11 April 2024 Meeting Briefing
Hon Shane Jones
Minister of Resources

Key messages:

- *the changes made to the Crown Minerals Act since 2018* ***have severely damaged investment confidence*** *and made New Zealand an unattractive place to invest*
- *the current gas shortages* ***imperils our energy security, causes risks to our electricity system****, this means* ***demand goes unmet*** *with risks to the competitiveness of our export sector and overall economic recovery*
- *our international reputation is now as a* ***country with high sovereign risk*** *at the same time our major fields near end-of-life*
- *to achieve the Government's stated objective to revitalise the oil and gas sector, much-needed* ***investment is now required*** *to protect and grow our diminishing oil and natural gas reserves base*
- *damage to the sector requires policy changes that are both pragmatic and proportionate to the magnitude of the problems faced. Comparisons to overseas jurisdictions are interesting but, given New Zealand's unique operating environment, do not provide a roadmap*
- *we seek:*
  a. *repeal of all legislative changes since 2018 (with one exception) to the Crown Minerals Act;*
  b. *the replacement of the decommissioning laws with legislation that appropriately balances the risk to the Crown with that of operator insolvency;*
  c. *fiscal measures that encourage new appraisal and exploration investment to restore and grow oil and gas reserves (i.e. activities that are not directed at 2P reserves);*
  d. *efficient and timely regulatory processes and consenting, including consideration of permit extensions; and*
  e. *changes to be made with urgency, befitting the risks, especially to electricity supply.*

The urgent need for reform

- Many of the changes to the Crown Minerals Act since 2018 were designed to halt future activities (the "offshore ban") or eliminate the risk to the Crown of having to fund another decommissioning project. Specific concerns with these changes include:
    1. restrictions on exploration acreage that were unadvertised and not part of any party's campaign policy platforms, and announced without consulting permit holders;
    2. measures to mitigate financial risk to the Crown that were cherry-picked from other jurisdictions, and layered in ways that are neither appropriate to the New Zealand context, nor proportionate to the risk being managed;
    3. submissions from affected parties during the select committee process were largely ignored; and
    4. undermining the previously clear and unambiguous purpose of the Crown Minerals Act has cut across regulatory responsibilities, unnecessarily increasing the complexity of the operating environment.
- The issues noted above have dramatically increased New Zealand's reputation for sovereign risk, across a multitude of sectors. The unwillingness of the previous government to work with the petroleum sector to develop pragmatic and sensible policy solutions contributed to the current low trust environment.
- The dramatic regulatory over-reaction in the wake of the financial collapse of the Tui operator was an attempt to eliminate risk, without consideration of the costs borne by permit holders nor the 'concessionary' nature of the relationship between Crown and permit holder. The changes we seek we believe are proportionate and fit-for-purpose given the challenges in our energy mix.
- If we are to stave off energy shortages, contribute to resolving the looming winter25 electricity security problems, and meet the urgent need to grow our oil and gas reserves base, we believe the changes made to the Crown Minerals Act since 2018 should be repealed, and urgently.
- Government and officials can then work to replace the repealed legislation with sensible, pragmatic legislation developed through a consultative public policy process. This approach recognises the ongoing need for natural gas in our energy mix for the foreseeable future and the vital role the sector plays in our ongoing health and well-being.

The case for action

- The petroleum sector in New Zealand is at a crossroads. Increasingly stringent and high-cost consenting requirements, restrictions on exploration acreage availability, and a vocal and polarising campaign against the ongoing use of fossil fuels has damaged the long-term viability of the sector and undermined our energy security.

