SUBMISSION

STRATERRA™
NATURAL RESOURCES OF NEW ZEALAND

Submission to Ministry of Business, Innovation and Employment on

"DRAFT MINERALS PROGRAMME FOR MINERALS (MINERALS EXCLUDING PETROLEUM" (NOVEMBER 2012)"

INTRODUCTION

1 Straterra[1] welcomes the opportunity to submit on the Draft Minerals Programme for Minerals (MPM), released for consultation in October 2012. As stated in our submission on the Crown Minerals (Permitting and Crown Land) Bill, we do so in the interests of achieving benefits for the minerals sector, and for the New Zealand economy as a whole (including the Crown).

2 Straterra Inc represents more than 90% by value of New Zealand minerals production, exploration, scientific research, engineering and geo-technical services, and legal and other ancillary services to the industry. Current membership stands at 54 (refer to the Straterra list in Appendix 1).

3 In preparing this submission, Straterra has consulted widely within its membership, and, specifically, through in-house meetings and discussion with Newmont Waihi Gold, Solid Energy, OceanaGold, NZ Coal & Carbon, Glass Earth Gold, Trans-Tasman Resources Ltd, Placer Gold International, and representatives of law firms, notably Anderson Lloyd, Bell Gully, Buddle Findlay, Greenwood Roche Chisnall, and Minter Ellison Rudd Watts.

4 As always, we would welcome further engagement with officials on our submission, if that would be useful or relevant in light of progress with the Bill, and in light of the many matters of detail of interest and concern to Straterra members.

[1] Straterra represents by 90 % by value of NZ minerals production, exploration, research, services, and support http://www.straterra.co.nz/About+Straterra

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EXECUTIVE SUMMARY

5 Please refer to the Straterra submission on the Bill[2], which provides the context for this submission. While much of the new MPM is satisfactory or welcome, there is some room for improvement (as is the case with the Bill). Much of this work will require entry into great technical detail, in many cases, to ensure fair and reasonable treatment of bona fide permit applicants and permit holders. We list below the key issues of interest or concern (with more material provided in the discussion below), as recommendations. We also support the Newmont Waihi Gold submission in its entirety, which includes matters we do not address here.

[2] Straterra submission on the Crown Minerals (Permitting and Crown Land) Bill http://www.straterra.co.nz/uploads/files/straterra_submission_crown_minerals_%28permitting_and_crown_land%29_bill_nov_2012.pdf

RECOMMENDATIONS

6 Straterra recommends the Ministry of Business, Innovation and Employment to:

a) Note Straterra's submission on the Bill, re our proposed purpose statement for the principal Act;

b) In relation to Rec. (a), note that MPM (**1.3**) would be enabled by Straterra's proposed amendments to the purpose statement, however, if that does not occur, amendment of 1.3 is required to define adequately "benefit of New Zealand" to include the direct and indirect economic activity that arises from encouraging and enabling responsible investment in prospecting, exploration and minerals development;

c) Agree to add to MPM (**1.4**): Historic Places Act 1993, Conservation Act 1987; Hazardous Substances and New Organisms Act 1996; Building Act 2004; Overseas Investment Act 2005;

d) Agree to amend MPM (**1.6 (6))** to provide for all coal mining, both Tier 1 and Tier 2, under stopped legal roads, to achieve the presumed intent of this provision;

e) Agree to move the detail in Schedule 5 of the principal Act on Tier 1 and Tier 2 thresholds into MPM (**1.7**), for any subsequent changes to be made more readily;

f) Note Straterra's general support for the material on the Principles of the Treaty of Waitangi (MPM (**chapter 2**)) as providing adequately and appropriately for the Crown/Treaty partner relationship, noting that there will be cases where a permit holder and iwi will have no need to engage with each other every year, which argues for a wording change to MPM (**2.12**);

g) Agree to amend MPM (**4.2 (1)**) to say: "A permit for minerals within a minerals group may be granted over land where there is a permit for other mineral groups or petroleum, *unless it adversely affects an incumbent permit holder*", to avoid the existing permit holder being placed in an invidious situation;

h) Agree to amend MPM (**4.6 (2) (b)**) to say: "an application covers several discrete deposits, *that is either linked by geology, and/or* the objective is to appraise whether the deposits can be effectively mined as a single development", to provide adequate special circumstances when granting or managing permit areas;

