OFFICIAL

IN THE WAITANGI TRIBUNAL KEI MUA I TE TARAIPIUNARA	WAI 3325 WAI 421 WAI 593 WAI 869 WAI 1383 WAI 1890 WAI 3278 WAI 3279 WAI 3288
UNDER	The Treaty of Waitangi Act 1975
CONCERNING	The Climate Change Priority Inquiry
AND	Claims brought by Te Waimate Taiamai ki Kaikohe Claims Alliance
AND	The Ngāti Ruapani ki Waikaremoana Climate Change Claim
AND	Te Upokorehe Future Generations Climate Change Claim
AND	The Ngāti Porou ki Hauraki Climate Change Claim

AFFIDAVIT OF DAVID ALARIC JOHN TONG

Dated: 1 September 2025

RECEIVED
Waitangi Tribunal
3 Sep 25
Ministry of Justice
WELLINGTON

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KŌKIRI CHAMBERS

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I, **David Alaric John Tong**, Global Industry Campaign Manager at Oil Change International, living in Melbourne, Australia, ~~swear~~ / affirm:

1. My full name is David Alaric John Tong. I am the Global Industry Campaign Manager at Oil Change International (**OCI**). I currently live in Melbourne, Australia.

2. I have attached to this affidavit an exhibit marked **[DT-1]**. It consists of a bundle of relevant documents. The bundle is paginated. When I refer to a document in the bundle, I provide the reference to the exhibit and page number in bold and in square brackets, for example **[DT-1, #]** where # is the page number.

Background

3. The purpose of this evidence is to assist the Waitangi Tribunal in the Wai 3325 Climate Change Priority Inquiry.

4. While this evidence has not been prepared for the High Court, I have read the Code of Conduct for expert witnesses set out in schedule 4 of the High Court Rules. I agree to comply with that code of conduct for the purposes of this Inquiry. My background and qualifications are set out below. I confirm that the statements made in my evidence are within my area of expertise (unless I state otherwise). I also confirm that I have not omitted consideration of material facts which might alter the opinions set out.

5. My expertise is in international climate policy and law, with a particular focus on supply side policy in relation to the oil and gas industry.

6. OCI is a research, communications, and advocacy organisation working to expose the true costs of fossil fuels and facilitate the ongoing transition to clean energy. OCI is legally incorporated in the United States of America as a 501(c)(3) non-profit organisation. Its head office is located at 714 G St. SE, #202, Capitol Hill, Washington, DC – but it has a globally spread staff of around 40 people.

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7. As Global Industry Campaign Manager, I lead OCI's work in relation to major international oil and gas companies. In my OCI role, I have worked closely on matters in relation to the International Energy Agency's (**IEA**) scenarios and on OCI research and analysis around the climate implications of oil and gas expansion, including as the lead author of several OCI reports and briefings.

8. Before joining OCI in March 2020, I was the Climate Change Programme Manager at WWF-New Zealand, based in Wellington. In this role, I was heavily involved in work towards the Climate Change Response (Zero Carbon) Amendment Act 2019 (**Zero Carbon Act**), and in involving New Zealand businesses in the Science-Based Targets Initiative (**SBTi**).

9. Outside my work at OCI, I am the Deputy Chair of Greenpeace International, and was the Chair from 2023-2024. Before that, I was a Board Member (2025-2022) and Chair of Greenpeace Aotearoa (2021-2022).

10. From 2013-2015, I completed a Master of Laws with First Class Honours at the University of Auckland, specialising in international climate law. I was admitted as a barrister and solicitor of the High Court of New Zealand in 2010. I worked as a Judges' Clerk at the High Court in Auckland from 2009-2010, a commercial litigator at a large firm from 2011-2013, and a community lawyer at the Auckland Community Law Centre from 2014-2015. I practiced as in-house counsel while at WWF-New Zealand from 2017 to February 2020.

11. Since 2011, I have attended ten of the last thirteen United Nations Framework Convention on Climate Change (**UNFCCC**) Conferences of the Parties (**COP**), and the last three rounds of mid-year intersessional climate negotiations in Bonn. In my OCI role, I co-coordinated the Climate Action Network International (**CAN**) Energy Working Group from 2021 to 2024, coordinating international civil society work in relation to energy transitions around the UN climate negotiations.

