

# **MINERALS PROGRAMME FOR COAL**

*Issued To Take Effect From 1 October 1996*

*By*

*His Excellency the Governor General (23 September 1996)*

*Pursuant to Section 18 of the Crown Minerals Act 1991*

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*Cover: Peacock coal from the West Coast, South Island (Photo: Eoin Jury)*

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# I PREAMBLE

1. The Crown Minerals Act 1991 is the legislation governing the management and allocation of rights in respect of Crown owned minerals.<sup>1</sup> This legislation provides, at section 5, that the Minister of Energy (the Minister) shall have the following functions:
  - (a) The preparation of minerals programmes;
  - (b) The grant of minerals permits; and
  - (c) The monitoring of the effect and implementation of minerals programmes and minerals permits.
2. The preparation of minerals programmes is provided for in sections 12 to 15 of the Crown Minerals Act 1991. In summary, these sections provide that the Minister shall prepare one or more minerals programme, outlining the policies on which the government shall base its management decisions in relation to Crown owned minerals, and the procedures and provisions that are to be followed in implementing these policies and the requirements of the Crown Minerals Act 1991. Minerals programmes are required to set out clearly the principal reasons for and against adopting these policies, procedures and provisions, and also any restrictions on prospecting, exploration and mining for Crown owned minerals. As provided for in sections 16 to 19 of the Crown Minerals Act 1991, minerals programmes are issued following consultation with iwi, interested parties and the community on a draft minerals programme.
3. Management of Crown owned minerals, through minerals programmes, aims to provide clarity to investors as to the conditions under which permits to prospect, explore or mine for particular minerals may be granted. Minerals programmes detail the operating rules and investment parameters. Within the scope provided for by the Crown Minerals Act 1991, this includes rights to subsequent permits and the payment to the Crown of any royalties.
4. Minerals programmes also provide a measure of accountability for those administering the Crown Minerals Act 1991. This is achieved, not only by outlining the reasons for and against the policies, procedures and provisions to be applied, but also by providing for iwi, public and industry input into the process, pursuant to sections 15 to 19 of the Act.
5. The Crown Minerals Act 1991 is concerned with the management and allocation of rights in respect of all Crown owned minerals. It requires the preparation of as many minerals programmes as necessary (in respect of minerals for which permits are sought or likely to be sought), to allow for the recognition that the physical characteristics of the different mineral resources and the characteristics of the markets for those resources vary and that, consequently, different policies and procedures may be necessary. This Minerals Programme concerns the management of Crown owned coal.
6. The Crown Minerals Act 1991 provides that, before any person can prospect, explore or mine for Crown owned coal in New Zealand, that person must have been granted an appropriate permit or licence, authorising that activity. Since October 1991, permits have been granted under section 25 of the Crown Minerals Act 1991. Prior to 1 October 1991, the appropriate authorisation was a prospecting or mining licence granted pursuant to sections 33 or 41, respectively of the Coal Mines Act 1979. As provided for in section 107 of the Crown Minerals Act 1991, such licences continue in force, as if the Crown Minerals Act 1991 had not been enacted, until their surrender, revocation or expiry.

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<sup>1</sup> Section 10 of the Crown Minerals Act 1991 provides that all petroleum, gold, silver and uranium existing in its natural condition in land shall be the property of the Crown; and section 11 reserves all minerals to the Crown in any future alienation of Crown land, and upholds all reservations of minerals made in earlier enactments.

7. Section 12 of the Crown Minerals Act 1991 provides that the purpose of a minerals programme is to establish the policies, procedures and provisions to be applied in respect of the management of any Crown owned mineral, and section 22 of the Act requires that the Minister of Energy shall carry out his or her functions and powers under the Act, in respect of permits and applications for permits, in a manner that is consistent with the policies, procedures and provisions of any relevant minerals programme. The relevant minerals programme is that which is in force at the time an initial permit is granted or that applies to the initial permit by virtue of a term of that permit.
8. Accordingly, this Minerals Programme for Coal shall apply as follows:
  - (a) To all allocation decisions with respect to permit applications which are either unresolved at its effective date of issue or are received after its effective date of issue and are resolved up to the date that the Minerals Programme is modified or replaced. An exception is in respect of mining permit applications made under sections 25 and 32 of the Crown Minerals Act 1991, where the initial permit (or prospecting licence granted in accordance with the Mining Act 1971) has been granted prior to the effective date of issue of this Minerals Programme for Coal and the conditions of the initial permit did not provide that this Minerals Programme was the relevant minerals programmes.
  - (b) To all decisions related to permits granted in accordance with (a) above;
  - (c) The financial provisions outlined in chapter 15 shall apply to all coal mining permits granted between 1 October 1991 and the effective date of issue of the Minerals Programme, as provided for in the conditions of grant of such permits;
  - (d) The financial provisions outlined in chapter 15 shall apply to all coal mining permits granted after the effective date of issue of this Minerals Programme and up to the date that the Minerals Programme is modified or replaced.
9. This Minerals Programme for Coal does not apply in respect of permits or licences granted prior to its effective date of issue unless specifically provided for in the permit's conditions. It does not apply to privately owned coal except in so far as a prospecting permit may be granted over Crown and privately owned minerals under section 30(1) of the Crown Minerals Act 1991. (For further discussion of Crown and privately owned minerals refer to paragraph 1.3.)
10. The Crown Minerals Act 1991 and this Minerals Programme for Coal do not address environmental and health and safety matters relating to prospecting, exploration and mining. These matters are provided for in the Resource Management Act 1991 and the Health and Safety in Employment Act 1992 which set the legislative requirements respectively on environmental and health and safety issues. The provisions of these two Acts complement those of the Crown Minerals Act 1991. Prior to undertaking prospecting, exploration or mining activities, a permit holder needs to ensure that any necessary consents under the Resource Management Act 1991 or the Health and Safety in Employment Act 1992, (or any relevant regulations made in accordance with these Acts), are obtained. The permit holder shall undertake prospecting, exploration or mining in accordance with the provisions of these Acts and the conditions of any consents obtained.
11. As well, prior to undertaking prospecting, exploration or mining, a permit holder is required to have obtained any necessary access arrangements, pursuant to sections 49 to 80 of the Crown Minerals Act 1991. (This is discussed more fully in paragraphs 4.3.1 to 4.3.13).
12. In this Minerals Programme for Coal, terms used have the same meaning as in the Crown Minerals Act 1991. In particular, Minister refers to the Minister of Energy and Secretary means the Secretary of Commerce. As provided for in section 6 of the Crown Minerals Act 1991, and in accordance with the State Sector Act 1988, the Minister or Secretary may, from time to time, delegate functions, powers or duties under the Act.

## **II EXECUTIVE SUMMARY**

### ***INTRODUCTION (CHAPTER 1)***

1. The purpose of this Minerals Programme for Coal (the Minerals Programme) is to establish the policies, procedures and provisions to be applied in respect of the management of Crown owned coal.
2. Coal is defined in section 2(1) of the Crown Minerals Act 1991.

### ***POLICY AND MANAGEMENT FRAMEWORK (CHAPTER 2)***

3. The Minister of Energy is responsible for the overall management of Crown owned coal. The Minister's management role will be limited to the extent of the functions and powers granted to him or her under the Crown Minerals Act 1991.
4. The Minerals Programme has been prepared on the basis that the desired outcome is to allow continuing investment in prospecting, exploration and mining of Crown owned coal.
5. The fundamental policy objective established for the management of coal is "To allow continuing investment in prospecting, exploration and mining of Crown owned coal which is in accordance with good exploration or mining practice, always provided that: there is efficient allocation of prospecting, exploration and mining permits; the Crown obtains a fair financial return from Crown owned coal; and there is due regard to the principles of the Treaty of Waitangi".
6. Other policies established provide that permits should be obtained by the person who is most likely to effectively and efficiently prospect, explore or mine; permit areas should be prospected, explored or mined in accordance with an appropriate work programme; the conditions of permits should be complied with; prospecting, exploration and mining operations should result in increased knowledge of New Zealand's coal resources; the Crown should obtain a guaranteed minimum royalty payment and benefit in sharing in any substantial profits from the extraction of its minerals; and the royalty regime should be competitive, clear, easy to comply with and administer.

### ***REGARD TO THE PRINCIPLES OF THE TREATY OF WAITANGI (CHAPTER 3)***

7. In accordance with section 4 of the Crown Minerals Act 1991, the Minister and Secretary, in exercising their powers and functions under the Act, shall have regard to the principles of the Treaty of Waitangi. This requires that the Minister and Secretary shall be sufficiently informed as to the relevant facts and law before making decisions. The Minister and Secretary, accordingly, are committed to a process of consultation with Maori on management of Crown owned coal so that they are informed of the Maori perspective.
8. In summary, consultation shall occur at three levels:
  - (a) The preparation of the Minerals Programme (refer Appendix III);
  - (b) Decisions in respect of applications for coal permits and applications for the extension of a permit's area or minerals;
  - (c) Planning in respect of a competitive tender allocation of a permit block.

## ***LAND AVAILABLE FOR PERMITS (CHAPTER 4)***

9. The following areas are not available for permitting under this Minerals Programme:
- (a) All Crown land in the Mount Moehau Range (Muriwai-Moehau-Waiaro Blocks). This land is excluded in recognition of Maori values.
  - (b) Mokoia Island. This land is excluded in recognition of Maori values.
  - (c) The Lake Rotoiti, Lake Okataina, Hongi's Track, Waione Block and Okere Falls Scenic Reserves and the Te Akau Road Recreation Reserve. This land is excluded in recognition of Maori values.
  - (d) Mount Taranaki and the Pouakai, Pukeiti and Kaitake Ranges (as defined by the boundaries of the Mount Egmont National Park and to the extent that the land is above sea level). This land is excluded in recognition of Maori values.
  - (e) The land known as Rotoiti 3W3-6 and the former Rotoiti 13D2 Block. This land is excluded in recognition of Maori values.
  - (f) Land which is closed for prospecting, exploration or mining by statute. (An up to date list of such land is held by the Ministry of Commerce).

Otherwise all land to which the Crown Minerals Act 1991 applies is available for allocation under permits.

10. The provisions of the Crown Minerals Act 1991 for obtaining access to land for prospecting, exploration and mining are outlined in chapter 4.3.

## ***THE PERMITTING REGIME (CHAPTER 5)***

11. There are three types of permits: prospecting, exploration, and mining.
- (a) Prospecting permits are granted to enable preliminary or reconnaissance exploration investigations and studies.
  - (b) Exploration permits are granted to determine the potential for and feasibility of mining an area.
  - (c) Mining permits are granted to allow extraction of Crown owned coal.

Prospecting permits may be granted in respect of both Crown and privately owned coal. Exploration and mining permits may be granted in respect of Crown owned coal only.

12. An application for a permit may be received as:
- (a) A “**first acceptable work programme offer**” application (this is a priority in time allocation method whereby a permit is granted over areas available for allocation provided the applicant's work programme is acceptable); or
  - (b) A “**cash bonus bidding**” application (which is a type of allocation by tender in accordance with section 24 of the Crown Minerals Act 1991); or
  - (c) A “**subsequent permit right**” application (in accordance with section 32 of the Crown Minerals Act 1991); or
  - (d) An application for a **special purpose mining permit**.

13. The procedures for receiving and determining priority of first acceptable work programme offer applications where more than one is received over the same area are set out in chapter 5.2. These procedures provide for the application with the earliest date and time of receipt having priority to be processed first over every other application made in respect of all or part of the same land.
14. Exploration and mining permits may be granted on the basis of the cash bonus bidding method of allocation. This provides for the allocation of permits to the applicant who makes the highest cash bid for a permit block. The procedures for reserving an area for cash bonus bidding and for conducting a cash bonus bidding round are set out in chapter 5.3.
15. Appendix I outlines the principle reasons for and against adopting these allocation policies.

### ***ALLOCATION OF PROSPECTING PERMITS (CHAPTER 6)***

16. There are not expected to be many applications for prospecting permits, given there is extensive knowledge about New Zealand's coal resources. However, there are areas where the level of knowledge is limited and prospecting permits may be appropriate. Prospecting permits may also be sought to enable pre-bid prospecting in preparation for a cash bonus bidding application.
17. A prospecting permit will be granted by the Minister where:
  - There is an acceptable work programme which is appropriate to the size and duration of the permit sought;
  - The grant of the permit is in accordance with sections 27 and 28 of the Crown Minerals Act 1991; and
  - The Minister is satisfied that due regard has been given to the principles of the Treaty of Waitangi and to relevant international obligations.
18. The work programme proposed will be accepted by the Minister if the Minister is satisfied that it provides for a minimum work commitment which has, as its purpose, the identification of land likely to contain exploitable coal deposits, and to add materially to the knowledge about the coal within the area, and is appropriate to the size and the term of the permit sought.
19. Generally prospecting permits will be granted with a general condition that the permit holder will make all efforts to prospect and will carry out as a minimum the programme of work as set out in the permit related to the objective of the permit.

### ***ALLOCATION OF EXPLORATION PERMITS (CHAPTER 7)***

20. Most exploration permits are expected to be allocated as a result of applications received and evaluated on the basis of the first acceptable work programme offer allocation method. Allocation may also occur as a result of a subsequent permit application made by the holder of a prospecting permit or applications received in accordance with a cash bonus bidding tender (expected to be used rarely).
21. For first acceptable work programme offer applications and subsequent exploration permit applications to be granted, there must be an acceptable work programme that details a minimum work commitment and technical approach with the objective of identifying the coal resource potential of the proposed permit area and identifying and evaluating the feasibility of mining any particular coal deposits identified, in a timely manner.

22. Before granting an exploration permit, the Minister must also be satisfied that the permit holder is likely to comply with the conditions of, and give proper effect to, the permit (section 27, Crown Minerals Act 1991).
23. Exploration permits will be granted on the general condition that the permit holder will make all reasonable efforts to explore the permit area in accordance with good exploration practice, in order to identify and delineate the coal resource potential of the area and whether or not there is a mineable coal reserve. For exploration permits granted as a result of either a subsequent exploration permit or first acceptable work programme offer, there will be a condition that the permit holder will make all reasonable attempts to undertake a defined minimum work programme. For permits granted as a result of a cash bonus bidding tender, there will be a condition setting out the minimum work required to be undertaken to retain the permit as advised in the notice of tender. There will also be conditions relating to the payment of prescribed fees and other appropriate conditions.

### ***ALLOCATION OF MINING PERMITS (CHAPTER 8)***

24. Mining permits may be allocated either as a result of applications received and evaluated on the basis of:
  - (a) A subsequent mining permit application made by the holder of an exploration permit;
  - (b) A first acceptable work programme offer application;
  - (c) An application received in accordance with a cash bonus bidding tender; or
  - (d) A special purpose mining permit application.
25. For an application received as either a subsequent mining permit or first acceptable work programme offer application to be granted, there needs to be an acceptable or approved work programme which is in accordance with good exploration or mining practice and provides for the recovery of the coal resource to be mined such that the Crown will obtain a fair financial return. The permit applicant must have delineated a coal deposit that can be effectively mined within technical and economic constraints. The area of land applied for must be appropriate and due regard must be given to the principles of the Treaty of Waitangi and any relevant international obligations.
26. Before granting a mining permit, the Minister must be satisfied that the permit holder is likely to comply with the conditions of, and give proper effect to, the permit (section 27, Crown Minerals Act 1991).
27. Where a mining permit (other than a special purpose mining permit) is allocated, the permit will be granted on the following conditions:
  - (a) A general condition to the effect that the permit holder will make reasonable efforts to undertake the activities authorised by the permit in general accordance with the approved work programme;
  - (b) A general condition that the permit holder will undertake mining and exploration operations in accordance with good exploration or mining practice;
  - (c) Conditions relating to the calculation and payment of royalties.

Other conditions may be included as considered appropriate. A condition may also be included that the permit holder, before commencing work and within 30 days of the anniversary of the grant of the permit in each year, shall submit to the Secretary a proposed annual work statement and mine plan.

28. Special purpose mining permits may be applied for to enable the demonstration of mining using or featuring historical methods of mining. Where a special purpose mining permit is granted, the permit will be subject to conditions which restrict the nature and scale of operations. In addition, the permit holder will be required to pay any prescribed fees and provide an annual report on production for each year.

### ***MONETARY DEPOSIT OR BOND (CHAPTER 9.1)***

29. Pursuant to section 27(2) of the Crown Minerals Act 1991, there may be a requirement to deposit with the Secretary, as security for compliance with the conditions of the permit, such monetary deposit or bond as may be required prior to a permit being granted. Procedures and provisions in respect of bonds and monetary deposits are outlined in chapter 9.1.

### ***SURVEY REQUIREMENTS (CHAPTER 9.2)***

30. The Minister may require the land to which a permit application relates be surveyed and a survey plan, certified by the Chief Surveyor, lodged with the Secretary before granting a permit. This is likely for many mining permits. Chapter 9.2 sets out the requirements that plans and descriptions included in permit applications must meet and outlines the situations in which the Minister will require a survey.

### ***CHANGES TO PERMITS (CHAPTER 10)***

31. Under section 36 of the Crown Minerals Act 1991, the following changes to permits may be made:
- (a) Amendments to the conditions of a permit.
  - (b) Extensions to the area of land to which a permit relates.
  - (c) Extensions to the minerals to which a permit relates.
  - (d) Extensions to the duration of a permit.
32. The ability to request changes to permits provides permit holders with greater flexibility to give proper effect to the permit, subject to the Minister agreeing to the change. All changes to permits must be applied for and granted before the permit expires.
33. The Minister shall decline an application for a change to a permit if the permit holder has not, in the Minister's opinion, substantially complied with the conditions of the permit.
34. Depending on the type of change being requested, various criteria will be taken into account in assessing the application. Work programme conditions will generally be amended only as a consequence of changed circumstances which affect the original permit's work objectives. The proposed amendment must facilitate more effective prospecting, exploration or mining to be carried out, or allow the same objectives to be met with a lesser work programme. Other conditions of grant may also be amended.
35. The minerals and land to which a permit relates may be extended if this will facilitate a more rational carrying out of activities under the permit and if, among other matters, the extension can be geologically justified.
36. The duration of exploration permits may be extended under section 37(1) and (2) of the Crown Minerals Act 1991. Section 37(1) allows exploration permits to be extended for a period not

exceeding ten years from the commencement date of the permit over an area of land not more than half the area of land of the permit. Where an extension of duration is needed to enable appraisal of a discovery over an area larger than half the area of the permit or for a period more than ten years from the commencement of the permit, the permit's duration may be extended under section 37(2). It is also possible to extend the duration of a prospecting permit and mining permit.

### ***TRANSFERS AND OTHER DEALINGS (CHAPTER 11)***

37. Under section 41 of the Crown Minerals Act 1991, no permit holder shall enter into an agreement transferring the permit or any interest in the permit, or creating any interest in the permit, or imposing any obligations on the permit holder in respect of an interest in the permit which relates to, or affects, the production or proceeds of a permit (or subsequent permit) without the consent of the Minister.

### ***UNIT DEVELOPMENT OF COAL PERMITS (CHAPTER 12)***

38. Where a coal deposit extends over the area or parts of the area of more than one permit, it is expected that the permit holders will co-operate to achieve the maximum ultimate recovery of the coal. In situations where it appears that this is not happening, the Minister may direct that the permit holders enter into a scheme for the unified development of the deposit.

### ***SURRENDER OF ALL OR PART OF PERMIT AREA (CHAPTER 13)***

39. The procedures to be followed for the giving of notice of surrender of all or part of the area of a permit are outlined in Chapter 13.

### ***GOOD EXPLORATION OR MINING PRACTICE (CHAPTER 14)***

40. One of the principal criteria in the evaluation of permit applications is that the proposed work programme submitted with the application be in accordance with good exploration or mining practice. Chapter 14 outlines some of the aspects of good exploration or mining practice the Minister shall have regard to in carrying out and exercising functions and powers under the Crown Minerals Act 1991.

### ***THE ROYALTY REGIME (CHAPTER 15)***

41. The royalty regime which shall apply to all coal mining permits issued in accordance with this Minerals Programme shall be a hybrid regime comprising a 1 percent **ad valorem royalty** and a 5 percent **accounting profits royalty** component.
42. Appendix II outlines the principal reasons for and against adopting the royalty regime. This includes a summary of alternative royalty options.
43. Terms used in the royalty provisions which are defined are indicated in bold. All defined terms are noted in paragraph 15.63 and definitions provided there, or reference given there to where the term is elsewhere defined.

### ***ROYALTY PAYABLE***

44. The permit holder shall be liable for the calculation and payment of royalties to the Crown in respect of all coal taken from the land comprised in the permit which is:

- (a) Sold; or
- (b) Gifted or otherwise exchanged or removed from the permit area without sale; or
- (c) Used in the production process (as a substitute for otherwise having to purchase coal for this purpose); or
- (d) Unsold on the surrender, expiry or revocation of the permit, in other words, inventory or stock unsold;

except as otherwise provided in paragraph 15.4.

45. No royalty shall be payable by a permit holder when:
- (a) The **net sales revenues** from a permit for a **reporting period** are less than \$100,000, except where the permit is part of a **production unit**; or
  - (b) The **net sales revenues** from a permit average less than \$8,333 per month if the **reporting period** is less than 12 months, except where the permit is part of a **production unit**; or
  - (c) The permit is part of a **production unit** and the combined **net sales revenues** of all permits and licences in the **production unit** are: either less than \$100,000 for a **reporting period**; or average less than \$8,333 per month if the **reporting period** is less than 12 months.
46. Where a mining permit has **net sales revenues** of \$100,000 up to \$1 million in a **reporting period**, the permit holder is liable to pay only the 1 percent **ad valorem royalty**.
47. Where a mining permit has **net sales revenues** of over \$1 million or more in a **reporting period**, the permit holder is required to calculate for that period both the **ad valorem royalty** and the **accounting profits royalty** and pay whichever is the higher.

### ***AD VALOREM ROYALTY***

48. The **ad valorem royalty** is 1 percent of **net sales revenues**.
49. **Net sales revenues** are the sum of total **gross sales** plus the value of any coal not sold but on which royalty is payable, minus any allowable **netbacks** plus any **net forwards**.

### ***ACCOUNTING PROFITS ROYALTY***

50. The **accounting profits royalty** is 5 percent of the **accounting profits** from a mining permit. For any period for which a **royalty return** must be provided, **accounting profits** are the excess of **net sales revenues** over the total of **allowable APR deductions**. **Allowable APR deductions** are pre-production costs, production costs, **depreciation**, administrative costs, restoration costs and operating losses carried forward. The **net allowable APR deductions** are the sum of **allowable APR deductions** less any proceeds from hire, lease or rent of **fixed assets** less any gain on disposal of land or **fixed assets** plus any loss on disposal of land or **fixed assets**.

### ***ROYALTY RETURNS AND PAYMENT***

51. The permit holder shall be required to lodge a **royalty return** and pay royalties owing within 5 months of the end of each period **reporting period**. The **royalty return** shall be prescribed in regulations.

52. An interim six-monthly royalty payment of 1 percent of the **net sales revenues** of a permit shall be payable within 30 calendar days after the end of the first six months of a **reporting period** and within 30 days after the end of a **reporting period**.
53. If the **reporting period** is less than 12 months, then only one interim payment is required.
54. The collection of royalties shall be administered by the Secretary. The Secretary shall review every annual **royalty return** and, if required, may request additional information from the permit holder.

#### ***COMPLIANCE WITH PERMIT AND ACT (CHAPTER 16)***

55. All permit holders are required to comply with the Crown Minerals Act 1991, any regulations made pursuant to the Act and the conditions of the permit. This includes the payment of any annual fees, the lodgement of data and the payment of royalty. If the Secretary has reason to believe that a permit holder is contravening or not making reasonable efforts to comply, a report shall be made to the Minister and revocation proceedings may be initiated.

#### ***REVOCATION OF PERMIT (CHAPTER 17)***

56. A permit may be revoked if the permit holder is contravening or not making reasonable efforts to comply with the Crown Minerals Act 1991, regulations made pursuant to the Act or the conditions of the permit.

