered alongside a separate regulatory impact statement covering proposals related to Māori engagement and involvement in Crown minerals.

While there is a commitment to a managed transition away from fossil fuels, the Government also recognises the continued importance of resources to New Zealand

18. The 2019 Resource Strategy notes that in order to take action against the existential threat of climate change, New Zealand must carefully transition away from oil and gas exploration over time. But it also recognises the value of resources to New Zealand generally and specifically in relation to our transition to a low-emissions economy.
19. Fossil gas⁷ is still used in some hard-to-abate sectors of the economy, by consumers, and to support the electricity system especially in dry years. Therefore, continued investment in existing fields is still required in the short-to-medium term. The development of the Aotearoa New Zealand Energy Strategy and Gas Transition Plan by 2024 is intended to set the direction for New Zealand's pathway away from fossil fuels and towards greater levels of renewable electricity and other low-emissions alternatives.
20. In relation to minerals, there is recognition that some are critical to our economy and wider wellbeing. These include minerals such as aggregates used in roading, and clean-tech minerals used in the production of low-emissions technology like electric vehicle batteries, solar panels, and wind turbines. Until alternatives are found, securing an affordable supply of these critical minerals is also a priority action in the 2019 Resource Strategy. To this end, the Government is developing New Zealand's first critical minerals list to identify minerals that are important for New Zealand's current and future needs.

What is the policy problem or opportunity? How is the status quo expected to develop?

The promotional intent of the CMA makes it inflexible to respond to evolving policy objectives

21. The choice to develop or not develop an asset should be available to the asset owner. A decision one way or another is typically made for a range of reasons depending on the asset, and can change over time.
22. The CMA, however, presumes that the Crown, as resource-owner, should develop Crown-owned minerals. This is the practical effect of the promotional aspects of the CMA. This includes its purpose statement (which directly and indirectly impacts the exercise of discretion throughout the CMA) and the function of the Minister of Energy to attract permit applications.
23. In relation to petroleum specifically, this includes the *proactive* Block Offer tender process, which is currently the only method of allocating petroleum exploration permits. There is a discretion in the CMA for the Minister to hold Block Offers "from time to time" (section 24), and a more specific expectation in the minerals programmes for Block Offers to be held annually. Read in light of the CMA's promotional purpose statement,

⁷ The Climate Change Commission (CCC) has adopted the term 'fossil gas' over natural gas. Both of these terms refer to the use of methane gas as a fuel. The term fossil gas is used in this Regulatory Impact Statement to be consistent with the CCC and the terminology used in the Emissions Reduction Plan.

this implies a frequency that is regular, with limited flexibility to adjust to evolving needs.

24. The choices that remain for the decision-maker are therefore only in relation to who develops the resource, how quickly it is developed and the financial return. While this approach may provide the most certainty and simplicity in decision-making, it is arguably at the expense of flexibility.
25. Flexibility is particularly important in the managed transition away from fossil fuels. The outcomes to be achieved in the longer term (a reduction in demand and therefore supply) are likely to be different to those in the short-to-medium term (sustaining investment to support the transition). Flexibility is also important to accommodate any difference in development objectives between petroleum and minerals, and between different kinds of minerals.
26. The CMA, as designed, does not factor in the negative externalities generated from resource extraction, which in the case of fossil fuels are carbon emissions. Although such impacts could be considered as part of processes in environmental legislation, a flexible CMA would allow governments to clearly signal the markets about the need for investment and development of Crown-owned minerals over the short, medium and longer-terms.

If the CMA's promotional intent remains the same (counterfactual) it will continue to promote prospecting, exploration and mining with unintended consequences

27. As highlighted above, the strategic and wider regulatory environment in which the CMA operates is changing. The change is generally in the direction of acknowledging and taking action to limit the short to long-term impacts of climate change on New Zealand and New Zealanders. To this end, there is now a clear objective to reduce reliance on fossil fuels in the long term, while also acknowledging their role in the short-to-medium term as part of a managed transition to a low-emissions economy.
28. A decision to continue to maintain the CMA's *promotion* of the extraction of Crown-owned minerals (and its interpretation in the minerals programme) has the potential to both frustrate and be undermined by the changes in the wider regulatory system. The CMA is one part of the Crown minerals regulatory system and even though rights to a mineral may be granted, whether mining occurs, when and for how long depends on resource management and conservation processes.
29. This may over time have unintended consequences. Continual promotion could lead to resource extraction that is not desirable for the long-term benefit of New Zealand. This is particularly so in the case of petroleum where granting a petroleum exploration permit usually for a period of ten years creates a long-term commitment on the part of the Crown, including an expectation that subsequent mining permits will be granted in the event that a commercial discovery is made.
30. At the same time, the tension between the different objectives in the system could also send mixed signals to potential investors, regulated parties, and the general public, preventing investment and development where it is desired and considered beneficial.