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Scope of this Evidence and Limitations

12. This evidence provides a summary of findings and research around the incompatibility of new oil and gas expansion with the Paris Agreement to the United Nations Framework Convention on Climate Change's (**Paris Agreement**) objectives.

13. Though this evidence cites peer reviewed analysis and IEA, Intergovernmental Panel on Climate Change (**IPCC**), and International Court of Justice (**ICJ**) findings, it has not itself been peer reviewed nor reviewed by the IEA, IPCC, or ICJ.

14. This evidence is international in scope and does not provide specific findings in relation to New Zealand's obligations. However, under the principle of common but differentiated responsibilities and respective capabilities contained in the UNFCCC and Paris Agreement – and recently affirmed by the ICJ in its 23 July 2025 Advisory Opinion on the Obligations of States in Respect of Climate Change (**ICJ Advisory Opinion**) – wealthy, developed nations have a greater obligation to take mitigation actions that others. Consequently, New Zealand should phase out oil and gas production and use faster than the median of international transition scenarios.

15. I am not an expert on the particular impacts of climate change on Māori. However, I note that there is widespread recognition that the climate crisis has disproportionate impacts on indigenous peoples.

Summary

16. **Any** new oil and gas extraction is inconsistent with the objectives of the Paris Agreement. In short:

    a. The IEA has found that there is no room for any new oil and gas expansion if warming is going to be limited to 1.5 degrees Celsius (°C);

    b. IPCC analysis has reached similar findings;

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c. Peer reviewed journal articles (building on OCI research) show that burning *just* the oil and gas in developed, operating fields now would warm the world beyond 1.5°C, and that burning *just* the oil, gas, and coal in developed, operating fields and mines now would warm the world beyond 2°C;

d. All countries agreed at the UN climate change conference in Dubai in 2023, COP28, to "transitioning away from fossil fuels in energy systems"; and

e. The ICJ Advisory Opinion concludes that granting fossil fuel production licenses may constitute an internationally wrongful act attributable to states.

17. Consequently, the Crown's withdrawal from the Beyond Oil and Gas Alliance (**BOGA**), and subsequent amendments to the Crown Minerals Act, are inconsistent with New Zealand's obligations under international law (including but not limited to the Paris Agreement), because they are inconsistent with limiting warming to 1.5°C or well below 2°C. The Crown Minerals Amendment Act 2025 is also arguably inconsistent with New Zealand's membership of the Coalition on Phasing Out Fossil Fuel Subsidies (**COFFIS**) and with key free trade agreements.

Assumption that the Crown intends to Meet Temperature Targets

Paris Agreement

18. The Paris Agreement's objectives are set out in Art 2. Article 2(1)(a) in particular provides for two temperature targets (emphasis added):[1]

> Article 2
>
> 1. This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate

[1] Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104, art 2(1)(a).

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> change, in the context of sustainable development and efforts to eradicate poverty, including by:
>
> a. **Holding the increase in the global average temperature to well below 2 °C above preindustrial levels** and **pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels,** recognizing that this would significantly reduce the risks and impacts of climate change.

19. This explicit 1.5°C target reflected leadership from Pacific nations, and particularly from then-Minister Tony de Brum of the Marshall Islands in brokering and creating the "High Ambition Coalition" (**HAC**) of nations.

20. On a personal note, I remember New Zealand government representatives' surprise at the COP21 negotiations in Paris at the launch of the HAC, and recall being personally embarrassed by how relatively late in the negotiations it was that the Crown endorsed the growing, Pacific-led push for a 1.5°C target. That said, at subsequent COPs, New Zealand has signed on HAC statements and participated in HAC ministerial meetings.

Climate Change Response Act 2002

21. Domestic law is aligned with the objectives of the Paris Agreement through the Climate Change Response Act 2002 (**CCRA**). The purpose of the CCRA is set out at s 3:

> To contribute to the global effort under the Paris Agreement to limit the global average temperature increase to 1.5° Celsius above pre-industrial levels.

ICJ Advisory Opinion

22. In July 2025 the ICJ found (emphasis added):[2]

[2] ICJ Advisory Opinion at [224].

