



Discussion Document: Proposed Regulations to Support the Crown Minerals (Decommissioning and Other Matters) Amendment Bill 2021

Submission form

MBIE is seeking submissions from industry and the public on the options and proposals in the discussion document by 5pm on Tuesday 24 August 2021. Please send your submission form to:

- resource.markets.policy@mbie.govt.nz, or
- Resource Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation and Employment
PO Box 1473
Wellington 6140
New Zealand.

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Name (first and last name)

Catherine Cheung

Email

climatejusticetaranaki@riseup.net

Is this an individual submission, or is it on behalf of a group or organisation?

Group (incorporated society)

Business name or organisation

Climate Justice Taranaki Incorporated

Is there any information you would like to be withheld? Please state which question/information you would like to be withheld? If applicable, please also provide a separate version of this form without the sensitive information.

Nil

PROPOSED REGULATIONS ON DECOMMISSIONING OBLIGATIONS

Section Three, Part 1: Field Development Plans and Asset Registers

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?

Please type your submission below. Please indicate the question(s) to which you are responding.

Question 1: This particular question asks about the information needed from petroleum mining permit and licence holders. But surely petroleum exploration permit and licence holders are also expected to properly decommission their exploratory and/or appraisal wells and associated infrastructure, if those wells are found to be uneconomical or the company decides not to move onto production for other reasons^{1,2}.

Notably at least one well, the Waitangi Valley-1 well, was an unconventional, exploratory well which hit such high pressure hydrocarbon zones at shallow depths that huge challenge was met when plugging and abandoning it in 2014³. What guarantee is there that these exploratory wells have been properly decommissioned and who will bear the residual costs should something happen? Tag Oil has since left NZ and presumably would not bear any trailing liability⁴. **We need to make sure that no exploratory wells held by exploratory permit and licence holders are left out of the decommissioning obligations and regulations.** Likewise, water flooding and waste injection wells after their production life also need to be properly decommissioned.

To be clear, along with over two dozens other groups, we do not support any new exploratory or production wells, granting of new exploratory or production permits/license on or offshore⁵, or extension (in duration and area) of existing/expiring permits/license.

In terms of the details to be required within Field Development Plans, the content listed as required (paragraphs 77-79) appear to be adequate, alongwith section 42B(2) in the Crown Minerals (Decommissioning & Other Matters) Amendment Bill (hereafter referred to as the Bill).

¹ E.g. Kotuku exploration well on the West Coast of South Island in 2010:

<https://www.stuff.co.nz/business/industries/3597572/Kotuku-bore-abandoned>

² E.g. Kahu-1 exploration well off the Taranaki coast and Tuatara-1 in the western Tasman Bay in 2010:

<https://www.stuff.co.nz/taranaki-daily-news/3933004/Exploration-well-a-failure> and

<https://www.stuff.co.nz/business/industries/4017837/Tuatara-1-well-looks-dry>

³ <http://blog.tagoil.com/topic/east-coast-basin>

⁴ <https://www.boilingcold.com.au/pitt-to-oil-and-gas-you-can-sell-assets-but-not-escape-liabilities/>

⁵ <https://our.actionstation.org.nz/petitions/no-new-petroleum-permits-in-onshore-taranaki-no-new-or-expanded-coal-mines-in-aotearoa>

Moreover, we request that detailed descriptions and analyses of the **adjacent and nearby landuse and risks**⁶ that may be posed by the petroleum infrastructure to them, be required in the FDPs, notably for onshore sites.

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?

Please type your submission below. Please indicate the question(s) to which you are responding.

Question 1A: Our group has raised decommissioning concerns on multiple occasions including various hearings under the EEZ-CS Act^{7, 8} and others⁹. We also submitted on the proposed policy for regulating decommissioning under the EEZ-CS Act in September 2018. In our submission¹⁰, we proposed that operators pay into a decommissioning and restoration fund for post-decommissioning work. We are glad that the current proposed regulations includes financial instruments for this purpose. In that submission, we also asked who would conduct the post-decommissioning inspection and maintenance of any abandoned or remaining infrastructure, and the monitoring of environmental health and remediation (if needed), who would pay for these, and for how long. These questions appear to be unanswered and considered largely out of scope by the proposed regulations.