# 1 INTRODUCTION

- 1.1 In accordance with the provisions of the Crown Minerals Act 1991, in particular sections 12 and 15 of the Act, this Minerals Programme for Coal establishes the policies, procedures and provisions to be applied in respect of the management of Crown owned coal.
- 1.2 The Minerals Programme for Coal applies to all Crown owned coal. Coal is defined in section 2(1) of the Crown Minerals Act 1991 to mean “anthracite, bituminous coal, sub-bituminous coal, lignite, peat and oil shale; and includes every other substance worked or normally worked with coal.”
- 1.3 It is emphasised that the Minerals Programme for Coal applies to Crown owned coal and does not apply to privately owned coal except in so far as a prospecting permit may be granted over Crown and privately owned coal under section 25 and 30(1) of the Crown Minerals Act 1991. There is both private and Crown ownership of coal. Crown ownership of coal occurs as an incident of the ownership of land<sup>1</sup> and through the reservation of Crown ownership of coal in the alienation of land from the Crown. This ownership is achieved through section 11 of the Crown Minerals Act 1991. Section 11 of the Crown Minerals Act 1991 reserves all minerals to the Crown in any future alienation of Crown land, and upholds all reservations of minerals made in earlier enactments. Such past reservations of title are common. In particular, the Land Act 1948, the Land Act 1924, the Land Act 1908 and the Land Act 1882 contain provisions reserving Crown title to minerals in alienations of land from the Crown made under those Acts. In addition, the Coal Mines Amendment Act 1950 reserved coal to the Crown in any alienation of land not subject to the Land Act 1948. This reservation was made even wider by the Coal Mines Act 1979 which reserved coal to the Crown in any alienation of land from the Crown.
- 1.4 To determine if coal has been reserved to the Crown, the Crown grant of title must be examined. This can be found in the District Land Registrar’s Office in each Land District. It will also be necessary to check the legislation under which the grant of title was made. If the relevant Act contains a provision reserving coal to the Crown, then that coal is owned by the Crown.
- 1.5 The Minerals Programme for Coal affects the exercise of the Minister’s functions and powers under the Crown Minerals Act 1991 in respect of permits and applications for permits for coal, by virtue of section 22(1) of the Act. This provision requires the Minister to exercise such powers and functions in a manner that is consistent with any relevant minerals programme.
- 1.6 Relevant minerals programme is defined in section 2 of the Crown Minerals Act 1991. Whether the Minerals Programme for Coal will be the relevant minerals programme, in respect of permits and applications for permits for coal will depend on a number of factors such as the time the initial permit was granted (refer section 2 of the Act), the provisions of the permit and whether a permit holder elects at a later time for a policy, procedure or provision of a later minerals programme to apply (refer section 22 of the Act).
- 1.7 No prospecting, exploration or mining permit application for coal shall be considered and granted other than in accordance with the policies, procedures and provisions of this Minerals Programme, other than exploration permit and mining permit applications made in accordance with respectively sections 32(1) and 32(3) of the Crown Minerals Act 1991 where the Minerals Programme for Coal is not the relevant Minerals Programme.

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<sup>1</sup> Land includes land covered by water and the foreshore and seabed to the outer limits of the territorial sea: (refer section 2(1) of the Crown Minerals Act 1991).

## **2 THE POLICY FRAMEWORK**

### ***INTRODUCTION***

- 2.1 The purpose of this chapter is to establish the underlying policies to be applied in respect of the management of Crown owned coal and to establish the policy and management framework on which this Minerals Programme is based.

### ***THE MANAGEMENT ROLE***

- 2.2 The Crown Minerals Act 1991 provides that the Minister of Energy is responsible for the overall management of the Crown's coal resources. In accordance with section 13 of the Crown Minerals Act 1991, the management role includes the issuing of a minerals programme in respect of Crown owned coal. This includes establishing management policies for coal.<sup>2</sup> In addition, the Minister manages the Crown's coal resources through the various functions and powers in respect of permits and applications for permits the Minister is responsible for under the Act. The exercise of these functions and powers is to be based on the management policies<sup>3</sup> established for these resources.
- 2.3 The management role to be exercised by the Minister will be limited to the extent of the functions and powers granted to him or her under the Crown Minerals Act 1991, and to the exercise of these functions and powers as provided for by the general scheme of the Act.
- 2.4 The key management decision is to determine whether to enable or preclude (depending on the outcome sought by the Crown) prospecting, exploration or mining of Crown owned coal. This decision is made taking into account the nature of the coal resource and the economic and commercial implications to the Crown, as owner, of possible allocation and pricing policies. There are also considerations related to the management of the coal resource itself, including the need for good exploration or mining practice.
- 2.5 Management under the Crown Minerals Act 1991 does not include taking into account the impacts which prospecting, exploration and mining activities have upon the environment. This is because specific responsibilities for the management of the environment and addressing environmental effects are established by the Resource Management Act 1991.
- 2.6 This Minerals Programme has been prepared on the basis that the desired outcome is to allow continuing investment in prospecting, exploration and mining for coal.

### ***PRINCIPAL REASONS FOR AND AGAINST THIS OUTCOME***

- 2.7 Enabling investment which is commercially viable in prospecting, exploration and mining of coal is considered desirable given the value of coal as an energy mineral and a source material for industry and agriculture and in generating export income. Prospecting, exploration and mining of coal also provides significant employment both directly and indirectly. Given there is significant private ownership of coal, it is appropriate that the Crown behave similarly to other owners of coal, enabling the development of coal resources in response to market demand.

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<sup>2</sup> The Minister also needs to establish procedures and provisions for the management of coal which reflect these policies. The establishment of procedures and provisions are the subject of chapters 3 and 5 to 17.

<sup>3</sup> The Minister also exercises functions and powers in accordance with the procedures and provisions established.

- 2.8 It is noted that the policy to allow continuing investment in prospecting, exploration and mining which is established under this Minerals Programme should be considered in the context of the wider New Zealand investment environment. In particular, as provided for under the Resource Management Act 1991 and the Health and Safety in Employment Act 1992, prospecting, exploration and mining activities must comply with respectively the environmental and health and safety standards required by these pieces of legislation. The Crown Minerals Act 1991 land access consent provisions must also be complied with before prospecting, exploration or mining may be undertaken.
- 2.9 The alternative to allowing continued investment is to decline to allocate permits for coal. This approach is not considered in the interests of the economy in that, as the Crown owns a large amount of New Zealand's coal resources, particularly in the South Island, it would seriously affect the ability of New Zealand to take advantage of its coal resources.

### ***POLICIES FOR THE MANAGEMENT OF CROWN OWNED COAL***

- 2.10 Where allocation is to be provided for, then in accordance with section 12 of the Crown Minerals Act 1991, one of the purposes of this Minerals Programme is to establish policies to be applied in respect of the management of coal. In particular, the policies are to provide for:
- (a) The efficient allocation of rights in respect of Crown owned coal; and
  - (b) The obtaining by the Crown of a fair financial return from its coal.
- 2.11 Section 4 of the Crown Minerals Act 1991 directs all persons exercising functions and powers under the Act to have regard to the principles of the Treaty of Waitangi.
- 2.12 As an owner, the Crown is also concerned to ensure that its coal resources are extracted in accordance with good exploration or mining practice, including the avoidance of unnecessary waste.

### ***INTERPRETATION OF "EFFICIENT ALLOCATION OF RIGHTS"***

- 2.13 The concept of "efficient allocation of rights" in section 12 of the Act is distinct from the concept of efficient extraction of the coal resource. An efficient allocation should occur if the Minister allocates permits in accordance with the policies established (refer paragraphs 2.18 to 2.20). This includes the obligation on the Minister to be satisfied that the permit applicant will comply with the conditions of, and give proper effect to, any permit granted (section 27, Crown Minerals Act 1991). As a rule, efficient allocation occurs when a permit is obtained by the person who most values the permit. Attempting to ensure that the allocation of rights is efficient concerns how it is determined who should be the holder of permits and involves establishing criteria that can be used to indicate the value that an applicant attaches to a desired right.
- 2.14 The Crown considers this is achieved when permits for coal are obtained by the person who is likely to make all reasonable efforts to prospect, explore or mine (as appropriate) effectively and efficiently in accordance with recognised good exploration or mining practice<sup>4</sup>. While the concept of efficient allocation of rights is distinct from that of efficient extraction of the coal resource, it is noted that, where there is efficient allocation of rights, this should lead to an efficient economic outcome.

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<sup>4</sup> *From this premise: in areas of low competitive interest, an applicant must commit to undertake a minimum acceptable programme of work and in areas of high competitive interest, the Crown also has the option of using cash bonus bidding to attempt to improve the efficiency of the initial allocation of permits.*

## ***INTERPRETATION OF “FAIR FINANCIAL RETURN”***

- 2.15 The term “fair financial return” in section 12 of the Crown Minerals Act 1991 is used in relation to the Crown obtaining a financial return from its coal resource. Relevant considerations for determining whether the return is fair include:
- The Crown’s role as owner of the coal;
  - The non-renewable nature of the coal resource;
  - The attractiveness of the regime to investors;
  - That any requirements to make payments to the Crown for any coal obtained under a permit apply equitably to all permit holders; and
  - That the requirements to make payments are administratively simple and easy to comply with.
- 2.16 Determining the attractiveness of the regime requires a balance to be found between royalty payments required by the Crown for extracting its resource and the regime’s capacity to bring about investment. This balancing includes taking into account the competitiveness of the regime as compared to opportunities to invest in exploration and mining of privately owned coal and it includes recognising the risks and potential gains to investors from prospecting, exploration and mining. A regime which is unduly concessionary will result in the Crown not receiving a fair financial return from its coal resource, while an unduly harsh regime is likely to result in declining or no investment.
- 2.17 The obtaining by the Crown of a fair financial return is achieved not only by policies requiring payments by the permit holder for any coal obtained under the permit, but also through policies for the allocation and ongoing administration of permits. In particular, the Crown wants to ensure that identification and extraction of coal is in accordance with good exploration or mining practice.

## ***POLICY OBJECTIVES***

- 2.18 On the basis of the above considerations, the fundamental policy objective established for the management of coal is:
- To allow continuing investment in prospecting, exploration and mining which is in accordance with good exploration or mining practice, ALWAYS PROVIDED THAT:**
- **There is efficient allocation of permits;**
  - **The Crown obtains a fair financial return from the extraction of its coal resources by a permit holder under a permit; and**
  - **There is due regard to the principles of the Treaty of Waitangi.**
- 2.19 In addition, the Minister will take into consideration any international obligations which are relevant in managing the coal resource and in exercising the functions and powers prescribed under the Crown Minerals Act 1991.
- 2.20 The following policies which all contribute to achieving the objectives of efficient allocation of rights and the obtaining by the Crown of a fair financial return from its coal resources, are also established:
- (a) **Prospecting, exploration or mining permits should be obtained by the person who is most likely to effectively and efficiently prospect or explore or mine;**

- (b) Permits should be readily obtainable and tradeable;
- (c) Permit areas should be prospected, explored or mined in accordance with an appropriate work programme which has the objective of:
  - (i) In respect of prospecting and exploration, enabling the identification of areas of resource potential and/or determining the nature and size of an identified deposit and the feasibility of mining; or
  - (ii) In respect of mining, extraction of coal through good mining practice, including the avoidance of waste and resource sterilisation;
- (d) The conditions of the permit should be complied with;
- (e) Prospecting, exploration and mining operations should result in increased knowledge of New Zealand's coal resources;
- (f) The Crown, as an owner of coal, should obtain a guaranteed minimum royalty payment from the extraction of its coal resources;
- (g) The Crown, as an owner of coal, should benefit in sharing in profits arising from a coal development;
- (h) The investor should perceive that sovereign risk is minimised. (Sovereign risk is defined as the risk that the government may change significant aspects of its policy and investment regime);
- (i) The allocation and royalty systems should be clearly outlined and easy to comply with and administer;
- (j) **The allocation and royalty system should not impose unreasonable transaction costs and should be sufficiently attractive so as to not significantly deter investment.**

***PRINCIPAL REASONS FOR AND AGAINST THE POLICIES ESTABLISHED IN PARAGRAPHS 2.18 TO 2.20***

2.21 The establishment of these policies recognises:

- (a) The value of coal as an energy source and a source material for industry and agriculture and in generating export income;
- (b) That decisions on prospecting, exploration and mining are considered most appropriately made by those prepared to invest and take risks rather than being made by the Crown (subject to investors meeting the standard of having a work programme with an appropriate objective and meeting the standard of good exploration or mining practice);
- (c) That New Zealand needs to have an attractive regime to secure continuing investment;
- (d) There is both Crown and significant private ownership of New Zealand's coal resources;
- (e) Sections 4 and 12 of the Crown Minerals Act 1991, which respectively direct the Crown to have regard to the principles of the Treaty of Waitangi and to provide for the efficient allocation of rights in respect of Crown owned coal and the obtaining by the Crown of a fair financial return from its coal; and

- (f) Where the Minister has discretion as to what matters to take into account in exercising his or her functions and powers prescribed under the Crown Minerals Act 1991, that international obligations may properly be a relevant consideration provided they are relevant to the allocation of coal permits.

2.22 Other policies, which would involve the Minister and the Crown directing or favouring who should be involved in investment or the type of investment to be undertaken under permits, have been considered and rejected as not being an appropriate role for the Crown in a market based economy such as that of New Zealand. Intervention of this nature is unlikely to result in optimal investment decisions and could impact negatively on private sector investment in prospecting, exploration and mining for coal.

### 3 REGARD TO THE PRINCIPLES OF THE TREATY OF WAITANGI

- 3.1 Section 4 of the Crown Minerals Act 1991 provides that all persons exercising functions and powers under the Act shall have regard to the principles of the Treaty of Waitangi (Te Tiriti O Waitangi) (“the Treaty”). This means that Parliament has directed that the principles of the Treaty are a relevant factor that must be given weight by all those exercising a power of decision under the Crown Minerals Act 1991.<sup>5</sup>
- 3.2 This requires the Minister and Secretary to have regard to the following basic principles:
- that the Crown acts, in accordance with what is the paramount principle, reasonably and in good faith to its Treaty partner;
  - that the Crown must make informed decisions; and
  - that the Crown is to avoid creating impediments to providing redress for grievances under the Treaty (this will be more relevant where there is an application for a permit in respect of land or resources that is the subject of a claim before Government or the Waitangi Tribunal).
- 3.3 In order to make an informed decision, that is, one that takes into account all relevant considerations, the Minister and Secretary must be sufficiently informed as to the relevant facts and law, to be able to show that they have had proper regard to the impact of the principles of the Treaty. The Minister and Secretary are, therefore, committed to a process of consultation with Maori on the management of Crown owned coal so that they are informed of the Maori perspective. Decisions will be made taking into account the considerations raised in the course of that consultation.
- 3.4 In relation to the management of coal under the Crown Minerals Act 1991, consultation involves a process in which the Minister and Secretary are committed to a dialogue with tangata whenua hapu and iwi<sup>6</sup> and are receptive to Maori views and give those views full consideration. This process is seen as operating on three levels. These are:
- (a) The preparation of the Minerals Programme for Coal. The consultation process undertaken with Maori is discussed in appendix III;
  - (b) Decisions in relation to applications for coal permits and applications for amendments to permits for coal which seek to extend the land covered by an existing permit. The procedures for undertaking consultation on such applications are discussed in paragraphs 3.7 and 3.8; and
  - (c) Planning in respect of a competitive tender allocation of a permit block. This is discussed in paragraphs 3.9 and 3.10.
- 3.5 It is important to note that each decision will be made having regard to the considerations in relation to the principles of the Treaty that are raised as a result of consultation taking into account the circumstances of each case. The basic principles that will be followed in each case, however, are:

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<sup>5</sup> Crown ownership of coal occurs as an incident of the ownership of land and through the reservation of Crown ownership of coal in the alienation of land from the Crown. This is outlined in more depth in paragraph 1.3.

<sup>6</sup> Tangata whenua is defined as the Maori iwi or hapu which has mana whenua over a particular area. Literally, it translates as “people of the land”. For a further discussion of this and a glossary of Maori terms, refer to *Proposed Guidelines for Local Authority Consultation with Tangata Whenua*, Office of the Parliamentary Commissioner for the Environment, June 1992.

- (a) That there is early consultation with Maori at the onset of the decision making process aimed at informing the Secretary and the Minister of the Treaty implications of particular issues;
- (b) That sufficient information is provided to the consulted party, so that they can make informed decisions and submissions;
- (c) That sufficient time is given for both the participation of the consulted party and the consideration of the advice; and
- (d) That the Secretary and the Minister genuinely consider the advice, and approach the consultation with open minds.

### ***CONSULTATION ON PERMIT APPLICATIONS AND APPLICATIONS TO EXTEND THE LAND TO WHICH A PERMIT RELATES***

- 3.6 The introductory summary to chapter 5 outlines the types of permits which may be granted and the types of allocation mechanisms. In most cases, permit applications will be made on the basis of “first acceptable work programme offer” or as “subsequent permit applications”. In both these cases, permit applications may be made at any time over any area which is available for permitting. Permits may also be allocated by a process of competitive tendering or as special purpose mining permits.
- 3.7 With respect to applications that are received as first acceptable work programme offer applications, subsequent permit applications, special purpose mining permit applications and also with respect to applications to extend the land to which a permit relates, the Secretary shall initiate consultation with appropriate tangata whenua hapu and iwi on the application, once it has been established that the application is in order to be processed (refer paragraphs 5.2.3 to 5.2.23). Tangata whenua hapu and iwi will be given written advice that an application has been received and details of the application. This will include a map outlining the specific area of land over which the application is made and an outline of the proposed work to be undertaken should a prospecting, exploration or mining permit be allocated (or any changes proposed to the work programme of an existing permit, if the application is to extend the land to which a permit relates).
- 3.8 Tangata whenua hapu and iwi will be asked to advise the Secretary of any issues or questions that they may have with the permit application. To assist tangata whenua hapu and iwi in responding to the Secretary, response forms may be made available. Generally, two months will be given to tangata whenua hapu and iwi to respond. Tangata whenua hapu and iwi may request additional time for making comments.

### ***CONSULTATION ON PLANS TO HOLD A COMPETITIVE TENDER***

- 3.9 Where it is proposed to designate an area for the possible allocation of permits by competitive tender, the Secretary will consult with the local representatives of appropriate tangata whenua hapu and iwi and outline the proposal. Concurrent with initiating this process of consultation, it is likely to be necessary for the Minister to advise publicly the closure of the proposed tender area to permit applications, other than non-exclusive prospecting permit applications, for a defined period, and to advise why this course of action is being taken (refer paragraphs 5.3.2 to 5.3.5).
- 3.10 Tangata whenua hapu and iwi will be given written advice of the proposal to allocate permits by competitive tendering over a certain area. The advice will include a map of the area under consideration and advice will be given of the number of permit blocks likely to be offered, the types of activities that may take place, should a permit be allocated and the proposed timing of the competitive tender, and any proposed conditions of the offer will also be outlined. Generally, two months will be given to tangata whenua hapu and iwi to comment on the proposal.

## ***FORM OF CONSULTATION***

- 3.11 The form of the consultation process which shall be undertaken in respect of application for permits will be flexible. If tangata whenua hapu and iwi and the Crown think it is appropriate, there may be face to face (kanohi ki te kanohi) consultation or a hui held. Officials will be available to discuss and provide information on an application or proposed designation of an area for competitive tender if tangata whenua hapu and iwi require further information. If tangata whenua hapu and iwi have organisations established to foster consultation processes (for example, a committee which meets to consider permits and consents under the Crown Minerals Act 1991 and the Resource Management Act 1991 respectively), the Secretary would be pleased to work with such organisations.
- 3.12 To ensure that there is appropriate consultation, the Secretary will maintain a contact list of tangata whenua hapu and iwi and will endeavour to ensure that this is up to date. Tangata whenua hapu and iwi are invited to add their contact names and addresses to the list and are encouraged to advise the Secretary of any changes in contact names and addresses in order to facilitate the consultation process.
- 3.13 As part of the consultation process, amongst other matters, tangata whenua hapu and iwi may request that the Minister not include areas of land in any permit granted or in a competitive tender, in recognition of the principles of the Treaty of Waitangi.
- 3.14 The Secretary will report to the Minister on all consultations with tangata whenua hapu and iwi. Before determining an application or the definition of a competitive tender block, the Minister will give consideration to this report. The Minister will also have regard to any claims under the Treaty that are before Government and the Waitangi Tribunal which may have implications for the management of Crown-owned coal.
- 3.15 Where tangata whenua hapu and iwi have requested that the Minister not include areas of land in any permit granted or in a proposed competitive tender, the matters that the Minister will take into consideration in evaluating the request include, but are not limited to, the following:
- What it is about the specific area of land that makes it important to the mana of tangata whenua hapu and iwi;
  - Whether the area is a known wahi tapu site;
  - The uniqueness of the specific area of land, for example, is it one of a number of mahinga kai (food gathering) areas or the only waka tauranga (the landing places of the ancestral canoes);
  - Whether the importance of the area to tangata whenua hapu and iwi has already been demonstrated. This includes Treaty claims, objections under other legislation, and previous correspondence with the Secretary, in particular comments on any preceding permit;
  - Any Treaty claims which may be relevant and whether granting a permit over the land or the particular minerals would impede the prospect of redress of grievances under the Treaty;
  - Any iwi management plans in place in which the area specifically is mentioned as being important and should be excluded from certain activities;
  - The area's land ownership status;
  - Whether the area is already protected under other legislation, for example, the Resource Management Act 1991, the Conservation Act 1987, or the Historic Places Act 1993; and

- The size of the area and value (or potential value) of the resources affected if the area is excluded.

- 3.16 Where tangata whenua hapu and iwi have requested specific areas of land to be excluded from an application or competitive tender allocation or have made other requests affecting the grant of the permit application the permit applicant will be advised. Following the Minister's full consideration of the matter, tangata whenua hapu and iwi will be informed in writing of the Minister's decision concerning the request(s). Where it is likely that the Minister may exclude land from a permit application area in determining its grant, the permit applicant will be advised of this prior to a final decision on the matter being made by the Minister.

### ***ONGOING PROVISION OF INFORMATION TO ASSIST CONSULTATION***

- 3.17 To assist tangata whenua hapu and iwi, the Secretary may, from time to time, publish information brochures on the Crown Minerals Act 1991 and its operation and distribute these to tangata whenua hapu and iwi.

### ***OTHER PROVISIONS AVAILABLE TO IWI***

- 3.18 In addition to the provisions of the Crown Minerals Act 1991 outlined above, tangata whenua hapu and iwi may use the landowner and occupier provisions of the Act to protect areas of importance. These provisions are discussed in paragraphs 4.3.1 to 4.3.13 (specifically paragraphs 4.3.4 and 4.3.6 discuss Maori land). Also, there are other legislative mechanisms open to tangata whenua hapu and iwi that can be used to protect areas of importance. The Crown Minerals Act 1991 is complemented by the Resource Management Act 1991 which promotes the sustainable management of natural and physical resources. The Resource Management Act 1991 requires all decision makers to take into account the principles of the Treaty of Waitangi. Where tangata whenua hapu and iwi are concerned that prospecting, exploration or mining for coal may have an impact on surface land areas or features of significance, the provisions of the Resource Management Act 1991 could be used to protect taonga and wahi tapu areas. There are also provisions in the Conservation Act 1987 and the Historic Places Act 1993 which could be used by tangata whenua hapu and iwi.

## **4 LAND AVAILABILITY AND ACCESS**

### **4.1 LAND TO WHICH THIS MINERALS PROGRAMME DOES NOT APPLY**

- 4.1.1 Section 15(1)(b) of the Crown Minerals Act 1991 requires that this Minerals Programme for Coal shall identify any restrictions on the prospecting, exploration, or mining of Crown owned coal. This chapter outlines restrictions on land available for permitting.
- 4.1.2 Areas of land may be unavailable for permit allocation:
- (a) In accordance with section 15(3) of the Crown Minerals Act 1991, on the grounds that a defined area of land is of particular importance to the mana of an iwi; or
  - (b) In accordance with statute (Acts, Regulations or Gazette Notices), whereby land is closed to prospecting and/or exploration and/or mining of coal; or
  - (c) By policy decision of the Minister in accordance with the preparation of this Minerals Programme.