i) Agree to amend MPM (**4.6 (3)**) to clarify that applications to acquire or extend ground where there is "connecting land of convenience" would ordinarily be declined, to make a clear distinction from the approach to such ground being relinquished or surrendered;

j) Agree to add to MPM (**4.6**), a sub-section (4) to say: "*In the event of a permit holder having multiple permits related to a single mining operation, infrastructure, geology, or areas of adjoining land, the provisions of 4.6 should be applied across all of those permits*";

k) Agree to add to MPM (**4.9 (3)**), a sub-section (d) to say: "*the proposed work programme*", in the event that new information comes to light that could influence WP design;

l) Agree to amend MPM (**4.10) (1)**) to say: "Permits may be held by individuals, companies, *related companies*, or groups of companies", to cover the situation where a permit may be held by two companies, both owned by a parent company;

m) Agree to add to the MPM, a new **4.11 (c):** "*other circumstances beyond the permit holder's control, such as weather, a natural disaster, or other reasonable circumstances*", for industry to receive fair and reasonable treatment;

n) Agree to specify indicative time frames on the Crown when administering the Crown minerals regime, e.g., in **chapter 5** of the MPM;

o) Agree to amend MPM (**5.2 (2)**) to say: "If the Minister considers that any previous non-compliance by the applicant was immaterial, *or if there are justifiable grounds for previous non-compliance*, the Minister may … ", to provide for reasonable treatment of permit applicants;

p) Agree to amend MPM (**5.5 (4)**) to say: "If an applicant … granting of a permit to the applicant, *unless reasonable circumstances for a less than good record of compliance exist*", to ensure reasonable treatment of permit applicants;

q) Agree to add to MPM (**5.6 (5)**) the Hazardous Substances and New Organisms Act 1996, Conservation Act 1987, Wildlife Act 1953, and the Marine and Coastal Area (Takutai Moana) Act 2011;

r) Agree to amend MPM (**6.2 (1) (a) (iii)**) to say: "the permit application, or the application to extend land to which a permit relates, is for a mineral that belongs to a different minerals group, *provided that does not conflict with existing applications, privileges or operations,* or", to ensure fair and reasonable treatment of incumbent permit holders and applicants;

s) Agree to amend MPM (**6.2 (1) (a) (v)**) to say: "the application is for a mining permit and the applicant is the holder of an existing privilege, *or is a related company*", for completeness, and agree to apply the same treatment to MPM (**6.2 (1) (a) (vi) (A)**), for the same reason;

t) Note the typo in MPM (**6.2 (1) (a) (vi) (B)**), which should refer to 10.2 (1) (b), and not 10.2 (b);

u) Agree to amend MPM (**6.3 (2)**) to say: "An acceptable work programme offer application … must include a report that states the ownership of the minerals applied for, *unless the minerals are owned by the Crown*", to be fair and reasonable to permit applicants;

v) Agree to amend MPM (**6.4 (2) (a)**) as per Rec. (r);

w) Agree to amend MPM (**6.4 (2) (d) (i)**) as per Rec. (s);

x) Agree to amend MPM (**8.5**) on maximum areas for prospecting permits to provide for *10,000km^2* for offshore permits to reflect the reality of prospecting activity in the oceans;

y) Note Straterra's support of MPM (**9.3**) on assessment of work programmes in light of the assessment criteria provided in MPM (**9.4**), noting our proposed amendments to 9.4;

z) Note Straterra's support for the proposed minimum area for an exploration permit (MPM (**9.5**));

aa) Agree to amend MPM (**9.6 (3) (c)**) to say: "those matters set out in clause 9.3 that the minister considers to be relevant, *taking into account matters relating to substantial compliance set out in clause 12.2*", noting Rec. ( ), to ensure fair and reasonable treatment of permit holders;

bb) Agree to add to MPM (**9.6 (4)**) a new sub-section (d) to say: "*there is additional supporting exploration work available*", to ensure fair and reasonable treatment of permit holders;

cc) Note Straterra's support for the provision for the appraisal period to be extended beyond four years subject to criteria (MPM (**9.6 (8)**);

dd) Agree to amend MPM (**10.4 (b)**) to say: "consider the extent to which the inability to deplete the discovery during the term of the permit is due to force majeure events, *or other reasonable circumstances*", to ensure fair and reasonable treatment of permit holders;

