Parliamentary Commissioner for the Environment
Te Kaitiaki Taiao a Te Whare Pāremata

Submission on the draft minerals strategy for New Zealand to 2040

To the Ministry of Business, Innovation and Employment

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Submitter details

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The Parliamentary Commissioner for the Environment

The Parliamentary Commissioner for the Environment was established under the Environment Act 1986. As an independent Officer of Parliament, the Commissioner has broad powers to investigate environmental concerns and is wholly independent of the government of the day. The current Parliamentary Commissioner for the Environment is Simon Upton.

Introduction

Thank you for the opportunity to provide feedback on the Government's draft minerals strategy.

My comments relate to three issues:

- the need to translate the high-level environmental aspirations in the strategy into specific actions
- whether New Zealand's existing royalty regime captures a fair share of the value associated with the one-time removal of publicly owned minerals
- the risks associated with operators failing – for financial or other reasons – to responsibly decommission mine sites and the associated facilities.

I have organised my comments on each of these matters under the questions on which the Government is seeking feedback.

Beyond those specific comments, I think it is important to consider how the pro-mining initiatives outlined in the draft strategy will interact with the watering down of environmental protections proposed via the Fast-track Approvals Bill and Resource Management (Freshwater and Other Matters) Amendment Bill. A major theme underpinning all of this policy work is the need to capture the economic benefits associated with extractive projects. The fact that extractive industries also come with a range of environmental costs has been largely overlooked.

Question 1: are the strategic pillars of the strategy (enhancing prosperity for New Zealanders, demonstrating the sector's value, and delivering minerals for a clean energy transition) suitable or is there more we need to consider?

The Government should consider whether the strategy should focus only on the benefits of increased mineral extraction, or whether minimising the associated environmental costs should be an integral part of all pillars.

The first pillar in the draft strategy is enhancing prosperity for New Zealanders. Prosperity is defined very broadly – it includes "the protection of environmental values important to New Zealanders". That sentiment, however, does not translate through to the specific actions identified in the strategy. Key action #3 centres on developing a more enduring, efficient and responsible regulatory framework, but the emphasis is on enabling faster permitting and consenting – not environmental protection.

Historically, the costs of mining in certain areas of New Zealand have been seen as too high to contemplate any level of benefit. The prohibition of mining in national parks (under the Crown Minerals Act 1991) represents one example of this. In my view, regulatory 'bottom lines' of this sort make sense on the basis that ecosystems and species are irreplaceable – they should be strictly protected wherever they are rare or threatened.

The draft strategy is clear that there will be no change to the existing prohibitions on mining in national parks and some other types of high-value conservation land. The Government should be commended for that, even if that status quo falls well short of changes considered by the previous Government (that would have placed 12 additional classes of public conservation land off limits for mining).[1] There will always be debate about exactly where bottom lines should be set. I would only observe that, in many cases, there is unlikely to be any difference between the conservation value of land within a national park and that within a nearby forest park or ecological area. If national parks are off limits, why not ecologically similar areas that, for whatever reason, were never designated as such?

Once bottom lines have been established – and met – mining projects should be considered on their merits. If the public benefits of a new mine exceed the likely environmental costs, then there is no good reason why it should not go ahead. I say *public* because that is ultimately what matters here. For the most part, the minerals of interest are commonly owned by all New Zealanders. It is the royalties and economy-wide productivity benefits (in the form of better paying jobs, increased tax revenues and associated downstream multiplier effects) that should be considered when permitting decisions are being made – not returns to investors.

That sort of logic, however, requires environmental damages to be evaluated and, where possible, quantified. None of the actions in the strategy call for that. This Government has supported cost benefit analysis in various other settings, and it is just as well-suited to help inform decisions about whether or not to permit the extraction of publicly owned minerals. Making it an integral element of the minerals permitting process would ensure that only projects with overall benefits for New Zealanders go ahead, thereby improving public confidence in the sector.

[1] DOC (2023).

Question 2: are the key actions the right ones to deliver on our strategic pillars, and are they ambitious enough? What else might we need to consider?

