Energy Resources Aotearoa
POWERING A BETTER NEW ZEALAND TOGETHER

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Ministry of Business, Innovation and Employment

Via email: resource.markets.policy@mbie.govt.nz

Submission on the Proposed regulations to support the Crown Minerals (Decommissioning and Other Matters) Amendment Bill 2021

Part 1: Introduction

1. Energy Resources Aotearoa represents energy-intensive firms in the energy resources sector, from explorers and producers to distributors and users of resources like oil, LPG, natural gas and hydrogen.

2. This document constitutes our submission to the Ministry of Business, Innovation and Employment ("MBIE") on the Proposed regulations to support the Crown Minerals (Decommissioning and Other Matters) Amendment Bill 2021.

3. It follows our engagement on the 2019 *Review of the Crown Minerals Act 1991* in January 2020 and our recent submission on the Crown Minerals (Decommissioning and Other Matters) Amendment Bill.[1] We also recommend that the reader look at our submission on the Amendment Bill and the appendices, especially Wood Mackenzie's *New Zealand Upstream Decommissioning Study* given its direct relevance to the proposals in this discussion document.

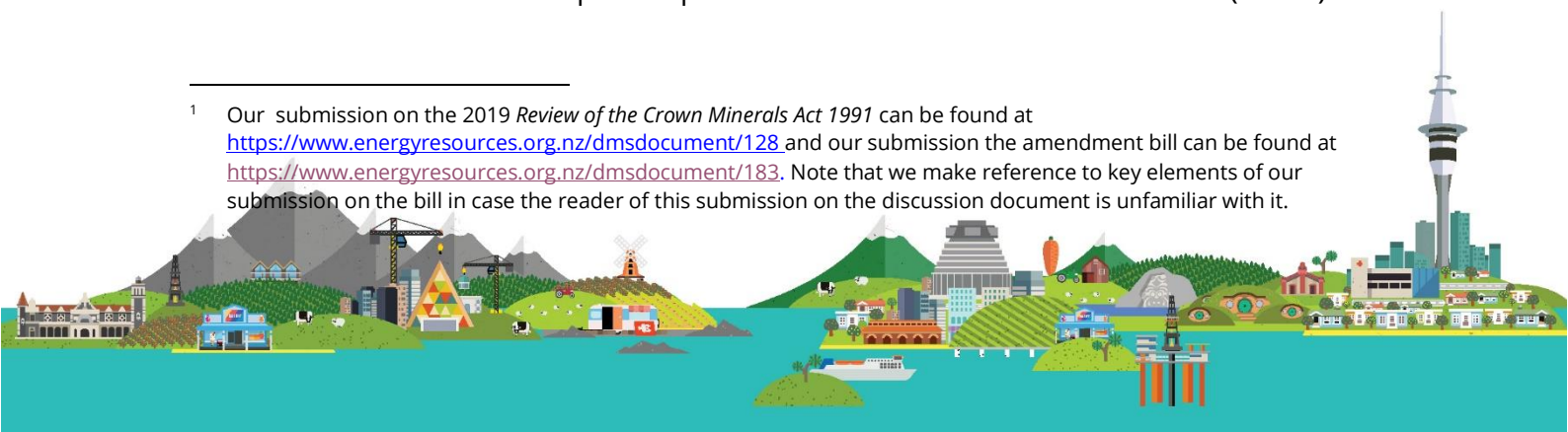
4. Should the government proceeds with the proposed legislative regime (despite our reservations), we have sought to provide pragmatic and useful comments on the regulations and process, where we put concerns about the bill to the side (at least to the extent possible). We:

    a. make scene-setting remarks and offer constructive suggestions on managing the policy process going forward (Part 2);

    b. make overarching comments on the proposals (Part 3); and

    c. answer relevant specific questions from the discussion document (Part 4).

[1] Our submission on the 2019 *Review of the Crown Minerals Act 1991* can be found at https://www.energyresources.org.nz/dmsdocument/128 and our submission the amendment bill can be found at https://www.energyresources.org.nz/dmsdocument/183. Note that we make reference to key elements of our submission on the bill in case the reader of this submission on the discussion document is unfamiliar with it.