#### ***LAND UNAVAILABLE BECAUSE OF SIGNIFICANCE TO MAORI***

- 4.1.3 Section 15(3) of the Crown Minerals Act 1991 provides that, on the request of an iwi, a minerals programme may provide that defined areas of land of particular importance to its mana are excluded from the operation of the minerals programme, or shall not be included in any permit. By such means, wahi tapu and other significant land can be afforded protection from prospecting, exploration and mining activities.
- 4.1.4 In accordance with section 15(3) of the Crown Minerals Act 1991, the areas of land defined below shall be unavailable for inclusion in any permit (from north to south):
- (a) *Crown land in the Muriwai-Moehau-Waiaro blocks, containing 42680 hectares more or less, being:*

Sections 2, 9, 12, 37, 38, 39 and 40 Block I Colville Survey District, Sections 12 and 25 and Part Section 26 Block II Colville Survey District, Sections 4, 6, 8, 9 and 10 Block I Moehau Survey District, Part Section 8 and Parts Section 9 Block II Moehau Survey District, Section 6 Block IV Moehau Survey District, Lot 1 DP 22770, Lot 2 DPS 2021, Part Moehau 1P Block and Crown land situated in Block IV Moehau Survey District (Deemed Marginal strip) situated in Blocks I and II Colville Survey District and Blocks I, II and IV Moehau Survey District.

The Moehau Range, at the northern tip of the Coromandel Peninsula, is a place of historical and spiritual significance for the Marutuahu tribes of Pare-Hauraki and other iwi who have spiritual and historical associations with Moehau.
  - (b) *Mokoia Island, Lake Rotorua, containing 135.165 hectares (334 acres) more or less being Mokoia Island situated in Blocks IX, XIII and XIV Rotoiti Survey District.*

Mokoia Island is the symbolic and geographic centre of the Te Arawa iwi, and of particular importance to the mana of the Ngati Whakauae, Ngati Rangiwewehi, Ngati Rangiteaorere and Ngati Uenukukopaku being the four hapu who inhabit lands surrounding Lake Rotorua or have inhabited the island in the past.
  - (c) *The area of the Hinehopu, Lake Rotoiti and Lake Okataina Scenic Reserves, containing 5014.5879 hectares more or less, specifically:*

*Lake Rotoiti Scenic Reserve containing 451.3874 hectares more or less being:*

Parts Lot 2 DP 11082, Part Rotoiti Block and Part Te Tautara Block, Section 1 SO 56544, Parts Rotoiti 1, 2, 3W, 4, 5A, 5B, 6 and 7A Blocks, Part Rotoiti 3G Block, Rotoiti 3H, 3I and 3J Blocks, Parts Kuharua Block, Part Kuharua 1B Block, Part Te Taheke 2B Block, Te Taheke 7 Block (Oremu), Taheke Papakainga 5B Block, Lot 6 DPS 31392, Parts Paehinahina 2 Block, Part Paehinahina 1 and 3 Blocks, Part Waione 3B Block, Motumauri and Pateko Islands situated in Blocks VII, VIII, X, XI and XII Rotoiti Survey District and Blocks V and IX Rotoma Survey District.

*Lake Okataina Scenic Reserve containing 4416.1397 hectares more or less being:*

Parts Rotoiti 14 Block, Part Okataina 4 and 5 Blocks, Parts Okataina 3, 6B, 7 and 8 Blocks, Okataina 12 Block, Section 1A Block XVI Rotoiti Survey District and Sections 6, 7 and 8 Block XVI Rotoiti Survey District situated in Blocks XI, XII, XV and XVI Rotoiti Survey District and Blocks III, IV and VIII Tarawera Survey District.

*Hongi's Track Scenic Reserve (Hinehopu) containing 50.9112 hectares more or less being:*

Parts Rotoiti 6 and 7 Block and Part Te Tautara Block situated in Block IX Rotoma Survey District.

*Waione Block Scenic Reserve containing 74.7552 hectares more or less being:*

Parts Waione C Block and Sections 2, 3 and 4 Block XVI Rotoiti Survey District situated in Blocks XII and XVI Rotoiti Survey District.

*Okere Falls Scenic Reserve containing 19.2372 hectares more or less being:*

Sections 7, 8 and Part Section 9 Block VI Rotoiti Survey District.

*Te Akau Road Recreation Reserve containing 2.1662 hectares more or less being:*

Part Lot 1 DP 16449 situated in Block XI Rotoiti Survey District.

The Ngati Pikiao and Ngati Tarawhai gifted the land of the reserves to the people of New Zealand in 1921 as a gesture of goodwill so that the scenic beauty of the land could be enjoyed by all. The reserves include battle sites, sites of special trees (including Rakau o Hinehopu on the Whakatane-Rotorua State Highway) and many other wahi tapu (of special and/or sacred importance) sites, including urupa, rock carvings and former pa. The maintenance of the scenic values and the protection of the historical and spiritual sites of the reserves is highly important to the mana of the Ngati Pikiao and Ngati Tarawhai.

- (d) *The areas of land known as Rotoiti 3W3-6 and Rotoiti 13D2 containing 109.6468 hectares more or less, specifically:*

*Rotoiti 3W3-6 Blocks containing 81.6059 hectares more or less being:*

Rotoiti 3W3, 3W4, 3W5A, 3W5B, 3W5C, Part 3W5 (Roadway) and 3W6 Blocks situated in Block VII Rotoiti Survey District.

*Former Rotoiti 13D2 Block containing 28.0409 hectares more or less being:*

Lots 1 to 28 DPS 4171, Lot 1 DPS 4848 and Lots 1, 2, 3 and 4 DPS 11099 situated in Block IX Rotoma Survey District.

- (e) *Mt Taranaki and the Pouakai, Pukeiti and Kaitake Ranges as defined by the area of the Mt Egmont National Park, where the land (surface and subsurface) is above sea level, containing 33764.7817 hectares, more or less, being:*

Pts Sub 2, Subs 1, 3, 4, 5, 9, Pts Subs 7, 8, 10, Pts Secs 49, 170, Pt Sec 189, Lots 1, 2, 3, 4 DP 13397, Lot 1 DP 15932, Blk III Cape SD,

Pt Sec 169 Oakura District, Blks III & VII Cape SD,

Secs 1-3, 11-14, 16-18 Blk V Egmont SD,

Sec 38 Blk VI Cape SD,

Lot 2 DP 7882, Secs 3, 4, 6, 7, 10, 14, 15, 20, Blk VII Cape SD,

Lot 1 DP 10394, Lot 1 DP 8824, Lot 2 DP 8649, Lot 1 DP 11816 & Secs 8, 14, 16, 18, Blk XI Cape SD,

Pt Sec 3, Blk XV Cape SD,

Lot 1 DP 10401, Blk XII Egmont SD,

Secs 54, 55, 68 & Pt Sec 63, Blk IV Kaupokonui SD,

and Egmont National Park in Blks V, VI, VII, IX, X, XI, XIII, XIV, XV Egmont SD,

Blks XI, XV Cape SD,

Blk IV Opunake SD,

and Blks I, II, III, IV, V, VI, VII Kaupokonui SD

Section 1 SO 13356 Blk XII Egmont SD

Pt Sec 134 Omata District Blk VI Egmont SD

Lot 1 DP 13427 Blk I Egmont SD.

Mt Taranaki and the Pouakai, Pukeiti and Kaitake Ranges are a fundamental source of tribal identity and mana for the iwi of Taranaki. The iwi of Taranaki consider Mt Taranaki and its associated ranges to be a tipuna (ancestor). The area is regarded as a wahi tapu (of special and/or sacred importance).

- 4.1.5 There are other provisions available to tangata whenua hapu and iwi under this Minerals Programme to protect wahi tapu and areas of land considered important. These are outlined in chapter 3. This includes that tangata whenua hapu and iwi will be given the opportunity to raise issues of concern related to permit allocation or a competitive tender allocation on a case by case basis. The land access provisions of the Crown Minerals Act 1991 are another way of protecting areas (refer paragraphs 4.3.7 and 4.3.8). Other legislation, for example, the Resource Management Act 1991, also includes protection mechanisms.

#### ***LAND DECLARED UNAVAILABLE TO MINING, EXPLORATION AND/OR PROSPECTING BY STATUTE***

- 4.1.6 Areas of land may be closed by statute to prospecting, exploration, or mining of coal. Where land is declared as closed to any of these activities for coal, the Minister will consider such land unavailable for allocation by permit in respect of the activity. The Secretary will keep an official list of all such declared land, which will be made available on request.

## **4.2 LAND AVAILABLE FOR PERMITTING**

- 4.2.1 Other than in respect of land unavailable for permit allocation as outlined in paragraphs 4.1.1 to 4.1.6, applications for coal permits shall be considered in accordance with the policies, procedures and provisions outlined in this Minerals Programme, and the provisions of the Crown Minerals Act 1991, for all land to which the Crown Minerals Act 1991 applies.

## 4.3 LAND ACCESS

- 4.3.1 The granting of a permit under the Crown Minerals Act 1991 does not confer, on the permit holder, an automatic right of access to any land (section 47 Crown Minerals Act 1991). Prior to commencing any prospecting, exploration or mining for coal, a permit holder must reach an appropriate access arrangement with the landowner and occupier. Sections 49 to 80 of the Act establish the statutory provisions regarding the processes involved in obtaining land access for prospecting, exploration and mining.
- 4.3.2 There are different procedures for obtaining access depending on whether it is proposed to undertake minimum impact activities or activities other than minimum impact activities. There are also different procedures depending on whether the land is Maori owned, non-Maori owned or Crown owned. These provisions are summarised as follows.

### *ACCESS PROVISIONS FOR MINIMUM IMPACT ACTIVITY*

- 4.3.3 Minimum impact activity is defined in section 2 of the Crown Minerals Act 1991. It includes sampling and surveying by hand held means, aerial surveying and any activities that do not result in other than minimum scale impacts.

Minimum impact activity does not include:

- The cutting, destroying, removing or injury of any vegetation on greater than a minimum scale;
  - The use of explosives;
  - Damage to improvements, stock or chattels;
  - The breach of any law, including laws in relation to protected native plants, water, noise and historic sites;
  - The use of more persons for any particular activity than is reasonably necessary;
  - Any impacts which are “prohibited impacts”; or
  - Entry on land which is “prohibited land”.
- 4.3.4 Except in respect of the special classes of land as noted in paragraph 4.3.5 below and with respect to Maori land, as noted in paragraph 4.3.6 below, a permit holder is not required to obtain formal landowner and occupier consent to undertake minimum impact activities. However, prior to entering onto any land for access, a permit holder must give at least 10 working days notice in the appropriate manner outlined in section 49 of the Crown Minerals Act 1991. Earlier access to land to undertake minimum impact activities can be obtained if every land owner and occupier gives their consent.
- 4.3.5 In accordance with sections 50 and 55(2) of the Crown Minerals Act 1991, the following classes of land cannot be entered without the written agreement of each owner and occupier of the land with the person desiring access for the purposes of undertaking a minimum impact activity:
- (a) Any land held or managed under the Conservation Act 1987 or any other Act specified in the First Schedule to the Conservation Act 1987;

- (b) Land subject to an open space covenant in terms of the Queen Elizabeth the Second National Trust 1977;
- (c) Land subject to a covenant in terms of the Conservation Act 1987 or the Reserves Act 1977;
- (d) Land for the time being under crop<sup>7</sup>;
- (e) Land used as or situated within 30 metres of a yard, stockyard, garden, orchard, vineyard, plant nursery, shelterbelt, airstrip, or indigenous forest;
- (f) Land which is the site of or situated within 30 metres of any building, cemetery, burial ground, waterworks, race, or dam;
- (g) Land having an area of 4.05 hectares or less.

4.3.6 For Maori land, section 51 of the Crown Minerals Act 1991 provides that any person seeking to obtain access on to Maori land shall, in addition to complying with section 49 of the Act and before any such entry is made:

- (a) ensure that reasonable efforts have been made to consult with those owners of the land as identified by the Registrar of the Maori Land Court; and
- (b) give not less than 10 working days' notice to the local iwi authority of the land to be entered in a manner as set out in section 49(3) of the Crown Minerals Act 1991.

If Maori land is regarded as wahi tapu by the tangata whenua, no person may enter the land for minimum impact activity without the landowner's consent (section 51(2)).

### ***ACCESS PROVISIONS FOR OTHER THAN MINIMUM IMPACT ACTIVITIES***

4.3.7 Except as outlined in paragraph 4.3.4, with respect to minimum impact activities, the holder of a permit can only prospect, explore or mine in or on land to which the permit relates in accordance with an access arrangement. An access arrangement shall be agreed in writing between the permit holder and each owner and occupier of the land (sections 54 and 55 of the Crown Minerals Act 1991). In certain circumstances (see paragraph 4.3.10), access may also be determined by an arbitrator.<sup>8</sup>

4.3.8 Where a permit holder seeks to obtain an access arrangement, in accordance with section 59 of the Crown Minerals Act 1991, the permit holder shall serve a written notice on each owner and occupier advising of the intention. Section 59 specifies what information must be contained in the notice. Desirably, an access arrangement is to be determined between the permit holder and each owner and occupier of the land.

4.3.9 Any access arrangement made shall be in writing. Examples of provisions that may be included in access arrangements are detailed in section 60 of the Crown Minerals Act 1991. Where an access arrangement has a duration of longer than six months, in accordance with section 83 of the Crown Minerals Act 1991, it must be registered against affected land titles by the District Land Registrar.

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<sup>7</sup> A crop is defined in section 2 of the Crown Minerals Act 1991 as plants grown on cultivated land, the produce of which is to be harvested.

<sup>8</sup> Access arrangements for coal determined by an arbitrator are expected to be uncommon.

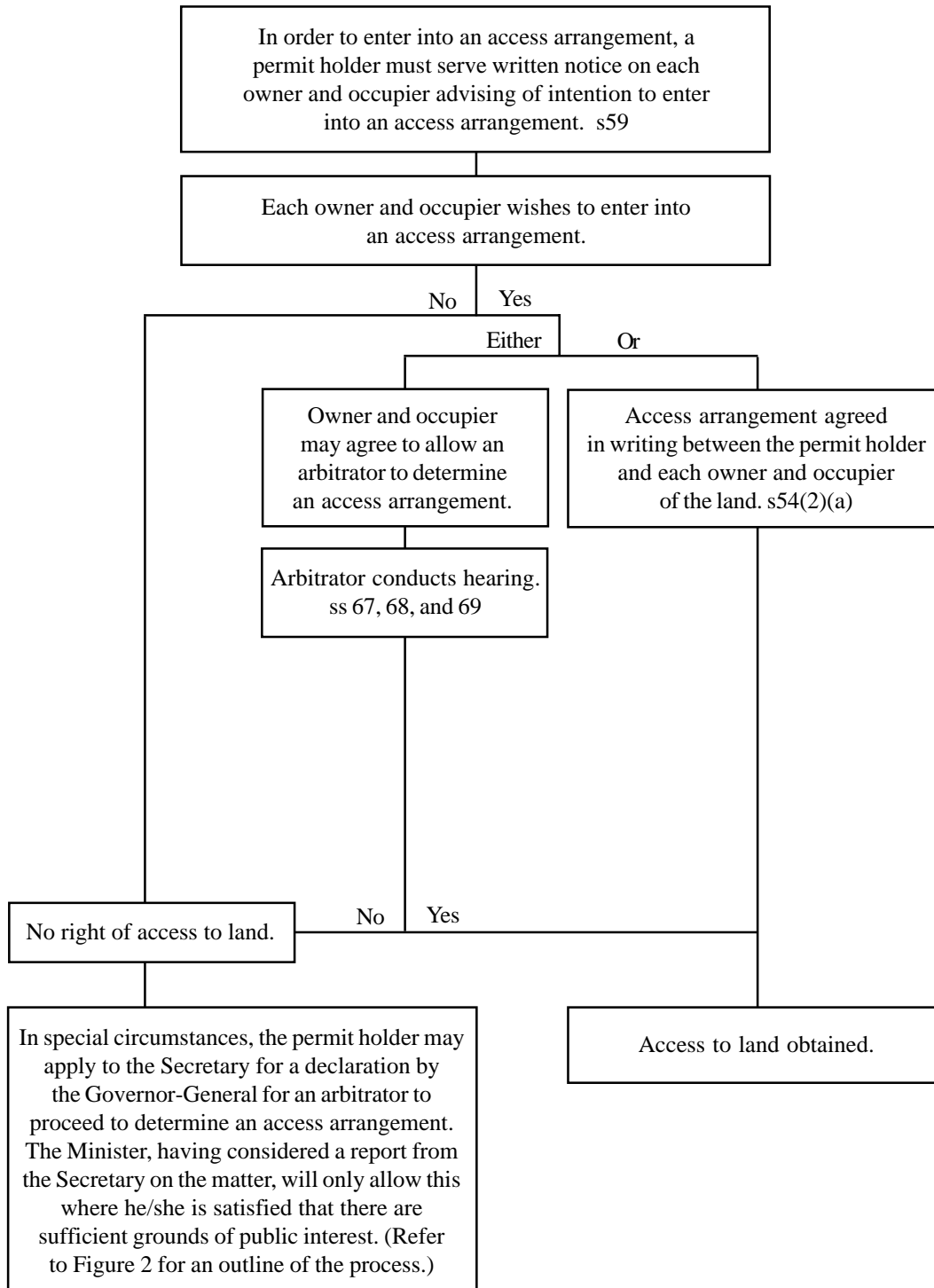
- 4.3.10 If agreement on an access arrangement cannot be reached, the permit holder may ask the owner and occupier of the land to agree to an arbitrator being appointed in order to determine an access arrangement suitable to them both. The owner and occupier, however, are not obliged to agree to the appointment of an arbitrator.
- 4.3.11 In limited circumstances, where it can be clearly established that on the grounds of public interest access is necessary, section 66 of the Crown Minerals Act 1991 allows the permit holder to apply to the Secretary for a declaration by the Governor-General that an access arrangement be determined by arbitration and that the Secretary appoint an arbitrator to determine access arrangements between the permit holder and each owner and occupier. It is emphasised that applications for such a declaration will only be considered where the access sought is clearly shown to be on the grounds of public interest. Sections 66 to 75 of the Crown Minerals Act 1991 detail the procedures to be followed where the Minister agrees that there are public interest grounds supporting the appointment of an arbitrator. These provisions are expected to be used infrequently in respect of permits covered by this Minerals Programme. These provisions do not apply to Maori land<sup>9</sup>, or land defined as private by section 5(1) of the Mining Act 1971, or those classes of land identified in section 55(2) of the Crown Minerals Act 1991 (as listed in paragraph 4.3.5).

### ***CROWN OWNED LAND CLOSED TO ACCESS ARRANGEMENTS***

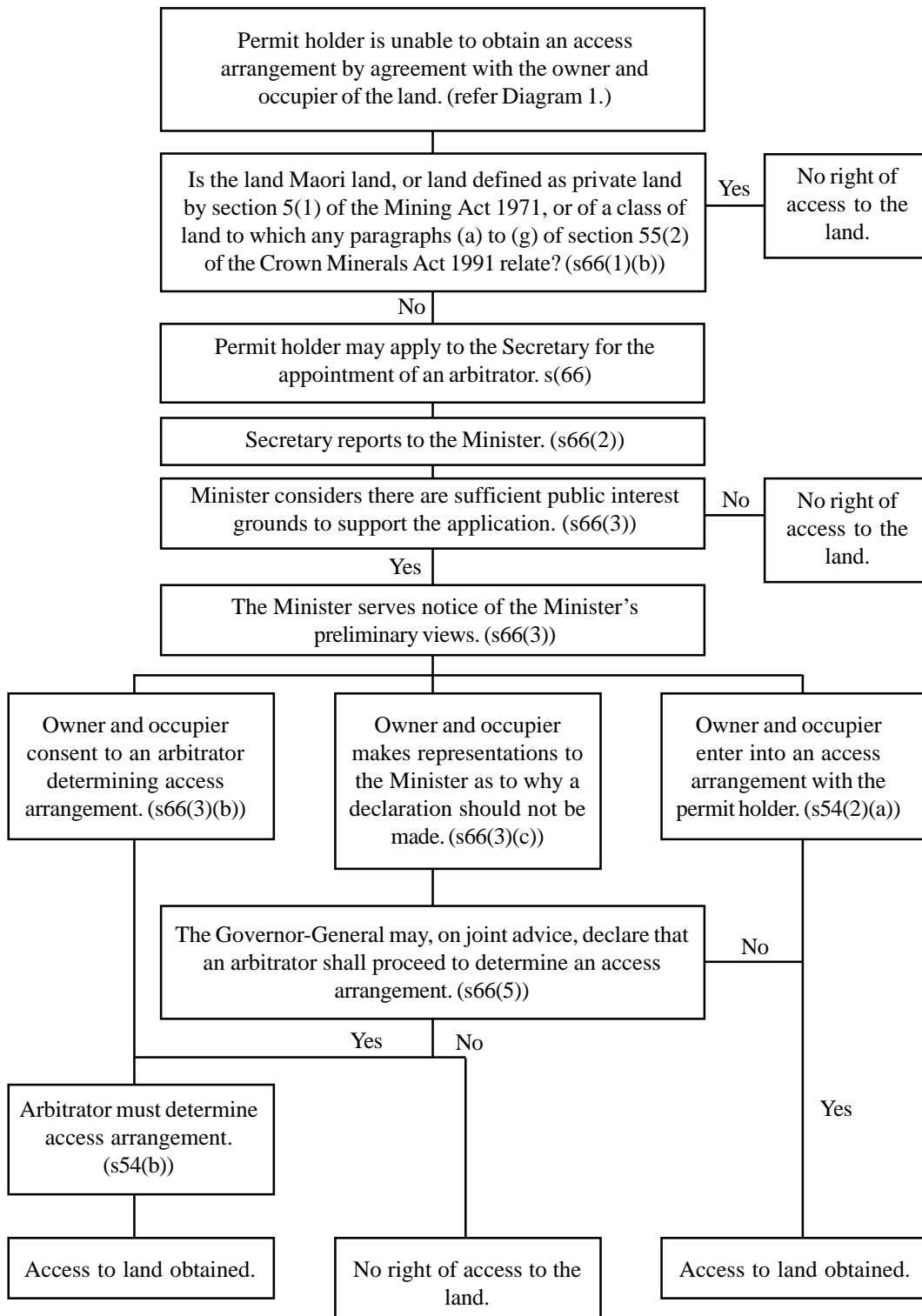
- 4.3.12 In accordance with section 62 of the Crown Minerals Act 1991, on the recommendation of the Minister of Energy and the Minister administering the land concerned, the Governor General, by Order in Council, may prohibit access in respect of any Crown owned lands. This means that no access arrangements may be made, and no minimum impact activities may be carried out on the said land. Any Order will not affect any access arrangements, or rights under it, made before the date of the Order in Council. The Secretary shall keep an official list of all land affected by such Orders in Council.
- 4.3.13 An overview of the access arrangement provisions of the Crown Minerals Act 1991 is given in figures 1 and 2.

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<sup>9</sup> *In most instances, there will not be a reservation of ownership of coal to the Crown on Maori land.*



**Figure 1: Procedure for obtaining access arrangements for coal other than minimum impact activities**



**Figure 2: Procedure for obtaining access arrangements for coal on the grounds of public interest**

## 5 THE PERMITTING REGIME

### 5.1 INTRODUCTION

- 5.1.1 Section 23 of the Crown Minerals Act 1991 provides that any person may apply to the Secretary for a permit. For permit applications in respect of any coal, each application will be considered in a manner which is consistent with the policies, procedures and provisions outlined in this Minerals Programme.
- 5.1.2 There are three types of permits: prospecting; exploration; and mining. In brief, prospecting permits are granted to enable preliminary or reconnaissance exploration investigations and studies; exploration permits are granted to determine the potential for and feasibility of mining an area; and mining permits are granted to allow extraction and selling of Crown owned coal.
- 5.1.3 An application for a permit may be received as:
- (a) A **“first acceptable work programme offer”** application; or
  - (b) A **“cash bonus bidding”** application (which is a type of allocation by tender in accordance with section 24 of the Crown Minerals Act 1991 and is the only type of allocation by tender which will apply to Crown owned coal); or
  - (c) A **“subsequent permit right”** application (in accordance with section 32 of the Crown Minerals Act 1991); or
  - (d) An application for a **special purpose mining permit**.
- 5.1.4 **First acceptable work programme offer** is a priority in time allocation method. In summary, it provides for the first person who applies for a permit in respect of a specific area, to have his or her application considered in priority to any others over the same area. The permit applied for will be granted, where the applicant’s work programme meets the criteria established and the Minister is satisfied that the applicant will comply with the conditions of, and give proper effect to, the permit. It is expected that most applications received will be on the basis of first acceptable work programme offer allocation. The procedures for receiving and determining priority of applications are set out in paragraphs 5.2.1 to 5.2.23. The policies and procedures for evaluating and granting such applications are set out in chapters 6, 7 and 8.
- 5.1.5 In areas of high prospectivity and where there is strong competitive interest, permits may be allocated by **cash bonus bidding**. This is a form of competitive tender allocation. It resembles cash purchasing at an auction. The procedures for reserving an area for cash bonus bidding and for conducting a cash bonus bidding round are set out in paragraphs 5.3.2 to 5.3.21.
- 5.1.6 Where a prospecting or exploration permit is held, the permit holder may be able to apply for, respectively, a **subsequent exploration permit** or a **subsequent mining permit** in accordance with section 32 of the Crown Minerals Act 1991. In brief, section 32 provides that, if the holder of a prospecting or exploration permit can justify to the Minister the grant of a subsequent exploration or mining permit on the basis respectively of prospecting or exploration results from the current prospecting or exploration permit, then the permit holder shall be granted a subsequent permit. This is subject to the approval of a work programme by the Minister in accordance with section 43 of the Act. Permit grant is also subject to the Minister being satisfied that the permit holder will comply with the conditions of, and give proper effect to, any subsequent permit granted. (Section 43 also provides for the Minister to agree or be

satisfied that a work programme for the permit is not required to be approved. It is not expected that this discretion will be exercised.) Prospecting and exploration permits will be granted with the right to a subsequent permit except where the permit applicant requests and is granted a permit on a non-exclusive basis.