ee) Agree to amend MPM (**10.11 (4) (d)**) to say: "consider whether the permit holder as complied *or substantially complied* with the conditions of the permit and the Regulations", to ensure fair and reasonable treatment of permit holders;

ff) Agree to amend MPM (**11.3 (1)**) to provide for Tier 1 permit holders to report on expenditure and activity on mining permits within *50 working days* from the beginning of every calendar year, and to retain the status quo in respect of exploration permits, to avoid an unnecessary, undesirable, and extremely onerous requirement on permit holders;

gg) Agree to amend MPM (**11.3 (3) (a) (i)**) to say: "a … permit holder must provide ….and *ordinarily provide* resources and reserves estimates in accordance with the *principles of an internationally-recognised resource and reserve classification code, such as* the JORC Code, *or by agreement with the regulator*… ", to provide for both permit holders who work in accordance with the JORC code, and those who operate effectively without that specific certification;

hh) Agree to amend MPM (**11.3 (3) (a) (iv)**) in a way that is consistent with Rec. (gg);

ii) Agree to amend MPM (**11.4 (1)**) on reporting on Tier 2 permits in a way that is consistent with Rec. (ff);

jj) Agree to amend MPM (**11.8 (2) (a)**) to say: "review progress by the permit holder *or holder of multiple permits* against the work programme *or work programmes*", and make other amendments to 11.8 to provide for portfolio consideration of permits, subject to criteria, e.g., that they relate to the same mining operation, project, mining infrastructure, geology, or that permits cover adjoining land;

kk) Agree to add to the end of MPM (**11.8 (2) (e)**): *", in consultation with the permit holder",* to provide for common courtesy and respect, and add the same wording to **11.8 (7)** to the end of the first sentence, for the same reason;

ll) Agree to replace the wording in MPM (**11.3**) "Normally the meeting will be expected to", with "*The meeting will ordinarily be*", for consistency of style in the MPM;

mm) Agree to amend MPM (**11.3 (a)**) to say: "be held in Wellington, *or elsewhere by agreement*", noting that the costs of third-party participants would likely have to be met by the permit holder;

nn) Agree to add to MPM (**11.8 (8)**) mention of the following agencies for completeness: Department of Conservation, Historic Places Trust (or replacement organisation);

oo) Agree to add to the end of MPM (**12.2 (2)**): *", or has made good progress and will continue to make good progress towards those expectations, or if a resource has been identified that will continue to be developed*", to provide a fair and reasonable definition of substantial compliance;

pp) Agree to add to MPM (**12.2**) a sub-section (3) to say: "*In the event of a permit holder having multiple permits relating to the same mining operation, project, geology, infrastructure, or covering adjoining areas of land, sub-section (2) will be applied across all of those permits*";

qq) Note Straterra's general support for MPM (**12.3**) on matters for the Minister to take into account when considering an application for a change to work programme conditions, as logical and reasonable;

rr) Notwithstanding Rec. (qq), agree to add to MPM (**12.3 (1) (d) (vii)**) a sub-section (A) to say: "*unavoidable delays arising from other reasonable circumstances*", to ensure fair and reasonable treatment of permit holders;

ss) Agree to amend MPM (**12.7 (2) (c)**) to say: "the degree of certainty that there is *generally* one continuous resource spanning the current permits … ";

tt) Agree to amend MPM (**12.8 (3)**) to say: "Applications for a change in operator will be processed *in having regard to the operator's track record, financial viability, and the ability to develop systems and capability for health & safety, and environmental management*";

uu) Agree to align MPM (**12.10 (4)**) with Straterra's proposals for the Bill, in relation to the change-in-control provisions, to avoid unnecessary revocation of permits if it takes a change in control more than three months to be advised; and

vv) Agree to amend MPM (**12.14 (1) (a)**) in relation to revocation of permits to say: "the Minister is satisfied a permit holder has contravened a condition of the permit, or conditions imposed by the Act or the Regulations, *except in cases of substantial compliance with the permit, or in taking into account reasonable circumstances",* to ensure fair and reasonable treatment of permit holders.

DISCUSSION

General

7 Following are discussion points in relation to those recommendations where further detail is warranted.

8 As a qualification, the Straterra submission is not exhaustive, however, focuses on key matters of interest and concern to the broad spread of our membership. Nonetheless, it is important to ensure that every detail of the MPM is as correct and fit for purpose as it can be. On that basis, we support the Newmont Waihi Gold submission in its entirety.