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> **1.5°C has become the scientifically based consensus target under the Paris Agreement.** At the twenty-sixth COP, which was the third CMA to the Paris Agreement, parties "[r]ecognize[d] that the impacts of climate change will be much lower at the temperature increase of 1.5°C compared with 2°C and resolve[d] to pursue efforts to limit the temperature increase to 1.5°C"

Assumption that the Crown Intends to Meet These Targets

23. For the purposes of this evidence, I take it as accepted that the Crown is committed to meeting its climate change targets under the Paris Agreement, including but not limited to its nationally determined contributions. I also take it as accepted that the Crown intends to act in accordance with its obligations at domestic and international law.

There is no room for new oil and gas expansion for 1.5°C or 2°C

24. If the Crown intends to meet these targets and to meet its domestic and international law obligations, then there is no room for **any** new oil, gas, and coal beyond already developed fields and mines.

25. To be categorical: **burning just the oil, gas, and coal in existing, developed, operating fields would warm the world beyond 2°C.**

26. Both the IEA and IPCC have concluded that to achieve the objectives of the Paris Agreement some of the fossil fuels found in operating fields and mines operating cannot be burned:

    a. The IEA first warned in 2021 that approving new oil and gas fields and mines for construction, let alone exploring for new fossil fuels, is incompatible with its 1.5°C-aligned Net Zero Emissions (**NZE**) scenario.[3]

    b. In its updated 2023 NZE scenario the IEA stated that the world has waited too long to avoid hard choices.[4] The IEA

[3] IEA, *Net Zero by 2050: A Roadmap for the Global Energy Sector* 2021 **[DT-1, #22]**.
[4] IEA, *Net Zero Roadmap: A Global Pathway to Keep the 1.5 °C Goal in Reach, 2023 Update* 2023, **[DT-1, #374]**.

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underlined that, due to the failure to rein in fossil fuels since 2021, declines in oil and gas use would need to accelerate after 2030,[5] to the extent that "a number of projects are closed before they reach the end of their technical lifetime."[6]

c. The IEA has also found that none of the liquefied natural gas (**LNG**) export projects under construction today are necessary under its 1.5°C pathway, and that after 2030 governments and companies will need to scale back a significant portion of existing LNG capacity.[7]

d. The IPCC's most recent Synthesis Report warned that "projected CO2 emissions from existing fossil fuel infrastructure without additional abatement would exceed the remaining carbon budget for 1.5°C."[8]

27. As I will set out below, peer reviewed journal articles and OCI research also confirm these findings.

28. OCI first published research showing that burning just the oil, gas, and coal in developed, operating fields would warm the world beyond 1.5°C in its 2016 report, *The Sky's Limit*.[9] Since then, OCI has regularly updated this analysis.

29. In 2022, colleagues at OCI and academics wrote and published an Environmental Research Letters paper, which applies a peer reviewed version of OCI's *The Sky's Limit* analysis to show that the majority of oil, gas, and coal in operating fields now must never be burned for 1.5°C.[10]

30. In 2023, OCI updated the data using this peer reviewed methodology, and found that 60% of oil, gas, and coal in developed, operating fields

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[5] IEA, *World Energy Outlook 2023* **[DT-1, #583 and #588]**.
[6] IEA *The Oil and Gas Industry in Net Zero Transitions* 2023 **[DT-1, #824]**.
[7] At **[DT-1, #824]**.
[8] IPCC, *Summary for Policymakers, Climate Change 2023: Synthesis Report* 2023, **[DT-1, #1054]**.
[9] Greg Muttitt and others, *The Sky's Limit: Why The Paris Climate Goals Require A Managed Decline Of Fossil Fuel Production,* Oil Change International, 22 September 2016, **[DT-1, #1072]**
[10] Kelly Trout and others, 'Existing fossil fuel extraction would warm the world beyond 1.5 °C', 2022 **[DT-1, #1132]**.

