

11 October 2017

Deborah Russell
Chairperson
Environment Select Committee
Private Bag 18041
WELLINGTON 6160

via email: en@parliament.govt.nz

Dear Chairperson

The Crown Minerals (Petroleum) Amendment Bill

BusinessNZ is pleased to have the opportunity to provide a submission to the Environment Select Committee on the Crown Minerals (Petroleum) Amendment Bill which was introduced to the House on 24 September 2018.¹

The Bill would put into law the Government's decision, announced in April 2018, not to grant further, new permits for offshore oil and gas exploration. We wish to be heard by the Select Committee.

Summary

BusinessNZ:

- maintains our view, outlined on the day of the announcement that this is bad policy as announced and now executed via poor process. We see no evidence to support the decision in the form of a ban nor evidence of the need to rush this amendment through the House and are concerned at the process and decision risks manifesting in sovereign risk;
- is concerned that the decision will not only undermine New Zealand's reputation as a place to invest, but place New Zealand's energy security at risk, imperilling the current achievement of balanced policy settings across the energy trilemma;² and
- urges the Select Committee to consider delaying the commencement of the Bill and to include a review clause into the bill to formally assess its implications.

¹ Background information on BusinessNZ is attached in Appendix One.

² The 'energy trilemma' being the three dimensions of energy security, energy equity (affordability and access) and environmental sustainability.

Comments

BusinessNZ remains opposed to the Ban

BusinessNZ agrees with the underlying policy objective sought by the 12 April decision, but strongly considers that banning new oil and gas exploration is an unnecessary way to achieve emissions reduction goals.

This amendment gives effect to a decision that fails to reflect evidence-based policy standards across any number of dimensions. For example, there will be no overall reduction in global emissions, and potentially an increase in emissions as a result of this ban as global exploration from places with lower environmental standards fills the gap left by our reduced output.

We also do not think that the amendment is consistent with the purpose of the Crown Minerals Act:

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.

We fail to see how this amendment is consistent with the objective to promote exploration, is an efficient allocation of rights, the effective management of those rights or consistent with providing a fair financial return for the minerals owned by the Crown.

We refer the Select Committee to the Regulatory Impact Statement (RIS) prepared by MBIE should it seek a sound and even-handed assessment of the costs and benefits of the proposal.³ It uses orthodox techniques of probability weighted scenarios compared to a counterfactual where there is no change to the Crown Minerals Act 1991.

The decision harms:

- *investment*

BusinessNZ considers that banning new petroleum and gas exploration will have significant implications for New Zealand business. There are two strands to this,

³ Document URL <https://www.mbie.govt.nz/info-services/sectors-industries/natural-resources/oil-and-gas/overview-crown-minerals-act-regime/pdf-document-library/regulatory-impact-statement-proposed-changes-to-the-crown-minerals-amendment-act-1991.pdf>

being the consequences of the decision-making process and the implications of the decision itself:

- a. the decision-making process: this was a process bereft of consultation. A process without meaningful dialogue risks triggering dramatic policy shifts as has happened in Australia. The National Party has already signalled that it will reverse the ban. In general, such swings signal that policy settings are neither durable nor predictable and investment follows political cycles, not underlying investment opportunities; and
- b. the implications of the decision itself: it signals that the government is willing to expropriate returns by regulatory fiat and in doing so, create uncertainty about the security of property rights. If a multi-billion dollar energy industry can be banned, what other emitting industries might face the same fate?

Both of these dimension raises doubts among investors as to the viability of investing in New Zealand business. These doubts manifest in an elevated sovereign risk (or in more practical terms the weighted average cost of capital or 'hurdle' rate required to invest in New Zealand), dampens the desire to invest, and ultimately increases the cost of business through inadequate infrastructure as growth opportunities are missed. Put simply, it damages New Zealand as a stable, lower risk place to invest.

