

Government's New Resources Strategy could restrict Changes to the Crown Minerals Act and Prolong New Zealand's Dependency on Fossil Fuels

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Environmental organisations, community groups and individuals concerned about Government's ongoing support and reliance on fossil fuels in their multi-decade transition plan to a zero carbon economy will no doubt be intending to make submissions on the Government's draft Resources Strategy and Crown Minerals Act review. For them, this Commentary will hopefully serve as a wake-up call.

Earlier this year, Minister of Energy and Resources Megan Woods directed MBIE to begin work on two interrelated pieces of work: an Aotearoa Resource Strategy 2019-2029 and a review of the Crown Minerals Act 1991. These two work programmes will have a significant effect on how fast New Zealand phases out reliance on fossil fuels for energy and export earnings.

Background

Under the National Government's 'Business Growth Agenda,' export earnings from fossil fuel exploration and production were intended to grow from \$3bn to \$30bn (+900%) by 2021. Rapid fossil fuel development, and government's role in promoting and facilitating it, were mandated by the CMA and guided by the 'New Zealand Energy Strategy 2011-2021.' That strategy has now been superseded by various Coalition Government policy initiatives such as the ban on new offshore oil exploration permits, energy efficiency initiatives, Just Transition planning and the Zero Carbon Bill.¹

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Since February, MBIE's Resource Markets Policy team has been working on drafting a Resource Strategy for minerals and petroleum (the Strategy) *in parallel with* a review of the Crown Minerals Act, the second tranche of work on the Act following the CMA (Petroleum) Amendment that put an end to new permits for offshore exploration.

In April the policy team invited initial thoughts about what should be included in the Strategy from Treaty partners and a range of 'stakeholders' who had registered their interest with MBIE. Shortly thereafter, FFARN contacted the policy team raising questions about the timing and relationship of

¹ Refer to Attachment A, OIA response from Hon Dr Megan Woods, 23 July 2019, p 3

the Resource Strategy and CMA review work streams. It appeared that the intention was to sign off on the Strategy before the CMA review was completed, thereby creating a risk of getting the cart before the horse. Stakeholders were likely to be confused or constrained in what they could say in their submissions, the Resource Strategy would not be supported by an amended CMA, or more likely changes to the CMA would be limited by the already finalised Strategy.

When no response was forthcoming from either the Minister's office or the MBIE policy team, FFARN submitted an OIA request to the Minister in June. On 23 July, Minister Woods replied to FFARN's OIA request.² Her letter did answer some of the questions raised by FFARN and conveyed new information, but it also raised further concerns.

Timing of the two work programmes

Community groups and environmental organisations are at a disadvantage because they haven't been given a clear indication of when public submissions will be invited or when the Strategy and CMA review will be completed. Most aren't privy to the Wellington officials' gossip network. Since the Minister has declined to release briefing papers about the work programmes, a bit of guesswork is involved. The policy team has been vague about when the Strategy will be released for public consultation. An earlier timetable indicated it would be 'mid-year'. A recent email (4/7/19) to stakeholders stated it would be 'in the coming months.' It presumably will be a matter of the team's work load and capabilities. The Strategy may be released for comment sometime in late August or September, but it could be later. Because of the relationship between the two pieces of work (see below) it will need to be finalised by the end of the year.

The CMA review is running in parallel but lags behind the Strategy work. A discussion document on proposed changes to the CMA is being prepared and will be released for public comment in 'late 2019.' This will no doubt occur after public submissions on the Strategy have closed and nearer the time the Strategy is signed off by the Minister. Assuming the CMA review discussion document is released before Christmas, any amendments to the CMA will have to be made in the early 2020 parliamentary session.

