Parliamentary Commissioner for the Environment
Te Kaitiaki Taiao a Te Whare Pāremata

Submission on Crown Minerals Amendment Bill

To the Economic Development, Science and Innovation Committee

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Submitter details

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The Parliamentary Commissioner for the Environment

The Parliamentary Commissioner for the Environment was established under the Environment Act 1986. As an independent Officer of Parliament, the Commissioner has broad powers to investigate environmental concerns and is wholly independent of the government of the day. The current Parliamentary Commissioner for the Environment is Simon Upton.

Introduction

The Parliamentary Commissioner for the Environment provides advice on the environmental aspects of legislation with a view to ensuring its durability through governments of different political persuasions. The proposed amendments to the Crown Minerals Act 1991 fall into two broad categories – those that are primarily political and those that are primarily administrative. This submission highlights the political changes but offers no recommendations. We separately provide advice, and recommendations, on how proposed administrative changes could be improved to help safeguard the environment. We do not comment on all of the proposed changes.

Political

The key proposal in the Bill is to **remove the ban on new petroleum exploration permits** beyond onshore Taranaki and in essence re-allow oil and gas exploration throughout New Zealand, onshore and offshore. This is essentially a political decision, as was the previous Government's decision to restrict oil and gas exploration.

Numerous international climate change and trade agreements to which New Zealand is a party, as well as multitudes of peer-reviewed scientific papers, affirm that effectively tackling climate change will require global *gross* emissions of carbon dioxide to be reduced to zero. In short, at some point soon humans will need to stop extracting fossil fuels from the ground or risk very large increases in global average temperature. The International Energy Agency (IEA) found that to limit warming to 1.5 °C a key assumption necessary for the modelling was that no new oil and gas fields and coal mines be approved for development from 2021.[1]

[1] https://iea.blob.core.windows.net/assets/deebef5d-0c34-4539-9d0c-10b13d840027/NetZeroby2050-ARoadmapfortheGlobalEnergySector_CORR.pdf.

The point at which New Zealand decides to stop extracting fossil fuels, and the way in which it goes about doing so, is a political choice that signals the extent of New Zealand's determination to contribute to achieving a global goal. Maintaining the ban can reasonably be interpreted as stronger support for taking climate action than removing it. Allowing exploration to resume is a signal that New Zealand considers that there is time for the world to continue to delay action on phasing out reliance on fossil fuels. That claim is increasingly hard to sustain.

At the time of the original ban, and in the absence of detailed cost-benefit analysis supporting the decision to impose the ban, PCE published a note that set out what could and could not be claimed both in support and in opposition to the oil and gas exploration ban.[2] A copy of the note is attached to assist Members of Parliament (MPs) as they again weigh up the pros and cons of the ban.

This is a nuanced issue, and care was taken to ensure that the findings of the note reflected that nuance. From a purely environmental point of view it found, *inter alia*, that the ban would have a small and uncertain impact on global emissions depending on a number of factors, but that there was equally no firm basis for claiming (as some did) that the ban would increase global emissions.

Inevitably, what New Zealand does will be a rounding error in the global scheme of things. But that has never been the basis of New Zealand's engagement on this critical global policy challenge. New Zealand's policy position has always been that all countries should do what they can to reduce emissions. Parliament must now decide whether removing the ban is consistent with doing that. While much has changed in the policy and political landscape since 2018 when the ban was introduced, the key findings of the PCE note remain valid.

The Climate Implications of Policy Assessment accompanying the Bill estimates that the increase in domestic emissions from removing the ban will be 51 megatonnes of emissions by 2050.[3] The Regulatory Impact Statement accompanying the Bill contains only a basic analysis and falls well short of a thorough analysis of the costs and benefits, including the environmental costs, of removing the ban.[4] I note that a thorough analysis would include an assessment of wider environmental impacts, including the need to plant more land in pine forest to offset the higher domestic emissions that will inevitably be associated with any new oil and gas extraction.[5]

The PCE note ran to 66 pages and provided a careful analysis that was designed to assist MPs of all persuasions to debate the issue on a sound basis. It is disappointing that for the second time, MPs are being presented with changes to the regulation of oil and gas exploration without proper analysis. Despite the vastly greater analytical resources available to the Government, the PCE note remains the most detailed examination in the public arena of the arguments for and against continued oil and gas exploration.

