IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 55/2024
[2025] NZSC 197

BETWEEN	CLIMATE CLINIC AOTEAROA INCORPORATED Appellant
AND	MINISTER OF ENERGY AND RESOURCES Respondent

Hearing:	6 May 2025
Court:	Winkelmann CJ, Ellen France, Williams, Kós and Miller JJ
Counsel:	J D Every-Palmer KC, M Heard and R E King for Appellant A Boadita-Cormican, E G R Dowse and D Ranchhod for Respondent N R Coates, S-M Downs and N A T Udy for Te Hunga Rōia Māori o Aotearoa | The New Zealand Māori Law Society Inc as Intervener
Judgment:	19 December 2025

JUDGMENT OF THE COURT

A The appeal is dismissed.

B There is no order as to costs.

REASONS
(Given by Winkelmann CJ)

Table of Contents

Introduction

[1] When deciding whether to grant petroleum exploration permits under s 25 of the Crown Minerals Act 1991 (CMA), must the decision maker address climate change issues? And what does a statutory obligation to have regard to the principles of the Treaty of Waitangi require of that same decision maker?[1] These are the issues for consideration on this appeal.

[2] In 2018, because of the impact of petroleum extraction and consumption on climate change, the New Zealand government changed its policy in relation to

[1] The obligation to have regard to the principles of the Treaty of Waitangi arises under s 4 of the Crown Minerals Act 1991 [CMA]. Section 2(1) defines "Treaty of Waitangi (Te Tiriti o Waitangi)" as having the same meaning as the word "Treaty" as defined in s 2 of the Treaty of Waitangi Act 1975, which in turn refers to the texts set out in sch 1 of that Act.

petroleum exploration and mining, through legislation imposing a ban on the allocation of new offshore exploration permits and limiting future onshore permits to the Taranaki region. The issues on this appeal arise in the context of permits later granted to Greymouth Gas Turangi Ltd (Greymouth) and Riverside Energy Ltd (Riverside) conferring exclusive rights for 10 years to explore for petroleum in specified onshore areas in the Taranaki region and, if successful, to apply for a petroleum mining permit.[2]

[3] The appellant is an incorporated society established to enable students to develop and support solutions addressing climate change.[3] In judicial review proceedings before the High Court in July 2022, the appellant challenged the lawfulness of the decisions to grant the permits. At the time when the decisions to grant the exploration permits were made in late June 2021, the purpose of the CMA was "to promote prospecting for, exploration for, and mining of Crown owned minerals for the benefit of New Zealand".[4] That challenge was unsuccessful in both the High Court and the Court of Appeal.[5]

[4] On appeal, the appellant continues to argue that the phrase "for the benefit of New Zealand" requires the decision maker to take into account, as a mandatory relevant consideration, the climate change implications of their decision. A related issue on appeal is the extent to which the decision maker did take climate change into account.

[5] The appellant further argues that the decision maker's statutory obligation to have proper regard to the principles of the Treaty of Waitangi also obligated them to consider climate change implications, specifically the disproportionate impact of climate change on Māori. It is not in dispute that the decision maker did not do that

---

2 Riverside was renamed Jetex Energy Ltd after the hearing in this Court. For consistency with the Courts below, we refer to Riverside in these reasons.

3 Students for Climate Solutions Inc was renamed Climate Clinic Aotearoa Inc after the hearing in this Court. We refer to this group simply as "the appellant".

4 CMA, s 1A(1) (as at 7 August 2020). On 31 August 2023, s 4 of the Crown Minerals Amendment Act 2023 replaced the word "promote" with "manage". On 6 August 2025, s 4 of the Crown Minerals Amendment Act 2025 reverted s 1A(1) back to the original wording by replacing "manage" with "promote".

5 *Students for Climate Solutions Inc v Minister of Energy and Resources* [2022] NZHC 2116, [2022] NZRMA 612 (Cooke J) [HC judgment]; and *Students for Climate Solutions Inc v Minister of Energy and Resources* [2024] NZCA 152, [2024] 2 NZLR 822 (French, Gilbert and Mallon JJ) [CA judgment].

in this case, but rather limited their consideration to the localised impacts of the proposed activities on certain iwi and hapū with direct interests in the permit area.

[6] Te Hunga Rōia Māori o Aotearoa | The New Zealand Māori Law Society Inc was given leave to intervene and to make submissions on the relevance of the Treaty to the appeal.[6] We have been assisted by its submissions.

Background

Climate change context

[7] The significance of climate change for New Zealand, and the place that climate change issues find within the law, is the context within which this appeal falls for consideration. In *Smith v Fonterra Co-operative Group Ltd*, this Court discussed the nature and extent of the challenges presented to human well-being, to the planet and to New Zealand by climate change.[7] We do not repeat the description of those challenges here but note that this Court accepted as indisputable that climate change threatens human well-being and planetary health.[8] In particular, this Court referred to the observations of the Intergovernmental Panel on Climate Change (IPCC) in its sixth report that the window of opportunity to ensure a liveable and sustainable future for all is rapidly closing.[9] This Court also referred to the IPCC's report on the specific effects of climate change in New Zealand, including extreme weather events, erosion, coastal flooding, increasing insurance losses and detrimental impacts upon ecosystems.[10]

[8] Over the past 33 years, New Zealand has entered into a series of international commitments in connection with climate change and has enacted legislation and initiated climate-based policy in response to the challenges and in compliance with its international obligations, some of which are outlined briefly below.[11]

---

6 *Students for Climate Solutions Inc v Minister of Energy and Resources* SC 55/2024, 9 April 2025 (Minute No 3) at [4].

7 *Smith v Fonterra Co-operative Group Ltd* [2024] NZSC 5, [2024] 1 NZLR 134.

8 At [13]–[14].

9 At [14] citing Intergovernmental Panel on Climate Change *Climate Change 2023: Synthesis Report – Summary for Policymakers* (20 March 2023).

10 At [26].

11 See at [27]–[48] for a discussion of these international commitments and Parliament's response.

Climate Change Response Act 2002

[9] The Climate Change Response Act 2002 (CCRA) was enacted to enable New Zealand to meet its obligations under the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol.[12] Its purpose includes providing a framework to enable the development of clear and stable climate change policies that: allow New Zealand to prepare for and adapt to the effects of climate change; contribute to the global efforts to limit global temperature rise to 1.5 degrees Celsius; and enable New Zealand to meet its international obligations including those arising under the UNFCCC.[13]

[10] The CCRA has undergone several amendments since it was first enacted. The most significant amendment was implemented by the Climate Change Response (Zero Carbon) Amendment Act 2019 (Zero Carbon Act). Among other things, the Zero Carbon Act provided for the establishment of the Climate Change Commission, the setting of emissions reduction budgets, and a net-zero emissions target for 2050 (2050 target).

[11] The Zero Carbon Act inserted into the CCRA s 5ZN, which is a focus of the climate change aspect of the appeal. Section 5ZN says:

> **5ZN 2050 target and emissions budget are permissive considerations**
>
> If they think fit, a person or body may, in exercising or performing a public function, power, or duty conferred on that person or body by or under law, take into account—
>
> (a) the 2050 target; or
>
> (b) an emissions budget; or
>
> (c) an emissions reduction plan.

---

12 Climate Change Response Bill 2002 (212-1) (explanatory note) at 1. United Nations Framework Convention on Climate Change 1771 UNTS 107 (opened for signature 4 June 1992, entered into force 21 March 1994); and Kyoto Protocol to the United Nations Framework Convention on Climate Change 2303 UNTS 162 (opened for signature 16 March 1998, entered into force 16 February 2005).

13 Climate Change Response Act 2002 [CCRA], s 3.

[12] It is relevant to note that of the matters specified in s 5ZN(a)–(c), only the 2050 target was in force at the time the decisions to issue the exploration permits were made. There was no emissions budget and no emissions reduction plan detailing how that target was to be met.

Crown Minerals Act 1991

[13] The CMA has been in force since 1991 but, as we come to, was significantly amended in 2013 and 2018. The purpose provision, s 1A, was introduced as part of the 2013 amendments.[14] The 2018 amendments were made in response to climate change.

[14] The correct interpretation of s 1A(1) of the CMA is a critical focus of the appeal — namely, whether the words "for the benefit of New Zealand" require a decision maker under s 25 to consider the climate change implications of granting a petroleum exploration permit. While s 1A was later amended, at the time of the decisions that are a focus of this appeal it read:[15]

> **1A Purpose**
>
> (1) The purpose of this Act is to promote prospecting for, exploration for, and mining of Crown owned minerals for the benefit of New Zealand.
>
> (2) To this end, this Act provides for—
>
> (a) the efficient allocation of rights to prospect for, explore for, and mine Crown owned minerals; and
>
> (b) the effective management and regulation of the exercise of those rights; and
>
> (c) the carrying out, in accordance with good industry practice, of activities in respect of those rights; and
>
> (d) a fair financial return to the Crown for its minerals.

[15] Another focus of the appeal is the nature and extent of the obligation imposed by s 4 of the CMA upon decision makers when issuing permits. That section

---

14 Crown Minerals Amendment Act 2013, s 6 inserting ss 1A and 1B into the CMA.

15 See above n 4.

requires all persons exercising functions and powers under the CMA to have regard to the principles of the Treaty of Waitangi.

[16] It is important for the purposes of this appeal to note that the first part of the CMA vests ownership of certain minerals in the Crown (to the extent it did not already have ownership). The CMA states that:[16]

> Notwithstanding anything to the contrary in any Act or in any Crown grant, record of title, lease, or other instrument of title, all petroleum, gold, silver, and uranium existing in its natural condition in land … shall be the property of the Crown.

[17] The CMA also provides that every alienation of land from the Crown made on or after its commencement date is deemed to be made subject to a reservation in favour of the Crown of every mineral existing in its natural condition in the land.[17]

[18] The CMA then proceeds to create a legal framework to enable the Crown to exploit that ownership commercially. The framework envisages three types of permits in relation to the mining of petroleum: prospecting, exploration and mining.[18] An exploration permit is a precursor to a mining permit. It grants the permit holder the right to explore a specified area, including through methods such as drilling, dredging or excavation, to determine whether there is commercially extractable petroleum within that area. If a commercially viable petroleum deposit is discovered, the exploration permit holder has a right, subject to an application process and various statutory caveats, to surrender the exploration permit in exchange for the grant of a mining permit.[19] The grant of a mining permit is not automatic and may only be approved if the application satisfies the relevant statutory criteria.[20] However, while an exploration permit holder is not statutorily guaranteed the issue of a mining permit, the respondent accepts that it creates an expectation of such, and that in terms of the statutory scheme mining permits are generally granted if the application meets the relevant statutory criteria.

