SUBMISSION

STRATERRA™
NATURAL RESOURCES OF NEW ZEALAND

Submission to the Commerce Select Committee on the

"CROWN MINERALS (PERMITTING AND CROWN LAND) BILL (NOVEMBER 2012)"

INTRODUCTION

1. As stated previously by Straterra, the Crown Minerals Act Regime Review is the prime opportunity to improve the Crown minerals regime. New Zealand needs to maximise its economic development opportunities, and the minerals and petroleum sectors can play an increasingly important part in that, if adequately enabled.

2. Straterra welcomes the opportunity to submit 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).

3. We appreciate being provided with the draft new Minerals Programme for Minerals (Excluding Petroleum) during this submission process. The royalties review and tax review discussion papers have arrived too late to be considered.

4. 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 52 (refer to the Straterra list in Appendix 1).

5. 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.

6. Straterra wishes to be heard by the Commerce Select Committee on this submission.

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EXECUTIVE SUMMARY

7. The Bill, as written, achieves a number of significant improvements to the Crown Minerals Act 1991, however, leaves room for improvement. Straterra makes recommendations to improve the workability of the new regime.

8. The proposed purpose statement to the Act mixes the promotion of benefits to New Zealand, as the policy, with specific mechanisms for how the policy is to be achieved. This is confusing and unnecessary because the rest of the Act and the Minerals Programmes provide for the interpretation of, and achievement of the Bill's purpose. The deletion of all text after "New Zealand" in new section 1A would resolve the matter. The words "the efficient" could be added before "prospecting" to provide due regard to the Crown's interests and role as the owner of the minerals.

9. If, however, it is absolutely necessary for the Crown's functions or attributes or areas of action to be expressed in the purpose statement of the Act, we recommend replacing the word "by" with "while" to avoid the perception that the Crown will be overly constrained in how it manages the new regime.

10. The proposed combination of tougher permit revocation provisions, and reduced flexibility for permit holders in managing their permits could lead to permit holders that "substantially comply" with their permits – a frequent circumstance - being unable to obtain changes to their permits and thereby losing their permits, to be awarded to other operators. The disadvantaged permit holders may fail to obtain new permits. At the very least, these provisions will discourage investment, and may lead to outcomes inconsistent with the regime's purpose. Amendments to several clauses of the Bill are proposed.

11. New provisions should be added to enable operator flexibility in managing multiple permits, subject to strict criteria, and that flexibility should also be provided for at the annual work programme review meetings for Tier 1 permit holders.

12. The new provisions for transfers and dealings are welcomed, noting matters of detail that warrant improved drafting for workability.

13. Refer to the discussion section on other provisions of the Bill of importance, interest or concern, including in relation to information disclosure, and the annual work programme meetings for Tier 1 permit holders.

FULL LIST OF RECOMMENDATIONS

14. Straterra recommends the Commerce Select Committee to:

a) Agree to insert the words "the efficient" before "prospecting", and to delete all text after "New Zealand", to achieve a clear purpose statement in **section 1A** of the principal Act, while ensuring that the material expressed in (a) – (c) of the original wording are listed in the Minerals Program; or

b) Agree to replace the word "by" with "while" in **section 1A**, to remove unnecessary constraints or perceptions of constraints on the Crown's ability to further the purpose of the Act;

c) Agree to add a new **section 39 (1A):** "*despite sub-section (1) (a), the Minister cannot revoke a permit for a minor breach that is otherwise substantially compliant, and when exercising discretion in respect of revocation, the Minister must have regard to the purposes underlying the Act*";

d) Agree to add a new **section 39 (1B)**: "*In assessing compliance, the Minister shall have discretion to consider a permit holder's performance under multiple permits where: (a) the*

permit holder is responsible for a substantial permit portfolio in New Zealand; and (b) where any rationalisation of work program obligations between different permits can be justified by reference to external market influences, or on the basis that work undertaken pursuant to one permit has direct relevance to furthering the objectives of another permit";

e) Agree to insert a new **section 36 (2A):** "*Notwithstanding sub-section (1), when considering a change to a permit, which comprises part of a larger project in respect of which multiple permits are held by a permit holder, the Minister must consider the permit holder's combined work programme for the entire project*", and to agree to define "project" in the Minerals Programme, to include criteria such as contiguous permits, shared geological model, association with the same processing facility, and/or mining operations;