What objectives are sought in relation to the policy problem?

31. Based on the principles, objectives and outcomes for the CMA Tranche Two Review, we are seeking the following objectives (equally weighted) in relation to this specific policy problem:
 - New Zealand's petroleum and minerals resources sector should contribute to the country's productive, sustainable and inclusive economy. Changes would ensure that the management of the sector supports the realisation of the Government's wider priorities. This includes a managed and equitable transition away from fossil fuels.

- Future-proofing the CMA regime to enable it to be interpreted in an enduring way, with sufficient flexibility to accommodate changes in policy objectives now and in the future.
- The sector needs to be governed by a regulatory regime that is clear, coherent and fair. Changes would align with Government Expectations for Good Regulatory Practice by ensuring the CMA avoids duplicating functions provided for in other enactments in the wider Crown-minerals regulatory regime.
- Mitigating any legal risks to the Crown.

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

What criteria will be used to compare options to the status quo?

32. The following criteria will be used to assess options:
- **Effectiveness:** How effective is the option in addressing the policy problem within the scope provided?
 - **Proportionality:** Does the option minimise costs, risks and potential unintended consequences?
 - **Regulatory certainty:** Does the option make regulatory requirements clear and transparent, and outcomes more predictable?
 - **Practicality:** Does the option minimise implementation risks, provide for administrative simplicity, and encourage timely decision-making?

What scope will options be considered within?

Options are limited by the scope of Tranche Two of the CMA Review

33. The CMA Tranche Two Review is intended to examine whether the CMA is fit-for-purpose to achieve government objectives, without changing fundamental aspects of its operation and wider legislative settings. It would consider incremental changes, such as whether the promotional aspects of the CMA needed amending.
34. Any changes would need to be consistent with the existing emphasis on the role of the Crown as resource-owner, and its economic stewardship. Changes would not shift the original policy rationale underpinning the CMA and its fundamental role in the wider system i.e., to allocate development rights to Crown-owned resources in a manner that delivers fair financial return to the Crown.
35. Therefore, options that introduce wider wellbeing considerations or changed the interpretation of “for the benefit of New Zealand” in the programmes to be wider than maximising economic benefit were not considered.
36. Any changes should also not impact the Crown’s ability to allocate new petroleum permits within onshore Taranaki. Decisions regarding this were scoped out of Tranche Two.

Guidelines from the Legislation Design Advisory Committee

37. The Legislation Design Advisory Committee (LDAC) provides specific guidance on designing legislation and, in particular, purpose provisions and statements of principle.⁸ Among other advice on good legislative design, LDAC notes that legislation needs to be clear about the policy objective or purpose of the legislation and think through whether it has sufficient durability and flexibility to adapt to change and allow for continuous improvement.
38. LDAC guidelines outline the key non-mutually exclusive functions that purpose clauses serve:
- To communicate the basic purpose of a regime to help the reader understand and apply the legislation;

⁸ For LDAC guidance, see here: <http://www.ldac.org.nz/guidelines/supplementary-materials/designing-purpose-provisions-and-statements-of-principle/>

- To signal the direction of the regime and/or a change in the high-level policy approach;
- To set the basis for implementing, monitoring and assessing the performance of the regime or to be the basis for statutory criteria or tests for discretions; and
- To guide the interpretation of the legislation.

39. The guidelines also caution against the following:

- Avoiding vague aspirational or political statements as purpose clauses have a legal effect on the nature of powers and duties under the legislation;
- Ensuring that purpose clauses reflect, and can be implemented through, the substantive provisions of the legislation; and
- Ensuring that purpose clauses do not go beyond what the substantive provisions can deliver.

40. In designing and considering options, we took LDAC’s guidelines into account.

Removing the CMA’s purpose statement was not considered

41. We did not consider the option of removing the purpose statement in the CMA for two reasons. One, purpose clauses are now standard aspects of good legislation design and two, repealing it would involve amending the substantive provisions of the CMA that refer to or are guided by the purpose statement in their interpretation or in the application of statutory criteria and discretion. A wholesale adjustment of the CMA in this way is out of scope of Tranche Two of the CMA Review.

Options that involve only amending the minerals programmes were not considered

42. Two minerals programmes (the Minerals Programme for Petroleum 2013 and the Minerals Programme for Minerals (Excluding Petroleum) 2013) set out:

- how the Minister and the Chief Executive will have regard to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi);
- how the Minister and the Chief Executive will exercise specific powers and discretions conferred on him or her by the CMA;
- how the Minister and the Chief Executive will interpret and apply specific provisions in the CMA or regulations made under the CMA; and
- general guidance on the CMA and the regulations.

