

Submission by



to the

Ministry of Business, Innovation and Employment

on the

**Proposed Regulations to support the Crown Minerals
(Decommissioning and Other Matters) Amendment Bill**

7 September 2021

PROPOSED REGULATIONS TO SUPPORT THE CROWN MINERALS (DECOMMISSIONING AND OTHER MATTERS) AMENDMENT BILL 2021 DISCUSSION DOCUMENT – SUBMISSION BY BUSINESSNZ¹

INTRODUCTION

1. BusinessNZ and the BusinessNZ Energy Council (BEC) welcome the opportunity to provide feedback on the Discussion Document *Proposed Regulations to support the Crown Minerals (Decommissioning and Other Matters) Amendment Bill 2021*.
2. Proposed changes to the Bill and regulations are being consulted on in parallel. The Bill establishes a statutory obligation to decommission, provides for monitoring to improve regulatory oversight, ensures financial security is provided and expands the current enforcement provisions. A copy of our submission on the Bill can be found on our website².
3. The *Proposed Regulations to support the Crown Minerals (Decommissioning and Other Matters) Amendment Bill 2021 Discussion Document* (“the Document”) provides further details about information provision for monitoring purposes, criteria for financial security obligations, and post-decommissioning requirements.
4. We recognise efforts to strengthen decommissioning provisions of the Crown Minerals Act and supporting regulations to help mitigate this risk.
5. Although we acknowledge the Government’s commitment to creating a low-emissions economy and the consequences for the oil and gas sector, we would like to reinforce the important role these fuels are expected to play in a smooth energy transition. Careful consideration must be made to ensure infrastructure is available and investment to maintain critical infrastructure is made to enable a successful transition which balances energy sustainability, energy security and energy affordability.
6. This submission provides some general comments, focussing on the broader implications of regulatory changes. We agree with some of the changes which clarify decommissioning obligations. However, we note the proposed Bill and supporting regulations introduce multiple layers of requirements which, when considered collectively, are not in proportion to the risks identified. We are concerned about the uncertainty created by some of the proposed regulations and the resultant chilling effect on investment. We believe this deterred investment will adversely affect energy security and affordability.
7. Members have been consulted in preparing this submission. Given the diversity of our membership, some members will have specific issues they wish to comment on in more detail. We have encouraged members to make their own submissions raising those issues specific to their areas of interest. This submission is not confidential.

¹ Background information on BusinessNZ is attached as Appendix One.

² https://www.businessnz.org.nz/__data/assets/pdf_file/0004/223276/FINAL-BusinessNZ-submission-on-CMA-Decommissioning-Amendments.pdf

GENERAL COMMENTS

Multiple layers of new requirements are not in proportion to the risks identified

8. The proposed changes introduce multiple layers of requirements to address the risk of failing to undertake and fund decommissioning activities including:
 - Obligations to carry out decommissioning activities,
 - Requirements to maintain the financial security to do so,
 - Provisions to monitor and assess financial capability,
 - Provisions to monitor and enforce obligations,
 - Penalties (both civil and criminal) for failure to meet these obligations.
9. While we accept changes to clarify permit or licence holders' decommissioning responsibilities, we note each additional requirement will add cost to business, as well as the agency responsible for overseeing those requirements. Given the multiple layers of requirements, we believe some of the proposed changes will introduce costs without reducing the perceived decommissioning risks.
10. We note the criteria for assessing options include the extent to which compliance and opportunity costs on industry and administrative costs to the Crown are proportional to expected benefits from regulation. While each option has been assessed on this proportionality criteria individually, we would argue the multiple layers of new requirements considered collectively are not in proportion to the perceived risks and introduce unfair costs on industry and unnecessary administrative costs to the Crown.

