In Confidence

OFFICE OF THE MINISTER
OF ENERGY AND RESOURCES

The Chair
Cabinet Economic Growth and Infrastructure Committee

Crown Minerals Act Review: Minerals Programmes and Regulations

Proposal

1 This paper seeks agreement to revised regulations and minerals programmes. These changes give effect to policy decisions implemented through the amended Crown Minerals Act.

Executive Summary

2 A review of the regime for Crown minerals was initiated in March 2012 with the release of a discussion paper. The proposals covered amendments to the Crown Minerals Act 1991, associated regulations and minerals programmes. The proposals were based on three objectives:

a. Encourage the development of Crown-owned minerals so that they contribute more to New Zealand's economic development.

b. Streamline and simplify the regime where appropriate, ensuring it is in line with the regulatory reform agenda, and make it better able to deal with future developments.

c. Ensure that better coordination of regulatory agencies can contribute to stringent health, safety and environmental standards in exploration and production activities.

3 The Crown Minerals (Permitting and Crown Land) Bill was reported back by the Commerce Committee on 19 March 2013. The regulations and minerals programmes have been revised in line with the Bill, and feedback from stakeholders.

4 The revised regulations set out the new reporting and royalty obligations on permit holders. The key changes relate to strengthening obligations on reporting mineral reserves. The royalties regulations set out the increased rates applicable to new permits for non-petroleum minerals.

5 The revised minerals programmes represent a 'one stop shop' which summarise the obligations on permit holders and the processes and considerations the Minister take into account when implementing the Act. The revised minerals programmes describe a modernised approach to permit management that is focused on ensuring delivery of key work programme obligations.

6 The revised minerals programmes describe how permit decisions will be made and how iwi will be consulted. They provide detail on when the Minister might consider revoking a permit and the matters that will be taken into account when considering applications for permits, changes to permit conditions, relinquishment and permit amalgamation. Expectations for iwi engagement are also spelt out in more detail. These provisions provide greater certainty to permit holders with respect to how their permits will be managed.

7 It is proposed that the new Act, regulations and minerals programmes commence at the same time (in late April). Following the Committee's agreement to the content of the regulations and minerals programmes these will be finalised for consideration by Cabinet Legislation Committee, and issued by the Governor General.

Background

8 The Crown Minerals Act 1991 regime is made up of the Crown Minerals Act 1991 (the Act), minerals programmes, and associated regulations. The Act establishes the framework for issuing and managing permits. Within that general framework, the minerals programmes must set out how the Minister and Chief Executive will have regard to the principles of the Treaty of Waitangi, and may set out matters such as how powers or discretions under the Act will be applied and how provisions in the Act will be interpreted and applied. Under the Act, as it will be amended by the Bill, minerals programmes are regulations for the purposes of the Regulations (Disallowance) Act 1989, but not for the purposes of the Acts and Regulations Publication Act 1989. The regulations prescribe the form or content of applications and other documentation or information required, as well as fees and royalties payable, under the Act.

9 Changes to the Crown Minerals Act 1991 regime support the Business Growth Agenda goals through facilitating the growth of the petroleum and minerals sectors while ensuring that risks to the environment and workers are managed responsibly with strengthened health, safety and environmental controls.

10 Cabinet has previously agreed to amendments to the Crown Minerals Act 1991 regime as part of the review of the regime [EGI Min (12) 15/4, CBC Min (12) 6/7 and CAB Min (12) 42/4]. This followed public consultation on the discussion paper, *Review of the Crown Minerals Act 1991 Regime* and release of the report of the Royal Commission of Inquiry on the Pike River Coal Mine Tragedy. The amendment bill, the Crown Minerals (Permitting and Crown Land) Bill is currently before the House.

11 The majority of amendments proposed to the Crown Minerals Act 1991 regime require consequential amendments to the minerals programmes and regulations. This paper seeks agreement to revised regulations and minerals programmes under the amended Act.

12 I intend that the revised minerals programmes, along with updated regulations, will come into effect at the same time as the Crown Minerals (Permitting and Crown Land) Bill. Following the Committee's agreement to the content of the regulations and minerals programmes these will be finalised for consideration by Cabinet Legislation Committee, and issued by the Governor General. This will conclude the review and revision of the regime.

Crown Minerals Regulations

13 Four sets of Crown minerals regulations are currently in force. These are:

a. Crown Minerals (Petroleum) Regulations 2007 – covering the application, notification and reporting requirements for petroleum activities;

b. Crown Minerals (Minerals and Coal) Regulations 2007 – covering the application, notification and reporting requirements for non-petroleum mineral activities;

c. Crown Minerals (Petroleum Fees) Regulations 2006 – setting out the fees payable for petroleum activities; and

d. Crown Minerals (Minerals Fees) Regulations 2006 – setting out the fees payable for non-petroleum mineral activities.