- 5.1.7 **Special purpose mining permits** may be allocated to enable historical mining methods to be demonstrated. These are likely to be applied for by historical societies, museum trusts or other similar body. The criteria on which such permits will be allocated are discussed in paragraphs 8.53 to 8.61.
- 5.1.8 Chapters 6, 7 and 8 detail the policies, procedures and provisions for evaluating prospecting, exploration and mining permits respectively.

## 5.2 RECEIPT AND DETERMINATION OF PRIORITY OF FIRST ACCEPTABLE WORK PROGRAMME OFFER APPLICATIONS

5.2.1 As noted, it is expected that most permit applications will be received on the basis of first acceptable work programme offer allocation. This is a priority in time allocation method, which means that the application determined to have been received first is processed first, and any later applications will not be considered until the first application has been processed. With the first acceptable work programme allocation method, from time to time, applications will be received which overlap with:

- (a) another permit application or extension of permit area application made in respect of this Minerals Programme or the Minerals Programme for Minerals other than coal and petroleum;
- (b) a granted permit for coal;
- (c) a granted permit for one or more of the minerals or industrial rocks and building stones covered by the Minerals Programme for Minerals other than coal and petroleum;
- (d) an existing privilege (or privilege application) granted (or under consideration) under the Coal Mines Act 1979 or the Mining Act 1971.

To avoid priority disputes and to ensure land is available for allocation, clear procedures for receiving and determining the priority of applications in respect of the same land have been established. These are set out in this chapter. In most instances, an application will be made over an area of land over which there are no granted permits or existing privileges (other than petroleum permits or licences), no other applications (including those for other minerals and industrial blocks and building stones<sup>10</sup>) and which is available for permitting (refer chapter 4). Its receipt will be straightforward and it will proceed to being evaluated in accordance with the procedures of chapters 6, 7 or 8 depending on whether it is a prospecting, exploration or mining permit application.

5.2.2 The procedures which follow apply:

- (a) to the receipt of applications and determining the priority of applications under the first acceptable work programme offer allocation method;
- (b) if there is a need to determine the priority for processing of a permit extension application made under section 36 of the Crown Minerals Act 1991; and
- (c) if there is a need to determine the priority for processing a special purpose mining permit application.

**It is emphasised that these procedures do not apply to the allocation of permits by competitive tender or to applications that have priority under section 32 of the Crown Minerals Act 1991.**

### ***RECEIPT OF APPLICATIONS***

5.2.3 Permit applications (and applications to extend the area of granted permits) may be received on any business day by:

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<sup>10</sup> *Permit applications for minerals and industrial rocks and building stones other than coal and petroleum are considered under the Minerals Programme for Minerals other than coal and petroleum.*

- postal or courier delivery during the hours of business; or
- hand delivered during the hours of business; or
- facsimile; or
- other means as approved by the Secretary.

The date and time of every application will be recorded at the time of receipt. Hours of business are 7.30am to 4.30pm. The following days are not classified as business days: all Saturdays and Sundays; all statutory holidays; Wellington Anniversary Day; the period from 24 December until 2 January inclusive. Where a postal, courier or hand-delivered application is received outside of the hours of business, its receipt will be recorded as 7.30am of the next business day.

- 5.2.4 When received, an application will be checked to ensure that the application details are in order. An application should be made in accordance with the appropriate regulations<sup>11</sup> and must be accompanied by the prescribed fee. If the application requirements, as prescribed in the regulations, are not substantially complied with, then the applicant will be promptly advised that the application cannot be formally received.

### ***CLARIFICATION THAT LAND IS AVAILABLE FOR PERMIT ALLOCATION***

- 5.2.5 The Secretary will then check that it is in order to receive the application by determining whether the land which is the subject of the application is available for permit allocation, as discussed below.
- 5.2.6 Permit applications made on the basis of first acceptable work programme offer (and applications for an extension of permit area and special purpose mining permit applications) will be considered over all land other than:
- (a) Areas of land that are the subject of granted permits (except non-exclusive permits and petroleum permits) and existing privileges (other than petroleum licences) as defined in Part 2 of the Crown Minerals Act 1991, where the written consent of the current privilege or permit holder has not been obtained to the grant of a permit (refer sections 30(8) and 119 of the Crown Minerals Act 1991). It is a policy established under this Minerals Programme that, except where the Minister specifically provides for non-exclusive prospecting or exploration permits, there will not be more than one permit or existing privilege (other than petroleum) granted over the same area of land unless the permit holder or existing privilege holder agrees by written consent. In other words, a coal permit application will not be accepted over land where there is a granted permit or existing privilege. In respect of coal or any other mineral(s) or industrial rock(s) or building stone(s), unless the permit holder or existing privilege holder agrees by written consent; and
  - (b) Areas of land that are not available for inclusion in any permit, in accordance with section 4.1 of this Minerals Programme and in accordance with section 15 of the Crown Minerals Act 1991. (Section 22 of the Crown Minerals Act 1991 requires the Minister to grant permits in a manner that is consistent with the policies, procedures and provisions of this Minerals Programme); and

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<sup>11</sup> *Regulations shall be prescribed from time to time in accordance with section 105 of the Crown Minerals Act 1991.*

- (c) Areas of land that have been notified as being closed to first acceptable work programme offer applications (other than non-exclusive prospecting permit applications), permit extension of area applications and special purpose mining permit applications because they are either under investigation for, or the subject of, an allocation of exploration or mining permits by tender (refer paragraphs 5.3.2 to 5.3.5); and
- (d) Areas of land that are the subject of an undecided permit application, unless approval to the overlap has been obtained from the prior applicant.

Where an application cannot be processed as it is in second priority to another application, it may at the request of the applicant sit in second priority pending the outcome of the initial permit application.

5.2.7 There is a database of all granted permits and existing privileges (except those for petroleum), known as the National Mining Index<sup>12</sup>. This database also records permit and privilege applications under consideration and notes other land not available for permit allocation by first acceptable work programme offer allocation. All applications received are entered into this database and any overlaps with granted permits, existing privileges or unresolved permit applications are advised to the Secretary.

5.2.8 Where it is identified that an overlap exists between the permit application (or permit extension of area application) and an area not available for allocation, except where the overlap is in respect of a granted permit or existing privilege which has less than **30 calendar** days duration remaining at the date of receipt,<sup>13</sup> or is in respect of a permit granted on a non-exclusive basis, then the applicant will be advised of the overlap and will be asked within 10 working days of receipt of the advice to advise the Secretary:

- (a) To amend the application to provide that the area of overlap is excluded from the application; or
- (b) That the consent of the holder of the existing privilege or granted permit to the overlap is being sought; or
- (c) That the application is withdrawn.

Where the applicant advises that the consent of the holder of the existing privilege or granted permit is being sought, then within 45 working days of advice of the overlap, the applicant will be required to advise the Secretary:

- (i) That the consent of the existing privilege or permit holder to the grant of a permit has been obtained, and produce evidence to this effect; or
- (ii) To amend the permit application (or application for an extension of permit area) to exclude the overlapping area; or
- (iii) To withdraw the application.

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<sup>12</sup> This is presently managed by Land Information New Zealand (previously known as the Department of Survey and Land Information) in cooperation with the Secretary.

<sup>13</sup> The effect of this procedure is to provide for permit applications to be received over an existing permit (or licence) up to 30 days prior to the expiry of the existing permit (or privilege) from a person who is not the holder of the granted permit or existing privilege. The rights of the holder of the granted permit (or existing privilege), however, run until the expiry of the permit. This includes the right to apply for a subsequent permit (unless specifically provided otherwise in the permit). An application for a subsequent permit made by the holder of the granted permit or existing privilege, in accordance with section 32 of the Crown Minerals Act 1991, will have priority over any other application made over the same area.

If the applicant does not obtain the necessary consent or amend the application area or does not respond, the Minister may refuse the application on the grounds that it overlaps a granted permit or existing privilege.

- 5.2.9 Where an application<sup>14</sup> is received which includes land covered by a granted permit or existing privilege with less than 30 days duration remaining, the Secretary will defer consideration of the application until the expiry of the permit or privilege. The holder of the granted permit or existing privilege may exercise the right in accordance with section 32 of the Crown Minerals Act 1991 to apply for a subsequent permit (unless the permit specifies otherwise) over all or part of the granted permit or existing privilege. Such applications, which must be made before the expiry of the said permit or privilege, have a right in priority over all other applications over all or part of the same land. If such subsequent permit rights are exercised then paragraph 5.2.13 will apply to such other applications that have been received.
- 5.2.10 Where an application is received which includes land covered by a permit granted on a non-exclusive basis, and the application does not indicate that a non-exclusive permit is sought,<sup>15</sup> then the applicant will be advised of the overlap and will be asked within 10 working days of receipt of the advice to:
- (a) Advise whether the application should be processed on the basis that any permit granted shall be non-exclusive. (This provision is not available to a permit holder seeking an extension of permit area);
  - (b) Amend the permit application (or application for an extension of permit area) to exclude the overlapping area; or
  - (c) Withdraw the application.

If the applicant does not advise that the application should be processed on a non-exclusive basis or does not amend the application area or does not respond, the Minister may refuse the application on the grounds that an exclusive permit has been sought which overlaps a granted permit.

- 5.2.11 In order to ensure any accidental minor overlaps do not affect the consideration of the permit application, applications can be made with the general proviso that the application is intended to exclude all granted permits or existing privileges.

### ***PRIORITY OF APPLICATIONS IF MORE THAN ONE MADE IN RESPECT OF THE SAME LAND***

- 5.2.12 When a permit application (or permit extension application) is received over land that is available for allocation (refer paragraph 5.2.6) and there are no other applications over the land<sup>16</sup> then it will be evaluated in accordance with the procedures of Chapters 6, 7 or 8 depending on whether it is a prospecting, exploration or mining permit application (or paragraphs 10.15 to 10.21 if it is a permit extension application). The application is described as being in first priority. When a permit application (or permit extension application) is received over land that is available for

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<sup>14</sup> It is reiterated that this does not mean a subsequent permit application made in accordance with section 32 of the Crown Minerals Act 1991.

<sup>15</sup> Applications may be received which indicate that a non-exclusive prospecting permit is sought (refer paragraph 6.22). A non-exclusive exploration permit may also be granted over a non-exclusive small scale suction dredge gold mining permit granted under the Minerals Programme for Minerals other than coal and petroleum.

<sup>16</sup> As noted in paragraph 5.2.6(a), except where the Minister specifically provides for non-exclusive permits, there will not be more than one permit or existing privilege in respect of minerals (which includes industrial rocks and building stones and coal) other than petroleum granted over the same area of land unless the permit holder or existing privilege holder agrees by written consent.

allocation as defined in paragraph 5.2.6 and there is already an application over all or part of the land for any coal or mineral or industrial rock or building stone covered by the Minerals Programme for Minerals other than coal and petroleum) then it is necessary to establish the subsequent priority of the application for processing. The priority of applications is determined by their date and time of receipt, with the application with the earliest date and time of receipt having priority to be processed first over every other application made in respect of all or part of the same land.

- 5.2.13 Where an application is received and it does not have first priority, the applicant will be advised that their application is in second or subsequent priority and cannot be processed until any application with an earlier date or time of receipt over the same or part of the same area is resolved. An applicant in second or subsequent priority either may indicate that the application should be held for future processing dependent on the resolution of the preceding application(s), or may withdraw the application or may formally ask for the application to be amended to remove any overlaps with other permit applications, so that it may be processed.
- 5.2.14 It is emphasised that the Secretary will not, and is under no obligation, to process any second or later applications until the first in priority application is resolved.
- 5.2.15 Where the first in priority application is granted, any second or later applications will be reviewed and the options extended to the applicant for dealing with an overlap with a granted permit (refer paragraph 5.2.8, in particular). Where the first in priority application is refused, withdrawn or is granted in amended form, so that it no longer relates to the same land as the second or later permit applications, the second and any later permit applications will be given a revised priority (but will maintain their relative priorities). The applicants will be advised of the revision and whether the application is now first in priority for processing.

### ***APPLICATIONS WITH EQUAL PRIORITY***

- 5.2.16 Where the Secretary receives two or more applications for prospecting, exploration or mining permits, or an application for extension of permit area in respect of all or part of the same land with the same date and time of receipt, the priority of the applications will be equal. In such a case, the applications will be evaluated in competition. The Secretary will advise each applicant that their application has equal priority with one or more other applications and invite the applicants, if they desire, to provide further information in support of the application within 20 working days of the date of receipt of the advice. The permit will be granted in respect of the application which the Minister considers has the best work programme, evaluated in accordance with the policies and procedures outlined in chapters 6, 7 and 8 respectively depending on whether the application is for a prospecting, exploration or mining permit or chapter 10 if the application is for an extension of area of a granted permit and paragraphs 5.2.17 to 5.2.23 as relevant<sup>17</sup>. The grant is also subject to the Minister being satisfied that the permit applicant will comply with the conditions of, and give proper effect to, any granted permit determined in accordance with the appropriate procedures outlined in chapters 6, 7 and 8.
- 5.2.17 Where there are competing prospecting permit applications<sup>18</sup>, the applicants' proposed work programmes will be ranked according to:
- (a) how appropriate and comprehensive the work programme is to achieve the objective of identification of land likely to contain exploitable mineral deposits and to add materially to the knowledge about the resources within the area; and

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<sup>17</sup> Where the competing application is for a mineral or industrial rock or building stone covered by the Minerals Programme for Minerals other than coal and petroleum, the evaluation will also be in accordance with the policies, procedures and provisions of that Minerals Programme.

<sup>18</sup> This includes an application to extend a prospecting permit's area.

(b) the timing of the work programme.

The Minister may also take into consideration the proposed level of expenditure.

5.2.18 Where there are competing exploration permit applications,<sup>19</sup> the applicant's proposed work programmes will be ranked according to:

- (a) How appropriate and comprehensive the work programme is, given the geological knowledge of the area and exploration results to date;
- (b) The timing of the proposed work to potentially identify a mineable deposit (and/or to assess mining feasibility); and
- (c) The information gathering potential of the proposed work.

Committed work (that is, work where there is an upfront obligation to it being undertaken) will generally be favoured ahead of contingent work. The Minister may also choose to rank exploration work programmes on the basis of proposed expenditure.

5.2.19 Where there are competing mining permit applications<sup>20</sup>, the applicants' proposed work programmes will be considered taking into account the timing and appropriateness of the proposed technical approach to working the area given existing knowledge of the area's geology and the nature of the resource. Where an exploration permit and mining permit application are being considered in competition, the applicants' proposed work programmes will be considered taking into account the proposed technical approach to working the area given existing knowledge of the area's geology and the nature of any resource defined. Timing of work will be of lesser concern.

5.2.20 Where a prospecting permit application has equal priority with either an exploration or mining permit application, in accordance with section 28(1)(b) of the Crown Minerals Act 1991, the Minister will give priority to considering the exploration or mining permit application, on the basis that at the time of the prospecting permit application there exists substantial interest in exploring for or mining the land to which the prospecting permit application relates.

5.2.21 Where competing applications have work programmes that are equally satisfactory and thus it is not clear which is best, then the Minister will rank the applications taking into account the technical expertise of the permit applicants and whether the applicants are likely to give effect to the permit and comply with the permit conditions. The Minister will also take into account any previous failure by the applicant (of which the applicant has been notified) to comply with the requirements of previous permits or privileges. In such instances, the Minister is likely to favour awarding the permit to the applicant who has the better history of efficient and effective mining in accordance with recognised good exploration or mining practice.

5.2.22 It should be noted that, where there are competing applications, the Minister is not obliged to accept the application proposing the most work or to accept any application. The Minister must be satisfied in terms of the criteria set out in chapters 6, 7 and 8 as relevant that there is an acceptable work programme.

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<sup>19</sup> This includes an application to extend an exploration permit's area.

<sup>20</sup> This includes applications to extend a mining permit's area.

5.2.23 In situations where applications have equal priority, the only occasions that modifications to an application will be considered are:

- (a) As provided for in paragraph 5.2.16, where an applicant may provide further information to support the application;
- (b) Where the content of an application or supporting information to an application is unclear, in which case the applicant will be asked to clarify meaning and, if appropriate, to provide further information; and
- (c) When none of the competing applications are considered acceptable and the Minister decides to advise all competing applicants of this position and invite them to re-submit modified applications within 20 working days or some other time as advised by the Minister. The modified applications will then be considered as though they were the original applications.

## 5.3 ALLOCATION BY CASH BONUS BIDDING

- 5.3.1 Where the Minister considers that there is competitive interest for exploration or mining permits for coal in a defined area of high prospectivity, then the Minister may determine that it is appropriate to have permit allocation by cash bonus bidding. The procedures for reserving a defined area for cash bonus bidding and conducting the bid are set out below. As noted in paragraph 5.1.3, cash bonus bidding for exploration or mining permits will be the only method of allocation by public tender used in respect of coal.

### ***RESERVATION OF LAND FOR POSSIBLE CASH BONUS BIDDING***

- 5.3.2 For areas where the Minister considers there may be merit in using cash bonus bidding allocation, the defined area will be reserved for possible cash bonus bidding and closed to:

- (a) first acceptable work programme offer permit applications, except applications for non-exclusive prospecting permits; and
- (b) applications to extend a permit's area; and
- (c) special purpose mining permit applications,

for all coal and minerals, and industrial rocks and building stones covered by the Minerals Programme for Minerals other than coal and petroleum effective either immediately or from a notified date.

- 5.3.3 The Minister will not close an area of land to applications as provided in paragraph 5.3.2, where:

- (a) The area of land or part thereof is held under a granted permit or existing privilege which has more than 30 days duration remaining;
- (b) The area of land or part thereof is already the subject of an application for a prospecting, exploration or mining permit or an application to extend a permit's area,<sup>21</sup> except with the consent of the permit holder, existing privilege holder or permit applicant.

If the Minister closes an area of land as provided for in paragraph 5.3.2 and the area includes a granted permit or existing privilege, the closure of the area will not restrict, in any way, the rights the current permit or privilege holder has to conduct permit operations, to exercise subsequent permit rights or to extend the duration of the permit before the permit expires.

- 5.3.4 The Minister will give public notice of every decision to close an area to first acceptable work programme offer applications (other than non-exclusive prospecting permits), applications to extend a permit's area and special purpose mining permit applications in order to allow for a possible cash bonus bidding tender. The notice will be published as considered appropriate, in newspapers and mining industry magazines, and will be forwarded as considered appropriate, to mining industry organisations, regional, unified and district councils and the land owner(s) and occupier(s) of the affected land.

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<sup>21</sup> *These provisions do not apply where the granted permit or existing privilege or permit application or application to extend a permit is in respect of petroleum. Petroleum permits and other mineral (including coal) permits seldom are in conflict when granted over the same areas. These provisions do apply to granted permits, existing privileges, permit applications and applications to extend a permit for those minerals and industrial rocks and building stones covered by the Minerals Programme for Minerals other than coal and petroleum. An exception is in respect of non-exclusive prospecting permits. These may be granted in accordance with paragraph 6.22 to allow pre-bid minimum impact prospecting. Other non-exclusive prospecting permits would be able to be granted provided these would not interfere with any permit tender or proposed permit tender.*

- 5.3.5 The notice of closure of an area to first acceptable work programme offer applications (other than non-exclusive prospecting permits), applications to extend a permit's area and special purpose mining permit applications, will state the Minister's intentions to consider the area of land for the competitive tender allocation of permits by cash bonus bid. The notice will specify:
- (a) A map and legal description of the area of land which is to be closed;
  - (b) The duration of the closure of the area of land to applications (other than non-exclusive prospecting permits). This will be for a sufficient period of time, firstly, to allow for the investigative stage during which time it will be confirmed whether or not the competitive tender will proceed; and secondly, to allow for the competitive tender, if it is determined that this will proceed; and a time allowance for processing of bid applications;
  - (c) Advice as to whether the possible competitive bid will be in respect of coal exploration or mining permits; and
  - (d) Advice as to where further information can be obtained.

### ***DETERMINING WHETHER TO PROCEED WITH CASH BONUS BIDDING ALLOCATION***

- 5.3.6 Following the publication of the notice of closure of an area to first acceptable work programme offer applications (other than non-exclusive prospecting permits), applications to extend a permit's area and special purpose mining permit applications, a full investigation will be carried out to determine whether or not a cash bonus bidding tender should be held. This investigation will include, but not be limited to, the following:
- (a) A technical evaluation of the area of the competitive tender. The Minister must be satisfied that there is adequate information of the coal potential or coal resources of the area, to support a competitive tender of either exploration or mining permits. A technical or data package to promote the competitive tender may be prepared;
  - (b) Consultation with tangata whenua hapu and iwi concerning the proposal to hold a competitive tender allocation of permits. The consultation will be undertaken in accordance with the procedures outlined in chapter 3;
  - (c) An evaluation of the likely interest in a competitive tender. This may involve calling for expressions of interest in a possible tender by cash bonus bidding.

There will also be discussions held with owners and occupiers of the land which would be affected if the competitive tender proceeded, and relevant local authorities, to inform them of the possible tender.

- 5.3.7 This investigation should be completed within 6 months. If the Minister decides that a competitive tender will not proceed, the notice of closure of the area to first acceptable work programme offer applications (other than non-exclusive prospecting permits), applications to extend a permit's area and special purpose mining permit applications, will be cancelled. If the Minister decides to proceed with a competitive tender, a notice of the tender will be published advising this. Any such notice will be published in the same newspapers as the original notice of closure and copies will be forwarded to those mining industry organisations, regional, unified and district councils and landowners and occupiers who received the closure advice. This notice will be issued in accordance with section 24 of the Crown Minerals Act 1991.

- 5.3.8 Specifically, the notice of tender will specify:
- (a) The type of permit offered (exploration or mining);
  - (b) The mineral(s) to which the permit relates;
  - (c) The block(s) of land<sup>22</sup> over which the coal rights are being tendered and advice as to where approved plans and descriptions of the tender block(s) can be obtained;
  - (d) The manner in which cash bonus bids must be submitted;
  - (e) The date and time by which bids must be received to be valid and the place where bids must be received;
  - (f) The conditions to which any permit granted as a result of the tender will be subject. This includes any conditions relating to either minimum work requirements or compliance with a specified work programme, and the calculation and payment of royalties. The conditions advertised will not be varied by the Minister after the close of the tender, unless there is agreement with the successful applicant and the amendments are not substantial;
  - (g) Any application fee to be paid; and
  - (h) Advice of any minimum bidding price which is to apply or whether the tender is subject to a reserve price (the amount of which will not be disclosed until bidding closes).
- 5.3.9 Where a tender is held, it is the right to coal in the land which is being tendered. The successful bidder will have to negotiate a land access agreement with the landowners and occupiers (refer paragraphs 4.3.1 to 4.3.11). The successful bidder will also be likely to need resource consents from the appropriate local authorities to undertake exploration and mining activities.
- 5.3.10 Where an exploration permit block is put up for tender, one of the conditions of grant will be to the effect that the permit holder will make all reasonable efforts to explore and delineate the coal resource potential of the permit area, in accordance with good exploration or mining practice, and to identify a mineable reserve. As well, to ensure that the land under an exploration permit allocated by cash bidding is adequately explored and/or appraised, the Minister will advise with each competitive tender notice the minimum work required to be undertaken to retain the permit. The minimum work requirements will be a condition of permit grant.
- 5.3.11 Where a mining permit block is put up for tender, any permit granted will be subject to conditions as outlined in paragraph 8.43. There may also be conditions specified of the type outlined in paragraph 8.44.
- 5.3.12 There will generally be a period of approximately six months from the notice advertising the cash bonus bidding permit tender to the closing time for bids to be received. At no time will this period be less than four months. This period provides for parties to obtain and research available data on the mineral or industrial rock or building stone potential or mineral or industrial rock of building stone resources of the block on offer and other relevant information, and to formulate and submit a bid. (Parties may apply for a non-exclusive prospecting permit during this time, refer paragraph 6.22).
- 5.3.13 The notice of closure of an area of land to first acceptable work programme offer applications will continue if a cash bonus bid tender is undertaken until the final date for receipt of cash bonus bids, and for a further period of time to allow for processing of bids. This will take about 3 months. If necessary, the Minister may extend the duration of the notice.