- The essential role of natural gas in stabilising our energy system is largely underappreciated. However, this vital function, and our energy security, has been undermined by legislative changes that have restricted investment and elevated the perception of sovereign risk. Nowhere is this more dramatically demonstrated when comparing the forecast natural gas production profile with what could be considered a more likely outcome (see Appendix 1 attached).[1]
- Ongoing investment in oil and gas activities is also important to maintain the domestic skills base to support the sector. These specialist roles and services are essential to keep production flowing. A loss of a skilled workforce inevitably leads to higher costs which will be passed on to consumer, as the necessary skills are imported from overseas.
- We welcome the Government's intent to repeal the restrictions to the allocation of exploration acreage introduced in 2018. The return to a more balanced view of the energy trilemma importantly recognises the role natural gas plays in ensuring New Zealand's energy security and well-being. However, we believe additional measures are needed to attract investment and incentivise exploration to protect and grow New Zealand's oil and gas reserves.

What the sector needs

- Repealing the restrictions on the allocation of exploration acreage is a necessary step. However, in light of the policy-led damage to the sector, this is insufficient to attract and incentivise the much-needed further investment in New Zealand's petroleum sector. To support New Zealand's economic and well-being aspirations the sector needs:
    1. a fair and proportionate approach to manage the financial risks associated with decommissioning oil and gas facilities;
    2. encouraging exploration, appraisal and development of gas resources through tax and royalty incentives;
    3. means to address the lack of investor confidence; and,
    4. measures to improve regulatory process timeliness and efficiency.
- We understand you have been briefed by officials on a range of potential options, developed in part from options identified in 2009 to stimulate oil and gas exploration. We provide commentary on those options in Appendix 2 attached.
- We provide in Appendix 3 attached a range of options we believe would improve the investment climate. These measures are aimed at encouraging exploration investment in ways that are proportionate to the damage incurred and extant risks, and that brings forward exploration drilling and reserves development. Where we agree with the options outlined in Appendix 2, we do not expand on these options.

[1] The petroleum reserves data release includes a forward-looking production forecast from permit and license holders based on 2P reserves. This is aggregated or "stacked" to provide an aggregate production profile. When considering additional effects such as turn-down limits on processing capacity, the outlook is far less optimistic.

- The following sections of this briefing provide some background information to what we have outlined in Appendix 3.

Decommissioning

- The legislation developed in response to the financial failure of the Tui operator was in regard to a one-off incident. In formulating the policy response, here was no evidence presented of systemic financial or environmental sector wide risk. In our view these changes were dramatic over-reaction in an attempt to eliminate the risk of the Crown undertaking another decommissioning project. However, the evidence for such a costly and harsh policy intervention simply wasn't there.
- While we are pleased to see a willingness to revisit the legislative changes in relation to decommissioning, we are concerned that an issue-by-issue approach to the elements of a decommissioning regime fails to focus on the formation of a coherent, well-balanced regime that we believe is both more appropriate to the context and necessary. In our view the legislation needs to:
    1. provide for financial security but allows for greater discretion in the application of parent company guarantees and the requirement for financial securities;
    2. removal of the criminal liability for directors. This criminalises matters usually dealt with through civil means and undermines the ability to attract high calibre governance professionals;
    3. remove trailing liability provisions as these are unnecessary if financial securities are required;
    4. limit the scope of financial securities in the Crown Minerals Act to the plugging and abandonment of wells;
    5. remove post decommissioning fund requirements; and
    6. remove the presumption of complete removal as the basis for financial securities in the absence of resource or marine consents.
- We acknowledge - if based on presented evidence of financial risk - that the rules should allow for a more stringent approach based on that risk for a specific permit holder. We describe this as a 'base and flex' approach.

Encouraging new exploration and appraisal

- Our approach is premised on a strong preference of securing our energy security with indigenous gas supplies. The alternative is a reliance on expensive imported LNG or low-quality coal to meet our energy needs or unmet demand from industrials. Reliance on imported gas and coal introduces unnecessary supply chain risks, and exposure to a different, external gas pricing mechanism. Investment in both appraisal and exploration can be encouraged through:

1. introducing flexible royalty settings (for example royalty holiday on a proportion of reserves or lower royalty rates for frontier basins);
2. enabling enhanced CAPEX depreciation for new developments or redevelopment of existing operations;
3. allowing CAPEX uplift for discoveries prior to a prescribed date, for example a greater than 100% tax credit on CAPEX (i.e. get the prescribed percentage of investment back as a full tax credit in the year of expenditure) on all activities designed to grow 2P reserves; and
4. removing the energy resources levy ("ERL") for petroleum mining license ("PML"s).

