SUBMISSION

STRATERRA™
NATURAL RESOURCES OF NEW ZEALAND

Submission to the Ministry of Economic Development on

"REVIEW OF THE CROWN MINERALS ACT 1991 REGIME DISCUSSION PAPER (MARCH 2012)"

INTRODUCTION

1. The Crown Minerals Act Regime Review is the prime opportunity to improve the Crown minerals regime. New Zealand needs to maximise our economic development opportunities, and the minerals and petroleum sectors[1] can play an increasingly important part in that, if adequately enabled.

2. Straterra[2] welcomes the opportunity to participate in this review. We do so in the interests of achieving benefits for the minerals sector, and for the New Zealand economy as a whole.

3. To an extent, improvements are being made, and they are acknowledged and appreciated. We refer, in particular, to the increase in capacity and capability within New Zealand Petroleum & Minerals.

4. The Ministry of Economic Development discussion paper (DP)[3] presents supportable high-level objectives, however, as is often the case with policy proposals seeking to manage natural tensions between industry and government, there is room for improvement.

5. As an overall theme, New Zealand needs to be clear about the role of government, and the role of industry, if we are to develop a competitive regulatory regime. This needs to be developed in an international context because the minerals sector is globally competitive. Capital is allocated based on competition for prospectivity, regulatory certainty, and cost competitiveness. Investment in New Zealand will be discouraged if regulations create uncertainty, and, notably, if government is enabled to make decisions that lie logically with industry. The DP should provide more clarity in this area.

6. Straterra wishes to engage directly with MED to create for New Zealand a fit-for-purpose Crown minerals regime. We refer specifically to the proposals for: purpose; upfront health, safety and

[1] Green Growth Advisory Group (2011) Greening New Zealand's Growth http://www.med.govt.nz/sectors-industries/environment/pdf-docs-library/Greening%20New%20Zealands%20Growth.pdf

[2] Straterra Inc. offers a collective voice for the NZ resource sector. Straterra represents 90% by value of NZ minerals production, exploration, services and support, research, and ancillary services (excluding oil and gas). http://www.straterra.co.nz/Industry+Links

[3] This submission focuses on minerals; it does not consider issues in relation to petroleum, other than emerging petroleum technologies, arising from, e.g., new approaches to the development of coal.

environmental assessments; streamlining the permitting regime; the royalty regime review; issues relating to information, and intellectual property rights; and proposals for engagement with communities and iwi. There are also unresolved issues to do with access to Crown land.

7. MED is urged to delay writing drafting instructions for a Bill until further work with industry has been carried out.

8. We propose a technical advisory group format, and a clear path assessed to position the sector in a competitive manner.

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EXECUTIVE SUMMARY

What New Zealand should aim to achieve – the Goal

9. The first objective of the review is sound - "to encourage the development of Crown-owned minerals so that they contribute more to New Zealand's economic development" (Page 9 of the DP). New Zealand has a rich resource endowment, with potential for development, much of it owned by the Crown on behalf of all New Zealanders. Finding resources, and developing new and known resources effectively and efficiently for national economic benefit, is surely at the core of the Crown minerals regime's purpose. There appears to be broad agreement on this between government and industry. The Business New Zealand submission[4] goes into some length on this matter, and is supported by Straterra.

10. For this reason, it is crucial to develop a purpose statement to the Act that reflects the high-level objective, and government policy. We propose:

> **"An Act to promote investment in, and development of New Zealand's mineral and petroleum resources, to benefit the economy, including a fair, financial return to the Crown.[5] Refer also to paras. 37-43 of our submission.**

Problem definition

11. In reviewing the Crown minerals regime, the key consideration has to be - what is the problem to be solved? It is this: more activity could and should occur, than is occurring. In evidence, only 42% of global mining companies surveyed by the Fraser Institute[6] in 2011-2012 were encouraged by New Zealand's regulatory and land access environment, while the comparison figures for South Australia were 89%, West Australia (84%), and NSW (75%).

12. All other things being equal, the global exploration and mining industry will go where there are prospective minerals, access to land, and good regulation. We have the first, but not the third, and physical access to the resources remains problematic at many places.

13. Our concerns are chiefly, but not exclusively, the following:

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[4] Business New Zealand submission on the MED Crown minerals regime review discussion paper http://www.businessnz.org.nz/

[5] Straterra's proposed purpose statement to the Act is consistent with that of the NZMIA, PEPANZ, and Business New Zealand

[6] Fraser Institute (2011-2012) survey of mining companies http://www.fraserinstitute.org/uploadedFiles/fraser-ca/Content/research-news/research/publications/mining-survey-2011-2012.pdf

14. The Crown's approach to permitting processes strays into decision-making on matters that should lie with business (**paras. 51-58**). This is not the international norm[7]; it discourages investment (**para. 11**); and can lead to sub-optimal decisions on permits.

15. Putting out new ground, and newly-available acreage (NAA), to competitive tender, especially if New Zealand Petroleum & Minerals "picks winners" under non-transparent criteria, could prevent bona fide exploration companies applying for or getting permits, with the risk of sub-optimal exploration, and less development occurring than should occur. There may be situations where competitive tender is appropriate, and the current Northland tender process may be one of those situations (**paras. 59-63**).

16. Permits take too long to obtain, noting that many proposals for streamlining the regime may not resolve that problem.

17. The policy logic for upfront high-level assessments on health & safety, and environmental matters (covered under other legislation) is supported in principle, however, we note there are risks to manage of adding to bureaucratic complexity and costs (**paras. 44-47**).

18. Attempting to co-ordinate the diverse regulatory processes, under diverse legislation, within NZP&M is an ambitious proposal. This is an important issue, nonetheless, and is for Central Government to address because it affects primary industry as a whole, not just minerals and petroleum (**paras. 48-50**).

19. Each permit and permit application is treated, rightly, on its merits. The primary driver for management of permits is to maximise expenditure within the permit over time. Where permits are held by a company with producing assets, and those permits are associated with those assets, a case can be made to treat these permits under a consolidated regime to allow the resource to be developed in a technically and financially-rational manner (**paras. 64-68**).

20. The Government's decisions on access to Crown land require work for implementation, and industry would welcome being consulted on that (**paras. 75-80**).

21. The royalties review is focused on a return to the Crown, in the belief – we understand – that this would function as a proxy for benefits to the wider economy. We believe the focus should be on encouraging investment, in the context of international competitiveness, and in the context of New Zealand taxes, fees, rates, compensation and other payments made to

[7] For example, the Mining Act 1978 (WA) http://www.austlii.edu.au/au/legis/wa/consol_act/ma197881/

government by the minerals sector (**paras. 105-108**). With more investment and activity, more returns would flow to the Crown (and the nation as a whole), as an inevitable outcome of a fit-for-purpose Crown minerals regime[8]. An ideal New Zealand royalty regime would be positioned at a competitive level to prevent that investment flowing unnecessarily to other minerals-endowed nations.

How to achieve the Goal – the policy approach

22. Straterra agrees the Crown has a legitimate interest in how its resources are extracted to maximise the return to the Crown. The question central to this review is how best to achieve this outcome, as a subset of the more important outcome/goal of benefiting the national economy. Herein lies a natural tension between the Crown and industry. To set the scene for our submission, we contrast the respective approaches:

    - The Crown believes it must have the power to determine "good" exploration and mining practice, "technical capability" and financial viability thresholds, for minerals prospecting, exploration and development. It believes it must exercise this role to prevent sub-optimal resource development. It believes that competitive allocation of new ground, based on these criteria, will maximise minerals development, and the return to the Crown;

    - The minerals industry believes it must have discretion over how it carries out prospecting, exploration and mining, in order to raise, manage and retain globally-mobile investment capital, and to respond to changing and evolving circumstances during the life of a project. Competitive allocation can work, however, may suit only a few settings. Some regulation is desirable to promote activity, and prevent non-performance and anti-competitive behaviour.

23. Basically, the Crown has two or three options when exploring and developing its mineral resources. It can do the job itself, and the State Coal Mines Act 1901 once provided a mechanism. Alternatively, the Crown can "outsource" minerals development, which is the current preferred approach. A variant of that is the State-owned enterprise model, e.g. Solid Energy New Zealand Ltd.