Part 2: Scene-setting remarks on the process and its implications

5. There are three process issues which, when combined, have serious implications for the substantive matters being addressed by MBIE in this consultation process. Those issues are the:

    a. concurrence of the two consultation processes, and the imposed timeframes which compromise the delivery of optimal outcomes.

    b. serious concerns with the bill which mean parliamentary amendment (as part of the current process) is possible; and

    c. absence of adequate detail from the proposed policy for regulations.

6. Combined, these have a cumulative effect and have influenced how we have approached this consultation process and our comments provided. We now explain each in turn.

Concurrence of the two consultation processes and the imposed timeframes compromise the delivery of optimal outcomes

7. We appreciate the two-week extension that MBIE granted to submitters. However, as forewarned in our letter to MBIE dated 19 July, running one consultation process into another has proven difficult. We must reiterate our view expressed in that letter by stating that trying to engage on two major consultations (i.e. the amendment bill and the discussion document), one straight into another (combined with an Alert Level 4 lockdown), has proven to be genuinely difficult within the timeframes. Other issues, as described in this part of the submission, mean that our members, and us as the industry's peak body, have not been able to provide the level of thoughtful engagement we usually aspire to.

8. The discussion document states that "Your submissions will help us develop recommendations on regulations for the Government to consider, which is expected to occur towards the end of 2021." We are unaware of any decommissioning in the near term which warrants this tight timeframe for finalising policy by year's end. The rush imposed by this arbitrary timeframe is deeply frustrating as it has significantly negated our ability to best contribute to achieving good public policy.

9. As we also said in our submission on the amendment bill, we have simply not been able to consider everything as carefully as we would like to, and our silence or lack of comment on certain matters does not necessarily imply support or acceptance.

Serious concerns with the bill which mean parliamentary amendment (as part of the current process) is possible

10. The regulations are tied to what has turned out to be a controversial and surprisingly strict bill with unexpected aspects the sector has uniformly expressed serious concern about.

11. Given the significant concerns about the bill (from both sector stakeholders and independent third parties such as those we commissioned to provide advice), it is possible it will change materially if the Committee acts upon the concerns of submitters. The fact that the bill is controversial and may change means the regulations should not be advanced too quickly or in a way that presumes assent of the bill as drafted.

12. The fact that major changes to the bill have been credibly sought is significant. Various permutations of the bill (in terms of how the discrete policy components are determined and how they interact as a collective whole) should directly affect judgements on the appropriate level of strictness of the regulations. It is only from a systemic perspective that the merits of individual policies can be appropriately judged, and that view must be applied to the New Zealand regulatory system as a whole as well as the revised Crown Minerals Act.

13. For example, if the Government's preferred policies of a trailing liability and post-decommissioning fund are retained by Parliament, that may have direct implications for the level of assurance the Crown seeks to achieve through the financial security mechanism, i.e. a lighter touch in the latter may be more appropriate. The point here is that, while useful to get an early indication of policy direction through the current discussion document for regulations, one cannot (and should attempt to) make definitive judgements about the best overall package until the final shape of the bill is resolved by Parliament.

Absence of adequate detail from the proposed policy for regulations.

14. More detail is needed on the proposed regulatory policy. The discussion document is entitled "Proposed regulations to support the Crown Minerals (Decommissioning and Other Matters) Amendment Bill 2021" but the discussion document does *not* contain the proposed regulations. Instead, it proposes options for policy for regulations, but that is not the same. Indeed, the disclaimer even states "This document is a guide only". This has meant we have not been able to sufficiently comment on many aspects of the proposals.

Recommendation:

15. Seeking to have the industry submit on and government resolve such difficult and sometimes vexing issues in a few months before year's end is not a realistic expectation if good public policy outcomes are to be achieved.

16. As expressed in our submission on the bill, in the first instance we prefer the proposed regime goes back to the drawing board, given design issues which lead to an incoherent and excessively strict overall package. However, if the bill *is* to proceed and regulations are to be developed, we recommend:

    a. that the bill's commencement provisions be used to their full advantage. That is, the provision to allow secondary legislation to come into force on a date specified by Order in Council should be relied upon as a basis to

commit to devising policy for regulations on a more reasonable and suitable timeframe with adequate detail provided;

b. a more collaborative manner of policy development be adopted, enabled by the above, which would involve a further stage of policy consultation;

   i. this is important because of inadequate detail in the current discussion document; and

   ii. the final shape and permutation of the bill (which could well change) will greatly influence the appropriate design of regulations (as covered in paragraphs 12 and 13 above); and

c. as sought in our letter of 19 July, that government also commits to consulting on an exposure draft of final regulations.