Addressing investor confidence

- The petroleum sector is facing is a form of "investment inertia". Ultimately it will be for the individual permit holders and participants to make the investment decisions. It is important therefore, the case for investment in New Zealand is put forward. Our recommendations are consistent with some of those set out in Appendix 2, and include:
    1. reinsertion of "promote" in the Crown Minerals Act purpose statement;
    2. actively promoting the New Zealand petroleum sector to international investors; and
    3. introduction of a mediation and compensation mechanism in the Crown Minerals Act.
- Improving investor confidence does not guarantee firms will settle on positive investment decisions. It is however important for the government to signal its support to the sector. We firmly believe that the success of any international promotion will be positively correlated to the extent of the changes made, especially to the decommissioning regime.

Improving regulatory processes

- The petroleum sector has been active in New Zealand for over 100 years. The risks posed to health, safety, and the environment are well understood. However, the industry still attracts an unreasonable level of scrutiny from consenting authorities, despite their familiarity with the risks and mitigations. Regulatory decision -making and consenting delays continue to be of concern.
- This leads to uncertain and changing information requirements and timeframes as decision-makers appear to be seeing each application for "the first time, every time". There is significant room for improvement in the regulatory and consenting space for upstream petroleum activities. This may include specifying decision-making timeframes and the development of national environmental standards and policies to cover what are considered routine activities in comparable jurisdictions.

- The lack of service standards and timeliness undermines regulatory credibility, adding to the elevated perception of sovereign risk.

Other matters

- Changes to the West Coast of the North Island marine mammal sanctuary made in the run-up to the 2020 election will restrict offshore exploration activities due to the prohibition of seismic surveying in territorial waters.

Next steps

- We seek to continue to work collaboratively with officials as they work-up a new Crown Minerals regime.
- Our preference is to return to the Crown Minerals Act as it was on 12 November 2018 as the starting point for developing decommissioning legislation where the policy solutions are proportionate to the risks being managed, and to revert to this with urgency.
- From this starting point pragmatic and proportionate legislation amendments can be developed through a collaborative, consultative process to appropriately manage the financial risks. Should this not be possible, we seek to work with officials to urgently develop up an alternate regime consistent with that outlined in this note. [2]