---

16 Section 10. Section 2 defines "petroleum" broadly as including oil, gas and other fossil fuels.
17 Section 11.
18 Sections 2B and 23.
19 Section 32(3).
20 Sections 29A and 32(3).

[19] The creation of a minerals programme is generally a precursor to the issue of a mining permit and, in the case of petroleum, a necessary precondition to the issue of a mining permit.[21] Any minerals programme must specify the minerals to which it applies and set out how the Minister will give effect to the principles of the Treaty of Waitangi for the purposes of the programme.[22] It may also set out or describe how powers and discretions will be exercised under the CMA by the Minister and the Chief Executive of the Ministry of Business, Innovation and Employment | Hīkina Whakatutuki (MBIE), and include any other information the Minister considers likely to be of assistance.[23] Under s 22, the Minister is bound by the terms of the programme, except to the extent that there is any inconsistency between the programme and the Act; in the case of inconsistency the Minister must act in accordance with the Act. The relevant minerals programme for this appeal is the Minerals Programme for Petroleum 2013 (Petroleum Programme).[24]

[20] Section 24 of the CMA permits the Minister to offer permits for allocation by public tender unless a minerals programme expressly provides otherwise. Since 2014, following amendments made to the CMA in 2013, petroleum exploration permits have been offered exclusively through annual "block offer" tenders, utilising this provision. The expression "block offer" is not found in the CMA but is used to describe the offering of permits for allocation by public tender under s 24 — the "block" referring to a potential permit area.

[21] Section 25 confers on the Minister a power to grant a petroleum exploration permit through the public tender process under s 24. That discretion is expressly subject to ss 4 and 22 (discussed above) and s 29A.

[22] Section 29A sets out the process a decision maker must follow when considering an application. It lists several criteria of which the decision maker must be satisfied before granting a permit:[25]

---

21 Section 15; but see s 23A.
22 Section 14(1).
23 Section 14(2).
24 See Minerals Programme for Petroleum 2013 Order (No 2) 2013.
25 As at 7 August 2020.

(2) Before granting a permit, the Minister must be satisfied—

(a) that the proposed work programme provided by the applicant is consistent with—

(i) the purpose of this Act; and

(ii) the purpose of the proposed permit; and

(iii) good industry practice in respect of the proposed activities; and

(b) that the applicant is likely to comply with, and give proper effect to, the proposed work programme, taking into account—

(i) the applicant's technical capability; and

(ii) the applicant's financial capability; and

(iii) any relevant information on the applicant's failure to comply with permits or rights, or conditions in respect of those permits or rights, to prospect, explore, or mine in New Zealand or internationally; and

(c) that the applicant is likely to comply with the relevant obligations under the Act or the regulations in respect of reporting and the payment of fees and royalties; and

(d) in the case of a Tier 1 permit for exploration or mining, that the proposed permit operator has, or is likely to have, by the time the relevant work in any granted permit is undertaken, the capability and systems that are likely to be required to meet the health and safety and environmental requirements of all specified Acts for the types of activities proposed under the permit.

(3) For the purposes of the Minister satisfying himself or herself of the matter in subsection (2)(d), the Minister—

(a) is only required to undertake a high-level preliminary assessment; and

(b) must seek the views of the health and safety regulator and may, but is not required to, obtain the views of any other regulatory agency; and

(c) may, but is not required to, rely on the views of the regulatory agencies; and

(d) is not required to duplicate any assessment process that a regulatory agency may be required to undertake in accordance with a specified Act.

(4) To avoid doubt, subsection (2)(d) does not limit, have any effect on, or have any bearing on—

(a) whether the permit holder or permit operator is required to obtain any permit, consent, or other permission under any health and safety or environmental legislation:

(b) the granting to the permit holder or permit operator of any permit, consent, or other permission necessary under any health and safety or environmental legislation by any government agency, consent authority, or Minister responsible for the administration of that legislation.

[23] The only issue that arises as to compliance with s 29A in this case is whether the decision maker properly satisfied themselves that the proposed programme of work was consistent with the purpose of the Act. This issue arises out of the first ground of appeal: was the decision maker required to address the issue of climate change in assessing the best interests of New Zealand and, if so, did they?

Change in government policy on petroleum exploration in light of climate change

[24] Because of the contributions that fossil fuel extraction and consumption make to climate change, in 2018 the government began a long-term transition away from petroleum exploration and production. It banned the allocation of new offshore petroleum exploration permits and limited future block offers to the onshore Taranaki region, while preserving the rights of existing permit holders.

[25] The Crown Minerals (Petroleum) Amendment Act 2018 gave effect to this policy shift. It amended s 23A of the CMA to limit applications for petroleum permits,[26] and s 24 to limit offers for such permits, to land in the onshore Taranaki region only.[27] The effect of the amendments was to substantially reduce the area available for new petroleum exploration.

[26] The notion of a "just transition" underpinned the carve-out for the onshore Taranaki region. Internationally and domestically, the concept of a just transition acknowledges that managing climate change risk necessitates complicated policy

[26] Section 5.
[27] Section 6.

decisions that balance the need for action with the need for equity and economic stability.[28]

[27] The reduction of the area in which exploration and extraction could occur resulted in a reduction in the number of exploration permits. Whereas 15 were granted under the 2014 block offer, only one was granted under the 2018 block offer.

The issue of exploration permits in this case

[28] Around the time when Cabinet settled upon the policy leading to the legislative ban on mineral exploration and extraction outside of the Taranaki region, it also agreed to hold block offers for onshore blocks in Taranaki in 2018, and again in 2019 and 2020. The current proceedings concern the 2019 block offer.

[29] Cabinet's decision was not a decision to make a block offer for the purposes of the CMA, although it is relevant context for the appeal. MBIE officials held delegated authority from the Minister to make decisions under ss 24 and 25 in respect of these block offers.

[30] A brief chronology of the relevant decisions is as follows. In 2019, consultation with iwi was undertaken in respect of the Minister's intention to decide, under s 24, to make block offers in the onshore Taranaki region. The decision to make a block offer was then taken by a delegate — the then National Manager Petroleum and Minerals at the MBIE. The tender process for the block offer, preliminary to the s 25 decisions, was launched in July 2020. Bidding closed in early November 2020. Greymouth and Riverside each made a bid in response to that offer, with no competing bids for their respective areas.

[31] The decision maker for the decisions to grant the exploration permits under s 25 was the then General Manager Energy and Resource Markets at the MBIE. They received recommendations from the Principal Exploration Geologist in the

---

[28] Paris Agreement 3156 UNTS 79 (opened for signature 22 April 2016, entered into force 4 November 2016), preamble; Stéphanie Bouckaert and others *Net Zero by 2050: A Roadmap for the Global Energy Sector* (International Energy Agency, October 2021); and He Pou a Rangi | Climate Change Commission *Ināia tonu nei: a low emissions future for Aotearoa – Advice to the New Zealand Government on its first three emissions budgets and direction for its emissions reduction plan 2022–2025* (31 May 2021) at 340.

Petroleum and Minerals Team of the MBIE's Energy and Resources Markets branch. Both the decision maker and the Principal Exploration Geologist provided affidavits in this proceeding. We traverse the content of that evidence as to the matters considered later.[29] It is sufficient to say for now that decisions were taken in late June 2021 to issue the two permits.

Decisions in lower Courts

High Court

[32] The High Court dismissed the appellant's challenge.[30] The Judge found that as a matter of statutory construction the purpose of the CMA at the time the decisions to issue the exploration permits were made was to promote mining, and the use of the phrase "for the benefit of" was simply Parliament's indication that it desired those activities to take place precisely because they were for New Zealand's benefit.[31] The Judge emphasised the carefully crafted provisions that set out for a decision maker how they should address other matters such as good industry practice, noting the absence of similar machinery within the CMA to enable a decision maker to take into account climate change.[32]

[33] The Judge concluded that while climate change issues are important — perhaps "the most significant issues of our time" — they were irrelevant considerations for the purposes of s 25, such that if the decision maker had taken them into account substantively, they would have been acting unlawfully.[33] That was because Parliament had spoken on the question of limiting the purpose of the Act in light of climate change issues. It did so through the 2018 amendments, confining that response to the restrictions imposed by those sections.[34]

[34] As to the significance of the CCRA, the Judge found that the "free floating" relevant considerations potentially arising from ss 5ZN and 5ZO did not displace the

---

29 Below at [96]–[105].
30 HC judgment, above n 5.
31 At [70] and [73].
32 At [71]–[72].
33 At [114]–[115].
34 At [74]–[75].

specific intention of Parliament expressed in the CMA.[35] Notwithstanding those provisions, climate change considerations remained irrelevant to the CMA.

[35] The Judge accepted that the principles of the Treaty are made relevant by s 4 and the principle of legality. He further accepted that if the principles of the Treaty engaged climate change issues, then they would become relevant to the decision.[36] He found the decision maker had adequately addressed the Treaty.

Court of Appeal

[36] The Court of Appeal dismissed the appellant's appeal.[37] The majority found that climate change was not a mandatory relevant consideration in decisions to grant exploration permits under s 25 of the CMA.[38] The members of the Court differed on whether s 5ZN of the CCRA by its terms allowed the decision maker to take into account the 2050 target (there having been no emissions budget or reduction plan at the relevant time).[39] French and Gilbert JJ said they did not express a view on whether the decision maker could have taken climate change into account as a permissive relevant consideration.[40] But they agreed with the High Court's interpretation of s 1A, which they characterised in the following way:

> [33] Although the Judge did not put it this way, he essentially regarded the phrase "for the benefit of" as Parliament's assertion of a deemed fact rather than a qualifying touchstone.

