SUBMISSION

STRATERRA™
NATURAL RESOURCES OF NEW ZEALAND

Submission from Straterra
To MBIE
Review of the Crown Minerals Act
January 2020

Introduction

1. Straterra is the industry association representing the New Zealand minerals and mining sector. Our membership is comprised of mining companies, explorers, researchers, service providers and support companies.

2. We welcome the opportunity to make this submission on the review of the Crown Minerals Act 1991 and comment on the November 2019 Discussion Document. Our submission focuses on the chapters of the document relevant to the minerals sector generally.

Chapter 1 - Wellbeing

3. The Crown Minerals Act is designed to provide a legislative framework for how the Crown allocates Crown-owned minerals for the benefit of New Zealand. Other related legislation is designed to ensure that mineral activities are carried out in a way that balances environmental, social and economic considerations. We argue that this system works well and should not be changed.

4. As historical context, it is worth noting that the Crown Minerals Act came into existence out of the Resource Management Act at the same time and in this sense, they are twin Acts. The fact that the Resource Management Act is also due to be reviewed, with a longer timeframe being signaled due to its complexity, means that this review of the Crown Minerals Act is premature in the sense that the two Acts are designed to work together and it is inappropriate to second guess the outcomes of the RMA review and replicate the functions of that Act in the CMA at this time. The CMA will need to fit in with the revised RMA.

5. Chapter 1 of the Discussion Document discusses the role and purpose statement of the Act and asks what aspects of wellbeing the Crown Minerals Act (CMA) should consider when making decisions.

6. We acknowledge the government's well-publicised approach to wellbeing and the wider range of measures beyond economic growth that are important to it. These include the natural, financial, human and social capital which make up the Treasury's Living Standards Framework and the government's focus on a productive, sustainable and inclusive economy.

7. As stated in the Discussion Document, the minerals sector contributes significantly to wellbeing particularly through the economic contribution it makes. We argue mining also contributes to society's broader wellbeing (not just economic) in a wide variety of ways ranging from the contribution businesses make to communities in regional New Zealand, the significant expenditure devoted to improving biodiversity, through to the essential role the products of mining have in our society.

8. We also argue the CMA already allows for the broader approach to wellbeing as the term 'benefit to New Zealand', which is explicit in the purpose of the Act[1], has a broad meaning and should not be, and has not been, interpreted as being confined to just *economic* benefit. We note that the Minerals Programme 2013 interprets benefit to New Zealand as increasing New Zealand's economic wealth through economic recovery of New Zealand Crown-owned minerals and refers to other important components which are covered in other legislation.

9. The CMA's role is to focus on the efficient allocation of rights to develop mineral resources, while the management of the environmental effects on extracting these resources, and the health and safety of workers who undertake this activity (i.e. the environmental and human wellbeings), are the focus of 'sister' pieces of legislation i.e. the Resource Management Act 1991 (RMA) and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act), and health and safety (the Health and Safety at Work Act 2015) respectively. We argue that if these regulations aren't strong enough to meet the needs of society they can be strengthened and that this is preferable to a confusing replication of their objectives.

10. Discussion of the CMA needs to be viewed in the context of the whole regulatory system. These Acts help manage the adverse effects of the sector / resources activities and if there are environmental or social issues (and outcomes) that need to be addressed, it is those Acts that should be amended and not the CMA.

11. We fully support such a regulatory regime and it is easy to show it is consistent with what happens in reality and that mining in New Zealand does contribute to the benefit of New Zealand society in this way. The government's recently released Minerals and Petroleum Resource Strategy provides many examples of the important contribution minerals make to society and our way of life. Minerals are used for everything from roads to electronics. Demand for many minerals will increase as the transition to lower emissions technologies progresses; the impact modern mining has on the environment is minimised under the existing environmental regime; and successful mining companies are able to, and do, make positive contributions to the environment and biodiversity. Mining salaries and wages are relatively high and they support hard working families in regional New Zealand. This all supports the proposition that the mining and the minerals sector is totally consistent with the government's focus on a productive, sustainable and inclusive economy.

12. For these reasons we do not see the need to amend the CMA to explicitly consider the other aspects of wellbeing when making decisions to allocate and manage rights to prospect,

[1] The purpose of the CMA is to promote the prospecting for, exploration for, and mining of Crown-owned minerals for the benefit of New Zealand

explore and mine Crown-owned resources. Doing so would not enhance the other wellbeings, which are already addressed in the wider regulatory system governing the industry and are explicitly referred to in the Minerals Programme.

13. Instead, replicating the environmental and other protections of these Acts into the Crown Minerals Act would confuse and dilute the CMA's role and conflict with, and detract from the legislation that was created to focus on these wellbeings. Such confusion discourages investors. Investors are not deterred by stringent standards, but they are highly averse to confusing and uncertain process.

14. Finally, it is worth noting, to give effect to the proposal would require investment in additional MBIE staff to acquire the expertise required.

Chapter 1 - Role and Purpose Statement

15. The document asks how the purpose of the Crown Minerals Act be should be expressed through its purpose statement and whether it should be amended from promoting the prospecting for, exploration for, and mining of Crown-owned minerals for the benefit of New Zealand.