17. Such a process will achieve better public policy outcomes by enabling a more collaborate process that ensure the regulations are designed with the regulatory system as a whole in mind.

Part 3: Overarching comments on the regulations

Stronger cost-benefit analysis is needed

18. Much greater analysis is needed before the proposed policy for regulations should be advanced. The impact analysis in the discussion document appears weak, and it does not even define the "pluses and minuses" through a reference key (for example, is two pluses the maximum score or not?). MBIE does not adequately explain how it arrived at its findings/rankings. The low level of detail in the analysis suggests that policy thinking still requires refinement and continued engagement with the sector.

19. Although effectiveness, flexibility, proportionality and certainty are outlined as criteria, we note that paragraph 22 of the discussion document states that:

> "The overarching objective of the Bill is to mitigate the risk that permit and licence holders fail to fund and carry out decommissioning, and fund any required post-decommissioning work. Therefore, when assessing any options, effectiveness is given priority as we consider it the most important criteria to achieve this overarching objective."

20. Setting "effectiveness" (as defined) as the overarching objective makes clear that cost to the economy and the industry are of secondary concern. We believe this plays out in the proposals, which seem to represent a complete shedding of risk (with limited regard for the cost imposed on the sector).

21. We draw attention to Castalia's cost benefit analysis on the proposed regime, which found that the costs greatly outweigh any benefits. Specifically, the proposed changes are estimated to result in net costs of almost $1 billion (present value). The proposed changes have an estimated benefit-cost ratio of 0.11. This means that for every $1 of cost imposed by the proposed changes, $0.11 worth of benefits are generated. Clearly, further fundamental analysis is needed.

The significance of retrospective legislation and implications for carefully transitioning permit holders into the new regime

22. As covered in paragraphs 42-53 of our submission on the bill, in his independent legal opinion, Professor Philip Joseph expressed serious concerns about the nature and effect of the bill, saying it is retrospective legislation, a point which Justin Smith QC concurred with. We raise this point not merely to recap our submission on the bill or to make an academic point, but to draw attention to the fact that in developing secondary legislation, officials have a crucial and pragmatic opportunity to *reduce* the adverse impacts of what is inherently a retrospective regime. That is, the detail of regulations can soften adverse impacts by delivering optimal regulations with the parameters of the primary legislation.

23. To the extent that the legislation will ultimately impose new standards on existing operations, heed should be given to fairly and justly transitioning permit holders into the new regime. Indeed, given the 2018 petroleum exploration settings and subsequent surrender of exploration permits, the Crown Minerals regime is, practically speaking, almost solely about managing existing assets. This suggests that the transitional question is the most important issue to grapple with.

24. To minimise the imposition of new and unexpected costs, lighter touch and less costly financial security mechanisms (especially parent company guarantees) should be preferred where they are suitable and acceptable.

25. Whereas new permit entrants can factor in the costs and risk associated with heavier instruments such as escrow accounts, incumbents cannot – they simply must live with the new rules (or, in extreme cases, cease production or exit earlier than planned).

26. One particularly important point is that the 'best' mechanism is not one that can be determined 'from a distance' or without regard to the contextual aspects of where a given permit and field is at in its life. The precise circumstances are highly relevant to what rules are suitable. For example, from first principles, cash deposits may sound highly secure and therefore attractive to the Crown, but if imposed late in life on a marginal field this may change the economics to significantly detrimental effects.

27. Similarly, cash securities built up over time only serve to sufficiently cover decommissioning cost if the field has time to generate the revenue, but late in life this cannot be always assumed. By contrast, a parent company guarantee (which can be viewed by some as being less secure), can in fact be better as the provision is made immediately and does not usually need to be built up over time.

Concern about the scope and blurred boundaries

28. We have concerns about the scope of decommissioning to be managed under the proposed regime. Requiring complete removal of infrastructure risks turning the CMA into a de facto environmental regime, thereby blurring the boundaries with dedicated statutes such as the RMA and CMA.

