

## Submission from Straterra to the Department of Conservation Conservation Management and Process June 2022

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### Key points

- Straterra submits on this consultation only in relation to the Conservation Act 1987 concessions regime, as it applies to minerals prospecting, exploration and mining.
- Mineral activities on conservation land are subject to access arrangements under the Crown Minerals Act 1991 (CMA). The statutory tests are similar to those of the concessions regime.
- Section 170, Conservation Act, exempts “mining activity” from the requirement for a concession, to avoid unnecessary regulatory duplication.
- In practice, activities related to mining outside of the footprint of a Crown minerals permit are deemed not to be mining activities and are, therefore, subject to concessions, as well as access arrangements.
- This is illogical because such activities only occur in relation to a mining operation, eg access roads, administration buildings, parking for mobile plant.
- It is illogical to require prospecting and exploration to have a concession, as well as an access arrangement, if an exemption from concessions is already provided for mining activity.
- The solution is to (1) insert definitions for exploration, prospecting, mining, and mining operations into the Conservation Act drawing on the CMA definitions, and (2) amend section 170, Conservation Act, to extend the exemption from a concession to prospecting and exploration.
- Note that minerals activities on conservation land are already subject to the Resource Management Act 1991, and potentially, also the Wildlife Act 1953, and the Heritage New Zealand Pouhere Taonga Act 2014.
- Note also that mining is heavily restricted or prevented in respect of land listed on Schedule 4 of the CMA.

### 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 are grateful for the opportunity to make this submission on the [Conservation Management and Process discussion document](#).

## Submission

### Scope

3. Straterra's submission addresses the following points:
  - That mining companies may be required to apply for a concession for mining-related activities on conservation land outside of the area of the mining permit, an outcome we consider is not intended under Section 170 (3) (a), Conservation Act 1987 (refer to text in Appendix 1 of this submission).
  - Aircraft concessions are required for all commercial activities, including minerals prospecting, exploration and mining. These activities are, however, also subject to access arrangements under the Crown Minerals Act 1991, unlike any other commercial activity.
  - It is unnecessary regulatory duplication to require minerals activities to apply for both access arrangements and concessions, which both require operators to manage their impacts on conservation values, and to take actions to maintain conservation values.
4. The consultation seeks feedback on, among other things, "targeted changes to concessions processes", and on "other minor and technical amendments".
5. The discussion document states, "There is an opportunity to make targeted amendments to the Conservation Act to enable more proactive and efficient concessions management without removing the Department of Conservation's statutory ability to protect conservation values".
6. We consider that the concerns we raise and our proposed solutions to them are consistent with the spirit of this consultation.
7. In terms of protecting conservation values, we invite consideration of [case studies](#) of environmental management at mines and quarries presented on the Straterra website, in particular:
  - OceanaGold [Globe Progress](#) mine closure and post-closure management
  - BT Mining [Stockton mine](#) site rehabilitation
  - OceanaGold [Waihi North](#) project

**Answer to Question 1. Do you agree with the objectives listed above? If not, please explain why.**

8. We agree with the objectives, and draw attention to two of the review objectives (page 8 of the discussion document):
  - "Cost and time effectiveness: To reduce the time and costs required of those involved in conservation management processes; this includes tangata whenua (iwi, hapū and whānau), stakeholders, researchers, businesses, local councils, the public and DOC."
  - "Regulatory stewardship: To clarify policy intent; this includes transparency and consistency in decision making, and making rules clear for users."

9. Eliminating a requirement on prospectors, explorers and miners, in relevant circumstances, to obtain both access arrangements and concessions for the same activities would meet the above objectives.

## Discussion on concessions

10. The discussion document lists “four key functions of the concessions system in managing people’s use of public conservation land & waters (PCL&W)”, reproduced below:
- Delivering effective land management – First and foremost, the concessions system is responsible for ensuring that any activities **maintain the values of public conservation land**. It enables DOC to control which activities can occur, assess any adverse effects and apply any conditions necessary for the activity to take place.
  - Providing well-governed access opportunities – Appropriate private use and development of public conservation land needs an enabling mechanism. **A clearly regulated environment** gives legitimacy to that use, provides a reasonable level of certainty and clarifies responsibilities.
  - Securing public benefit from private use and development – **A royalty is paid** when the use of PCL&W results in commercial gain. DOC generally refers to these royalties as activity fees. Securing a fair return to the public for the use of a public asset is the basis for charging activity fees.
  - Clarifying public and private entitlements and responsibilities – A concession agreement **clarifies entitlements and responsibilities** for both parties in situations where both DOC and the concessionaire have interests and duties relating to the activity (*emphasis added by Straterra*).
11. Straterra contends that the access arrangements regime under the CMA achieves all of the above functions in respect of minerals activities on conservation land.
12. It is, therefore, unnecessary regulatory duplication to impose both concessions and access arrangements on prospectors, explorers and miners.

## Answer to Question 34. Do you agree with how we have described the problem and its impacts?

No. The discussion document fails to address our concerns over the regulation of minerals activities on conservation land, and we refer to the footnote on page 45:

“Section 170 of the Conservation Act 1987 requires all activities on PCL&W to be authorised by DOC in the form of a concession, with the following exemptions: i) **any mining activity** authorised under the Crown Minerals Act 1991” (*emphasis added by Straterra*).

