

SUBMISSION

Submission from Straterra

To the Economic Development, Science and Innovation Committee

Crown Minerals Amendment Bill

January 2023

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 Amendment Bill (the Bill). This submission focuses on the provisions to alter the purpose statement of the Crown Minerals Act 1991 (the Act). It also makes some comments on the provisions for strengthened engagement with iwi and hapū.
3. We wish to speak to our submission.

Recommendation

4. We do not support the Bill and we recommend rescinding it in its entirety.

The matter of urgency / critical minerals

5. This Bill was rushed through under urgency in the last stages of the House sitting in 2022. There was no need for this haste and in fact, it is inappropriate to consider the proposed changes to this Bill in the absence of the Government's strategy for critical minerals. It will directly impact investment in, prospecting for, and mining of the critical minerals the world is chasing to enable a sustainable energy future; sustainable infrastructure; climate change mitigation; and the continuation of modern life as we know it with improvements in science, medicine, communications, and technology.
6. The critical minerals strategy cannot be isolated from the purpose of the Crown Minerals Act, or indeed, the General Policy Statement outlined therein. In fact, the General Policy Statement references critical minerals (see below), but the New Zealand Government does not yet have a policy or list that outlines what these critical minerals are.

The General Policy Statement:

*“The Bill seeks to neutralise the promotional intent of the CMA, while retaining the existing emphasis under the CMA on the role of the Crown as resource owner, and its economic stewardship. This change would make clear the CMA’s role as an allocation and management framework, while enabling flexibility in the pursuit and realisation of objectives that may evolve over time and be different for the different kinds of minerals that it regulates (eg, petroleum as compared with **critical minerals**).”*

7. We strongly recommend further development of this Bill is stalled until the New Zealand Government is clear on its intent, and indeed its obligations, to enable the Crown, as resource owner, to enable investment in, prospecting for, and mining of what are deemed to be critical minerals. This list is likely to include minerals already being mined, as well as minerals that exist in New Zealand but have yet to be prospected and mined. The critical minerals strategy will have geopolitical implications and must be part of enabling law.
8. It would be concerning if Government ideology isolated New Zealand from the rest of the world in the quest to resource a better future with sustainably sourced minerals, responsibly mined in an employment environment that values worker health and safety, working conditions, and remuneration.

Summary of Straterra position on altering the purpose statement of the Bill

9. This Bill seeks to alter the purpose statement of the Crown Minerals Act and neutralise the promotional intent of the Act.
10. We are strongly opposed to this.
11. The problem definition the Bill is trying to solve is unclear. The Bill’s explanatory note says that the CMA should reflect what it says are “strategic shifts” in the wider regulatory environment in which the CMA operates. Specifically, it seeks to provide more flexibility in the allocation of rights to Crown-owned minerals so that it is not seen as promoting fossil fuels.
12. There are a number of problems with this. Firstly, the Bill conflates mining and greenhouse gas emissions. There is an implication that all Crown minerals are fossil fuels when in fact they are not. New Zealand produces a range of minerals used in a variety of applications, eg to name just a few, construction materials for roads and concrete, and metals for electronics and electricity generation and storage. In addition, New Zealand has significant prospectivity in a range of minerals that are not currently mined, that will be important for New Zealand’s future and the low-carbon economy. New Zealand has minerals and can make a valuable contribution to the low emissions future, but we need enabling law for responsible minerals exploration and development.
13. Secondly, the Crown Minerals Act as it stands already provides the Government with flexibility to decide how to meet an obligation to “promote”. Removing the concept of “promotion” from the Act is not needed to allow a rebalancing of Government priorities if that is what it wants, and is instead counter-productive.
14. The removal of the word “promote” sends a strong negative signal to investors, other Governments, and the public at large that the New Zealand Government is anti-mining. This has implications for sovereign risk; it risks existing jobs, research, and investment in New Zealand’s minerals sector. It also encourages the view among sections of the public that mining should not be supported and

perpetuates the myth and falsehood that modern responsible mining in New Zealand is not or cannot be environmentally responsible.