We believe the challenge lies in making sure that the proposed regulations and those under the EEZ Act complement and reinforce, rather than contradict or compromise one other, or leaving out gaps and loopholes. The overarching consideration should be the irrefutable advice from major science and industry analyses (eg. IPCC¹¹ and IEA¹²) and overwhelming calls from global and local communities^{13, 14} to end fossil fuels development.

We urge that relevant agencies, including MBIE/NZPAM, EPA, WorkSafe NZ, Land Information NZ and all territorial authorities, work closely together to ensure that related

⁶ <https://www.rnz.co.nz/news/national/428392/energy-watchdog-wins-court-battle-for-safety-buffer-zones>

⁷ <https://climatejusticetaranaki.files.wordpress.com/2013/03/cjt-submission-on-stos-maui-gas-field-final.pdf>

⁸ <https://climatejusticetaranaki.files.wordpress.com/2013/03/cjt-submission-on-stos-2017-application-final.pdf>

⁹ <https://climatejusticetaranaki.files.wordpress.com/2018/10/cjt-slides-for-env-select-committee-hearing-17oct18-v1.pdf>

¹⁰ <https://climatejusticetaranaki.files.wordpress.com/2018/09/cjt-submission-on-mfe-decommission-policy-sep18.pdf>

¹¹ <https://www.ipcc.ch/report/ar6/wg1/#FAQ>

¹² <https://www.iea.org/reports/net-zero-by-2050>

¹³ <http://www.lofotendeclaration.org/>

¹⁴ <https://our.actionstation.org.nz/petitions/no-new-petroleum-permits-in-onshore-taranaki-no-new-or-expanded-coal-mines-in-aotearoa>

legislation (e.g. CMA, EEZ-CS Act, Health and Safety At Work Act; HSNO, various regional and district plans and policies, etc) complement each other and are implemented effectively.

Locally, we continue to question the level of technical competency and transparency demonstrated by the Taranaki Regional Council in ensuring that decommissioning requirements both onshore and in the coastal marine areas are met. Gaps and failures in management were highlighted by former Parliamentary Commissioner for the Environment Dr. Jan Wright's report (2014/2015)¹⁵ on the industry, and those concerns continue to this day.

Moreover, to avoid overlaps, gaps, contradictions or inconsistencies, the legal instruments and technical requirements and standards for decommissioning in the EEZ-CS and in the coastal marine areas should be developed together. It would be prudent to have central agencies oversee the decommissioning plans, implementation, inspections and post-decommissioning monitoring, rather than leaving these to the Taranaki Regional Council.

Content of FDPs

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

Please type your submission below. Please indicate the question(s) to which you are responding.

Question 1B: We are concerned over the potentially overly narrow scope of the proposed regulations. The interpretation of 'decommissioning' (paragraph 33 of discussion document) refers to *"the process of permanently taking out of service petroleum infrastructure and wells and undertaking any site restoration activities, in a safe and environmentally responsible manner, at the end of a petroleum field's economic life or when production ceases."*

There is an urgent need to ban new fossil fuel exploration and production, as well as to phase out many existing projects faster than their natural decline¹⁶.

This means **decommissioning of petroleum infrastructure, in some cases, before the end of a petroleum field's economic life or before production ceases**, under government and/or company direction. To reflect this, the definition/interpretation of decommissioning needs to be expanded. With the increasing push for carbon capture, use and storage (CCUS), the infrastructure associated with this will require careful consideration in terms of its placement, maintenance, monitoring and possibly eventual decommissioning. To be clear, our group is strongly opposed to the development of CCUS, given that it's a costly, unproven technology that distracts and wastes precious time and resources when we must urgently phase out fossil fuel based, emission intensive activities.