It will be remembered that it was that interpretation of purpose that led the High Court Judge to conclude that climate change considerations, including those arising under s 5ZN, were irrelevant considerations for the purposes of s 25 of the CMA.

[37] Mallon J, writing separately, would have found that climate change was a permissible relevant consideration.[41] Nevertheless, she was satisfied that the

---

35 At [79]. Section 5ZO of the CCRA concerns the issuance of ministerial guidance addressing how to take the 2050 target or an emissions budget into account.
36 At [116].
37 CA judgment, above n 5.
38 At [64]–[65] and [88]. Compare at [112] per Mallon J.
39 At [7] and [88] per French and Gilbert JJ and [139] per Mallon J.
40 At [7] and [88].
41 At [139].

Minister's delegate had turned their mind to s 5ZN, accepting the advice of their officials that granting the permits was not inconsistent with the matters in s 5ZN.[42]

[38] This Court granted leave to appeal on the question of whether the Court of Appeal was correct to dismiss the appeal.[43] Without limiting the scope of argument, the parties were directed to address whether the climate change considerations expressed in s 5ZN of the CCRA are mandatory, permissive or irrelevant considerations when granting a petroleum exploration permit under s 25 of the CMA and, if those considerations are not irrelevant, whether the decision maker in fact gave them due consideration.

First ground of appeal: is climate change a mandatory consideration?

Argument

[39] The appellant takes as its starting point the s 1A purpose of the CMA, which is to promote exploration and mining "for the benefit of New Zealand". This, it says, is to be read as promoting exploration and mining only when it is for the benefit of New Zealand. Any power or discretion exercised under the Act must be exercised on the basis that it is constrained by that purpose, in the absence of contrary indication. Moreover, in this case s 29A expressly requires that the decision maker be satisfied that the applicant's proposed work programme is consistent with that purpose, thereby requiring an assessment of the benefit, if any, for New Zealand. Against that background and given the close connection between climate change and the extraction and consumption of fossil fuels, climate change considerations are so obviously relevant to the permitting decisions in issue that they are mandatory relevant considerations. The appellant submits that this includes but is not confined to the specific climate change considerations referred to in s 5ZN (that is, the 2050 target, an emissions budget, and an emissions reduction plan).

[40] The appellant argues that the Minister's delegate failed to consider the climate change implications of granting the exploration permits — both in the sense that they did not adequately consider the matters listed in s 5ZN, and that they did

---

42 At [130].

43 *Students for Climate Solutions Inc v Minister of Energy and Resources* [2025] NZSC 4 (Winkelmann CJ, Glazebrook, Williams and Kós JJ).

not consider the relevant climate change considerations more generally. Their consideration of the need for a "just transition" and other climate change workstreams across government was not sufficient to discharge their statutory obligation to consider the climate change implications of their decision.

[41] The respondent's starting point is that the interpretation of s 1A of the CMA that was adopted by the High Court and the majority of the Court of Appeal is correct. The phrase "for the benefit of New Zealand" in the CMA's purpose does not require the decision maker to consider whether the grant of a permit is for the benefit of New Zealand, including on account of climate implications. That is because the overarching purpose of the CMA is to promote exploration for, and mining of, Crown-owned minerals as regulated under the Act, because that is for the benefit of New Zealand. To weigh climate change in considering the grant of a permit, it says, would undermine or even negate the purpose of the CMA.

[42] The implication of the mandatory relevant consideration argued for by the appellant would, it is argued, require a strained interpretation of the CMA. Read in the context of the scheme of the CMA as a whole, ss 1A, 25 and 29A do not involve decisions about *whether* to facilitate further fossil fuel extraction. That decision was made by Parliament when it enacted the CMA to promote the prospecting for, exploration for and mining of Crown minerals for the benefit of New Zealand. Rather, the text and the legislative history show a clear purpose to promote the commercial exploitation of the resource. That is why, it is submitted, the operation of the CMA is limited to the allocation and management of economic rights associated with the extraction of Crown minerals, leaving the regulation of associated aspects of such activities — environmental (including climate change) regulation, for example — to be dealt with elsewhere.[44] This explains the fact that there are detailed legislative provisions enabling considerations associated with the economic right to be taken into account, but no such detailed provisions in relation to climate change.

[43] Nor, the respondent argues, is the implication of such a mandatory consideration justified on the grounds that it is an obvious matter to take into

---

[44] In the case of environmental regulation, principally in the Resource Management Act 1991.

account. That is for three reasons. First, Parliament cannot have expected a decision maker to call into question the empowering Act's fundamental premises. Second, the effect of unknown future activities could not properly or practically be taken into account by the decision maker. Third, the continued promotion of fossil fuel extraction is not inconsistent with New Zealand's international obligations.

[44] However, the respondent accepts that the climate change considerations expressed in s 5ZN are considerations a decision maker *may* consider. The respondent says whether those considerations are permissive or mandatory will depend upon the decision-making context. In the context of the CMA, with its strong purpose of promoting prospecting and mining, they can only be permissive relevant considerations. And even then, the need for consistency with the purpose of the CMA means substantive consideration of s 5ZN is likely to be significantly limited.

[45] In oral argument, the respondent contended that the decision under s 24 to offer blocks for tender is the critical decision. The respondent submits that once the decision to offer blocks is made, it would be contrary to the text and purpose of the CMA to require the s 25 decision maker to revisit the issue of whether permits should be issued at all. Having said that, the respondent accepts that the CMA does not require block offers to be commenced, noting that it is the current Petroleum Programme that expresses the intent that there be a block offer every year.[45]

[46] In this case the respondent submits that the s 25 decision maker did in fact give due consideration to the matters in s 5ZN. While the decision maker did not take into account broader climate change implications, they were not required to do so, and it would have been improper for them to consider whether to grant the permits at all since that would have been to allow s 5ZN to negate the purpose of the CMA.

---

[45] Clause 7.3(1). Though the intention that there be a block offer every year has not been realised: no permits were granted during the 2018 and 2019 calendar years. Instead, block offers 2018 and 2019 were offered in 2020 and 2021 after delays caused by the 2018 CMA amendments.

Discussion

[47] We begin our analysis of this argument with a preliminary point, which shapes how we address this appeal. We accept the respondent's submission that the critical decision for the purposes of the CMA in relation to permitting will usually be the s 24 decision to offer permits for tender. This is because the decision to offer an area for tender is an in-principle decision that exploration may be permitted in the area. And as the respondent concedes, the process thereby set in motion is undertaken in expectation that successful exploration may in the future lead to successful extraction of petroleum. We accept also that it would undermine the promotional intent of the CMA to invite tenders pursuant to a s 24 decision but then decide under s 25, and for reasons that could have been weighed at the s 24 stage, not to allocate any permits. Such an approach would not build the investor confidence necessary to promote exploration and mining.

[48] Moreover, given the relatively narrow time frames between the offer for tender in July 2020 and the decisions on permits in June 2021, it is unlikely that much would have become known by the time of the s 25 decisions that was not available to the s 24 decision maker.

[49] For this reason, we address the question of whether climate change is a mandatory consideration primarily with reference to the s 24 decision. Although that was not the pleaded basis of the challenge to the issue of permits, we did hear full argument in relation to the scheme of the Act and are able to address the issue with the benefit of that argument. As will be seen, no prejudice arises for any party from this approach.

[50] We turn then to the question of whether climate change was a mandatory consideration for a s 24 decision maker. Mandatory relevant considerations are those expressly or impliedly identified by the statute as considerations to which the decision maker must have regard, or considerations which are, in the words of Cooke J in *CREEDNZ Inc v Governor-General*:[46]

---

[46] *CREEDNZ Inc v Governor-General* [1981] 1 NZLR 172 (CA) at 183.

> … so obviously material to a decision on a particular project that anything short of direct consideration of them … would not be in accordance with the intention of the Act.

Cooke J further explained the case for implication on the ground of "obviousness" as follows: "the more general and the more obviously important the consideration, the readier the Court must be to hold that Parliament must have meant it to be taken into account".[47]

[51] It is well established that public decision makers must exercise statutory powers in accordance with, and to promote, the policy and objects of the relevant section and the statutory scheme of which that section is a part.[48] These may include, where relevant, considerations arising under the New Zealand Bill of Rights Act 1990 and the Treaty of Waitangi. The issues raised in this case are fundamentally issues of statutory interpretation. In the case of the CMA the s 25 decision maker is expressly required to have regard to the Act's purpose — that is the effect of s 29A. Although there is no similar provision applying to the s 24 decision maker, for the reasons just discussed, whether the discretion being exercised arises under s 24 or s 25, the purpose of the Act is central to that exercise.

[52] The first question to be asked, therefore, is whether the appellant's or respondent's interpretation of the purpose provision, s 1A, is to be preferred. In other words, the first question is whether the Minister is required to consider if permitting exploration for petroleum in the region is for the benefit of New Zealand. If the Minister is required to address "the benefit of New Zealand" in this way, the second issue is whether climate change is a mandatory consideration and, if so, what aspects of climate change. Finally, if climate change is a mandatory consideration, we must consider whether it was addressed by the decision maker in this case.

The proper interpretation of s 1A

[53] Section 10 of the Legislation Act 2019 provides that "[t]he meaning of legislation must be ascertained from its text and in the light of its purpose and its

---

47 At 183.

48 *Unison Networks Ltd v Commerce Commission* [2007] NZSC 74, [2008] 1 NZLR 42 at [51]–[54].

context." In *Commerce Commission v Fonterra Co-operative Group Ltd* this Court said that text and purpose are the key drivers of statutory interpretation, so that even if the meaning may appear plain in isolation of purpose, the meaning should be cross-checked against purpose.[49]

[54] The awkwardness in this case is that it is the very meaning of the purpose provision that is central to the appeal. Regard must therefore be given to the language and general scheme of the CMA. Assistance can also be sought from the legislative history of the CMA.

Language and context

[55] The language used in s 1A is ambiguous. On the respondent's reading, it is intended to convey that the purpose of the CMA is to promote the stipulated activities *because* doing so is for the benefit of New Zealand, leaving any balancing considerations (other than those in ss 4 and 29A) to be dealt with under other legislative regimes. On the appellant's reading, the purpose is to promote the stipulated activities *only where* doing so is for the benefit of New Zealand.