15. Under the Act, we see the Crown, as owner of the Crown Minerals, as having a responsibility to ensure they are developed for the benefit of New Zealand. The fact that many of the Crown Minerals were obtained by nationalisation through legislation reinforces the need for the Act to enable their development.
16. In Straterra's view, the consequence of amending the CMA, as proposed, will be to shrink the contribution of minerals activities to the New Zealand economy over time, leading to further reduction in New Zealand's already low productivity. At the same time there will be no benefit to the global climate or the New Zealand environment because of "carbon leakage" and the fact that mining occupies such a small area of our country's land area.
17. We expand on these points below.

Use of the word "promote"

18. Clause 4(1) proposes replacing the word "promote" with "manage".
19. The use of the word "promote" in the purpose statement is a standard feature of a number of New Zealand acts of Parliament governing a range of sectors and activities. In the Crown Minerals Act, "promote" could be interpreted as:
 - 1) a general supportive or enabling role,
 - 2) the Government proactively marketing New Zealand to investors.
20. As stated earlier, it would seem the Government wants more flexibility in what it promotes and how much, but this flexibility is already there, given the generality of this term. The existing wording does not constrain the Government in its behaviour and removal of the concept of "promotion" from the Act is not required to allow a rebalancing of Government priorities.
21. The explanatory note says, "the CMA's focus on promoting the allocation of petroleum and minerals for *economic benefit* does not enable flexibility in the choices available to the Crown as resource owner." [emphasis added]. We don't agree and consider the Government is using a false construct in an attempt to solve a non-existent problem. The purpose of the Act is to "promote ... for the *benefit* of New Zealand." "Benefit of New Zealand" has a broad meaning and should not be, and has not been, interpreted as being confined to just economic benefit. The Government's environmental, climate action, cultural, social, and other objectives already find scope within this term.
22. Promotion in the second sense of the term, proactively marketing New Zealand to investors, has been phased out in recent years. For example, the Ministry of Business, Innovation and Employment (MBIE) no longer promotes New Zealand at the premium international mining event held annually in Toronto, Canada, known as PDAC, whereas it has previously. We note in this regard that the existence of the word "promote" in the CMA has not prevented MBIE from failing to showcase New Zealand minerals as investment opportunities.
23. We argue that this sort of promotion should be reinstated, because investment in the industry and in the people who work in the industry, is of benefit to New Zealand, and will increasingly be so as new and changing patterns of demand emerge for exciting and newly mined critical minerals in New Zealand.

24. We look forward to the debate New Zealand is about to have on the subject of critical minerals when MBIE's highly anticipated discussion document on the subject is released sometime this year. But as we note above, this is critical to the purpose of the Act and therefore, should be debated and defined alongside amendments to the Act, not retrospectively. There are a range of "low carbon" minerals, discussed below, that the Government will need new investment in, if they are to be discovered and developed commercially in the coming decades.

Allocation of rights

25. Clause 4 (2) changes "efficient allocation of rights" to "efficient processing and consideration of applications for rights".
26. This change is petty and says at once too little and too much. On the first point, are participants in the system to assume that MBIE will do nothing other than process and consider applications? This would be senseless. On the second point, the Bill does not need to explicitly state that applications will be processed and considered; participants in the system may safely assume that these are things that the Crown minerals regulator does as a matter of course. The existing wording and the use of the term "allocation of rights" doesn't mean that applications can't be declined, and that rights must be allocated on application. Efficient and effective processing and consideration of applications with a view to wise decision-making on applications is implied in the term "allocation".
27. As with clause 4 generally, this amendment sends a signal that the Government is anti-mining with all the associated risks and implications as discussed earlier.