We understand that the Bill and the proposed regulations relate to oil and gas infrastructure only. We question how and when **coal mines and associated infrastructure** will be brought under proper decommissioning legislation.

¹⁵ <https://www.pce.parliament.nz/publications/drilling-for-oil-and-gas-in-new-zealand-environmental-oversight-and-regulation>

¹⁶ <http://www.lofotendeclaration.org/>

What about industrial facilities that rely primarily on fossil fuels, notably Methanex (Motunui) and the Ballance Agri-Nutrients Urea plant (Kapuni), both use fossil gas as feedstock and fuel? How will their decommissioning be regulated?

During the early hearings in 1980-81 for the Motunui and Waitara Valley synthetic petrol plants (now Methanex), local landowners and interested parties were able to insert conditions into the consents for the full reinstating of the sites by the companies as these facilities come to the end of operation. However, these conditions were removed when the consents were renewed subsequently, without notification to interested parties or the public. Similarly, conditions for reinstating the site of the ammonia-urea plant in Kapuni were introduced at the initial hearings in 1979, and agreed upon by the company at the time. It is not clear whether these conditions still exist in the consents and whether they would be fit for purpose when the plants finally close down.

Critically, these plants were given a life span of 30-35 years at the time of the hearings, so they are well passed their use-by date, prompting an urgent need for decommissioning assurance in terms of finance, technology and the expectation to remediate and reinstate the sites to standards that are acceptable to hapū, iwi and the local community.

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?

Please type your submission below. Please indicate the question(s) to which you are responding.

Question 2: More detail, and more importantly, **accurate, up-to-date detail of activities and infrastructures**, are crucial. Companies are known to conduct drilling campaigns^{17, 18} whereby multiple new wells and/or side-tracks are drilled in quick succession, or periods of intense hydraulic fracturing (fracking or stimulation) from existing wells at multiple depths episodically. It will be a challenge keeping on top of such activities.

Petroleum permit or license holders are also known to sell or farm-out their permits or licenses, even resource consents, to other companies. The financial situations of companies also vary and can change drastically over short periods of time. The Australian government got caught out recently because of a legislative loop hole and insufficient oversight to deal with the partial buy and sell of the aging Northern Endeavor and associated oil fields¹⁹. We remain extremely concerned over the proposed sales of OMV's Maari permit/licence to Jadestone Energy and are opposed to its approval²⁰.

¹⁷ <https://www.rnz.co.nz/news/national/429860/omv-planning-2022-in-fill-drilling-campaign-at-mau>

¹⁸ <https://www.toddenenergy.co.nz/?p=1388>

¹⁹ <https://www.boilingcold.com.au/northern-endeavour-a-major-screw-up-by-government-patrick/>

²⁰ <https://www.rnz.co.nz/news/business/431934/massive-disparity-between-seller-and-buyer-s-estimated-oil-reserves>

Clear line of reporting and effective communications among agencies (Crown, MBIE/NZPAM, regional & district councils) are needed to ensure that **accurate, up-to-date records of the operatorships and multiple ownerships** of permits/licenses and their **financial status** are held by all and that no company would evade responsibilities.

We have the same concerns over the apparent lack of requirements on petroleum exploratory permit and licence holders for wells and other infrastructure associated with exploratory and/or appraisal drilling. See our answers above.

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?

Please type your submission below. Please indicate the question(s) to which you are responding.

Question 3: Initial FDPs and Asset Registers should be provided within three months preferably and no later than six months after the regulations take effect. Surely companies already hold the information needed, and if not, should be able to collate or update the required information as a matter of urgency.

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.

Please type your submission below. Please indicate the question(s) to which you are responding.

Question 4:

We prefer option 2. Updated FDP and Asset Register should be submitted annually and when there is a significant change. Three-yearly is too long an interval.

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.