[56] While either reading is available syntactically, we prefer the appellant's interpretation. The respondent's interpretation has the difficulty that it gives the words "for the benefit of New Zealand" no effect in the overall scheme of the CMA. Since it is to be assumed that all legislation is enacted for the benefit of New Zealand, on the respondent's argument the words only operate as words of praise for exploration and mining. By contrast, on the appellant's interpretation, the words have substantive content. That is a more conventional reading.

[57] The overall scheme of the CMA casts some further light on the correct interpretation. The CMA is legislation designed to support the exploitation of Crown-owned minerals, as s 1A makes plain. It is a fair assessment of the overall scheme of the Act that it is intended to facilitate and promote the exploitation of Crown mineral assets, particularly when read in the context of the legislative materials we address below. It must also be acknowledged that the CMA lacks a

---

[49] *Commerce Commission v Fonterra Co-operative Group Ltd* [2007] NZSC 36, [2007] 3 NZLR 767 at [22].

general statutory mechanism to enable countervailing considerations to be weighed against those provisions empowering and enabling that exploitation of minerals.[50] But it does not follow that the Minister may not do so. There are indications in the statutory scheme that the Minister may address considerations other than the advantages of mineral exploitation and conclude that exploration or mining is not for the benefit of New Zealand in a particular case.

[58] First, it is of note that the early provisions of the CMA effect and preserve Crown ownership of minerals existing in their natural condition in land.[51] The rest of the Act is then concerned with how the Crown exploits its ownership interest. It seems logical that Parliament would wish to preserve for the Crown, as the owner, some flexibility as to how it deals with these assets, particularly given all the Crown's other obligations. The CMA already allows that flexibility to accommodate Crown obligations under the Treaty of Waitangi. That is, of course, an acknowledgment that mining is not always for the benefit of New Zealand.

[59] There are other obligations and considerations which, as a matter of logic, Parliament would not wish the Crown to be constrained from taking into account, particularly in its s 24 decision making. One would expect, for example, that Parliament would also wish to reserve to the Crown the ability to exclude areas for the mining of highly hazardous chemicals from offer for tender. Why put officials and tenderers through processes when, ultimately, they will fail at the relevant regulatory hurdle? Or, to take another example, it could also be anticipated that Parliament would wish the Crown to have flexibility to consider trade and other international relations. Minerals are, after all, often the focus of international tension. The Minister would be unlikely to want to put exploration permits out for tender where that exploration or any subsequent mining could cause New Zealand difficulty in the international arena — perhaps creating regional tensions or attracting punitive tariffs.

---

50 However, the CMA does include provisions which identify specific considerations to be weighed: see ss 4 and 29A.

51 See above at [17], where it is noted that s 11 applies to every alienation of Crown land made on or after the commencement of the CMA.

[60] In short, Crown-owned minerals comprise a very substantial asset base which must be managed in a wide range of circumstances. The respondent's proposed interpretation would severely limit the Minister's ability to manage those mineral resources. If the Crown were to be so constrained in its management of an asset base of this extent and nature, then we could expect that to be stated unambiguously in the legislation.

[61] Second, it is significant that while the CMA provides for the creation of minerals programmes, it does not compel their creation.[52] A related point is that while s 24 provides for the allocation by public tender of permits to prospect and explore for, and mine, Crown minerals, the CMA does not by its terms compel the Crown to make any or all minerals available for these purposes. The respondent's construction of s 1A, which would affect the application and interpretation of most provisions in the CMA, would seem to require a maximalist approach to the creation of mineral programmes and the offer of blocks for tender (leaving to one side compliance with the principles of the Treaty).

[62] Third, and finally, the absence of a detailed scheme for considering countervailing factors is not inconsistent with the appellant's interpretation. It would be difficult to construct a detailed statutory scheme leaving the Crown with the freedom it requires to make decisions which benefit New Zealand. These are, after all, decisions about an asset base which is extensive and varied. And they are decisions that must be made against the backdrop of a complex range of existing legislation which would regulate any possible mining, and against the backdrop of the state's obligations under international law and other matters it may wish to take into account as a sovereign entity.

[63] For these reasons, the text and scheme of the CMA do not support a reading of s 1A which constrains the decision maker as the respondent contends.

---

[52] The extent of the obligation in s 15 is that the Minister must, as soon as is practicable, prepare a draft minerals programme for a Crown-owned mineral if there is no minerals programme for that mineral and, in the opinion of the Minister, that mineral is likely to be the subject of a permit application under the Act.

Legislative history

[64] It is appropriate to cross-check this reading of the text and scheme of the CMA against the relevant legislative history. This can provide useful context that assists with ascertaining the textual meaning and purpose.[53]

[65] The respondent says that the appellant's interpretation of the CMA is not available when regard is had to legislative materials and legislative history. It says these show that this was legislation to promote exploitation of minerals, and that there was a deliberate decision to place consideration of other matters that might bear upon the interests of New Zealand into different legislation, for others to address.

[66] The respondent emphasises that Parliament deliberately separated the allocation of economic rights under the CMA from regulation of the activities associated with exercise of those rights by their holders. The respondent refers to the decision to remove the content that would become the CMA from the then Resource Management Bill, which occurred in response to the *Report of the Review Group on the Resource Management Bill*.[54] That report records the motivating concern as being that the Minister of Energy would be given a multiple-objective mandate including:[55]

> … the conflicting roles of, on the one hand, acting as a regulator on behalf of the community in respect of the community's interests in sustainable management of minerals and, on the other, acting as agent for the Crown's commercial interest in obtaining a fair financial return on its mineral estate.

[67] The intention to separate out other considerations, the respondent submits, was again identified when the Bill inserting the s 1A purpose was debated in 2012.[56] The then Minister of Energy and Resources, the Hon Phil Heatley MP, said in moving the first reading of the Bill:[57]

---

53 See above at [53]–[54].

54 *Report of the Review Group on the Resource Management Bill* (Ministry for the Environment, MfE/1, 11 February 1991) as cited in *Greenpeace of New Zealand Inc v Minister of Energy and Resources* [2012] NZHC 1422, [2012] ELHNZ 177 at [101], n 24.

55 At 56.

56 Crown Minerals (Permitting and Crown Land) Bill 2012 (70).

57 (25 September 2012) 684 NZPD 5642.

> The Crown Minerals Act is not primarily about health and safety or environmental regulation. This maintains the independence of health and safety and environmental regulation, to completely avoid possible conflicts between the Government's dual roles of promoting resource exploration and production and also regulating the effects of those activities.

[68] The respondent further submits that the legislative materials relating to the 2012 Bill show that the purpose of the CMA was to promote the exploitation of minerals *because* that benefits New Zealand. The explanatory note to the Bill stated that the amendments proposed had the aim of encouraging the development of Crown-owned minerals so that they contributed more to New Zealand's economic development.[58] Comments along the same lines are to be found in the speech of the then Minister of Energy and Resources the Hon Simon Bridges MP during the Committee stage of the Bill:[59]

> … this bill is fundamentally about development and promoting development. To refer to the purpose in new section 1A(1) … "The purpose of this Act is to promote prospecting for, exploration for, and mining of Crown owned minerals for the benefit of New Zealand." This bill is for the benefit of New Zealand.
>
> The benefits from petroleum are immense in this country: royalties and taxes are 42c in every dollar of profit, billions of dollars to the Crown over the years that go to pay for the schools and the hospitals and the roads …

[69] The respondent also points to the content of the Petroleum Programme as supporting its submission that this was promotional legislation, and for that reason other considerations as to the interests of New Zealand were left for other ministers under other enactments. Although the Petroleum Programme is secondary legislation, the respondent says it is appropriately taken into account when interpreting the CMA because it came into force on the same day as the new s 1A, suggesting contemporaneous preparation.[60]

[70] The Petroleum Programme records that the Minister sees "for the benefit of New Zealand" as the overarching objective of the purpose statement and as the touchstone for interpreting the rest of the purpose statement and the provisions of the Act governing various activities and processes.[61] It states that within the context and

---

58 Crown Minerals (Permitting and Crown Land) Bill 2012 (70-1) (explanatory note) at 2.
59 (10 April 2013) 689 NZPD 9257.
60 Citing CA judgment, above n 5, at [121], n 99 per Mallon J concurring.
61 Clause 1.3(7).

mandate of the Act, the Minister considers that "the benefit of New Zealand" is "best achieved by increasing New Zealand's economic wealth through maximising the economic recovery of New Zealand's petroleum resources".[62] In the respondent's submission, the Petroleum Programme also recognises that other considerations bearing upon the interests of New Zealand are dealt with elsewhere.[63] The Petroleum Programme records that the Minister is not required to duplicate the activities and requirements of ministers and departments responsible for administering this other legislation, except where that is specifically provided for in the CMA.[64]

[71] The respondent also relied on the fact that the 2018 amendments to end offshore permits and confine onshore permits to Taranaki were stated, using a variety of formulations, as taking effect despite anything to the contrary in the Act "including section 1A".[65] In the Court of Appeal, the majority had said that if the appellant's interpretation of s 1A were right, the inclusion of that proviso would not have been necessary.[66]

[72] Finally, the respondent points to the decision in *Greenpeace of New Zealand Inc v Minister of Energy and Resources* as authority for the proposition that the purpose of the CMA is to see permits issued, so that other countervailing considerations outside of ss 4 and 29A are not to be addressed.[67]

[73] We accept that the *Report of the Review Group*, the speeches of the various responsible ministers, and the Petroleum Programme each support the view that the CMA was intended to facilitate the exploitation by the Crown on behalf of New Zealand of its mineral wealth and to do so by promoting exploitation opportunities to third party investors. We also accept that the 2013 amendment adding in s 1A was intended to make this promotional intent clear. But even accepting what can fairly be said to be a powerful promotional intent, it does not

---

62 Clause 1.3(7).
63 Clause 1.3(8).
64 Clause 1.4(3).
65 Crown Minerals (Petroleum) Amendment Act 2018, ss 5, 6 and 7, inserting ss 23A(2), 24(5A) and 25(2A), respectively, into the CMA. Those provisions were repealed on 6 August 2025 by the Crown Minerals Amendment Act 2025.
66 CA judgment, above n 5, at [53].
67 *Greenpeace*, above n 54, at [111] and [116].

follow that the Minister was required to ignore other considerations in determining whether a particular allocation of permit rights was indeed in the interests of New Zealand.