43. The minerals programmes are considered secondary legislation (section 19(3) of the CMA).

44. Legal professional privilege

What options are being considered?

45. We considered the following mutually exclusive options:
- **Option 1 – Status quo and counterfactual, OR**
 - **Option 2 – Replace the promotional intent of the CMA with neutral policy language, OR**
 - **Option 3 – Replace the promotional intent of the CMA with nuanced policy language**
46. Where options include amending the CMA, the Minerals Programme for Petroleum 2013 and the Minerals Programme for Minerals (Excluding Petroleum) 2013 would also be amended to reflect changes in the primary legislation.

Option 1 – Counterfactual

47. Under this option, the CMA would not be amended and would continue to *promote* the development of Crown-owned minerals, leading to the unintended consequences described above.

Option 2 – Replace the promotional intent of the CMA with neutral policy language [Recommended]

48. This option would involve amendments as follows:
- amending the promotional elements of the purpose statement in the CMA such as replacing “promote” with language such as “manage or administer the allocation of rights in respect of”;
 - amending the functions of the Minister in the CMA away from attracting and/or promoting permits to focus on the Minister’s role in offering opportunity for applications to be made, and making decisions under the CMA; and
 - amending the CMA to allow greater flexibility as to the timing of public tenders for the allocation of petroleum exploration permits.
49. This option would achieve the objectives described in Tranche Two of the CMA Review. Option 2 would make clear the CMA’s role as an allocation and management framework, while enabling flexibility in the pursuit and realisation of objectives that may evolve over time and be different for the different kinds of minerals that it regulates (e.g., petroleum versus critical minerals).
50. The majority of public submitters are in favour of tempering the CMA’s promotional intent. However, industry stakeholders expressed caution, noting that other legislation also use the word ‘promote’ in purpose statements and that changes to the purpose statement will have implications for development that is desired, such as for clean-tech minerals.
51. This is the recommended option and an analysis of its marginal costs and benefits is contained below.

Option 3 – Replace the promotional intent of the CMA with nuanced policy language

52. This option is broadly similar to Option 2 except as it relates to the purpose statement of the CMA, which would be amended to replace promotional elements with nuanced policy language such as manage or administer the allocation of rights in respect of “responsible prospecting for...” or “sustainable prospecting for...”.
53. This option has been developed as a result of public submissions. Submitters were asked for examples of alternative wording (other than “manage” or “administer”) that

would appropriately describe the CMA's purpose. Some submitters put forward terms such as "sustainability", "sustainably" and "protect".

54. This option would increase flexibility compared with Option 1. However, it would, at the same time, introduce a new and more nuanced policy objective in relation to "responsible" or "sustainable" mining. Therefore, any flexibility gained would be less than that in Option 2.
55. It would also, arguably, overlap with considerations and functions (e.g., environmental) under other legislation in the wider regulatory regime. This is likely to have an impact on outcomes under the CMA, increasing regulatory uncertainty. Therefore, any marginal benefits from the gain in flexibility would be outweighed by the costs of this uncertainty.

How do the options compare to the status quo?

| | Option 1 – Counterfactual | Option 2 – Replace the promotional intent of the CMA with neutral policy language | Option 3 – Replace the promotional intent of the CMA with nuanced policy language |
|-----------------------------|---------------------------|--|--|
| Effectiveness | 0 | <p style="text-align: center;">++</p> <p><i>Making neutral the CMA’s promotional intent would allow flexibility in how governments’ evolving objectives and priorities for the resources sector, such as a managed transition away from fossil fuels or the development of critical minerals, are given effect to.</i></p> | <p style="text-align: center;">+</p> <p><i>Although this option would make neutral the CMA’s promotional intent, it would simultaneously introduce a new and nuanced policy objective around “responsible” or “sustainable” mining. The degree of flexibility introduced would be more than the counterfactual, but less than Option 2.</i></p> <p><i>It could potentially restrict the development of those Crown-owned minerals considered necessary in a managed transition to a low-emissions economy.</i></p> |
| Proportionality | 0 | <p style="text-align: center;">+</p> <p><i>The unintended consequences from the counterfactual i.e., mixed signals as to the development of Crown-owned minerals and undesirable extraction would be minimised.</i></p> | <p style="text-align: center;">-</p> <p><i>The added complexity in decision-making and potential overlap with functions of other regulators could give rise to other risks and unintended consequences, compared to the counterfactual.</i></p> |
| Regulatory certainty | 0 | <p style="text-align: center;">- / 0</p> <p><i>Option 2 would clarify that the CMA is merely an allocation and management tool.</i></p> <p><i>The outcome to be impacted would be the frequency of public tenders for petroleum exploration permits (Block Offer). Increased flexibility would make their timing less predictable than the status quo (where expectation per the minerals programmes is for an annual tender).</i></p> | <p style="text-align: center;">--</p> <p><i>This option would introduce nuance into the CMA’s policy objective, potentially beyond the CMA’s current focus on economic benefit. It would likely impact outcomes of all regulatory processes and decisions in the CMA, creating uncertainty.</i></p> |