One thing that has changed since the note was first published is the growth in supply-side policies overseas. New Zealand was not the first to put in place a ban of this kind. Bans in France and Costa Rica preceded New Zealand's. New Zealand was, however, a founding member of the Beyond Oil & Gas Alliance, which now includes Denmark, Costa Rica, France,

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[2] See https://pce.parliament.nz/media/zgem0tcf/report-restricting-the-production-of-fossil-fuels-in-aotearoa-new-zealand.pdf.

[3] See https://www.mbie.govt.nz/dmsdocument/28879-climate-implications-of-policy-assessment-disclosure-sheet-proactiverelease-pdf.

[4] See https://www.mbie.govt.nz/dmsdocument/28877-regulatory-impact-statement-amendments-to-the-crown-minerals-act-1991-relating-to-petroleum-exploration-and-mining-proactiverelease-pdf.

[5] Assuming plantation pine sequesters 461 MT of CO2 per hectare this equates to 112,000 more hectares of forest to offset the estimated 51Mt of extra emissions by 2050.

Greenland, Ireland, The Marshall Islands, Portugal, Samoa, Spain, Sweden, Tuvalu, Vanuatu and Wales. The United Kingdom has also recently announced a similar ban. There is clearly momentum in the international supply-side policy space, although to what degree this shows an impact from New Zealand's ban is debatable. The (unredacted) Regulatory Impact Statement says that reversing the ban would likely be inconsistent with New Zealand's trade agreements and risks New Zealand's international reputation and relationships.[6]

There is inevitable uncertainty about the impact of this change on New Zealand's climate commitments and trade agreements. That uncertainty may temper new investment. Regulatory risk is eternal, and in a democracy changes of government will lead to changes in policies. Companies must weigh that risk. I would like to take this opportunity to place on record my view that it would *not* be appropriate for this or any future government to offer subsidies – implicit or explicit – to underwrite the risks of exploration (political or otherwise).

The Bill proposes **changing the purpose** of the Act from "manage" to "promote" (reversing a change made in 2023). How active the verb is in the purpose clause is also a political choice. In considering that choice, MPs might find some useful guidance contained in the High Court's and the Court of Appeal's comments on the distinction between "manage" and "promote".[7]

The courts commented that "promote" essentially deems mining to be to New Zealand's benefit and that by using it Parliament "is not contemplating a balancing exercise under the Act", meaning that environmental and climate considerations were not implied to be mandatory under the Act.

I think balancing is needed – economic benefits can be overstated and do not always outweigh the environmental costs. All forms of mining are to some extent damaging to the environment at the mine and processing sites. Environmental damage from fossil fuel extraction is amplified by the increased contribution to climate change it causes when burnt. Moving from "managing" mining to "promoting" it is in essence promoting more environmental damage. Adequate environmental mitigations and safeguards on mining activities can help provide an acceptable balance. However, changes to other environmental legislation are changing that calculus.

In considering the term "manage", the Court of Appeal observed that the purpose of replacing "promote" with "manage" was to "neutralise the promotion intent of the Crown Minerals Act to increase flexibility in the management of Crown-owned resources". The court also commented that Parliament's intent in using the term "manage" was to align the Act with wider policy settings and the net zero transition."

Government policy statements, which are proposed to be included as an option, are a good way for a government to make clear its priorities for the sector. This can provide transparency and short-term clarity. However, if different governments produce radically different government policy statements they could easily become a source of uncertainty for both the public and industry. Given how political some decisions under the Act are, this seems to be an unavoidable risk.