Again, the first pillar of the strategy is enhancing prosperity for New Zealanders. Royalties are one of the main ways in which New Zealanders can benefit from the extraction of minerals that are ultimately publicly owned. Given that, it is surprising that the strategy does not call for a review of the existing royalty regime to ascertain whether it captures a fair share of the value associated with the one-time removal of minerals – without deterring all investment in what is ultimately a highly risky business activity.

The royalty regime for Tier 1 minerals such as gold, coal and iron sand was last reviewed a decade ago.[2] This resulted in the creation of the current royalty structure whereby mining firms pay the higher of a 2 per cent royalty on the value of their sales and a 10 per cent royalty on the value of their accounting profits.[3]

In recent years, that regime has been generating revenues in the order of $10–20 million per year.

Gold has tended to account for the majority of that. In the 2022/23 financial year, gold miners paid $7.7 million in royalties to the Crown.[4] For context, that was on total production of 6.67 tonnes of gold with a then market value of perhaps $680 million.[5] That implies an effective royalty rate of 1 per cent of sales – significantly less than the (minimum) 2 per cent that is required in theory.

Coal has also been a significant contributor. In the 2022/23 financial year, coal miners paid $7.5 million in royalties. That was on total production of 2.6 million tonnes of coal, 1.3 million tonnes of which were bituminous, 1 million tonnes sub-bituminous, and 275,000 tonnes lignite. At then export prices,[6] the bituminous and sub-bituminous fractions of that production had a market value of perhaps $1 billion. Again, that implies an effective royalty rate well below what is required in theory.

The only other high-value mineral currently mined in any significant volume is iron sand. Data on production volumes for 2017–2023 is currently withheld by Stats NZ, presumably on the basis that there was only one iron sand mine operating during that period (New Zealand Steel's operation at North Head in the Waikato). Nevertheless, New Zealand Steel's website states that 1.2 million tonnes of iron sand is required annually to support steel production at Glenbrook.[7] Despite those seemingly large volumes, iron sand only contributed $45,000 in royalties in 2022/23.[8]

There are good reasons why the royalties currently being paid by gold, coal and iron sand miners fall below what might be expected. One is that some minerals – coal being one – are not

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[2] Cabinet Economic Growth and Infrastructure Committee (2013).

[3] One important exception to that is coal and gold mines that generate annual profits of less than $5 million and $2 million respectively. These operations are only subject to the 2 per cent royalty on sales value.

[4] New Zealand Petroleum and Minerals (2024).

[5] Assuming an average gold price of USD$1,800/ounce (e.g. from Gold.org) and USD/NZD exchange rate of 1.6 (e.g. from xe.com).

[6] Assuming average prices of NZD$520 for bituminous coal and NZD$380 for sub-bituminous coal (both derived from export data published by Stats NZ).

[7] NZ Steel (2024).

[8] New Zealand Petroleum and Minerals (2024).

everywhere Crown owned, and therefore do not always attract royalties. Another is that past changes to the royalty rates payable on minerals (in 2013, for example) have not been applied to already existing mines. This means that some long-standing mines may still be operating under the legacy royalty regime under which they were established.

Royalty payments of $10 to $20 million per year seems a modest contribution for an industry that uses large quantities of publicly owned minerals to (according to the draft strategy) generate $1 billion in export value. Given the Government's intention to foster a much larger minerals industry, and that updated royalty rates have not been imposed on existing permit holders, now would be an excellent time to revisit whether the New Zealand's royalty regime is fit for purpose.

Royalties are not the only way in which New Zealanders can benefit financially from mining activity. Royalties compensate for the exploitation of publicly owned resources. In cases where mining activity takes place on public land, there are two reasons for further compensation. Firstly, to offset the damage from mining activity, and secondly to charge a rental for use of the land. In practice these two drivers for compensation may be bundled together (for example in negotiations with the Department of Conservation (DOC)), but in my view for transparency they should be considered separately.

As part of any project on public land, mining companies should invest in remediation to return the site to its natural state of biodiversity. If this is not possible, they should offset any permanent damage by investing to improve biodiversity on public land elsewhere (ideally nearby).