| | | | |
|---------------------------|---|---|--|
| | | <i>Other outcomes are less likely to be impacted as the CMA's policy objective, "for the benefit of New Zealand" and its economic interpretation, remain unchanged.</i> | |
| Practicality | 0 | 0 <i>Option 2 does not involve new requirements or functions that need to be implemented.</i> | -- <i>Given the introduction of a new and nuanced policy objective in the CMA, its application to the processes and decisions throughout the CMA could introduce greater administrative complexity and therefore risks.</i> |
| Overall assessment | 0 | 2 / 3 | - 4 |

Key for qualitative judgements:

++ much better than status quo

+ better than status quo

0 about the same as status quo

- worse than status quo

- - **much worse than status quo**

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

56. **Option Two**, amending the promotional intent of the CMA with neutral policy language **is the recommended option:**

- It effectively addresses the policy problem by enabling flexibility and not necessarily promoting or inhibiting the ability of current or future governments to allocate rights in relation to Crown-owned minerals. It would emphasise the purpose of the CMA as the key legislative instrument in the strategic management of Crown-owned minerals for the benefit of New Zealand.
- It would send clearer signals to investors and regulated parties about New Zealand’s evolving needs. Compared with the counterfactual, the unintended risks and consequences from the variance between the purpose of the CMA and wider policy announcements would likely be minimised, generating more regulatory certainty.
- It may lead to more efficient and productive allocation processes for petroleum exploration in particular. The current annual public tender or Block Offer process takes an average of two years to complete and involves a significant investment of time and resource from iwi and hapū and the regulator. The yield in terms of interest and permits has trended down over the past decade.⁹ Flexibility in the timing of Block Offers would allow for better alignment with New Zealand’s energy security needs and market interest.
- As the changes do not involve expanding decision-making considerations or introducing new functions, this option is considered no less practical to implement as the counterfactual.

57. It is also the recommended option when compared with Option Three:

- Introducing “sustainable” or “responsible” language, may not be consistent with the objective of not duplicating functions in the other parts of the system. “Sustainable” and “responsible” imply wider wellbeing considerations around the environment and health and safety, which are currently the responsibility of other regulators. It is also potentially beyond the agreed scope of Tranche Two of the CMA review that is intended to consider changes that are consistent with the existing emphasis on the role of the Crown as resource-owner, and its economic stewardship.
- It is considered less certain and practical to implement. “Sustainable” or “responsible” are open to a range of interpretations and when applying these terms in decision-making, the Minister and/or the regulator may need to have regard to a wider range of considerations, potentially lengthening the time taken to make decisions and increasing the risk of legal challenge to those decisions.

What are the marginal costs and benefits of the option?

Assumptions

58. In our analysis of impacts, we have made the following assumptions:

⁹ Ten exploration permits were granted each in Block Offers 2012 and 2013, 15 in Block Offer 2014, nine in Block Offer 2015, one each in Block Offers 2016, 2017 and 2018, and two in Block Offer 2019.

- As the CMA Tranche Two Review is intended to make incremental change, we assume the recommended option would widen existing discretion under the Act, but not fundamentally alter it.
- The touchstone for decision making under the CMA would remain ‘for the benefit of New Zealand’ and its interpretation in the minerals programme. Currently, that interpretation focuses on increasing New Zealand’s economic wealth through its resources.
- The objectives for the managed transition away from fossil fuels, and in particular fossil gas, involve maintaining security of supply through the transition as fossil gas is progressively displaced by renewable, lower-emissions alternatives (see the Terms of Reference for the Gas Transition Plan¹⁰). The Gas Industry Company’s (the industry co-regulator) recent (2021 and 2022) gas supply and demand projections¹¹ indicate that there is sufficient gas ‘in the ground’ to meet mass market demand until at least 2035 and the demands from high-value users for the very long-term (i.e., out to 2060). The recommended option would not inhibit the ability to meet security of supply objectives and maintain investment when required, as it is not intended to curtail flexibility in decisions.