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<sup>22</sup> *It is emphasised that the right to minerals in the land is being tendered and not the land itself. The successful bidder will have to negotiate a land access agreement with the landowners and occupiers (refer paragraphs 4.3.1 to 4.3.11).*

- 5.3.14 With cash bonus bidding of a permit block, the permit will be granted to the applicant who has made the highest cash bid for a block, always provided that the Minister is satisfied that the applicant will comply with and give proper effect to the permit (refer paragraphs 7.35 and 8.36) and the applicant meets the bidding criteria. This may include a requirement that bids must be equal to, or higher than, a minimum bidding price announced as part of the tender or a reserve price which is disclosed after bidding closes.

### ***LODGEMENT AND ACCEPTANCE OF BIDS***

- 5.3.15 For a cash bid to be accepted, it must be accompanied by a certified bank cheque drawn on a New Zealand Trading Bank or an overseas bank draft in New Zealand dollars, of a minimum deposit of twenty percent of the bid submitted and made payable to the Government of New Zealand. Following notification that a bid is successful, there will be a maximum period of 5 working days from the date of advice to forward any outstanding bid payment owing. Failure to pay the outstanding amount will result in disqualification of the bid and forfeiture of the deposit (which will be paid to the Crown Bank Account together with any interest accrued). This procedure is to ensure bona fide bids. Where a bid is unsuccessful, the deposit will be returned within 15 working days (refer paragraph 5.3.18).
- 5.3.16 Cash bids must be forwarded in sealed envelopes. Where there is more than one permit block on offer and more than one permit block is applied for, bids for each block must be in separate envelopes.
- 5.3.17 At a nominated time, all bids received will be opened. No bids will be opened before this time. The bids will be opened by no less than two people, one of whom is a government official designated by the Secretary and one of whom is a Justice of the Peace. Receipt of every bid will be acknowledged promptly. The successful bidder will be formally advised in writing within 10 working days, except as provided for in paragraph 5.3.19.
- 5.3.18 All cash bid deposits (which are received with bids) will be deposited in a trust account in accordance with Part VII of the Public Finance Act 1989. For bids then determined unsuccessful (or withdrawn), the deposit plus any interest accrued will be returned to the applicant within 15 working days from the opening date of bids. For successful bids, the interest will be paid to the Crown Bank Account.

### ***CONSIDERATION OF EQUAL CASH BIDS***

- 5.3.19 When more than one bidding party submit equal highest bids for a permit block, the Minister will defer a decision on the award of the permit and will request the equal highest bidders to modify their original bids. The Minister will then determine an outcome in accordance with paragraphs 5.3.14 and 5.3.15.

### ***GRANT OF PERMIT AND CONDITIONS OF GRANT***

- 5.3.20 Any person lodging a cash bonus bid for a permit block will be deemed to have accepted the conditions of permit grant as specified in the Cash Bonus Bidding Tender Notice. Before the permit is granted, the successful bidder must formally accept the conditions of grant by forwarding any outstanding cash bid payment owing within 5 working days of advice to do so (refer paragraph 5.3.15) and lodging any monetary deposit or bond required (refer chapter 9.1 and section 27(2) of the Crown Minerals Act 1991). If a monetary deposit or bond is required as a prerequisite to permit grant, a period of three months will be given to lodge it. This period of time may be extended, upon written application, if the Minister considers that there are good reasons for doing so.

5.3.21 If the successful bidder chooses not to accept the offer to grant a permit, does not forward any outstanding bid payment owing within 5 working days or does not forward any required monetary deposit or bond within the agreed period, the Minister's decision to award the permit will lapse and the deposit shall be forfeited (refer paragraph 5.3.15). The Minister will decline the application accordingly. The Minister may then choose to approach the next highest acceptable bidder. For a subsequent bid to become acceptable for processing, it needs to be validated by the lodging of a deposit within 10 working days from the Minister notifying the bid applicant that his/her application will be evaluated as the highest cash bonus bid.

## 6 ALLOCATION OF PROSPECTING PERMITS

### *INTRODUCTION*

- 6.1 Prospecting permits are granted for the purpose of undertaking preliminary reconnaissance investigations and studies to identify land likely to contain exploitable coal deposits or occurrences and to obtain a better understanding of an area's coal potential where existing knowledge of the coal resource is not extensive. Prospecting activities include geological, geochemical and geophysical surveys, the taking of samples by hand or by hand held methods and the undertaking of aerial surveying. (This is not however a requirement of prospecting permits.) Generally, prospecting permits are minimum impact activities.
- 6.2 Prospecting permits may be taken up by exploration and mining companies to undertake reconnaissance work over relatively large areas, as well as data processing and research organisations wishing to undertake reconnaissance studies for sale of the information obtained to potential and existing explorers. It should be noted that, as a result of comprehensive investigations undertaken in the past (in particular, the work of the Coal Resources Survey), there is extensive knowledge of the coal resources of New Zealand. Therefore, it is expected that there will be few applications made for prospecting permits. However, there are areas of land where the level of knowledge of coal is limited and prospecting permits may be appropriate. It is not envisaged that permits will be required in order to test an academic theory, or for the testing of new surveying or sampling technology.
- 6.3 In accordance with section 30 of the Crown Minerals Act 1991 a prospecting permit may be granted over land containing Crown owned and privately owned coal. For the explorer at the preliminary investigation stage, this has the advantage of not requiring a coal ownership title search over the extent of the land to which the prospecting permit relates. The Minister, however, cannot grant any subsequent exploration permit arising from the prospecting permit over privately owned coal (refer section 25(1A) of the Crown Minerals Act 1991).
- 6.4 A prospecting permit may be granted for an initial duration of up to two years (refer section 35(1), Crown Minerals Act 1991). An extension to the duration of a prospecting permit may be granted such that the total duration of the prospecting permit is no longer than four years (refer section 36(4), Crown Minerals Act 1991). The criteria used to determine a prospecting permit's duration are listed in paragraph 6.15. Prospecting permits may be granted with the permit holder having either an exclusive or non-exclusive right over the area (refer paragraph 6.22).
- 6.5 Where an exclusive prospecting permit is applied for, the first acceptable work programme offer method of allocation will be used for allocating prospecting permits. In brief, this provides for processing priority to be granted to the first application received,<sup>23</sup> subject to the application satisfying defined allocation criteria. This allocation method is considered the most appropriate for prospecting permits given they are typically sought over areas of land where:
- The level of knowledge of mineralisation is limited; or
  - A better understanding of the area could potentially be obtained through the use of new sampling or surveying technology; or
  - There is not substantial interest in exploration or mining in the area.

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<sup>23</sup> This is determined in accordance with the procedures set out in paragraph 5.2.3 to 5.2.23.

- 6.6 Where a non-exclusive prospecting permit is applied for, allocation will be on the basis of an acceptable work programme (and paragraphs 5.2.4 and 5.2.6 will apply for determining whether or not the application will be received).
- 6.7 Section 28 of the Crown Minerals Act 1991 provides that the Minister shall not grant a prospecting permit where he or she considers that the prospecting proposed is unlikely to materially add to the existing knowledge of the mineral (the definition of which includes coal), or there exists, at the time of the application, substantial interest in exploring for or mining the mineral in all or part of the land to which the application relates, unless he or she is satisfied that special circumstances apply. As noted, there have been substantial investigations undertaken in the past on the coal resources of New Zealand and accordingly it is expected that few prospecting permits for coal will be granted.

### ***APPLYING FOR A PROSPECTING PERMIT***

- 6.8 Prospecting permits can be applied for at any time. The information to be provided when making an application for a prospecting permit is prescribed in relevant regulations<sup>24</sup>. This includes that the applicant should detail the proposed minimum work programme which will be undertaken should the application be successful and give an indication of likely expenditure on prospecting operations, and that the applicant should explain the objectives of the proposed work programme having regard to the application area's geology, potential coal distribution and other factors considered relevant by the applicant. The objective of a prospecting permit should be either to obtain sufficient information to enable a decision to be made regarding ongoing exploration investment in the area or should be research oriented or should be to undertake investigative studies in order to determine an application in association with a cash bonus bidding tender.

### ***EVALUATION OF AN APPLICATION***

- 6.9 When it is determined that a prospecting permit application is in order for processing<sup>25</sup>, the application will be evaluated. This will be done in accordance with the policy framework outlined in chapter 2 and involves:
- (a) evaluating the work programme proposed and the appropriateness of the size and duration of the permit sought (refer paragraph 6.11);
  - (b) taking into consideration section 28 of the Crown Minerals Act 1991<sup>26</sup> (refer paragraphs 6.11 and 6.12); and
  - (c) taking into consideration any relevant issues raised by tangata whenua hapu and iwi concerning the application which must be given regard to (refer chapter 3 and paragraph 6.16).
- 6.10 The evaluation will take into account the information provided with the written application and any subsequent information provided by the applicant. The work programme proposed will be accepted by the Minister if the minimum work commitment has, as its purpose, the identification of land likely to contain exploitable coal deposits, will add materially to the knowledge about the coal within the area and is appropriate to the size and term of the permit sought.

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<sup>24</sup> Regulations shall be prescribed from time to time in accordance with section 105 of the Crown Minerals Act 1991.

<sup>25</sup> Refer paragraph 5.2.3 to 5.2.23. In most cases an application will have first priority.

<sup>26</sup> Section 28 provides that the Minister shall not grant a prospecting permit if the Minister considers that:

(a) The prospecting proposed in the application is unlikely to materially add to the existing knowledge of coal in all or part of the land to which the application relates; or

(b) There exists, at the time of the application, substantial interest in exploring for or mining coal in all or part of the land to which the application relates.

Unless the Minister is satisfied that special circumstances apply (such as in the case of a cash bonus bidding tender).

## ***WORK PROGRAMME ASSESSMENT***

- 6.11 In determining whether the applicant's proposed work programme has, as its purpose, the identification of land likely to contain exploitable coal deposits and whether it, will add materially to the existing knowledge about coal within the permit area and is appropriate to the size and term of the permit sought, the Minister will take into consideration, but not be limited to, the following matters:
- The geology of the area;
  - Any prospecting, exploration or mining previously carried out over all or part of the land. In reviewing previous mining operations (prospecting, exploration or mining), the Minister will take into account how long ago the activities were undertaken, the type and appropriateness of investigations undertaken and the methods and analytical techniques that were used;
  - The level of existing knowledge of the coal resources of the area;
  - The proposed prospecting activities. The Minister will be concerned to ensure that these are prospecting rather than exploration. Generally, prospecting activities are minimum impact activities;
  - The minimum level of expenditure indicated;
  - Whether the proposed prospecting activities will investigate the full extent of the proposed permit's area (refer also to paragraph 6.14); and
  - The time the applicant estimates is required to undertake the prospecting work proposed, and to process and analyse the results.

## ***ASSESSMENT OF OTHER INTEREST IN THE AREA***

- 6.12 In assessing whether or not to grant a prospecting permit, the Minister will consider the level of interest in exploring for or mining coal in the land or part of the land to which the prospecting permit application relates (section 28, Crown Minerals Act 1991). The Minister will take into consideration, but not be limited to, the following matters:
- Whether any applications for exploration and mining permits over a significant part of the application area are received subsequent to receiving the prospecting permit application but prior to any decision regarding the grant of the prospecting permit;
  - Former permits or privileges held over the area, how long ago these were held and, if known, why the permits or privileges had been surrendered or not renewed or otherwise continued with; and
  - Privileges or permits in adjacent areas.

## ***PERMIT AREA***

- 6.13 There is no minimum or maximum limit on the land area of a prospecting permit. The appropriate area is that which is reasonably adequate to enable the activities authorised by the permit to be carried out.
- 6.14 The Minister will not usually agree to a prospecting permit application over a non-contiguous area. If a permit is desired over a non-contiguous area, the reasons why this is considered necessary should be clearly outlined. The Minister will need to be satisfied that a single work programme applicable to the non-contiguous area is appropriate.

## ***DURATION OF PERMIT***

- 6.15 The Minister may grant a prospecting permit for a term of up to two years. In determining the duration of a permit, matters that the Minister shall take into account include, but are not limited to, the following:
- The minimum period of time necessary to complete the work programme;
  - Whether a competitive tender is to be made over all or part of the area of land to which the permit relates; and
  - The number of years the permit is required for, as stated by the applicant in the application.

## ***TANGATA WHENUA CONSULTATION***

- 6.16 For other than non-exclusive prospecting permit applications made in association with a cash bonus bidding tender, the Secretary will advise tangata whenua hapu and iwi of the application and commence consultation as set out in chapter 3 of this Minerals Programme. Where tangata whenua hapu and iwi raise issues or make requests affecting an application, for example, a request for land to be excluded from an application, then the concerns expressed and the requests made will be fully considered by the Minister. If upheld, these may affect the overall effectiveness of an application and be relevant to deciding whether or not to grant the application (refer in particular to paragraph 3.15).

## ***FURTHER INFORMATION AND AMENDMENTS TO THE APPLICATION***

- 6.17 The Minister will at times be open to the presentation of further information from the applicant relating to the application. Where the meaning of an application is unclear, the applicant will be asked by the Secretary to clarify it and, if appropriate, to provide further information or a technical presentation. Where the work programme is not acceptable but it is considered that non-substantial amendments would make the work programme acceptable, then the applicant may be approached by the Secretary to consider submitting a modified proposed work programme. Where the Minister does not consider that the area of a permit application is fully justified or the Minister has other concerns with the permit application's area, the Minister will advise the applicant of the concerns held and the grounds for these. If appropriate, the Minister may ask the applicant to consider submitting an amendment to the application area to make the application acceptable. The Minister may also ask an applicant to consider submitting an amendment to the area of an application to address matters arising from consultation with Maori.
- 6.18 Prior to the completion of the evaluation of an application, the applicant may request to amend the area of land of an application, or the applicant details. Requests for amendments must be agreed to by the Secretary to be effective. Where the application covers an increased area of land, the priority of an application over the extra land will have to be determined. Where the requested amendment is considered by the Secretary to substantially alter the nature and intent of the application such that the application would be, in effect, a substitute or new application, then the Secretary may decline to agree to the amended application and thus the application as originally submitted will be considered.
- 6.19 If the Secretary has concerns with an application amendment request, the applicant will be advised of these and given the opportunity as appropriate either to comment on the matter or to explain matters in more detail, or to modify the proposed amendment. It is emphasised that an applicant will not be given the opportunity to so change the application that it is in effect a

substitute or new application, unless the Secretary determines that to do so would promote the efficient allocation of rights to Crown owned minerals.

### ***GIVING EFFECT TO THE PERMIT***

- 6.20 Where it is determined that an application for a prospecting permit is technically acceptable, the Minister must also be satisfied that the applicant will comply with the conditions of, and give proper effect to, the permit (section 27, Crown Minerals Act 1991). In this respect, matters that the Minister will take into consideration as relevant include, but are not limited to, the following:
- (a) The applicant's financial ability to carry out the proposed prospecting work programme and to pay the prescribed fees;
  - (b) The applicant's technical ability to carry out the proposed prospecting work which may include the proposed use of technical experts; and
  - (c) Other prospecting, exploration or mining activities, both in New Zealand and internationally, that the applicant (or any related company) has been involved with, to the extent that these activities reflect on the applicant's ability to comply with the conditions of the proposed permit and pay the prescribed fees.

If the Minister is aware of any factors which could contribute to the view that the applicant may not give proper effect to the permit, the Minister shall raise with the applicant the concerns held and advise the applicant of the factor(s) that are considered to be relevant to the grant of the permit. Examples of concerns that the Minister may have include:

- the applicant (or any related company) has not complied with work programme conditions or the conditions of consents associated with previously held permits or privileges; and
- the applicant has not met requirements to lodge data or pay fees and other monies owed to the Crown associated with previously held permits or privileges.

- 6.21 In determining an application for a prospecting permit the Minister will also take into account any international obligations contingent on the government, if relevant to the particular application in question.

### ***EXCLUSIVE AND NON-EXCLUSIVE PERMITS***

- 6.22 The Minister may grant both exclusive and non-exclusive prospecting permits. It is anticipated that prospecting permit applications will mostly be for exclusive rights and therefore likely to be granted with exclusive rights; that is, the permit will give the permit holder the exclusive right to prospect for coal in the area of land to which it relates. The Minister may, however, determine that non-exclusive permits will be granted where:
- (a) An area is notified for allocation by competitive tender and, prior to the close of the tender, the Minister considers it is appropriate to provide for pre-bid minimum impact prospecting so interested parties may better formulate a bid; or
  - (b) A prospecting permit is sought to allow speculative surveys or investigations of an area's coal distribution and the applicant would not be disadvantaged materially if the permit was granted on a non-exclusive basis. (This may give some advantages to the holder also in respect of data lodgement in accordance with section 90(7) of the Crown Minerals Act 1991).

### ***RIGHT TO SUBSEQUENT EXPLORATION PERMIT(S)***

- 6.23 The Crown Minerals Act 1991 provides for prospecting permit holders to have subsequent rights to exploration permits in accordance with section 32 of the Act, unless it is specified otherwise in the conditions of the prospecting permit. Where the objective of a prospecting permit is to determine the merit and potential of an area of land for future coal exploration (except where a non-exclusive permit is proposed, prior to a cash bonus bidding tender), the Minister will provide for the permit holder to have a right to a subsequent exploration permit(s). To be able to exercise this right, the permit holder must satisfy the Minister that the results of prospecting operations justify the granting of one or more exploration permits within the prospecting permit boundaries.
- 6.24 Where the Minister determines that non-exclusive prospecting permits will be granted, the grant of such permits will also be made on the basis that the permit holder has no right to a subsequent exploration permit. The Minister may also determine that where the objective of a prospecting permit is to undertake speculative surveys where the results are intended for sale to industry, the permit may be granted with the permit holder having the exclusive right to prospect but without the right to a subsequent exploration permit.

### ***DECISION CONCERNING PERMIT GRANT***

- 6.25 Where an application for a prospecting permit has been received by the Secretary and it is in order to be processed, a prospecting permit will be granted by the Minister where:
- The application is first in priority;
  - The land in respect of which the application is made is available for permitting;
  - The minerals in respect of which the application is made are available for permitting;
  - There is an acceptable work programme which is appropriate to the size and duration of the permit sought;
  - The grant of the permit is in accordance with sections 27 and 28 of the Crown Minerals Act 1991; and
  - The Minister is satisfied that having had due regard to the principles of the Treaty of Waitangi (refer chapter 3) and any relevant international obligations that the grant of a permit is not inconsistent with such principles or obligations.

The applicant will be advised in writing of the outcome of the application. Where a prospecting permit is to be granted it will be subject to conditions. Permit applicants will have been consulted about the likely conditions, prior to the Minister making a decision to grant or decline the application.

- 6.26 Processing of an application which has first priority should usually be completed within three months of the effective date of receipt of the application. Applicants will be advised if processing will take longer than this.

### ***GROUND(S) FOR DECLINE OF APPLICATION***

- 6.27 Processing of an application which has first priority should usually be completed within three months of the effective date of receipt of the application. Applicants will be advised if processing will take longer than this.

- 6.28 An application may be declined by the Minister when, after due consideration of all the relevant factors, the Minister considers that the applicant has failed to fulfil one or more of the requirements precedent to the granting of a permit. This includes where the Minister and applicant have been unable to determine a mutually agreeable work programme and conditions, land area or duration for the permit. It also includes where the Minister considers that the applicant would not comply with the conditions of, and give proper effect to, any permit granted (in accordance with section 27 of the Crown Minerals Act 1991). The Minister may also decline an application if the applicant does not formally accept the grant of the permit or lodge any required monetary deposit or bond within the time specified. As well, an application may be declined having regard to the Government's international obligations, if they are relevant to the particular permit in question.<sup>27</sup>

### ***CONDITIONS OF PROSPECTING PERMITS***

- 6.29 Generally, prospecting permits will be granted with a general condition that the permit holder will make all efforts to prospect and will carry out as a minimum the programme of work as set out in the permit related to the objective of the permit. The objective may be to obtain sufficient information to enable a decision to be made regarding ongoing exploration investment, or may be to undertake some specified reconnaissance studies or may be to enable the better determination of a bid in relation to a cash bonus bidding tender. There may be a condition requiring the permit holder to spend a minimum amount of money on prospecting activities.<sup>28</sup>
- 6.30 The permit will specify whether the permit holder does or does not have exclusive rights over the permit area. It will also specify whether or not the permit holder has subsequent permit rights and any restrictions on those rights.
- 6.31 There will be a permit condition requiring the payment of prescribed fees. As well, the Minister may grant a prospecting permit on the condition that the permit holder provides, to the Secretary, periodic reports detailing the progress and the results of the prospecting work undertaken under the permit.
- 6.32 All prospecting permit holders are also required to comply with the Crown Minerals Act 1991 and the relevant regulations. This includes the payment of annual fees and the lodgement of data in accordance with section 90 of the Act and the specific requirements of regulations. A coal prospecting permit holder has the right to prospect (as defined in section 2 of the Crown Minerals Act 1991) for coal, in the land, and on the conditions stated in the permit (refer section 30, Crown Minerals Act 1991).

### ***GRANT OF PROSPECTING PERMIT***

- 6.33 Where the Minister has decided to grant a prospecting permit, the grant of the permit will be subject to the acceptance of the proposed permit conditions by the applicant and may also be subject to the lodging of a monetary deposit or bond with the Secretary within a defined timeframe (section 27(2), Crown Minerals Act 1991). Generally, a period of one month will be given. If the applicant does not accept the conditions of grant or does not lodge any required monetary deposit or bond within the defined timeframe, the decision to grant the permit lapses and the Minister will decline the permit application accordingly. This period of time can be extended, upon written application, if the Secretary considers that there are good reasons for doing so.

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<sup>27</sup> *It should be noted that this will not affect any subsequent mining permit right.*

<sup>28</sup> *Where there is a condition requiring a minimum amount of money to be spent on prospecting activities, this shall not include expenditure on obtaining necessary consents and agreements, legal fees, the purchase of plant and equipment, office and administrative expenses, nor the amount of any annual fees, bonds or levies related to the permit.*

### ***COMMENCEMENT DATE OF PERMIT***

- 6.34 The commencement date of a prospecting permit is specified by the Minister in the permit. In most cases this shall be the date that the Minister signs the grant of permit (which occurs after the receipt of any required monetary deposit or bond). Prior to the grant of the permit, the applicant may request a particular commencement date, which will be considered by the Minister if there are reasonable grounds. For example, a commencement date may be requested that post-dates the Minister's signing of the permit documents if the land over which the permit is sought is physically inaccessible for certain winter months. When a permit is granted, section 35(2) of the Crown Minerals Act 1991 allows the Minister to consent to a deferral or amendment of the commencement date of the granted permit if the permit holder has been prevented from commencing activities under the permit by delays in obtaining consents under the Crown Minerals Act 1991 or any other Act. The permit holder must ensure that such delays have not been caused, or contributed to, by the default of the permit holder.

### ***COPIES OF PERMIT HELD***

- 6.35 A true copy of every granted prospecting permit is held as follows:
- (a) By the District Land Registrar who, in accordance with section 81 of the Crown Minerals Act 1991, on the grant of a prospecting permit, receives a copy from the Secretary and is required to formally receive and record the permit;
  - (b) By the Secretary;
  - (c) By the permit holder; and
  - (d) By the Chief Surveyor, if the permit was granted in respect of unalienated Crown land, or by the Registrar of the Maori Land Court, if the permit was granted in respect of Maori land.