Under the Crown Minerals Act, prospective miners are required to enter into an access arrangement with relevant landowners before mining can commence.[9] Where private land is involved, that almost certainly leads to the negotiation of an annual rental of some sort. Whether an equivalent fee is charged in situations involving public land is uncertain.

When it comes to public conservation land, for example, DOC charges a fee on access applications for mining activities.[10] However, this is a one-off charge intended to cover administrative costs rather than an ongoing rental based on the land that is being occupied.

DOC also charges annual activity fees on the many commercial activities that take place on public conservation land (via the concessions process). Grazing, for example, attracts an annual payment equivalent to 6 per cent of the land value.[11] Notably though, the Conservation Act 1987 explicitly exempts mining firms from the need to hold a concession to operate on public conservation land,[12] I am unsure what Parliament's intent was in including that provision, but note that others have interpreted it as providing a necessary pathway for mining activity to occur on public conservation land.[13]

Whatever the case, existing arrangements make it difficult for DOC to charge mining firms a rental on the land required for their operations. Again, given the focus in the draft strategy on enhancing prosperity for New Zealanders, I find it surprising that this has not been addressed.

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[9] s54(2).

[10] DOC (2024a).

[11] DOC (2024b)

[12] Conservation Act – section 17O.

[13] DOC (2012) – p2.

Question 5: are there any other things we have missed that we should include, or things we should not include?

One issue that is not addressed in the draft strategy is how to ensure that mining firms take responsibility for decommissioning mines and their associated processing facilities. While most operators will want to do the right thing, circumstances may well arise where they are unable to.

Decommissioning has received a lot of attention recently in the context of oil and gas projects. The previous Government amended the Crown Minerals Act in response to the failure of an operator to decommission the Tui oil field.[14] Among other things, those amendments require the holders of petroleum permits to maintain financial securities against the possibility that they are unable to adequately decommission well sites. The Minister is required to determine the size of those securities, taking into account a number of factors, including the estimated cost of decommissioning.

The decommissioning requirements introduced to the Crown Minerals Act by the previous Government do not apply to minerals projects. Instead, these risks tend to be managed as part of the resource consenting process under the Resource Management Act 1991. Section 108 of the Act specifies that consent authorities can include a wide range of conditions when granting consents, including requirements for bonds to be established. Correspondence with several councils suggests that these provisions are used routinely in the context of minerals projects, with bonds that can extend into the millions of dollars.

Councils will play a much-reduced role in consenting mining projects for those that are granted consents under the Fast-track Approvals Bill. As the bill is currently drafted, it will fall to expert panels to recommend to decision-making ministers the conditions relating to mine decommissioning and remediation, and how large a bond might be required as security against an operator failing to fulfil their responsibilities. Given the timelines for expert panels to complete their work, and the complexity of most mining projects, I think there is a real question as to whether these matters will receive adequate consideration.

Ultimately, it will be the Crown that will be forced to pay for decommissioning and remediation if operators are unable to. Recent years have seen several examples of this – at the former Tui copper, lead and zinc mine in the Waikato,[15] at the Stockton coal mine on the West Coast,[16] and at the former Prohibition and Alexander gold mines on the West Coast.[17] In that last example, the then Environment Minister – the Hon Dr Nick Smith – commented that "these contaminated sites were the legacy of inadequate oversight and requirements of previous mining activities" and that "we need to … ensure that we properly regulate mining activities today so as not to create more problems of this sort in the future".

I am not convinced that mining activities will be properly regulated if they receive resource management consents under the Fast-track Approvals Bill. In particular, I am concerned about the optionality of the decommissioning arrangements that exist for mines. Whereas Parliament has *required* securities to be established and maintained for oil and gas projects, it has been far less demanding for those involving minerals. That may well be a simple oversight. But if so, it is

[14] The current Government is intending to revisit these changes to ensure they align with international best practice (MBIE, 2024).

[15] NZ Government (2013).

[16] NZ Government (2014); Forest and Bird (2017); Treasury (2017).

[17] DOC (2016); DOC (2017).

an oversight that could prove costly, particularly given the Government's aspirations for a much larger mining sector.

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