[74] We also accept that these materials confirm what is apparent from the CMA itself: formal processes that protect other aspects of New Zealand's interests, such as the environment, conservation concerns, biosecurity and hazardous substances, are to be undertaken under other legislation and by other decision makers. However, as the materials also make clear, the concern lying behind that approach was that the decision-making process could be hopelessly compromised by conflicts and competing objectives, were the Minister required to wear all of these hats.

[75] While the Minister was not to be burdened with responsibility for the raft of regulation that would bear upon any permitted activity, the materials do not suggest that the Minister was to be constrained from taking other matters into account. In fact, the Petroleum Programme requires the Minister to take into account "whether the area is already adequately protected under other legislation — for example, the Resource Management Act 1991, the Conservation Act 1987 or the Historic Places Act 1993".[68] This supports the point made above that the Minister's discretion under the CMA falls to be exercised in a broader context, including a broader legislative context. This approach was already apparent in the provisions of the 2005 Petroleum Programme, the predecessor to the 2013 Programme, which pre-dated the enactment of s 1A.[69] The 2005 Petroleum Programme referred to the "desired outcome" as being "to promote the responsible discovery and development of New Zealand's petroleum resources that contribute substantially to our economy".[70]

[76] As to the significance of later legislative treatment of the CMA, the Court of Appeal majority placed weight upon the inclusion in ss 23A, 24 and 25 of the phrase "despite anything to the contrary in [the] Act (including section 1A)" as indicating Parliament's assumption that s 1A was to be interpreted as stating that mining and exploration are for the benefit of New Zealand.[71] However, we agree

---

68 Clause 2.7(1)(c).
69 Minerals Programme for Petroleum 2005.
70 Clause 2.2 as cited in *Greenpeace*, above n 54, at [12].
71 CA judgment, above n 5, at [53].

with Mallon J that in the context of legislative changes ending permits outside of the onshore Taranaki region, this phrase is best read as clarifying that a broadly expressed purpose and broadly conferred discretions were qualified in relation to permits outside the onshore Taranaki region.[72] It is difficult to construe the proviso as carrying greater meaning than that.

[77] That takes us to the respondent's reliance upon the *Greenpeace* decision. This was decided in the High Court before the 2013 amendment to the CMA inserting the s 1A purpose provision.

[78] In *Greenpeace*, the Minister's decision to allot an exploration permit was challenged on the basis that they had failed to assess the environmental effects arising from operation of the permit, and to take into account relevant international obligations requiring consideration of environmental impacts.[73] The challenge was framed primarily by reference to the terms of the 2005 Petroleum Programme, which made clear that the purpose of the policy was to promote *responsible* discovery, and required not just that the Minister have regard to the principles of the Treaty, but that they also:[74]

> … take into consideration any international obligations which are relevant in managing the petroleum resource and in exercising the functions and powers prescribed under the Act.

[79] The applicant in *Greenpeace* argued that responsible discovery in terms of this policy required consideration of the environmental impacts including the international obligations in relation to the environment.[75] The Crown's response was that the framework of the CMA was such that those areas of Crown responsibility were met through other legislation so that the Minister was not required to turn their mind to that area of consideration and to duplicate what had already been, or would be, dealt with elsewhere.[76] As to that, Gendall J said:

---

72 At [138(a)] citing s 5 of the Crown Minerals (Petroleum) Amendment Act.

73 *Greenpeace*, above n 54, at [58]–[61]. A challenge was also brought on the basis that the Minister had failed to have sufficient regard to the principles of the Treaty of Waitangi.

74 Clauses 2.16–2.17.

75 *Greenpeace*, above n 54, at [58].

76 At [67].

> [92] I do not think that it is proper to analyse the application or performance of the Minister's functions and powers within the empowering legislation in isolation from the total statutory regime relevant to the exercise of those powers within the subject matter of the legislation. A Minister cannot purport to act under a delegated authority of one statute which would lead him to making decisions which are invalid or open to question when viewed against other statutes. The decision-making process of a Minister under delegated legislation ought not be compartmentalised so as to ignore a wider statutory framework in which the particular activity is designed to be governed. Text, purpose and context are crucial.

[80] The application for review on this ground was nevertheless unsuccessful. Viewed in the context of the 2005 Petroleum Programme, and other legislation, there was no mandatory requirement for the Minister to take into consideration environmental matters arising from international obligations, so long as the Minister had turned their mind to the fact that those were within the mandate of others — which they had done in this case.[77] The Minister was also not required to call for or to undertake an environmental inquiry as, again, these were dealt with elsewhere.[78]

[81] We do not see the Judge's approach as supporting the respondent's arguments. The *Greenpeace* decision rather supports the view that, at least under the legislation and Petroleum Programme as they stood at the time, the Minister was free — and indeed, in some circumstances, might have been required — to take into account matters outside of the ss 4 and 29A matters, if they bore upon the interests of New Zealand. The Judge had accepted that the Minister's powers could not be viewed in isolation from other obligations bearing upon the Crown.[79]

[82] In the lower Courts in this case, the respondent also relied upon *Greymouth Petroleum Mining Group Ltd v Minister of Energy and Resources* and *Rangatira Developments Ltd v Sage* as authorities supporting its interpretation.[80] Those cases were not cited in argument before us. In any case, it is sufficient to note our agreement with Mallon J's treatment of those cases.[81] They do not assist the respondent.

---

77 At [115].
78 At [116].
79 At [92].
80 *Greymouth Petroleum Mining Group Ltd v Minister of Energy and Resources* [2019] NZHC 1222, [2019] ELHNZ 129 at [12]; and *Rangatira Developments Ltd v Sage* [2020] NZHC 1503 at [75].
81 CA judgment, above n 5, at [135]–[137].

[83] To sum up this point, then, we have concluded that on a proper interpretation of s 1A, the reference to "the benefit of New Zealand" is not simply a recognition of the benefits that flow from mining, but rather a statement that what is promoted by the CMA is exploration and mining that is for the benefit of New Zealand. That conclusion flows from a textual analysis of s 1A, giving substantive effect to the phrase "for the benefit of New Zealand". It flows also from the fact that the Act regulates the management of a large, varied and valuable Crown asset base. The appellant's interpretation recognises that the Crown has other obligations and considerations that it may need to bring to bear on that decision making. The respondent's analysis is unlikely in that it would appear to compel approval of mineral exploitation in all circumstances other than those constrained by ss 4 and 29A considerations.

[84] We have given examples above of situations where the Minister might wish to consider factors that also arise for consideration under other regulatory regimes. Indeed, investor confidence would in some circumstances require such an approach, since inviting tenders or allocating permits which have no prospect of approval under other regulatory regimes would undermine investor confidence. There may also be considerations that are not fully addressed or not addressed at all under other regulatory regimes that the Minister should nevertheless consider when assessing whether a proposed activity is for the benefit of New Zealand.

[85] It follows that when deciding under s 24 whether to offer exploration or mining permits for public tender, the Minister is required to address whether such an offer is for the benefit of New Zealand. In making that assessment the Minister is not required to undertake a full assessment of matters that are explicitly addressed under other statutory regimes that relate to the mining activity. However, the Minister may have regard to such matters if they logically bear upon the s 24 decision concerning whether to invite block tenders for a particular mineral, or in a particular area. If there are other matters that are not dealt with, or not fully dealt with, in other regulatory frameworks that are of obvious relevance to the "benefit of New Zealand" assessment, then the Minister may be required to address those matters.

Was climate change a mandatory consideration for the Minister?

[86] As noted above, climate change is a matter of pressing concern for New Zealand and its well-being both in the near and long term.[82] Moreover, the Crown has entered into binding obligations on New Zealand's behalf in connection with reducing greenhouse gas emissions.[83] Is climate change so obviously relevant to the issue of an exploration permit for petroleum that it is a mandatory relevant consideration?

[87] We accept that in the case of the decision to offer the permits in question for tender under s 24, climate change was a mandatory relevant consideration. That is so for a number of reasons. First, petroleum extraction and consumption are major contributors to greenhouse gas emissions in New Zealand and internationally. Second, the effects of climate change are matters of pressing concern for New Zealand and its well-being in both the near and long term. Third, New Zealand has entered into binding international commitments which require drastic reduction of its greenhouse gas emissions. Finally, at least at the time when the decisions were taken, there was, as the appellant submitted, no comprehensive regime that created a framework for addressing the climate change implications of ongoing petroleum exploration and mining. While the CCRA was enacted to create a legislative framework to enable climate change issues to be addressed, at the time of the challenged decisions, only the 2050 target was in existence, with no budget or plan as to how that target would be achieved or how New Zealand would comply with its international obligations.

[88] The respondent argues that any consideration of climate change would be too theoretical to be useful, since it was not known whether a petroleum resource would be discovered or what its size might be. But as the respondent concedes, the permitting process was being set in motion for the purpose of finding and extracting petroleum.[84] Given the scale at which any such extraction would need to be conducted to be economical, the climate change implications were, we consider, sufficiently clear to require the decision maker to engage with them.

---

82 Above at [7].
83 See *Smith v Fonterra*, above n 7, at [28]–[29].
84 See HC judgment, above n 5, at [80(b)].

[89] What of s 5ZN? We have rejected the High Court Judge's finding that the matters listed in s 5ZN were not permissible considerations in the context of the CMA.[85] However, he went further, addressing the effect of the provision more generally. He said that Parliament had made clear that the matters listed in s 5ZN could only be permissible considerations and not mandatory considerations — using the language "if they think fit".[86] That was not the position the respondent took in argument before us. It accepted that in some circumstances the s 5ZN considerations may be mandatory. We think that must be so. As this case makes clear, whether a consideration may be taken into account or is mandatory is affected by the nature and subject matter of the decision, and other contextual matters.[87]

[90] In this case, the 2050 target was an aspect of climate change that the Minister was required to consider.