29. The discussion document states in a heading on page 10 that "Failure to decommission carries health, safety and environmental risks, and is inconsistent with New Zealand's international obligations". The discussion document summarises various conventions and guidelines by saying in paragraph 37 that "The general premise is complete removal, except when special circumstances consistent with the IMO [international Maritime Organisaton] guidelines can be shown to apply."

30. These assessments are largely correct so far as the offshore environment goes, although perhaps downplay the importance derogation regime under the IMO guidelines where material can be abandoned for reasons pertaining to health and safety, technical reasons and cost.

31. The assertion on page 10 of the discussion document that "Failure to decommission… is inconsistent with New Zealand's international obligations" is ultimately erroneous, and with great consequence. This is for the following two reasons:

    a. it extrapolates general international obligations for the marine environment and applies them to the onshore setting. This is not in anyway intended by those international obligations as they simply do not apply to the onshore environment; and

    b. it establishes a Crown Minerals Act which expands beyond its core remit. This is unnecessarily restrictive in terms of its presumption for the complete removal of infrastructure.

32. The policy for regulations must reflect the reality that complete removal is not required onshore and that even in the offshore marine environment a significant derogation regime exists.

Financial security mechanisms

33. The discussion document seeks feedback on proposals pertaining to details of a mandatory financial security requirement.

34. We refer the reader paragraphs 101-112 of our submission on the amendment bill, where we oppose the *mandatory* imposition of financial security requirements on permits and licences. We note that no comparable overseas jurisdiction imposes a mandatory security requirement.[2]

35. Under the proposed regime, the Minister has no discretion and must impose financial security requirements. The Minister is also granted wide case-by-case discretion over the type of security to be required.

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[2] As Wood Mackenzie states in page 11 of its New Zealand Upstream Decommissioning Study report, "In practice, the UKCS, the NCS, the US GOM and Australia Offshore apply the joint & several liability, apply the trailing liability (soon to be passed into law in Australia) but do not use mandatory financial securities." Mandatory financial security in the absence of a risk assessment will be disproportionate to actual risk, imposing potentially significant burdens on permit holders when it is unnecessary.

36. This is unnecessarily prescriptive, especially given the new powers the Minister will obtain to investigate and review the financial capability of permit holders. Our strong preference has been that private management of liability is the standard approach and that financial security is only required where there are material issues with the company's financial position or method of provisioning etc. This would better reflect a risk-based approach.

37. If (contrary to our preference), the eventual amendment act requires mandatory financial security, officials have the opportunity to minimise the adverse impact that has on permit holders by providing opportunities for lighter-touch security requirements when setting regulations. That is, even if an overly strict bill is passed, regulations, appropriately designed within statutory parameters, can minimise the harmful impact of the bill's literal requirements.

38. In addition to the answers given to specific questions in the discussion document, we refer the reader to Wood Mackenzie's New Zealand Upstream Decommissioning Study's remarks on residual liability, which is on pages 17-19 of their report which can be found in Appendix One of our submission on the bill (see footnote 1).

Post decommissioning fund

39. The paragraph 57, the current discussion document states:

> "In the 2019 discussion document, we sought views on the suitability of the existing CMA provisions and the wider regulatory regime to address any residual liability in relation to any post-decommissioning work for onshore petroleum wells. Most submitters were supportive of strengthening the regime to address post-decommissioning liability."

40. This description borders on being disingenuous, as the 2019 *Review of the Crown Minerals Act 1991* discussion document did not actually propose any amendments in relation to post-decommissioning liability. Any 'support' must have been generic given the lack of actual proposals to respond to. Seeing the amendments being implemented through the bill and policy consulted on for recommended regulations by the end of the year is incredibly disappointing, as the ambitious timeframe leaves very little time for the engagement needed to meaningfully work through what can at best be described as a new and complicated issue.

41. We refer the reader paragraphs 80-100 of our submission on the amendment bill, where we express serious and fundamental concerns about the proposed post-decommissioning and its core design principles.

42. The rationale for such a fund has not been adequately demonstrated and it should not proceed. The Minister of Energy and Resources' Cabinet Paper of April 2021 states in paragraph 115 that industry's concerns will be addressed through:

> "consultation with permit and licence holders and careful design of the regulations that will implement how payments will be calculated and held".

43. However, given the manner in which the fund is being introduced and the timeframes under which it is being done, we do not consider that careful design is possible, especially without knowing basic facts such as the actual quantum to be levied.