24. If the Crown does outsource the opportunity, it must exercise care in how it regulates that activity to ensure good outcomes.

[8] This logic underpinned the Government's tax cuts – the concept is that reduced taxes to individual firms will encourage more economic activity in NZ, delivering greater overall tax revenue to the Crown. http://www.beehive.govt.nz/release/fact-sheet-company-tax-cut

25. By way of a rough analogy: a restaurant must be audited by government to ensure the food is safe, however, should not be told what ingredients to use or how to prepare the food.

26. In the case of prospecting, exploration and mining, it would be unreasonable to expect the Crown to know more about these activities at a place than the permit applicant. Nonetheless, the Crown must be empowered to "audit" or assess, in a high-level way, the fitness of an applicant to exercise a permit. There is a balance to be struck.

27. We know if we get the balance wrong from the undesirable outcomes that may result: backlogs in permitting processes, partly out of fear of judicial review over adverse decisions; tortuous processes for changing permit conditions and extending the duration of permits; uneven handling of permit applicants; potentially wrong decisions; and unreasonable costs to applicants, especially in time.

28. The first step in getting the balance right is to agree on the nature of the minerals industry.

The nature of the minerals industry

29. Finding minerals, proving up an economic ore deposit, determining how the ore is to be extracted economically and responsibly, and building a mine (including processing facilities) cost progressively increasing amounts of at-risk funds with not a cent earned from production, and no certainty of income, until the ore is extracted, processed, and sold. This is a challenge for investors, at every stage.

30. A further complication is that the knowledge of the geology, the economics of the project, and technology, will change during the life of the project, necessitating on-going changes in the company's approach. In the early stages of prospecting and exploration, a single exploration drill hole can lead to a complete change of the model of the geology. Companies need flexibility in the regulatory approach, but can be held to account in terms of expenditure.

31. Greenfields exploration is often carried out by start-up exploration companies[9], and is the fuel driving minerals activity. An exploration company may invest in proving up a resource, to then sell that "asset" to a company better placed to take the resource to the next stage, or even to mine the resource. Often the exploration company may have staff of one or two professionals, and contract out work to be done and specific expertise. This is a typical, but not exclusive, business model in the prospecting/exploration sector. Staff and Board may be bona fide, but the company has little or no track record.

[9] For example, Trans-Tasman Resources, Glass Earth Gold, Chatham Rise Rock Phosphate

32. Mining companies are as important a driver for minerals development because they provide exploration capability, and the technical and financial capability required to advance successful exploration.

33. Prospecting, exploration and mining for minerals are difficult and complex. To meet the challenge, the technology and approaches used are sophisticated, continually evolving, and demand a high expertise of people in the industry, across a wide range of disciplines, including: geology, geophysics, mathematics, IT, engineering, chemistry, accounting, financial management, law and regulation. As knowledge of a resource is gained, work programmes change. Certainly, there should be checks and balances when applying for permits. A simple system for that will suffice (**paras. 51-59**).

34. Resource optimisation is a critical component of the development of a mineral resource – noting that the approach taken, and the parameters that determine project value, vary widely across different minerals. Companies, particularly public-listed entities, are strongly incentivised to maximise the value of a resource, and use sophisticated physical and financial analysis and models to do so.

35. Furthermore, the minerals industry is very different to the petroleum industry[10]. Oil and gas deposits are very different, technically and financially, than minerals. For example, the trade-off in petroleum extraction between the rate of field recovery and total field recovery does not occur with a mineral like gold or coal. A single petroleum exploration well can cost $100 million, while an entire gold exploration programme might cost $10 million. The scope for variation of approach in the case of petroleum is much less than that of minerals. We say that minerals is by far the more dynamic sector. All of that affects the business models, and industry structure, adopted in each case. The minerals industry must be considered on its own merits, and definitely not in the context of the petroleum industry.

The minerals industry's vision

36. The minerals industry seeks a Crown minerals regime that provides, ideally:

[10] Straterra's comments on petroleum are restricted to "conventional" petroleum, as opposed to "emerging" petroleum and minerals technology, such as coal-seam gas, and underground coal gasification, where a flexible approach to regulation is desirable.

- **PURPOSE**: "**An Act to promote investment in, and development of New Zealand's mineral and petroleum resources, to benefit the New Zealand economy, including a fair, financial return to the Crown**" (*paras. 37-43* of our submission);

- If there is to be an **upfront assessment of risk management capability for HSE**, that it be carried out efficiently, and provide fair consideration of start-up companies (*paras. 44-47*);

- Companies are responsible for **compliance with other legislation**, and any related public consultation, as part of their "social licence to operate", as required under section 9 of the CMA (*paras. 48-50*);

- Central government continues work to improve the **alignment of regulatory processes**, e.g.: concessions/RMA interface; concessions/access arrangements (*paras 48-50*);

- **"Alternative" approach to permitting** – the applicant proposes expenditure on activities within a proposed time frame, and subject to the applicant meeting simple criteria, such as fitness to be a Director, and with recognition of track record (where applicable), and other activities being carried out (*paras. 51-58*);

- Mechanisms in addition to competitive allocation for **allocation of rights** to new ground, or newly-available acreage (NAA) (*paras. 59-63*);

- Consolidated treatment of permits - a **portfolio approach** - for operators that have multiple permits/permit applications relating to the same project, and associated with existing infrastructure, to enable flexibility, staging and economically-rational development (*paras. 64-68*);

- Guidance on **time frames** for processing permit applications (*paras. 72-74*);

- Improved **access to Crown land,** in particular, public conservation land, under the Government's decisions (*paras. 75-80*);

- Any triage system (**Tier 1/Tier 2**) must provide for lowered hurdles for applications for all prospecting and exploration activities (*paras. 81-83*);

- **Reporting periods** – Align reporting on prospecting and exploration permits with their anniversaries, to allow better workflows, while providing for reporting on mining permits may be aligned to advantage with the calendar year (*para. 99*);

- More clarity on, and improved provisions for **transfers and dealings** *(paras.100-101)*;

- As is the case for the above bullet points, the following items (bulleted below) require **more work between MED and the industry** to deliver on the purpose of the Crown minerals regime (*paras. 102-103*);

- **Permit** areas, surrender, relinquishment, revocation, subsequent permits, exclusivity or otherwise of permits, changes to permit conditions, extensions in duration of permits, renewal of permits, appraisal extensions, work programmes, compliance, and related matters – Make business friendly (*para. 104*);

- A **royalty regime** assessed against international benchmarks, and considered in the context of other payments made to government by the minerals sector (*paras. 105-108*);

- **Data and IP management** that provides for a transfer of information to the Crown while respecting the commercial sensitivity of information (*para. 109*); and

- Effective **engagement with iwi** and other stakeholders (*paras. 110-115*).

DISCUSSION OF STRATERRA'S APPROACH

Purpose of the Crown Minerals Act 1991

37. Recall the origins of the Crown Minerals Act 1991. This started life as Part IX of the Resource Management Bill, however, was separated out to concentrate on property rights to minerals, leaving the RMA to provide for sustainable management, and the regulation of the environmental effects of minerals activities. Thus, the Mining Act 1971, Coal Mines Act 1979, and the Petroleum Act 1937, were superseded by the CMA and the RMA, both statutes passed in 1991.

38. The CMA was enacted with no purpose statement per se, other than the provision: "an Act to restate and reform the law relating to the management of Crown owned minerals", while section 12 of the Act on the purpose of minerals programmes says these must "provide for - (a) the efficient allocation of rights in respect of Crown owned minerals; and (b) the obtaining by the Crown of a fair financial return from its minerals".

39. The above – we submit - is a narrow agenda. Therefore, we are encouraged by the first objective of the Crown minerals regime review, and concerned over the narrow formulation of the purpose statement in the DP (Paras. 341-346), which highlights: "the efficient allocation and management of Crown owned minerals", and a "fair financial return from the development of Crown owned minerals".

