STRATERRA™
NATURAL RESOURCES OF NEW ZEALAND

Submission from Straterra

To the Economic Development, Science and Innovation Committee

on the Crown Minerals (Decommissioning and Other Matters) Amendment Bill 2021, and Accompanying Regulations

August 2021

Introduction

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

2. We welcome the opportunity to submit on the Crown Minerals (Decommissioning and Other Matters) Amendment Bill 2021 (the Bill), and accompanying discussion document, which covers proposed regulations to support the Bill.

Executive Summary

3. The overarching objective of the Bill is improved regulation of the decommissioning of petroleum structures and installations.

4. Straterra has concerns with proposed amendments to section 2C of the Crown Minerals Act 1991, which we explain at the end of this submission, and on which we also provide a recommendation.

5. We oppose the scope creep of the Bill into areas not concerned with petroleum decommissioning. At issue is that the Bill will make it more difficult for a Crown minerals permit to be granted to smaller explorers and miners of minerals other than oil and gas.

6. As discussed below, clause 8, and 10-13 of the Bill raise the bar for decisionmakers in granting a Crown minerals permit (section 29A of the Crown Minerals Act 1991 (CMA)), and in relation to transfers and dealings, and changes of operator and permit holder (section 41 and related sections of the CMA).

7. If the Bill becomes law, the decisionmaker will need to be satisfied that the permit applicant is "very likely" to comply with a work programme taking into account technical and financial capability, instead of "likely", as is currently the case. The same issue arises in respect of clauses 10-13, which

covers ministerial approvals for such things as transfers and dealings, and changes of operator or permit holder.

8. We note that no reasoning has been provided for the Bill to apply proposed amendments to the above clauses to all permit holders, and not solely the petroleum sector.

9. This is a blunt instrument to be applied to a very wide range of permit holders, and, therefore, inappropriate.

10. Contrast the different scales and natures of petroleum activities (capitalised in the hundreds of millions to billions of dollars), compared with "minerals exploration juniors" (hundreds of thousands to millions of dollars' capitalisation).

11. By minerals exploration junior, we mean a company that has few permanent staff, limited liquidity or capitalisation, and an objective of discovering a new mineral resource, or improving the knowledge of a discovery, or improving the knowledge of resources adjoining an existing, mineable mineral resource. The exploration junior may or may not be listed on a stock exchange, and where not, they may seek to list, as a way of raising capital.

12. For this group, an exploration permit can be a vehicle to raise investment capital. Completion of part of a work programme typically provides the basis for raising funding for the remainder of the work programme.

13. This is a business model that applies to exploration juniors everywhere in the world, and they tend to have a higher appetite for financial risk than, say, larger mining companies that also carry out minerals exploration, and do not need to take on a higher level of risk. A recent example is the Reefton goldfield where OceanaGold surrendered a number of exploration permits, which two exploration juniors have since taken up. High risk is inherent to exploration juniors; it is not necessarily a result of a reckless or incompetent approach to doing business.

14. Exploration is the life-blood of the minerals industry. By way of context, 1000 prospects (zero or very low-impact assessment of minerals prospectivity over a large area) can lead to 100 exploration targets (more detailed work in a smaller area), and subsequently 10 potential mineable deposits, out of which might arise one mine (RSC, in relation to gold resources). The success of the mining industry depends crucially on the high financial risk taken at the prospecting and exploration stages by people who are typically constrained by the investment market to adopt a just-in-time approach to raising capital.

15. Changing the weighting in decision making from "likely" to comply with a work programme (taking into account technical and financial capability) to "very likely", which is what the Bill does, raises the question of what the Government intends to achieve as regards minerals exploration, and, potentially also, alluvial gold mining, and smaller quarries and mines. Does the Government wish to prevent much of these activities, and, if so, for what reason?

16. We think this can be hardly the Government's intention, and we propose a solution below.

Recommendations

- Limit the application of clauses 8, and 10-13 to petroleum permit and licence applicants and holders only, to achieve the overarching objective of the Bill.

- Amend clause 6 of the Bill to allow permit holders at any time to initiative a change in the Tier status of their permit, consistent with the criteria for determining Tier status.

The overarching objective of the Bill

17. The Explanatory Note to the Bill is clearly aimed at improved regulation of the petroleum sector in relation to decommissioning, eg:

> "requiring permit and licence holders to establish and maintain adequate financial security for the purposes of funding and carrying out decommissioning activities, to minimise the risk of decommissioning liabilities being transferred to the Crown or third parties or both; and."

18. The following specifically links the issue of financial capability to the petroleum sector:

> "empowering the Minister to carry out more effective monitoring of a permit or licence holder's financial position and plans for field development on a regular basis, and to carry out assessments of a permit or licence holder's financial capability to complete decommissioning when needed; and" (emphasis added).