Please type your submission below. Please indicate the question(s) to which you are responding.

Question 4A: We agree with the analysis for Option 2.

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.

Please type your submission below. Please indicate the question(s) to which you are responding.

Question 4B: Annually for both.

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'?

Please type your submission below. Please indicate the question(s) to which you are responding.

Question 4C: Any reported loss of well or other structural integrity.

Any seismic, environmental and/or health concerns raised by adjacent and/or nearby communities that maybe associated with the permit/licence holders' activities.

Section Three, Part 2: Financial Capability Monitoring and Assessments

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?

Please type your submission below. Please indicate the question(s) to which you are responding.

Question 5: Yes, audited accounts should be provided by each permit/licence holder.

Given the often complex, changing, multiple ownership of permits/licenses, it would be difficult to monitor each of the companies involved effectively.

Is it possible to require that one of the permit/license co-holders become the guarantor who would be financially liable if a co-holder becomes bankrupt or tries to evade responsibility?

Ongoing financial monitoring

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

Please type your submission below. Please indicate the question(s) to which you are responding.

Question 5A: Yes

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?

Please type your submission below. Please indicate the question(s) to which you are responding.

Question 6: Yes, and make sure that petroleum exploratory permit/license holders are included, not just mining permit/licence holders.

We question who would review/verify the accuracy or certainty of the cost estimates provided by permit/licence holders?

We question why we cannot expect better quality of cost estimation, say Class 1 or 2 (rather than 3) if decommissioning is expected within three years?

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?

Please type your submission below. Please indicate the question(s) to which you are responding.

Question 7: We believe cost estimates for both onshore and offshore (including those in the coastal marine areas) petroleum field decommissioning should be verified by an independent third party.

We also argue that an independent technical reviewer should be required to make sure that the method and process proposed for the decommissioning is up to standard.

Offshore decommissioning presents obvious technical challenges. But onshore decommissioning is hugely complex because of the change in landuse and ownerships, and the potential risks to human health and safety, including impacts on people's wellbeing from environmental damage. There is also a greater number of **onshore wells** owned by a great number of companies at various life stages from exploration to production, water flooding, waste injection and recently suspended or plugged, mostly in Taranaki and the numbers continue to increase.

A technical risk assessment report (Petrofac, 2017)²¹ commissioned by MBIE revealed that of nearly 1,000 onshore wells drilled in NZ in the past 150 years throughout the country from Auckland to Southland, more than 100 are orphan wells, 14 of which requiring priority action²². The costs to decommission all these wells would be well over \$20M. A subsequent (2019) document identified 36 wells that required further evaluation or costly plugging and abandonment, sparking tension with current landowners^{23, 24}.

²¹ <https://s3.documentcloud.org/documents/6763468/1920-0860-Response-to-Robin-Martin.pdf>

²² <https://www.rnz.co.nz/news/national/409016/oil-and-gas-exploration-priority-action-recommendation-on-disused-wells-not-followed-through>

²³ <https://www.rnz.co.nz/news/national/411351/taranaki-farmer-tells-government-to-pay-up-for-orphan-oil-well-plugging>

²⁴ <https://www.rnz.co.nz/news/national/404415/orphan-wells-nz-s-abandoned-oil-and-gas-wells-would-cost-14-point-3m-to-plug>

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.

Please type your submission below. Please indicate the question(s) to which you are responding.

No comment

Financial information for financial capability assessments

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

Please type your submission below. Please indicate the question(s) to which you are responding.

Question 8: We prefer Option 2 because it gives transparency and allows for comparisons.

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.

Please type your submission below. Please indicate the question(s) to which you are responding.

No comment

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?

Please type your submission below. Please indicate the question(s) to which you are responding.

Question 8B: Yes, the list should also include information on any other legal and/or financial liability in NZ and overseas, including current court cases.

The list may also include any other information that the companies believe is relevant.

Section Three, Part 3: Financial Securities

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?