A flawed policy development process

Parties planning to make submissions on the Strategy and CMA review may have assumed that amendments to the CMA would need to be passed into law before the Resources Strategy was finalised and that both pieces of work would be based on a clear statement of Government's energy, resources and climate policy framework. This seems both logical and necessary, since changes to the CMA are likely to be needed to remove barriers to Government's policy framework and provide for a Resources Strategy that takes into account climate change goals and a more holistic understanding of wellbeing than simply economic growth (i.e. the Wellbeing Budget). The process would be:

² Attachment A, OIA response from Hon Dr Megan Woods, 23 July 2019,



In her recent OIA reply³, the Minister sets out a different and rather more convoluted process. First of all, “the Strategy itself *does not set out policies.*” It is not a policy document. It sets “the Government’s *vision, principles and objectives for petroleum and minerals in New Zealand*” and “informs the development of ‘other policies’ [sic].” The Strategy will “inform” and “underpin the CMA review,” not the other way around. Like the proverbial duck analogy, the Strategy certainly quacks like a policy framework but it isn’t one according to the Minister.

Presumably there must be a policy framework somewhere that guides how the vision, principles and objectives in the Strategy are eventually articulated. In turn the Strategy will influence the CMA review. It certainly won’t just ‘emerge’ from a consensus among competing submissions on the Strategy, conjured up by the policy team.

The answer seems to be ‘yes’ there is an existing policy framework, albeit a loose one cobbled together from various Government policy initiatives and public pronouncements centred around transitioning to a zero carbon economy. On page 3 of the Minister’s OIA response, she states:

“A particular focus of the Resource Strategy is ensuring that we can successfully transition to a low-carbon economy. This means reduced reliance on coal and gas as it is *gradually phased out* by alternative energy sources. The Strategy also acknowledges that *coal and gas have an important role to play during the transition* to ensure energy security and affordability.”

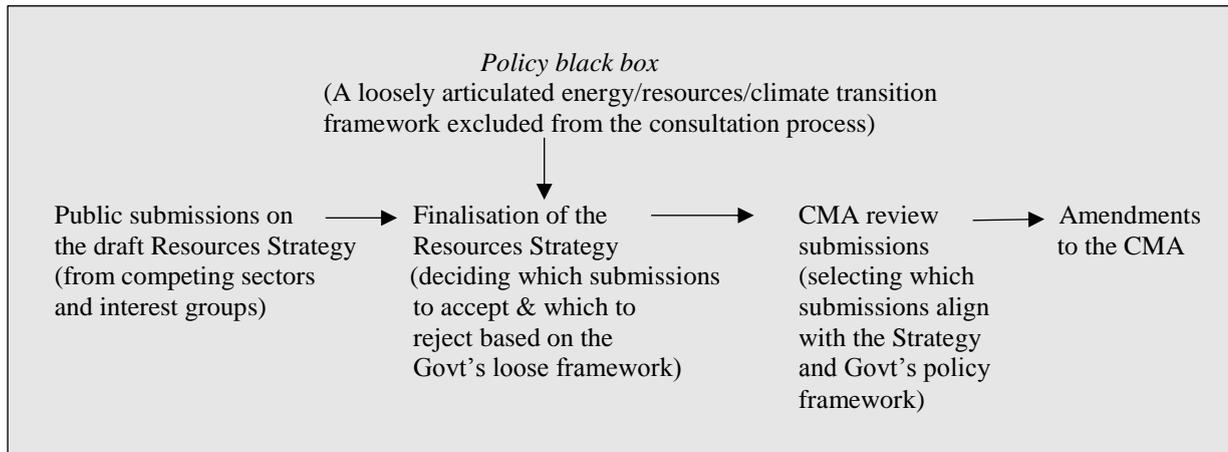
In May Minister Woods told the NZ Minerals Forum meeting in Dunedin that the Resources Strategy would be “driven by the objective of transitioning from fossil fuels to renewable energy.” But it must be a “planned and deliberate transition over the coming decades, rather than an abrupt and unplanned one overnight.” She implied that those wanting to “go faster in moving away from particular fuels” were advocating a disruptive, chaotic process rather than a carefully planned one.

This seems to be the broad approach the Government has adopted to energy, resources, and climate policy although it has not yet been articulated as coherently as National’s ‘Business Growth Agenda’. It also happens to align closely with the position that the fossil fuels industries have lobbied for.