### ***ADVICE TO OTHER PARTIES OF THE GRANT OF PERMIT***

- 6.36 Following the grant of the prospecting permit, the Secretary may advise the following parties of the grant of the permit:
- (a) Land Information New Zealand (formerly the Department of Survey and Land Information), in order to update the National Mining Index.
  - (b) The relevant occupational health and safety inspector, for example, the Inspector of Coal Mines.
  - (c) The relevant local authorities with jurisdiction over the area of land to which the permit relates.

### ***6.37 OTHER CONSENTS NECESSARY***

The grant of a permit gives to the permit holder the right, as outlined in sections 30, 31 and 32 of the Crown Minerals Act 1991, to prospect and to have that right exclusively unless the permit conditions expressly provide otherwise. However, to carry out permit activities and give proper effect to the permit, other consents complementing the permit granted under the Crown Minerals Act 1991 are likely to be needed. The permit holder will have to undertake prospecting in accordance with the provisions of the Resource Management Act 1991 and the Health and Safety in Employment Act 1992, and any regulations made in accordance with these Acts and comply with the conditions of any such consents. Before undertaking any prospecting work requiring land access, a permit holder must also obtain necessary land access arrangements or give appropriate notice where minimum impact activities are to be undertaken and a land access arrangement is not needed.

# 7 ALLOCATION OF EXPLORATION PERMITS

## INTRODUCTION

- 7.1 Exploration permits are granted to enable a person or company to undertake exploration (and prospecting) work for the purpose of identifying coal deposits and evaluating the feasibility of mining particular deposits. Work which may be undertaken under an exploration permit range from minimum impact activities such as mapping projects and taking samples by hand to bulk sampling, drilling, dredging, shaft and tunnel excavations and other studies that are reasonably necessary to determine the nature and size of a coal deposit.
- 7.2 In accordance with section 25(1A) of the Crown Minerals Act 1991, an exploration permit may be granted only in respect of Crown owned coal and not in respect of coal that is privately owned.
- 7.3 Exploration permits may be granted to include other mineral(s) where the other mineral(s) can be explored for at the same time that exploration is undertaken in respect of the coal and there is considerable merit in investigating the feasibility of mining both in one project. Examples of other minerals that could be explored for at the same time as coal include gold and gravel and coal and petroleum (methane gas).<sup>29</sup>
- 7.4 Allocation of coal exploration permits may occur as a result of applications received and evaluated on the basis of either:
- (a) **First acceptable work programme offer**; or
  - (b) A **subsequent permit application** made by the holder of a prospecting permit; or
  - (c) An application received and evaluated in accordance with a **cash bonus bidding** tender.
- 7.5 First acceptable work programme offer applications may be made at any time. Applications will be received and considered in accordance with the procedures outlined in paragraphs 5.2.1 to 5.2.23 and 7.11 to 7.43. It is expected that most exploration permit applications will be made on this basis.
- 7.6 Subsequent exploration permit applications may be made by a prospecting permit holder in accordance with section 32 of the Crown Minerals Act 1991, unless the conditions of the prospecting permit preclude otherwise (refer paragraph 6.23). This allocation method is discussed further in paragraphs 7.11 to 7.43. Due to the high level of knowledge of New Zealand's coal resources, few prospecting permits are likely to be granted and it is expected that few subsequent exploration permit applications will be received.
- 7.7 Cash bonus bidding allocation will be used where it is determined that an area is highly prospective (including that there is good information available about the coal potential of the area) and that there is competitive interest for permits over the area. The procedures for this allocation method are outlined further in paragraphs 7.44 and 5.3.1 to 5.3.21. This allocation method is expected to be used rarely.
- 7.8 In most circumstances, exploration permits will be granted as exclusive exploration permits. An exception to this is where an exploration permit is granted over land that is already covered by an existing licence or permit and the holder of that licence or permit has given written consent that a new permit may be granted over all or part of the licence or permit area (in terms of sections 30(8) or 119 of the Crown Minerals Act 1991). Where an existing licence or permit holder gives consent to a new permit being granted over all or part of the existing licence or

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<sup>29</sup> *Where there is an application for an exploration permit over minerals covered by this Minerals Programme and also another minerals programme, then the policies, procedures and provisions of both of the minerals programmes will apply to the evaluation of the application.*

permit, permit conditions and/or an agreement between the existing licence or permit holder and the new permit applicant will be necessary which define each parties rights to apply for a subsequent mining permit. Consent agreements may require the Minister's approval pursuant to section 41 of the Crown Minerals Act. Another situation where an exploration permit will be granted on a non-exclusive basis is where all or part of the proposed permit is over land also covered by a non-exclusive small scale suction dredge gold mining permit granted in accordance with the Minerals Programme for Minerals other than Coal and Petroleum.

- 7.9 An exploration permit may be granted for an initial duration of up to five years (section 35(1) Crown Minerals Act 1991). Permit duration is determined by the Minister and depends on the nature of the proposed exploration activities. The criteria used to determine an exploration permit's duration are discussed in paragraph 7.29. An extension of duration of an exploration permit may be granted subject to sections 36, 37 and 38 of the Crown Minerals Act 1991. Section 36 provides that the duration of an exploration permit shall not be changed to be more than ten years from its commencement date. Section 37 requires that a minimum of one half of the area of the permit shall be relinquished at the time of extending the duration.<sup>30</sup> Section 38 provides for the Minister to decline an extension of duration if the permit holder has not substantially complied with the conditions of the permit up to the stage of applying for an extension. (For more details refer to paragraphs 10.28 to 10.34). Section 37(2) of the Crown Minerals Act 1991 also provides for a further extension of duration to complete detailed appraisal work. (For more details, refer to paragraphs 10.35 to 10.46).

### ***APPLYING FOR AN EXPLORATION PERMIT***

- 7.10 The information to be provided when making an exploration permit application is prescribed in relevant regulations.<sup>31</sup>

### ***ALLOCATION BY FIRST ACCEPTABLE WORK PROGRAMME OFFER AND SUBSEQUENT EXPLORATION PERMIT APPLICATION***

- 7.11 With either a first acceptable work programme offer application or a subsequent exploration permit application, the emphasis of the application should be on the proposed work programme, which should detail the minimum work that is proposed to be undertaken and should clearly define the stages proposed to complete the work and ongoing work commitment options. Desirably, the applicant will provide an explanation or commentary discussing the reasons why the permit is sought and the objectives of the proposed work having regard to the application area's geology, coal distribution potential, coal exploration and mining history and other factors considered relevant by the applicant. The objective of the exploration permit should be to achieve comprehensive exploration over the full extent of the permit area in a timely manner with the purpose of identifying and/or appraising a mineable coal reserve to a point where development of a coal mine can commence. If requested by the applicant, the opportunity to support the application with a technical presentation will be provided.
- 7.12 When it is determined that the exploration permit application is in order for processing<sup>32</sup> the application will be evaluated. This will be done in accordance with the policy framework as outlined in chapter 2 and involves:
- (a) Evaluating the work programme proposed, and the appropriateness of the size and duration of the permit sought (refer paragraphs 7.13 to 7.29);

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<sup>30</sup> *In circumstances where a discovery has been made which extends over more than half of the area, then the provisions of section 37(2) of the Act allow for an extension of permit duration over an area greater than 50 percent.*

<sup>31</sup> *Regulations shall be prescribed from time to time in accordance with section 105 of the Crown Minerals Act 1991.*

<sup>32</sup> *Refer paragraphs 5.1.6 and 5.2.3 to 5.2.23. In most cases an application will have first priority.*

- (b) Where a subsequent exploration permit application is made, considering the results of prospecting and whether these justify the granting of a coal exploration permit in respect of the land which is the subject of the application (section 32(1) of the Crown Minerals Act 1991); and
- (c) Taking into consideration any relevant issues raised by tangata whenua hapu and iwi concerning the application which must be given regard to (refer chapter 3 and paragraph 7.30).

### ***THE WORK PROGRAMME***

7.13 For a coal exploration permit application to be granted, there must be an acceptable minimum work programme. For subsequent exploration permit applications, the work programme will be approved by the Minister in accordance with section 43(1) of the Crown Minerals Act 1991. The work programme proposed will be accepted or approved by the Minister if the minimum work commitment and technical approach have the objective of identifying the coal resource potential of the proposed permit area and/or identifying coal deposits and/or evaluating the feasibility of mining any particular coal deposits identified, in a timely manner. In determining this, the Minister will take into account, but not be limited to, the following matters as considered relevant:

- The geology of the permit application area;
- The technical approach to be taken to exploring the permit application area and the stated objectives of the work programme;
- The information gathering potential of the proposed work programme;
- Whether or not the proposed work programme provides for exploration over the full extent of the proposed permit area;
- The time the applicant estimates is required to undertake both the committed and conditional exploration work proposed and to process and analyse the results;
- Past coal prospecting, exploration and/or mining activities over the permit application area, or which may be relevant to the application area, and the level of knowledge of the coal resources of the area;
- Whether the proposed exploration will enable a decision to be made on the development of a particular deposit at the expiry of the permit;
- Any sampling techniques proposed to be used and whether the proposed level of sampling is justified from an exploration perspective;
- The minimum level of expenditure indicated for each stage of the proposed work programme;
- For exploration permit applications which have, as an objective appraisal of an identified coal deposit, the indicated nature, extent and physical characteristics of the coal deposit, and the technical approach to better defining these matters; and
- Whether the proposed exploration operations are in accordance with good exploration practice.

7.14 It is expected that most coal exploration permit applications will be received over areas where there has previously been significant exploration and even mining, and the exploration permit is being sought for the purposes of intensive mine feasibility studies. It is possible, however, that exploration permit applications will be received for areas where there is less knowledge of the coal reserves and the exploration permit is being sought to identify new coal deposits or to appraise a coal deposit on which there is little information.

- 7.15 The work programme should clearly specify the objectives to be achieved during the permit term and the review or decision points in the programme which will lead to either the continuation of exploration or appraisal or the surrender of the permit (or an amendment to the work programme, refer chapter 10). Where the work programme depends on results from investigations, scenarios should be developed to outline the likely course of exploration. For example, the initial drilling programme may be to confirm the seam correlation which, if different from the model assumed at the time of application, may result in substantially more drilling and a different exploration strategy. Such possibilities should be indicated in the work programme.
- 7.16 The technical evaluation of an exploration permit application's work programme will be undertaken with particular reference to whether its objective is appropriate to the existing knowledge of the geology and coal deposits of the application area. Where there has been considerable previous coal exploration and/or mining, the work programme will be reviewed in terms of its timeliness in advancing a project to the point where development of a coal mine can commence if the exploration and appraisal results justify this. Where there has been little or no exploration in recent years in the application area, the work programme will be reviewed in terms of its information gathering potential.
- 7.17 In assessing the technical approach and work programme, the Minister will also take into account the proposed level of expenditure. The indicative minimum levels of expenditure provide a guide to the scale and extent of operations proposed. In particular, this can provide an indication of the amount of drilling or bulk sampling proposed when the work programme commitment is described as "a programme of drilling and/or bulk sampling as considered necessary."
- 7.18 Where a proposed exploration permit includes sampling, the Minister will have regard to its extent. Any provision under an exploration permit providing for sampling as part of the appraisal of a coal deposit does not entitle the permit holder to mine instead of obtaining a mining permit. To prevent this, the Minister may impose a maximum bulk sampling limit.
- 7.19 Where an exploration permit is being sought to identify new coal deposits or to appraise a coal deposit on which there is little information, generally a work programme would include a drilling programme commitment which will enable the explorer to determine whether there is a coal discovery which is worthy of further investigation for mining feasibility.
- 7.20 As a general principle, the Minister will require the work programme to provide for exploration over the full extent of the proposed permit, unless there are reasonable grounds why this is impractical. This situation may arise where the physical characteristics of a proposed permit's area prevent the permit holder from exploring over some parts (refer also to paragraphs 7.25 to 7.27).
- 7.21 It is emphasised that the Minister will grant an exploration permit only when satisfied that the permit application has an acceptable work programme. It should be noted that the Minister is not obliged to grant any application.

### ***APPROVAL OF WORK PROGRAMME FOR SUBSEQUENT EXPLORATION PERMIT***

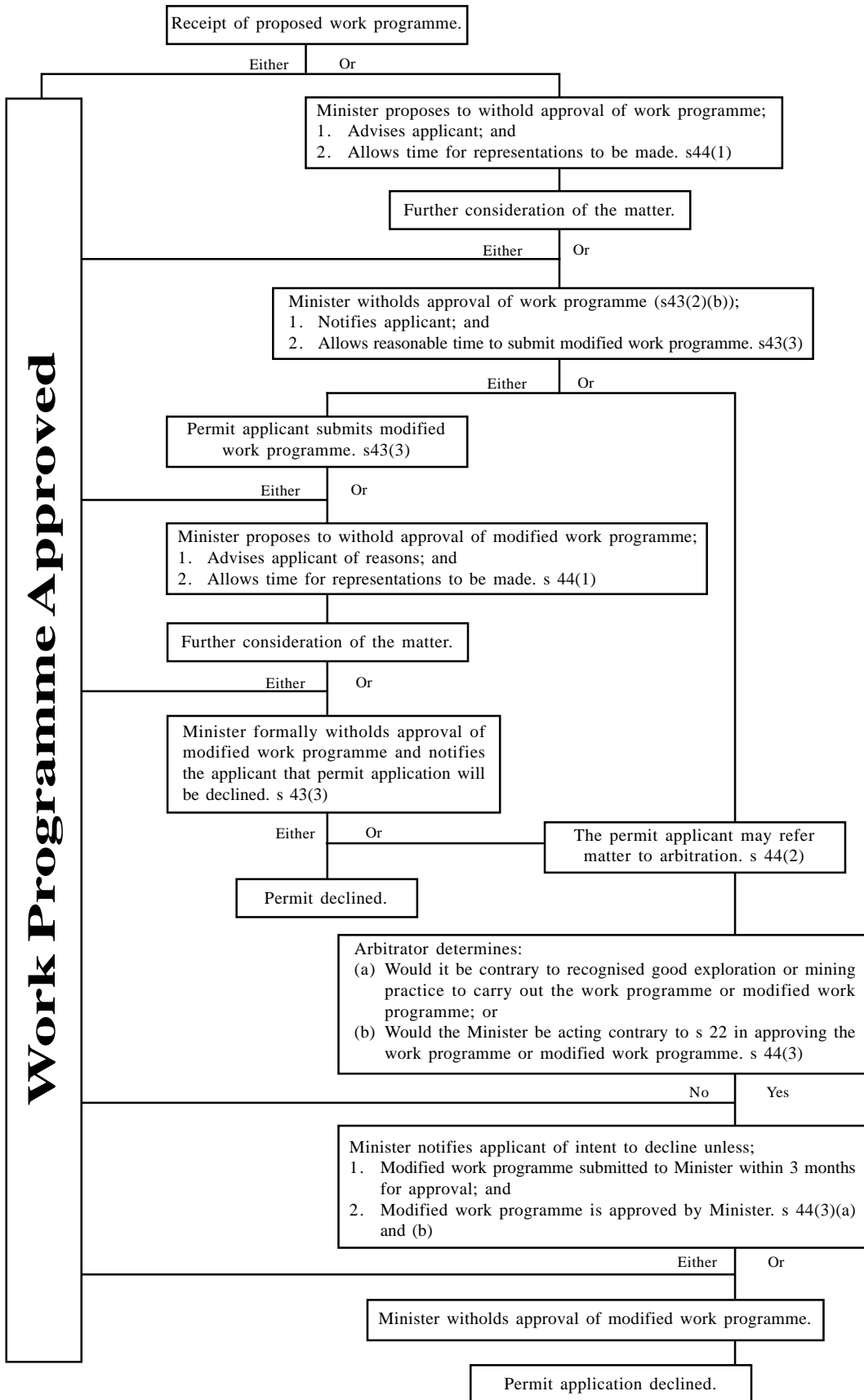
- 7.22 Section 43(1) of the Crown Minerals Act 1991 requires that, for a subsequent exploration permit to be granted, the Minister must approve the work programme for the permit (or agree to be satisfied that a work programme for the permit is not required to be approved). If, after taking into account any of the evaluation criteria outlined in paragraphs 7.13 to 7.21, the Minister is not satisfied that the proposed work programme submitted for approval has the objective of identifying and/or appraising the coal resource potential of the proposed permit area and/or identifying coal deposits and/or evaluating the feasibility of mining any particular coal deposits, in a timely manner, or is not in accordance with good exploration or mining practice, then the Minister, in accordance with section 44(1) of the Crown Minerals Act 1991, will advise the applicant of the reasons for this and of the proposed withholding of approval. The applicant will be given a reasonable opportunity to make

representations to the Minister regarding the proposed work programme. The Minister will consider any representations made by the applicant in determining whether to approve or withhold approval of the proposed work programme. The applicant will be advised of the Minister's decision.

- 7.23 Where the Minister withholds approval, in accordance with section 43(3) of the Crown Minerals Act 1991, the applicant is entitled to submit a modified work programme, within a reasonable period. The Minister must then, within a further six months, consider whether to approve or withhold approval of any modified work programme that is submitted. Evaluation of a modified work programme will be carried out in accordance with paragraphs 7.11 to 7.21. If the Minister proposes to withhold approval of a modified work programme, as set out in section 44(1) of the Crown Minerals Act 1991, the Minister must advise the applicant of the proposed withholding of approval and give the applicant a reasonable opportunity to make representations on the matter. The Minister will consider any representations made by the applicant in determining whether to withhold approval of a modified work programme. The applicant will be advised of the Minister's decision.
- 7.24 Should the Minister decide to withhold approval of the proposed work programme or modified work programme, the applicant may refer the matter to arbitration (sections 44(2) and 99 of the Crown Minerals Act 1991). Under section 99 of the Act, the Minister is required to follow the decision of the arbitrator. If the arbitrator decides that a proposed work programme or modified work programme should be approved, the Minister shall approve that work programme. If the arbitrator decides that approval of a proposed work programme or modified work programme should be withheld, the Minister shall give the applicant notice that the Minister intends to decline the application for an exploration permit; and that the applicant may submit a modified work programme to the Minister within three months after the date of notice or such longer period as the Minister determines. Where the applicant submits a modified work programme, the Minister shall either approve the modified work programme or withhold approval of that programme if the Minister considers the modified work programme is contrary to recognised good exploration or mining practice; or is not acceptable in accordance with paragraphs 7.13 to 7.21. If the applicant does not submit a modified work programme or the Minister withholds approval of the modified work programme, the Minister shall decline the application. The process described in this paragraph and paragraphs 7.22 and 7.23 is outlined in figure 3.

### ***PERMIT AREA***

- 7.25 There is no minimum or maximum limit on the size of the land area of an exploration permit. The appropriate area of an exploration permit is that which is reasonably adequate to enable the activities authorised by the permit to be carried out. An exploration permit with the objective of appraising a coal deposit and assessing its mine feasibility will be granted over the known extent of the potential coal deposit and adjacent land as considered necessary for future mining of the deposit. For the purpose of this Minerals Programme, a coal deposit is defined as an area that might be worked by a single mine which may be all or part of a coalfield, all or part of a sector of a coalfield, which can be specified in terms of geological structure and/or extent of coal deposition and the feasibility of mining the deposit.
- 7.26 In general, an exploration permit will be granted over an unbroken or discrete area. Where the exploration permit is in respect of an area containing private and Crown owned coal, the permit may be granted over an unbroken total area, but granted to exclude private minerals. An application may cover several discrete coal deposits where the objective is to appraise whether the deposits can be effectively mined as a single development.
- 7.27 The permit area and work programme are complementary and, as noted, a consideration in work programme evaluation is the proposed permit size and the requirement that the permit applicant intends to explore over the full extent of the proposed permit. If the work programme is



**Figure 3: Procedure for approval of work programme for subsequent permit applications**

considered insufficient for the area applied for, either an enhanced work programme may be sought or a reduction in the application area.

- 7.28 In considering the area of a subsequent exploration permit application, the Minister will have regard to the matters outlined in paragraphs 7.25 to 7.27 and also will be satisfied that the results of the prospecting activities, conducted under the prospecting permit, justify the granting of an exploration permit over the full extent of the area applied for.

### ***DURATION OF EXPLORATION PERMIT***

- 7.29 Section 35(1) of the Crown Minerals Act 1991 provides that the Minister may grant an exploration permit for an initial duration of **up to** five years. In determining the duration of an exploration permit, the Minister will take into account, but is not limited to, the following:

- The number of years requested by the permit applicant;
- The expected time needed to complete the work programme, including time needed to obtain land access and resource use consents (under the Resource Management Act 1991).

The permit applicant will indicate the duration sought in the permit application. In accordance with the policy framework outlined in chapter 2, the Minister will seek to ensure that the applicant intends to explore the permit area within a reasonable timeframe.

### ***TANGATA WHENUA CONSULTATION***

- 7.30 Chapter 3 outlines procedures the Minister will follow to consult with tangata whenua hapu and iwi concerning permit applications<sup>33</sup>. Where tangata whenua hapu and iwi raise issues or make requests affecting an application, for example, for land to be excluded from an application, then the issues raised and the requests made will be fully considered by the Minister. If upheld, these may affect the overall effectiveness of an application and be relevant to deciding whether or not to grant the application, (refer in particular to paragraph 3.16).

### ***FURTHER INFORMATION AND AMENDING APPLICATIONS***

- 7.31 The Minister will, at all times, be open to the presentation of further information from the applicant relating to the application. Where the meaning of an application is unclear, the applicant will be asked to clarify meaning and, if appropriate, to provide further information or a technical presentation.
- 7.32 For first acceptable work programme applications where the work programme is not acceptable but it is considered that non-substantial amendments would make the work programme acceptable, then the applicant may be approached by the Secretary to consider submitting a modified proposed work programme. Where the Minister does not believe that the area of a permit application is fully justified or the Minister has other concerns with the permit application's area, the Minister will advise the applicant of the concerns held and the grounds for these. If appropriate, the Minister may ask the applicant to consider submitting an amendment to the application area to make the application acceptable. For subsequent exploration permit applications, as noted in paragraphs 7.22 to 7.24, sections 43 and 44 of the Crown Minerals Act

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<sup>33</sup> *Where a subsequent exploration permit application is received, there would have previously been consultation with tangata whenua hapu and iwi prior to the grant of the initial prospecting permit.*

1991 set out the process the Minister shall follow if requesting modifications to a work programme. The Minister may also ask an applicant to consider submitting an amendment to the area of a permit application to address matters arising from consultation with Maori.

- 7.33 Prior to the completion of the evaluation of an application, the applicant may request to amend the area of land of an application, the minerals to which an application relates, the proposed work programme or the applicant details. Requests for amendments must be agreed by the Secretary. Where the application covers an increased area of land, the priority of the application over the extra land will have to be determined. For a first acceptable work programme offer application, where the requested amendment is considered by the Secretary to substantially alter the nature and intent of the application such that the application would be, in effect, a substitute or new application, then the Secretary may decline to agree to the amended application and thus the application as originally submitted will be considered.
- 7.34 If the Secretary has concerns with an application amendment request, the applicant will be advised of these and given the opportunity, as appropriate, either to comment on the matter or to explain matters in more detail, or to modify the proposed amendment. It is emphasised that an applicant will not be given the opportunity to so change the application that it is in effect a substitute or new application, unless the Secretary determines that to do so would promote the efficient allocation of rights to Crown owned minerals.

### ***GIVING EFFECT TO PERMIT***

- 7.35 Where it is determined that an application for an exploration permit is technically acceptable, the Minister must also be satisfied that the applicant will comply with the conditions of, and give proper effect to, the permit (section 27, Crown Minerals Act 1991). In this respect, matters that the Minister will take into consideration as relevant include, but are not limited to, the following:
- The applicant's financial ability to carry out the proposed work programme and to pay the prescribed fees;
  - The applicant's technical ability to carry out the proposed work which may include the proposed use of technical experts;
  - Any evidence that the applicant will not obtain land access to all or part of the area of the permit or resource consents to the extent that proper effect would not be able to be given to any permit granted; and
  - Other prospecting, exploration or mining activities, both in New Zealand and internationally, that the applicant (or any related company) has been involved with, to the extent that these activities reflect on the applicant's ability to comply with the conditions of the proposed permit and any work reporting requirements and to pay the prescribed fees.