14 Amendments are proposed to the Crown Minerals (Petroleum) Regulations 2007 and Crown Minerals (Minerals and Coal) Regulations 2007. The most significant of these changes relate to reserves reporting, which are set out in more detail below.

15 Other changes relate to notification processes and deadlines. The proposed changes to the Crown Minerals (Petroleum) Regulations 2007 and Crown Minerals (Minerals and Coal) Regulations 2007are detailed in Annex 1.

Reserves and resources reporting

16 Reserves and resources are estimates of the amount of petroleum or minerals within permit areas. These provide key information to the Crown in managing its resources for the benefit of New Zealand. They inform allocation decisions and are inputs into resource and market forecasts.

17 Estimates of reserves also assist the effective working of downstream markets by improving the transparency of the supply-side of the market.

Petroleum

18 In August 2010, the Ministry of Economic Development released a discussion document on changes to petroleum reserves reporting and disclosure requirements [EGI Min (10) 128]. The paper addressed a lack of confidence in the accuracy, precision and consistency of information on petroleum reserves. It proposed that the Ministry be able to verify and validate reserves estimates, and give better visibility to the upside potential of existing field reserves.

19 From this discussion document and the submissions received, a suite of measures is proposed that will significantly improve the quality and availability of information on New Zealand's petroleum reserves. These changes focus on publication of more detailed estimates of the upside potential of each field.

20 Industry feedback identified some potential issues regarding interpretation of definitions, particularly of "contingent resources", and concern that publication of contingent resources without adequate explanation of their meaning runs the risk of a wider audience misinterpreting the data. These points will be addressed through the implementation plan associated with the new regime.

Minerals

21 Minimal information on minerals reserves is currently available. The consequence is that Crown's understanding of its mineral assets is sparse.

22 It is therefore proposed to strengthen reporting obligations for minerals permit holders so that at least a baseline level of reserves information is available. The level of information that will be required is significantly less than for petroleum, reflecting that the existing requirements are minimal and the value of the resource is lower.

23 Industry submissions expressed general concern about the commercial implications resulting from the publication of reserves information. Some noted that this could adversely affect their negotiating position with landowners. I note this concern but maintain that it is appropriate for such information to be made available for the reasons described in paragraphs 16 and 17.[1] I note that the petroleum sector expressed similar concerns when equivalent reserves reporting provisions were introduced in 2004, and that such concerns have not materialised into matters of legitimate concern.

24 Industry feedback on the standards required for reserves reporting has been taken into account by providing for reserves and resources to be reported to three major international classification systems.

Royalties

25 In September 2012, Cabinet Business Committee agreed that royalty provisions, which are currently set out in minerals programmes, be made into regulations, with appropriate empowering provisions in the Act [CBC Min (12) 6/7].

26 Cabinet approved new royalty rates for non-petroleum minerals on 27 February 2013 [EGI Min (13) 3/7], and these have been incorporated into the new Regulations.

27 Minor changes are also proposed for petroleum royalties to clarify that royalties are payable on gas flared outside of an approved testing programme and establish a royalty regime for underground gas storage.[2]

28 These changes will only apply to new permits granted following commencement of the new regime. The minerals and petroleum sectors were consulted on these changes and have no outstanding concerns.

Minerals Programmes

29 On 1 October 2012, Cabinet Business Committee (CBC) noted that the former Minister of Energy and Resources intended to release for consultation the *Draft Minerals Programme for Petroleum* and the *Draft Minerals Programme for Minerals (Excluding Petroleum)*, as part of the review of the Crown Minerals Act 1991 regime [CBC Min (12) 7/7].

30 The draft minerals programmes were open for consultation from 4 October to 5 December 2012, with 25 submissions received. Some submissions on the minerals programmes identified changes that are more appropriate for the Crown Minerals (Permitting and Crown Land) Bill, and these were taken forward in the final departmental report on the Bill.

31 I propose that Cabinet Economic Growth and Infrastructure Committee agree to the revised minerals programmes (the '*Petroleum Programme*' and the '*Mineral Programme*') attached, subject to minor or technical amendments. The attached minerals programmes:

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[1] It will be important to clearly identify the date reserves disclosures will to made so that listed companies can coordinate reporting obligations to relevant stock exchanges.