| Affected groups <i>(identify)</i> | Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i> | Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i> | Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i> |
|--|---|--|--|
| Additional costs of the preferred option compared to taking no action | | | |
| Regulated parties and potential investors | <i>See comment below</i> | Low <i>See comment below</i> | Low |
| Ministry of Business, Innovation and Employment (the regulator) | There are unlikely to be any additional costs to the regulator from implementing the recommended option. | Low | High |
| New Zealand public | <i>See comment below</i> | Medium <i>See comment below</i> | Low |
| Total monetised costs | - | - | - |

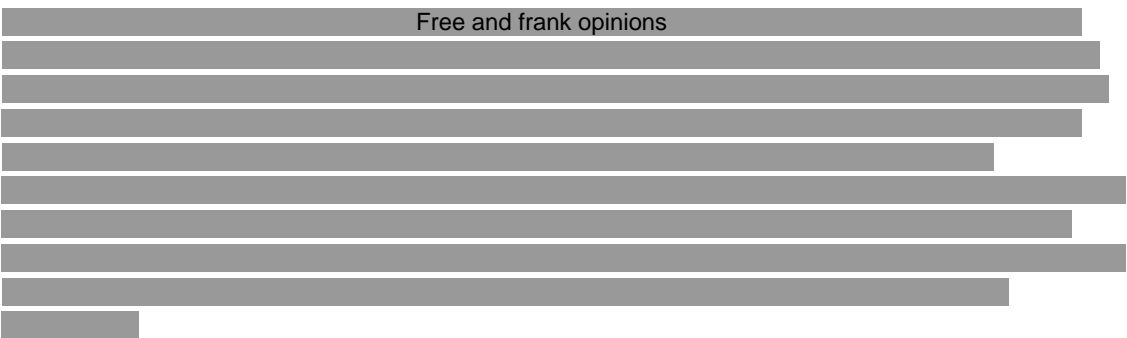
¹⁰ <https://www.mbie.govt.nz/building-and-energy/energy-and-natural-resources/energy-strategies-for-new-zealand/gas-transition-plan/#:~:text=As%20set%20out%20in%20the,Aotearoa%20New%20Zealand's%20international%20commitments.>

¹¹ “Gas Demand and supply projections – 2021 to 2035”: <https://www.gasindustry.co.nz/assets/WorkProgrammeDocuments/Gas-Industry-Co-Gas-Market-Settings-Investigation.pdf>

“Gas Supply and Demand Projections 2022”: <https://www.gasindustry.co.nz/assets/CoverDocument/Gas-supply-and-demand-projections-2022.pdf>

| | | | |
|---|---|---------------|--------|
| Non-monetised costs | | Low to Medium | Low |
| Additional benefits of the preferred option compared to taking no action | | | |
| Regulated parties and potential investors | <i>See comment below</i> | Medium | Low |
| Ministry of Business, Innovation and Employment (the regulator) | There are potential benefits from being able to hold promotional activities when needed, particularly in the case of tenders for petroleum exploration permits. | Low | Medium |
| New Zealand public | <i>See comment below</i> | High | Medium |
| Total monetised benefits | | - | - |
| Non-monetised benefits | | Medium | Medium |

Additional costs and benefits to potential investors and regulated parties

59.  Free and frank opinions
60. An increase in flexibility as to the promotion of resource development could lead to fewer opportunities to explore, prospect or mine. However, this is hard to model as to status quo itself is changing. A permit under the CMA by itself does not automatically result in mining activities; it is simply a step in the process. The Resource Management Act 1991, the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, and the Conservation Act 1987 all determine whether and when a permit for the right to mine will eventuate in mining activities. Given resource management and conservation reforms currently underway, the status quo itself is evolving. Against these changes, the impact of a widening of discretion under the CMA cannot reliably be assessed.

Additional costs and benefits to the New Zealand public

61. Introducing flexibility into the CMA with regards to the promotion of non-renewable mineral development is likely to lead to longer-term benefits to the New Zealand public. It will enable development to be promoted where governments have determined a need for it, and it is likely to limit the unintended extraction of resources and their flow-on impacts.
62. There are potential benefits from costs saved. For example, in the case of annual Block Offers for petroleum exploration permits, the process takes an average of two years from commencement to decisions and involves significant consultation with iwi and hapū. Should flexibility lead to Block Offers taking place when required (rather than on

a regular basis), there are potential savings from the time and resources invested in the process.