Fair and reasonable treatment of industry

9 As a leitmotif for our submission, Straterra seeks fair and reasonable treatment of bona fide permit holders. It is accepted that the Crown must have the discretion to apply sanctions to poorly-performing permit holders or applicants. That said, we believe the regulatory pendulum has swung too far, against the large majority of permit holders who are bona fide.

10 With the best will in the world, circumstances may arise ahead of the application for, commencement of, or in the exercising of a permit that will require the permit holder to seek a change in conditions, or an extension in duration, at times within a very short space of time before permit expiry, or in which the permit holder was unable to comply fully with the permit. These circumstances may not fall within the caveats provided in the draft MPM.

11 For example: a commodity price could plummet, forcing a temporary mothballing of operations; a contract with a drilling contractor may be breached, and require rescheduling; a geological structure could be revealed during operations that forces a change in work programme, if it can be changed; a key staff member may suffer sudden illness or death causing delays; a change in ownership of a company could lead to delays in business planning and operations.

12 All of the above examples are based on events experienced by companies. Such situations must be taken into account in the following sections of the MPM, **4.11, 5.2, 5.5, 9.6, 10.11, 12.2, 12.3**, and **12.14**. In particular, it is crucial that a fair and reasonable definition of substantial compliance is provided in the MPM (**12.2 (2**).

13 As a general consideration, holders of multiple permits, where these permits relate to the same project, mine, infrastructure, geology, and/or where they cover adjoining land, need to have compliance and management of their permits considered as a portfolio. There may be very good reasons for a business to put more effort into one permit and less in another from year to year,

and during the life of the permits. We have made recommendations to accommodate this reality of doing business in relation to sections **4.6, 11.8** and **12.2**. Solid Energy has submitted extensively on this matter, and we support its submission.

Permits in relation to different minerals groups

14 We urge care in relation to the sections of the MPM that cover overlapping permits for different groups of minerals, in particular, **4.2** and **6.2**. It is not good enough for the regulator to grant permits over the same ground for, say, coal and subsequently gold- or vice versa – and expect the parties to sort out any differences among themselves. That would be like leasing a restaurant to two operators, one who wishes to prepare formal French cuisine and another, a diner, and then saying that it is up to them to figure out how the restaurant would be managed and run – obviously unworkable. We make recommendations to resolve the matter.

Purpose statement

15 Note Straterra's submission on the Bill re the purpose statement for the principal Act (**1.2**). We support the general approach taken in **1.3 (1) – (11)** on interpreting the purpose of the Act. For this material to be consistent with the Act, however, we believe that amendment of the purpose statement to the principal Act is required, as submitted on the Bill. If that does not occur, the material provided in the MPM is deficient. For example, the "benefit of New Zealand" (**1.3 (6)**) includes the attraction of additional investment capital into New Zealand, and resultant economic activity - including direct and indirect jobs, taxes, royalties, rates, levies and other charges, and support of communities.

Reasonable provision for exceptions to permits being granted over unbroken areas

16 Permits will normally be granted over an "unbroken area" unless there are "special circumstances", notably, if there are "several discrete deposits" that can be mined as a "single development" (**4.6**). This wording is overly restrictive. For instance, exploration could reveal discrete deposits that would not be mined as a single development, however, would comprise broadly a single operation from a mining perspective. Newmont Waihi Gold's operations in the Coromandel would fit that description. An additional criterion could be discrete deposits linked by geology to provide for the circumstances faced by companies like NWG. We note that NWG has submitted on this point.

17 The provision on "connecting land of convenience" (**4.6 (3)**) requires editing for clarity. If it is logical to prevent a permit applicant acquiring "connecting land of convenience", then it would be illogical to prevent a permit holder surrendering or relinquishing such land. At issue is the

shape and location of the remaining area when permit areas are allocated or surrendered or relinquished. Criteria could include the ability of the Crown to effectively re-allocate surrendered or relinquished ground, and ground remaining after an initial permit in an area has been allocated. There are a number of other sections of the MPM requiring amendment along the same rationale as above. A commonsense approach is required, and, once more, we draw attention to the NWG submission.