40. That would like saying the purpose of a restaurant is to pay rent to the landlord, which might be the landlord's perspective but not the restaurateur's (profit), or society's perspective (a good and safe restaurant, addition to urban culture, jobs and other economic activity).

41. Here, the key goal or outcome should be more prospecting, exploration and mining activity in New Zealand, because minerals owned by the Crown belong, in effect, to all New Zealanders. That goal would be consistent with the Government's economic growth agenda. It would be consistent with Energy and Resources Minister Hon Phil Heatley's foreword to the discussion paper: "Petroleum and minerals also provide employment, investment, and regional development opportunities and they are important inputs across the economy."

42. As well, the Minister told a seminar hosted by Buddle Findlay on 28 March: "We want both sectors [minerals and petroleum] to … grow significantly. We want to replicate what we have done with Taranaki. We are beating the drum about economic growth and jobs."

43. We believe the minerals sector has good potential for growth in New Zealand. Case studies on the effects of minerals development on the economy are provided in **Appendix 1**.

Recommendations

a) Agree to the following **purpose statement** – "An Act to promote investment in, and development of New Zealand's minerals and petroleum resources, to benefit the New Zealand economy, including a fair, financial return to the Crown" – to reflect the high-level objective of the review, and s.12 of the CMA;

b) Agree to *ensure* that all provisions of the Act, the M/P, and regulations, are consistent with, and further the **purpose of the Act**;

c) Agree to *provide recognition* of the **economic potential of minerals** to New Zealand in the policy statement/explanatory note to the Act. This makes the case for minerals as worthy of good regulation, and should also explain the investment challenge;

d) Agree to *explain* the **role of the Crown** under the CMA as the owner of Crown minerals, to allocate the rights to minerals, and to encourage and enable activity, in a fair way, in the policy statement/explanatory note to the Act. This makes a distinction to other roles the Crown has, under other legislation, having other regulatory purposes;

e) Agree to *avoid* a **conflation of treatment of minerals and conventional petroleum**, because the two sectors are very different in their nature, their effects under other legislation, the investment challenge, and in their business models and industry structure;

Upfront assessment of risk management capability for HSE

44. Health & safety is, and must be, the highest priority for any mining company, and environmental responsibility is, and must be, core business[11]. We understand, therefore, there are very good reasons for proposing an upfront assessment of an applicant's risk management capability for HSE (Paras. 24-28 of the DP). We understand the public and political reaction to the Deepwater Horizon oil spill in the Gulf of Mexico, and the Pike River Coal disaster in that context.

45. The question must be raised whether upfront HSE assessments would have prevented the Pike River Coal mine disaster, or the Deepwater Horizon oil spill. It is likely that both sets of companies would have passed such assessments.

[11] Viz. Straterra's membership policy http://www.straterra.co.nz/Principles%20of%20membership

46. We do say that adding another layer of regulation via the CMA (e.g. Paras. 190-194) could add costs to regulation, without conferring any real benefits on New Zealand.

47. Nonetheless, if the Government is committed to upfront HSE assessments of risk management capability, this must be carried out efficiently, and carefully, to not discriminate against companies that may be bona fide but lack a track record (refer to **para. 31**). Whichever system is adopted, we suggest it should be applicant focused, rather than application focused. It could be argued this requirement is a component of an applicant's technical capability.

Recommendations

f) Agree to *highlight* the importance of **HSE** in the policy statement/explanatory note to the Act, noting that these matters are covered under other legislation, and that the need for compliance with other legislation is already provided for in section 9 of the CMA;

g) Note the industry's position that upfront HSE assessments are unnecessary, while recognising the government's views on this matter;

h) In the event of upfront assessments of risk management capability for HSE being enacted, agree that further work between MED and industry should be carried out to ensure **effective implementation**;

Compliance with other legislation

48. In a broader context, the proposal for NZP&M to achieve better co-ordination between regulatory agencies is laudable (Page 12). We caution that this is an ambitious proposal, however, and may be an issue for central government to address. Consider that mining companies will or may need approvals in relation to rights to minerals, H&S, environment, conservation (access to land, concessions, translocation of wildlife), historic heritage, buildings and other structures, and hazardous substances, under diverse pieces of legislation, administered by diverse agencies. Paras. 4 and 5 of the DP underestimate the level of complexity.

49. Even if the Government's merging of MED, DoL and other agencies eased the regulatory co-ordination challenge, that still leaves the issue of co-ordination with the Environmental Protection Authority, diverse regional and district councils around New Zealand, the Department of Conservation, and the Historic Places Trust.

50. Regulatory compliance under other legislation will still be necessary to exercise a permit, as is already made expressly clear in section 9 of the CMA. The permit holder will incorporate those aspects of compliance in their own planning, and will be best placed to co-ordinate those requirements as part of securing their complete "licence to operate".

Recommendations

i) Agree that responsibility for **compliance under other legislation** - H&S, environment, conservation, access to Crown land, wildlife, historic heritage, hazardous substances, buildings and other construction - lies with the permit holder or permit applicant, and not under this Act;

j) Notwithstanding the above, note that there is an issue of regulatory co-ordination to be addressed, and that this is a matter for Central Government;

Alternative permitting, and permit management system

51. The perpetuation of the current approach to permit applications, under the 2008 Minerals Programme, will continue to expose NZP&M to the risk of judicial review of adverse decisions, with long processing times to mitigate those risks, requiring a great deal of industry expertise on the part of NZP&M, and without necessarily achieving the Crown's or the industry's objectives, or benefiting New Zealand.

52. To press the point, we believe it is inappropriate, and sends a discouraging signal to investors, to require the regulator to determine "good" exploration or mining practice, or technical capability, or "financial ability" of the applicant. Of course, there must be criteria in that respect, and we suggest MED consider seriously the systems used in South Australia[12], West Australia[13], Queensland[14], and the Northern Territory[15].

53. We develop here those aspects of the West Australia system that industry considers works well. Here, the permit applicant explains in basic terms what they intend to do, what funds they intend to spend, the time frame within which the work will be done, and provides a guarantee of commitment to that programme. There is a pre-set level of minimum expenditure per hectare per year. After a period of time the permit holder must relinquish half the permit area, and then

[12] SA Mining Act 1971 http://www.legislation.sa.gov.au/LZ/C/A/MINING%20ACT%201971.aspx
[13] WA Mining Act 1978 http://www.austlii.edu.au/au/legis/wa/consol_act/ma197881/
[14] Queensland Mineral Resources Act 1989 http://www.austlii.edu.au/au/legis/qld/consol_act/mra1989200/
[15] NT Department of Resources – Minerals and Energy http://www.nt.gov.au/d/Minerals_Energy/

double the minimum expenditure per hectare. There is an application fee; there is a bond that is non-refundable if the applicant fails to perform on the permit conditions.

54. One might consider additional criteria, such as the fitness of the applicant to be a Director, with recognition of an applicant's track record, if they have one, and consideration of other activities being undertaken by that applicant. For example, the applicant may be a mining company of long standing wishing to develop more resources to feed into existing infrastructure, for extraction, processing, transport and sale. Refer to the section discussing a portfolio approach to permits (**paras. 64-68**).

55. The rationale is that all aspects of prospecting, exploration and mining permitting should be efficient, for the regulator, and for the applicant. That also goes for the management of permits: extensions in duration of permits, renewal of permits, appraisal extensions, extensions in permit area, changes to permit conditions, and conversion of permits into subsequent permits.

56. This avoids the regulator having to be an expert on every aspect of prospecting, exploration and mining, while still being enabled – and this is crucial - to audit applicants and permit holders. It allows the opportunities and set-backs to do with, e.g., the geology, technology, and land access, to be catered for, without tying up both the regulator and the permit holder in multiple applications to vary permit conditions. The regulator is freed up to allocate permits to performing firms, and remove them from non-performing firms, in a timely manner. If a permit holder cannot complete a work programme to the spending floor within the agreed timeframe, it can apply for relief if criteria for special circumstances are met (**para. 70**). If an exploration permit expires, the permit holder has an opportunity to retain the permit (refer to the portfolio approach covered in **paras. 64–68**), provided criteria are met e.g., meeting all expenditure targets and timeframes, to avoid "land banking". The criteria for decision-making are transparent to all.