Attachments

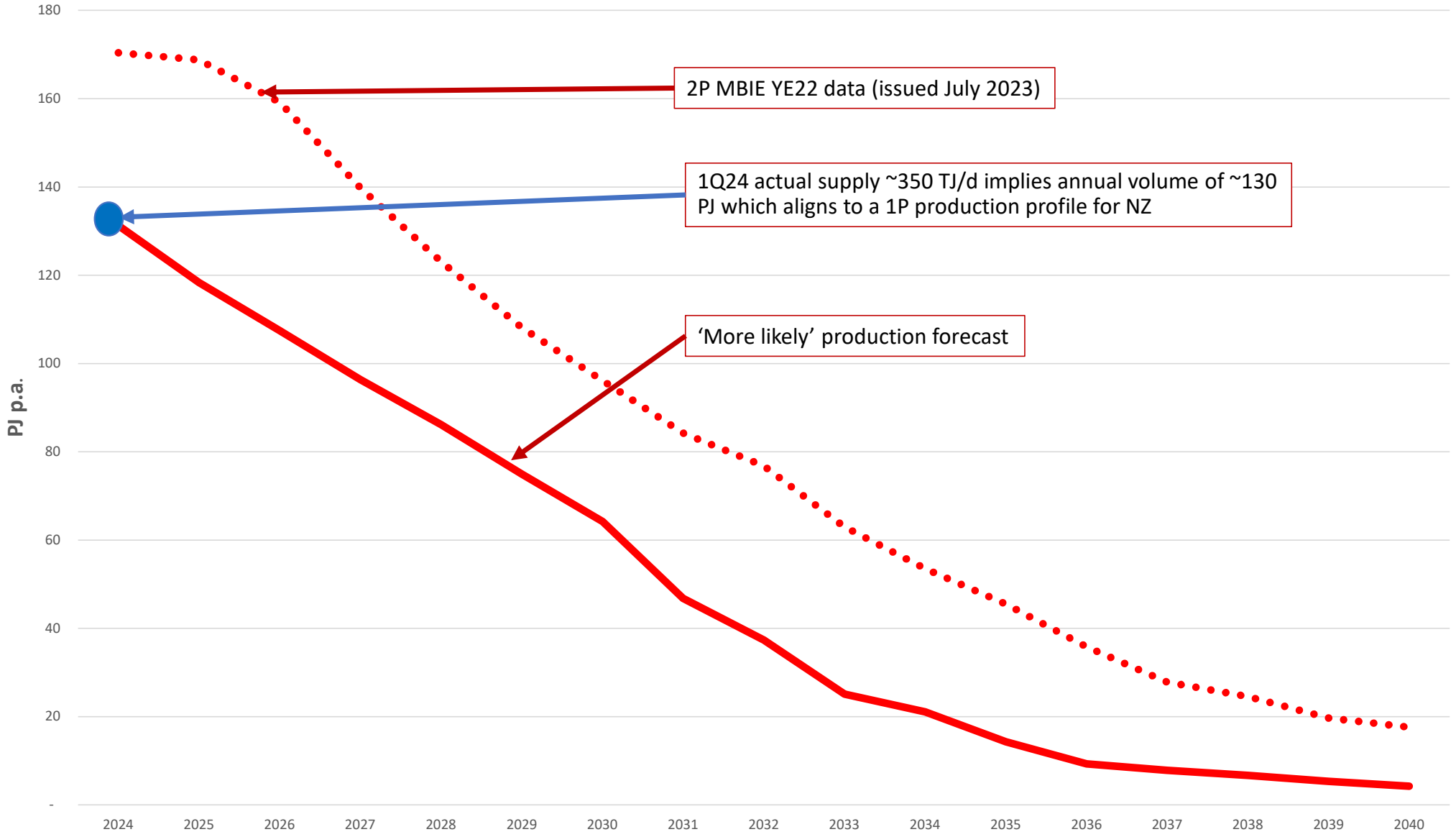
APPENDIX 1: New Zealand gas supply scenarios

APPENDIX 2: Options for investor confidence and addressing sovereign risk, Energy Resources Aotearoa Responses to options provided by MBIE

APPENDIX 3: Industry proposed complementary measures to encourage further exploration and appraisal

[2] We have provided MBIE officials with a clause-by-clause analysis of changes to the Crown Minerals Act since November 2018 outlining our position, and identifying those changes we consider improves the legislation.