Please type your submission below. Please indicate the question(s) to which you are responding.

Question 9: Yes

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.

Please type your submission below. Please indicate the question(s) to which you are responding.

Question 9A: Not aware

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?

Please type your submission below. Please indicate the question(s) to which you are responding.

Question 9B: As mentioned above, we are in agreement with the IPCC and all other recent analyses that call for an immediate halt to future exploration and mining. Hence if the government accepts that critical advice, this question will not arise. The industries' argument²⁵ that securities requirements and financial checks would dampen investment interest should not be our concern because we must work within the ten or so years left of remaining natural gas to transition off fossil fuels and honour our international obligation to avoiding global temperature rise above 1.5 degrees C. The industries' warning over the affordability of electricity cannot be addressed by extending fossil gas supply, but by fixing our broken electricity pricing market²⁶ and fundamental system change²⁷. There are many pathways for energy security without further fossil fuels development, if we are committed to down shifting our extractive and exploitative economic growth paradigm to a more regenerative and equitable circular or doughnut economy²⁸.

That said, if the government does not accept that advice, and continues to permit this industry, then yes, definitely securities must be required before petroleum companies begin putting down any infrastructure in NZ.

Financial securities requirements must apply also to exploratory permit/licence holders because of the heightened risks of exploratory drilling, and because of the inherent uncertainty of discovery with exploration (in the order of 1 in 10 or less).

The argument around allowing a company sufficient time to "*gradually accumulate funds*" is dangerous because of the uncertainty of striking an economically viable reserve, the volatility of the oil/gas market and the risk of stranded assets as the global pressure for moving off fossil fuels to a zero carbon economy increases.

If it's a part permit/licence holder taking over one of the holders of a permit/licence, then it should carry the security responsibility of the exiting company.

Regulations around securities should also apply (retrospectively) to existing permit/licence holders.

Notably the Parliamentary Commissioner for the Environment recommended in 2014/2015²⁹ that The Minister of Energy and Resources:

"Requires the adequacy of public liability insurance held by companies bidding for exploration permits to be assessed by New Zealand Petroleum and Minerals as part of 'credit checking'".

²⁵ [https://www.parliament.nz/resource/en-](https://www.parliament.nz/resource/en-NZ/53SCED_EVI_111853_ED1377/c7a6745b36f6f81ca6c5ad3abf6d4a2cf890871d)

[NZ/53SCED EVI 111853 ED1377/c7a6745b36f6f81ca6c5ad3abf6d4a2cf890871d](https://www.parliament.nz/resource/en-NZ/53SCED_EVI_111853_ED1377/c7a6745b36f6f81ca6c5ad3abf6d4a2cf890871d)

²⁶ <https://thespinoff.co.nz/business/29-07-2021/why-those-in-energy-poverty-should-be-angry-about-rio-tintos-latest-results/>

²⁷ <https://www.newsroom.co.nz/ideasroom/breaking-out-of-neoliberalisms-iron-cage>

²⁸ <https://climatejusticetaranaki.files.wordpress.com/2021/04/cjt-submission-to-ccc-28mar21am.pdf>

²⁹ <https://www.pce.parliament.nz/publications/drilling-for-oil-and-gas-in-new-zealand-environmental-oversight-and-regulation>

Criteria for kinds of securities

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

Please type your submission below. Please indicate the question(s) to which you are responding.

Question 9C: None of the listed kinds of securities is fail safe. Critically, we are in the twin crises of climate and ecological collapse. There should simply be no new petroleum infrastructure allowed, thus also avoiding the far-ranging problems with decommissioning. This means no extension of permits/licence duration or area, no progression from exploration to production, and no drilling of new wells or side-track from existing wells. If any of these is allowed then the most stringent and safe kind of securities should apply, depending on circumstances.