57. It will be necessary to edit the M/P for consistency with an alternative approach to permitting, and permit management. We propose that MED and industry work together to achieve this.

58. The best of the Statement of Reasons for policies in the M/P could be edited into the explanatory note/policy statement to the Act. While consistent with the New Zealand Energy Strategy (Para. 371 of the DP), they are not provided for in that document[16].

[16] New Zealand Energy Strategy 2011-2021 http://www.med.govt.nz/sectors-industries/energy/pdf-docs-library/energy-strategies/nz-energy-strategy-lr.pdf

Recommendations

k) Agree to *amend* the M/P to provide for an **alternative approach to permitting** – the applicant proposes expenditure on prospecting, exploration or mining within a proposed time frame (against international benchmarks adapted to local conditions), and subject to the applicant meeting some basic criteria, e.g. fitness to be a Director, recognition of track record, and of other activities being undertaken;

l) Agree to *revise* the **criteria in the M/P** for assessing permit applications relating to good exploration and mining practice, technical capability, and financial viability, for consistency with Rec. (k);

m) Agree that the permit applicant should decide, and not the Crown, what **methods and technology** to use in carrying out an activity, for consistency with Recs. (k) and (l);

n) Agree that this system must include a **revocation** provision: that if the applicant fails to comply with permit criteria, under Rec. (k), the permit must be surrendered back to the Crown, with flexibility for extenuating circumstances;

o) Agree to *select* the best of the M/P's "**statement of reasons**" for policies, and edit that into the policy statement/explanatory note to the Act, because these matters are not provided for in the New Zealand Energy Strategy;

p) Agree to *direct* **MED to work with industry** to developing the alternative approach to permitting, and permit management;

Allocation of new ground and NAA

59. The proposed concept of "competitive allocation" of mineral development rights to new ground and NAA is attractive, in principle (Paras. 197-210). As the discussion paper says, it provides the regulator with a market mechanism for awarding the permit to the company that values it the most.

60. No doubt, there will be situations in which competitive allocation of rights to minerals is appropriate. But on the face of it, we are not clear what those situations will be, aside from the obvious case of petroleum. The proposed Northland tender may be an example.

61. At issue is the prime objective of competitive allocation, which would be to promote the right sort and level of activity in New Zealand, to encourage economic development. Even if armed with simple and transparent decision-making criteria, as outlined in **paras. 51–58**, competitive allocation could pose difficulties for NZP&M when deciding between two or more applicants for the same ground. Does one award the permit to the company proposing to spend the most dollars? Or not? If not, what weighting would one choose between spending intentions, and other factors, such as track record, content of the work programme or NZP&M perceptions of the geology and extent of a mineral deposit? Competitive allocation, though attractive in principle, would be difficult to apply fairly in practice, at least in the case of minerals. The risk is that some types of bona fide exploration company would be discouraged from lodging an application, or would not succeed if they did.

62. That said, it is not clear how to improve on this system, i.e., avoid NZP&M making a value judgment or "picking winners", as opposed to enabling the market find the best permit applicant. We do note that the first-come, first-served approach, subject to minimum criteria and standards, has served New Zealand reasonably well over time.

63. To conclude: MED is urged to think carefully about how, or whether, it introduces competitive allocation for minerals. What may work well for petroleum may not work well for minerals. Further work between MED and industry may be required.

Recommendation

q) Agree to *provide* for **mechanisms in addition to competitive allocation** in relation to new ground and NAA, e.g. first-come-first-served, to ensure that bona fide exploration companies are not discouraged from applying for access to acreage, and subject to Recs. (k) – (p);

Portfolio approach to multiple permits and permit applications

64. Companies such as OceanaGold, Solid Energy, Newmont Waihi Gold, Francis Mining, and Bathurst Resources typically hold multiple permits or are pursuing multiple permit applications, in relation to specific projects. For these companies, this sheaf of paperwork can comprise a single portfolio.

65. At issue is whether all permits and applications relating to a single project, where that project has significant investment in plant and equipment, can be treated in a consolidated manner. The

proposal for proactive engagement on the part of NZP&M (e.g. Paras. 47-52) is welcome in this context, and could provide the mechanism for creating a portfolio approach for this type of customer.

66. The benefits for relevant industry players would be increased flexibility in managing, and staging the various components of development over the life of a project. This approach should provide: economic benefits, namely, more effective allocation of funds, and more effective use of scarce government resources; as well as resource benefits, namely, improved resource recovery.

67. The portfolio approach would be applicable to emerging mineral and petroleum technologies, where work carried out under one permit for a technology contributes to the proving and development of that technology for other permits relating to that technology, whether or not part of the same project.

68. Naturally, there must be criteria to ensure the application of this portfolio approach is rigorous and transparent, and exploration companies are not unreasonably disadvantaged. The regulator will wish to avoid tying up acreage with a company cynically wishing to prevent fair competition from others.

Recommendations

r) Note the proposal for more **proactive engagement** with permit applicants/permit holders is supported;

s) Agree to take a **portfolio approach to operators with multiple permits or applications** relating to the same project, where significant assets exist, to enable flexibility and staging in prospecting, exploration and mining activities; and in respect of emerging mineral and petroleum technologies; while providing criteria to prevent unfair competition against greenfields exploration by exploration companies;

Retention of permits

69. Retention permits provide for the discoverer/miner of an economic ore deposit to plan for spanning economic cycles, which can exceed 10 years, and accommodate events beyond the company's control, e.g. land access, regulatory delays, legal contest. This issue is related to the preceding one, proposing a portfolio approach to permits. Once more the potential for unfair competition arises, necessitating criteria to enable companies of the type described in **para. 64,** while ruling out companies that do not fit that character.

70. The West Australia Mining Act 1978 provides relevant criteria: "the time required to evaluate work done [on a tenement] to plan future exploration or mining or raise capital therefor"; "that the [tenement] … contains a mineral deposit which is uneconomic but which may reasonably be expected to become economic in the future or at the relevant time economic or marketing problems are such as not to make the mining operations viable"; "that the [tenement] contains mineral ore which is required to sustain the future operations of an existing or proposed mining operation"; "that a [tenement] is one of two or more [combined reporting tenements] … [and] the aggregate exploration expenditure for the combined reporting tenements would have been such as to satisfy the expenditure requirements for [the tenement concerned] had that aggregate exploration expenditure been apportioned between the combined reporting tenements"; "that there are existing political, environmental or other difficulties in obtaining requisite approvals"[17].

71. The desirability of retention permits applies also to emerging mineral and petroleum technologies, which by their nature entail unforeseen circumstances as these technologies are developed.

Recommendation

t) Agree to *provide for* the **retention of permits** for permit holders to accommodate delays occasioned by the physical and economic realities of mining, e.g. in relation to economic cycles, and delays in obtaining approvals under other legislation, and/or access to land, or legal contest, and to accommodate emerging mineral and petroleum technologies, subject to criteria to prevent unfair competition;

Reducing processing times

72. Any set of proposals for streamlining permitting processes will require guidance around time frames to be effective. This is the approach taken under the RMA, and the Department of Conservation's recently reviewed and amended concessions regime[18], including in relation to consultation with iwi. As well, West Australia requires 30 working days, with separate provision for consultation with indigenous people.

73. We propose 20 working days as practical and reasonable, with an additional 20 days for consultation with iwi, so, all up, 40 working days. Generally, permitting under Recs. (k) – (p),

[17] Sections 69B, 102, 65 (3b), and reg. 22A, Mining Act 1978 (WA)
[18] Department of Conservation concessions regime timetables http://www.doc.govt.nz/about-doc/concessions-and-permits/concessions/about-concessions/timeframes/

would take very little time. Naturally, there must be some flexibility, however, 20 + 20 working days as a guide is preferable to the current situation where it can take several months or years to get a permit.

74. There is also the matter of incomplete applications. Section 88 (3) of the RMA provides five working days for the council to return an incomplete application to the applicant, and that approach could be adopted here.