[91] This takes us to the next issue: what does it mean to say that climate change is a mandatory consideration? It does not follow from the fact that climate change was a mandatory relevant consideration that it should have been the controlling consideration. The obligation on the decision maker is to engage with the mandatory consideration with due awareness of its content and with a genuinely open mind.[88] What is sufficient to amount to this engagement is responsive to context, including the nature of the decision and the process surrounding it.[89]

[92] The court will assess whether this engagement has occurred in respect of a mandatory consideration. However, leaving to one side reasonableness review, the court will not inquire into the weight ultimately given to a mandatory consideration

---

85 At [79].

86 At [77].

87 Philip A Joseph *Joseph on Constitutional and Administrative Law* (5th ed, Thomson Reuters, Wellington, 2021) at [23.2.3(4)].

88 *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2021] NZSC 127, [2021] 1 NZLR 801 at [159]–[161] per William Young and Ellen France JJ.

89 Joseph, above n 87, at [23.2.3(5)]. See, for example, *Trans-Tasman Resources*, above n 88, at [157] and [159]–[161] per William Young and Ellen France JJ.

by the decision maker. Generally, courts defer to the decision maker with regard to matters of weight.[90]

[93] The last point to be addressed under this heading is the s 25 decisions, which were the focus of the appeal. For the reasons set out above, the s 24 decision is the point at which climate change must be engaged with as a mandatory relevant consideration. It is unlikely that engagement with climate change considerations at the s 25 stage will be necessary beyond the matters arising from the s 29A assessment. It will be remembered that s 29A adopts the standard of good industry practice for evaluating tenders. The Minister would be concerned to ensure that the tenderer has the necessary capability and systems to meet that standard. Section 29A(2)(d) requires that the Minister be satisfied that the permit holder has or is highly likely to have the capability and systems needed to meet the environmental requirements of all specified Acts. These Acts include the Resource Management Act, which requires decision makers to have particular regard to the effects of climate change in relation to managing the use, development, and protection of natural and physical resources.[91] However, by its terms, s 29A(2)(d) of the CMA requires only a preliminary assessment by the Minister of the permit holder's ability to comply with these requirements.

[94] It is also necessary to state a further qualification to this general position. It cannot be ruled out that context may render climate change a mandatory relevant consideration at the s 25 stage. That might be necessary if there were, say, a significant intervening event between the s 24 and s 25 decisions.

---

90 *Valuer-General v Wellington Rugby Football Union Inc* [1982] 1 NZLR 678 (CA); *New Zealand Fishing Industry Assoc Inc v Minister of Agriculture and Fisheries* [1988] 1 NZLR 544 (CA) at 568 per McMullin J; *Behari v Minister of Immigration* [1990] 3 NZLR 558 (CA); and *Minister of Immigration v Al Hosan* [2008] NZCA 462, [2009] NZAR 259 at [66]. There are exceptions to this rule, such as where the relevant instrument stipulates the weight to be accorded (see *Ye v Minister of Immigration* [2008] NZCA 291, [2009] 2 NZLR 596 at [88]–[89] per Glazebrook J) or where the weight given to a particular consideration calls into question the reasonableness of the decision (see *Waitakere City Council v Lovelock* [1997] 2 NZLR 385 (CA) at 407 and 412 per Thomas J).

91 Section 7(i). Activities taken under CMA permits must comply with the Resource Management Act, which, depending on the nature of the activity, might require resource consent for the activity. For example, petroleum production from a well site requires resource consent. We note that s 7(i) is not however a direction to seek to limit climate change itself: *West Coast ENT Inc v Buller Coal Ltd* [2013] NZSC 87, [2014] 1 NZLR 32 at [130] per McGrath, William Young and Glazebrook JJ.

Was climate change addressed by the decision maker in this case?

[95] Because of the focus of the challenge in this case, no affidavit has been filed by the s 24 decision maker. We therefore have only a brief record of that decision. There is an artificiality in addressing the s 25 decisions as stand-alone decisions, divorced from the s 24 decision. Nevertheless, given how the case was framed with the appellant's focus squarely upon the s 25 decisions, we address the extent of the s 25 decision maker's consideration of climate change.

[96] The s 25 decision maker details how, although their involvement began around the time of the closing of tenders, they were generally aware of policy responses to climate change occurring within the MBIE before then.

[97] The s 25 decision maker received detailed briefings from officials in connection with the two permits which addressed climate change. Officials summarised the relevant sections of the CMA, addressed how Treaty principles affect decision making, and discussed ss 5ZN and 5ZO of the CCRA, explaining also the broader operation of that Act. The officials referred to the report of He Pou a Rangi | the Climate Change Commission on emissions budgets and reduction plans,[92] summarising the aspects of the Commission's advice to the Minister which were relevant to petroleum as follows:[93]

> The [Climate Change Commission (CCC)] notes that the speed at which New Zealand reduces non-renewable gas use for generating electricity needs to be carefully managed to ensure electricity remains reliable and affordable. The CCC notes that the supply of gas from non-renewable sources could reduce over time as gas fields reach the end of their economic life. In particular, the current role of Methanex in incentivising gas production to supply all users, and providing flexibility (by reducing its demand and methanol production when there is an interruption in supply or in dry years when the hydro lakes are low) is acknowledged.
>
> … The CCC recommends that the Government develops a National Energy Strategy. The CCC recommends that as part of that Strategy, the Government sets a renewable energy target that 50% of all energy consumed comes from renewable sources by 31 December 2035 (the CCC does not recommend an energy generation target). The purpose of the National Energy Strategy includes ensuring a smooth and appropriately sequenced phase down of fossil fuel use. The CCC also recommends a fair, inclusive and equitable transition.

---

92 He Pou a Rangi | Climate Change Commission, above n 28.

93 Footnotes omitted.

[98] The officials noted that the Minister had yet to respond to the report or provide a budget or plan. Pending that, the only applicable consideration under s 5ZN was the 2050 target. As to that, the officials noted it was a domestic target, whereas the petroleum produced from petroleum mining permits was processed or combusted offshore as well as in New Zealand. The report said that while the CCRA provides a legal framework which manages New Zealand's greenhouse gas emissions, including those from petroleum, the 2050 target did not prohibit the use of petroleum and did not require an immediate cessation of non-renewable energy use. Moreover, the Commission's recommendation that 50 per cent of all energy consumed should be from renewable sources by 31 December 2035 was not inconsistent with the continuing production of energy from non-renewable sources in the near and medium term.

[99] Officials also advised the s 25 decision maker that although the National Energy Strategy recommended by the Climate Change Commission did not at that point exist, steps had been taken in recent years to amend the CMA in order to align it with a smooth phase-down of the use of fossil fuels, noting the 2018 reduction of the area available for petroleum mining or extraction to the onshore Taranaki region, and the general reduction in the number of exploration permits granted. The officials also identified the fact that this was a permit for exploration only and conferred no right to mine. Further, it was uncertain what would be discovered by the exploratory activities.

[100] The s 25 decision maker said that beyond that advice they were aware of other matters relevant to climate change. They were aware of work being undertaken on the development of a National Energy Strategy. They were aware of correspondence from Lawyers for Climate Action New Zealand Inc (LCANZI), making a case as to why no permits should be issued. They were also aware of an official briefing prepared for the Minister in respect of that correspondence. That briefing noted the steps already taken by Parliament to amend the CMA to align it with a phase-down of fossil fuels. It recorded that because emission budgets and reduction plans were still under preparation, the climate change regulatory environment was evolving. The advice contained in that briefing was that decision making under the CMA for the 2019 block offer was based on the available advice

and information. Finally, the decision maker's evidence was that they were aware of a broader work programme being undertaken in the MBIE related to climate change, including decarbonisation-related policy.

[101] They attended meetings with officials at which concepts of a smooth transition were discussed. They were also aware from the Climate Change Commission's report that it was important that the phase-down of fossil fuels was carefully managed so that electricity and other energy would remain available and affordable throughout the transition.

[102] They also undertook a detailed analysis of the merits of the applications.

[103] They said that they took climate change into account in making their decision as they considered it relevant. They understood that it was open to them to take it into account because of the provisions of ss 5ZN and 5ZO. They said that they took into account all of the advice they received and, by agreeing with the analysis set out in the advice, adopted it.

[104] The appellant says that the decision maker was in error in focusing just on the matters listed in s 5ZN, ignoring the broader climate change context. It points to the formal written record of the decisions which, in connection with climate change, mentions only that section. The appellant says further that the decision maker was wrong to ignore the ministerial briefing which noted that the then-current petroleum settings might not be fit for purpose. The decision maker's response to the latter criticism was that that briefing was not relevant to their decision, and they accordingly did not take it into account. Their thinking was based on what was in play at the time, and not on assumptions. They provide as context for that position that the 2018 decision to ban offshore exploration was a very significant step in climate change terms. They quote from the Minister's response to LCANZI, describing that legislative response as having "struck a balance to protect existing industry, and protect future generations from the impact of climate change". They describe that response as an important part of the regime at the time when they made their decisions.

[105] Although the decision maker refers to ss 5ZN and 5ZO of the CCRA, it is apparent that the official analysis they adopted as their own went far beyond consideration of the 2050 target. As noted above, in isolation that target was of little utility to a decision maker without the associated budgets and plans. But the decision maker took into account the advice of the Climate Change Commission regarding the need to transition away from reliance upon energy from non-renewable sources. While the official advice to the decision maker acknowledged the significance of petroleum mining for climate change, it placed consideration of the particular permit applications within the context of the recent significant reduction in the scope of exploration and mining — both in terms of territory available for those activities, and also in terms of the number of permits that had been issued and the need for an appropriately sequenced transition away from reliance upon non-renewable energy sources.

[106] The s 25 decision maker was not required to address themselves to the advice to the Minister querying whether the petroleum settings then in place were fit for purpose. That advice simply raised queries for further consideration by the Minister. It is difficult to know what the decision maker could have made of the questions raised in that advice, given the advice of which the decision maker was also aware from the Climate Change Commission regarding the need for a managed transition.

[107] Therefore, even if the decision maker were obliged to engage afresh with climate change as a mandatory relevant consideration at the s 25 stage (including climate change considerations beyond s 5ZN), they did just that. They did so in a way which discharged their obligation to have regard to this mandatory relevant consideration — including in respect of the implications for the Crown's broader climate change commitments — with due awareness of its content and a genuinely open mind.