[2] Royalties associated with any original gas in a storage reservoir would be subject to a one off royalty of 5% AVR, and any crude oil or condensate produced subsequently would be subject to the standard petroleum royalty of the higher of 5% AVR and 20% APR. Royalties on gas injected would be paid in the usual way, i.e. at the point of production.

a. incorporate the policy decisions to amend the Crown Minerals Act 1991 regime [EGI Min (12) 15/4 and CBC Min (12) 6/7]

b. incorporate feedback from submissions on the draft minerals programmes

c. incorporate changes to the Bill recommended by the Commerce select committee

d. will replace the current minerals programmes for petroleum and non-petroleum minerals

e. provide a "one-stop shop" summary of the legislation and regulations as well as setting out how the Minister, the Chief Executive and NZP&M will interpret and apply the Act.

Key amendments to the minerals programmes

32 The Crown Minerals Act establishes the framework for issuing and managing permits. Within that general framework, the minerals programmes must set out how the Minister and Chief Executive will have regard to the principles of the Treaty of Waitangi for the purposes of the minerals programme, and may set out matters such as how powers or discretions under the Act will be applied, and how provisions in the Act will be interpreted and applied. The minerals programmes interpret and apply the Act and set out practices and procedures relating to:

- Interpretation of the purpose statement
- Regard to the principles of the Treaty of Waitangi
- Assessment of applicants' technical, health and safety, and environmental capability
- Processes for granting permits, and approving work programmes
- Changes to work programmes
- Annual review meetings
- Exclusivity of permits and overlapping permits
- Permit duration and appraisal extensions
- Subsequent permit rights
- Permit revocation
- Unconventional resources

33 The revised minerals programmes set out guidance for permit applicants and holders on how permitting decisions will be made, and provide the Minister with flexibility in decision making where necessary.

Interpretation of the purpose statement

34 The Bill, as reported back to the House by the Commerce Committee, proposes the following purpose statement for the Crown Minerals Act:

1A Purpose

(1) The purpose of this Act is to promote prospecting for, exploration for, and mining of Crown owned minerals for the benefit of New Zealand.

(2) To this end, this Act provides for—

(a) the efficient allocation of rights to prospect for, explore for, and mine Crown owned minerals; and

(b) the exercise, in accordance with good industry practice, of those rights; and

(c) the effective management and regulation of those rights; and

(d) a fair financial return to the Crown for its minerals.

35 The Act does not currently contain a purpose statement. The revised minerals programmes describe how the Minister will interpret and apply each of the elements of the purpose statement when making decisions under the legislation. This in turn informs the practices and procedures set out in the minerals programmes.

36 Submitters generally welcomed the description of the Minister's interpretation of the purpose statement, although a number of submitters, such as ECO, considered that a broader interpretation of the purpose statement should be taken to include environmental and sustainability objectives. I consider, however, that a focused interpretation is appropriate, since the development of the Crown mineral estate is subject to and takes place within a broader statutory framework covering other important components of the "benefit of New Zealand", including environmental objectives.

37 In light of recommendations from the Royal Commission of Inquiry on the Pike River Coal Mine Tragedy, the reported-back Bill includes a reference to 'good industry practice' in the purpose statement, reflecting the central importance of health and safety in all activities under Crown minerals permits. The revised minerals programmes have been updated to align with the changes to the purpose statement. In particular, the provisions relating to 'good industry' practice have been elevated.

Processes for granting permits and approving work programmes

38 The Act establishes that the Minister may grant permits to prospect for, explore for, and mine Crown-owned minerals. The minerals programmes set out processes for allocating permits. The revised programmes retain the current methods of permit allocation, and improve the effectiveness of these processes based on experience.

39 The *Petroleum Programme* maintains the current policy that petroleum exploration permits will be issued solely via annual competitive block offers.

40 Given the wide variety of non-petroleum minerals covered and circumstances particular to each, the *Minerals Programme* sets out the range of allocation methods that may be used. These are in line with current allocation methods, but procedures relevant to each have been refined. In general, competitive allocation methods would be used for minerals for which there is expected to be a number of parties interested in the resource and there is a reasonable level of publicly available information on the distribution and nature of the resource.

41 Following the submissions process, the *Minerals Programme* has been updated to provide for a holding period, of not more than 60 working days, while a determination can be made on which allocation method to apply to an area of land that was previously under permit when that area becomes available. This provides time for the land to be reserved for future competitive tender allocation, if desirable, rather than having it default into 'Newly Available Acreage' allocation – a short time-bound period for applications.

42 The *Minerals Programme* provides that permits will ordinarily be granted over unbroken areas, and describes the circumstances under which permits may be non-contiguous – this is generally circumstances where discrete deposits are to be explored or mined as a single project.