³ Refer to Attachment A, OIA response from Hon Dr Megan Woods, 23 July 2019, p 2.

In terms of the proposed Resources Strategy, that means it's already a given that the Government will continue to allow and facilitate exploration for and extraction of coal, gas and oil not only for the next ten years but for decades to come. It is simply taken for granted that this loose policy framework will be reflected in the 'vision, principles and objectives' of the Resource Strategy, which in turn will 'underpin and inform' the CMA review. The framework itself will not be subject to public comment or change either in consultation on the Strategy or during the review of the CMA.

In summary, the policy development process appears to be:



The design of this policy process appears to be intentional. Submitters are in effect being chivvied through a series of sheep-gates, where submissions that don't conform to the Government's loose energy/resources/transition policy framework are shunted to the reject pen. Those that do are kept and used to legitimate the final content of the Strategy and amendments to the CMA.

If for example you wanted to make a submission suggesting that the Strategy include phasing out coal and petroleum extraction over the next ten years, you would be out of luck. If you wanted to argue a case for amending the CMA Purpose statement to end fossil fuels extraction, the Resource Strategy would already have been finalised and ruled that option out. The Government's framework already assumes continued 'sustainable' extraction of coals, oil and gas will continue for decades to come.

What can be done?

Some of the problems with the Resource Strategy development process and CMA review could be resolved if the Minister were to:

- (a) ask the policy team to include a summary of the Government's energy/resources/zero carbon transition framework for comment in the Resource Strategy public consultation; and
- (b) delay finalising the draft Resource Strategy until the CMA review is completed.

Unfortunately, as mentioned, the Minister has declined to release official briefings about the design of the Strategy and CMA review work programmes so we don't know what led her to adopt the current process.

There are a number of things community groups, environmental organisations and concerned individuals could do if these problems with the policy development process persist. You could:

- Address Government's hidden energy/resources/transition policy in your submission
- Spread the word to other interested groups and alert them to problems with the consultation process
- Raise your concerns with the Minister and policy team
- Bring your concerns and needed changes to the attention of the media.

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23 JUL 2019

Dr Terrence Loomis

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Thank you for your email of 24 June 2019 requesting the following under the Official Information Act 1982 (the Act):

- a) *any Cabinet papers relating to the development of the Resource Strategy,*
 - b) *the Resource Strategy work plan/programme, and*
 - c) *all communications between yourself, your staff and MBIE officials regarding the work programmes for the Resource Strategy and the CMA 1991 (Tranche 2) Review that address the following questions:*
1. *How specifically will the Resource Strategy 'underpin' or otherwise relate to the CMA 1991 Review?*
 2. *Is it intended that the Resource Strategy work programme (including public consultation) will be completed and the Strategy signed off by Cabinet before the CMA 1991 Review is completed? Before any CMA amendment bill is enacted into law?*
 3. *If so, what plans are in place to ensure the purpose, principles, values and objectives of the Resource Strategy take account of, and align with, the CMA as eventually amended? Will finalisation of the Resource Strategy be delayed, or will the Strategy be reviewed following amendments to the CMA?*
 4. *What provisions if any have been made regarding public consultation on the draft Resource Strategy so that submitters are not (a) limited in the scope of their submission by the provisions within the current CMA 1991, or (b) have any portions of their submissions disregarded because they propose or assume changes to the CMA 1991 (e.g. the Purpose Statement)?*
 5. *Is the New Zealand Energy Strategy 2011-2021: Developing Our Energy Potential still Government's policy? If so has it been taken into account in policy work on the Resource Strategy, especially expectations in the Energy Strategy*

that coal and gas use will increase in the decades to 2050, and that these resources need to be promoted and developed for the sake of the economy and energy security?

I have responded to each part of your request below.