Uncertainty and the effect on investment

11. The proposed changes allow the Minister discretion in various aspects; requesting financial information, determining the amount and type of financial security to be held, determining post-decommissioning amounts to be paid, and allocation of post-decommissioning funds.
12. Given the potentially substantial decommissioning and post-decommissioning costs involved, these decisions are likely to have a significant impact on businesses. This level of ministerial discretion creates uncertainty and sovereign risk for those seeking to operate in New Zealand, likely discouraging future investment.
13. While we acknowledge the Government's commitment to creating a low-emissions economy, we note the important role oil and gas will play during our energy transition. This was highlighted by the Climate Change Commission's recent advice to government. For example, in the demonstration paths modelled by the Climate Change Commission, gas will continue to be used as a fuel source in buildings, industry and heat, and to generate electricity, until at least 2035³.
14. BECs modelling suggests gas will have a role to play until 2050. BEC has developed a New Zealand specific model TIMES-NZ to explore two possible future energy scenarios; Kea (cohesive) where climate change is prioritised as the most pressing issue, and Tūi (individualist) where climate change is one of many pressing issues⁴. Our bottom-up model selects from available technologies to produce a least-cost energy system over the medium to long term. The model shows around 50PJ of natural gas is consumed in 2050 in both scenarios. Even in the Kea (cohesive) scenario, gas is selected for electricity generation as a back-up fuel to support increasing levels of intermittent renewable generation like wind and solar.

³ Climate Change Commission, Ināia tonu nei: a low emissions future for Aotearoa, p112, 113, 115.

⁴ <https://times.bec.org.nz/>

Figure 1: Kea – Fuel Consumption for all subsectors, all end use, all technology (PJ)

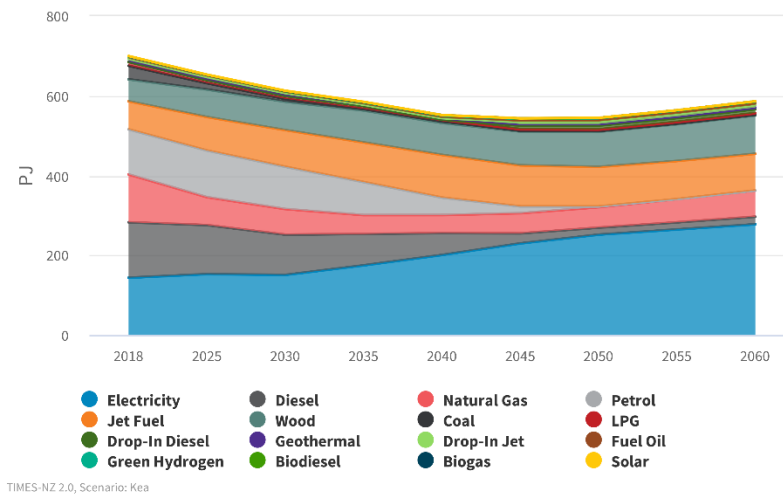
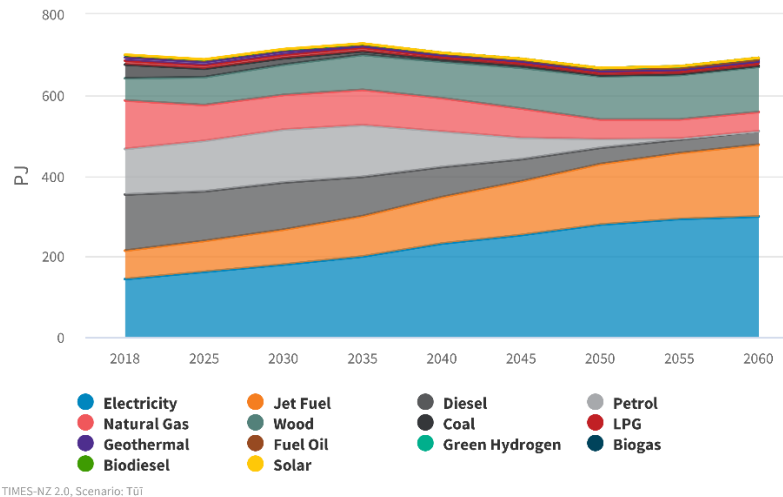


Figure 2: Tūi – Fuel Consumption for all subsectors, all end use, all technology (PJ)



- To ensure a smooth transition to a more sustainable system, investment in the oil and gas sector is required. The Gas Industry Company have estimated between "\$300-500 million every 3 to 5 years to produce existing reserves and maintain production levels"⁵. The private sector has a crucial role to play to make investment decisions and manage commercial risk. However, the proposed changes will add costs to business, creating significant uncertainty and deter this kind of investment.

