STRATERRA™
NATURAL RESOURCES OF NEW ZEALAND

Submission

To the

Ministry of Economic Development

On

“Reviewing the Crown Minerals Act 1991: Discussion Paper”

Executive summary

The resource sector believes the proposed changes to the Crown Minerals Act 1991 carry risks and gives rise to a number of concerns:

1. Generally, little or no rationale has been provided in the discussion paper for the proposed changes, on what the changes would entail, or on how they would be implemented, making it difficult for Straterra to provide useful comment, and raising concerns over fairness, transparency and usefulness of proposed changes;
2. The impression is created that the Crown is mainly concerned about the allocation and management of petroleum, in which case the proposed changes may not be fit-for-purpose for non-petroleum minerals;
3. Many of the proposed changes would lead to increased uncertainty for businesses, or a perception of increased uncertainty, increasing sovereign risk for doing business in New Zealand, making it more difficult for businesses to attract, manage and retain investment capital; and
4. An opportunity has been missed to develop fit-for-purpose legislation for petroleum, bring geothermal resources within the Crown minerals regime, and extend the arbitration provisions applying to petroleum to other minerals.

The overall impression is gained that the Crown is seeking greater flexibility in administering the Crown minerals regime, to achieve the review’s laudable objectives. Certainly, aspects of the review seem aimed at improving matters for businesses, as well as the Crown.

That said, Straterra believes the Crown’s proposals risk achieving the opposite of what is intended. A number of worst case scenarios could be envisaged, based on the information provided.

The development of UCG and methane hydrates could be stymied because of lack of consultation with industry on the policy detail. Operators of suction dredges could be forced into anti-social behaviour in the absence of property rights. Investors could walk away from New Zealand, believing that removing sections of the Act into minerals programme and regulations, forcing businesses to comply with the latest version of a minerals programme, and watering down the right to subsequent permits as a “right of priority”, would fail to protect their interests.

The Minister could shorten permit duration to speed up minerals extraction, adversely affecting the running of businesses. Red tape covering decommissioning could increase at places with bonds required under the Crown minerals regime, as well as those currently required under the RMA and the Conservation Act, unnecessarily adding to compliance costs.

Given the above, the proposed changes to the Crown minerals regime could lead to reduced investment in prospecting, exploration and mining in New Zealand, leading to the potential contraction of the resource sector, with consequent adverse effects on communities and New Zealand as a whole, arising from a perception, if not the reality, of increased uncertainty for businesses.

Naturally, neither the Crown nor the sector would desire the above outcomes. We recognise there is opportunity for consultation and Straterra welcomes the opportunity to submit on the Crown's proposals. Straterra would welcome being invited to participate in further work on the review of the Act, to achieve sensible outcomes for the sector and for New Zealand.

Recommendations

Straterra has a number of recommendations for achieving the review's objectives.

Straterra recommends that the Crown:

1. Develop a purpose statement for the Crown Minerals Act, along the lines proposed, with an amendment to the phrase "enabling employment and investment opportunities" to read as follows: "promoting New Zealand's attractiveness for investment in minerals, thereby promoting economic benefits for New Zealand and enabling employment and investment opportunities";
2. Bring geothermal resources within the Crown minerals regime to improve incentives for exploration and development;
3. Develop fit-for-purpose legislation for petroleum, with a specific and detailed consultation process for this including with industry, to address issues such as methane hydrates, overlapping permits, underground gas storage, new classes of permit, data disclosure, changes in permit duration, decommissioning and other issues specific to the petroleum sector;
4. Focus changes to the Crown Minerals Act on non-petroleum minerals and geothermal resources;
5. The restriction on arbitration in respect of access to minerals (s.55) should be removed to provide explicitly for this dispute resolution mechanism, as is the case for petroleum (s.53 with qualifications in s.55);
6. Consider retaining unchanged the permit system for small-scale gold activities;
7. Provide greater clarity in the Act on the purpose and nature of minerals programmes and regulations, and on the processes for making changes to the foregoing, in order to reduce a perception of uncertainty for businesses of proposed changes to the Crown minerals regime;
8. Provide clear rules for public consultation including with industry when developing or making changes to minerals programmes and regulations and provisions for industry to seek redress in the event of adverse decisions;
9. Provide for businesses to transfer to the latest version of a minerals programme voluntarily and not compulsorily;
10. Amend the proposed change to s.32 of the Act on rights to subsequent permit to clarify that the "right of priority" would apply only to the permit holder making an application, or, leave s.32 unchanged.