Appendix 1: New Zealand Gas Supply Scenarios



Area	MBIE Preferred options	Under consideration	Currently out of scope	Energy Resources Aotearoa comments	Support
Investor confidence - sovereign risk	**-**	A clear disputes and compensation mechanism for petroleum permit and licence holders to ensure investments made under current policy settings are honoured.	-	With the damage to investor confidence from the unadvertised ban on future exploration acreage allocation it is necessary for the Government to give existing and potential investors a level of comfort and security in their investments in New Zealand.	☑☑
Investor confidence – reducing costs for investors: Allocation of petroleum exploration permits	Amend the CMA to allow for a choice between competitive and non-competitive allocation methods.	**-**	**Option 1:** Move to a non-competitive allocation method. **Option 2:** Retain the current competitive allocation method.	The Block Offer process, in its current form is no longer fit for purpose. The annual process was premised on a competitive exploration market, which no longer exists. We agree the Government should retain the flexibility to allocate specific areas on a competitive bids basis, but also to retain the non-competitive priority in time approach as the business-as-usual process. This approach works well for non-petroleum minerals under the Crown Minerals Act.	☑☑
Investor confidence – reducing costs for investors: Royalties	Review New Zealand's petroleum royalty regime to consider options such as: – Removing the 5% AVR; and/or – Reducing the 20% APR; or – Introducing a Resource Rent Tax; or – Royalties holiday (temporary or permanent for a specified amount).	**-**	**-**	Flexibility in the royalties regime is a positive example of how the Government can encourage exploration investment. This is particularly true if the royalty variations are time bound. That is to say these variations would apply to discoveries made before a particular date, say 2030 or 2035. This approach was used in the early 2000's to encourage gas exploration with positive results.	☑☑

Area	MBIE Preferred options	Under consideration	Currently out of scope	Energy Resources Aotearoa comments	Support
Investor confidence – reducing costs for investors: Tax and direct subsidies	-	Making permanent the temporary tax exemption for drilling rigs and seismic vessels.	All other proposals in your 2010 submission on the tax regime.	We support making the tax emption a permanent feature. We are disappointed the other measures; such was capital expenditure uplift and depreciation have been excluded on the basis of an inflexible approach to the tax system by IRD. Our suggestions on potential tax measures are outlined in Appendix 2.	☑
Investor confidence: Signalling promotional intent	– Amending the CMA's purpose statement from "manage" to "promote" – Introducing an optional Government Policy Statement for petroleum and minerals – A programme of promotional activities	**-**	**-**	This is an important step in signalling to international investors	☑☑

Area	MBIE Preferred options	Under consideration	Currently out of scope	Energy Resources Aotearoa comments	Support
Decommissioning – information provision	Develop the regulations to provide clarity to industry as to what information is to be provided and how frequently. This option would not involve amendment to the Act.	-	Amend the Act to provide greater certainty and further limit Ministerial discretion, for example to provide greater certainty as to how much financial information the Minister can request or how often monitoring requirements will be carried out.	It is important the permit holders signal to the regulator what the expected decommissioning costs will be. This helps ensure the Crown receives a fair return on its petroleum estate. Care should be exercised to ensure the triggers to provide an update are set at a reasonable level as this is not a costless exercise for the permit holder.	☑
Decommissioning – financial securities	Make technical amendments to provide for greater flexibility for: – Joint ventures – Securities held across different permits and licenses – Related parties	Operational options to provide guidance or confirm what level of removal is needed for existing installations	Limit the coverage of financial securities to plugging and abandoning wells.	We are disappointed with the approach outlined here as it fails to understand or appreciate the implications of the combination of the individual elements. Our primary criticism of the current legislation is the risk elimination approach adopted *in toto*. Rather than taking the opportunity for a legislative reset, to develop a fairer and more proportionate legislation, this (as well as the consideration by officials of the other elements) do not address the primary issue of the shortcomings in the Crown Minerals Act which seek to manage land use issues and landowner preferences.	☒
Decommissioning - trailing liability	-	**Option 1**: Retain trailing liability but limit liability to the immediately previous permit holder **Option 2**: Retain trailing liability (status quo)	Remove trailing liability	We have serious reservations about trailing liability and its dampening effect on all investment – existing and new. We continue to question the need for trailing liability for previous permit holders and participants when the Government is looking to retain the power to require financial security against decommissioning obligations *and* retains a duplicative Crown authorisation process. We covered this (and other elements) in depth in our 2021 submission on the Crown Minerals amendment Bill.	☒