For instance, it's unacceptable that Tamarind Taranaki Ltd. would totally evade financial responsibility for the decommissioning of the Tui field offshore. Yet it's sister company Tamarind Onshore NZ Ltd³⁰ has continued to own/operate multiple permits onshore (e.g. PEP51153³¹, PEP57065) and the mother company Tamarind Resources is also free of any liability. However, even a parent company guarantee which overrides the parent's immunity under corporate law would not have helped in this case, as the parent company was reported to have gone into receivership in March 2020³².

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?

Please type your submission below. Please indicate the question(s) to which you are responding.

Question 10: Probably not, because it would further complicate the already very complicated system and relationships (most permits/licences have multiple owners), and it would be too hard for the government to be assured that the third party holding the escrow account is reliable.

³⁰ <http://www.tamarindresources.com/cheal.html>

³¹ <http://data.nzpam.govt.nz/PermitWebMaps/os/Home/StaticMap?permit=51153>

³² <https://www.mbie.govt.nz/building-and-energy/energy-and-natural-resources/tui-project/>

Section Three, Part 4: When Production Ceases

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?

Please type your submission below. Please indicate the question(s) to which you are responding.

Question 11: The proposed annual notification of expected date for production cessation seems reasonable.

It is not clear whether permit/licence holders are expected to notify the expected date of production cessation for individual wells, wellsites or the entire permit/licence area. This is important especially for onshore permits/licences. It maybe advantageous to require permit/licencer holders to decommission individual wellsites as they cease production, rather than waiting for the entire permit/licence area to end.

PROPOSED REGULATIONS ON A POST-DECOMMISSIONING FUND

Section Four, Part 1: Criteria Relating to the Post- Decommissioning Payment

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?

Please type your submission below. Please indicate the question(s) to which you are responding.

Question 12:

We do not agree that there could be **exemptions** on post-decommissioning payments, to be granted by the Minister or through other means (paragraph 208).

In terms of scope, we understand that the proposed post-decommissioning obligations do not apply to orphaned wells where former permit/licence holders no longer exist (para. 211). It is not clear whether such obligations and the proposed post-decommissioning fund would apply to other already suspended, plugged and/or abandoned wells and infrastructure (para. 212) where permit/licence holders still exist. We argue that they should apply for as long as the concerned companies are still operating in NZ, albeit at a different sites or permit/licence areas in some cases.

If they do not apply and the costs would not be covered by the fund, how would they be funded, assuming that those infrastructure and sites would be monitoring into the longterm?

Notably, the Parliamentary Commissioner for the Environment (PCE) in 2014/2015³³ highlighted that:

“Under law, once a well has been abandoned and ‘signed off’ by the High Hazards Unit and the councils, any leaks from the well become the responsibility of the owner or occupier of the land.”

The PCE recommended that The Minister of Energy and Resources:

“Ensure that the oil and gas industry bears the cost of ongoing monitoring of abandoned oil and gas wells and the remediation of future leaks, by, for example, the imposition of an annual levy.”

³³ <https://www.pce.parliament.nz/publications/drilling-for-oil-and-gas-in-new-zealand-environmental-oversight-and-regulation>

Recently in August 2021, Australia’s parliament passed legislation that includes trailing liability provisions to reduce the risk that financial costs of decommissioning will be left to Australian taxpayers³⁴.

Clearly landowners and occupiers should not have to bear the costs and impacts from something that the industry has profited from. It is especially unfair given that the Crown Minerals Act s56 imposes that where an owner or occupier has entered into an access arrangement with a company, all successors in title to the owner/occupier are bound by the arrangement³⁵. Critically, there is no guidance or standards in access arrangements which would clearly protect landowner/occupier from potential costs “if the permit holder should go into liquidation and leave activities incomplete”³⁶.

We therefore strongly urge that measures pertaining to trailing and residual liabilities be retained in the Bill and proposed regulations, despite industry push back. The conditions in existing petroleum permits and regional and district councils consents are inconsistent and do not protect landowners/occupiers, as detailed in Taranaki Energy Watch’s submissions on the Bill and the proposed regulations.