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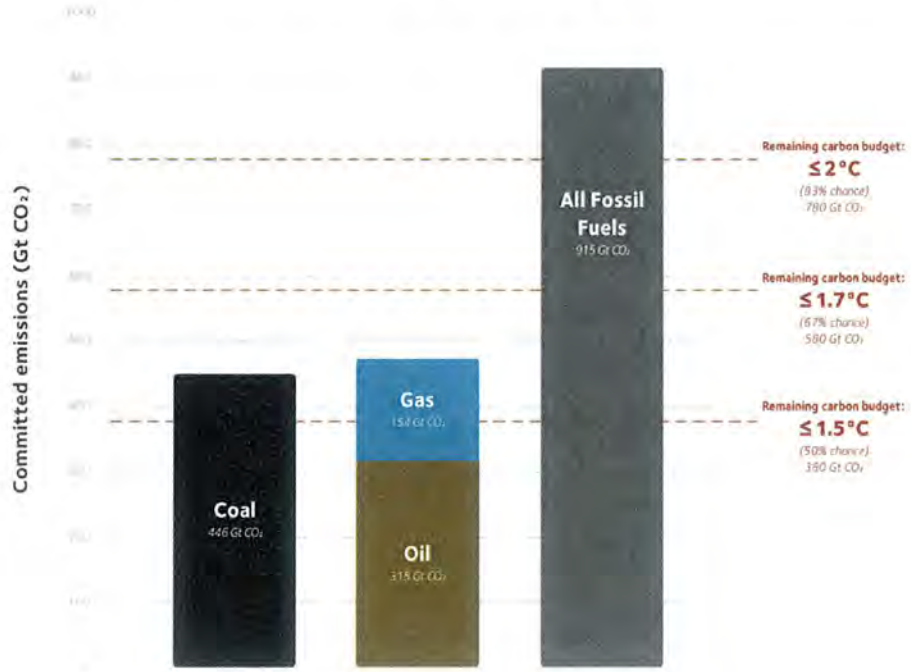
and mines as at 2023 must stay in the ground to limit warming to 1.5°C, as shown in Figure 1:[11]

Figure 1: CO2 emissions committed by developed oil and gas fields and coal mines, compared to remaining carbon budgets from the start of 2023



Source: Oil Change International analysis of Rystad Energy data (2023) (oil and gas); Trout and Muttitt et al (2022) (coal); Intergovernmental Panel on Climate Change (2021) and Global Carbon Project (2022) (carbon budgets).

31. A 2024 Science paper provides a meta-analysis of different scenarios, including both IEA and IPCC, and shows that existing oil, gas, and coal production more than meets projected fossil fuel demand in any 1.5°C scenario considered, as shown in Figure 2:[12]

[11] Kelly Trout *Sky's Limit Data Update: Shut Down 60% of Existing Fossil Fuel Extraction to Keep 1.5°C in Reach* Oil Change International, 16 August 2023 **[DT-1, #1145]**.

[12] Fergus Green and others, 'No new fossil fuel projects: The norm we need', 30 May 2024, *Science*, Vol 384, Issue 6699, **[DT-1, #1151–1155]**.