Introduction

Straterra Inc was formed in 2008 to be a collective voice for the New Zealand resource sector. Its membership includes gold producers (all NZ hard rock production), coal (>90% of NZ production), affiliation with aggregates, as well as exploration, research, service and support. Members' exports exceed $1.5 billion a year, and incur more than $30m/yr in exploration spending.

The resource sector makes a significant contribution to the New Zealand economy. Oil, gas, coal, gold, aggregates and other minerals contributed $2.149 billion to GDP in 2008, compared to the wine industry ($0.454 billion), and tourism ($6.660 billion). Resource exports in 2009 earned $3.6 billion (8.2% of total goods exports) while dairy in that year was $10 billion, and overseas tourism, $9.3 billion. In 2009 there were 6800 people employed directly in mining, and 8000 people, indirectly, flowing from the economic activity of the 6800. The median wage for a mining employee was $57,320 in 2008, compared to the New Zealand median of $33,530.

Properly encouraged, the resource sector's contribution to the New Zealand economy could grow significantly. As a resource-rich country, and with new technologies and changing demands, New Zealand's mineral and geothermal resources will afford economic opportunities for many decades to come. It is appropriate for the Government to consider ways of improving the legislative and regulatory framework governing the prospecting, exploration and mining of resources, for the benefit of the sector and for New Zealand.

Straterra welcomes the opportunity to comment on "Reviewing the Crown Minerals Act 1991: discussion paper". The Government is to be commended for having developed excellent objectives for the review. There are implications for the resource sector. Straterra looks forward to further engagement with the Government, as work in this area proceeds.

Straterra believes the ultimate objective for the Government is to create legislation and regulation that maximises the opportunity for the development of New Zealand's resources. It goes without saying that all exploration and development must occur in an environmentally-responsible manner and the RMA and other legislation ensures this outcome. All comments and recommendations in this submission are provided within this context.

Straterra's response to questions raised in the discussion paper

1. Do you have any comments on the objectives of the review?

"The objectives of the review of the Crown minerals regime are: a. to align the regulatory regime for the allocation and management of Crown-owned minerals with the Government's Economic Growth Agenda and regulatory reform agenda; b. to encourage the development of Crown-owned mineral resources to contribute to New Zealand's economic development; c. to make the regime better able to deal with future developments and requirements; and d. to streamline and simplify the regime where appropriate (excerpt from the discussion paper)*."*

The objectives of the review are appropriate. Straterra believes the scope of the review should include geothermal resources, fit-for-purpose legislation for petroleum, and extending the arbitration provisions for petroleum to other minerals.

Geothermal resources

In passing the Resource Management and Crown Minerals legislative package in 1991 there was much discussion on what to do with geothermal resources. In the event, the geothermal legislation of the time was repealed and geothermal resources were included under the RMA, as a form of water. The following issue arises.

An electricity generator holding consents for using, and land owner permission to access, subterranean, high-temperature fluids, would suffer adverse effects if another developer accessed the same resource from an adjoining property. This can occur because there are poorly-defined property rights to geothermal resources. (Over-allocation of surface water flows can occur for similar reasons.) This is a disincentive to investment, with two main consequences.

The first is that the development of geothermal resources has been suboptimal. Many areas remain to be more fully explored and developed as sources of renewable energy for New Zealand. While the Institute of Geological and Nuclear Sciences and the University of Auckland are leading research in this field and argue that annual geothermal production could triple over the next decade from 500MW to 1500MW, this is a theoretical figure and assumes a favourable incentives framework.

Secondly, New Zealand's largest geothermal electricity generators have been paying land owners to place restrictive covenants on their properties to prevent other interests gaining access to explore or develop resources, which could inhibit the allocation of geothermal resources to their highest-value use.

As matters stand, the Government is devoting much attention to the issue of freshwater management in New Zealand. Good progress is being made, including on the issue of allocation of water flows. Efficient management in this area depends on good information, which, in the case of groundwater, is difficult and costly to obtain, to the level required to operate, say, a cap-and-trade scheme. For this reason the emerging framework for freshwater is unlikely to be fit-for-purpose for geothermal resources.

The alternative would be to include geothermal resources within the Crown minerals regime. This would provide the appropriate incentive for the considerable upfront investment required – often in the hundreds of millions of dollars - to develop geothermal resources.