44. One of the most fundamental issues that is not engaged with or resolved is how the post-decommissioning fund interacts with, or potentially offsets and cancels, the residual liability of permit holders. If any form of post-decommissioning fund is set up, either operator who funded it must be able to draw upon it or otherwise the government should likely formally take on the residual liability (at least to the quantum covered by levy payers).

45. Trying to resolve such vexing issues in a few months before year's end is untenable, which ultimately suggests that either the post-decommissioning fund should be abandoned entirely (as is our preference) or a significant extension to the process is obtained to allow issues to be better worked out in a collaborative manner.

46. In addition to the answers given to specific questions in the discussion document, we refer the reader to Wood Mackenzie's New Zealand Upstream Decommissioning Study's remarks on residual liability, which is on pages 15-17 of their report which can be found in Appendix One of our submission on the bill (see footnote 1).

Part 4: Response to specific questions from the discussion document

Content of FDPs

QUESTION 1: What information do you think petroleum mining permit and licence holders should include in an FDP to give the Minister sufficient detail to assess financial capability to meet decommissioning obligations?

Energy Resources Aotearoa response: The core scope of the new regime is focussed on decommissioning risk, and key data relating to this is what should be sought. Field development plans are broad documents outlining field development and initial plans for decommissioning. Given our fields are aging, the 'transitional' point we raised in our introductory remarks is relevant, and this means thinking about how to (appropriately) bring existing assets into the new regime. For aging assets, FDPs are unlikely to provide the best information on decommissioning. In practice what will be useful to MBIE is the operator's decommissioning plan.

Moving on from the matter of which document/ mechanism is best, the information that is most relevant is likely to be:

a. a high-level description of the physical assets and what the plans are for them (e.g. removal, partial removal, abandonment etc);

b. cost estimates; and

c. expected timing.

As decommissioning draws closer, plans and details may change as clearer information about the 'as-is' state of infrastructure is clearly determined and as plans are firmed up with new technology and new industry practice in mind. Requiring too much information, especially too early on, is unlikely to be useful given how much things can change over the decades an asset can be operated for.

We also refer the reader to Wood Mackenzie's New Zealand Upstream Decommissioning Study's remarks on decommissioning cost estimates, which is on pages 20-21 of their report which can be found in Appendix 1 of our submission on the bill at https://www.energyresources.org.nz/dmsdocument/183.

Content of FDPs

QUESTION 1A: Do you envisage any issues arising because of potential overlaps between these proposed regulations and other proposed changes such as under the EEZ Act?

Energy Resources Aotearoa response: Overseeing the management and removal of physical infrastructure is the domain of regulatory regimes other than the CMA – primarily the RMA and EEZ Act. If the CMA shifts its focus outside of managing core permit issues and into what amount to environmental issues, new issues may arise.

With scope creep and duplication comes the risk that responsibility and accountability is in fact diminished rather than enhanced, creating co-ordination problems as different regulators may feel less need to focus on areas where another regulator also has responsibility. If multiple regulators are considering the same matter and imposing requirements or conditions, the risk arises that those contradictions and inconsistent requirements are imposed which puts operators in a difficult position in terms of knowing which standard to meet. This creates uncertainty if any matters are contested in court.

We consider that clarity of responsibility and avoiding confusing or contradictory cross-over between regimes is best achieved by having the CMA specify a general obligation to decommission while not getting into the actual environmental/infrastructure management side of it. That should be left to the environmental statutes designed for that specific role.

As MBIE should be aware, we have had significant issues about workability of the EEZ Act's proposed decommissioning regulations since policy was first consulted on in September 2018. As of the last exposure draft, we still have concerns about the undefined scope of decommissioning and the lack of clarity this provides for operators in terms of whether certain pieces of infrastructure require a decommissioning plan or not. With unresolved issues in the EEZ Act, we caution against introducing further complications through expanding the scope of CMA regulation beyond the realm of permit management and ensuring broad financial capability.

Content of FDPs

QUESTION 1B: Do you have any other feedback on FDPs and their content?

Energy Resources Aotearoa response: n/a

Content of Asset Registers

QUESTION 2: Is the level of detail we are proposing sufficient to provide a comprehensive view of the assets that need to be decommissioned in a particular field? If you think there should be less detail, why? If you think there should be more detail, why and what further information do you suggest?