19. We observe what appears to be imprecise language in the Explanatory Note, because it doesn't specify petroleum permit holders but instead refers to permit holders generally :

> "amending the permit acquisition provisions (sections 29A, 41, 41AE, and 41C) to require the decision-maker to have a higher level of confidence that the proposed permit holder will comply with the work programmes or permit conditions, health and safety and environmental requirements, and obligations relating to fees and royalties. In a recent High Court decision Greymouth Gas Turangi Ltd v Minister of Energy and Resources [2020] NZHC 2712, the High Court interpreted "likely" in the context of ascertaining whether an applicant is "likely" to comply with and give proper effect to the proposed work programme (section 29A(2)(b)) as an "outcome that is reasonably in prospect, that being an outcome that is a distinct possibility". The intent of these amendments is to shift the threshold higher than set by the court in the Greymouth judgment, to a level of confidence that is broadly midway between "more likely than not" and "certainty"."

20. It is also inappropriate to apply a court decision concerning a petroleum company to the minerals sector, we suggest. The financial aspects of minerals prospecting and exploration are very different in their scale and nature from petroleum activities, as argued above.

21. We are also concerned over the following text:

> "The intent is that the threshold is set so that the Minister can exercise greater control over who receives a permit, but not so high as to practically prevent the grant of all permits. This is intended to reduce the likelihood of persons that do not have sufficient technical and financial capability, or that have a poor history of compliance, being awarded a permit; and".

22. In our view, the CMA as currently worded provides a sufficient and appropriate regulatory safeguard in respect of minerals activities.

Unexplained text in the discussion document

23. We note para. 12 of the discussion document:

> "The Bill also proposes changes that are not specific to decommissioning and apply across the whole of the CMA, to both minerals permit holders and petroleum permit and licence holders. These include:
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> › Amending the permit acquisition provisions (sections 29A, 41, 41AE and 41C) to require the decision-maker to have a higher level of confidence (consider it 'highly likely') that the proposed permit holder will comply with the work programmes or permit conditions, health and safety and environmental requirements, and obligations relating to fees and royalties."

24. There is no explanation provided to justify extending the application of a measure, which appears designed for petroleum activities, to minerals activities. We are left to guess the Government's intentions or the cause, and have done so above.

25. Para. 22 says:

> "The overarching objective of the Bill is to mitigate the risk that permit and licence holders fail to fund and carry out decommissioning, and fund any required post-decommissioning work. Therefore, when assessing any options, effectiveness is given priority as we consider it the most important criteria to achieve this overarching objective. The remaining criteria are weighted equally."

26. The Bill and accompanying regulations should, therefore, stick to petroleum activities, and decommissioning in particular.

27. Our view carries particular weight in light of para. 21, which sets out criteria for making changes to law and regulations:

> "Where we propose options for regulations, we have assessed these options against the following criteria, which is consistent with how we assessed policy options to develop the Bill:
>
> › How effective regulations are to ensure that permit and licence holders can meet their decommissioning and post-decommissioning obligations when required to.
>
> › Flexibility to consider individual circumstances and risk profiles as needed.
>
> › The extent to which the compliance and opportunity costs on industry and administrative costs to the Crown are proportional to the expected benefits from regulation.
>
> › Whether the regulations provide certainty and clarity around requirements."

28. Applying "very likely" in respect of minerals activities fails to meet the above criteria, in light of the arguments we have already made on the fundamental differences in the nature and scale between petroleum activities and minerals activities, in particular, in relation to mineral exploration juniors, and small mines and quarries.

Section 29A text for ease of reference

> Clause 8: Section 29A amended (Process for considering application) (1) In section 29A(2)(b) and (c), replace "likely" with "highly likely". (2) In section 29A(2)(d), replace "is likely" with "is highly likely".

> Section 29A: (2) (b) that the applicant is likely to comply with, and give proper effect to, the proposed work programme, taking into account—(i) the applicant's technical capability; and (ii) the applicant's financial capability; and

29. As above, we raise an issue over the meaning of "highly likely" in relation to technical and, more particularly, financial capability.

30. The same consideration applies to clauses 10-13 of the Bill, eg proposed amendments to section 41 (6), section 41 AE, and section 41C (3) of the CMA.

Determination of Tier status

31. We have concerns about the proposed amendments to section 2C of the CMA (clause 6 of the Bill). If enacted, a permit holder will be dependent on the Minister of Energy and Resources exercising their discretion on whether or not to change the Tier status of a permit (unless the permit is also changed under section 36 (1) of the CMA).

32. At issue is that if the level of mining drops such that the permit holder would be eligible for a change in Tier status, and yet this does not occur, then the permit holder will have to continue paying permit fees at the Tier 1 rate, as well as bear the costs of annual permit review meetings, which would be unreasonable. In this circumstance, the Tier status should drop to Tier 2 as of right, on the anniversary of the permit, or as we propose below.

33. In response to the reasoning for the proposed amendments to section 2C, that the regulator has "a disproportionate administrative burden on the regulator for a relatively low-risk activity", we suggest the permit holder should be able at any time to initiate a change of permit status.