43 The minerals programmes describe how a holder of two or more adjacent permits can apply to amalgamate them into a single permit. This provision provides that the royalty rates of the most recent of the amalgamated permits would apply and sets out how the duration of amalgamated permits will be determined.

44 At present, work programmes often contain a large number of obligations, many of which are of limited importance to realising the value of the Crown's mineral estate, e.g. intermediate deadlines within broad exploration tasks or desktop studies. NZP&M consequently spends a significant amount of time managing compliance with these obligations. This is in part a consequence of the current minerals programmes requiring such specificity.

45 The revised minerals programmes focus on key work programme outcomes and decision points, such as whether to proceed to more detailed seismic investigation, or to undertake drilling. These will be agreed up front with the permit holder and managed actively through annual work programme review meetings with NZP&M.

46 Submitters welcomed this approach, citing examples where overly-prescriptive work programme obligations can result in activities that are not in the interest of the permit holder, or the Crown.

Assessment of applicants' technical, health and safety and environmental capability

47 The new Act will require that before issuing a permit, the Minister must be satisfied that the applicant has the financial and technical capability to carry out the work programme. For Tier 1 permits (i.e. petroleum and high value minerals), the Minister must also be satisfied that the applicant is likely to have the capability and systems that are likely to be required to meet health and safety and environmental requirements.

48 The revised minerals programmes set out the information that permit applicants will be required to provide and the factors the Minister will take into account when assessing capability. This includes, but is not limited to, the applicants' record of compliance with other permits, financial resources, technical capability and ability to demonstrate that they have the personnel, systems and processes necessary to undertake the work in accordance with the requirements of the relevant legislative requirements.

Changes to work programmes

49 As noted above, the programmes encourage a small number of clear obligations and fewer binding permit conditions. This is expected to result in fewer cases where changes to work programme obligations are required.

50 However, there will be cases where it is necessary for permit holders to seek changes to work programme obligations. This is particularly the case for non-petroleum minerals where exploration plans can deviate significantly as information about the resource is gathered.

51 The minerals programmes set out the factors the Minister will consider when assessing applications for changes in conditions. As per the previous minerals programmes, these relate to factors generally outside the control of permit holders, such as availability of new geological information or force majeure.

52 Under the revised minerals programmes, the Minister will also be able to consider whether the proposed change would facilitate the activities under the permit, or adjacent or related permits for the same mineral group, being carried out more effectively. This allows consideration of permit holders' work programme obligations over their portfolio of permits, which was not previously possible. Applications for changes of conditions that are the result of poor planning would not be considered.

53 The Minister will no longer be required to be satisfied that the permit holder has "substantially complied" with the permit before granting a change of conditions. This provision provided undue scope for dispute and was time consuming.

Annual review meetings

54 Annual review meetings are a new process to ensure better interaction between Tier 1 permit holders, NZP&M and other regulators. The minerals programmes describe the purpose and format of these meetings.

55 Submitters on the draft minerals programmes identified a number of areas where work programme and permit management could be further streamlined to reflect the nature of the minerals and petroleum operations, e.g. taking a portfolio or project-based approach to permit management (subject to conditions), and amalgamation of permits, which have been reflected in the revised programmes.

Exclusivity of permits and overlapping permits

56 The Act provides that the rights to prospect, explore and mine a resource under a permit are exclusive to the permit holder unless the permit expressly provides otherwise.

57 The circumstances in which a non-exclusive permit may be issued are clarified in the revised minerals programmes. These circumstances include:

- petroleum prospecting permits[3]
- minerals prospecting permits where the land is notified for allocation by competitive tender or the applicant would not be materially disadvantaged if the permit were to be granted on a non-exclusive basis
- permits over methane hydrates, and shale oil and gas where the area may also be subject to a petroleum permit for conventional resources (and vice versa)
- strata titles.[4]

58 If applicable, a permit will state the extent to which any rights contained within it are non-exclusive.

59 The minerals programmes now also provide guidance on how activities over the same area under different permits should be coordinated, and how disputes between permit holders will be resolved.

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[3] The *Petroleum Programme* provides that petroleum prospecting permits may be issued on an exclusive basis under certain circumstances – primarily in "far frontier" areas where there is little data or known interest from other operators. This will encourage some oil companies to undertake seismic data acquisition, potentially bringing forward exploration and mining activities in these areas.

[4] These are permits that specify access to a resource at a certain depth. These are not currently used in New Zealand.

Permit duration and appraisal extensions

60 The Act provides for a maximum duration of a petroleum exploration permit of 15 years, and a maximum of 10 years for mineral exploration permits. The *Petroleum Programme* sets out the considerations the Minster will take into account when determining the duration of a petroleum exploration permit within this maximum – in general, permits in remote areas with little data over them will require a longer duration. There was limited discretion provided under the previous programme.