63. The recommended option could potentially result in lost revenue to the Crown in the form of fees and royalties that come with prospecting, exploring and mining minerals. However, whether any mining occurs, when and for how long depends on other parts of the Crown minerals regulatory system (noted above). Investors may also choose to focus on developing the resource from existing fields rather than new exploration. Given the evolving status quo from resource management and conservation reforms, the value of any potential lost revenue is hard to assess and quantify.

Section 3: Delivering an option

How will the new arrangements be implemented?

- 64. The proposals in this regulatory impact statement are intended to be implemented through amendments to the Crown Minerals Act 1991 and to the minerals programmes. A Crown Minerals Amendment Bill is part of the 2022 Legislation Programme as a Category 4 priority (to be referred to a select committee in the year). Consequential amendments to the minerals programmes will be drafted by the Ministry of Business, Innovation and Employment (MBIE) once legislative changes are enacted.
- 65. Consideration will be given to when amendments should be brought into effect, and the exact timing will be confirmed on introduction of legislation in Parliament. Transitional provisions may be needed for activities, such as public tenders for petroleum exploration permits, that may be underway and which might be impacted directly by any changes to legislation.
- 66. The recommended option will be implemented by MBIE as the relevant regulator for the CMA regime. MBIE is an experienced regulator. Changes, once enacted, will be communicated to regulated parties, including any specific impacts on them.
- 67. As indicated above, we do not expect the recommended option to impose additional administrative costs on MBIE, and in some instances may lead to savings.

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

- 68. MBIE has a responsibility in its regulatory stewardship role to monitor, review and report on regulatory systems. Any changes arising from CMA Tranche Two amendments would be monitored, evaluated and reviewed as part of the wider Crown Minerals Act 1991 framework. This includes determining whether the changes are producing the benefits envisaged and addressing any unintended costs and other impacts.
- 69. In the context of introducing flexibility in the development of Crown-owned minerals, this will include monitoring:
 - whether and how well the new regime is able to respond to evolving policy objectives and different objectives between various Crown-owned minerals;
 - the impact of the changes (if any) on investor perceptions of New Zealand’s regulatory environment as it relates to resource development; and
 - whether and to what degree this increased flexibility is producing more efficient outcomes in promotional activities, such as public tenders for petroleum exploration permits.

70. Constitutional conventions

Annex One: Overview of the Crown minerals regulatory system

The Crown Minerals Act 1991 operates in a wider regulatory system of checks and balances

The Crown Minerals Act 1991 (CMA) is one among several pieces of legislation that affects or relates to prospecting, exploring or mining Crown minerals. The other key statutes include the Resource Management Act 1991 (RMA), the Maritime Transport Act 1994, the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, and the Health and Safety at Work Act 2015. Obtaining a permit under the CMA is necessary when the minerals are owned by the Crown, but it is not sufficient on its own to start to develop those minerals.

The CMA was introduced at the same time as the RMA. The efficient allocation and management of rights to develop Crown minerals, and the management of environmental effects from extracting these resources were deliberately separated at the time. This separation was intended to minimise potential conflict between the Crown’s dual roles as resource owner and as regulator. It ensures independent and transparent decision making, clear accountability for the different objectives, and regulatory efficiency.

The different regulators within the Crown-owned minerals system is set out below:

| | | PERMIT Allocation, compliance and administration | ENVIRONMENTAL CONSENTS | HEALTH & SAFETY | LAND ACCESS |
|------------------|-----------------|--|---|------------------------------------|-----------------------------------|
| REGULATOR | ONSHORE | Ministry of Business, Innovation and Employment | Local Authorities | Worksafe NZ | Private land owners and occupiers |
| | OFFSHORE | | Environmental Protection Authority (beyond 12 nautical miles) | Worksafe NZ | DOC MBIE LINZ |
| | | | Local Authorities (out to 12 nautical miles) | Maritime NZ (oil spill management) | |

Overall, this regulatory system provides checks and balances which aim to achieve positive wellbeing outcomes. The diagram below sets out how the regulatory system accounts for the broader dimensions of wellbeing understood through the Treasury’s ‘Living Standards’ framework which highlights natural, human, social and financial capital as key determinants of wellbeing.

HUMAN CAPITAL

Health and Safety at Work Act 2015 (HSWA)

Under the HSWA all permit holders are required to maintain safe working environments and implement sound practices.

Crown Minerals Act 1991 (CMA)

When granting a permit the Minister must be satisfied that the work programme is consistent with good industry practice.

A high level health and safety capability assessment is carried out before granting a Tier One permit.

NATURAL CAPITAL

CMA 1991

Schedule 4 provides for the protection of the surface of high value conservation land, such as National Parks, from all but minimum impact exploration and mining activity, by limiting access to it.