Supporting arguments

Responsibility to develop

28. The Crown has legislated to take ownership of all gold, silver, uranium, and petroleum in New Zealand. Ownership of minerals other than those depends on when the title to the land was first alienated from the Crown. However, the policy decision was taken that from the commencement of the Land Act 1948 all sales of Crown land reserved all mineral rights to the Crown.
29. The reasoning behind the Crown taking and/or keeping ownership of minerals was that it was better placed to ensure that those minerals were in fact developed and exploited for the benefit of all New Zealanders. If the Crown now wishes to refuse to grant rights over certain of its minerals through the proposed changes to the Crown Minerals Act, then the foregone benefits of doing so need to be explicitly recognised, and further, the Crown (which holds the minerals for all of us) should release those minerals from its ownership.
30. As discussed in the previous section, the words "for the benefit of New Zealand" make it clear that the promotion is for the benefit of all and should provide comfort that there is intended to be a positive for New Zealand arising from promoting prospecting for, exploration for, and mining of Crown-owned minerals.

Sovereign risk

31. Legislating to remove "promote" from the purpose statement of the Crown Minerals Act and changing the wording around allocation of rights would send a signal to investors that the

Government's position on mining is that it is anti-mining for no reason other than ideology and political gain in some sectors of society.

32. Changing the purpose statement in this way would provide confusion among the industry's stakeholders, deter investment in the industry and pose a higher sovereign risk generally.
33. Even having the proposition in this Bill debated sends a negative message to the investors needed for mining in New Zealand. Hundreds of millions of dollars of investment, existing and future, are at stake with the proposed changes, including the jobs and benefits to regional economies that come with that. The rights of existing investors are also being jeopardised and there is a risk that existing investors could exit, or at least curtail their future expansion plans.

Blunt instrument

34. Consistent with its net zero greenhouse gas emissions target and the Emissions Reduction Plan, the Government does not want to be seen as promoting fossil fuels, as reflected in the explanatory note of the Bill. It also has reservations with some minerals or aspects of mining practice in New Zealand such as mining on conservation land.
35. Amending the purpose statement of the Crown Minerals Act is a blunt instrument to achieve these goals and is not necessary.
36. Such aspects can and are being addressed already under separate legislation. Straterra argues that the Government's environmental policy goals can be addressed within the current system by assessing proposals on a case-by-case basis, and using a consenting pathway to ensure there is no net loss in competing values in the land eg biodiversity.

Low carbon economy

37. An amended purpose statement as proposed would impact on all Crown-owned minerals including so-called "green minerals" such as lithium, tungsten and vanadium which will be important for the low-carbon economy. New Zealand has significant prospectivity of these. Where captured by the Crown Minerals Act, the development of these critical minerals could be curtailed by the proposed changes to the purpose statement.

Mining and the environment

38. This Bill is anti-mining and it encourages and perpetuates the myth or falsehood that modern mining in New Zealand is neither environmentally responsible nor needed.
39. The CMA operates alongside other legislation that regulates environmental impacts, as well as health and safety and other aspects of mining.
40. These aspects are extremely important, and the industry has made strong gains as shown [here](#) in our environmental case studies. The reality is the impact modern responsible mining has on the environment is minimised under the existing environmental regime and successful mining companies are able to, and do, make positive contributions to the environment and biodiversity.
41. We support these regulations which can be strengthened as societal values change. We argue that it is here where legislative changes can be made if the Government feels this to be necessary, not the Crown Minerals Act.

Fossil fuels

42. The Bill's explanatory note says the CMA as it stands limits the scope for decisions to achieve a managed and equitable transition away from fossil fuels. We do not agree this is the case but irrespective, it is important to realise that at the current time fossil fuels are needed and it is foolish to curtail supply from New Zealand sources.
43. Coal is used as energy for food processing and industry, and as an important back-up for Huntly Power Station to provide security of electricity supply. It is used for, and is an essential component in, steel manufacturing. There are also a growing number of alternative technologies and uses for coal such as carbon foam (a component of space rockets) and filters.
44. To illustrate its critical nature at the current time, coal was deemed an essential service or key utility during the Covid-19 lockdowns, and coal mining continued to operate due to the integral role it plays in the provision of food and hospital services eg heating for sterilising hospital equipment.
45. Coal's contribution to emissions occurs principally when it is consumed, not mined, and if the coal destined for combustion is not produced locally, then it will be imported and still burned here. As is well known, imports of coal into New Zealand have risen in recent years as production has been curtailed, reaching a record high of 1.8 million tonnes last year.