Indicative time frames on the Crown when administering the regime

18 The general provisions in relation to permits (**Chapter 5**) contain no reference to time frames required of the Crown when administering the regime. A general indication would be useful for permit holders and applicants to better manage their expectations and work flows. Accordingly, some guidance[3] could be provided in the MPM.

Prospecting permit areas

19 Prospecting permit sizes (**8.5**). An onshore prospecting permit would be normally "no larger than 500 square kilometres", and for an offshore area "no larger than 5000 square kilometres". In the case of offshore areas, the figure should be doubled to 10,000km to provide adequately for activities in the deep oceans. For instance, Trans-Tasman Resources has a prospecting permit covering 6319km2, which is not considered extra-ordinary in an international context.

Reporting on activity and expenditure

20 Under **11.3 (1),** a Tier 1 permit holder is required to report on expenditure and activity no later than 40 working days after the end of every calendar year. This is a period when relevant company staff may be on holiday, are busy with field operations, and/or are busy with budgeting and business planning. While these reports would be no more than a few pages, following a template, a great deal of information is contained in each report, which can include exploration expenditure, resource information, exploration work programme reporting, mine plans, plans for future development, and electronic submission in GIS files of mine plan data. The experience is that each report can take six weeks to prepare. For the holder of multiple permits, there are few or no synergies between permits in terms of reporting. The holder of 10 permits, say, would find it excruciatingly onerous to meet the 40-working day timetable, especially at the beginning of the calendar year.

[3] See Department of Conservation guidelines for administering the concessions regime http://www.doc.govt.nz/about-doc/concessions-and-permits/concessions/about-concessions/timeframes/

21 That said, we understand the rationale for aligning reporting on mining permits with royalty returns. The requirement to report early in the calendar year is justified in this instance, and we seek an extension in time frame for completion from 40 to 50 working days.

22 In the case of prospecting and exploration permits, that rationale does not apply; therefore, we recommend in the strongest terms to have the annual reporting requirement aligned with 40 working days from the anniversary of the permit. We believe this is the only way in which this requirement will be workable for companies such as Solid Energy, NZ Coal & Carbon, NWG, and OceanaGold.

JORC Code

23 The requirement for reporting in accordance with JORC Code certification (**11.3 (3) (a) (i) and (iv)**) in relation to resource reporting is generally desirable and appropriate, however, some permit holders would prefer to conduct their operations without having to certify a resource as JORC compliant, for various reasons. We suggest either JORC Code certification, or, a level of certification that is agreed between the permit holder and the Crown, in each instance. That could include the general use of a JORC framework, without having to apply strictly the JORC Code in every detail.

Annual work programme meetings for Tier 1 permit holders

24 The annual work programme meetings was a theme for submission on the Bill. Under **11.8 (2) (e)** and **(7)**, we expect that the permit holder would be consulted, and copied into correspondence with other regulatory agencies. We expect that meetings would not necessarily be held in Wellington (**11.8 (3) (a)**). As discussed in our submission on the Bill, a permit holder with multiple permits should be able to have all permits relevant to a single operation or project or geology considered at the one meeting. It is envisaged that not every regulator would necessarily attend every meeting. Attendance would be determined as fit for purpose.

Release of information

25 Amendment to the release of information provisions (**11.10 and 11.11**) are warranted to ensure due propriety is given to commercially-sensitive information. We submitted in this vein on the Bill. We provide no specific recommendation here, but note the NWG submission in this regard.

26 On the matters covered in **Chapter 12** on changes to permits, we submitted extensively on the Bill. We argued for the removal of statutory time frames for applying for changes to permits

(**12.1 (3) and (4)**) to be reasonable to businesses. For one matter, it would reduce the risk of unfair revocation of permits from bona fide permit holders.

Change of operator

27 As submitted on the Bill, requiring a new operator to reapply for a permit would be onerous and unnecessary compared to the benefits achieved (MPM (**12.8 (3)**), because that party was and still will be a permit holder. Certainly, some matters should be considered, e.g., track record, financial viability, upfront health, safety, and environmental management capability.

Change-in-control

28 As submitted on the Bill, the changes-in-control provisions (**12.10 (1) (a) and (4)**) are unnecessarily harsh because it could take easily more than three months for a change-in-control to be advised. That should not form grounds for revocation. A fine would be preferable to provide a reasonable incentive to comply.