Administrative

Mineral and fossil fuel extraction is quite environmentally damaging in the immediate vicinity of the extraction activity. The risks are more extensive in the dynamic marine environment. The environmental risks can persist well after extraction ceases. The costs for environmental clean-

[6] https://www.documentcloud.org/documents/25178182-ris-unredacted

[7] *Students for Climate Solutions Inc v Minister of Energy and Resources* [2024] NZCA 152; *Students for Climate Solutions Inc v Minister of Energy and Resources* [2021] NZHC 2116

up can be very high. The (unredacted) Regulatory Impact Statement estimated that the costs for decommissioning other offshore fields could total $2 billion.[8] If a mining company does not cover those costs, they become financial liabilities for the Crown and taxpayers. The costs incurred by the Government in cleaning up the Tui Oil Field, currently budgeted at between $300–$443 million, is a cautionary example.[9]

The Bill proposes changes to the decommissioning regime to provide greater flexibility and clarity around the types of financial securities that may be accepted, as well as introducing a new ability for the Minister to set the timeframe over which the securities must be held.

Given the range of financial products now available it makes sense to allow a mix of securities. What is important is that those securities are real and can be called upon if needed.

It is crucial that the security arrangements are sufficient to cover the quantum of costs and can be called on when those costs occur. The Bill provides no guidance on what a minimum provision for costs might be. That minimum quantum should be the estimated decommissioning costs and the securities should be held until decommissioning has been completed and signed off by the Ministry.

While there may be value in the Minister having some flexibility in deciding the quantum and the timeframe over which the securities might be held, the Minister should be required to spell out the reasons for the quantum and timeframe that have been chosen. The Minister should also be required to explain any deviation (higher or lower) from a reasonable minimum. From an environmental perspective, if the set amount and timeframe are less than the expected costs and timing of decommissioning, this explanation is particularly important. Any shortfall becomes a potential financial liability to taxpayers. Taxpayers are entitled to know what trade-offs have been made, and why.

After decommissioning, ongoing risks to the environment remain should the decommissioning works fail. There will also be costs associated with monitoring of the site.

The Bill removes the requirement to provide payment, or financial security, to cover post-decommissioning costs that may be required. It instead introduces perpetual liability for permit holders who have completed their decommissioning obligations, for any wells and infrastructure left *in situ*. This is nice in theory, but it assumes that the company remains solvent into the future to meet any future liability should it occur. That is a risky assumption.

As the future risks to the environment are potentially large and the company may not be around to meet that future liability, some financial security arrangements should continue to be required to cover potential post-decommissioning costs. PCE recognises that political views on that point may differ. A solution that could future-proof the Bill would be to provide the Minister with the option of imposing financial security arrangements for post-decommissioning costs.

PCE recommends that:

- The Minister should be required to provide reasons for the quantum and timeframe set for financial security arrangements.
- Guidance on a minimum quantum and timeframe for financial security arrangements should be added to the Bill (even if the Minister has flexibility to deviate from that minimum).

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[8] https://www.documentcloud.org/documents/25178182-ris-unredacted

[9] https://www.rnz.co.nz/news/business/511110/nearly-half-a-billion-taxpayer-dollars-set-aside-to-decommission-tui-oil-field and https://www.rnz.co.nz/news/business/510731/decommissioning-of-abandoned-tui-oil-field-complete

- Financial security arrangements for post-decommissioning costs, or at least the option to set security for those costs, should remain.

Consultation timeframes

The extremely short timeframes for consultation on this Bill have meant that PCE has not been able to provide the detailed and considered analysis PCE normally provides select committees and MPs in general. There is a risk that some of the changes proposed in the Bill will cause environmental harm but have not been able to be identified in the timeframe available. Fortunately, the attached note prepared by PCE in 2020 remains a reliable guide to the broader policy context.

Rt Hon Simon Upton

Parliamentary Commissioner for the Environment
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Attachment: PCE, 2020. *Restricting the production of fossil fuels in Aotearoa New Zealand: A note on the ban on new petroleum permits outside onshore Taranaki*. Wellington: Parliamentary Commissioner for the Environment.