BusinessNZ believes that the decision – both the process and the decision itself - is one of the factors at play in declining business confidence. One potentially severe but unintended consequence of the decision is the reduction of exit options for Taranaki businesses as reduced asset values diminish their ability to attract investment for diversification and growth.

- *competitiveness*

The competitiveness of many businesses will also be affected by this ban in the medium to longer term. It will likely mean higher gas prices because of the restriction in supply, raising costs for enterprises that use gas for their operations. Exporters such as Fonterra, NZ Steel, Methanex and Refining NZ may find their products less competitive in world markets.

- *security of supply*

While the ban is on new offshore permits, and can be portrayed as having no tangible impact (as it has banned an activity that technically doesn't exist), the business environment for all offshore exploration, and the risks and incentives faced by all explorers has fundamentally shifted.⁴ The decision is a strong signal to investors to which they will respond immediately, not some time in the future. All plans, current and future, will now be reconsidered in light of this decision, especially when combined by the prospect of a higher future carbon price.

As a result, the careful balance on which New Zealand's energy security rests has been shifted. It is difficult to know where the new equilibrium will be

⁴ This has even been recognised by the Government with respect to the change to the 'drill or drop' conditions.

reached as it is the complex interplay of a range of demand and supply factors but the risks are clearly weighted to the downside.

If contingent gas reserves from existing permits are never commercially proven, we face a serious risk to our future energy security in about a decade. Recent cold weather has proven how invaluable our low cost gas-fired sources of electricity are when needed, especially in the absence of cost-effective, reliable alternatives.

We also note the recent Productivity Commission Low emissions economy report (page 427) where (noting that the use of fossil fuels needs to decline significantly) it notes that:

"Replacing coal with gas as a fuel for industrial heat would therefore contribute to emissions reductions. As such, natural gas is often suggested as a 'bridging fuel' in the transition toward a low emissions economy."

The decision (and therefore this amending Bill) seems contrary to this with the increased risk of gas supply likely to discourage capital investment necessary to convert from coal to gas.

- *energy affordability*

This critical dimension of the energy trilemma will be placed at risk by the ban at a time when there are substantial upward pressures across other sources of energy (notably fuel and electricity). This risk is exacerbated where there is no alternative reliable low costs source of energy. This risk is real. One need look no further than a report in the Energy News dated Monday 8 October, 2018, where it was reported that:

"Low hydro lake levels and the continued outage of the Pohokura gas field nudged wholesale prices towards \$200/MWh over the weekend."

Such prices, on a sustained basis, might bring forward alternative sources of energy but would hit already hard-pressed consumers in the hip pocket when they heat their homes. Commercial heating, for example, of schools and hospitals will also be affected. Ultimately the cost and efficiency of new energy solutions and therefore the pace of the transition will be dictated by global, not domestic action. Acting sooner will add costs unless there is a future where energy is as reliable, but cheaper than current sources.

Indeed somewhat perversely, increased gas scarcity and prices could have two unintended consequences, being:

- a. an economic disincentive to electrify (running completely counter to the potential use of gas as a 'bridging fuel' and increased renewable aspirations) and prolonging the burning of coal both at Huntly and in industrial installations. This would also drive up carbon emissions and

- increase pressure on businesses without economic alternatives, to fund offsets;⁵ and
- b. the resurrection of a 'Gasbridge'-like LNG importation terminal proposal or similar as it would become commercial relative to domestic gas prices.

A 'Just transition'

BusinessNZ strongly supports climate change action and the objective of the decision but do not believe that the Bill will achieve either.

A 'just transitions' framework can and should be long term, constructive and non-political. The development and proper execution of a 'just transitions' framework here in New Zealand would see government, employers and workers acting co-operatively together to create the kind of sustainable future we all want. It will go well beyond political cycles. A robust 'just transitions' framework will recognise that things won't happen by accident but by careful and deliberate co-design.