f) Agree to insert a new **section 36 (2B):** "*Where a permit holder has made multiple applications for changes to the same permit, or to permits which, together, comprise part of a larger project, the Minister may consider the applications together, having regard to the combined effect of the changes sought;"*

g) Agree to amend new **section 33B** by adding the phrase "or permits" everywhere the word "permit" appears (sub-sections (1) (a), and (2) (b)), for consistency with Recs. (d) and (e);

h) Agree to amend **sections 36 (3), 36 (4), 36 (4A)** and **36 (4B)** to remove the statutory time frames for submitting applications for an extension in duration of a permit, and change in conditions of a permit, to provide permit holders reasonable flexibility to manage their permits in response to changing ambient circumstances;

i) Agree to amend **section 36 (4C) (b)** to say: "if the application is declined, contravenes that condition from the date *of the decision to decline*", to be fair to applicants for a change in conditions of a permit;

j) Agree to amend **sections 35 (9) and (10)** to say: "(9) The Minister may, on the application of a permit holder defer or amend the commencement *or expiry dates* of a permit and subsections (1), (3), (5) or (7) applies accordingly, if the Minister is satisfied that – (a) the permit holder has been prevented from commencing *or continuing* activities under the permit by delays in obtaining consents under any Act; and (b) those delays have not been caused or contributed to by default on the part of the permit holder" and "(10) If the Minister defers or amends the commencement *or expiry dates* of permit under sub-section (9), the new commencement *or expiry dates* must be specified in the permit";

k) Agree to delete **section 41 (5)**, as unnecessary;

l) Agree to replace **section 41A (6)** with wording to provide for the Minister to accept late notification, under reasonable circumstances, and with discretion to impose a suitable fine for lateness, on the offending permit holder (s), and not co-permit holders;

m) Agree to replace **section 41C (3)** with wording to provide for matters to consider in relation to a new operator, e.g., track record, and technical capability, and refer to relevant provisions of section 29A, e.g., section 29A (2) (c) and 29A (3);

n) Agree to add a new **section 90AA (1) (aa)**: "The disclosure under sub-section (1) (a) should not be made unless it is necessary for the performance or exercise of a function, power or duty conferred or imposed on the receiving regulatory agency under a specified Act";

o) Agree to add to the end of **section 33B (1) (b)**: "*in consultation with the permit holder*";

p) Agree to add a new **section 35C (5) (c)**: "when considering an area to be relinquished under a permit, which comprises part of a larger project in respect of which multiple permits are held by a permit holder, the Minister must consider the permit holder's combined proposals for relinquishment under permits for the entire project rather", cf. Rec. (d);

q) Agree to amend **section 8 (2A)** to say: "Subsection (1) does not apply to the taking by any person of any Crown owned mineral in a stopped legal road if – (a) The mineral is *either coal or* a mineral for which a Tier 2 permit would, but for this provision be required; and (b) The road is within an area of land that otherwise contains privately owned minerals;

r) Agree to provide in **sections 18AA and 18AB** of the Conservation Act 1987, and **sections 16A and 47** of the Reserves Act 1977 for public consultation on proposals to classify land as sanctuary areas, wilderness areas, Ramsar wetlands, nature reserves and scientific reserves, cf. section 8 of the National Parks Act 1980, to provide an appropriate statutory process for the consideration of minerals and other values in decision-making;

s) Agree to amend section 27 (2) to read: "The Minister may grant a permit subject to any conditions that he or she thinks fit*, and that reasonably are necessary to achieve the purpose of the Act;"*

t) Agree to replace **section 5 (a)** with the following wording: "to attract permit applications";

u) Note Straterra's general support of **section 2A**, in respect of Tier 1 and Tier 2 permit holders, to provide the regulator with the necessary administrative flexibility, and agree to place matters of detail into **Schedule 5**;

v) Note Straterra's support of **section 7**, specifying the CEO's functions;

w) Note Straterra's support of **section 29A (2) (c) and (3)**, requiring permit applicants to demonstrate an ability to manage health, safety and environmental risks;

x) Note Straterra's support for **section 33A**, requiring permit holders to report annually on engagement with relevant iwi;

y) Note Straterra's support of **sections 35, 35A, 35B** and **35C** in relation to permit durations, partial relinquishment of permits, and appraisal extensions;

z) Note Straterra's support of **sections 61** and **61C**, in relation to access to Crown land, in particular, public conservation land;

aa) Note Straterra's support of **sections 115B** and **115C**, providing for a transition of permit holders to the new Minerals Programme, in a way that respects the interests of permit holders and investors;