Problem Definition

16. We are unable to ascertain what is trying to be achieved by changing the purpose statement in this way or what problem is trying to be solved. The document outlines the government's economic priorities but is not clear how the proposed changes to the purpose statement will further these priorities and if anything, in our view, the issues set out in the document support the case for retaining the status quo.

17. Promoting Crown-owned minerals is a good thing. Doing so benefits New Zealand without necessarily, impacting significantly the environment. The government's wellbeing approach and desire for a productive, sustainable and inclusive economy, as discussed in a previous section of this submission, is totally consistent with the existing purpose statement and can be achieved under it.

18. Within the purpose statement, is it the word 'promote' that is the problem or is it 'prospecting for, exploration for, and mining of Crown-owned minerals'? We note, as discussed in the previous section, the term 'for the benefit of New Zealand' should provide comfort that promoting prospecting for, exploration for, and mining of Crown owned minerals must be positive for New Zealand.

Use of the Word 'Promote'

19. The use of the word 'promote' in the purpose statement is a standard feature of a number of New Zealand acts of parliament governing a range of sectors and activities. Just a handful of these relevant to our sector with the word promote include the Conservation Act, the Resource Management Act, the Energy Efficiency and Conservation Act, and the Exclusive Economic Zone and Continental Shelf Act.

20. In the Crown Minerals Act, 'promote' could be interpreted as 1) a general supportive or enabling role, as set out in Clause 4(e) of Minerals Programme 2013 or 2) the government proactively marketing New Zealand to investors, which is consistent with the interpretation in Clause 4(f) of the Programme. We note that this marketing activity has been phased down within MBIE in the last couple of years. It is of course open to the government to decide from time to time how to meet an obligation to "promote" under the Crown Minerals Act and it does not require the removal of the concept of "promotion" from the Act to allow such a rebalancing. Promotion in the second sense, above, must continue as investment in the industry is of benefit to New Zealand and there are a range of "low carbon" minerals, discussed below, that the government will need new investment in if they are to be fully exploited in the coming decades.

Responsibility to Develop

21. Under the Act, we see the Crown, as owner of the Crown Minerals, as having a responsibility to ensure the Crown Minerals are developed for the benefit of New Zealand. An analogy is the Crown as landlord who looks to rent its premises, not keep them vacant thus depriving a lessee of suitable premises. The fact that many of the Crown Minerals were obtained by nationalisation (through legislation) reinforces the need for the Act to enable their development. We also have a responsibility, as a global citizen, to make use of our resource endowment – to not do so simply acquiesces to some other jurisdiction's standard, or lack of, environmental management.

22. As discussed in the previous section, the words 'for the benefit of New Zealand' makes it clear that the promotion is for the benefit of all and should provide comfort that there is intended to be a positive for New Zealand arising from promoting prospecting for, exploration for, and mining of Crown-owned minerals

Sovereign Risk

23. Legislating to remove 'promote prospecting for, exploration for, and mining of Crown owned minerals for the benefit of New Zealand' from the purpose statement of the Crown Minerals Act it would send a signal to investors that the government has an anti-mining sentiment. We do not think this is a message the government wants to convey. The Minerals and Petroleum Resource Strategy, published in November 2019, suggests that the government has quite a balanced approach to mining and the need for extraction to provide the minerals a modern society requires. Changing the purpose statement in this way would provide mixed messages and confusion amongst the industry's stakeholders, deter investment in the industry and pose a higher sovereign risk generally. This risk is (briefly) acknowledged in para 35.

24. Hundreds of millions of dollars of investment are at stake with the proposed changes including the jobs and regional economies that come with that. The rights of existing investors are also being jeopardised and there is a risk that existing investors could exit, or at least curtail their future expansion plans.

A Blunt Instrument

25. As stated, the Minerals Strategy and other government statements imply that the government is generally supportive of mining but has reservations with some minerals or aspects of mining practice in New Zealand e.g. block offers for oil and gas exploration, fossil fuels generally, and mining on conservation land. Amending the purpose statement is a very blunt instrument and not necessary.

26. Such aspects, and the processes currently in place enabling them, could be specifically/ separately addressed without amending the purpose statement which has general implications for the extractive sector as a whole. As mentioned, the implications could be significant in terms of lack of investment etc.

Low Carbon Economy

27. An amended purpose statement as proposed would impact on all Crown-owned minerals including so-called green minerals such as lithium and cobalt which will be important for the low carbon economy. New Zealand has significant prospectivity of these but their ownership status in many cases is not totally clear. Assuming they are captured by the Crown Minerals Act, the development of these important minerals could be curtailed by the proposed changes to the purpose statement.

2013 Reforms

28. The purpose statement was introduced to the Crown Minerals Act in the 2013 amendment. Para 32 of the Discussion Document says there was 'widespread objection' at the time to a purpose statement with the word promote in it but no good reasons are given for this objection.

29. Para 34 of the document points out that when legislation is being reviewed, the purpose statement is usually reformatted once all final decisions are made about legislative change. But there is nothing else proposed in the Discussion Document for the minerals sector which suggests the promotional element of the purpose statement needs to be removed.