Furthermore, the problems of orphaned wells, which are deemed out of scope in this proposal, must not be understated, as explained in our response to question 7.

The issues of leakage and fugitive emissions from plugged and abandoned wells and infrastructure (orphaned or not) cannot be ignored, because of their potential adverse impacts on water and the climate^{37, 38, 39, 40, 41}.

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?

Please type your submission below. Please indicate the question(s) to which you are responding.

³⁴ <https://www.minister.industry.gov.au/ministers/pitt/media-releases/stronger-oversight-australias-offshore-oil-and-gas-industry>

³⁵

https://www.legislation.govt.nz/act/public/1991/0070/latest/DLM246709.html?search=ts_act%40bill%40regulation%40deemedreg_minerals_resele_25_a&p=1

³⁶ <https://www.nzpam.govt.nz/assets/Uploads/our-industry/factsheets/permits-land-access-new-zealand.pdf>

³⁷ <https://www.iea.org/reports/methane-emissions-from-oil-and-gas>

³⁸ <https://www.sciencedirect.com/science/article/pii/S0048969715312535#!>

³⁹ <https://agupubs.onlinelibrary.wiley.com/doi/full/10.1002/2014EF000265>

⁴⁰ <https://www.resilience.org/stories/2013-01-10/shale-gas-how-often-do-fracked-wells-leak/>

⁴¹ <https://research.csiro.au/oilandgas/unconventional-resources/fugitive-emissions/>

Question 12A:

The list of post decommissioning work appears overly limited, considering the definition of decommissioning (paragraph 33) which also involves “*site restoration activities*”. We suggest expanding the third point (under paragraph 213) to read:

“Environmental damage or health and safety risks caused by a failure of the decommissioning of petroleum infrastructure including wells and inadequate site restoration.”

Notably, sites of petroleum wells, production stations and associated waste discharge areas are heavily contaminated⁴². They need to be properly remediated to standards that are acceptable to tangata whenua, hapū and iwi, and for specific landuse that follows to protect human health and potentially contributes to rewilding.

While using data and models from overseas jurisdictions is wise, any factors more specific to New Zealand, such as seismic risks, must be well considered and taken into account⁴³.

We argue that costs on fugitive emissions (carbon equivalent) should be included, given the urgent move to a zero carbon economy and the expected rise in carbon price globally.

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?

Please type your submission below. Please indicate the question(s) to which you are responding.

Question 12B: Re paragraph 221-222 and figure 3, more fine-scaled external factors such as proximity (and connectivity) to drinking water source and human activities or landuse (e.g. major hazardous facility) and ocean currents and meteorological factors, should also be considered.

We do not think it is particularly useful to compare the risk levels between offshore and onshore wells as presented in figures 2 and 3 however.

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?

⁴² <https://climatejusticetaraki.files.wordpress.com/2013/03/cjt-3rd-submission-to-pce-nov2013-v8-final.pdf>

⁴³ <https://www.pce.parliament.nz/our-work/news-insights/archive/2014/environment-commissioner-urges-new-zealand-to-get-ahead-of-the-game-on-an-expanding-oil-and-gas-industry>

Please type your submission below. Please indicate the question(s) to which you are responding.

Question 12C: Why are the kinds and extent of interventions to a well, notably hydraulic fracturing, not listed as a risk factor? There has been well documented research showing the risks of well failure associated with hydraulic fracturing^{44, 45}.

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?

Please type your submission below. Please indicate the question(s) to which you are responding.

No comment

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?

Please type your submission below. Please indicate the question(s) to which you are responding.

No comment

Section Four, Part 2: Making Payments

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?

⁴⁴ <https://onepetro.org/SPEHFTC/proceedings-abstract/17HFTC/2-17HFTC/D021S005R004/195320>

⁴⁵ <https://www.desmog.com/2020/01/23/oil-gas-well-casing-failure-fracking-xto-ohio-blowout/>

Please type your submission below. Please indicate the question(s) to which you are responding.