Unfortunately, the announcements, as reflected in this amending Bill, were none of these and the growing sense of grievance by employers and workers has been compounded by the rushed Select Committee process. Indeed, the rushed process simply reinforces the perception of bad law. We strongly believe that not giving those affected adequate time to participate in the Select Committee process simply exacerbates the ill feeling amongst those affected, further damaging the goal of a just transition.

We also note clause 27 of the Bill that would insert New Part 2 in Schedule 1 of the Act to override the requirement to consult on changes to the Petroleum Programme:

"if the change is consequential on the amendments made to this Act by the Amendment Act."

This appears to signal the likelihood of a further derogation of consultation. From here it will be important to see what Government commitment is being made to affected businesses, and how quickly other high value businesses can be developed to fill the void.

Delaying the Bills Commencement

The Bill as currently drafted has the Act coming into force as follows:

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

In light of the substantial issues with the decision made on the 12 April 2018, and the lack of urgency in its passage (we understand from the industry that there was

⁵ This is consistent with reported comments by Genesis Energy's CEO in Energy News, where he is quoted as saying "By introducing significant uncertainty over gas supplies, particularly in the 2030s, it becomes much harder to remove coal from the electricity system."

widespread agreement to defer or postpone the 2019 Block offer process), if the Select Committee is still minded to progress the Bill, we would suggest a deferment of the commencement of the Act by a year.

2 Commencement

This Act comes into force ~~on the day one year~~ after the date on which it receives the Royal assent.

Such a deferment would allow the more careful consideration of the full implications of the decision by the soon to be established Climate Change Committee or, in lieu of its establishment, the Interim Climate Committee. In particular, this examination could articulate a pathway or pathways to the objectives sought by the decision. Should the Select Committee be open to this, the Bill would need to have inserted an accompanying clause along the lines of it ceasing to have effect in the event that certain criteria existed as judged by a certain person. This would in effect be a conditional form of sunset clause.

It would also allow greater consultation with the Taranaki regional leaders and business community.

Finally, we consider that there is merit in the Select Committee considering the insertion of a review clause in the Bill that would allow Parliament the opportunity to come back to the decision once its practical on-the-ground implications were better understood.

Summary

We do not support this Bill, nor the decision made on 12 April 2018 it seeks to give effect to. We do, however, support the objective sought – that of a transition to a low carbon economy. In not supporting the Bill we consider that a different process – both in terms of the decision making up to the 12 April announcement, and the truncated Select Committee – could have been a demonstrable showcase for the just transition. Instead, it was heavy-handed and has potentially damaged business confidence in the robustness of the government’s decision-making processes. We ask that the Select Committee consider a deferment in the commencement of the Bill to allow for a fuller discussion and resolution in how better to achieve the objectives sought.

Yours sincerely



John A Carnegie
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BusinessNZ

APPENDIX ONE: ABOUT BUSINESSNZ

BusinessNZ is New Zealand's largest business advocacy body, representing:

- Regional business groups [EMA](#), [Business Central](#), [Canterbury Employers' Chamber of Commerce](#), and [Employers Otago Southland](#)
- [Major Companies Group](#) of New Zealand's largest businesses
- [Gold Group](#) of medium sized businesses
- [Affiliated Industries Group](#) of national industry associations
- [ExportNZ](#) representing New Zealand exporting enterprises
- [ManufacturingNZ](#) representing New Zealand manufacturing enterprises
- [Sustainable Business Council](#) of enterprises leading sustainable business practice
- [BusinessNZ Energy Council](#) of enterprises leading sustainable energy production and use
- [Buy NZ Made](#) representing producers, retailers and consumers of New Zealand-made goods

BusinessNZ is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy. In addition to advocacy and services for enterprise, BusinessNZ contributes to Government, tripartite working parties and international bodies including the International Labour Organisation ([ILO](#)), the International Organisation of Employers ([IOE](#)) and the Business and Industry Advisory Council ([BIAC](#)) to the Organisation for Economic Cooperation and Development ([OECD](#)).

