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Crown Minerals Act Review
Ministry of Economic Development
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Submission on Crown Minerals Act Review

NZOG (New Zealand Oil & Gas Ltd) welcomes the opportunity to comment on the Government's "Reviewing the Crown Minerals Act 1991 Discussion Paper".

Introduction

The Crown Minerals Act 1991 (CMA) establishes Crown ownership of certain mineral rights (including petroleum) and having done so, establishes a framework for private sector interests to extract the resources for value. The framework for the issue and management of rights under this Act creates the property rights that are an essential element of the business model for the exploration and production industry.

The general approach proposed in the Discussion Paper is to move many important powers and definitions from the CMA to the Minerals Programme and regulation, and for the Minister of Energy and Resources, who already has considerable power, to be given an even greater degree of discretion.

NZOG believes that, as a matter of principle, fundamental rights should remain enshrined in the CMA, with procedural matters covered in sub-ordinated legislation and regulation. Respecting this demarcation, NZOG is not opposed to a subtle shift in emphasis from legislative guidance to regulatory oversight, if implemented correctly.

However, NZOG has serious concerns about a number of the proposed revisions and deletions to the CMA, which are generally lacking in detail and with little or no rationale provided.

If the changes as suggested proceed, it will mean that the subsequent review of the Minerals Programme and regulations is likely to be at least as important as the current review of the CMA. It would have beneficial to the consultation process if the detail of the overall framework had been provided for comment at one time.

It is essential that the reform of the Minerals Programme and regulations is coherent and consistent with government policy objectives to facilitate oil and gas exploration; and provides certainty and transparency for industry participants looking to make major and long term investment decisions.

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There must be sufficient time given for industry consultation and review of the proposed changes to the Minerals Programme and regulations. NZOG has some concern that the Government's current timetable may be too tight. It has been indicated that the proposed revisions to the Minerals Programme are to be released in March 2011 and gazetted in June 2011. This is unlikely to allow sufficient time for proper consideration.

Proposed Changes to CMA

Many of the proposed changes to the CMA are described in very general terms and do not provide important detail. For example, there is a stated intention to increase penalties for non-compliance, with no information provided on the likely magnitude of the increase.

The discussion paper identifies a number of broader areas that are not being addressed as part of the current CMA review. However, there are other issues that do fall within the jurisdiction of the CMA which have been largely ignored; such as retention lease, unitization and strata titles.

The detailed comments that follow are listed under the subject headlines of the Discussion Paper and are referenced to the Questions that accompanied the Paper (NB not all of the Questions are addressed). In this submission NZOG has restricted its comments to those areas where it believes it can most usefully contribute.

- **Inclusion of a purpose statement**

Q1 & 2
NZOG supports the inclusion of a purpose statement, but it needs to be carefully drafted and avoid being too narrowly focussed. The desire to secure a fair financial return for the Crown needs to be balanced against ensuring that New Zealand's petroleum regime can attract investment and enable developments to proceed in a timely manner.

- **Manage new technologies, resource and activities**

Q8
NZOG supports the proposal for new classes of permits for research activities; non-exclusive seismic surveys; and underground gas storage. There are some clarifications needed, however. What happens if there are overlapping interests? To what extent are prior rights going to be preserved?

A permit for a speculative seismic survey should only be granted over an existing exploration or mining permit where the holders of the existing permit have given their approval.

The duration of any permit granted for research/scientific activities or non-exclusive seismic surveys should be short (months rather than years), to avoid areas being excluded from exploration activity.

- **Changing Mineral Programme regime**

Q 14
It is proposed to remove some of the detail in the CMA on what a Minerals Programme must contain. However, only one specific example (royalties) is given. Without any information on what actual changes are contemplated, NZOG cannot at this time support this proposal.

With regard to royalties, it is proposed that royalties are no longer specified in the Minerals Programme but are dealt with in regulations to the CMA. NZOG can see no good reason for this change. The Minerals Programme seems to be the appropriate place to deal with royalty matters, together with various other matters relating to permit allocation and management.