Energy Resources Aotearoa response: n/a

When and how often FDPs and Asset Registers are submitted

QUESTION 3: Do you consider that requiring initial FDPs and Asset Registers six months after the regulations take effect provides permit and licence holders with enough time to comply with the new regulations? Why or why not?

Energy Resources Aotearoa response: 12 months seems more appropriate as it would allow a full annual cycle, in case the particular six months proposed is a busy part of the year for a permit holder.

When and how often FDPs and Asset Registers are submitted

QUESTION 4: Which option do you prefer for FDPs and Asset Registers and why? Your answer can be different for the FDP and Asset Register.

Energy Resources Aotearoa response: Significant change that materially changes the decommissioning costs seems a better standard (but there is a question about the subjective nature of a qualitative assessment vs specified bright line measures). Matters such as reserves determinations are not necessarily significant in terms of the core issue which is the decommissioning costs.

When and how often FDPs and Asset Registers are submitted

QUESTION 4A: Do you agree with the impact analysis of these options? If not, why not? Please provide evidence to support your answer.

Energy Resources Aotearoa response: It would benefit from a stronger focus on significant change that materially changes the decommissioning cost.

When and how often FDPs and Asset Registers are submitted

QUESTION 4B: If we were to require FDPs and Asset Registers at regular intervals, how frequent should it be and why? Your answer can be different for the FDP and Asset Register.

Energy Resources Aotearoa response: n/a

When and how often FDPs and Asset Registers are submitted

QUESTION 4C: Are there any other circumstances that you think the regulations should include as a 'significant change'?

Energy Resources Aotearoa response: Fundamentally this needs to be wound back in scope to focus on changes that will affect the cost of decommissioning (and perhaps the timing or scope thereof).

Ongoing financial monitoring

QUESTION 5: Do you consider that requiring permit and licence holders to provide audited accounts is appropriate to carry out ongoing financial monitoring? If no, what information do you propose we seek and why?

Energy Resources Aotearoa response: Requiring annual audited accounts seems reasonable, for both the permit holder and a parent company providing any guarantees. The fact that the accounts have been audited should provide satisfaction regarding credibility. Paragraph 118 of the discussion document allows audited group accounts to be provided, and we support their allowance.

Ongoing financial monitoring

QUESTION 5A: Do you agree that financial information should be required to be signed by at least one director and audited?

Energy Resources Aotearoa response: Audited accounts should suffice by themselves. Director sign off seems unnecessary as the audit process should confer legitimacy.

Requirements for decommissioning cost estimates

QUESTION 6: Do you agree with our proposed requirements? Do you think they are sufficient to generate cost estimates that can be relied on for the scope of decommissioning activities and costs required? Why or why not? Are there any other requirements that you think cost estimates should meet?

Energy Resources Aotearoa response: Overall this is reasonable, but some aspects need serious refinement. Aside from the fact that full removal is unrealistic as a starting point, it will lead to unnecessary costs through leading to excessive provisioning requirements.

We copy below our submission on the bill (from paragraphs 124-125):

> "Related to the broad definition and general obligation to decommission (which, under the definition, means to remove), *significant issues may arise when calculating the level of financial assurance required under regulation*.

> Full removal will involve much higher costs than the alternative of leaving certain pieces of infrastructure in situ (as and where appropriate).
>
> If full removal is the requirement except where a derogation is obtained through a separate regulatory approval, over-provisioning of financial security may be required which in turn imposes significant and ultimately unnecessary costs on permit holders. The exemptions in new sections 89E (2) and 89E (3) do not resolve this issue, as regulatory approval for abandonment of infrastructure is not typically obtained until close to end of life (this is because assets and infrastructure changes and a permit holder will not know definitively what it wants to do until the operation is coming to a close)."

In addition, high provisioning costs could lead to material changes in field economics, especially if parent company guarantees and other lower-cost mechanisms won't be accepted. This could, in extreme circumstances, precipitate the very decommissioning risk the Crown wishes to minimise. Great care is needed in setting assumptions for removal.

Requirements for decommissioning cost estimates

QUESTION 7: Which option do you prefer for offshore decommissioning cost estimates and why? Are there alternative options that we should consider and why?