Area	MBIE Preferred options	Under consideration	Currently out of scope	Energy Resources Aotearoa comments	Support
Decommissioning – criminal liability	-	-	Remove criminal liability for directors	It is vital that this remains in scope. Our 2021 submission on the Bill on the proposed decommissioning legislation included a legal opinion that highlighted; the unusual step of criminalising matters that were normally dealt with as a civil matter – and the perverse impact this would have on attracting the high-calibre governance professionals needed to ensure businesses are run in a responsible manner.	☒
Decommissioning – post-decommissioning liability	Reduce Ministerial discretion (either in the Act or in regulations), for example by setting clear parameters for the maximum amount a payment could be, and when it will be required to be paid.	**Option 1**: Remove the post-decommissioning fund but retain the discretion for the Minister to require the permit holder to hold a financial security, with amendments to reduce ministerial discretion. **Option 2**: Remove the post-decommissioning obligations and replace it with perpetual residual liability for permit holders.	Remove the post-decommissioning obligations altogether.	We again reiterate our major issues with this approach; first it is not clear what are the issues this fund is trying to mitigate, secondly it is unclear how the likelihood and the costs will be estimated (and therefore levied on permit holders). Third, we question the legitimacy of the Crown expecting to receive a risk-free return on its petroleum estate when it acts in the capacity of; resource owner, regulator, beneficiary, and legislator. Finally, it creates a massive moral hazard problem as all participants are expected to contribute towards a fund that will, given its purpose (to the extent this can be determined) meet the costs of a particular operators failure to adequately decommission its well.	☒

KEY ☑☑ Strong support ☑ Qualified support ☒ Do not support

APPENDIX 3

				Primary Impact			
	THEME	**MEASURE**	**High-level Summary of Energy Resources Aotearoa Position**	**Extend existing field life**	**Increase activity**	**Low emissions potential**	**Importance**
RECOVERING INVESTOR CONFIDENCE	**Decommissioning**	Repeal and reform decommissioning provisions	Repeal overly onerous and unnecessary decommissioning financial security and monitoring requirements for mining permits and licenses - and replace with a fairer and more proportionate regime that balances the risk to the Crown with the cost to permit holders, and more fairly reflects the risks associated with each permit holder	☑	☑	☑	Changes to New Zealand's decommissioning legislation are needed to develop an evidence based, balanced approach to manage **the risk that the Crown will be required to undert**ake and fund another decommissioning project. Legislation introduced was a dramatic over reaction to the financial collapse of one permit holder. These changes will have the greatest impact on perceived sovereign risk and without their removal it will be extremely difficult, if not impossible, to attract overseas investors.
		Repeal criminal liability provisions for directors	Criminalising what is normally be a civil issue unreasonably discourages suitably qualified persons from corporate governance roles	☑			
		Financial security requirements	These need to be based on individual operator financial risk profiles. Where required payments from the operator to escrow or bonds should be immediately deductible	☑			
		Trailing Liability	Duplicative with other processes and unnecessary	☑			
		Repeal post decommissioning liability requirements	These provisions are poorly conceived and difficult to quantify and enforce.	☑			
REDUCING RISK	**Tax/Accounting treatment**	Enhanced exploration expenditure deductions	Allow an uplift on exploration activity expenditure tax deductions to encourage exploratory drilling. This relief might be offered on a time limited basis (say out to 2035) to encourage near term exploration		☑		We see this as a vital measure for encouraging exploration drilling, particularly if time limited.
		Enhanced CAPEX depreciation	Options could include: -Introduce an irrevocable election to switch from seven year amortisation to units of production method (on a field / development basis). -Introduce a "double declining balance" method for spreading petroleum development expenditure (DV for other assets). -Allow an upfront deduction upfront for petroleum development expenditure.	☑			While important - New Zealand's security of supply risks will likely be better managed through encouraging exploration and royalty measures.
		Offshore drilling rig exemption	Options could include: -Make the exemption a permanent exemption. -Extend the exemption to support vessels (including seismic support vessels). -Extend the exemption to on-board processing of seismic data. -Align the tax treatment with Australia by introducing a 5% final tax.		☑		The rolling nature of the exemption, since its introduction, is an unnecessary administrative burden. The exemption should also be broadened to include onboard seismic processing and support vessels mobilised to support the offshore campaign.
		Deductibility of development expenditure	Allow permit holders to claim an uplift on development CAPEX for new developments or changes to existing operations that contribute to growing the 2P reserves base.	☑			Important to encourage the development of new reserves or for converting contingent resources to reserves - particularly if time limited.
		Research and design tax credit scheme	Apply a 30% tax credit to new projects or initiatives that reduce emissions and/or accelerate the transition to a lower carbon economy (e.g. hydrogen, offshore wind, CCUS, etc.)			☑	Encourages innovation and reutilising existing infrastructure to meet net zero targets and reduce emissions.
		Tax exemption for drilling rig and support vessel employees	Introduce a tax exemption for income derived by employees working on seismic ships, drilling rigs or support vessels in New Zealand. Extend the "92 day exemption" to 183 days for employees working on seismic ships, drilling rigs or support vessels.		☑		For consistency we would like to see a similar tax exemption for foreign crew mobilised to support offshore activities.
	Royalties	Differential royalty rates for frontier basins	Offer differential (lower) royalty terms for early movers exploring frontier basins to encourage drilling of exploration wells.		☑		It might be approproate to offer a differential basin-specific royalty regime