61 Similarly, mining permits may be issued for up to 40 years and the minerals programmes continue to set out the factors the Minister will take into account when determining the duration.

62 The minerals programmes also set out the circumstances in which the duration of a permit may be extended. This includes the considerations and duration for appraisal extensions of exploration permits, i.e. where a discovery is made and more time is required to assess whether that discovery is minable.

Subsequent permit rights

63 The Act sets out that a permit holder will have the exclusive right to apply for a subsequent permit *unless the permit expressly provides otherwise*. The minerals programmes set out the circumstances in which permits will and will not have subsequent rights.

64 The *Petroleum Programme* maintains the policy that petroleum prospecting permits do not carry subsequent rights to apply for a petroleum exploration permit. This follows from the current policy that all petroleum exploration permits are awarded through annual competitive tenders. However, petroleum exploration permits carry subsequent rights to apply for a mining permit.

65 The *Minerals Programme* maintains the policy that, with the exception of non-exclusive prospecting permits, minerals prospecting and exploration permits have subsequent rights. However, the programme also maintains that minerals prospecting permits only be issued where the mineral potential of an area is not already well understood.

Permit revocation

66 The Act streamlines the process for revoking a permit for non-compliance with permit conditions, including delivery of work programme obligations.

67 Submissions on the Crown Minerals (Permitting and Crown Land) Bill and draft minerals programmes noted that revocation could be initiated following breach of *any* permit conditions, many of which would be minor or accidental. Requiring, as a permit condition, compliance with relevant health and safety legislation in line with the recommendation of the Pike River Royal Commission's report introduces further scope for permit revocation. This, it was argued, creates significant risk to investors.

68 Accordingly, the revised minerals programmes now set out the circumstances in which the Minister would and would not consider initiating revocation of a permit. In particular, it notes that revocation proceedings will not be used in response to minor breaches of permit conditions provided that the breach is not on-going and such breaches are infrequent.

69 Revocation is likely to be applied (without limitation):

- where the permit holder has failed to comply with its committed work programme obligations
- where the permit holder has not submitted royalty returns and paid royalties by the due date
- where the permit holder has frequently missed due dates for the submission of notices and information
- following serious and on-going failure to comply with the Health and Safety in Employment Act 1992.

70 The *Minerals Programme* also notes that revocation is likely to be applied if the permit holder has not paid fees by the due date. This is not included in the *Petroleum Programme* as it is more of an issue for Tier 2 minerals permits.

71 These provisions reduce the perceived risk of permit revocation without limiting the Minister's ability to initiate revocation proceeding in other circumstances if considered appropriate. It should also be noted that a permit holder, following receipt of a notice from the Minister of an intention to revoke a permit, has 40 working days to remedy the breach of conditions, and that the revocation may not proceed if it does so.

Regard to the principles of the Treaty of Waitangi

72 A focus of changes to the Crown Minerals Act 1991 regime is strengthening the Crown's engagement with iwi and hapū ahead of permits being awarded, and fostering long term productive relationships between permit holders and iwi and hapū. This reflects iwi interests of kaitiakitanga, and that permit holders will generally have ongoing interaction with iwi and hapū and the local community.

73 The Act, as it will be amended by the Crown Minerals (Permitting and Crown Land) Bill as reported-back, requires that the minerals programmes set out or describe on how the Crown will have regard to the principles of the Treaty of Waitangi in the management of Crown minerals. In practice, this is primarily through consultation processes relating to issuance of permits.

74 The revised versions of the programmes provide clearer guidance and procedures for consultation processes than the previous versions. They also explicitly provide for a wider range of outcomes from iwi and hapū consultation. Previously, much of the emphasis was on excluding areas of importance to iwi and hapū (wāhi tapu) from permit areas. Interaction with iwi and hapū in recent permit rounds has identified that there are a range of measures that can be adopted that result in protection of areas of significance without necessarily excluding areas from permits.

75 The ability of iwi and hapū to engage in these consultation processes differ significantly. The minerals programmes emphasise the need to ensure consultation is meaningful by providing sufficient time and information, and allowing for different forms of engagement, e.g. through face to face meetings and/or hui. The minerals programmes also require consideration of any potential implications for Treaty claims.

76 Related to the new requirement to provide an annual iwi engagement report, the minerals programmes encourage permit holders to consult with relevant iwi and hapū on their annual iwi engagement report and, where possible and appropriate, include their views before submitting the report. The programmes also set out that the engagement report is a standing item for the annual review meeting between regulators and permit holders and that the Ministry may, as appropriate, discuss the outcome of the review of the permit holder's iwi engagement report with relevant iwi and hapū.