It is noted that Australia has been investing heavily in geothermal resources research, compared to New Zealand. On 27 May 2010, Hon Greg Combet, the Minister Assisting the Minister for Climate Change and Energy Efficiency, told the Australian federal parliament that Australian government was investing more than $A200 million in geothermal energy research, as leverage for the more than $A720 million being spent by private interests. New Zealand has far greater and "easier" resource potential and yet its spending is at a lower level by orders of magnitude.

Fit-for-purpose legislation for petroleum

The Government's Petroleum Action Plan has as one of its work streams: "Developing a fit-for-purpose legislative framework for the petroleum sector". This may be the appropriate approach to a review of the Crown Minerals Act, especially when considering the chief driver for this review, as stated on page 9 of the discussion paper, in paragraph 1.2:

“A key driver for the review of the regime has been the Petroleum Action Plan, announced by the Minister of Energy and Resources in November 2009. This plan contains various initiatives to achieve the strategic objective of ensuring New Zealand is highly attractive for petroleum exploration and development, such that our full development potential is realised.”

In his address to the Petroleum Conference on 20 September 2010, the Minister, Hon Gerry Brownlee, expressed concern over the relative lack of development of petroleum fields in New Zealand outside of the Taranaki basin, and explained steps the Government is taking in this area, for example, to improve the information base.

Instead of attempting to deal with all minerals including petroleum in the review of the Crown Minerals Act - hoping to benefit everyone, while satisfying no one - it would be preferable for the Government to develop legislation specifically for the petroleum sector, and have the review of the Crown Minerals Act targeted at other minerals (and within that, include geothermal resources).

The argument in favour of two separate statutes is that the nature of petroleum and the issues that arise from their development are very different to the nature of other minerals and issues relating to their development. Different minerals programmes for petroleum and other minerals have been an attempt to deal with this issue. Historically there has been different legislation for petroleum and the mining of other resources.

As a further illustration of the material differences between petroleum and other minerals, many of the proposed changes in this review are explicitly or implicitly aimed at the petroleum sector. Refer to the answers to Q6, Q7, Q8, Q9, Q10, Q11, Q12, Q16, Q17, Q24, Q28, Q30, Q32, Q34, Q35 and Q36. This consideration alone is a compelling argument for developing fit-for-purpose legislation for petroleum, and for consultation with industry on the policy detail.

Arbitration for access to land

Section 55 of the Act proscribes arbitration over access to Crown minerals other than petroleum, as opposed to the situation for petroleum (s.53 with qualifications in s.55). This is an anomaly in the Act. The value of minerals (and geothermal resources) in the ground may greatly outweigh any other value of that land, to the point of being of strategic importance for New Zealand. Provision of arbitration would be an appropriate way of dealing with the rights and interests of property owners and developers.

It is noted that arbitration is provided for in the Act, in theory at least, via an Order in Council based on national significance. Straterra understands this provision has never been exercised.

2. Should the CMA have a purpose statement?

Yes. This is essential to aid the interpretation of the Act, to deliver on the objectives of the review, and to provide certainty for businesses and for the Crown.

3. Do you have any comments on the proposed content of the purpose statement?

"It is proposed that a purpose statement be included in the CMA which: a. sets out what the CMA does: • it enables the allocation and management of rights to prospect, explore for and mine Crown-owned minerals; and b. states the government's objective in implementing the CMA, which might include: • the efficient allocation and management of rights to develop Crown-owned minerals for the benefit of New Zealand; • providing the Crown with a fair financial return for its mineral resources; • enabling employment and investment opportunities; and • supporting energy and infrastructure development (excerpt from the discussion paper)*."*

The suggested content is necessary but not sufficient. The phrases "efficient allocation and management of rights" and "enabling employment and investment opportunities" partially reflect the Government's objectives but fall short of a full reflection.

The key issue for the resource sector anywhere in the world is attractiveness for investment. This in turn depends on availability of information; the degree of clarity, transparency and certainty in legislation and regulations; and the degree to which legislation and regulations safeguard the legitimate interests of businesses and investors.

The purpose statement should encapsulate the above concern by referring specifically to attractiveness for investment. This is consistent with the discussion paper's introduction, page 9, paragraph 1.2, which states: "A key driver for the review of the regime has been the Petroleum Action Plan, announced by the Minister of Energy and Resources in November 2009. This plan contains various initiatives to achieve the strategic objective of ensuring New Zealand is *highly attractive for petroleum exploration and development*, such that our full development potential is realised (Straterra's italics)."