Energy Resources Aotearoa response: We are not confident about the merits of a split on offshore vs onshore. This implicitly may assume a different risk profile but this should be demonstrated properly first before establishing policy on the back of this conception.

Requirements for decommissioning cost estimates

QUESTION 7A: Do you agree with the impact analysis of these options? If not, why not? Please provide evidence to support your answer.

Energy Resources Aotearoa response: n/a

Financial information for financial capability assessments

QUESTION 8: Which option do you prefer for financial information requirements and why?

Energy Resources Aotearoa response: n/a

Financial information for financial capability assessments

QUESTION 8A: Do you agree with the impact analysis of these options? If not, why not? Please provide evidence to support your answer.

Energy Resources Aotearoa response: n/a

Financial information for financial capability assessments

QUESTION 8B: Are there other types of financial information that could or should be used to assess financial capability? If yes, what are they and why should we consider them?

Energy Resources Aotearoa response: n/a

Criteria for kinds of securities

QUESTION 9: Do you think the two considerations identified above (irrevocable and under New Zealand jurisdiction) are appropriate to help identify securities that provide assurance that funds are available when required? Are there other matters that we should include and why?

Energy Resources Aotearoa response :We agree that the criterion of irrevocability and applicability of New Zealand law has merit as it protects the Crown's interest in having secure provisioning/assurance in place. Although important, the government must be realistic in its application of these principle, i.e. it cannot expect financial instruments to unreasonably bend (especially in a small jurisdiction such as New Zealand) beyond what is widely practiced in the industry.

We draw attention to our prolonged experience with the development of the Ministry of Transport's offshore financial assurance regime. That process took approximately eight years to work through, as (until standard insurance products were deemed acceptable) a fundamental issue was that the financial security arrangements sought were unobtainable in the market.

The standing of the permit holder in question should inform the level of flexibility applied, i.e. a strong and compliant permit holder might be reasonably allowed to provide financial assurance through products that might not otherwise be acceptable in the case of others.

Criteria for kinds of securities

QUESTION 9A: Are you aware of other securities currently available in New Zealand that would be irrevocable and under New Zealand jurisdiction? Please provide details.

Energy Resources Aotearoa response: n/a

Criteria for kinds of securities

QUESTION 9B: Should the Minister require certain types of securities in certain situations? For example, should new permit and licence holders provide a security that is different to existing permit and licence holders? Why or why not?

Energy Resources Aotearoa response: If financial security is to be provided, a parent company guarantee (of appropriate soundness etc) should be deemed acceptable as it is typically the lowest cost mechanism and imposes the least opportunity cost on permit holders. We understand that over-seas a parent company guarantee (of appropriate soundness) is a typical mechanism and deemed acceptable overseas.

Cash/escrow should only be required where there are material issues with the soundness of other mechanisms, due to the opportunity cost and the fact that it prevents deployment of that capital into productive operations within the business (which may in turn lead to premature cessation of production).

One particularly important point is that the 'best' mechanism is not one that can be determined from a distance. The precise circumstances are highly relevant. For example, cash deposits may sound highly secure, but, if accrued over time, will not cover the cost of decommissioning if field closure is (for whatever reason) premature. By contrast, a parent company guarantee (which can be viewed by some as being less secure), can in fact be better as the provision is made immediately and does not usually need to be built up over time.

QUESTION 9C: Do you think we should specify a hierarchy of securities required from permit and licence holders? Why or why not?

Energy Resources Aotearoa response: n/a

Managing cash reserves

QUESTION 10: Do you agree that an escrow managed by a third party is an appropriate mechanism for managing cash funds? Why or why not?

Energy Resources Aotearoa response: Interest on monies held is important to consider. If funds are held in escrow, the permit holder directly incurs an opportunity cost. To reduce (but still not eliminate) the opportunity cost, the permit holder should be entitled to a reasonable interest rate on sums held.

QUESTION 11: What timeframe would be appropriate and practical for permit and licence holders to notify MBIE's Chief Executive of expected production cessation dates, in order to achieve our aim of allowing MBIE as the regulator to increase engagement?

Energy Resources Aotearoa response: The government needs to be aware of and accept changing field dynamics, meaning that a date is unlikely to known with great confidence until much later in life. This is because new work at the field can dramatically extend the production life beyond what was originally expected. Not accounting for this

will lead to higher NPV decommissioning costs which will unnecessarily flow through into decommissioning costs.