If the Minister is aware of any factors which could contribute to the view that the applicant may not give proper effect to the permit, the Minister will raise with the applicant the concerns held and advise the applicant of the factor(s) that are considered to be relevant to the grant of the permit. Examples of concerns that the Minister may have include:

- The applicant (or any related company) may have held an exploration or mining right previously and not complied with work programme conditions or the conditions of associated consents;
- The applicant has not met requirements to lodge data or pay fees and other monies owed to the Crown associated with previously held permits or privileges.

Before deciding on the matter, the Minister will consider any comments that the applicant has to make.

- 7.36 In determining an application for an exploration permit, the Minister will also take into account any international obligations contingent on the government, if relevant to the particular application in question.<sup>34</sup>

### ***DECISION CONCERNING PERMIT GRANT***

- 7.37 Where the application is in accordance with first acceptable work programme offer allocation, the Minister will either grant the permit on the basis of the original or the amended application or decline the application. Where the application is a subsequent exploration permit application and the grant of a permit would not be contrary to sections 22 and 27 of the Crown Minerals Act 1991, the Minister will:
- (a) Approve the proposed work programme (or modified work programme) and grant the permit (on the basis of the original or an amended application); or
  - (b) Withhold approval of the proposed work programme and request the applicant to submit a modified work programme (paragraphs 7.22 to 7.24 and section 43, Crown Minerals Act 1991); or
  - (c) Withhold approval of the modified work programme and decline the permit application.
- 7.38 Processing of an application will usually be completed within six months of the date of receipt of the application. Applicants will be advised if processing will take longer than this. For example, this may occur where there is a subsequent permit application and the Minister withholds approval of the work programme and then the applicant chooses to prepare and submit a modified work programme. Section 43 of the Crown Minerals Act 1991 prescribes the statutory time limits for the processing of modified work programme approvals in such cases.
- 7.39 Following the determination of the Minister to either grant or decline the permit application, the applicant will be advised in writing of the outcome of the decision. Where an exploration permit is to be granted, it will be subject to conditions and there may be a requirement to lodge a monetary deposit or bond (refer chapter 9.1).

### ***GROUNDS FOR DECLINE OF APPLICATION***

- 7.40 An application may be declined by the Minister when, after due consideration of all the relevant factors, the Minister considers that the applicant has failed to fulfil one or more of the requirements precedent to the granting of a permit. This includes where the Minister and applicant have been unable to determine a mutually agreeable work programme and conditions, land area or duration for the permit. It also includes where the Minister considers that the applicant would not comply with the conditions of, and give proper effect to, any permit granted (in accordance with section 27 of the Crown Minerals Act 1991). The Minister may also decline an application if the applicant does not formally accept the grant of the permit or lodge any required monetary deposit or bond. As well, an application may be declined having regard to the Government's international obligations, if they are relevant to the particular permit in question.<sup>35</sup>

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<sup>34</sup> *It should be noted that this will not affect any subsequent exploration permit rights.*

<sup>35</sup> *It should be noted that this will not affect any subsequent mining permit right.*

## **CONDITIONS OF EXPLORATION PERMITS**

- 7.41 Where a coal exploration permit is allocated either as a result of a first acceptable work programme offer application or of a subsequent exploration permit application, the permit will be granted with conditions set by the Minister in accordance with section 25(1) of the Crown Minerals Act 1991 as follows:
- (a) A general condition to the effect that the permit holder will make all reasonable efforts to explore the permit's area and appraise any coal deposit identified, in accordance with good exploration practice, in order to identify and delineate the coal resource potential of the permit area and to evaluate whether or not there is a mineable coal reserve;
  - (b) A condition that the permit holder shall make all reasonable efforts to undertake a defined minimum programme of work (the approved work programme). This programme of work, if appropriate, may specify stages, with obligations having to be met by defined times; and
  - (c) A condition requiring the permit holder to pay all prescribed fees.
- 7.42 Additionally, the Minister may decide to set other conditions as considered appropriate, which may include:
- (a) A condition that the permit holder shall spend a defined minimum amount on exploration work, including feasibility studies.<sup>36</sup> The defined minimum amount will be agreed to between the Minister and the permit applicant on the basis of the work programme to be conducted. Minimum expenditure obligations may be defined for various stages. Where the Minister sets such a condition, there will also be a condition providing that the Secretary may also review the minimum expenditure level in consultation with the permit holder. In doing this, both the Minister and the permit holder will need to take into account the nature of the operations at the time of the review and changes in wage and operating costs from one review period to the next;
  - (b) A condition that the Secretary may, from time to time, require the permit holder to clearly mark the boundaries of the permit;
  - (c) Conditions to provide for both permit and/or licence holders to exercise their property rights in co-operation where a permit is to be granted over land already under an existing prospecting, exploration or mining licence and/or permit (with the holder's consent); and
  - (d) A condition requiring the permit holder to provide defined periodic reports and returns on exploration activities.
- 7.43 All permit holders are required to comply with the Crown Minerals Act 1991 and the relevant regulations. This includes the payment of annual fees and the lodgement of data in accordance with section 90 of the Act and the specific requirements of regulations.

## **ALLOCATION OF EXPLORATION PERMITS BY CASH BONUS BIDDING**

- 7.44 As noted in paragraph 7.7, the Minister may decide to have exploration permit allocation by a cash bonus bidding competitive tender. The detailed procedures for reserving land for a competitive tender, advertising the competitive tender and receiving and evaluating bids are

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<sup>36</sup> *This shall not include, expenses incurred in obtaining necessary consents and agreements, legal fees, the purchase of plant and equipment, office and administrative expenses, nor the amount of any annual fees, bonds or monetary deposit, or levies.*

outlined in paragraphs 5.3.2 to 5.3.21. The exploration permit is granted to the person making the highest cash bid, subject to the person meeting the bidding criteria and the Minister being satisfied that the person will comply with the conditions of, and give proper effect to, any permit granted (which is determined in accordance with paragraph 7.35).

### ***GRANT OF EXPLORATION PERMIT***

- 7.45 Where the Minister has decided to grant a coal exploration permit, the grant of the permit will be subject to the acceptance of the proposed permit conditions by the applicant and may also be subject to the lodging of a monetary deposit or bond with the Secretary within a defined timeframe (section 27(2), Crown Minerals Act 1991). Generally, a period of one month will be given to lodge the monetary deposit or bond. This period of time may be extended, upon written application, if the Secretary considers that there are good reasons for doing so. If the permit applicant does not accept the conditions of grant or lodge any required monetary deposit or bond within the defined timeframe, the decision to grant the permit lapses and the Minister will decline the permit accordingly.
- 7.43 The granted permit will state the following matters:
- (a) That it is a coal exploration permit;
  - (b) The permit holder;
  - (c) The duration of the permit;
  - (d) The area of land in respect of which the permit is granted. The permit will be accompanied by a plan showing the permit area; and
  - (e) The permit conditions, including the work programme.

### ***COMMENCEMENT DATE OF PERMIT***

- 7.47 The commencement date of an exploration permit is specified by the Minister in the permit. In most cases, this will be the date that the Minister signs the grant of permit (the date of issue, which occurs after the formal acceptance of the conditions of grant and the lodging of any required monetary deposit or bond). The applicant may request a particular commencement date, which will be considered by the Minister if there are reasonable grounds. Matters that the Minister may take into consideration include, but are not limited to, the following:
- Whether any consents, including access arrangements, are required under any Act or regulation and delays in obtaining such consents have been experienced by the permit applicant;
  - Whether the land covered by the permit application is physically inaccessible for part of the year (for example, due to snow or frost); and
  - Whether the commencement of activities under the proposed permit is constrained by the non-availability of machinery or equipment until a certain time.
- 7.48 When a permit is granted, section 35(2) of the Crown Minerals Act 1991 allows the Minister to consent to a deferment or amendment of the commencement date of the granted permit if the permit holder has been prevented from commencing activities under a permit by delays in obtaining consents under any Act. The permit holder must ensure that such delays have not been caused, or contributed to, by default of the permit holder. It is expected that this discretion

will be exercised in the context of delays in obtaining resource use consents under the Resource Management Act 1991 outside the permit holder's control.

### ***COPIES OF PERMIT HELD***

- 7.49 A true copy of every granted exploration permit is held as follows:
- (a) By the District Land Registrar who, in accordance with section 81 of the Crown Minerals Act 1991, on the grant of an exploration permit, receives copies from the Secretary and is required to formally receive and record the permit and must enter the particulars of each permit on every certificate of title, provisional register or other instrument of title registered or lodged in the office of the District Land Registrar that is affected by the permit;
  - (b) By the Secretary;
  - (c) By the permit holder; and
  - (d) By the Chief Surveyor, if the permit was granted in respect of unalienated Crown land, or by the Registrar of the Maori Land Court, if the permit was granted in respect of Maori land.

### ***ADVICE TO OTHER PARTIES OF THE GRANT OF AN EXPLORATION PERMIT***

- 7.50 Following the grant of the exploration permit, the Secretary may advise the following parties of the grant of the permit:
- (a) Land Information New Zealand (formerly the Department of Survey and Land Information), in order to update the mining industry land and map database (the National Mining Index);
  - (b) The relevant occupational health and safety inspectors (for example, the Inspector of Coal Mines); and
  - (c) The relevant local authorities with jurisdiction over the area of land to which the permit relates.

### ***OTHER CONSENTS NECESSARY***

- 7.51 The grant of a permit gives to the permit holder the right, as outlined in sections 30, 31 and 32 of the Crown Minerals Act 1991, to prospect and explore and to have that right exclusively unless the permit conditions expressly provide otherwise and to be the owner of all minerals lawfully obtained. However, to carry out permit activities and give proper effect to the permit, other consents complementing the permit granted under the Crown Minerals Act 1991 are likely to be needed. The permit holder will have to undertake prospecting or exploration in accordance with the provisions of the Resource Management Act 1991 and the Health and Safety in Employment Act 1992, and any regulations made pursuant to these acts. This may include the need to obtain consents pursuant to these Acts and comply with the conditions of any such consents. Before undertaking any prospecting or exploration work requiring land access, a permit holder must also obtain necessary land access arrangements or give appropriate notice where minimum impact activities are to be undertaken and a land access arrangement is not needed.

## 8 ALLOCATION OF MINING PERMITS

### INTRODUCTION

- 8.1 Mining permits for coal are granted to enable the extraction and production of coal existing in its natural state in land. A mining permit also allows any prospecting or exploration activities to be undertaken in respect of the area over which the mining permit is held.
- 8.2 In accordance with section 25(1A) of the Crown Minerals Act 1991, a mining permit for coal shall be granted only in respect of Crown owned coal and not in respect of privately owned coal. Mining permits may be granted in respect of coal and another mineral, but this is expected to be unusual (for example, coal and petroleum (methane gas))<sup>37</sup>.
- 8.3 Allocation of mining permits may occur as a result of applications received and evaluated on the basis of:
- (a) A **subsequent mining permit** application made by the holder of a coal exploration permit;
  - (b) A **first acceptable work programme offer** application;
  - (c) An application received in accordance with a **cash bonus bidding** tender; or
  - (d) An application for a **special purpose mining permit**.
- 8.4 The grant of a subsequent mining permit to the holder of a coal exploration permit is the typical method of allocating mining permits. (Typically, a person will obtain an initial coal exploration permit to undertake appraisal and mine feasibility studies and then apply for a mining permit.) Subsequent mining permit applications are made in accordance with section 32 of the Crown Minerals Act 1991. This allocation method is discussed further in paragraphs 5.1.6, 8.11 to 8.41 and 8.43 to 8.51.
- 8.5 First acceptable work programme offer applications for coal mining permits may be forwarded at any time. They will be received and considered in accordance with the procedures outlined in paragraphs 5.2.1 to 5.2.23, 8.11 to 8.41 and 8.43 to 8.49.
- 8.6 Cash bonus bidding allocation of a coal mining permit may occur where the Minister determines that there is competitive interest in obtaining a coal mining permit and there are defined mineable coal reserves. The use of this allocation method is not expected to be common. The procedures for this allocation method are outlined in paragraphs 5.3.1 to 5.3.21 and 8.42.
- 8.7 Special purpose mining permits may be allocated to enable historical mining methods to be demonstrated. These are likely to be applied for by historical societies, museum trusts and similar bodies. The criteria on which such permits will be allocated are discussed in paragraph 8.53 to 8.60.
- 8.8 A mining permit may be granted for up to forty years (refer section 35(1) Crown Minerals Act 1991). The actual duration in each case is dependent on the proposed rate of mining and the extent of the identified coal resources and reserves. The criteria used to determine a mining permit's duration are listed in paragraph 8.29. An extended duration may be granted for such a period as the Minister considers reasonable where the permit holder establishes that the discovery cannot be economically depleted within the term of the permit (refer section 36(5) of the Crown Minerals Act 1991 and paragraph 8.29).

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<sup>37</sup> *Where there is an application for a mining permit over minerals covered by this Minerals Programme and also another Minerals Programme, then the policies, procedures and provisions of both the Minerals Programmes will apply to the evaluation of the application.*

## ***SUBSEQUENT MINING PERMIT AND FIRST ACCEPTABLE WORK PROGRAMME OFFER MINING PERMIT APPLICATIONS***

***(This section does not apply to cash bonus bid mining permit applications or special purpose mining permit applications).***

### ***APPLYING FOR A MINING PERMIT***

- 8.9 The information to be provided when making an application for a mining permit is prescribed in relevant regulations<sup>38</sup>. The emphasis of the application should be on the proposed work programme. This should outline the proposals for extracting and producing coal and should indicate the minimum annual production or a production profile should the application be successful, as considered appropriate. To complement and explain the work programme proposed, the applicant should provide a detailed evaluation report of the coal deposit intended to be mined. This should detail the identified resources and reserves and discuss the structure, extent, physical and chemical characteristics of the coal deposit intended to be mined and should outline other factors considered relevant by the applicant. This information will be used to determine whether the proposed work programme is acceptable. This information also enables an assessment of an appropriate term and the appropriate permit area. If requested by the applicant, the opportunity to support the application with a technical presentation will be provided.
- 8.10 The Minister will grant a coal mining permit only when satisfied that all of the above criteria have been met. It should be noted that the Minister is not obliged to grant any application. In this regard, a permit application may be declined if it is made for an area adjoining an existing permit held by the applicant or a related party, and the Minister considers it is being sought to avoid payment of royalty to the Crown and that it would be more appropriate for the existing permit to be extended.

### ***EVALUATION OF AN APPLICATION***

- 8.11 When it is determined that the mining permit application is in order for processing<sup>39</sup>, the application will be evaluated. This will be done in accordance with the general policy framework as outlined in chapter 2. In particular, the Minister is concerned to obtain a fair financial return for the Crown from the extraction of coal.
- 8.12 Where an application for a mining permit has been received by the Secretary and it is in order to be processed, a mining permit will be granted by the Minister where:
- (a) The application is first in priority;
  - (b) The land in respect of which the application is made is available for permitting;
  - (c) The minerals in respect of which the application is made are available for permitting;
  - (d) The permit applicant has identified and delineated a coal deposit that can be effectively mined within technical and economic constraints (refer paragraphs 8.14 to 8.15);
  - (e) There is an acceptable or approved work programme which is in accordance with good mining practice and provides for the recovery of the coal resource such that the Crown will obtain a fair financial return (refer paragraphs 8.16 to 8.24);

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<sup>38</sup> Regulations shall be prescribed from time to time in accordance with section 105 of the Crown Minerals Act 1991.  
<sup>39</sup> Refer paragraphs 5.1.6 and 5.2.3 to 5.2.23.

- (f) The area of land applied for is appropriate to enable mining activities to be carried out (refer paragraphs 8.25 to 8.28);
- (g) An appropriate duration is determined (refer paragraph 8.29);
- (h) There is an agreed point(s) of valuation for royalty purposes (refer paragraph 8.30);
- (i) The Minister is satisfied that due regard has been given to the principles of the Treaty of Waitangi (refer chapter 3 and paragraph 8.31) and any relevant international obligations (refer paragraph 8.37); and
- (j) The Minister is satisfied that the permit applicant will comply with and give proper effect to any permit granted (refer paragraph 8.36).

8.13 In considering whether a coal deposit has been delineated, whether there is an acceptable work programme and whether the permit application area is appropriate the Minister will take into account, but not be limited to, the following:

- The geology of the mining permit application area;
- The applicant's level of knowledge of the coal resources proposed to be extracted from the application area;
- The structure, extent and physical and chemical characteristics of the coal proposed to be extracted and produced;
- Estimates of coal resources (inferred, indicated and measured) and coal reserves (mineable in situ, recoverable and marketable);
- Proposed mining operations in respect of production operations and coal resource management;
- Proposed mining operations in respect of extraction, production and processing facilities;
- The production profile proposed and the proposed commencement date for production;
- The avoidance of waste of coal resources, especially where selective mining is being undertaken;
- Project economics, particularly financial viability and technical constraints;
- Whether proposed mining operations are in accordance with good exploration or mining practice; and
- The size, nature, extent and siting of the proposed mining operations.

Paragraphs 8.14 to 8.29 outline in more detail specific considerations the Minister will address in assessing whether the permit applicant has delineated a coal deposit and whether the proposed permit work programme, permit area, and permit duration are acceptable. The Minister will decide whether to grant a permit taking into account the information provided in the application and any further information provided by the applicant (refer paragraphs 8.32 to 8.35).

### ***DELINEATION OF COAL DEPOSIT***

8.14 The Minister needs to be satisfied that the applicant has sufficient evidence that a coal deposit has been identified to support the grant of a mining permit. For the purpose of this Minerals Programme, a coal deposit is defined as an area that might be worked by a single mine which may be all or part

of a coalfield or all or part of a sector of a coalfield, which can be specified in terms of geological structure and/or extent of coal deposition and the feasibility of mining the deposit. There are international guidelines which the Minister may use to consider resource and reserve estimates.

- 8.15 The identification and delineation of a coal deposit will, in most instances, have been made as a consequence of the applicant's exploration work under a previous permit or a previous licence granted under the Coal Mines Act 1979. This is a prerequisite to the grant of a subsequent mining permit in accordance with section 32 of the Crown Minerals Act 1991. In some instances, an applicant may have obtained sufficient knowledge of the coal deposit from previous exploration studies or mining operations over the area of interest. It is very important that there is sufficient information of the coal resources of the area to proceed with mining without the risk of sterilizing reserves. The preparation of an appropriate work programme is also dependent on such information.

### ***THE WORK PROGRAMME***

- 8.16 For a mining permit application to be granted, there must be an acceptable or approved work programme. For subsequent mining permit applications, the work programme will be approved in accordance with section 43 of the Crown Minerals Act 1991. These provisions are summarised in paragraphs 8.22 to 8.24.
- 8.17 A coal mining permit work programme should provide a general overview of how it is proposed that the permit area applied for will be worked. This includes an outline of the proposals for extracting and producing coal (the coal mining methods<sup>40</sup> and an indicative long term mining scheme) and an indication of expected production.
- 8.18 The objective of a coal mining permit work programme should be to recover the coal resource in accordance with recognised good exploration or mining practice and within technical and economic constraints. Where the Minister is satisfied that, taking into consideration those matters outlined in paragraph 8.13, the technical approach proposed in the work programme will meet this objective and that there will be sound mine management, the work programme will be accepted and approved.
- 8.19 In assessing the work programme, the Minister may take into account the proposed level of expenditure. This can give an indication of the scale and extent of operations proposed.
- 8.20 A mining permit application may include in its work programme that there will be both mining and exploration operations conducted over the permit area. This situation arises where there is sufficient information on the mineable in situ and recoverable reserves to warrant a mining venture but there needs to be further detailed exploration work undertaken over those parts of the permit application area where there are inferred, indicated or measured coal resources, for example, to obtain further information on the coal resource and its characteristics. Before approving a mining work programme which includes such exploration operations, the Minister must be satisfied that there is sufficient information to justify a coal mining venture proceeding. Sufficient information will need to have been gathered to establish that a coal resource has been identified and delineated, and has the potential to extend over the full permit area (refer paragraphs 8.14 and 8.15). The purpose of any planned exploration work should be, to enable the definition of mineable in situ or recoverable reserves suffice and to allow mining to proceed within the overall strategy of the permit being sought.
- 8.21 It will be a condition of most coal mining permits, that the permit holder will be required to forward an annual work statement and accompanying mine plan. This is required to provide advice on matters such as:

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<sup>40</sup> *It is noted that the Minister, in considering the mining methods proposed, seeks to ensure that these are appropriate to the geological setting of the discovery and resource extraction proposed. The effects of the use of the mining methods on the environment are dealt with under the Resource Management Act 1991.*

- production estimates for the next twelve months (or advise if no work is planned for the next twelve months and give an explanation for this);
- the anticipated location, extent and direction of mining and the period of mine operation over the next 12 months;
- general mining activities to be undertaken over the next 12 months;
- production to date; and
- estimated remaining mineable in situ and recoverable coal reserves.

The annual work statement and mine plan complements the work programme. It must be in general accordance with the approved work programme. Having the annual work statement and mine plan as a complementary requirement to the approved work programme provides flexibility for the Minister to approve a more general work programme. It avoids the need for a prescriptive mining scheme for the duration of the mining venture to be approved at the time of permit application, which may prove inappropriate as mining progresses. A detailed work statement and mine plan which is prepared by the permit holder annually can take into account results to date and enables the Secretary to monitor that the recovery of the coal resource is in accordance with good exploration or mining practice. The annual work statement either will be accepted by the Secretary, or, if considered not in accordance with the approved work programme, the Secretary will raise with the permit holder the concerns held. An amendment to either the work programme or the annual work statement may be required. If agreement on an acceptable annual work statement cannot be reached, action may be taken against the permit holder on the grounds of breach of permit conditions. It is emphasised that the annual work statement and mine plan must be in general accordance with the approved work programme.

### ***APPROVAL OR WITHHOLDING OF APPROVAL OF WORK PROGRAMME FOR SUBSEQUENT MINING PERMIT***

- 8.22 As noted, section 43(1) of the Crown Minerals Act 1991 requires that for a subsequent mining permit to be granted, the Minister must approve the work programme for the permit (or agree that a work programme for the permit is not required to be approved). Within six months of receiving the proposed work programme, the Minister must either approve the work programme or withhold approval and notify the applicant accordingly. If, after taking into account any of the evaluation criteria outlined in paragraphs 8.13 and 8.16 to 8.21, the Minister is not satisfied that the proposed work programme submitted for approval has the objective of recovering the coal resource in accordance with good exploration or mining practice and in a timely manner, then the Minister, in accordance with section 44(1) of the Crown Minerals Act 1991, will advise the applicant of the reasons for the proposed withholding of approval. In situations where a coal deposit extends over more than one permit and the Minister has served a notice of unit development, and one exploration permit holder applies for a mining permit prior to a unit development scheme having been determined and approved, then the Minister may withhold approval of the proposed work programme until the Minister has considered the unit development scheme (refer chapter 12). The withholding of the approval would be on the grounds that the Minister is not reasonably able to determine whether the proposed work programme will avoid waste and unnecessary sterilisation of the coal deposit until the work programme can be evaluated in the context of the approved unit development scheme. The applicant will be given a reasonable opportunity to make representations to the Minister regarding the proposed work programme. The Minister will consider any representations made by the applicant in determining whether to approve or withhold approval of the proposed work programme. The applicant will be advised of the Minister's decision.

- 8.23 Where the Minister withholds approval, in accordance with section 43(3) of the Crown Minerals Act 1991, the applicant is entitled to submit a modified work programme within a reasonable period. The Minister must then, within a further six months, consider whether to approve or withhold approval of any modified work programme that is submitted. Evaluation of a modified work programme will be carried out in accordance with paragraphs 8.13 and 8.16 to 8.21. If the Minister proposes to withhold approval of a modified work programme, as set out in section 44(1) of the Crown Minerals Act 1991, the Minister must advise the applicant of the reasons for the proposed withholding of approval and give the applicant a reasonable opportunity to make representations on the matter. The Minister will consider any representations made by the applicant in determining whether to withhold approval of a modified work programme. The applicant will be advised of the Minister's decision.
- 8.24 Should the Minister decide to withhold approval of the proposed work programme or modified work programme, the applicant may refer the matter to arbitration, in accordance with sections 44(2) and 99 of the Crown Minerals Act 1991. The Minister is required to follow the decision of the arbitrator. If the arbitrator decides that a proposed work programme or modified work programme should be approved, the Minister shall approve that work programme. If the arbitrator decides that approval of a proposed work programme or modified work programme should be withheld, the Minister shall give the applicant notice that the Minister intends to decline the application for a mining permit; and that the applicant may submit a modified work programme to the Minister within three months after the date of notice or such longer period as the Minister determines. Where the applicant submits a modified work programme, the Minister will either approve the modified work programme or withhold approval of that programme if the Minister considers the modified work programme is:
- (a) Contrary to recognised good exploration or mining practice; or
  - (b) Is not acceptable in accordance with paragraphs 8.13 and 8.16 to 8.21.