Recommendations

u) Agree to **statutory time frames for processing applications** – 20 working days, plus 20 working days for consultation with iwi, with a penalty for non-performance by the regulator for its portion;

v) In relation to Rec. (u), agree to **start the clock** the day the application is delivered to NZP&M;

w) Agree to *direct* MED to develop fair provisions for dealing with **incomplete applications**, e.g. five working days from the receipt of the application;

x) Agree to *provide* the applicant with an **opportunity to provide further information** to the regulator if requested, with the applicant not losing priority in processing, and with a suitable time frame for that information to be provided;

Access to Crown land

75. Bringing greater certainty and balance to decisions around access to Crown Land, especially public conservation land outside of schedule 4, remains a key issue for the Crown minerals regime review to address.

76. Straterra believes that applications for access to Crown land for mineral development do not need to be notified, because it would not add to the information already available to relevant Ministers under the Crown Minerals Act. In particular, where public conservation land is concerned, the Ministers will have the benefit of advice from the Department of Conservation. DOC, in turn, will have consulted the relevant Conservation Board, which represents the public interest in conservation land.

77. However, assuming the decision to move to public notification of "significant" access applications is retained, it is important to clearly set out the criteria to determine whether or not an application is "significant". It would be unfortunate if a new test of "significant" was

developed specifically for the CMA access regime. The criteria used by the Minister for the Environment to assess national significance under section 142 of the RMA could be taken as a starting point, noting the criteria need to be pruned and amended for simplification, and to introduce a greater level of objectivity.

78. In drafting and applying any test of "significant" for Crown land access under the CMA, care needs to be taken to avoid undesirable outcomes. For example, it would make little sense if an applicant secured resource consents on a non- or limited-notification basis, however, was required to undergo a full public notification process for access.

79. Where access applications are to be notified, the opportunity for submissions and decision-making should be aligned with similar processes under the RMA. We are aware that considerable work has been undertaken by officials in other agencies (notably, DOC and MfE) around aligning resource consent and concession processes under the RMA and Conservation Act, respectively, for nationally-significant developments on public conservation land. On that note, decisions on publicly-notified access applications under the CMA should be similarly aligned with resource consent processes under the RMA. We submit that MED/NZP&M should work with other agencies within the context of the RMA Phase 2 reforms.

80. The criteria the joint Ministers will use to determine whether or not to grant access, and if so on what terms, needs to be clearly spelled out in the CMA by way of a revision to section 61. Particular care needs to be taken to avoid duplication with the RMA. The RMA is the primary statute dealing with environmental issues. The granting of resource consents with conditions to manage or compensate for adverse effects provides the opportunity for all effects on values represented on public conservation land to be addressed within the context of a balanced decision – that weighs the benefits of a development proposal against the adverse effects. There is no need for these matters to be revisited by the Ministers in their decision-making under the access provisions of the CMA. Rather, Ministers' concern should be the commercial relationship between the Crown and the applicant, focusing on issues of risk and return, and having regard to the Crown's broader interest as the recipient of royalties from mining on Crown land.

Recommendation

y) Agree to *direct* MED to work with industry to **define** "significant" in relation to access arrangement applications, and in proposing amendments to section 61 of the CMA;

DISCUSSION OF SELECTED PROPOSALS IN THE DISCUSSION PAPER

Tier 1 and Tier 2

81. It is possible that a triage system for minerals permit applications would reduce processing times. The question is what should be in Tier 1 and Tier 2. The current proposal is to assign the "high-value, high-risk" proposals, as characterised by MED, namely, "large commercial gold, silver, coal, ironsand, and emerging phosphate and sulphide minerals" into Tier 1 (Paras. 165-168), and assign the rest, such as alluvial gold, aggregates, and industrial minerals, into Tier 2.

82. At issue is that some alluvial gold operations can be very large, and would fit more logically into MED's high-risk category. As well, prospecting and exploration for Tier 1 projects are low-impact, and low-risk activities from an HSE perspective, while earning no income. The processing of these activities should be made as easy and business friendly as possible. It would be unfortunate if these activities were lumped in with applications for large and complex mines, on one hand, or with hobby mining applications on the other.

83. MED is urged to think more carefully about the Tier 1/Tier 2 triage system, and work with industry to refine the criteria for Tier 1 and Tier 2.

Recommendation

z) Note that the triage system envisaged with Tier 1 and Tier 2 categories is supported in principle, with more work required to better delineate different types of activity;

Permit areas, relinquishment

84. We have not been able to study in detail the matters raised in Paras. 177-187, and 211-216 in relation to prospecting and exploration permit areas. Nor have we been able to address relinquishment issues raised under Paras. 233-234.

85. That said, we note that prospecting/exploration companies carrying out aerial geophysics often need large permit areas to make it worth their while. The proposal in Para. 186 for a maximum of 500 square km (50,000 hectares) may be too small by an order of magnitude[19].

86. The resolution of these matters would benefit from further work between industry and MED, as proposed in **paras. 102 and 103**.

[19] Glass Earth Gold is applying for a prospecting permit to fly geophysics over 700,000 ha in Otago.

Recommendation

aa) Note Recs. (kk) - (pp);

NAA process

87. Paras. 202-208 are of concern for companies wishing to renew an exploration permit, over ground that has taken more than 10 years (five + five) to develop into a mineable resource. MED is proposing that this company would have to surrender their IP, and compete with others who have spent nothing on obtaining that information. That would be unfair to the incumbent.

88. At issue is that it can take more than 10 years to move from exploration to mining of a resource. Any applicant entering the proposed system would be "gambling against the clock", a deterrent to investment.

89. We share MED's concern over the risk of permit holders hanging onto ground cynically, under the guise of an exploration programme, with land being tied up for no good reason, and not being developed. As discussed in **paras. 51-58**, the West Australia system provides for renewal of exploration permits only under tight criteria.

90. It is noted that a company in this situation could apply for an appraisal extension of four years, provided it can be shown that a discovery was made during the second five-year term of the exploration permit (Para. 231). That may be unnecessarily restrictive, and, as above, the West Australia system provides a way forward.

Management of work programmes

91. We seek more flexibility in managing work programmes.

92. Annual work programme reviews are supported, as consistent with proactive management of permits, noting there may be situations where they may need to be held more often, or less often.

93. In relation to Paras. 219-230: the concern that companies may lodge change of conditions applications close to commitment period deadlines "as a means of avoiding compliance" (Para. 222) is not rescued by the proposal for permit holders to adhere to a "firm set of work commitments" (Para. 223). As discussed, the drilling of a single exploration hole can - and often does - fundamentally alter the knowledge of the geology. A more business-friendly approach is called for. The alternative approach discussed in **paras. 51-58** would resolve the issue, by

enabling permit holders to have the flexibility to make adjustments to work programmes, within agreed budgets, and reporting timetables, without having to seek permission for making those changes.

94. The approach to non-compliance presents room for improvement (Paras. 226-229). Delays with obtaining regulatory approvals under other legislation are commonplace, and would likely not be considered a force majeure circumstance under the Crown minerals regime. In many cases, that would be unfair to the permit holder because such delays are often beyond the control of the permit holder. We propose the approach taken in West Australia, namely, flexibility for a defined set of special circumstances (**para. 70**).

95. Para. 232 says: "Like the current system, permit holders that want to surrender acreage would be eligible to do so upon completion of work programme obligations". What if a permit holder discovers while working that the nature of the ore deposit is other than initially modelled? Forcing the permit holder to continue a work programme that is no longer appropriate would be unfair, and makes no business sense. In West Australia, if a permit holder wishes to surrender a permit, they surrender a permit. The NAA system would avoid any gaming of the situation[20].

Recommendations

bb) Note the proposal to hold **work programme reviews** with permit holders is supported;

cc) Agree to *apply an alternative approach* to permitting for changes in, delays in completion of, and cessation before completion of **work programmes**, as per Recs. (k) – (p);

Use of the JORC Code

96. The use or otherwise of the JORC Code should be up to industry (Paras. 249, 251-255). If a company's shareholders and/or listing conditions[21] require JORC Code information, then the company will get it. In many cases, that will not be a requirement[22], and the company would not spend unnecessarily to obtain it. MED's proposed approach would interfere unnecessarily in how a company runs its business.