- a) This part of your request is refused under section 18(e) of the Act, as no Cabinet papers on this subject exist: "(e) that the document alleged to contain the information requested does not exist or, despite reasonable efforts to locate it, cannot be found".
- b) I have identified four briefings within the scope of this part of your request and have listed their titles below. The briefings themselves are withheld under section 9(2)(f)(iv) of the Act, to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials.
- 2145 18-19: Briefing Petroleum and Minerals Resource Strategy - first draft overview
 - 2147 18-19: Engagement plan for the Petroleum and Minerals Resource Strategy and the tranche two review of the Crown Minerals Act 1991
 - 2576 18-19: Petroleum and Minerals Resource Strategy- revised draft overview
 - 3858 18-19: Draft Resource Strategy for Engagement with Stakeholders
- c) This part of your request is also withheld under section 9(2)(f)(iv) of the Act: "(f) maintain the constitutional conventions for the time being which protect - (iv) the confidentiality of advice tendered by Ministers of the Crown and officials"

However, to assist you, please find answers to your questions below:

1. How specifically will the Resource Strategy 'underpin' or otherwise relate to the CMA 1991 Review?

The Resource Strategy sets the Government's vision for petroleum and minerals in New Zealand. Please note that the Strategy itself does not set out policies, rather it informs the development of other policies. It is intended that the CMA review will be informed by the vision, principles and objectives of the Resource Strategy.

2. Is it intended that the Resource Strategy work programme (including public consultation) will be completed and the Strategy signed off by Cabinet before the CMA 1991 Review is completed? Before any CMA amendment bill is enacted into law?

Yes, as the Resource Strategy underpins the CMA review, it is intended that the Strategy is completed before the CMA review is completed. The Strategy will be published before any amendments are made to the CMA, as recommended by the review.

3. *If so, what plans are in place to ensure the purpose, principles, values and objectives of the Resource Strategy take account of, and align with, the CMA as eventually amended? Will finalisation of the Resource Strategy be delayed, or will the Strategy be reviewed following amendments to the CMA?*

As the Strategy sets the Government's vision for the future of petroleum and mineral development in New Zealand, any changes recommended by the CMA review will be informed by the purpose, principles, values and objectives of the Resource Strategy, not the other way around.

4. *What provisions if any have been made regarding public consultation on the draft Resource Strategy so that submitters are not (a) limited in the scope of their submission by the provisions within the current CMA 1991, or (b) have any portions of their submissions disregarded because they propose or assume changes to the CMA 1991 (e.g. the Purpose Statement)?*

Our Government is taking a collaborative approach to the formulation of the Resource Strategy. Early engagement with Treaty partners and stakeholders on what they would want to see in the Strategy has already been conducted. We intend to continue this collaborative approach when the Strategy is released for public consultation later in **2019**.

The questions will be open-ended and not confined to issues related to the CMA; all submissions received during the public consultation will be considered. There will be opportunities for the public to discuss any issues with the CMA itself when its review discussion document is released for public consultation later in the year.

5. *Is the New Zealand Energy Strategy 2011-2021: Developing Our Energy Potential still Government's policy? If so has it been taken into account in policy work on the Resource Strategy, especially expectations in the Energy Strategy that coal and gas use will increase in the decades to 2050, and that these resources need to be promoted and developed for the sake of the economy and energy security?*

The Energy Strategy 2011-2021 was issued under the last Government, and many recent policy developments have superseded it such as the announcement on April 12 2018 to limit oil and gas exploration to onshore Taranaki. This Government has a goal to transition New Zealand's economy to a clean, green and carbon-neutral one by 2050, and the energy sector is central to this transition.

A particular focus of the Resource Strategy is ensuring that we can successfully transition to a low-carbon economy. This means reduced reliance on coal and gas as it is gradually phased out by alternative energy sources. The Strategy also acknowledges that coal and gas have an important role to play during the transition, to ensure energy security and affordability.

In terms of the information withheld under section 9(2) of the Act, I am satisfied that, in the circumstances, the withholding of this information is not outweighed by other considerations that render it desirable to make it available in the public interest.

You have the right to seek an investigation and review by the Ombudsman of my decision on this request, in accordance with section 28(3) of the Act. The relevant details can be found at: www.ombudsman.parliament.nz.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Woods', written in a cursive style.

Hon Dr Megan Woods
Minister of Energy and Resources