DISCUSSION

Purpose

15. The purpose statement (clause 6 of the Bill, proposing new section 1A), reads currently:

> *"The purpose of this Act is to promote prospecting for, exploration for, and mining of Crown-owned minerals for the benefit of New Zealand, by providing for –*
> *(a) the efficient allocation of rights to prospect for, explore for, and mine Crown-owned minerals; and*
> *(b) the effective management and regulation of the exercise of those rights; and*
> *(c) a fair, financial return to the Crown on its minerals."*

16. As written, this purpose statement has two distinct parts: (1) an articulation of policy, being the promotion of benefits for New Zealand; and (2) a series of mechanisms for achieving the policy. This is confusing because a purpose statement should entail a clear statement of purpose, rather than conflating the "what" (the policy), with "how" the policy is to be achieved. The legislation

as a whole, plus the Minerals Programmes and Regulations, have that second function of interpretation, and application and/or operation of the purpose of the Act.

17. Certainly, the Crown, as the owner of the minerals, has an interest in the efficient operation of the regime, in terms of: allocation of rights; administration of the regime; a return to the Crown; attractiveness for investment in New Zealand; and development of New Zealand's resource endowment.

18. New section 1A is easily improved by adding the words "the efficient" before "prospecting", and deleting all text after "New Zealand".

19. If the above arguments are not acceptable to the Government, we seek the replacement of the word "by" with "while" to both provide for the Crown to exercise its statutory role, as expressed, and provide for the Crown to take any other action to further the purpose of the Act.

Recommendations

k) Agree to insert the words "the efficient" before "prospecting", and to delete all text after "New Zealand", to achieve a clear purpose statement in **section 1A** of the principal Act, while ensuring that the material expressed in (a) – (c) of the original wording are listed in the Minerals Programme; or

l) Agree to replace the word "by" with "while" in **section 1A**, to remove unnecessary constraints or perceptions of constraints on the Crown's ability to further the purpose of the Act;

Reduced flexibility in permit management

20. While we agree with the Crown's intent, the Bill as written makes permit management more onerous or even unworkable for bona-fide permit holders. The relevant provisions are: clause 8 (15) repealing section 2 (3) of the Act; clause 18 introducing new section 29A; clause 24 amending section 36; clause 25 deleting section 38; and clause 26 amending section 39.

21. Taken together, permit holders who are substantially but not fully complying with their permits risk having their permits revoked or removed, even if they are working towards proving up a resource, or a reserve, or a mineable deposit, or are seeking to change their operations, in response to rapidly-changing, or difficult to predict economic and market conditions. Having lost the permit, they could struggle, potentially, to obtain a new permit. If enacted, the new

provisions would create added investment uncertainty in New Zealand, and increase New Zealand's sovereign risk as a place to do business. They do little to achieve the Bill's purpose.

22. To summarise what each amendment does:

- *Section 2 (3)* defined the phrase "substantially complied with" for the purpose of section 38 – no longer provided for;
- *Section 35(2)* provided for the postponement of a permit's commencement date where a permit holder was prevented from commencing activities under a permit by delays obtaining consents under the Act (and the permit holder had not caused or contributed to those delays) – retained and broadened to include consents under any Act, however, the focus remains on delays to commencement;
- *Section 38* provided for a permit holder to apply for a change in conditions and/or an extension in duration of the permit, provided the permit holder has substantially complied with the permit, which includes having been exempted from meeting a condition of the permit, and circumstances beyond the permit holder's control – no longer provided for;
- *Section 36 (3)* now requires six months' notice for applying for an extension in duration of an exploration or mining permit, unless there are compelling reasons to file later than that date, however, not less than a month prior to permit expiry (*section 36 (4)*);
- *Section 36 (4A)* now requires 90 days' notice for applications for a change in conditions of a permit, before the expiry of the permit or before the date specified in an application for an extension in permit duration, unless there are compelling reasons to file later than that date, however, not less than a month before permit expiry (*section 36 (4B)*);
- *Section 36 (4C) (a)* absolves the permit holder applying for a change in conditions of having to comply with the original terms of the permit while the Minister is considering the application, which is appropriate; however
- *Section 36 (4C) (b)* determines that a permit holder who fails to meet the requirements in section 36 (4C) (a) is in breach of the conditions of their permit, if the application for a change in conditions is declined - from the date the breach occurred;
- *Section 39 (1) (a)* now provides for the Minister to revoke a permit if the permit holder has contravened a permit condition, with no provision for extenuating circumstances, noting that a general discretion is provided with the word "may"; and
- *Section 29A (2) (b) (iii)* requires the Minister to be satisfied that a permit applicant is likely to comply with a permit, taking into account previous failure to comply with permit conditions.