[20] Hypothetically, a permit holder could cynically drop a permit to allow another interest to acquire it as a new permit, by private arrangement, to avoid pursuing a transfer or dealing.
[21] ASX and NZX require listed companies to adhere to the JORC Code as a condition of their listing, and this must be supplied by a "competent" person.
[22] On the other hand, a company listed in Canada must adhere to the requirements of that stock exchange, and these are different from JORC. Such a company would not wish to be burdened with a JORC reporting requirement.

97. To elaborate, in some cases, a JORC estimate is not needed to make a decision whether or not to move from exploration to mining. For instance: a private company would be unlikely to require a JORC-compliant estimate of resources; and there are geological situations where it would not be possible to estimate a resource to a JORC Code standard, e.g. coal seams in folded and faulted structure, even if a company wanted one[23].

98. The Crown's concerns in this area are understood, however, and we suggest more work between MED and industry to provide a suitable approach when considering applications for a subsequent permit, or an extension of land under a mining permit.

Recommendation

dd) Agree to *rescind* the requirements for **JORC Code certification**, because such considerations should be largely at the discretion of industry, with further work required between MED and industry to develop a suitable requirement;

Mineral reporting

99. The proposal in Para. 261 to "align the reporting periods of annual summary reports and royalty returns e.g. to a calendar year basis" is fraught, despite otherwise good intent[24]. NZP&M will be inundated with material at a time of year when staff are most likely to take annual leave, and when permit holders and applicants are at their busiest, taking advantage of summer conditions for work. A staggered work flow throughout the year would surely be in everyone's interests, in particular, for prospecting and exploration permits. It may make sense, however, to align reporting on mining permits with royalty returns on a calendar year basis.

Recommendation

ee) Agree to *align* **reporting periods** in relation to anniversaries of permits, not with the calendar year, for prospecting and exploration permits, to allow better workflows;

Transfers and dealings

100. As the DP notes (Para. 377), transfers and dealings are a frequent occurrence. We would welcome improvements to section 41 of the Act[25]. We agree with the proposal: "that parties

[23] Francis Mining has been operating for 35 years on the West Coast without the need for JORC estimates, which would in any case be impossible to obtain, because of the geological complexity of the coal seams the company has under permit.
[24] Perhaps, NZP&M desires ease in preparing statistics.
[25] Solid Energy has submitted on this matter in their submission, drawing on their extensive experience.

may assume that Ministerial consent is not required unless advised to the contrary within 40 working days of a proposed transfer or dealing being notified", that is to say, with the presumption that an application would be approved. We suggest the time frame should be shortened.

101. We suggest that the scope of section 41 of the Act should be limited to transfers and dealings, and that sections 41 (2) (b) and (d), covering matters in relation to permits other than transfers and dealings, should be deleted.

Recommendations

ff) Agree to *provide for* 20 working days for the Minister to decide whether or not he/she needs to make a decision on an application for a **transfer or dealing**;

gg) Agree that **section 41(3) be retained** in its current form, including the reference to special circumstances;

hh) Agree that the **scope of section 41** should be narrowed so that only permit transfers and key dealings are caught, and that the scope of section 41(2) is clarified to make it clear which agreements are caught, and which agreements are not;

ii) Agree to *provide* specific **criteria in section 41 (3)** under which the Minister would make that decision;

jj) Agree to *provide for* 2**0 working days** for the Minister to make a decision, if he/she decides that he/she needs to make a decision;

OTHERS AREAS WHERE ADDITIONAL WORK IS REQUIRED

Explanatory note

102. There are many policy issues considered within the Crown minerals regime review where Straterra believes the standard discussion paper/submissions process risks falling short in developing solutions. Accordingly, we propose MED to engage directly with industry to forge workable and desirable proposals, by establishing a technical advisory group. This is a well-established mechanism, habitually used by government to gain optimum value from public consultation, especially in areas of technical detail and complexity.

103. We discuss particular issues of interest and concern below, noting that more work is also desirable on areas already covered in this submission, e.g.: the permitting system; allocation of rights to Crown minerals; a portfolio approach to relevant types of permit holding; access to Crown land; the Tier 1 and Tier 2 triage system; management of permits.

Streamlining permitting processes

104. The DP's secondary objective of streamlining and simplifying the regime is obviously supported, as underpinning the high-level objective. A large number of proposals are advanced for achieving this objective, many of which are inter-related. There are many issues of detail to work through, that need to be considered in the context of the entire regime. This is a non-trivial task.

Royalty regime

105. The focus on the role of the royalty regime in delivering a "fair financial return" to the Crown is unhelpful because it diverts the review's attention from the high-level objective of encouraging, enabling and advancing the sector's contribution to the economy. If the Government instead delivered a review that achieved that objective, the result would be a more active and vital minerals sector, resulting inevitably in enhanced royalty returns to the Crown.

106. While not discussed in the objectives, principles, or problem definition, the discussion paper leaps to a focus on income to the Crown from royalties in the section on proposed changes to the regime (Pages 13-14; Paras. 315-316). This is taken up in the proposed purpose statement for the Crown minerals regime (Paras. 341-346), which emphasises a "fair financial return from the development of Crown-owned minerals". None of this relates to the DP's objectives. The pursuit of a fair, financial return to the Crown is surely a desirable *outcome* for New Zealand of a fit-for-purpose Crown minerals regime, not its purpose. The royalties review should be recast in that light.

107. Of course, there has to be a royalty regime; the question is how to determine it. MED's proposal to consider international comparisons is logical, however, must be done in the context of the taxes, fees, rates, development contributions under the RMA, and compensation for access to Crown land paid to government by the minerals sector. To press the point, there would be no sense in comparing New Zealand's royalty regime to that of a jurisdiction where there is no requirement for compensation for access to Crown land, or no requirement for payment of rates.

108. To conclude: the further development of New Zealand's minerals resources is a key opportunity to make significant national net economic gains, in which a return to the Crown is one small - and interdependent - component of that picture. To iterate: the review should focus on the national benefit, and not just on revenue earned by the Crown.

Data and intellectual property rights

109. There are legitimate questions relating to data acquisition, intellectual property rights to data, access to and publishing of data. MED and industry should develop a suitable regime as a separate project, that enables the Crown to obtain information while protecting commercial sensitivities. For example, there would be no need for a mining company to have reports on noise or the environment published because these are not relevant to an understanding of the resource. The current five-year period of commercial sensitivity may be appropriate, however, should be limited to resource-specific information. Decisions on this workstream could be included in the M/P.

Engagement with iwi

110. Straterra agrees that the current obligations on the part of the Crown in respect of Maori are adequately and appropriately provided for in the CMA and the M/P, and are a sound basis on which to base productive relationships (Para. 63).

111. Engagement with Maori is important (Para. 67). This already occurs in many contexts in regulatory processes, e.g. under the RMA, and in relation to cultural and heritage issues, to the extent that poor co-ordination between regulatory processes during consultation or engagement with iwi can and does occur. If iwi are to be involved in prospecting, exploration or mining proposals, they should have the opportunity of doing so in a co-ordinated way, not least out of fairness to iwi, and to the applicant.

112. The proposal to investigate ways of iwi and industry working more closely together is supported in principle (Para. 74). It is noted that no amendment of the CMA or the M/P is

proposed at this stage, and that the iwi engagement issue will be pursued on a separate track, with industry involvement (Paras. 71 and 72). That is supported.

113. That said, the issue of engagement with iwi requires further thought. For example, it is not clear what is meant by "opportunities for iwi to invest in the sector from an economic development perspective" (Para. 68). Recall that our sector is generally a high-risk, high-reward business, and the rewards should go principally to those who take the risks. It is possible, therefore, that iwi may be unwilling to apply for a permit on a stand-alone basis or may be unwilling to take an equity stake in minerals because of the risk profile of our industry. Any intervention in this area, even if well intentioned, will require careful management to avoid creating further investment uncertainty, escalating the industry perception of sovereign risk and further stymying investment.