Second ground of appeal: did the decision maker give adequate consideration to the principles of the Treaty?

Argument

[108] The issue under this ground of appeal is whether s 4 — which provides that all persons exercising functions and powers under the CMA must have regard to the principles of the Treaty — required the decision maker to consider the impacts of climate change on Māori beyond the Taranaki hapū and iwi directly affected by the s 25 decisions. The appellant invokes in particular the Treaty principle of active protection which requires the Crown to protect Māori rights and interests guaranteed under arts 2 and 3 of the Treaty (Māori Treaty interests). The appellant argues that the Crown had information to the effect that climate change would impact upon Māori disproportionately, and that it would adversely impact upon Māori Treaty interests.

[109] Te Hunga Rōia Māori presented submissions generally in support of the appellant's argument on this point. It submitted that the duty of active protection required the decision maker to turn their mind to, and actively engage with, the nature of the Māori Treaty interests implicated and the impact of proposed Crown action on those interests. The duty of active protection is therefore connected to the Crown's duty to consult and make informed decisions.

[110] Te Hunga Rōia Māori accepts, however, that Treaty interests are not absolute, and while the obligations are constant, the standard for discharging them is what is reasonable in the circumstances. There may be balancing considerations. Nevertheless, Te Hunga Rōia Māori argues the balancing exercise must be carried out in a manner consistent with the Crown's Treaty obligations. It submits that if the impacts on Māori are serious, either at the localised level or at a national level, those principles may (but will not necessarily) require refusal of a permit, or a conditional grant only.

[111] Te Hunga Rōia Māori adds that to limit consideration of the Treaty principles to local iwi in the tender and permit context is to take an overly reductionist approach to the Crown's obligations under the Treaty, and moreover unduly shifts

the burden onto local Māori in all instances to identify the interests in play. This is unfair when the Crown is already aware of data and other information that shows that Treaty principles are engaged.

[112] The respondent's primary answer to this ground of challenge is again that the critical decision was the s 24, rather than the s 25, decision.

[113] The respondent accepts at the level of principle that the impact of climate change on Māori is generally relevant to the Crown's Treaty obligations under s 4. However, it argues that the s 4 obligation, expressed in general terms as it is, must be read as constrained by the purpose of the CMA, which is to promote the exploitation of minerals.

[114] As to the s 25 decisions, the respondent accepts that the decision maker did not consider the broader question of impacts upon Māori Treaty interests, confining their Treaty principles assessment to issues raised by iwi and hapū directly affected by the proposed bids. For the Riverside bid this was Ngāti Ruanui, and for the Greymouth bid this was Te Ātiawa and Taranaki iwi. But even so, in the context of this legislation, seeking out and taking account of the views of iwi directly affected by the particular permit determination was sufficient to comply with the Crown's Treaty obligations. In contrast, an approach which required consideration of the broader impacts of climate change on Māori generally would be contrary to the purpose of the legislation, which leaves wider climate change policy to be addressed elsewhere.

Evidence as to consultation and engagement with Māori Treaty interests

[115] Important context for this evidence can be found in the consultation requirements set out in the 2013 Petroleum Programme discussed above. Clause 2 of the Petroleum Programme sets out how the Crown meets its responsibilities, under s 4, to have regard to the principles of the Treaty of Waitangi. Clause 2.2 details the requirement for consultation with iwi and hapū — an obligation which is only stated in respect of the iwi and hapū whose rohe includes some or all of the permit areas, or who may be directly affected by a permit. As we set out below, the documentary record in relation to both the ss 24 and 25 decisions supports the conclusion that the

consultation with iwi and hapū undertaken in this case was no more extensive than that contemplated by cl 2.2. In particular, it did not encompass the effects of climate change upon Māori Treaty interests more generally.

[116] A September 2019 MBIE memorandum sought approval for the blocks to proceed to iwi consultation as part of the 2019 block offer process. It described the s 4 obligation as it applied to the decision to offer the blocks for tender, referring to the consultation to be undertaken prior to the s 25 decisions. It stated that Ngāti Maru, along with other Taranaki iwi, would have a Crown Minerals Protocol issued by the Chief Executive of the MBIE that would specify the consultation required, and further stated that the Protocol would be complied with.

[117] In May 2020, the MBIE briefed the Minister on the results of that consultation, setting out the nature of submissions received from iwi and hapū directly affected. As foreshadowed, that briefing document makes clear that the consultation engaged only with the iwi and hapū that would be directly affected. While most submissions addressed the localised impacts of exploration permits on Māori, Te Korowai o Ngāruahine Trust (TKoNT) raised concerns about the impact of emissions on Māori generally. The MBIE summary records that TKoNT submitted that:

> There are serious concerns about the environmental impacts caused by exploration and mining. These include, and are not limited to, impact on aquatic life, birdlife, natural biodiversity and quality of the waterways.
>
> The on-going allocation of Block Offers for minerals exploration goes against the commitment to move to a low emissions economy, that is low impact and renewable. [TKoNT] sees the need to take a stand against oil and gas explorations in favour of leadership and investment in solar, wave, renewable electricity and hydrogen. Transitioning to a low-emissions economy requires leadership and commitment, and in doing so hard decisions need to be made that may not work in the interests of the traditional energy producers that have dominated our economy and our policy focus thus far.

[118] The MBIE advice to the Minister was that TKoNT's general opposition to further petroleum and mineral exploration in the Taranaki area did not align with the CMA and the considerations that the Minister needed to take into account.

[119] The record of the s 24 decision documents that for the purposes of s 4, the MBIE considered that the relevant principles of the Treaty in this case were partnership (the Crown and Māori dealing with each other reasonably and in good faith), active protection and impacts on redress for past wrongs. The decision maker recorded having reviewed the feedback received from iwi and hapū, and having taken it into account in the decision to offer the blocks for tender for exploration permits.

[120] Briefings from MBIE officials to the s 25 decision maker on the proposed exploration permits again identified that the applicable principles of the Treaty were partnership, active protection and redress for past wrongs. Officials noted that Māori are key stakeholders in the oil and gas sector, owing to the significance of ancestral relationships with the environment within which petroleum exploration occurs.

[121] The briefings went on to detail the results of the iwi engagement process undertaken ahead of the proposed block offer round[94] — that is, the consultation process set out above. The purpose of that engagement process was described as being to identify areas in the proposed blocks that were culturally significant to iwi and hapū.

[122] The MBIE summarised the submissions received into three broad requests:

(a) the exclusion of cultural and historical sites of significance from the blocks offered for tender;

(b) early engagement and active involvement in decision making around activities to be undertaken near sites of significance; and

(c) more active involvement during the evaluation of bids, and continuing engagement.

[123] In response to the submissions, the MBIE said it had taken several steps:

---

94 That is, before the s 24 decision to offer blocks for tender was made.

(a) excluding the historically significant area around Parihaka from the block offer;

(b) making permits issued under the 2019 block offer subject to an iwi engagement condition, requiring explicit and ongoing engagement with iwi, particularly in relation to sites of significance;

(c) when evaluating the bids, assessing bidders' likely compliance with the iwi engagement condition; and

(d) continuing to engage with iwi to ascertain whether the involvement of, and consultation with, iwi in decision making was adequate.

[124] As the respondent conceded, the decision maker's assessment of Treaty principles under s 25 did not include an assessment as to whether petroleum exploration should cease in New Zealand because of the wider impacts of climate change on Māori. Instead, it focused on submissions made by iwi directly affected by the proposed bids. Although TKoNT did raise concern regarding the need to transition immediately away from reliance on petroleum resources, the s 25 decision maker did not address that concern. The Principal Exploration Geologist confirmed in their evidence that the general impact of petroleum extraction on climate change was not put before the s 25 decision maker, as it was seen as irrelevant to the s 25 decisions.

Section 24 or s 25?

[125] It is necessary at this point to address again the same preliminary point that arose in connection with the first ground of appeal: the respondent's argument that the critical decision for the purpose of the operation of the permit scheme is the s 24 decision. Although argument on this appeal was primarily focused on s 25, again the pertinence of s 24 was identified by the respondent — an argument we have accepted. Adopting the approach above, in light of how the appeal was presented to us, we therefore address the s 4 requirements in connection with both ss 24 and 25.

[126] The issues that arise for consideration under this heading are therefore as follows:

(a) Is the s 4 obligation for the purposes of ss 24 and 25 constrained by the purpose of the CMA as the respondent contends?

(b) If not, what does s 4 require of a decision maker in the context of this decision?

(c) Was that obligation complied with in this case?

Is the s 4 obligation for the purposes of ss 24 and 25 constrained by the purpose of the CMA as the respondent contends?

[127] In part, resolution of this first issue flows out of the findings in relation to the first ground of appeal. The purpose of the CMA is not to be read as the respondent would have it — excluding climate change from consideration on the basis that it is dealt with elsewhere. The climate change implications of the issue of permits are not comprehensively dealt with elsewhere, and certainly not in the context of Treaty obligations.

[128] But the objection to the respondent's argument is still more fundamental than that. The respondent's argument depends upon a reading of s 4 which narrows down the Crown's obligations under the Treaty as they apply to the exercise of decision-making powers under the CMA. That cannot be right. As this Court said in *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board*:[95]

> The courts will not easily read statutory language as excluding consideration of Treaty principles if a statute is silent on the question. It ought to follow therefore that Treaty clauses should not be narrowly construed. Rather, they must be given a broad and generous construction. An intention to constrain the ability of statutory decision-makers to respect Treaty principles should not be ascribed to Parliament unless that intention is made quite clear.

[129] There is nothing in the language of s 4 or elsewhere in the CMA which justifies the narrowing down for which the respondent contends. Moreover, the

---

[95] *Trans-Tasman Resources*, above n 88, at [151] per William Young and Ellen France JJ (footnotes omitted). See also at [8] per curiam.

respondent's position lacks logic, since the localised environmental impacts of individual permits — impacts which the respondent accepts can properly be raised under s 4 — would also fall foul of its contention that issues that can be addressed under other statutory regimes should be addressed under those regimes.

[130] Here, the clear legislative intention is that when exercising decision-making powers under the CMA, the decision maker must address, and take into account, the principles of the Treaty.

What does s 4 require of a decision maker in the context of the s 24 decision?