23. From the Crown's perspective, these amendments make it easier to remove a permit from a non-complying permit holder, and allocate that permit to someone else who is considered more likely to comply with a permit, in a timely manner. The Explanatory Note to the Bill is consistent with this view: "The Bill enhances existing compliance mechanisms, increasing the penalties for offences … and limiting the current scope that a permit holder has to avoid revocation of its permit. This is complemented by increasing maximum permit durations and allowing greater flexibility in government oversight of work programmes."

24. We agree with the Crown's objective, however, are concerned with the means proposed.

25. Consider the issue from an industry perspective. Following are case studies provided by Newmont Waihi Gold, and OceanaGold Corporation of what could happen under the new regime.

26. At 35 working days prior to the expiry of an exploration permit NWG had completed 1481m of a 1500m work programme, with no need to drill any further in delineating a prospective resource. NWG will struggle to meet the deadline imposed under section 36 (4B) for a change-in-conditions. The permit is revoked under section 39 (1) (a) because NWG is in breach of its permit conditions. The company is fined $15,000 under section 101 (2), and must work hard to be eligible to apply for a new permit under section 29A (2) (b) (iii). Alternatively, NWG could drill an extra 19m, that it does not need to drill, at a cost of $7000, to avoid the foregoing complications.

27. OGC has two adjoining exploration permits, near the Macraes mine and processing plant, within the same geological system as the mine. Work determines that one tenement is more prospective than the other. OGC, therefore, exceeds the requirements of its work programme in the first, and decreases it in the second, to prioritise expenditure under a fixed annual exploration budget, determined under its business plan. OGC initially considers applying for a change in conditions to the second permit, however, it considers it may not obtain it under section 36 (1) because the relevant Minerals Programme provision (9.3) imposes a level of activity that is not warranted and for which there is no rational business case at that time. OGC is unable to have its work under the first permit considered in relation to the second, even at the annual work programme meeting (section 33B) because, there, each permit is considered individually. Being a Tier 1 metallic mineral explorer and miner, OGC cannot amalgamate its permits under the MPM (12.7 (1)). OGC, therefore, surrenders the second permit under section 40, to avoid revocation under section 39. Another company acquires the ground, however, in lacking access to existing plant and infrastructure, it is unable to develop the permit through to a

decision to mine. As the permit nears the end of its term, it is offered back to OGC and one of three things will happen: (1) if work has been done on the permit, OGC may agree to pay for the return of the ground (in which case the business case for developing the permit now must now accommodate that additional cost); or (2) if work has not been done on the permit, OGC will probably decline to pay for the return of the ground (but in any event the permit will have languished, undeveloped, for an additional permit term); or (3) OGC, having relinquished the ground, will have developed its business elsewhere (in New Zealand or overseas) and will have no further interest in the ground, either way. The ground will therefore remain undeveloped. (At issue is that OGC operates a processing plant in which they have invested hundreds of millions of dollars that no one else will build. It is not in New Zealand's interests, or in the interests of maximizing the recovery of the resource, if OGC is prevented, in such specific circumstances, from optimising the development and recovery of that resource.

28. In relation to Section 39 providing for the Minister's discretion to revoke a permit for a failure to comply, public pressure could be placed on the Minister to revoke the permit, introducing a political element into decision-making. A commercially-motivated competitor could also exert pressure to require revocation on strict non-compliance grounds.