114. If this concept is about employment opportunities for communities associated with the specific investment or permit allocation, then this is a common practice throughout minerals economies, but is typically industry led and not government imposed. In addition, it must be borne in mind that the minerals sector is a high skills, safety-focused and knowledge-based sector, and pre-qualification and skills are needed to work directly in the industry. The question of training and recruitment needs to be considered carefully. To a degree, anyone who wishes to work in minerals is already working in it, or pursing training. As matters stand, there is a skills shortage in New Zealand in the minerals sector, and companies often recruit overseas, from the global labour market, which also includes New Zealanders working overseas.

115. In any event, mining generates direct and indirect economic activity in New Zealand, and this is clearly visible on the West Coast, in East Otago, Waihi, and in Southland (refer again to **Appendix 1**).

Recommendations

kk) Note there are workstreams within the Crown minerals regime review in which **further work between MED and industry** would be desirable for ensuring good outcomes;

ll) Agree to *direct* **MED to work with industry on workstreams** identified below using a technical advisory group format, as suitable process;

mm) Note that more work is required between MED and industry on **simplifying provisions in the M/P** relating to permit areas, surrendering, relinquishment, revocation, renewal, and consolidation of permits, subsequent permits, exclusivity or otherwise of permits, transfers and dealings, and related matters;

nn) Note that the focus of the **royalties review** should be on encouraging investment, while taking account of the tax review, and other "fees" the industry pays, e.g. development contributions under the RMA, rates, and compensation for access to Crown land, with more work between MED and industry required;

oo) Note that **data and IP management** should provide for an appropriate transfer of information to the Crown while respecting commercial sensitivity of information, with more work required between MED and industry; and

pp) Note that the proposal for **strengthened engagement with iwi** is supported with more work in this area required between MED and industry.

FULL LIST OF RECOMMENDATIONS

116. For ease of reference is the complete list of Straterra's recommendations to the Government:

Policy and legislative framework

a) Agree to the following **purpose statement** – "An Act to promote investment in, and development of New Zealand's minerals and petroleum resources, to benefit the New Zealand economy, including a fair, financial return to the Crown" – to reflect the high-level objective of the review, and s.12 of the CMA;

b) Agree to *ensure* that all provisions of the Act, the M/P, and regulations, are consistent with, and further the **purpose of the Act**;

c) Agree to *provide recognition* of the **economic potential of minerals** to New Zealand in the policy statement/explanatory note to the Act. This makes the case for minerals as worthy of good regulation, and should also explain the investment challenge;

d) Agree to *explain* the **role of the Crown** under the CMA as the owner of Crown minerals, to allocate the rights to minerals, and to encourage and enable activity, in a fair way, in the policy statement/explanatory note to the Act. This makes a distinction to other roles the Crown has, under other legislation, having other regulatory purposes;

e) Agree to *avoid* a **conflation of treatment of minerals and conventional petroleum**, because the two sectors are very different in their nature, their effects under other legislation, the investment challenge, and in their business models and industry structure;

Compliance with other legislation

f) Agree to *highlight* the importance of **HSE** in the policy statement/explanatory note to the Act, noting that these matters are covered under other legislation, and that the need for compliance with other legislation is already provided for in section 9 of the CMA;

g) Note the industry's position that upfront HSE assessments are unnecessary, while recognising the government's views on this matter;

h) In the event of upfront assessments of risk management capability for HSE being enacted, agree that further work between MED and industry should be carried out to ensure **effective implementation**;

i) Agree that responsibility for **compliance under other legislation** - H&S, environment, conservation, access to Crown land, wildlife, historic heritage, hazardous substances, buildings and other construction - lies with the permit holder or permit applicant, and not under this Act;

j) Notwithstanding the above, note that there is an issue of regulatory co-ordination to be addressed, and that this is a matter for Central Government;

Alternative permitting and permit management system

k) Agree to *amend* the M/P to provide for an **alternative approach to permitting** – the applicant proposes expenditure on prospecting, exploration or mining within a proposed time frame (against international benchmarks adapted to local conditions), and subject to the applicant meeting some basic criteria, e.g. fitness to be a Director, recognition of track record, and of other activities being undertaken;

l) Agree to *revise* the **criteria in the M/P** for assessing permit applications relating to good exploration and mining practice, technical capability, and financial viability, for consistency with Rec. (k);

m) Agree that the permit applicant should decide, and not the Crown, what **methods and technology** to use in carrying out an activity, for consistency with Recs. (k) and (l);

n) Agree that this system must include a **revocation** provision: that if the applicant fails to comply with permit criteria, under Rec. (k), the permit must be surrendered back to the Crown, with flexibility for extenuating circumstances;

o) Agree to *select* the best of the M/P's "**statement of reasons**" for policies, and edit that into the policy statement/explanatory note to the Act, because these matters are not provided for in the New Zealand Energy Strategy;

p) Agree to *direct* **MED to work with industry** to developing the alternative approach to permitting and permit management;

Allocation of rights to new ground and NAA

q) Agree to *provide* for **mechanisms in addition to competitive allocation** in relation to new ground and NAA, e.g. first-come-first-served, to ensure that bona fide exploration companies are not discouraged from applying for access to acreage, and subject to Recs. (k) – (p);

Portfolio approach to permitting

r) Note the proposal for more **proactive engagement** with permit applicants/permit holders is supported;

s) Agree to take a **portfolio approach to operators with multiple permits or applications** relating to the same project, where significant assets exist, to enable flexibility and staging in prospecting, exploration and mining activities; and in respect of emerging mineral and petroleum technologies; while providing criteria to prevent unfair competition against greenfields exploration by exploration companies;

Retention of permits

t) Agree to *provide for* the **retention of permits** for permit holders to accommodate delays occasioned by the physical and economic realities of mining, e.g. in relation to economic cycles, and delays in obtaining approvals under other legislation, and/or access to land, or legal contest, and to accommodate emerging mineral and petroleum technologies, subject to criteria to prevent unfair competition;

Reducing permitting times

u) Agree to **statutory time frames for processing applications** – 20 working days, plus 20 working days for consultation with iwi, with a penalty for non-performance by the regulator for its portion;

v) In relation to Rec. (u), agree to **start the clock** the day the application is delivered to NZP&M;

w) Agree to *direct* MED to develop fair provisions for dealing with **incomplete applications**, e.g. five working days from the receipt of the application;

x) Agree to *provide* the applicant with an **opportunity to provide further information** to the regulator if requested, with the applicant not losing priority in processing, and with a suitable time frame for that information to be provided;

Access to Crown land

y) Agree to *direct* MED to work with industry to **define** "significant" in relation to access arrangement applications, and in proposing amendments to section 61 of the CMA;

Tier 1 and Tier 2

z) Note that the triage system envisaged with Tier 1 and Tier 2 categories is supported in principle, with more work required to better delineate different types of activity;

Permit areas, relinquishment

aa) Note Recs. (kk) - (pp);

Management of WPs

bb) Note the proposal to hold **work programme reviews** with permit holders is supported;

cc) Agree to *apply an alternative approach* to permitting for changes in, delays in completion of, and cessation before completion of **work programmes**, as per Recs. (k) – (p);

Use of the JORC Code

dd) Agree to *rescind* the requirements for **JORC Code certification**, because such considerations should be largely at the discretion of industry, with further work required between MED and industry to develop a suitable requirement;

Mineral reporting

ee) Agree to *align* **reporting periods** in relation to anniversaries of permits, not with the calendar year, for prospecting and exploration permits, to allow better workflows;

Transfers and dealings

ff) Agree to *provide for* 20 working days for the Minister to decide whether or not he/she needs to make a decision on an application for a **transfer or dealing**;

gg) Agree that **section 41(3) be retained** in its current form, including the reference to special circumstances;

hh) Agree that the **scope of section 41** should be narrowed so that only permit transfers and key dealings are caught, and that the scope of section 41(2) is clarified to make it clear which agreements are caught, and which agreements are not;

ii) Agree to *provide* specific **criteria in section 41 (3)** under which the Minister would make that decision;

jj) Agree to *provide for* **20 working days** for the Minister to make a decision, if he/she decides that he/she needs to make a decision;