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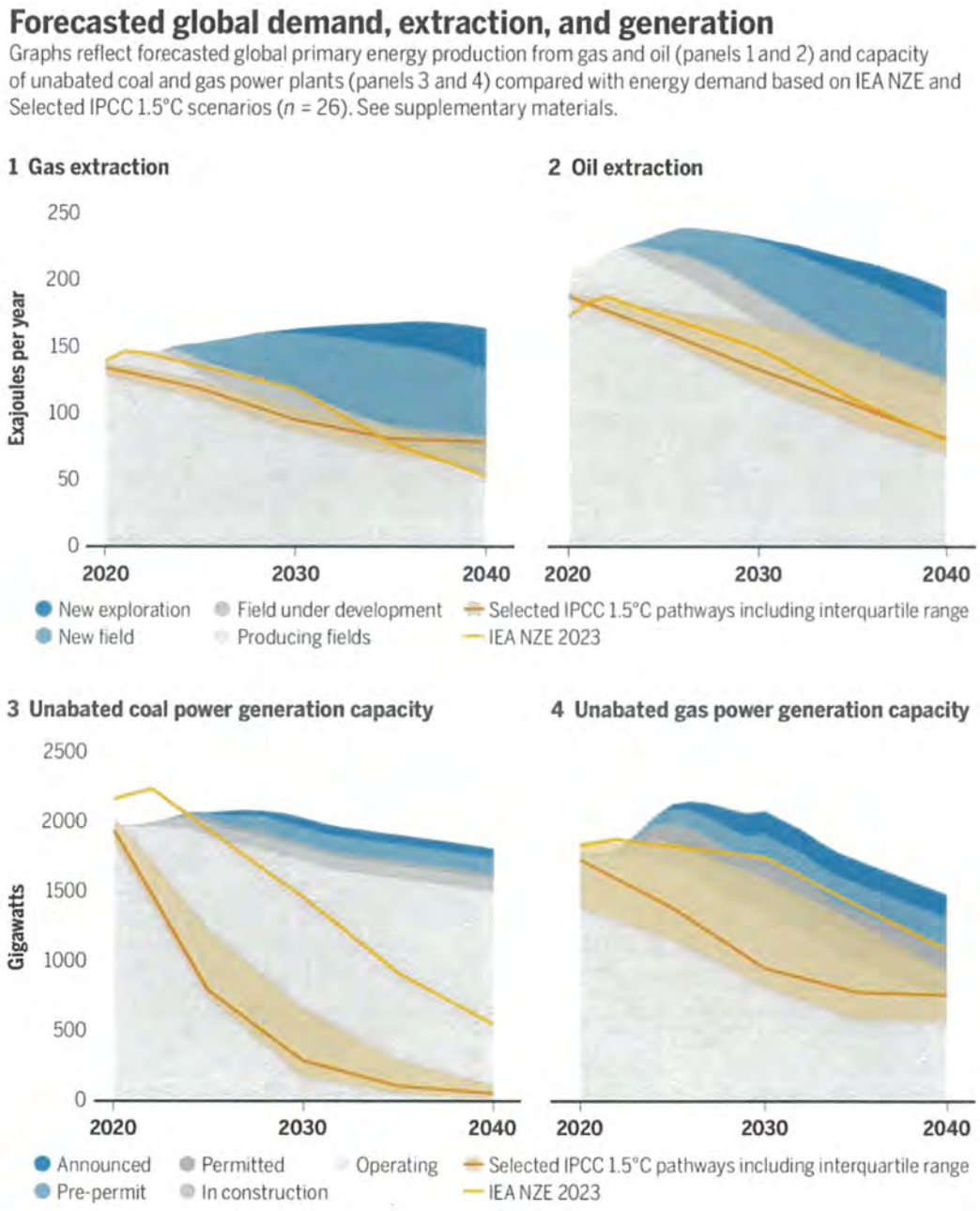
Figure 2: *Science* article graph of forecasted fossil fuel demand in 1.5°C scenarios



32. Recognising this reality, in 2023 all nations agreed at the United Nations climate change conference in Dubai, COP28, to an outcome that:

> 28. *Further recognizes* the need for deep, rapid and sustained reductions in greenhouse gas emissions in line with 1.5 °C pathways and calls on Parties to contribute to the

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following global efforts, in a nationally determined manner, taking into account the Paris Agreement and their different national circumstances, pathways and approaches (emphasis added):

(a) Tripling renewable energy capacity globally and doubling the global average annual rate of energy efficiency improvements by 2030;

(b) Accelerating efforts towards the phase-down of unabated coal power;

(c) Accelerating efforts globally towards net zero emission energy systems, utilizing zero- and low-carbon fuels well before or by around mid-century;

(d) **Transitioning away from fossil fuels in energy systems, in a just, orderly and equitable manner, accelerating action in this critical decade, so as to achieve net zero by 2050 in keeping with the science;**

(e) Accelerating zero- and low-emission technologies, including, inter alia, renewables, nuclear, abatement and removal technologies such as carbon capture and utilization and storage, particularly in hard-to-abate sectors, and low-carbon hydrogen production;

(f) Accelerating and substantially reducing non-carbon-dioxide emissions globally, including in particular methane emissions by 2030;

(g) Accelerating the reduction of emissions from road transport on a range of pathways, including through development of infrastructure and rapid deployment of zeroand low-emission vehicles;

(h) **Phasing out inefficient fossil fuel subsidies that do not address energy poverty or just transitions, as soon as possible;**