29. To conclude from the above, we support an approach that would maximise appropriate expenditure, while avoiding the banking of ground. As a separate but related issue, tenement consolidation should be provided for, though in very limited circumstances.

30. At issue is the statutory intransigence that will result from section 39 as drafted. Plainly, the Minister needs the power to revoke a permit for non-compliance, but there needs to be room for properly-exercised discretion, having regard to the purpose of the Act. To remove the discretion currently sitting in section 2 (3) of the Act disregards: the practical realities of running an exploration or mining project; the reliance on a range of external forces, which are continually subject to change; and the need to co-ordinate a range of key inputs into the operational process, not all of which are easy to control. The ability to be tripped up on a minor technical breach exists.

31. Thus, the revocation power in section 39 needs to accord greater flexibility to the permit holder, to provide a discretion for the Minister not to revoke where satisfied with substantial compliance, or where the failure is due to causes beyond the permit holder's control, or other extenuating circumstances exist, each case determined by having regard to the purpose of the Act. Given the greater scope for regular dialogue and interaction with NZP&M, the unit's

increased resourcing and focus, and a clearer sense of the Act's purpose, we believe the scope for this Ministerial discretion to be over-used or influenced is low. Officials now have the tools to exercise strong oversight of, and interaction with permit holders, such that opportunities for poor performers to abuse the slight softening of the proposed revocation provisions would be extremely limited. We believe it is not appropriate to rely on the Minerals Programme to interpret the Minister's power of discretion; this needs to be expressed in the primary legislation.

32. A general provision could be added to the Bill, providing for companies caught in the OGC scenario to manage their permits strategically, e.g., by working one tenement more, and another less, and not fall foul of work programme commitments. This provision would be applicable in some specific circumstances. Criteria would include: the permits must relate to a single project or operation; the aggregate work programme would remain consistent, however, the company would be allowed to manage its WP across the consolidated permits in a manner consistent with its business plan, and the development of the whole resource under permit.

Recommendations

m) Agree to add a new **section 39 (1A):** "*despite sub-section (1) (a), the Minister cannot revoke a permit for a minor breach that is otherwise substantially compliant, and when exercising discretion in respect of revocation, the Minister must have regard to the purposes underlying the Act*";

n) Agree to add a new **section 39 (1B)**: "*In assessing compliance, the Minister shall have discretion to consider a permit holder's performance under multiple permits where: (a) the permit holder is responsible for a substantial permit portfolio in New Zealand; and (b) where any rationalisation of work programme obligations between different permits can be justified by reference to external market influences, or on the basis that work undertaken pursuant to one permit has direct relevance to furthering the objectives of another permit*";

o) Agree to insert a new **section 36 (2A):** "*Notwithstanding sub-section (1), when considering a change to a permit, which comprises part of a larger project in respect of which multiple permits are held by a permit holder, the Minister must consider the permit holder's combined work programme for the entire project*", and to agree to define "project" in the Minerals Programme, to include criteria such as contiguous permits, shared geological model, association with the same processing facility, and/or mining operations;

p) Agree to insert a new **section 36 (2B):** "*Where a permit holder has made multiple applications for changes to the same permit, or to permits which, together, comprise part of a larger project, the Minister may consider the applications together, having regard to the combined effect of the changes sought;"*

q) Agree to amend new **section 33B** by adding the phrase "or permits" everywhere the word "permit" appears (sub-sections (1) (a), and (2) (b)), for consistency with Recs. (d) and (e);

r) Agree to amend **sections 36 (3), 36 (4), 36 (4A)** and **36 (4B)** to remove the statutory time frames for submitting applications for an extension in duration of a permit, and change in conditions of a permit, to provide permit holders reasonable flexibility to manage their permits in response to changing ambient circumstances;

s) Agree to amend **section 36 (4C) (b)** to say: "if the application is declined, contravenes that condition from the date *of the decision to decline*", to be fair to applicants for a change in conditions of a permit;

Duration of permit

33. Having accepted in principle, in new section 35 (9), that delays in obtaining access arrangements or resource consents may form grounds for deferring the commencement date of a permit, it follows that the same grounds should be available to extend a permit in other relevant situations, e.g., access is withdrawn after commencement (due to no fault of the permit holder), or the permit holder requires consent from multiple landowners and is only able to make a partial start on its work programme.