Question 13: The argument around “*the permit or licence holder’s ability to build up the fund over time...*” is weak because of the volatility of the oil/gas market and the risk of stranded assets as the global pressure for moving off fossil fuels to a zero carbon economy increases. For exploratory wells, the uncertainty of striking an economically viable reserve makes this considerable irrelevant.

Section Four, Part 3: Granting Exemptions

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?

Please type your submission below. Please indicate the question(s) to which you are responding.

Question 14: We do not accept exemptions. It is difficult to be absolutely certain that the drilling of a well would have zero impact in the future, even if no hydrocarbons were reported at the time of drilling. Even the supposed complete removal of the infrastructure, there could still be unexpected impact in the future, resulting in residual liability.

Section Four, Part 4: Accessing the Fund

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

Please type your submission below. Please indicate the question(s) to which you are responding.

Question 15: We don’t agree that third-parties such as landowners would need to apply to local Councils who would assess whether the application should proceed to the Minister of Energy and Resources. Third-parties should be able to apply directly to the Minister.

Paragraph 233 refers to “*remediation, associated clean-up, or investigative activities*” as eligible for the fund. We submit that regular monitoring of decommissioned infrastructure and environmental health should also be covered by the fund.

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

Please type your submission below. Please indicate the question(s) to which you are responding.

Question 15A: Tangata whenua, hapū and iwi, as well as established environmental and community groups should also be eligible as third parties to apply for post-decommissioning fund.

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

Please type your submission below. Please indicate the question(s) to which you are responding.

Question 15B: We don't agree that third-parties would need to apply to local Councils who would assess whether the application should proceed to the Minister of Energy and Resources. Third-parties should be able to apply directly to the Minister.

As noted in the former Parliamentary Commissioner for the Environment (2014/2015), councils have not done a good job of managing the industry, and this is likely to continue. Our view is that there has been significant regulatory capture at local, regional and indeed national levels by this industry, and NZ is now in a situation of trying to clean up the mess.

Section Four, Part 5: Managing the Fund

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

Please type your submission below. Please indicate the question(s) to which you are responding.

Question 16: We are unsure about the rationale behind the so-called ring-fencing of offshore and onshore funds separately. Practically, it is not that simple or clear-cut between offshore and onshore infrastructure and decommissioning issues.

For example, OMV's Maui platforms in the EEZ is linked to the Maui production station onshore by pipelines through the coastal marine area (cma) of Taranaki⁴⁶. The Pohokura platform in the cma is also linked to its onshore production station⁴⁷. Several of the Pohokura wells were drilled onshore but extended into the cma⁴⁸. The Kupe licence PMP38146 spans the EEZ and cma, with wells in both zones (including a suspended exploratory well in the cma), and pipelines that link an unmanned wellhead platform to the onshore production station⁴⁹.

Moreover, we would hope that most decommissioning would be completed to high standards and that the payment levels into the fund would be set high enough so that cumulatively there would be enough to provide a substantial portion, if not all, of the costs needed for the rare post-decommissioning problems.

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

Please type your submission below. Please indicate the question(s) to which you are responding.

Question 16A: Transparency, accountability and no favoritism are the key.

Listen to and genuinely consider all reports and complaints from tangata whenua, hapū, iwi, landowners and environmental and community groups (so-called third-parties in the entire process.

⁴⁶ <https://www.trc.govt.nz/assets/Documents/Environment/Monitoring-OGproduction/2019onwards/MR20-OMVMauiPS.pdf>

⁴⁷ <https://www.rnz.co.nz/news/business/382253/maintenance-at-taranaki-gas-field-to-increase-productivity>

⁴⁸ <https://www.trc.govt.nz/assets/Documents/Environment/Monitoring-OGproduction/2019onwards/MR20-PohokuraPS.pdf>

⁴⁹ <https://www.beachenergy.com.au/new-zealand/>