No New Mines on Conservation Land

30. If the driver for the suggestion to reword the purpose statement is an intention to pave the way for the implementation of the "no new mines on conservation land" policy, then this is premature. There would need to be an open public debate on this proposed policy should it be progressed and a proper analysis of the economic costs of its implementation to New Zealand has been undertaken.

Existing Rights

31. Commitments have already been made by government on a number of occasions that existing rights of permit holders to continue production or exploration activities will be protected. This commitment was also captured by Principle 10 of the Minerals and Resource

Strategy. It is essential that any changes to the purpose statement (or any other part of the Act) do not affect those rights.

32. This must also include the rights of permit holders to subsequent permits. That is, it needs to consider the natural extension of permit areas should mineral deposits be expanded through mining works, and the ability to extend the duration of these existing permits.

Chapter 4 - Community Participation

33. We do not support introducing community participation into Crown minerals permit applications under the Crown Minerals Act. There are multiple opportunities for this under other legislation.

34. Crown minerals are a Crown asset and the Crown granting a right to them is not a public issue the way that granting access to Crown land (or indeed any land) or an effects-based assessment under the RMA is. The Crown represents the public as the owner of the resource and therefore the public do not have a relevant interest in the allocation of the minerals, their right to participate comes through RMA etc.

35. Introducing community participation would not achieve the intended objective but in fact could diminish the effectiveness of the consultation that is already occurring through the other more appropriate consultation processes creating unnecessary duplication and further opportunity for vexatious intervention.

36. From an extractive industry perspective, adding further complexity and time to decision-making processes through public involvement in the Crown Minerals Act processes, would be costly and could delay important projects. The information in a permit application is often commercially sensitive and that information should not be put in the public arena.

37. The Crown's decision on permit applications draws on expert opinion from its technical advisors that is focused on the applicant's technical and financial capability. That is not an appropriate arena for public consultation. Consideration of conflict of interest issues alone would surely put paid to this idea – unless the intention was to stop any and all resource activity.

38. The RMA and EEZ are the appropriate mechanisms to deal with public involvement in the decision-making process and are set up to do so.

39. Introducing community consultation to Crown minerals permit applications could also introduce a precedent with other transfer of rights from the Crown to private interests, e.g. radio frequency spectrum and Treaty settlements.

Chapter 5 - Maori Engagement

40. This discussion in this chapter refers to the interests iwi and hapu might sometimes have in protecting certain land from mineral development (e.g. cultural and wahi tapu). While this is important, at the same time, Maori have significant interests in the resource sector and in retaining access to, and developing minerals for historical, cultural and economic reasons.

41. Archaeological evidence demonstrates Maori have been extracting mineral resource since 1400 AD - pakohe (argillite) and mata (obsidian) and pounamu, most of which is recovered in association with other minerals - particularly alluvial gold.

42. In addition, many Maori work and have business interests in the sector. The percentage of Maori employed in mining is much higher than the equivalent figure for the population as a whole.

43. The Crown Minerals Act already makes provision for the exclusion of defined areas from the operation of the Minerals Programmes or permits. Where there remain issues around land or taonga of particular historic and cultural significance, these will be addressed through the planning and consenting processes under RMA.

44. In practice, consultation between the industry (as opposed to the Crown) and iwi and hapu is happening on a regular basis. On the West Coast for example there is a good relationship between the local industry and Ngati Waewae and Makaawhio. For reference on this issue, please refer to Ngai Tahu's submission.

Chapter 6 - Compliance and Enforcement

45. In general, we support the proposed enforcement tools but the system needs to be fit for purpose so that compliance costs are not overly onerous. This means the information requested by the regulators needs to be relevant, and in a form that miners can comply with. For this reason, it is important that NZPM's systems are improved. As discussed below, the online system for annual summary reports has a number of shortcomings that need to be fixed so that on-line forms can be filled in correctly and penalties for false information avoided.

Compliance Notices

46. We support the use of compliance notices provided the actions and the timeframes set are reasonable. Good relationships are important to achieve good compliance.

Enforceable Undertakings

47. We support the use of enforceable undertakings provided the purpose and objectives of the Crown Minerals Act are met and the interests of the Crown and the permit/licence holder are preserved in a manner that is acceptable to both parties but does not result in costly court action for any party.

Infringement offences

48. Unlike other legislation, for example the RMA, where offences can have genuine adverse impacts, offences under the CMA are of a different nature.

49. Infringement notices can be an important tool for regulators to use provided that they are not overused. Focus should not be taken away from education and working with potential offenders to help them meet their obligations.

Chapter 8 - Technical Amendments

Annual Summary Reports

50. There are significant problems with the existing electronic system as it works in practice. For example, fields are not compatible and do not allow operators to enter the information they need to provide. Nor does the system provide operators with a record of what has been entered and submitted.

51. A sensible way to solve these issues would be a working group with NZPM and Straterra to road test the existing system and to identify and implement the needed improvements.

52. We would support compulsory electronic submission of the Annual Summary Report, provided the system issues are fixed and a simplified and a user-friendly system is implemented.