Recommendation

j) Agree to amend **sections 35 (9) and (10)** to say: "(9) The Minister may, on the application of a permit holder defer or amend the commencement *or expiry dates* of a permit and subsections (1), (3), (5) or (7) applies accordingly, if the Minister is satisfied that – (a) the permit holder has been prevented from commencing *or continuing* activities under the permit by delays in obtaining consents under any Act; and (b) those delays have not been caused or contributed to by default on the part of the permit holder" and "(10) If the Minister defers or amends the commencement *or expiry dates* of permit under sub-section (9), the new commencement *or expiry dates* must be specified in the permit;"

Transfers and dealings

34. In general, the new provisions on transfers and dealings with permits (sections 41, 41A, 41B, 41C, 41D) are welcomed; however, reconsideration is needed on some of the detail. As a general statement, the simplification and narrowing down of the existing section 41 regime is a positive step. Section 41 results currently in increased delays in transacting around permits and permit holders, with increased uncertainty and cost as a result, and a significant workload for NZP&M staff that is not necessarily matched by the significance of the particular transactions.

35. We dispute that the Act needs to require an assigning permit holder to notify other permit participants (new section 41 (5)). What can be the Government's interest in the private relationships between co-permit holders? These will be regulated under the relevant joint venture documentation, and that rightly should remain so. In practice, the relevant interests will have to consent by virtue of the usual deed of assignment and assumption requirement.

36. The change-of-control provision in the proposed new section 41A is defensible because the Crown has an interest in knowing who controls permit holders and their guarantors. However, we are very concerned that with parties owned offshore and the ability for corporate transactions to occur up the chain and removed from New Zealand the three-month notification window could well be inadvertently missed. There needs to be provision for Ministerial discretion to accept a late notification, all the more so given the dire consequence of permit revocation as a result. If any sanction for lateness is required, a fine would be more appropriate.

37. On the above, only the offending permit holder's interest in the permit should be affected – not the interests of innocent co-permit holders. Either way, parties will need to amend their joint venture agreements to reflect section 41A and its potential consequences.

38. As to the proposed new section 41C, Straterra does not understand why a change of operator should be treated as if it were an application for the grant of an initial permit – the holders of the permit are the same; there is just a change as to which party will undertake the operator's role. Subsection (3) would be better assigned to spelling out what it is about an operator that will be particularly considered by the Crown – presumably it is technical capability and track record, as distinct from financial viability or permit size or work programme/permit spend. Section 41C (3) could refer, perhaps, to the particular provisions of section 29A that will be relevant here.

39. In addition, we believe it would be helpful to clarify whether or not an operator has to be a permit holder.

40. Further comment on the new transfers and dealings provisions has been provided by Solid Energy in their submission, and Straterra supports that material.

Recommendations

k) Agree to delete **section 41 (5)**, as unnecessary;

l) Agree to replace **section 41A (6)** with wording to provide for the Minister to accept late notification, under reasonable circumstances, and with discretion to impose a suitable fine for lateness, on the offending permit holder (s), and not co-permit holders;

m) Agree to replace **section 41C (3)** with wording to provide for matters to consider in relation to a new operator, e.g., track record, and technical capability, and refer to relevant provisions of section 29A, e.g., section 29A (2) (c) and 29A (3);

Disclosure of information

41. We believe a further restriction is necessary on the provisions around disclosure of information by NZP&M and other regulatory agencies to other persons and organisations under new section 90AA (1) (a) (clause 35 of the Bill). At issue is that information collected under one Act, e.g., royalties, may be a sensitive matter for a permit holder when conducting negotiations with another regulatory agency under other legislation, e.g., Department of Conservation on access to Crown land, where the Conservation Act 1987 is relevant.

42. Such disclosure should not be permitted unless it is necessary for the performance or exercise of a function, power or duty conferred or imposed on that regulatory agency under a specified Act. This standard would provide more clarity and certainty for both stakeholders and regulatory agencies. As written, the provisions are of great concern to Straterra members.

Recommendation

n) Agree to add a new **section 90AA (1) (aa)**: "The disclosure under sub-section (1) (a) should not be made unless it is necessary for the performance or exercise of a function, power or duty conferred or imposed on the receiving regulatory agency under a specified Act";

Scope of attendance at annual work programme review meetings

43. New section 33B provides for the regulator to invite anyone they wish to the annual work programme meeting with Tier 1 permit holders, with no requirement to consult the permit holder. That would be discourteous to the permit holder, to say the least, and is surely not the Crown's intention. It is also likely to curtail the range of issues that the permit holder feels comfortable discussing in plenary. We propose an amendment to this section.