Furthermore, it is stated on page 11 of the discussion paper, in paragraph 4.2: "Minerals, including petroleum, contribute to the economic growth of New Zealand in a number of ways. They: a. provide a financial return to the Crown through royalty payments; b. provide employment, including often in smaller communities, both directly and indirectly through the flow-on effects to supporting sectors; and c. *attract investment and generate profits, resulting in increases to gross domestic product (GDP), additional financial flows through the economy, and increased tax revenue*. (Straterra's italics)."

Straterra recommends amending the phrase "enabling employment and investment opportunities" in the purpose statement to read as follows: "promoting New Zealand's attractiveness for investment in minerals, thereby promoting economic benefits to New Zealand and enabling employment and investment opportunities".

4. Do you have any comment on the proposal to clarify that UCG is managed under the coal mining regime through the MPM?

This is appropriate.

5. Do you have any comments on the requirement for a clearer policy framework around allocation and management of coal permits utilising UCG technologies?

It is difficult for Straterra to comment on the limited information provided. In principle, the development of a clearer policy framework is a good idea, and the Crown is urged to consult with industry on this.

6. Do you have any comments on the proposal to clarify that methane hydrates are petroleum?

No, other than to recommend developing fit-for-purpose legislation for petroleum including methane hydrates (refer to the answer to Q1). Little is known about the way exploration and development of methane hydrates would be carried out arguing for special and carefully considered treatment of this resource.

7. Do you think that methane hydrate activities could be carried out in the same land area as other permit activities (such as conventional petroleum exploration)?

Yes, with the following proposal.

The review does not address the possibility of permits applying only to particular strata or formations, an issue of particular relevance to petroleum. Such would open up the possibility of permits that overlap when viewed on a map, however, would be discrete when viewed in three dimensions. This is common practice overseas. There may be other aspects to the issue.

The issue of "strata title" has not been addressed in this review, and could be addressed in the context of developing fit-for-purpose legislation for petroleum, which Straterra recommends the Crown pursue (answer to Q1).

8. Do you think there should be a new class of permit for research/scientific activities and spec surveys?

It is difficult to provide comment on the limited information provided, other than to speculate that the driver for this change has to do with petroleum, e.g. methane hydrates. If so, the issue would be better considered by developing fit-for-purpose legislation for petroleum (see answer to Q1).

There is no need for a new class of permits in the case of minerals other than petroleum. Indeed, their introduction could complicate, rather than promote, the prospecting for and exploration of resources in New Zealand.

9. If so, how do you think data disclosure should be treated under such permits?

Refer to the answer to Q8, proposing the development of fit-for-purpose legislation for petroleum.

10. Do you have any comment on the role of the Crown in monitoring and managing underground gas storage activities?

This complex issue should be addressed in the context of developing fit-for-purpose legislation for petroleum (refer to the answer to Q1).

11. Do you think there should be a new class of permit for underground gas storage activities? (NB: this is not related to CCS)

Ditto.

12. Do you think that underground gas storage activities could be carried out in the same land area as other permit activities (such as petroleum exploration)?

Ditto. Refer also to the answer to Q7 on the concept of strata title.

13. Do you have any comments on the proposal to remove permit requirements for small-scale gold activities in river and lake beds and coastal marine areas?

The removal of the need for permits for small-scale gold activities will adversely affect, for example, the owners and operators of suction dredges. These people will have invested time and effort to determine where they would like to pursue their activity, and modus operandi for how best to mine the resource. They now risk others free-riding on their knowledge and imposing on their work patterns.

While it is understandable the Crown would like to see the workload of Crown Minerals reduced and its level of return on the processing of permits increased, the proposed change will cause much frustration within the small-scale gold activities sector. In removing the burden placed on Crown Minerals, a new one may be created for councils and the Department of Conservation.

Straterra recommends careful consideration be given to the issue before proceeding with this proposal.

14. Do you have any comments on the proposals to amend sections 15 and 16 of the CMA which deal with contents of minerals programmes and public notice?

This proposal is of concern to the resource sector because, as written, it will create a perception of increased uncertainty for businesses and investors, increasing sovereign risk for businesses, and thereby reducing New Zealand's attractiveness for investment.