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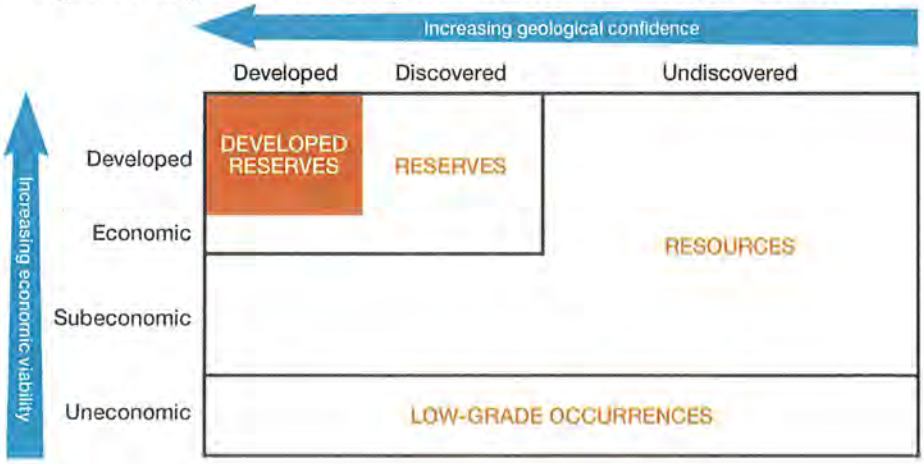
33. Failure to live up to those goals may have legal repercussions. The ICJ Advisory Opinion found that (emphasis added):[13]

> **Failure of a State to take appropriate action to protect the climate system from GHG emissions — including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licences or the provision of fossil fuel subsidies — may constitute an internationally wrongful act which is attributable to that State.** The Court also emphasizes that the internationally wrongful act in question is not the emission of GHGs per se, but the breach of conventional and customary obligations identified under question (a) pertaining to the protection of the climate system from significant harm resulting from anthropogenic emissions of such gases.

34. Importantly, developed fields and mines are the subset of proven oil, gas, and coal reserves where extraction permits and infrastructure have already been awarded, financed, and built. They are fields operating now. There are also proven reserves that are discovered but not yet developed, and discovered resources that are not economic to develop – but that may become economic to develop with technological advances or with higher oil or gas prices. This is illustrated in Figure 3:

Figure 3: Diagram of terminology for oil reserves, resources, and occurrences



[13] ICJ Advisory Opinion at [427].

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35. The above analysis shows that extracting and burning just the developed reserves would warm the world beyond 1.5°C or even 2°C. Extracting and burning all discovered reserves would warm the world far more.

36. In that context, it is my opinion that issuing permits to search for ever more oil, gas, and coal that can never be burned while meeting the Paris Agreement targets is inconsistent with the actions of a Government that is committed to meeting its climate change targets under the Paris Agreement, including but not limited to its nationally determined contributions.

Crown Withdrawal from BOGA and Crown Minerals Act Amendments

37. BOGA is an international alliance of governments and stakeholders working together to facilitate the managed phase-out of oil and gas production.

38. In 2020 and 2021, OCI played a significant role in putting together the scoping group of diplomats and experts who ultimately created BOGA. Since BOGA's launch in 2021, OCI (along with other civil society organisations) have continued to engage with BOGA.

39. In 2020, I met with New Zealand Government representatives to invite them to participate in the scoping process. They did so, and New Zealand was a founding associate member of BOGA when it launched in late 2021.

40. New Zealand withdrew from BOGA on 21 June 2025. The Crown explicitly linked this withdrawal to its decision to re-open new offshore oil and gas exploration. The Minister cited the repeal of the 2018 offshore oil and gas exploration ban as the main reason for leaving the coalition.[14]

[14] Eloise Gibson, 'NZ pulls out of global coalition for phasing out fossil fuels', *RNZ*, 25 June 2025, https://www.rnz.co.nz/news/political/565147/nz-pulls-out-of-global-coalition-for-phasing-out-fossil-fuels. **[DT-1, #1156]**.