Recommendation

o) Agree to add to the end of **section 33B (1) (b)**: "*in consultation with the permit holder*";

Relinquishment obligation

44. In light of Recs. (Rec. (d) – (f)), to provide for integrated management of permits relating to the same operation or project, the holder of multiple permits relating to the same project should be able to apply to relinquish areas within each permit in an integrated way, on the same rationale provided in para. 32.

Recommendation

p) Agree to add a new **section 35C (5) (c)**: "when considering an area to be relinquished under a permit, which comprises part of a larger project in respect of which multiple permits are held by a permit holder, the Minister must consider the permit holder's combined proposals for relinquishment under permits for the entire project rather", cf. Rec. (d);

Mining under stopped legal roads

45. The intention of clause 13 (amending section 8 of the Act) is supported as a pragmatic and sensible exclusion with respect to paper roads. That said, we believe the Tier 2 restriction is unnecessary in the case of coal. Unlike many other minerals, coal may be privately owned. If the road is within an area of land that otherwise contains private minerals (viz. sub-section (2A) (b)), the coal miner would not require a Crown permit except in respect of the road. Surely, this is precisely the type of situation clause 13 is seeking to remedy, regardless of whether or not the permit holder is classified as Tier 1 or Tier 2. A simple amendment would resolve the matter.

Recommendation

q) Agree to amend **section 8 (2A)** to say: "Subsection (1) does not apply to the taking by any person of any Crown owned mineral in a stopped legal road if – (a) The mineral is *either coal or* a mineral for which a Tier 2 permit would, but for this provision be required; and (b) The road is within an area of land that otherwise contains privately owned minerals.

Amendments to other legislation

46. The proposals to amend other legislation in relation to land classification have implications for the minerals sector. We refer in particular to: clause 57, inserting new sections 18AA and 18AB into the Conservation Act 1987; clause 67, inserting new section 16A into the Reserves Act 1977; and clause 69 amending section 47 of the RA.

47. At issue are the proposals for areas to be classified as wilderness areas, sanctuary areas, Ramsar wetlands, nature reserves, and scientific reserves, with a decision by Cabinet, rather than the earlier decision by the land-holding Minister. That was the "trade-off" agreed to by Cabinet[1] in exchange for automatic inclusion of new land under these categories in schedule 4. The relevant Cabinet Committee Minute said in particular: "*As such we consider the automatic addition of areas is only appropriate if statutory processes exist to ensure that mineral values are properly considered in conservation classification decisions that have this effect.*"

48. We believe these statutory processes must include provision for relevant Cabinet Ministers to be appraised of the values relevant to their portfolios, such as minerals and energy. Industry needs to be in a position to provide advice to Ministers (along with officials), to ensure informed land classification decisions are made. We suggest the adoption of an analogous approach to that applied to the establishment of national parks, as per section 8 of the National Parks Act 1980, which provides for public notice of a proposal that invites "*persons and organisations interested to send to the Director-General written suggestions on the proposal under investigation*".

Recommendation

r) Agree to provide in **sections 18AA and 18AB** of the Conservation Act 1987, and **sections 16A and 47** of the Reserves Act 1977 for public consultation on proposals to classify land as sanctuary areas, wilderness areas, Ramsar wetlands, nature reserves and scientific reserves, cf. section 8 of the National Parks Act 1980, to provide an appropriate statutory process for the consideration of minerals and other values in decision-making;

[1] e.g., http://www.med.govt.nz/sectors-industries/natural-resources/pdf-docs-library/minerals/cabinet-paper-stocktake-of-schedule-4-crown-minerals-act-outcomes.pdf

Granting of permits

49. The wording of new section 27 (2) could lead to the placing of political pressure on the Minister in granting a permit. In any event, the provision is at odds with the relatively more prescriptive nature of the regime. A simple amendment would resolve the issue.