NZOG agrees that drafting and other minor changes to Minerals Programmes could be made without the need for consultation, as long as suitable notice is given.

Q15
It is proposed that the most recent Minerals Programme should apply to all permits. There is always danger in retrospectively applying regulations or laws. Companies like NZOG have made significant investment decisions based on the rules and regulations which applied at the time. Having earlier programmes cease to be operative when a new programme is introduced would introduce an increased level of risk and uncertainty and may have a detrimental impact on future investments. It is not compelling that administrative burden should outweigh regulatory risk and uncertainty.

NZOG strongly supports the status quo – that is, permit holders have the option to transfer to the new Minerals Programme, but cannot be forced to.

- **Removal of permitting policy and operational matters from CMA**

Q17
It is proposed to remove certain operational matters relating to block offers from section 24, and include them instead in the block offer notice. Given the lack of detail or context – what is the issue Crown Minerals is trying to address? – NZOG cannot support this proposal at this time.

Q18
NZOG is inclined to support the removal of section 28, which restricts the granting of prospecting permits in certain circumstances, depending on what parameters are then included in the Minerals Programme.

Q19
Similarly, NZOG is inclined to support the removal of section 36(2) relating to the extension of a permit, depending on what is subsequently included in the Minerals Programme.

Q20
NZOG does not support the proposed removal of sections 37 and 36(4), (4A) and (5) from the CMA (which provide certain conditions for the extensions of permits).

Sections 35, 36 and 37 of the CMA set out some fundamental aspects of the New Zealand permitting system (in particular around permit extensions) which directly impact on exploration and production activities, and investment decisions. Any changes which make the process of obtaining permit extensions less certain or transparent, increase investment risk.

Uncertainty is created because the suggested removal of sections 37 and 36(4), (4A) and (5) is made without any detail provided of the “appropriate policies” that are to be set out in the as yet unsighted new Minerals Programme.

It may be appropriate for the Minerals Programme to include more of the procedural details around extensions (for example, the procedures to be applied in determining the duration of initial term exploration permits and how much acreage (if any) is to be surrendered when moving to a second term exploration permit), provided that the CMA continues to expressly provide for the ability of permit holders to seek permit duration extensions and the general parameters within which such permit duration extensions are available.

Q22

It is suggested that section 30(8) dealing with overlapping permits could be left to the Minerals Programme or repealed. NZOG is strongly opposed to repeal, as this would have serious implications for an existing property right.

NZOG is also opposed to moving the policy on overlapping permits to the Minerals Programme. Section 30(8), with its requirement that the prior written consent of the current permit holder is obtained before an overlapping permit can be granted, should be retained in its current form.

Q23 & 24

It is proposed to remove mandatory limits to permit duration and to have greater flexibility in the Minerals Programme. NZOG strongly agrees that the Crown should have the ability to be flexible and suggests that the Minerals Programme could state some "standard" exploration permit durations for different categories or locations of exploration activity, as well as specifying the factors to be applied when determining the appropriate permit duration for a particular application.

Flexibility around permit duration needs to be based on particular circumstances and cannot be solely determined by geographical location, as suggested in the Discussion Paper. Geography does not always reflect the particular geological complexity in a particular permit area.

NZOG also suggests there needs to be more flexibility around the expected work programme within a permit term. The minimum permit work programme requirements for recent Blocks Offers have been overly onerous, and have inhibited innovation. In particular, the expectation that a work programme must always provide for at least 1 well to be drilled in the first permit term is not always appropriate. Also, requiring a highly detailed work programme in years 4 and 5 is often pointless, as priorities will almost inevitably change as a result of the earlier programmed work. Also, regular competitive licensing rounds for blocks of a standard size seems more likely to encourage exploration activity than irregular licensing with relatively onerous programme obligations.

Q25

NZOG does not support the removal of section 35(2) as it provides necessary protection in the event a required consent cannot be obtained prior to the commencement date of a permit. In such a case, it is appropriate that the CMA provides for the commencement date of the permit to be delayed. Merely altering the permit conditions, as proposed, does not achieve the same outcome, as it does not extend the permit duration. Rather than removing it, section 35(2) could be reworded so that it is no longer applied only where the permit holder has been prevented from commencing any activity at all, not just the activity requiring consent. Section 35(2) could also usefully be extended to cover force majeure events that delay a permit holder from commencing activities.