Strengthened engagement with iwi and hapū

46. Clauses 12 and 13 of the Bill increase the requirements of permit holders to provide a draft annual report to relevant iwi or hapū. We question the need for these clauses. We also wonder whether iwi or hapū want this and we ask how they are going to be resourced to deal with the increased engagement.
47. Iwi and hapū sometimes have interests in protecting certain land from mineral development (eg cultural and wāhi tapu) and engagement is important. At the same time, Māori have significant interests in the resource sector and in retaining access to, and developing minerals for historical, cultural and economic reasons.
48. Māori have been extracting mineral resources for many centuries and today many Māori work and have business interests in the sector. The percentage of Māori employed in mining is much higher than the equivalent figure for the population as a whole.
49. In practice, consultation between the industry (as opposed to the Crown) and iwi and hapū is happening on a regular basis. On the West Coast, for example, industry considers it has good relationships with Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio.

What's at stake

50. Mining makes a small, but significant, contribution to the New Zealand economy and the wellbeing of New Zealanders. It is one of the most productive sectors in New Zealand as measured by output per hour worked. The average annual wage in mining is \$102,600 compared with \$64,000 for the economy as a whole. Mining is concentrated in small parts of the country so its impact on the economic development of certain regions is significant. The products of mining are essential for society and New Zealand is well endowed with many minerals which are able to be developed for society's benefit, including jobs, investment and export revenue.

51. The Bill's anti-mining stance puts that at risk, as well as the enormous potential for future development as the world develops a low carbon future.
52. The world is demanding more mining, not less, to solve climate change challenges. The International Energy Agency (IEA) says clean energy demand for critical minerals is set to soar as the world pursues net zero goals. In a comprehensive global study - [The Role of Critical Minerals in Clean Energy Transitions](#) - IEA showed need for government action to ensure reliable, sustainable supplies of elements vital for EVs, power grids, wind turbines and other key technologies.

Conclusion

53. In conclusion, the Bill's anti-mining ideology risks setting our country at odds with the rest of the world in the quest for a low emissions future. To please a few voters who want to see a ban on mining in New Zealand but are quite happy to use the products from mining that happens somewhere out of sight and out of mind, the Government could disadvantage many other New Zealanders by tinkering with the Crown Minerals Act.
54. Mining makes a valuable contribution to the New Zealand economy for the benefit of all New Zealanders. Under the Act, we see the Crown, as owner of the Crown Minerals, as having a responsibility to ensure those minerals are developed for the benefit of New Zealand. The amendments to this Act are contrary to that responsibility to the point of abdication.
55. The consequence of amending the Act, as proposed, will be to shrink the contribution of minerals activities to New Zealand over time, leading to further reduction in New Zealand's already low productivity. At the same time there will be no benefit to the global climate or the New Zealand environment because of "carbon leakage", and the fact that mining occupies such a small area of New Zealand's land area.
56. In wanting to abdicate its responsibility to promote mining, the Bill sends a strong negative signal to investors, other Governments we hold strategic partnerships with and the public at large that the New Zealand Government is anti-mining. This has implications for sovereign risk, and it risks existing jobs, research and investment in New Zealand's minerals sector. It encourages the view among sections of the public that mining should not be supported and perpetuates the myth and falsehood that modern responsible mining in New Zealand is not, or cannot be, environmentally responsible.
57. Decisions about mining in New Zealand cannot be properly made until the Government is clear on its critical minerals strategy direction. This work is in its infancy, yet it has material impacts on this Bill.
58. We do not support the Bill and we recommend rescinding it in its entirety.
59. We wish to appear before the Select Committee to discuss our submission.