Recommendation

s) Agree to amend section 27 (2) to read: "The Minister may grant a permit subject to any conditions that he or she thinks fit*, and that reasonably are necessary to achieve the purpose of the Act;"*

Minister's new functions

50. The Minister's new functions are supported, however, we recommend more general wording of new section 5 (a) to avoid bias, or a perception of bias towards "public tender" as a mechanism for allocating ground. Mechanisms for allocation are covered fully in the Minerals Programme, and, therefore, the uneven specificity in the primary legislation is unhelpful.

Recommendation

t) Agree to replace **section 5 (a)** with the following wording: "to attract permit applications";

Provisions supported by Straterra

51. The CEO's new functions are appropriate (section 7).

52. The requirements for Tier 1 applicants to have the capability and systems to address health, safety and environmental matters (section 29A (2) (c)) are supported. In this context, note Straterra's Charter, in particular: "Members will provide for high-quality and best-practice H & S in the workplace", and "Members will aim to achieve a net positive impact on the environment as a consequence of their activities".

53. An annual reporting obligation on permit holders in respect of their engagement with iwi in whose rohe their operations or activities are located is appropriate (section 33A).

54. The sections on permit conditions are supported (sections 35, 35A, 35B, 35C). While an improvement on current practice, the benefits from these provisions risk being undermined by others in the Bill (notably sections 36 and 39), as discussed above.

55. The new provisions covering access arrangements onto Crown land, in particular, public conservation land, are appropriate (sections 61, 61C). The provisions implement accurately earlier policy decisions made by the Government.

56. The provisions enabling the transition for permit holders to the new M/P are supported as providing adequate certainty for investors, and adequate protection for existing investments (sections 115B, and 115C).

Recommendations

u) Note Straterra's general support of **section 2A**, in respect of Tier 1 and Tier 2 permit holders, to provide the regulator with the necessary administrative flexibility, and agree to place matters of detail into **Schedule 5**;

v) Note Straterra's support of **section 7**, specifying the CEO's functions;

w) Note Straterra's support of **section 29A (2) (c) and (3)**, requiring permit applicants to demonstrate an ability to manage health, safety and environmental risks;

x) Note Straterra's support for **section 33A**, requiring permit holders to report annually on engagement with relevant iwi;

y) Note Straterra's support of **sections 35, 35A, 35B** and **35C** in relation to permit durations, partial relinquishment of permits, and appraisal extensions;

z) Note Straterra's support of **sections 61** and **61C**, in relation to access to Crown land, in particular, public conservation land;

aa) Note Straterra's support of **sections 115B** and **115C**, providing for a transition of permit holders to the new Minerals Programme, in a way that respects the interests of permit holders and investors;

Other issues of interest or concern

57. The detail of the Tier1 and Tier 2 permit system (new section 2A) should be addressed in the Minerals Programme, which is easier to change when fine-tuning the system than the primary legislation.

58. It is noted the new enforcement provisions seem unduly harsh, and more appropriate to the Crimes Act than this legislation (sections 99A, 99A, 99B, 99C, 99E).

59. It is accepted the Government desires increased flexibility in setting royalties, via regulation (section 105A).

Appendix 1

Straterra Membership List

NOVEMBER 2012

Anderson Lloyd
AQA
Atkins Holm Majurey
Bathurst Resources
Beca
Bell Gully
Berry Simons Environmental Law
Brightwater Engineering
Buddle Findlay
Campbell MacPherson
Chapman Tripp
Chatham Rock Phosphate
Coal Association of NZ
CRL Energy
Deloitte
Dowgold Consultants
Duncan Priest
EIS Ltd
Gallagher
George Hooper
Glass Earth Gold
GNS Science
Gough Group
Greenwood Roche Chisnall
Kenex Knowledge Systems
KPMG
L&M Group
McConnell Dowell
Minerals West Coast
Minserv International
Minter Ellison Rudd Watts Lawyers
Neptune Minerals
New Zealand Energy Corp.
Newmont Waihi Gold
NIWA
NZ Resources
Oceana Gold
Orica New Zealand
Placer Gold International
RDCL
Resource and Environmental Management Limited (REM)
RSC Mining and Mineral Exploration
Russell McVeagh
Sams Creek Gold
SGS NZ
Solid Energy
Stellar Recruitment
Stevenson Engineering
Todd Corporation
Transfield Worley
Trans-Tasman Resources
TRS Tyre and Wheel