Removing royalty provisions from minerals programmes into regulations is a case in point. The perception is that the Crown will have increased flexibility to change royalty levels – and open the prospect of royalty levels becoming a political issue. If so, that would increase uncertainty for businesses. If businesses don't know what the royalty regime will be with any certainty during the life of their activities, or if they perceive that to be the case, they may face greater hurdles in raising, managing and retaining investment capital.

Assuming that the purpose and nature of a minerals programme is to provide the policy framework for the Minister's decision-making and the process to be followed by the industry and government including on recourse for redress in the event of adverse decisions for industry, this should be spelled out in the Act, to provide certainty for businesses.

In the same vein, it needs to made clear in the Act that it is no easier to change regulations than it is to change a minerals programme, and that in both cases a proper public process including industry consultation must be followed. An important proviso is the need for clear rules around such consultation on any future legislative or regulatory changes.

Straterra is unable to comment on the proposal "to remove some of the detail around the content of minerals programmes" in section 15 of the Act because no information has been provided on what that detail is.

The proposal to fix "drafting errors" in minerals programmes without consultation raises two questions: what are the drafting errors, and what is the definition of a drafting error? Straterra would have been able to provide useful comment had this information been provided. If these are clerical errors, they should be fixed, preferably in consultation with industry.

15. Do you think that having the most recent minerals programmes apply to all permits will make the regime more consistent and easier to operate in?

The resource sector is concerned with this proposal.

When a business applies for a permit it does so in good faith, that the terms of the contract are the terms of the contract that the rule of law applies in New Zealand. If the terms of the permit can be changed, while an agreed work programme is being carried out, that business is placed in a precarious position.

Imagine the developer of a skyscraper who had approval to build 60 storeys, to be then told half way through the project that they can build to only 40 storeys. The developer could be put out of business.

A petroleum developer might spend tens of millions in exploration funds to discover a single field, with a success rate of one in 10. If the developer cannot be sure of the rules applying in New Zealand, how can it raise investment capital? The developer may be forced to look elsewhere.

It is understandable the Crown wishes to ease the administrative burden arising from multiple minerals programmes, and, no doubt the Crown wishes to avoid any expropriation of existing-use rights held by businesses. Nonetheless, the uncertainty remains.

By all means, better minerals programmes should be developed – with public consultation, including with industry - to provide a clear policy framework. This would cover the development of conditions on permits, assessing proposed work programmes, and other aspects of minerals rights allocation and management, and minerals development.

In this way, comfort for industry would be provided for many of the changes the Crown is proposing, viz the answers to Q17, Q18, Q19, Q20, Q21, Q22 and Q27.

As a crucial safeguard for industry, the move from one minerals programme to the latest version should be voluntary and not compulsory. If new minerals programmes are developed that meet the above objectives, industry would willingly move to the latest version of the minerals programme. Surely, such an approach would be in the best interests of the Crown and industry.

16. Do you have any other suggestions for improving the consistency of the regime and the ease of operating within it?

Refer to the answer to Q1, recommending the inclusion of geothermal resources in the Crown minerals regime, the development of fit-for-purpose legislation for petroleum, and extending the arbitration provisions available for petroleum to other minerals.

17. Do you have any comments on the proposal to remove the matters specified in sections 24(2) to (6) to the particular block offer notice?

No, other than to speculate, on the limited information provided, that this proposed change is driven by petroleum sector concerns. If so, this issue may be better addressed by developing fit-for-purpose legislation for petroleum. If not, insufficient information has been provided for Straterra to make useful comment.

18. Do you agree with the proposal to remove section 28 of the CMA and state the policy on the granting of prospecting permits in the minerals programmes?

Refer to the answer to Q14 and Q15.

19. Do you agree with the proposal to remove section 36(2) from the CMA and deal with considerations for granting an extension of land or minerals in the minerals programmes?

Ditto.

20. Do you agree with the proposal to remove sections 37 and 36(4)(4A) and (5) from the CMA and deal with considerations for granting extensions of duration of permits in the minerals programmes?

Ditto.

21. Do you agree with the proposal to remove the 'specified discovery' provisions from the CMA and deal with these matters in the conditions of the permit?

Ditto.

22. Do you have any comments on the proposed change to section 30(8) and the benefits of retaining the power to grant overlapping permits for a common mineral?

Ditto. More information in the discussion paper would have allowed Straterra to better understand what is intended. The consent of the first permit holder is a crucial safeguard of the interests of that permit holder, when contemplating the approval of a permit that overlaps with the first.