Other areas where additional work is required

kk) Note there are workstreams within the Crown minerals regime review in which **further work between MED and industry** would be desirable for ensuring good outcomes;

ll) Agree to *direct* **MED to work with industry on workstreams** using a technical advisory group format, as suitable process;

mm) Note that more work is required between MED and industry on **simplifying provisions in the M/P** relating to permit areas, surrendering, relinquishment, revocation, renewal, and consolidation of permits, subsequent permits, exclusivity or otherwise of permits, transfers and dealings, and related matters;

nn) Note that the focus of the **royalties review** should be on encouraging investment, while taking account of the tax review, and other "fees" the industry pays, e.g. development contributions under the RMA, rates, and compensation for access to Crown land, with more work between MED and industry required;

oo) Note that **data and IP management** should provide for an appropriate transfer of information to the Crown while respecting commercial sensitivity of information, with more work required between MED and industry; and

pp) Note that the proposal for **strengthened engagement with iwi** is supported with more work in this area required between MED and industry.

APPENDIX 1: CASE STUDIES OF THE ECONOMIC CONTRIBUTION OF MINERALS

Newmont Waihi Gold Ltd[26]

NWG operates the Martha Mine (an open pit gold mine), and the Favona and Trio underground mines at Waihi, Coromandel. NWG is looking to expand its operations at Waihi, based around underground mining.

NWG currently spends around $170 million a year on goods and services, around 80% of which is spent within New Zealand. Around 400 FTE are employed as staff, or direct contractors.

In addition to mining, NWG undertakes mineral exploration, mostly within the Waikato region. These activities inject some $10 million a year into the New Zealand economy.

The Martha mine open pit attracts some 40,000 visitors a year to Waihi, pop. 4700. The township has built around the open pit, a further example of economic activity generated by the mine.

The Hauraki Goldfield, which includes the Coromandel Peninsula and extends as far south as Te Puke, is the most prospective area in New Zealand for the discovery of gold-silver deposits. NWG is currently investigating underground mining proposals near its current operations, including under the township of Waihi, where the company has identified an ore body, Correnso, containing potentially $1 billion of recoverable ore.

OceanaGold Ltd[27]

OceanaGold Corporation (OceanaGold) is a significant Pacific Rim gold producer, with operating, development and exploration assets located in the South Island of New Zealand, and the Philippines, and with a corporate office based in Melbourne, Australia. The company is listed on the TSX, ASX and NZX under the stock code "OGC".

OceanaGold is New Zealand's largest gold miner. Its New Zealand assets include the Macraes Gold Mine, New Zealand's largest operating gold mine, and the Reefton Gold Mine.

The Macraes Gold Mine consists of a large-scale, open-cut mine, and an underground mine (Frasers Underground) with an adjacent processing plant. Macraes Gold Mine is located in the historic Macraes Goldfield, approximately 100 kilometres by road, north of Dunedin.

[26] Newmont Waihi Gold http://www.marthamine.co.nz/
[27] OceanaGold http://www.oceanagold.com/

The Reefton Gold Mine is an open-cut mining operation located near Reefton on the West Coast. The mine was commissioned in 2007.

OceanaGold directly employs more than 770 people in its New Zealand operations, and indirectly employs hundreds more. At current production levels, it exports around 270,000 ounces of gold per annum. Production since operations commenced in 1991 exceed 3 million ounces, with a value at current prices of NZ$6 billion.

Solid Energy New Zealand Ltd[28]

Solid Energy is New Zealand's largest energy producer, including coal, renewables (biofuels, biomass and solar), and new energy developments, and is one of New Zealand's major exporters. It is also a major energy user, primarily of transport fuels and electricity, in production and distribution operations.

Solid Energy is directly responsible through its own and its contractors' staff for close to 2000 direct jobs, and supports around 10,000 indirect jobs through suppliers and communities.

Bathurst Resources[29]

The Escarpment mine proposal would employ an additional 424 FTEs on the West Coast, with $41 million a year paid in wages during the seven years of the mine's life, and $60 million a year in royalties and taxes. Over the life of the project, Bathurst Resources would inject an extra $1 billion into the New Zealand economy, with more than $100 million a year paid to staff; suppliers; contractors; port, rail and shipping companies; and the Westport community. Up to 1 million tonnes of hard coking coal a year would be mined at Escarpment.

There is an opportunity for the company to continue in the Buller coalfield, with the existing Cascade mine, and development of new exploration tenure, e.g. the former Coal Brookdale, and Whareatea mine areas.

Ironsands

There are billions of tonnes of recoverable ironsands off the western coastlines of the North Island. Challenges lie ahead in proving the resource, extracting it in an economically-viable and environmentally-responsible way, and establishing overseas markets for the product, namely, titanomagnetite concentrate. The industry could create 100s or 1000s of jobs depending on the

[28] Solid Energy New Zealand Ltd http://www.coalnz.com/index.cfm/1,127,0,49.html
[29] Bathurst Resources http://www.bathurstresources.com/

degree of onshore processing.

Initial aeromagnetic indications in a limited area show a resource of between 4 and 10 billion tonnes of ironsand ore. Early investigations are that this could be mined to produce up to 10 million tonnes of ironsand concentrate (57% iron) annually after the first 3-4 years of operation. These figures need to be confirmed by exploratory drilling in order for an economic resource to be firmly established.

Lignite

The lignite resource in Southland and Otago has an estimated energy content equivalent to 30-40 Maui gasfields (108,000 petajoules – 144,000 petajoules)[30]. Plans are afoot in Southland to convert lignite into briquettes, fertiliser (working with Ravensdown with a revenue potential of $334 million a year), and, in the longer term, diesel, depending on technologies for managing carbon dioxide emissions[31]. This could be worth as much as $3 trillion, and provide jobs well into the next century and possibly beyond.

Rock phosphate

New Zealand currently imports around 1 Mt ($300 million worth) a year of rock phosphate (phosphorite), mostly from Morocco. Chatham Rock Phosphate[32] has a resource of 100 million tonnes, providing a supply for more than 25 years, and, possibly, as much as 100 years. CRP's licence covers 4276 km2, around 0.1% of the area of the Chatham Rise.

Precious and base metal seabed massive sulphides (SMS)

SMS are under investigation in the Kermadecs, by two companies, Neptune Minerals[33] and Nautilus Minerals, and GNS Science and NIWA, delays in permitting notwithstanding. Most of the deposits are copper and zinc, with 25% of the value being in gold[34]. Silver, barium, iron, and manganese are among other metals in the deposits. Based on international information, there could be between 250,000 tonnes and 20Mt in each deposit, which are distributed discretely along the undersea volcanoes of the Kermadecs. There may also be resources in the parallel, non-active arc, the Colville Ridge, which is currently largely unexplored.

[30] Wayne Hennessy, Coal Association of NZ
[31] Solid Energy NZ http://www.coalnz.com/index.cfm/1,127,0,49.html
[32] Chatham Rise Phosphate http://rockphosphate.co.nz/
[33] Neptune Minerals http://www.neptuneminerals.com/
[34] Kenex http://kenex.co.nz/default/default.asp

West Coast

The West Coast region currently produces annually around 2.7 Mt of coal and 135,000 oz. of gold with a total production value exceeding $940 million injecting around $614 million into the local economy. The West Coast minerals industry directly employs 2117 people, and a further 2700 indirectly. On the West Coast, the minerals industry supports more than 10,000 people[35] or one-third of the West Coast population.

The West Coast minerals industry is expected to generate annual export revenue exceeding $1 billion by the end of 2013[36].

[35] Based on the average West Coast household size of 2.3 people - BERL economics 2010 report "Potential Contribution of Mining to the West Coast Region"
http://www.westcoastnz.com/content/library/110222_Value_of_Minerals_to_the_West_Coast_Economy_Final_R.pdf
[36] Minerals West Coast