77 At the request of Te Rūnanga o Ngāi Tahu, a new section has been added to the *Minerals Programme* stating that holders of permits in pounamu-rich areas should engage with Ngāi Tahu and reach agreement on how incidental discoveries of pounamu will be dealt with. NZP&M will notify all applicants for permits in areas Ngāi Tahu has identified as pounamu-rich of Ngāi Tahu's and the Minister's expectations.[5]

Unconventional resources

78 With the emergence of unconventional extraction technologies, it is appropriate to include different policies and procedures for permitting of minerals occurring in different circumstances – for example, a mineral occurring in different states, phases and strata, or minerals that are explored or produced through substantially different methods.

79 Accordingly, the *Petroleum Programme* now sets out how the Minister will consider and award applications for permits for methane hydrates, coal seam gas and oil shale. The practices reflect the need to coordinate such activities with conventional extraction, and, where applicable, include additional requirements reflecting the nature of the resource.

Related matters

80 In 2008, Cabinet invited the Associate Minister of Energy to report on the merits of a National Policy Statement under the Resource Management Act 1991 (RMA) for minerals [CAB Min (08) 1/4].

81 National Policy Statements (NPS) can provide guidance to councils on matters of national significance. Councils must give effect to an NPS through their plans, and have to have regard to the provisions of an NPS when making decisions on resource consent applications.

82 Although minerals development is an important export industry and is economically significant, an NPS on minerals is not warranted. As the benefits and environmental effects of a minerals development tend to fall locally, councils are already well placed to consider mining consent applications.

83 Furthermore, evidence suggests that RMA plans already contain provisions for mining activities. Many mining activities have been occurring in regions for decades, and many environmental effects of mining are shared with other activities (such as forestry or road construction).

84 Petroleum development can have environmental effects that are rarely caused by other activities (such as oil spills). There is also interest in using techniques that may be controversial and unfamiliar in some regions, such as hydraulic fracturing, or fracking.

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[5] Permits granted under the Crown Minerals Act do not give rights to pounamu, which is vested in Ngāi Tahu under the Ngai Tahu (Pounamu Vesting) Act 1997. Removal for possession of pounamu without Ngāi Tahu's agreement is unlawful.

85 In such cases, other tools such as non-statutory guidance or national environmental standards are more appropriate than an NPS. The Ministry for the Environment is developing guidelines for councils on petroleum development, with a particular focus on hydraulic fracturing.

Consultation

86 The Ministry of Business, Innovation and Employment undertook public consultation on the draft minerals programmes from 4 October to 5 December 2012, with 25 submissions received. Targeted consultation on the revised minerals programmes and regulations was undertaken in early 2013.

87 The following agencies have been consulted on the proposals in this paper: The Treasury, Ministry for the Environment, Environmental Protection Authority, Maritime New Zealand, Ministry of Justice, Department of Conservation, Te Puni Kōkiri and the Department of Prime Minister and Cabinet.

Financial Implications

88 There are no financial implications.

Human Rights

89 There are no human rights implications.

Legislative Implications

90 The Crown Minerals (Permitting and Crown Land) Bill is currently before the House. Under the Crown Minerals Act, as it will be amended by the Bill, minerals programmes are regulations for the purposes of the Regulations (Disallowance) Act 1989, but not for the purposes of the Acts and Regulations Publication Act 1989.

91 At the appropriate time, I intend to seek Cabinet Legislation Committee approval:

a. to recommend that the Governor-General issue, by Order in Council, the *Petroleum Programme* and the *Minerals Programme*

b. of four sets of regulations under the Crown Minerals Act relating to royalties and reporting by holders of permits for petroleum and minerals

c. to commence the Crown Minerals (Permitting and Crown Land) Bill, once enacted, by Order in Council.

Regulatory Impact Analysis

92 Regulatory impact analysis requirements apply to the revised minerals programmes and new regulations.

93 A regulatory impact statement has been prepared and is attached to this Cabinet paper.

Quality of the Impact Analysis

94 The General Manager, Strategic Policy Branch and the Ministry of Business, Innovation and Employment Regulatory Impact Analysis Review Panel have reviewed the Regulatory Impact Statement (RIS) prepared by the Ministry of Business, Innovation and Employment and associated supporting material, and consider that the information and analysis summarised in the RIS meets the criteria necessary for Ministers to fairly compare the available policy options and take informed decisions on the proposals in this paper.