23. Do you think it is desirable to increase the Minister's discretion in determining permit duration?

It is difficult to comment, on the limited information provided. This could increase uncertainty for businesses. On that basis, it would be preferable to set out matters such as permit duration in the Act. On the other hand, the greater flexibility could be helpful to businesses and the Crown in reaching sensible outcomes for both sets of interests.

As a general observation, the limited rationale provided for many of the proposed changes has impeded Straterra's ability to provide useful comment. Further consultation with the resource sector on this proposal, and on many of the crown's proposals is essential to ensure that sensible outcomes are achieved for New Zealand.

24. Do you think a tiered approach to permit duration for different exploration conditions is appropriate?

It is difficult to comment without further information, other than to speculate that the proposed change is driven by petroleum sector concerns. If so, this issue would be better addressed by developing fit-for-purpose legislation for petroleum (refer to the answer to Q1).

25. Do you think that delays in work programme activities resulting from delays in obtaining consents can appropriately be dealt with by a change of conditions application?

Yes, if the change in conditions application can be processed expeditiously. This question raises an additional question: is there an overall issue of administrative efficiency and effectiveness? The Government's plan to significantly strengthen Crown Minerals ought to address many of the Crown's apparent desires of this review.

26. Do you have any comments on the proposed clarification of s32 (subsequent rights)?

The resource sector views this proposal with the utmost concern, and urges the Crown to provide clarification in the Act that the concept of a "right of priority" would apply only to the holder of an existing permit who is applying for a subsequent permit.

On the face of it, the proposal is not a "clarification" of the word "right" but a fundamental amendment to the Crown Minerals Act 1991. A right is a right. A "right of priority" is something else, unless suitable qualification is provided.

Providing adequate work programmes are prepared and other due diligence is carried out, the permit holder "shall have the right", under s.32 to obtain an upgrade from a prospecting permit to an exploration permit, and from an exploration permit to a mining permit. This provision was transferred essentially unaltered from previous legislation, for example, the Mining Act 1971.

As written, s.32 provides the safeguards the Crown is seeking, particularly if interpreted alongside the proposed purpose statement for the Act, with the amendment proposed in the answer to Q3. If the permit holder were unable to meet an efficiency criterion, however broadly defined, the permit upgrade would not occur.

There is a compelling reason for either retaining s.32 unchanged, or adopting Straterra's proposal, and that is to provide certainty for businesses, reduce sovereign risk, and retain New Zealand's attractiveness for investment.

The resource industry is capital intensive, during the exploration phase and after that. Issues of uncertainty and management of risk are paramount, at every stage. Providing they are complying with the law, and that their development proposals are sensible and timely, a permit holder ought to have the assurance that their exploration permit will be automatically converted into a mining

permit. This is a crucial safeguard of the interests of the permit holder, when raising, managing and retaining investment capital, and, indeed, for running their business.

From the discussion paper, it is unknown what criteria would apply or what the framework would be for determining whether or not a permit holder would get an upgrade. Straterra assumes from the general tenor of the discussion paper that this issue would be dealt with by developing new minerals programmes. Refer also to Straterra's observations and concerns expressed in the answers to Q14 and Q15.

27. Do you have any comments on the proposed repeal of sections 43 and 44 of the CMA?

Refer to the answers to Q14 and Q15.

28. Do you have any comments on the proposals to better manage non-compliance?

The discussion on non-compliance, particularly as it relates to decommissioning, is of concern. Currently, decommissioning is covered under the RMA, and may be covered, in addition, under access arrangements, notably on conservation land. Bonds may be required in both cases. This is an environmental issue, and has nothing to do with the purpose of the Crown minerals regime. Recall that the Crown Minerals Act and the RMA were passed as a package, to separate the allocation and management of Crown minerals from the management of environmental effects.

The speculation arises that this issue relates to concerns the Crown may have in relation to the petroleum sector. If so, this issue may be better addressed by developing fit-for-purpose legislation for petroleum (refer to the answer to Q1).

29. Do you have any comments on this proposal to simplify the requirements for transfers and dealings?

The proposed changes are appropriate, in principle. Providing the Minister the ability to demand a bond of the transferee looks excessive when it is considered that the transferee would always have to show that they are able to meet the commitments made by the transferer.

30. Do you have any comments on the proposal to review reporting requirements, in particular, for mining permits?

In principle, this should be left unchanged to protect the interests of non-listed companies and because it would have no effect on the situation applying to listed companies.