Q26
NZOG strongly opposes the proposed amendment of section 32 where the permit holder has a right to exchange an exploration permit for a subsequent exploration permit or mining permit. This is a fundamental aspect of the permitting regime. Providing a satisfactory work programme is completed, the permit holder currently can have confidence that a subsequent permit will be granted. If the permit holder only has a priority right to apply for a subsequent permit they will be reluctant to commit significant expenditure in the first permit term, reducing and slowing down overall exploration activity in New Zealand. If there are issues arising from the application of section 32 in its current form, amendments should be considered that nevertheless preserve the right.

NZOG does support the proposal to amend section 32 to make it clear that whilst an application under section 32 is being considered, the underlying permit remains in force.

Q27
NZOG does not support the repeal of sections 43 and 44, which make provisions for the approval of work programmes for subsequent permits. There is no rationale given for why these provisions should be transferred to the Minerals Programme; or any detail given on whether changes might be made to the provisions.

Sections 43 and 44 contain important protections which need to remain; e.g. a requirement for the work programme approval decision to be made within six months; and the ability of permit holders to refer to arbitration any decision by the Minister to withhold approval of a work programme.

- **Enhanced management of non-compliance**

Q28
It is proposed to strengthen offences and penalties for non-compliance, and to add late payment fees. Unfortunately, the discussion paper provides little in the way of details as to the nature or the extent of the changes. NZOG believes there should be penalties that provide a meaningful deterrent, but with the levels of the new penalties unspecified, NZOG cannot make a comment in support or opposition to the proposal.

NZOG is not opposed to including more details on royalty record keeping and audit rights in either the CMA or Minerals Programme, but notes that there are no details on how the audit process would work.

NZOG supports the proposal for the regulatory framework to specify requirements for decommissioning provisions. However, the mechanisms to be used need to be considered carefully. In other jurisdictions, joint venture partners have blocked assignments of interests and/or demanding very tough financial conditions to address concerns about potential joint venture partner liability for abandonment obligations. The effect of this can be to prevent assignment of assets to companies that see more value upside and are more prepared to aggressively work maturing or mature assets to extract full potential value. A regulated solution that finds an appropriate balance between cost, risk and incentivising field re-development and full exploitation (typically undertaken by the independents rather than the majors) would be a preferred solution.

NZOG does not support the greater use of bonds to secure decommissioning obligations, as this will deter some companies from investing in development and production activity.

- **Simplifying transfers and dealings**

Q29
Section 41 has been a cause of considerable uncertainty and imposes significant compliance costs. NZOG appreciates that these concerns have been recognised and strongly supports the fundamental principle that permit transfers and assignments require Ministerial consent, but that other permit dealings do not.

The suggestion that agreements that relate to production or the proceeds of production must be lodged with the Crown is lacking in detail and NZOG is not clear why this has been proposed.

- **Data and disclosure requirements**

Q30
The Crown proposes requiring further information from mining permit holders – with no detail at all on what particular further information will be required. It is therefore impossible for NZOG to express a view on this proposal.

The Crown is considering reducing the confidentiality period for raw data from 5 years to 3 years. It is stated this may encourage investment. However, NZOG does not believe the 5 year confidentiality period is a barrier to investment. Having different time periods is an unnecessary complication and NZOG supports the status quo.

Q31
It is pleasing that an issue that had been directly raised by NZOG with officials regarding section 42A has been addressed. Section 42A does not adequately deal with the treatment of data acquired over adjacent unpermitted acreage. NZOG supports the repeal of Section 42A(2).

Q32
NZOG submits that any data acquired over adjacent unpermitted acreage should remain confidential for the same period of time as the data from the permitted acreage with which it was acquired.

- **Other measures**

Q33
NZOG does not support the proposal to give a general power to the Minister to reserve particular minerals or land from allocation, particularly as no detail is provided on how broad the powers might be.