Resource Management Act 1991 (RMA)

The RMA regulates the environment effects of mineral and petroleum activities on land and within the territorial sea.

Resource consents, if required, will impose conditions to avoid, remedy, or mitigate adverse effects of the proposed activity on the environment.

The Department of Conservation is responsible for protected species under the Wildlife Act 1953, and Marine Mammals Protection Act 1978, Conservation Act 1987.

Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ)

Under the EEZ Act the Environmental Protection Authority manages the environmental effects of petroleum and minerals activities beyond the territorial sea. A marine consent is required from the EPA for those activities not permitted in the regulations.

Other Acts

Biodiversity Act 2002, Hazardous Substances and New Organisms Act 1996 and Maritime Transport Act 1994.

SOCIAL CAPITAL

Heritage New Zealand Pouhere Taonga Act 2014

An operator will need to obtain an archaeological authority from Heritage NZ if an archaeological site may be affected by minerals and petroleum activities.

Marine and Coastal Area (Takutai Māori) Act 2011

Before an applicant may lodge an application that relates to a right conferred by a customary marine title (CMT) order or agreement, the permit applicant must notify and seek views from applicant group who have applied for a CMT over the area.

RMA 1991

The public are able to provide input into the resource consent process for most mining activities that are considered to have more than a minor adverse effect on the environment.

CMA 1991

When granting a permit, the Minister is required to have regard to the principles of the Treaty of Waitangi.

Schedule 3 of the Minerals Programme for Minerals (Excluding Petroleum) 2013 and Chapter 3 of the Minerals Programme for Petroleum 2013 lists land that is of particular importance to the mana of iwi or hapū and must not be included in a permit.

FINANCIAL CAPITAL

CMA 1991

When granting a permit, the Minister must be satisfied that the work programme is consistent with the purpose of the Act.

Royalties are set to ensure "a fair financial return for the Crown."

Annex Two: Review of the Crown Minerals Act 1991

In June 2019, Cabinet agreed to the following principles, objectives and outcomes for Tranche Two of the Crown Minerals Act 1991 (CMA) Review:

Principles

- Support New Zealand’s wellbeing – The Review will focus on making changes that benefit the long-term wellbeing 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.

Objectives and outcomes

| Objective | Outcomes |
|--|---|
| <p>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> <ul style="list-style-type: none"> • <i>Growing and sharing New Zealand’s prosperity, and supporting thriving regions;</i> • <i>Supporting the transition to a clean, green New Zealand; and</i> • <i>Providing a secure and affordable supply of critical resources.</i> | <ul style="list-style-type: none"> • Crown-owned minerals are for the benefit of all New Zealanders; • The Crown will keep Maori 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; and • The management of the sector supports the realisation of the Government’s wider priorities (including affordable energy, housing, urban development and roading infrastructure) |
| <p>Risks and downsides associated with the sector need to be appropriately managed.</p> <p><i>Risks and downsides may include:</i></p> <ul style="list-style-type: none"> • <i>Harm to people and the environment; and</i> • <i>Financial loss to the Crown, businesses, individuals and third parties.</i> | <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>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. |

Annex Three: Summary of submissions on consultation relating to purpose statement changes

Substantial submissions

“Do you agree or disagree that the purpose of the Crown Minerals Act should be amended from promoting the prospecting for, exploration for, and mining of Crown-owned minerals for the benefit of New Zealand?”

The response from submitters can be summarised as either:

- a. **Agree that the purpose statement be amended because “promote” is inappropriate and is inconsistent with other environmental objectives (iwi and environmental submitters).**
 - i. *“The promotion of mining as an industry is inappropriate for a piece of legislation and undermines the intent of allowing other elements to be covered by other legislation.” - Ngāti Ruanui*
 - ii. *“The current purpose sets the Act in conflict with other aspects of NZ policy. In particular, the Purpose should refer to Treaty rights and environmental and conservation objectives.” – Greenpeace*
- b. **Disagree that the purpose statement be amended because of the signal to investors, “promote” is common in other Acts and there may be unintended consequences (industry submitters).**
 - i. *“Changes to the purpose statement will impact all Crown Minerals, not simply petroleum ...These changes may have unintended consequences, for example, for the development of ‘green-tech’ minerals....Changing the purpose statement risks reducing confidence in the regime and indicating that the Government is not supportive of the petroleum and minerals sector. In a managed transition, it is very important that settings are stable and predictable, and managed accordingly.” - Venture Taranaki*
 - ii. *“A number of other statutes in the resources and environmental system use the term “promote”. It is not unusual or inappropriate.” e.g. “the Electricity Industry Act 2010”...” the Gas Act 1992”...” the Resource Management Act 1991”...” the Conservation Act 1987”. – PEPANZ*

“If you answered “strongly agree” or “agree” above that the purpose of the Crown Minerals Act should be amended, what alternative wording would most appropriately describe the purpose of the Crown Minerals Act?”