Improving information to attract investment is a laudable objective. Releasing raw data early could affect the competitiveness of businesses. Data are costly to obtain, forming part of the often considerable investment made by a business, and early release to other parties would allow them to free-ride on another's effort.

In any event, it is not straightforward to draw a distinction between raw data and interpreted data. Gathering of raw data, let alone its presentation, will almost always entail interpretation, e.g. via data presentation software. This is desirable because the release of raw data without interpretation by appropriately-qualified professionals can lead easily to misinterpretation.

In the case of listed companies, there is a requirement for continuous disclosure of information, to protect the interests of shareholders. In this case, data would often have to be released earlier than five years or three years.

In the case of publicly-funded data acquisition, information should of course be made available as soon as practicable.

The speculation arises that this issue relates to concerns the Crown may have in relation to the petroleum sector. If so, this issue may be better addressed by developing fit-for-purpose legislation for petroleum (refer to the answer to Q1).

31. Do you have any comments on the proposal to repeal section 42A(2)?

No.

32. Do you consider that data acquired over adjacent unpermitted acreage (other than reasonable line tails) should be made available immediately or subject to a period of confidentiality?

Refer to the answer to Q30.

33. Do you have any comments on the proposal to add into the CMA a general power for the Minister to reserve land and minerals from allocation?

"In order that the Crown is able to strategically manage its resources for the benefit of all New Zealanders, it is proposed to add a general power for the Minister to reserve particular minerals or land from allocation (other than just for purposes of competitive allocation)."

It is not possible for the resource sector to comment usefully without further information. There may be very good reasons for this proposal, and it would be useful to have these spelled out in the Act.

34. Do you think that the current regime is satisfactory for the development of petroleum resources from exploration to production?

Yes, in principle. A petroleum company has up to 14 years to move from holding an exploration permit to either surrendering the permit or committing to developing a field. This is appropriate.

It is not clear what is proposed, in terms of promoting "efficient" development of a petroleum field. The petroleum company is best placed to determine the optimum rate of development and extraction of a field, from a business perspective. The Crown could force quicker extraction of petroleum to drive down domestic prices, say, for gas, or to increase the flow of revenue to the Crown. The margins for business would then need to be considered. Any changes in this area would have to be carefully considered, to balance the interests of business, and the interests of the nation.

In general it is poor practice for government to intervene in telling a business how to run its business. Rather, it is the role of government to set the overall framework to achieve objectives such as economic growth, within which businesses operate.

As argued in the answer to Q1, the Crown should consider developing fit-for-purpose legislation for petroleum.

35. Are there benefits in, once a discovery has been made, carrying out activities under a different class of permit (eg an "Appraisal Permit" or a "Development and Production Permit")? If so, why?

The current system does allow the Crown and the permit holder to review the permit holder's situation a number of times during the exploration phase of a petroleum field. This is sensible in light of the long time frames that this work can entail. In this way the Crown's interests are protected as the owner and manager of petroleum resources, and the company's interests are protected, in having sufficient time to properly determine whether or not to proceed to extracting the resource.

But there may be additional considerations, best addressed by developing fit-for-purpose legislation for petroleum (refer to the answer to Q1).

36. Do you think the Government should consider adopting a 'retention lease' model for non-economic discoveries? If so, why?

Yes. Changes in the economics of petroleum can occur over long time frames. As matters stand, only one in 10 wells may produce an economically-viable discovery. The concept of a retention lease will help businesses raise, manage and retain investment capital.

As argued in the answer to Q1, the Crown should consider developing fit-for-purpose legislation for petroleum.

37. Do you think that on the whole the changes proposed in this discussion paper will meet the objectives of the review if implemented?

The objectives of the review and the proposed purpose statement for the Crown Minerals Act 1991 (with the amendment proposed by Straterra) are appropriate and welcome.

Overall, the proposed changes carry some risks, in particular for businesses, and indirectly for New Zealand. Straterra believes these risks can be avoided by making a number of amendments to the Crown's proposals and by carrying out further consultation with industry. In particular, the Crown is urged to seriously consider developing fit-for-purpose legislation for petroleum, and including geothermal resources within the Crown minerals regime. Refer to the executive summary and Straterra's recommendations.

In many cases, Straterra has been unable to assess or comment on a proposal because insufficient information has been provided. As stated, we would be happy to participate in further discussions on all of the issues.