The proposal appears to extend the ability of the Crown to block access to resources. To encourage ongoing investment and interest in New Zealand as an exploration destination, there needs to be a clear and lasting permit allocation system, which is not potentially subject to political whim. Indeed, it seems bizarre that a proposal to broaden the Minister's power to reserve land and minerals is listed in the Discussion Paper as a change that would encourage economic development from mineral resources – when it appears to have the opposite effect.

The Discussion Paper comments that section 34 may be changed at a later point as a result of the fiscal review. NZOG notes that as at September 2010 IRD did not have petroleum royalties on its draft work plan for the next 18 months.

Q34
It is proposed that notification of a discovery would trigger a timeframe for either surrender or evaluation of a permit. NZOG does not support this. Imposing an arbitrary statutory timeframe could lead to a sub-optimal development of the resource, that fails to maximise the recovery of petroleum and the financial return to the Crown. The work programme approval process is the best way, for both the Crown and the permit holder, to determine how best to develop the discovery.

Q35
New classes of permits – Appraisal Permit, Development and Production Permit, and Retention leases - are all referred to but are not specifically proposed. Again, the lack of detail and rationale is disappointing. NZOG does not support having separate appraisal, development and production permits, as each stage can be addressed in the permit work programme.

Q36
Retention leases are worth considering, as they provide a mechanism for a sub-commercial discovery to be retained by the discoverers (in the hope that technology or market changes will make it commercial in future). However, there needs to be provision for adequate on-going permit reviews to ensure the criteria for deeming a discovery sub-commercial remain valid.

- **Overall Comment**

Q37
NZOG does not believe that the changes as proposed in the Discussion Paper would meet the stated objectives of the review if all were implemented. Many of the proposals require further detail to be provided. In summary;

NZOG supports:
- the inclusion of a general purpose statement
- new classes of permits for research activities; non-exclusive seismic surveys; and underground gas storage
- removal of sections 28 and 36(2)
- more flexibility around permit durations
- more flexibility around permit work programmes
- amending section 32 to make it clear the underlying permit remains in force
- specifying requirements for decommissioning provisions
- amendments to section 41
- removal of section 42A(2)

NZOG does not support:
- applying the most recent Minerals Programme to all permits
- removing certain operational matters relating to block offers from section 24
- royalties being no longer specified in the Minerals Programme
- removal of sections 37 and 36(4) (4A) and (5)
- removal of section 30(8)
- removal of section 35(2)

- amending section 32 to change a right of renewal to a priority right
- removal of sections 43 and 44
- the greater use of bonds to secure decommissioning obligations
- reducing the confidentiality period for raw data from 5 years to 3 years
- giving the Minister a general power to reserve particular minerals or land from allocation
- notification of a discovery triggering a timeframe for either surrender or evaluation of a permit
- separate appraisal, development and production permits

Insufficient detail has been provided for NZOG to form a final view on:

- removing some of the detail in the CMA on what a Minerals Programme must contain
- strengthening offences and penalties for non-compliance
- including more details on royalty record keeping and audit rights
- lodging with the Crown agreements that relate to production or the proceeds of production
- requiring further information from mining permit holders
- retention leases

NZOG believes the Government is genuinely committed to providing a certain and stable investment environment. The Minister's media release stated that the review of the Crown Minerals Act was intended to "bring added clarity and efficiencies to the permitting system, which will remove unnecessary costs and uncertainties..."

NZOG supports this goal, but is concerned that a number of the suggested changes to the CMA are not supported by adequate detail or the rationale for the change. In some cases, the general theme of transferring responsibility from the CMA to the Minerals Programme, regulations or to the Minister's discretion goes too far, in NZOG's view.

While the Crown may have particular concerns or uncertainties it hopes to address through changes to the CMA, it must not be overlooked that the overriding objective is to encourage and facilitate exploration and development of New Zealand's petroleum resources.

A number of the proposals are fundamentally inconsistent with this objective. In other cases, the "devil will be in the detail" and there will need to be sufficient time provided for industry input into the final CMA changes and to the new Minerals Programme review.

Yours sincerely

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