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41. This decision appears to have been motivated by a desire to resign rather than being formally ejected. The BOGA Secretariat has stated that it told the Minister in late 2024 that re-opening offshore oil and gas exploration would require the Crown to leave BOGA or be ejected.[15] I discussed this both with representatives of BOGA and with New Zealand diplomats during the UN climate change negotiations in Baku, COP29, in 2024. The Crown knew by late 2024 that its intention to reopen new offshore oil exploration was inconsistent with being part of BOGA.

42. New Zealand's decision to withdraw from BOGA also followed with the announcement of NZ$200 million in funding in the 2025 Crown budget to support new fossil gas drilling.

43. The Crown was candid that withdrawal was part of a deliberate policy to enable and expand gas exploration and development.

44. In the final debates before passing the Crown Minerals Amendment Act 2025 on 5 August 2025, Crown Ministers explicitly stated that the objective was to restart oil and gas exploration and production.

45. These amendments may have consequences for New Zealand's participation in other diplomatic alliances and for free trade agreements that New Zealand is a party to.

46. COFFIS is a group of governments committed to accelerating the removal of direct and indirect fossil fuel subsidies, improving transparency, and developing national and international phase-out strategies. New Zealand joined during the UN climate change negotiations in Baku in 2024.[16] On that day I was present as

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[15] Eloise Gibson, 'Government told after election it would have to quit fossil fuel group if new exploration started', *RNZ*, 7 July 2025, https://www.rnz.co.nz/news/political/566152/government-told-after-election-it-would-have-to-quit-fossil-fuel-group-if-new-exploration-started **[DT-1, #1159]**; 'New Zealand leaves the Beyond Oil & Gas Alliance', *Beyond Oil and Gas Alliance*, https://beyondoilandgasalliance.org/news-events/ **[DT-1, #1161]**.

[16] 'UK, Colombia, New Zealand join fossil fuel subsidy coalition at COP29 as negotiators eye new climate finance deal', *Oil Change International*, 19 November 2024, https://oilchange.org/news/uk-colombia-new-zealand-join-fossil-fuel-subsidy-coalition-at-cop29-as-negotiators-eye-new-climate-finance-deal/ **[DT-1, #1162]**.

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participants within the UN negotiations questioned whether it was consistent for New Zealand to join such an alliance while the government was working to propose new incentives for oil and gas exploration.

47. New Zealand's participation in future HAC meetings and statements may also be compromised.

48. I am not an expert in trade law, but note that:

a. legal advice commissioned by the Green Party concluded that the Crown's reversal likely breaches the Agreement on Climate Change, Trade and Sustainability between New Zealand, Costa Rica, Iceland, and Switzerland;[17] and

b. the Crown received advice from officials in late 2024 that re-opening new offshore oil and gas exploration could breach free trade agreements with the United Kingdom and European Union, which leaked to the media.[18]

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[17] 'Gas exploration fund 'clear breach' of international trade agreement - Green Party', *RNZ*, 24 June 2025, https://www.rnz.co.nz/news/national/564971/gas-exploration-fund-clear-breach-of-international-trade-agreement-green-party **[DT-1, #1164]**.

[18] Marc Daalder, 'Govt advised repealing gas ban likely to breach trade deals', *Newsroom*, 1 October 2024, https://newsroom.co.nz/2024/10/01/govt-advised-repealing-gas-ban-likely-to-breach-trade-agreements/ **[DT-1, #1167]**.

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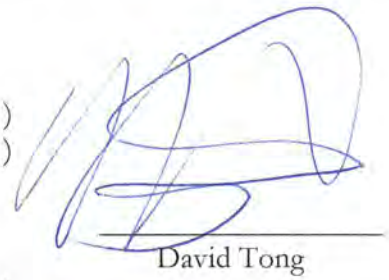
Conclusion

49. As burning only the oil and gas reserves now developed would warm the world beyond 1.5°C, even if coal use ended today, issuing licenses to search for new, as-yet undiscovered oil, gas, and coal is wholly inconsistent with the objective and aims of the Paris Agreement and purpose of the CCRA.

~~SWORN~~ / AFFIRMED at)
On this (15) day of September 2025)



David Tong

Before me: Mitchell Lee Skipsey)

~~A Barrister and Solicitor of the High Court of New Zealand/~~
~~Registrar of the High Court/ Justice of the Peace~~
Solicitor, Australia