[131] As discussed above, the respondent accepts that at the level of general principle, the impact of climate change on Māori is generally relevant to the Crown's Treaty obligations. It is also not disputed by the respondent that the Crown has a duty of "active protection" in respect of Māori interests.[96]

[132] The respondent does not take issue with the nature of the duty, but rather with the scope of the Māori interests it must engage with. That position is based on the argument, dismissed above, that the application of those principles is qualified under the CMA's statutory scheme.

[133] We accept Te Hunga Rōia Māori's submission that the duty requires the Crown to actively engage with the nature of the Māori Treaty interests affected by Crown action, and with the nature of that Crown action.[97] It may require the Crown to act to protect these interests, including by taking "especially vigorous action" where a taonga is in a vulnerable state.[98]

[134] The next issue therefore is to address just how climate change affects Māori Treaty interests and, in particular, the interests of Māori beyond the local iwi and hapū who are directly affected. The appellant referred us to the 2020 Ministry for

---

96 *Ngai Tai ki Tāmaki Tribal Trust v Minister of Conservation* [2018] NZSC 122, [2019] 1 NZLR 368 at [50(c)] per Elias CJ, Glazebrook, O'Regan and Ellen France JJ.

97 Waitangi Tribunal *The Ngawha Geothermal Resource Report 1993* (Wai 304, 1993) at [5.1.6].

98 *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513 (PC) at 517. See also below n 102.

the Environment | Manatū Mō Te Taiao report *Our atmosphere and climate 2020*, in which the impact of climate change upon Māori was described as follows:[99]

> As the climate continues to change, seasonal tohu [seasonal signs] become less reliable, places of special significance are affected, taonga species face increased risk of extinction, te mātauranga me ngā tikanga (knowledge and customs) are lost, and risks to the unique Māori values at the heart of our society grow.
>
> Rising sea levels and flooding are threatening to inundate all 14 marae of an iwi in the north. Iwi in the east talk about soil erosion and roads being washed away. Iwi in the south talk of the health of tītī declining, and iwi in the west also talk about flooding.
>
> Around the world, climate change poses threats and dangers to the survival of other indigenous communities. Because of their dependence on and close relationship with the environment and its resources, indigenous people are among the first to be directly affected by climate change.
>
> Climate change is expected to worsen the difficulties that are already being faced by indigenous communities. These include political and economic marginalisation, loss of land and resources, human rights violations, discrimination, and unemployment. All these interacting challenges will test the resilience, adaption, and survival of Māori and indigenous communities more than ever before.

[135] The appellant also refers to the Waitangi Tribunal's *Report on the Management of the Petroleum Resource*.[100] In that report, the Tribunal said that Treaty principles, including the principle of active protection, were engaged by the operation of the CMA regime. The Tribunal posed the question of how the protection of Māori interests could practicably be achieved, answering:[101]

> … in an area of law as complex as petroleum resource management — where a number of important interests are involved, including Māori interests — the only way that the Crown can guarantee Treaty-compliant outcomes is by ensuring that all key decision-making processes involve Māori participation of a kind that is appropriate to the decisions being made.

Against this background, we conclude that compliance with the principles of the Treaty in this case required the gathering of information on the impacts of climate change upon Māori Treaty interests, including impacts on Māori beyond the local iwi and hapū directly affected. That information then needed to be considered by the

---

99 Ministry for the Environment | Manatū Mō Te Taiao *Our atmosphere and climate 2020* (ME 1523, October 2020) at 55 (citations omitted).

100 Waitangi Tribunal *The Report on the Management of the Petroleum Resource* (Wai 796, 2011).

101 At 150.

s 24 decision maker. That consideration required engagement with the particular nature of the Māori interests at stake, and the impact of the Crown action upon those interests.

Was that obligation complied with in this case?

[136] We cannot proceed too far down the path with this issue, given the way it developed during the hearing and now as reflected in this judgment, with the focus shifting from the s 25 decisions (the pleaded basis of the challenge) to s 24. Because of this, we do not have the benefit of an affidavit from the s 24 decision maker. It does seem clear on the record before us that the approach to consultation with Māori Treaty interests was the same at both the s 24 stage and the s 25 stage, since the same consultation was relied upon at each stage. This was limited to the direct effects of exploration and mining upon local iwi and hapū interests. If this was the extent of the s 24 decision maker's consideration of Māori Treaty interests, this would fall short of the requirements of the active protection principle.[102] But absent a pleaded challenge to the s 24 decision and an affidavit from the decision maker we cannot say any more than that.

[137] Even if the challenge had been directed at the appropriate decision (that is, the s 24 decision) we are not persuaded that this error was such as to justify granting the relief sought, which is a quashing of the permitting decisions. We very much doubt that at the time of the s 24 decision — following closely on the heels of the ban on exploration in all areas except onshore Taranaki — consideration of this issue could have materially affected that decision. We reach that view in light of the obvious need to secure a "just transition" away from reliance on petroleum resources, including (as we noted above at [26]) the carve-out of the Taranaki onshore area from the ban on further exploration. The need for this transition was a consideration that decision makers would have had to weigh against the interests and rights of Māori affected by the ongoing impacts of climate change. The same logic applies to the s 25 decisions.

---

[102] Impacts for the decision maker's consideration will include loss of taonga species, coastal places of cultural significance, mahinga kai and associated mātauranga: Ministry for the Environment | Manatū Mō Te Taiao, above n 99, at 53–56.

Summary

[138] A number of issues have been traversed in this judgment. Given the complexity of the issues involved, it is worth briefly summarising our findings.

First ground of appeal: climate change

[139] The critical decision for the purposes of the CMA in relation to permitting will usually be the s 24 decision to offer permits for tender.[103] This is because the decision to offer an area for tender is an in-principle decision that exploration may be permitted in the area. It would undermine the promotional intent of the CMA to invite tenders pursuant to a s 24 decision but then decide under s 25, and for reasons that could have been weighed at the s 24 stage, not to allocate any permits.

[140] Properly interpreted, the reference to "the benefit of New Zealand" in s 1A(1) of the CMA is not simply a recognition of the benefits that flow from mining, but a statement that what is promoted by the CMA is exploration and mining that is for the benefit of New Zealand.[104] It follows that when deciding under s 24 whether to offer exploration or mining permits for public tender, the Minister is required to address whether such an offer is for the benefit of New Zealand.[105]

[141] Climate change is important context for the s 24 decision.[106] Climate change is a matter of pressing concern for New Zealand and its well-being both in the near and long term. Moreover, the Crown has entered into binding obligations on New Zealand's behalf in connection with reducing greenhouse gas emissions. Petroleum extraction and consumption are major contributors to greenhouse gas emissions in New Zealand and internationally.

[142] Climate change is therefore a mandatory relevant consideration for the s 24 decision maker when deciding whether to offer petroleum exploration permits for tender.[107] This is because climate change is so obviously relevant to a decision to commence a process which is intended, if successful, to progress through to

---

103 Above at [47].
104 Above at [83].
105 Above at [85].
106 Above at [86]–[87].
107 Above at [86]–[87].

extraction of petroleum. The matters listed in s 5ZN of the CCRA are aspects of climate change that the decision maker is required to consider; in this case, only the 2050 target was in force.[108]

[143] Section 24 is the decision point at which climate change must be engaged with as a mandatory relevant consideration.[109] It is unlikely that engagement with climate change considerations at the s 25 stage will be necessary beyond the matters arising from the s 29A assessment. However, it cannot be ruled out that context may render climate change a mandatory relevant consideration at the s 25 stage.[110]

[144] No affidavit was filed by the s 24 decision maker in this case because the s 25 decisions were the focus of the challenge.[111] The Court nevertheless proceeded to address the arguments in relation to the s 25 decisions because it heard full argument on the point.

[145] In assessing the matters considered by the s 25 decision maker, it was clear that even if they were obliged to engage afresh with climate change as a mandatory relevant consideration at the s 25 stage (including climate change considerations beyond s 5ZN of the CCRA), they did so.[112] Their consideration of climate change was sufficient to discharge their obligation to have regard to this mandatory relevant consideration — including in respect of the implications for the Crown's broader climate change commitments — with due awareness of its content and a genuinely open mind. The first ground of appeal is therefore dismissed.

Second ground of appeal: Treaty principles

[146] The Crown's duty of active protection of Māori Treaty interests requires the Crown to actively engage with the nature of the interests affected by Crown action, and with the nature of that Crown action.[113] It may require the Crown to act to protect these interests, including by taking "especially vigorous action" where a taonga is in a vulnerable state.

---

108 Above at [90] and [98].
109 Above at [93].
110 Above at [94].
111 Above at [95].
112 Above at [107].
113 Above at [133].

[147] In this case, the obligation to have regard to the principles of the Treaty pursuant to s 4 of the CMA required the s 24 decision maker to consider the impacts of climate change on Māori beyond the Taranaki hapū and iwi directly affected by the decision.[114] Compliance with that obligation required the gathering of information on the impacts of climate change upon Māori Treaty interests, and consideration of that information by the s 24 decision maker.

[148] The pleaded basis of the challenge to the Court was the s 25 decisions to grant the permits. There was no pleaded challenge to the s 24 decision, and therefore no affidavit from the s 24 decision maker, so the Court could not decide the appeal on that point.[115]

[149] Even if the challenge had been directed at the s 24 decision, the error was unlikely to have been sufficient to justify the quashing of the permitting decisions.[116] That was because it was unlikely that consideration of the impacts of climate change on Māori Treaty interests beyond those of the Taranaki hapū and iwi directly affected would have materially affected the s 24 decision. The Court reached that view in light of the obvious need to secure a "just transition" away from reliance on petroleum resources, including the carve-out of the Taranaki onshore area from the ban on further exploration. That means the appeal on the second ground must also be dismissed.

[150] Therefore, although the appellant has succeeded with some of its arguments, the appeal must be dismissed.

Result

[151] The appeal is dismissed.

[152] There is no order as to costs.

---

114 Above at [135].
115 Above at [136].
116 Above at [137].

Solicitors:
LeeSalmonLong, Auckland for Appellant
Te Tari Ture o te Karauna | Crown Law Office, Wellington for Respondent
Tukau Law and Consultancy, Kaikohe for Intervener