Deterred investments will impact on energy security and affordability

- As we have experienced over the last two years, investments have been delayed or abandoned because of uncertainty of existing and future regulatory arrangements. This has had effect of decreasing diversity and security of energy supply and potentially increasing energy prices.
- We use the energy trilemma framework to benchmark our energy system performance globally. The trilemma balances environmental sustainability with energy security and energy equity (including access to and affordability of energy). Currently New Zealand is ranked within the top 10 of countries globally.

⁵ Gas Industry Go, Briefing to the Incoming Minister, October 2020, p4.

However, while our sustainability score has improved over the last decade, our security score has declined due to declining energy storage, increased import dependence, and a lower diversity of electricity generation sources as thermal generation retires.⁶ This trend is likely to continue with further thermal generation closures, cessation of onshore refining capability and growing reliance on imported fuel to meet energy shortfalls.

18. Further deterring investment will also impact the affordability of energy. Major users exposed to the wholesale electricity and gas prices have expressed concern this winter over affordability and access to gas. Gas plays an important firming role in the electricity market during dry years, so this issue flows through to electricity affordability too.

Perpetual liability issues must be addressed

19. Although not covered in this discussion document, we would like to restate our concern with changes to the Bill that create perpetual liabilities. The current draft Bill holds permit and licence holders liable for meeting the costs of decommissioning even if they transfer out of a permit, if the new permit holder fails to carry out and fund decommissioning. These obligations create perpetual liabilities which we strongly oppose.
20. Imposing obligations on former permit and license holders interferes with existing commercial arrangements and undermines existing property rights. The change requires further work for those seeking to transfer permits or licences, creating a barrier for transfers to occur. Transferors and transferees would need to factor any ongoing liabilities into any divestment or investment decisions, likely slowing any future transfer of interests. Transferors are unfairly burdened as they are likely to have to accept a lower offer for assets to offset the potentially higher decommissioning costs imposed and may still be liable to meet decommissioning costs in future.
21. Creating such barriers to transferring interests and the associated liabilities means property rights are no longer divestible. Clearly defined and divestible property rights are a fundamental part of any market economy. Where rights are restricted, the incentive to invest is severely weakened.
22. Furthermore, this clause sets a poor precedent, not just within the sector, but for other businesses who face decommissioning costs or manage environmental risks. We can think of no other situation in New Zealand where a business is legitimately sold, and the seller is responsible for any liabilities which might be accrued by the new owner. This is a fundamental change to how business transactions work. It will create significant uncertainty, have a chilling effect on investment and will make New Zealand a less attractive place to invest or do business.

Collaboration with industry required to develop a balanced approach

23. We note some options were not publicly consulted on before drafting the Bill. We would have expected a full and genuine consultation on issues such as perpetual liability, particularly given the potential to adversely impact on current or future permit and license holders. The failure to do so creates further uncertainty in a sector which is already facing significant uncertainty.
24. We appreciate early indication of policy direction through parallel consultations on the Bill and the regulations. However, submitters have raised a number of concerns with the current drafting of the Bill and we would expect any changes to the Bill may result in changes to regulations. We encourage the Ministry to continue collaborating with industry to ensure a balanced approach.

⁶ World Energy Council, Energy Trilemma Index <https://trilemma.worldenergy.org/#!/country-profile?country=New%20Zealand&year=2020>

Appendix One - Background information on 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](#)).



The [BusinessNZ Energy Council \(BEC\)](#) is a group of New Zealand's peak energy sector organisations taking a leading role in creating a sustainable energy future. BEC is a division of BusinessNZ, New Zealand's largest business advocacy group. BEC is a member of the [World Energy Council \(WEC\)](#). BEC members are a cross-section of leading energy sector businesses, government and research organisations. Together with its members BEC is shaping the energy agenda for New Zealand.

Our vision is to support New Zealand's economic wellbeing through the active promotion of the sustainable development and use of energy, domestically and globally. With that goal in mind, BEC is shaping the debate through leadership, influence and advocacy.