Consistency with Government Statement on Regulation

95 I have considered the analysis and advice of my officials, as summarised in the attached Regulatory Impact Statement and I am satisfied that, aside from the risks, uncertainties and caveats already noted in this Cabinet paper, the regulatory proposals recommended in this paper:

a. are required in the public interest

b. will deliver the highest net benefits of the practical options available, and

c. are consistent with our commitments in the Government Statement on Regulation.

Publicity

96 I propose to release at an appropriate time:

a. this paper and associated Cabinet decisions

b. submissions received on the draft minerals programmes.

97 A work programme to implement the new regime is underway. This includes updates of all documentation associated with the Crown Minerals Act 1991 regime, establishing new business processes and preparation of key messages for permit holders and FAQs.

Recommendations

It is recommended that the Committee:

1 **Note** that the Crown Minerals Act 1991 regime is made up of the Crown Minerals Act 1991, regulations and minerals programmes

2 **Note** that Cabinet has previously agreed to proposed amendments to the Crown Minerals Act 1991 regime [EGI Min (12) 15/4, CBC Min (12) 6/7] that need to be reflected in revised Crown Minerals regulations and minerals programmes

3 **Note** that draft minerals programmes were available for public consultation from 4 October to 5 December 2012

4 **Note** that the Ministry of Business, Innovation and Employment undertook targeted consultation on the revised minerals programmes and Crown Minerals regulations in early 2013

5 **Note** that the Commerce Select Committee reported back the Crown Minerals (Permitting and Crown Land) Bill to the House on 18 March 2013

6 **Note** that the Crown Minerals regulations and minerals programmes have been revised in line with the Crown Minerals (Permitting and Crown Land) Bill as reported back by the Commerce Select Committee

7 **Note** that the Crown Minerals regulations and minerals programmes have been revised in line with the objectives of the Crown Minerals review:

7.1 Encourage the development of Crown-owned minerals so that they contribute more to New Zealand's economic development

7.2 Streamline and simplify the regime where appropriate, ensuring it is in line with the regulatory reform agenda, and make it better able to deal with future developments

7.3 Ensure that better coordination of regulatory agencies can contribute to stringent health, safety and environmental standards in exploration and production activities

Crown Minerals Regulations

8 **Agree** that permit holders be required to supply New Zealand Petroleum & Minerals with more detailed estimates of reserves and resources, including the upside potential of petroleum fields

9 **Agree** that royalties are payable on any gas flared outside of an approved testing programme or for safety reasons

10 **Note** that on 27 February 2013 the Cabinet Economic Growth and Infrastructure Committee approved new royalty rates for non-petroleum minerals and these will be incorporated in to new regulations

11 **Agree** that royalties are payable on any gas flared outside of an approved testing programme or for safety reasons at a rate of the higher of 5% AVR and 20% APR

12 **Agree** that Tier 1 permit holders be required to supply New Zealand Petroleum & Minerals with information on mineral reserves and resources to an international benchmark standard

13 **Agree** to the amendments to the Regulations set out in Annex 1 of this paper

Minerals programmes

14 **Approve** the:

14.1 *Petroleum Programme*

14.2 *Minerals Programme*

15 **Authorise** the Minister of Energy and Resources, in consultation with any relevant Minster, to make decisions, consistent with previously agreed policy, on any issues that arise prior to the regulations and minerals programmes being provided to the Cabinet Legislation Committee

16 **Note** that the amended Crown Minerals Act 1991 regime should be commenced in late April 2013

17 **Note** that the Minister of Energy and Resources intends to release this paper and associated Cabinet decisions, and submissions on the minerals programmes, subject to consideration of any information that would be withheld if the information had been released under the Official Information Act 1982.

Hon Simon Bridges
Minister of Energy and Resources

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Annex 1: Changes to Regulations under the Crown Minerals Act

Petroleum data and reporting

i. Add new regulations to ensure that the Ministry is notified about relevant activities by permit holders.
ii. Amend regulations requiring survey and drilling notices to be provided to the Ministry to additionally require proposed names for surveys or wells to be included in the notice.
iii. Reduce the six-monthly reporting timeframes for petroleum permit holders to annual timeframes and align with royalty reporting dates.
iv. Amend the expenditure reporting regulation to clarify that annual expenditure totals are required for the items listed in the expenditure report regulation.
v. Amend the prospecting and exploration regulations to include, for each well, any well stimulation activities carried out and their purpose.
vi. Amend the supply deadline for a number of reports and records to better reflect the reasonable timeframes required for permit holders to be able to supply certain information to the Ministry.
vii. Amend the well completion reporting regulation to additionally require permit holders to report on any well stimulation activities that are undertaken down hole.
viii. Remove the core analysis and microfossil record regulations and include the requirement to supply these records as clauses in the well completion regulation.
ix. Amend regulation 45 so that the relevant schedule also requires daily drilling reports to include details of any workover activities and well stimulation that have been undertaken in the relevant reporting period.
x. Adopt a consistent approach to the use of individual regulations and schedules when the next regulations are made.
xi. Publish annual production data on a well-by-well basis.
xii. Make survey and well header information publicly available immediately.
xiii. Clarify that royalties will be payable on flared gas, except where it is approved by the Minister as part of a testing programme.