13. In practice, this exemption from a concession applies only to a “mining activity” ***within*** the footprint of the minerals mining permit.
14. Mining activities, or activities related to mining outside the permit area, eg an access road, administration buildings, parking vehicles, and crossing a marginal strip, are subject to a concession, which defeats the purpose of the exemption.
15. As stated, this leads to unnecessary regulatory duplication with the mining company’s access arrangement with DOC under the Crown Minerals Act 1991. Section 61 (2) lists as criteria for decision making:

In considering whether to agree to an access arrangement, or variation to an access arrangement, in respect of Crown land, the appropriate Minister (in the case of subsection (1)) or the Minister and the appropriate Minister (in the case of subsection (1AA)) shall have regard to—

(a) **the objectives of any Act** under which the land is administered; and

(b) **any purpose for which the land is held** by the Crown; and

- (c) **any policy statement or management plan** of the Crown in relation to the land; and
  - (d) **the safeguards against any potential adverse effects** of carrying out the proposed programme of work; and
    - (da) the direct net economic and other benefits of the proposed activity in relation to which the access arrangement is sought; and
    - (db) if [section 61C\(3\)](#) applies, the recommendation of the Director-General of Conservation and summary referred to in that subsection; and
    - (e) any other matters that that Minister or those Ministers consider relevant (*emphasis added by Straterra*).
16. The above wording, insofar as conservation land is concerned, provides a similar level of scrutiny to that of the concession provisions. Decision-making ministers may weigh each of the above factors in their decision-making as they wish.
17. Note that CMA Section 61 (2) (e), is usually interpreted as a pointer to section 76, which covers compensation for “injurious affection”, ie adverse impacts on conservation values. Here, offsets and/or compensation are available as part of a proposed effects management package.
18. The solution to the problem is straightforward:
- (a) insert into section 2, Conservation Act, the definitions of “exploration”, “mining”, “mining operations” and “prospecting”, having the same meaning as “mining activity” drawing on section 2, Crown Minerals Act, reproduced in Appendix 1
  - (b) replace “mining activity” in section 170, Conservation Act, with “prospecting, exploration, mining, and mining operations”
19. Note that the definition of “mining operations” provides a catch-all in part (b) (v) of the definition in the CMA, “the doing of all lawful acts incidental to or conducive to the operations”. The catch-all is important because there are many activities that are not mining *per se*, but which are integral to mining eg the work of electricians and plumbers, transporting equipment on site.

## Answers to Questions relating to aircraft concessions

20. The above reflection speaks to the issue of aircraft concessions, discussed from page 74 of the consultation document that, “The Conservation Act 1987 does not explicitly state when an aircraft concession is required”.
21. The discussion document provides two options for resolving this issue:
- Option 1 - Amend the Conservation Act 1987 to explicitly state that an aircraft concession is required for all aircraft landings or take-offs on land administered under the Conservation Act 1987, National Parks Act 1980, Reserves Act 1977 or Wildlife Act 1953
  - Option 2 - Retain the status quo
22. The presentation of the issue omits the issue of regulatory duplication affecting prospectors, explorers and miners, as discussed above.

**Answer to question 87.** Which of the above is your preferred option? You may provide further analysis or comments to support your choice.

23. Regardless of which option is chosen, we seek an amendment – also in the interests of “clarity and transparency” – to exclude prospecting, exploration and mining from coverage, because matters relating to aircraft are already covered under access arrangements under the CMA.
24. Refer to our recommendations for resolving our concerns.

## Appendix 1

### Conservation Act 1987

#### Section 170 Application

- (1) This part applies to every conservation area.
- (2) Except as provided in subsection (3) or subsection (4), no activity shall be carried out in a conservation area unless authorised by a concession.
- (3) A concession is not required in respect of—
  - (a) any mining activity authorised under the [Crown Minerals Act 1991](#) (including the transitional provisions of that Act); or

### Crown Minerals Act 1991

#### Section 2 Interpretation

**exploration** means any activity undertaken for the purpose of identifying mineral deposits or occurrences and evaluating the feasibility of mining particular deposits or occurrences of 1 or more minerals; and includes any drilling, dredging, or excavations (whether surface or subsurface) that are reasonably necessary to determine the nature and size of a mineral deposit or occurrence; and to explore has a corresponding meaning

#### **mining—**

(a) means to take, win, or extract, by whatever means,— (i) a mineral existing in its natural state in land; or (ii) a chemical substance from a mineral existing in its natural state in land; and

#### **mining operations—**

- (a) means operations in connection with mining, exploring, or prospecting for any Crown owned mineral; and
- (b) includes, when carried out at or near the site where the mining, exploration, or prospecting is undertaken,— (i) the extraction, transport, treatment, processing, and separation of any mineral or chemical substance from the mineral; and (ii) the construction, maintenance, and operation of any works, structures, and other land improvements, and of any related machinery and equipment connected with the operations; and (iii) the removal of overburden by mechanical or other means, and the stacking, deposit, storage, and treatment of any substance considered to contain any mineral; and (iv) the deposit or discharge of any mineral, material, debris, tailings, refuse, or wastewater produced from or consequent on the operations; and (v) the doing of all lawful acts incidental or conducive to the operations;

#### **prospecting—**

- (a) means any activity undertaken for the purpose of identifying land likely to contain mineral deposits or occurrences; and
- (b) includes the following activities: (i) geological, geochemical, and geophysical surveying: (ii) aerial surveying: (iii) taking samples by hand or handheld methods: (iv) taking small samples offshore by low-impact mechanical methods