

27 January 2020

Resource Markets Policy
Ministry of Business, Innovation and Employment
By email to Resource.Markets.Policy@mbie.govt.nz

Dear Resource Markets Policy team

Review of the Crown Minerals Act 1991

1. This is a submission by the Major Electricity Users' Group (MEUG) on the discussion document "Review of the Crown Minerals Act 1991" (CMA) released by the Minister of Energy and Resources on 19th November 2019 and published on the Ministry of Business, Innovation & Employment web site.¹
2. MEUG members have been consulted in the preparation of this submission. This submission is not confidential. Some members may make separate submissions.

MEUG's interest

3. The CMA is important to MEUG because it governs the exploration and mining of:
 - Indigenous natural gas used as a power station fuel; and
 - New Zealand mined minerals needed to produce materials. These materials include concrete, steel, aluminium and rare minerals used in the construction of power stations, dams, wind turbines, electricity lines infrastructure and mechanical and electrical equipment including batteries.
4. An effective CMA supports decisions by existing and new investors in new power stations and electricity infrastructure ranging from the micro (household) to macro (grid) scale.
5. MEUG's secondary interest in the CMA is to promote best practice policy and regulatory decision making. The Tranche One changes to the CMA to implement the 12th April 2018 announcement to limit future petroleum exploration permits to onshore Taranaki, in the view of MEUG, fell well short of best practice. We explained our concerns in a submission to the Environment Committee on the Crown Minerals (Petroleum) Amendment Bill in 2018.² The detriments of those changes and the cavalier process used are still relevant and a source of discontent and uncertainty for businesses.

¹ <https://www.mbie.govt.nz/have-your-say/review-of-crown-minerals-act-1991/>. Document URL
<https://www.mbie.govt.nz/dmsdocument/7320-discussion-document-review-of-the-crown-minerals-act-1991>.

² Refer MEUG submission 11th October 2018 at <http://www.meug.co.nz/node/955>

6. The discussion paper proposes a fast-track process of less than 1-year for Cabinet to decide proposed changes, a Bill to be drafted and tabled, review by a select committee and public consultation, concluding with consideration by Parliament and enactment by the end of 2020. Legislative changes usually take around 1 ½ years. The discussion paper does not explain what benefits there are of fast-tracking Tranche Two changes. We think there are risks of unintended consequences if proposed options are not robustly stress tested. For example, changes to the CMA to reduce future gas use may be considered a benefit but have an unintended consequence of increasing costs and risks to supply in the electricity market and hence undermine electrification of the transport and process-heat sectors.
7. Getting changes to the CMA right and not rushing is MEUG's preference.
8. Another risk is that important secondary legislation (the Mineral Programmes) is not being considered concurrent with this review of the CMA.

To “promote” or not?

9. As the discussion paper is a broad review of the CMA, we agree the question needs to be asked as to whether the purpose statement is still fit-for-purpose. In MEUG's view there is no compelling case to change the purpose statement. The government as custodian of Crown owned minerals should retain and have its performance measured against the purpose statement in the CMA (s.1A) “... to promote prospecting for, exploration for, and mining of Crown owned minerals for the benefit of New Zealand.”
10. Having a purpose statement requiring a government agency to promote certain outcomes is widely used and we see no reason why it should not be retained in the CMA, e.g.:
 - For the Electricity Authority, “The objective of the Authority is to promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers.”³
 - For the Commerce Commission, “The purpose of this Act is to promote competition in markets for the long-term benefit of consumers within New Zealand.”⁴

For regulation of monopolies, Part 4 of the Commerce Act has a specific purpose statement that commences with the text “The purpose of this Part is to promote the long-term benefit of consumers in markets referred to in section 52 by promoting outcomes that are consistent with outcomes produced in competitive markets such that suppliers of regulated goods or services ...”⁵

³ s.15 Electricity Industry Act, <http://www.legislation.govt.nz/act/public/2010/0116/latest/096be8ed8164a0d5.pdf>

⁴ S1A, Commerce Act 1986, <http://www.legislation.govt.nz/act/public/1986/0005/latest/096be8ed818bf812.pdf>

⁵ Ibid, s.52A.

No need for additional well-being concepts in the CMA

11. Figure 2 in the discussion paper titled “Wellbeing in the regulatory systems for Crown Minerals” is a helpful summary of how the CMA intersects with other legislation to provide a matrix covering the four capital stocks of financial and physical capital, human capital, social capital and natural capital. Those four capital stocks are at the heart of Treasury’s thinking on a Living Standards Framework as “an aide for policy advisors” and to assist Treasury measure and meet its departmental vision of “higher living standards for New Zealanders.”⁶
12. The possibility of changing the CMA to require consideration of the Living Standards Framework or four capital stocks misses the point of the Framework. The Framework is a tool for developing policy advice and is being continuously improved by Treasury. It should already be part of every government policy analysts’ toolbox. Financial and physical capital is the most important of the four capital stocks for decisions required under the CMA and therefore conventional business cost-benefit-analysis techniques are most relevant. Treasury remind users of the Framework that considering the effects of a proposed policy change on the four capital stocks does not excuse policy advisors from concluding their analysis with a quantitative assessment of the benefits and costs:⁷

“When projects have many different benefits, the Living Standards Framework can help you think through the different aspects, and illustrate the gains from doing it, and the synergies or trade-offs of the different options.

This, of course, needs to be accompanied by the assessment of the value of these gains and the costs involved.”
13. MEUG therefore does not support a change to the CMA that includes reference to the four capital stocks that are the foundation of Treasury’s evolving thinking on a Living Standards Framework, colloquially referred to as “well-being”.

Loss of future mineable petroleum acreage is alarming

14. The effect of the Tranche One decisions on future explorable and mineable offshore petroleum acreage set out in chapter 3 is alarming. As noted in paragraph 6 above, strategies to electrify the transport and process heat sectors will be undermined if there is not a viable, commercially competitive and reliable supply of natural gas for new gas-fired peaking power stations. Proposed improvements to the CMA from this Tranche Two review should reconsider and mesh with a review of the Tranche One decisions.

Yours sincerely



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Executive Director

⁶ The Treasury’s Living Standards Framework, February 2018, p2, <https://treasury.govt.nz/sites/default/files/2017-12/his-usingtheframework-v2.pdf>

⁷ Ibid, p11.