	Royalty regime concessions	Options might include: - Remove the AVR component (5% of revenue) and retaining the APR component (20% of account profits) only. - Introduce new concessions (e.g. a royalty holiday for the first 20% of reserves). - Lower royalty rates for first movers in frontier basins - Remove ERL requirements for PMLs	☑	☑		Adjusting the royalty regime to manage security of supply concerns has been effectively tried before. We believe this could be an effective means to encourage bringing additional and new reserves to market.
Reducing sovereign risk	Repeal ban on new exploration outside of onshore Taranaki	Will add to the overall resilience of NZs energy system, and help secure a smooth low emissions journey		☑	☑	Reversing this poorly conceived legislation is a necessary step in regaining our reputation as an investment destination.
	Streamlined consenting processes for exploration wells	Setting consent conditions for exploration well drilling can be an open ended and drawn out affair. The process and risks for this activity are well traversed and understood.		☑		The risks and mitigations for exploration well drilling in New Zealand are widely known and understood. This should be reflected in the consenting process, which has become unnecessarily drawn out and costly.
Measures to Improve Administrative Efficiency	Clarify priority in time (PIT) processes for producing basins	Encourage near field exploration through a PIT regime for producing basins.	☑	☑		Any efforts to increase clarity around the availability of new exploration acreage is welcome.
	Defined block offer in frontier basins	Institute a new block offer process where the Crown calls for bids on a defined block in a frontier basin. Permit conditions would leverage some of the other measures offered here, such as reduced royalty rates.		☑		Considered a low priority to meet energy security concerns, but should be a consideration for future exploration.
	improve process efficiency and accountability	The activities in the upstream sector are well documented and understood. The efficiency and timeliness of approvals and consenting processes could be systematised and improved through standardised information and consenting timelines.		☑		Similar to the issues encountered for exploration well drilling, consenting and approvals processes have become unnecessarily time consuming and costly.
Other	CCUS legislation	Establish a clear regulatory pathway for the handling, storage, and monitoring of CCUS projects that also establishes a clear liability regime for project proponents.	☑		☑	Clarification on the treatment of a reinjected separated carbon stream is a priority for the sector to improve emissions performance.
	Gas storage	Amend decommissioning legislation to accommodate change of service from resource extraction to gas storage more attractive for fields at their end-of-life.	☑		☑	Worthy changes, but lower priority for addressing energy security and sovereign risk issues.
	ETS reform	Maintain existing levels of industrial allocation to EITE to ensure carbon price doesn't get ahead of those of our trade competitors		☑	☑	Worthy changes, but lower priority for addressing energy security and sovereign risk issues.

LEGEND HIGH MEDIUM LOW