The response from submitters can be summarised as either:

- a. **“Promote” to “Manage”** - *“The word “manage” provides for strategic development of Crown minerals through government direction, which will necessarily involve working with the sector to optimise development, whilst recognising that the Crown has a significant regulatory function that should not be muddled by promotional activities.” – Te Rūnanga o Ngāi Tahu*
- b. **“Promote” to “Regulate”** - *“The purpose of this Act is to regulate prospecting for, exploration for, and mining of Crown owned minerals, such that these activities ensure the protection and conservation of our natural environment and climate recognising environmental limits, respect the rights of tangata whenua, and provide for the wellbeing of all New Zealanders.” - Forest and Bird*

- c. **“Promote” to “Administer”** - *“Administering the sustainable and socially responsible prospecting, exploration, and mining of Crown minerals in Aotearoa New Zealand.” – Te Ātiawa*
- d. **Other** – *“It is the TARIT view that the purpose statement should be amended to incorporate the words sustainable, sustainably, sustainability, for example “Sustainably promoting the prospecting for, exploration for, and mining of Crown-owned minerals for the benefit of New Zealand” - Te Arawa River Iwi Trust*

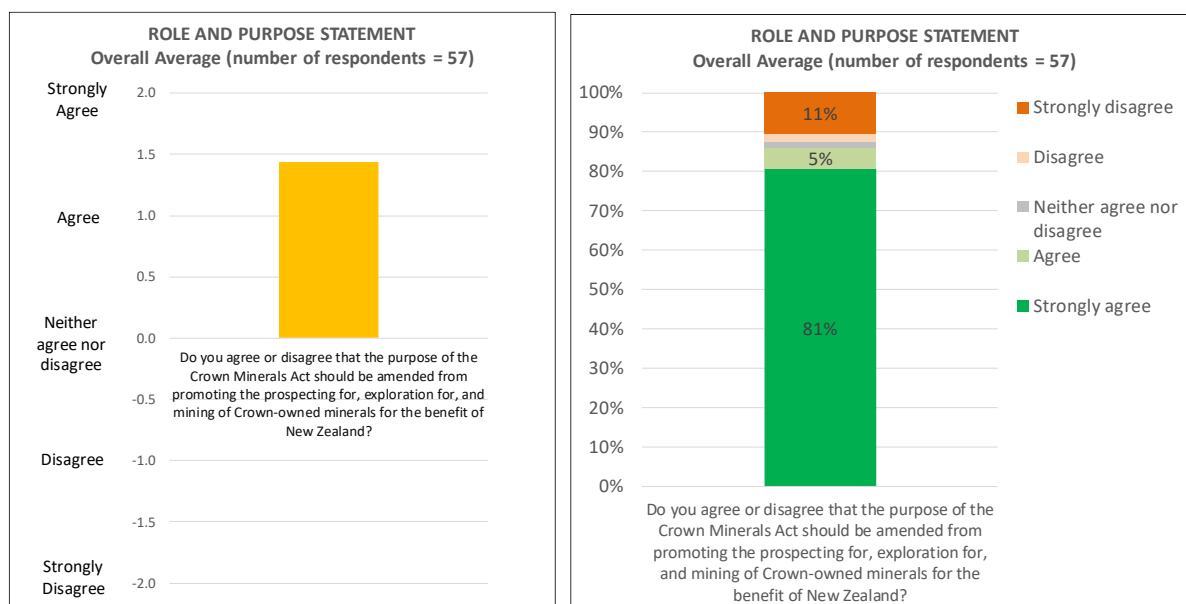
Online survey submissions

Fifty-seven people submitted on the purpose statement and 81% of them strongly agreed that the purpose of the CMA should be amended from “promoting the prospecting for, exploration for, and mining of Crown-owned minerals for the benefit of New Zealand”.

Common explanations for this agreement included:

- a. Fossil fuel burning will damage the climate and ecosystems (stop mining); and
- b. “Promote” creates a bias towards mining (economy first) over other considerations such as environmental wellbeing.

Eleven percent of purpose statement respondents strongly disagreed with changing the purpose of the CMA and noted that minerals are important and it is better to extract minerals in New Zealand where the regulatory systems are best practice.



Of those that agreed that the purpose should be amended, 51% thought that it should be changed to “Manage” while 13% thought “Administer” (the remaining 36% thought it should be changed to something else).