QUESTION 12: Do you agree with our proposed criteria to be used to determine the post-decommissioning payment for wells that have been plugged and abandoned? Are there any other criteria that you think we should consider? What are they and why do you think we should consider them?

Energy Resources Aotearoa response: In the time available and with a strong focus on the bill, we have not been able to get into the detail of this given its highly technical nature.

However we are not inclined to think that the cost of plugging and abandoning a well (paragraph 215 of the discussion document) is relevant, as the fund is focussed on *post-decommissioning*, i.e. remediation, by which phase P&A will already have occurred.

QUESTION 12A: Do you agree with our proposed criteria to be used to determine the post-decommissioning payment for any infrastructure left in place? Are there other criteria that you think we should consider? What are they and why do you think we should consider them?

Energy Resources Aotearoa response: In the time available and with a strong focus on the bill, we have not been able to get into the detail of this given its highly technical nature.

QUESTION 12B: Do you agree with our proposed criteria to be used to determine the post-decommissioning payment for environmental and health and safety effects based on location (as set out in Figure 3)? Are there any other criteria that you think we should consider? What are they and why do you think we should consider them?

Energy Resources Aotearoa response: The discussion document does not explain this relates to the well features aspect in Figure 1. In the absence of that contextual information, it is difficult to comment.

QUESTION 12C: Are the key factors for assessing the future risk of well integrity correct (as set out in Figure 1)? Why or why not? Are some factors more important than others? If so, what weight should the risk rating of each feature contribute to the overall risk rating for the well?

Energy Resources Aotearoa response: In the time available and with a strong focus on the bill, we have not been able to get into the detail of this given its highly technical nature.

QUESTION 12D: Are the key factors for assessing future risk relating to infrastructure left in place correct (as set out at Figure 2)? Why or why not? Are some factors more

important than others? If so, what weight should the risk rating of each feature contribute to the overall risk rating for infrastructure left in place?

Energy Resources Aotearoa response: In the time available and with a strong focus on the bill, we have not been able to get into the detail of this given its highly technical nature.

QUESTION 12E: Do you agree with determining the final post-decommissioning payment based on bringing together component parts one (wells) and two (infrastructure) and component three (environmental clean-up and health and safety impacts of any failure)? Are there any further considerations we should allow for? Why or why not?

Energy Resources Aotearoa response: No. The industry has not been adequately engaged on these important matters, and as covered in our answer to Question 12B above, the discussion document has not made clear how the tests in the various figures relate to each other as an overall assessment package. Given the highly technical nature of this subject more time is needed, especially as we and operators have been heavily focussed on responding to the bill.

QUESTION 13: Do you agree with the proposed criteria for assessing when payments will be due? Are there any other factors that we should consider when deciding when payments are due?

Energy Resources Aotearoa response: No. See our answer to Question 12E above.

QUESTION 14: Do you agree with our approach to granting exemptions? Why or why not? Are there other scenarios or criteria to consider that may justify an exemption?

Energy Resources Aotearoa response: Proposing an exemption regime has some appeal, but from first principles if any levy is designed correctly (which we absolutely consider to not be the case) then any 'exemption' would be determined through a risk assessment itself.

QUESTION 15: Do you agree with the process for accessing the post-decommissioning fund? Why or why not?

Energy Resources Aotearoa response: No, we do not have enough detail on this.

QUESTION 15A: Are there other groups that may require access to the fund?

Energy Resources Aotearoa response: We disagree with the very conception of the fund, but should any fund be advanced, the permit holder who contributed it should be able to draw upon it to cover any of its own residual liabilities that ever crystalise.

QUESTION 15B: What process should third parties follow to access the post-decommissioning fund?

Energy Resources Aotearoa response: n/a

QUESTION 16: Do you agree with our proposed approach to managing the post-decommissioning fund? Why or why not?

Energy Resources Aotearoa response: We oppose a collective fund that eliminates line of sight to the actual contributors, and which completely disregards the polluter-pays principle by levying permit holders to pay for the liabilities of others.

QUESTION 16A: Are there any other factors that we should consider when managing the post-decommissioning fund?

Energy Resources Aotearoa response: n/a