Petroleum reserves

xiv. Amend the petroleum regulations to improve the quality of published information on gas reserves as well as that provided by industry to government about the Crown's petroleum resources.
xv. Require permit holders to provide an annual status report on:
    - Petroleum initially in place, which includes estimates of crude oil in place and natural gas in place
    - petroleum reserves, including remaining petroleum and gas in place and an explanation of the methodology used to calculate the reserves
    - P90, P50 and P10, or proven, and proven plus probable, and proven plus probable plus possible estimates (1P, 2P and 3P estimates) for remaining and ultimately recoverable oil, condensate (C5+), liquefied petroleum gas (propane plus butane) and gas (methane and ethane) (including an explanation of the methodology used to calculate the estimates)
    - C50 estimates (2C estimates) for contingent resources

- a full explanation of why contingent resources are classified as contingent (including a description of development and cost thresholds)
- a copy of any report or any field study undertaken that results in a revised estimate of recoverable or in-place petroleum
- minimum, average and maximum daily and hourly system deliverability for gas using the installed infrastructure

xvi. Allow the Ministry to publish:
- Petroleum initially in place
- petroleum production and field reserves, including estimates of P90, P50 and P10 remaining reserves and ultimately recoverable reserves
- contingent resources by basin
- compositional data (gas (methane and ethane), liquefied petroleum gas (propane and butane), condensate (C5+) and crude oil) for reserves by field and contingent resources by basin
- minimum, average and maximum daily and hourly system deliverability for gas by field using the installed infrastructure
- petroleum production profiles in relation to mining permits and existing privileges
- resource estimates from discoveries or appraisals under any exploration permit, mining permit, or existing privilege

xvii. require that information provided to the permit holders would be provided in a standardised template to be developed by the Ministry

xviii. require that permit holders provide further explanation and supporting material, including geophysical, geological and commercial data, when reasonably requested by the Ministry

xix. require permit holders to report reserves and resources information according to the Petroleum Resources Management System

xx. provide for periodic independent third-party audits for fields with significant reserves or significant variability in reported reserves

xxi. allow the Ministry to determine which reserves and contingent resource figures are published should an independent third party audit reveal a material difference between the independent auditor and the field's rights holder

xxii. increase maximum penalties for non-compliance

xxiii. require company directors to certify that reserve information supplied is in accordance with the regulations.

Mineral data and reporting

i. Move annual activity and expenditure reporting to a calendar year basis from a permit year basis

ii. Enhance requirements for reserve and resource reporting, and increase penalties for non-compliance.

iii. Streamline the annual exploration summary reporting requirements.

iv. Extend regulation 33(1) to require a permit holder to supply all reports and records created in the past year about any prospecting and exploration activity undertaken in relation to their respective permits.

v. Amend regulation part 8 of Schedule 4 to improve the annual reporting requirements for mining activities (more detail about proposed changes provided in this section).

vi. Amend regulation 39 to cover all alluvial gold, aggregate and other Tier 2 mineral mining permit holders.

vii. Include a clause in regulation 39 which states that, upon request by the Chief Executive, permit holders must submit the proposed location, extent, direction of mining, and period of mine operation in the next year, including appropriate maps and plans.

Mineral reserves

viii. Introduce a requirement for reporting Tier 1 resource and reserves information using a standardised system (e.g. the JORC Code)

ix. Enhance and strengthen the enforcement of existing reporting requirements for the provision of all reports and records of any prospecting and exploration activities created in the previous year (section 33(1) of the Crown Minerals (Minerals and Coal) Regulations 2007).

x. Collate resource and reserves information and create a national database for Crown-owned minerals.

xi. Require exploration permit holders to report resources and reserves data as part of their annual reporting requirements under section 35 of the Crown Minerals (Minerals and Coal) Regulations 2007.

xii. Require resource and reserves estimates to state whether they are based on scoping, pre-feasibility or feasibility studies. This could then be used to categorise recoverable minerals.

xiii. Require resource and reserve estimates to be accompanied by a spatial definition of the areas to which the figures apply and the criteria used for defining the resource and reserve estimates.

xiv. Provide for publication of total in ground resources; inferred, indicated and measured resources; and proved and probable reserves for each mineral type.