Where the Minister withholds approval or the applicant does not submit a modified work programme, the application will be declined. The process described in paragraphs 8.22 to 8.24 is outlined in Figure 3 (chapter 7).

### ***ASSESSMENT OF PERMIT AREA***

- 8.25 The appropriate area of a coal mining permit, is that which is reasonably adequate to enable mining activities to be carried out for the duration of the proposed permit. This is required by section 32(4) of the Crown Minerals Act 1991 for subsequent mining permit applications and will also be the approach taken in the consideration of all other types of mining permit applications.
- 8.26 The Minister's assessment as to whether the permit area sought is appropriate will be made having regard to the definition of the coal deposit, the proposed work programme and other relevant matters outlined in paragraphs 8.13.
- 8.27 A coal mining permit generally will be granted over an unbroken area, unless the permit applicant can clearly establish that there are reasonable grounds for granting a permit over a non-contiguous area. Where the proposed mining permit is over an area containing Crown and privately owned coal, the permit may be granted over an unbroken total area, granted to exclude privately owned coal.
- 8.28 Before a coal mining permit can be granted, it must be clearly defined by maps and plans. Section 29 of the Crown Minerals Act 1991 provides that where the Minister considers it appropriate to do so, the Minister may require that land to which an application for a permit relates be surveyed in the prescribed manner and may postpone making a decision on the grant of a permit until a survey plan, certified by the Chief Surveyor, has been lodged with the Secretary by or on behalf of the applicant. Permit survey requirements are discussed in more detail in chapter 9.2.

## ***DURATION OF PERMITS***

8.29 Section 35 of the Crown Minerals Act 1991 provides that the Minister may grant a mining permit for a duration of up to forty years. In the determining the duration of a mining permit, the Minister will take into account such matters as:

- the number of years the applicant has requested the permit be granted for;
- the estimated coal reserves and coal resources;
- the proposed production schedule;
- the timing of mine development;
- the proposed commencement date for production;
- the time required to conclude mining permit activities (including necessary exploration) and undertake necessary rehabilitation; and
- other criteria as noted in paragraph 8.13 as considered relevant.

As noted, a mining permit may be granted up to a maximum term of forty years. In cases where a forty year term is completed and an economically viable deposit remains, it is possible to extend the duration of the permit beyond forty years.

## ***POINT OF VALUATION***

8.30 Having determined that there is an acceptable work programme and the appropriate permit duration and area, then the Minister shall specify the point(s) of valuation for royalty purposes. The point(s) of valuation will be determined in accordance with the royalty regime (which is discussed in detail in chapter 15) and following consultation with the permit applicant. The criteria which the Minister shall use to define the point(s) of valuation are outlined in paragraphs 15.18 and 15.19. The point(s) of valuation shall be stated as a permit condition.

## ***TANGATA WHENUA CONSULTATION***

8.31 Chapter 3 outlines the procedures the Minister will follow to consult with tangata whenua hapu and iwi concerning a permit application. Where tangata whenua hapu and iwi raise issues or matters affecting an application, for example, a request for land to be excluded from an application, then the issues raised and the request made will be fully considered by the Minister. If upheld, these may affect the overall effectiveness of an application and be relevant to deciding whether or not to grant the application (refer in particular to paragraph 3.16).

## ***FURTHER INFORMATION AND AMENDING APPLICATIONS***

8.32 The Minister will, at all times, be open to the presentation of further information from the applicant relating to the application. Where the meaning of an application is unclear, the applicant will be asked to clarify the meaning and, if appropriate, to provide further information or a technical presentation.

8.33 Where the work programme is not acceptable, for a subsequent mining permit application, as noted in paragraphs 8.22 to 8.24, sections 43 and 44 of the Crown Minerals Act 1991 set out the process the Minister shall follow if requesting modifications to a work programme. For first acceptable work programme applications where the work programme is not acceptable but it is considered that non-

substantial amendments would make the work programme acceptable, then the applicant may be approached by the Secretary to consider submitting a modified proposed work programme. Where the Minister does not believe that the area of a permit application is fully justified or the Minister has other concerns with the permit application's area, the Minister will advise the applicant of the concerns held and the grounds for these and consider any comments the applicant has to make in relation to the concerns raised. If appropriate, the Minister may ask the applicant to consider submitting an amendment to the application area to make the application acceptable. The Minister may also ask an applicant to consider submitting an amendment to the area of a permit application to address matters arising from consultations with Maori.

- 8.34 Prior to the completion of the evaluation of an application, the applicant may request to amend the area of land of the application, the minerals to which an application relates, or the applicant details. Where the application covers an increased area of land, the priority of the application over the extra land will have to be determined. Requests for amendments must be accepted by the Secretary to be effective. For a first acceptable work programme application, where the requested amendment is considered by the Secretary to substantially alter the nature and intent of the application such that the application would be, in effect, a substitute or new application, then the Secretary may decline the proposed amendments to the application and thus consider the application as originally submitted.
- 8.35 If the Secretary has concerns regarding a request to amend an application, the applicant will be advised of these and given the opportunity, as appropriate, either to comment on the matter or to explain matters in more detail, or to modify the proposed amendment. It is emphasised that an applicant will not be given the opportunity to so change the application that it is in effect a substitute or new application, unless the Secretary determines that to do so would promote the efficient allocation of rights to Crown owned coal.

### ***GIVING EFFECT TO A PERMIT***

- 8.36 Where it is determined that an application for a coal mining permit is technically acceptable, the Minister must also be satisfied that the applicant will comply with the conditions of, and give proper effect to, the permit (section 27, Crown Minerals Act 1991). In this respect, matters that the Minister shall take into consideration as relevant include, but are not limited to:
- The applicant's financial ability to carry out the proposed work programme and to pay monies owed to the Crown (in particular, royalties and the prescribed fees);
  - The applicant's technical ability to carry out the proposed work which may include the proposed use of technical experts;
  - Any evidence that the applicant will not obtain land access to all or part of the area of the permit, or resource consents to the extent that proper effect would not be able to be given to any permit granted; and
  - Other prospecting, exploration or mining activities, both in New Zealand and internationally, that the applicant (or any related company) has been involved with, to the extent that these activities reflect on the applicant's ability to comply with the conditions of the proposed permit and pay the prescribed fees and generally comply with the Crown Minerals Act 1991.

If the Minister is aware of any factors which could contribute to the view that the applicant may not give proper effect to the permit, the Minister shall raise with the applicant the concerns held and advise the applicant of the factor(s) that are considered to be relevant to the grant of the permit. Examples of concerns that the Minister may have include:

- the applicant (or any related company) has not complied with work programme conditions or the conditions of consents associated with previously held permits or privileges; and

- the applicant has not met requirements to lodge data or pay fees and other monies owed to the Crown associated with previously held permits or privileges.

Before deciding on the matter, the Minister will consider any comments the applicant has to make.

- 8.37 In determining an application for a mining permit, the Minister shall also have regard to any international obligations contingent on the government, if relevant to the particular application in question.<sup>41</sup>

### ***DECISION CONCERNING PERMIT GRANT***

- 8.38 Where the application is a subsequent mining permit and the grant of a permit would not be contrary to sections 22 and 27 of the Crown Minerals Act 1991, the Minister will:
- (a) approve the proposed work programme (or modified work programme) and grant the permit (on the basis of the original or an amended application); or
  - (b) withhold approval of the proposed work programme and request the applicant to submit a modified work programme (refer paragraphs 8.22 to 8.24 and section 43 of the Crown Minerals Act 1991); or
  - (c) withhold approval of the modified work programme and decline the application.

Where the application is made in accordance with first acceptable work programme offer allocation, the Minister will either grant the permit on the basis of the original or the amended application, or decline the application.

- 8.39 Processing of an application should usually be completed within six months of the date of receipt of the application. Applicants will be advised if processing will take longer than this. For example, this may occur where there is a subsequent mining permit application and the Minister withholds approval of the work programme in accordance with section 43 of the Crown Minerals Act 1991, and the applicant chooses to prepare and submit a modified work programme. Section 43 of the Crown Minerals Act 1991 prescribes the statutory time limits for the processing of modified work programme approvals in such cases. Following the determination of the Minister to either grant the mining permit or decline the permit application, the applicant will be advised in writing of the outcome of the decision.
- 8.40 Where an application meets the criteria noted in paragraph 8.12 and the Minister has agreed to grant a mining permit, it will be subject to conditions (refer paragraphs 8.43 to 8.44). The permit applicant will be asked to formally accept the grant of the permit on the conditions stated, within a defined timeframe, generally one month. There may also be a requirement for the permit applicant to have the permit application area surveyed in accordance with section 29 of the Crown Minerals Act 1991 (refer chapter 9.2). In such cases a defined time for the survey to be completed will be stated by the Minister, set in consultation with the applicant. There may also be a requirement to lodge a monetary deposit or bond.

### ***GROUNDS FOR DECLINE OF APPLICATION***

- 8.41 An application may be declined by the Minister when, after due consideration of all the relevant factors, the Minister considers that the applicant has failed to fulfil one or more of the requirements precedent to the granting of a permit. This includes where the Minister and

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<sup>41</sup> *It should be noted that this will not affect any subsequent mining permit rights.*

applicant have been unable to determine a mutually agreeable work programme and conditions, and area or duration for the permit. It also includes where the Minister considers that the applicant would not comply with the conditions of, and give proper effect to, any permit granted (in accordance with section 27 of the Crown Minerals Act 1991). The Minister may also decline an application if the applicant does not formally accept the grant of the permit, undertake a required survey, or lodge any required monetary deposit or bond within the time specified by the Minister. As well, an application may be declined having regard to the Government's international obligations, if they are relevant to the particular permit in question.<sup>42</sup>

### ***ALLOCATION OF MINING PERMITS BY CASH BONUS BIDDING***

- 8.42 As noted in paragraph 8.3, the Minister may decide to have mining permit allocation by a cash bonus bidding competitive tender. The detailed procedures for reserving land for a competitive tender, advertising the competitive tender and receiving and processing bids are outlined in paragraphs 5.3.2 to 5.3.21. The mining permit is granted to the person making the highest cash bid, subject to the person meeting the bidding criteria and the Minister being satisfied that the person will comply with the conditions of, and give proper effect to any permit granted. The latter is determined in accordance with paragraph 8.36. The conditions of grant which may apply are outlined in paragraphs 8.43 and 8.44.

### ***CONDITIONS OF GRANT OF MINING PERMITS (OTHER THAN SPECIAL PURPOSE MINING PERMITS)***

- 8.43 Mining permits resulting from either subsequent mining permit or first acceptable work programme offer applications or cash bonus bidding, will be granted on the following conditions set by the Minister in accordance with section 25(1) of the Crown Minerals Act 1991:
- (a) A general condition to the effect that the permit holder will make reasonable efforts to undertake the activities authorised by the permit in general accordance with the work programme;
  - (b) A general condition that the permit holder will undertake mining and exploration operations in accordance with good exploration or mining practice;
  - (c) In accordance with the provisions outlined in chapter 15, conditions relating to the calculation and payment of royalties; and
  - (d) A condition requiring the permit holder to pay prescribed fees.
- 8.44 Additionally, the Minister may decide to set other conditions as considered appropriate, which may include:
- (a) A condition requiring the permit holder, within 30 days of the anniversary of the grant of the permit in each year, to submit to the Secretary a proposed annual work statement and mine plan. The proposed annual work statement and mine plan will provide advice on matters such as for the next twelve months, production estimates, the anticipated location, extent and direction of mining and the period of mine operation, general exploration and mining activities to be undertaken, production to date and estimated remaining recoverable reserves. Compliance with the work statement and mine plan will constitute a condition of the permit;
  - (b) A condition requiring the permit holder to provide defined periodic reports and returns on mining activities and production;

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<sup>42</sup> It should be noted that this will not affect any subsequent mining permit right.

- (c) A condition requiring the permit holder to undertake mining in general accordance with a prescribed extraction schedule (which will have been nominated by the permit applicant and agreed to by the Minister or Secretary);
- (d) A condition requiring the permit holder to spend a defined minimum amount on mining activities<sup>43</sup> over the permit area, which will be agreed to between the Minister and permit applicant on the basis of the work programme to be undertaken. Where the Minister sets such a condition, there will also be a condition providing that the Secretary may also review the minimum expenditure level in consultation with the permit holder;
- (e) A condition that the Secretary may from time to time require the permit holder to clearly mark either the boundaries of the permit area or the area where mining activities are currently being undertaken; and
- (f) Where a permit is to be granted over land already the subject of an existing licence (granted under the Mining Act 1971 or the Coal Mines Act 1979) or permit, and the existing licence or permit holder has consented to this, conditions to provide for the exercise of the property right in co-operation.

8.45 All permit holders are required to comply with the Crown Minerals Act 1991 and the relevant regulations and the conditions of grant. This includes the payment of annual fees, the lodgement of data in accordance with section 90 of the Act and the specific requirements of regulations. It also includes ensuring that all necessary access agreements are obtained prior to the commencement of mining operations. A mining permit holder has the right to mine, explore and prospect (all defined in section 2 of the Crown Minerals Act 1991) for the coal (and other minerals) the permit is granted in respect of, in the land and on the conditions stated in the mining permit (refer section 30(3) of the Crown Minerals Act 1991).

### ***PERMIT DETAILS***

- 8.46 The granted coal mining permit will state the following matters:
- (a) The permit holder (which may be more than one person or company);
  - (b) The duration of the permit;
  - (c) The area of land in respect of which the permit is granted. The permit will be accompanied by a plan showing the permit area;
  - (d) The conditions of the permit; and
  - (e) Any other mineral(s) in respect of which the permit is granted.
- 8.47 Where the Minister approves a work programme, this will be part of the permit, which is a public document. Other information provided with the permit application to support and explain the work programme, will not form part of the permit.

### ***COMMENCEMENT DATE OF PERMIT***

8.48 The commencement date of a mining permit is specified by the Minister in the permit. In most cases, this will be the date the Minister signs the grant of the mining permit (the date of issue, which occurs after the formal acceptance of the conditions of grant, the undertaking of any required survey and

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<sup>43</sup> *This includes feasibility studies, exploration work that directly relates to the mining project, extraction and processing operations, and rehabilitation and abandonment work. It does not include expenses incurred in obtaining necessary consents and agreements, legal fees, office and administrative expenses, or insurance or banking fees, nor the amount of any annual fees, bonds or monetary deposits.*

the lodging of any required monetary deposit or bond). The applicant may request a particular commencement date, which will be considered if there are reasonable grounds. Mining operations however do not need to commence immediately or soon after the date of grant of the permit. The Minister may specifically provide for mining operations under a work programme to commence at some future date several years hence, if there are reasonable grounds to support this.

- 8.49 When a permit is granted, section 35(2) of the Crown Minerals Act 1991 allows the Minister to consent to a deferment or amendment of the commencement date of the granted permit if the permit holder has been prevented from commencing activities under a permit by delays in obtaining consents under any Act. The permit holder must ensure that such delays have not been caused, or contributed to, by the default of the permit holder. In most instances, it is expected that this discretion will be exercised in the context of delays in obtaining resource use consents under the Resource Management Act 1991, outside of the permit holder's control.

### ***COPIES OF PERMIT HELD***

- 8.50 A true copy of every granted mining permit is held as follows:
- (a) By the District Land Registrar who, in accordance with section 81 of the Crown Minerals Act 1991, on the grant of a mining permit, receives copies from the Secretary and is required to formally receive and record the permit and must enter the particulars of each permit on every certificate of title, provisional register or other instrument of title registered or lodged in the office of the District Land Registrar that is affected by the permit;
  - (b) By the Secretary;
  - (c) By the permit holder; and
  - (d) By the Chief Surveyor, if the permit was granted in respect of unalienated Crown land, or by the Registrar of the Maori Land Court, if the permit was granted in respect of Maori land.

### ***ADVICE TO OTHER PARTIES OF THE GRANT OF PERMIT***

- 8.51 Following the grant of the mining permit, the Secretary may advise the following parties of the grant of the permit:
- (a) Land Information New Zealand (formerly the Department of Survey and Land Information), in order to update a National Mining Index;
  - (b) The Occupational Health and Safety Inspector (for example, the Inspector of Coal Mines); and
  - (c) The relevant local authorities which have jurisdiction over the area of land to which the permit relates.

### ***OTHER CONSENTS NECESSARY***

- 8.52 The grant of a permit gives to the permit holder the right, as outlined in sections 30, 31 and 32 of the Crown Minerals Act 1991, to prospect, explore and mine for coal and to have that right exclusively unless the permit conditions expressly provide otherwise and to be the owner of all coal lawfully obtained. However, to carry out permit activities and give proper effect to the permit, other consents complementing the permit granted under the Crown Minerals Act 1991 are likely to be needed. The permit holder will have to undertake prospecting, exploration or

mining in accordance with the provisions of the Resource Management Act 1991 and the Health and Safety in Employment Act 1992, and any regulations made pursuant to these Acts. This may include the need to obtain consents pursuant to these Acts and comply with the conditions of any such consents. A permit holder must also obtain necessary land access consents before undertaking any exploration or mining work requiring land access.

### ***SPECIAL PURPOSE MINING PERMITS***

- 8.53 A special purpose mining permit may be granted by the Minister where:
- (a) A permit applicant seeks a mining permit to undertake mining operations for demonstrating historical methods of mining; and
  - (b) The area of the application is no greater than 5 hectares.

It is expected that such permit applicants would be an historical society, museum trust or other similar body.

- 8.54 Such mining projects require a mining permit because the demonstration activities use extraction and mining techniques which fall within the definition of mining in section 2 of the Crown Minerals Act 1991. It is considered that the procedures and provisions set out in paragraphs 8.9 to 8.50 are not appropriate for this kind of mining project. In this regard it is expected that mining operations conducted under a special purpose mining permit will not produce more than \$100,000 value of coal per annum.

- 8.55 Special purpose mining permit applications may be made at any time. Where it is determined that an application for a special purpose permit is first in priority to be processed (refer paragraphs 5.2.3 to 5.2.23), it will then be evaluated.

### ***EVALUATION OF APPLICATIONS***

- 8.56 The Minister needs to be satisfied as to the matters in paragraph 8.53 and that the permit applicant will comply with and give proper effect to any permit granted (section 27(1) Crown Minerals Act 1991). In this regard the Minister will require evidence of the nature of the permit applicant, for example, that the historical society, museum, trust or similar exists and has some standing in the local community and has the demonstration machinery or equipment proposed to be used (photographic evidence may be required). In evaluating an application the Minister will also have due regard to the principles of the Treaty of Waitangi (refer chapter 3) and the geology of the application area.

### ***CONDITIONS OF GRANT OF SPECIAL PURPOSE MINING PERMITS***

- 8.57 Special purpose mining permits will be granted with conditions established by the Minister of Energy in accordance with section 25(1) of the Crown Minerals Act 1991, which provide that:
- (a) The permit has been granted for demonstration purposes using or featuring historical mining methods (which may be specified);
  - (b) The permit holder shall not undertake mining other than for demonstration purposes using or featuring historical mining methods (which may be specified);
  - (c) The permit holder will calculate and pay royalties, in accordance with Chapter 15, where production from the permit is greater than \$100,000 per annum;
  - (d) The permit holder will pay prescribed fees;

- (e) The permit holder will provide an annual report to the Secretary outlining mining operations and production for the past year.

8.58 A special purpose mining permit will usually be granted for a duration of ten to fifteen years. It will commence from the date the Minister signs the permit.

### ***GRANT OF PERMIT***

8.59 Following the determination of the Minister to either grant or decline the special purpose mining permit, the applicant will be advised in writing of the decision. Where a special purpose mining permit is to be granted it will be subject to:

- (a) Acceptance of the conditions by the applicant;
- (b) The lodging of any required monetary deposit or bond by the applicant (which is required by section 27(1) of the Crown Minerals Act 1991), the amount of which shall be advised (refer chapter 9.1); and
- (c) As considered necessary, the permit holder having the permit application area surveyed in accordance with section 29 of the Crown Minerals Act 1991 (refer chapter 9.2).

8.60 The granted permit will state the following matters:

- (a) The purpose for which it is granted;
- (b) The permit holder;
- (c) The duration of the permit;
- (d) The area of land in respect of which the permit is granted. The permit will be accompanied by a plan showing the permit area; and
- (e) The conditions of the permit.

8.61 A true copy of every special purpose mining permit granted is held as set out in paragraph 8.50. Following the grant of a special purpose mining permit, the Secretary may advise the parties set out in paragraph 8.51.

## **9 REQUIREMENTS TO BE MET BEFORE THE GRANTING OF A PERMIT**

### **9.1 MONETARY DEPOSIT OR BOND REQUIRED PRIOR TO PERMIT GRANT**

- 9.1.1 In accordance with section 27(2) of the Crown Minerals Act 1991, the Minister may require that before a permit is granted there be deposited, with the Secretary, as security for compliance with the conditions of the permit, such monetary deposit or bond, as may be specified. Where a deposit or bond is required, its value will be determined by the Minister in accordance with the relevant regulations.<sup>44</sup> Any deposit or bond required will be held for the duration of the permit. The holding by the Crown of a deposit or bond provides a form of security that can be realised in situations of non-compliance without the need for recourse to legal proceedings, where outstanding monies are due to the Crown.
- 9.1.2 With the approval of the Secretary, a bond may be lodged by a permit applicant or holder instead of a monetary deposit. The bond is required to be issued by a bank, insurance agency, or other financial institution which is acceptable to the Secretary. Where the required permit deposit is less than \$1000.00, or such other amount from time to time advised by the Secretary, then a monetary deposit will be required.
- 9.1.3 Where a bond is lodged instead of a monetary deposit, the Secretary may require that there be a permit condition that the permit holder will, in the event that the surety named in the bond:
- (a) Being a company goes into liquidation, has a receiver or statutory manager appointed, or is wound up; or
  - (b) Enters into any scheme or arrangement with its creditors -
- provide the Secretary, as soon as practicable, with a monetary deposit for the required amount in place of the bond or with a replacement bond issued by a registered bank or other financial organisation approved by the Secretary.
- 9.1.4 Monetary deposits are held in a Trust Account pursuant to Part VII of the Public Finance Act 1989. Interest earned on the deposits is payable to the permit holder who has lodged the monetary deposit (refer section 97 of the Crown Minerals Act 1991).
- 9.1.5 Where the permit holder is a joint venture, partnership or otherwise made up of two or more parties and, where the deposit or bond required is greater than \$5,000, there is an option for each of the parties to lodge with the Secretary a monetary deposit or bond. This would usually be equal to their percentage interest in the permit. This option applies provided that, at no time, shall a deposit or bond amount of less than \$2,500 be accepted.
- 9.1.6 Where a permit holder wants to transfer an interest in a permit, in accordance with section 41 of the Crown Minerals Act 1991 (refer chapter 11), the Minister may require, as a condition of giving approval to the transfer, that the new permit holder replaces any deposit or bond lodged in respect of the permit.
- 9.1.7 As a condition of the transfer of a permit, the Minister may specify that the amount of the deposit or bond required by the Secretary is adjusted.

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<sup>44</sup> From time to time, regulations shall be prescribed in accordance with section 105 of the Crown Minerals Act 1991.

- 9.1.8 The Secretary returns monetary deposits or bonds either upon the surrender, expiry, or revocation of a permit (together with any accrued interest thereon) or upon the replacement of the deposit or bond, provided that the permit holder has substantially complied with the conditions of the permit and does not have any monies outstanding which are owed to the Crown. If there are monies payable to the Crown outstanding, the Minister may direct that the full deposit or bond, or part thereof as thought fit, be paid into the Departmental Bank Account in respect of outstanding fees or into the Crown Bank Account in respect of other outstanding payments, for example, royalties (section 97 Crown Minerals Act 1991).
- 9.1.9 Upon the termination of a permit, a check is undertaken to determine whether the permit holder has paid all required monies owed to the Crown and lodged all data and reports in accordance with permit and regulation requirements. This should be completed within two months of the termination of the permit.

## 9.2 PERMIT SURVEY REQUIREMENTS

- 9.2.1 In accordance with section 29 of the Crown Minerals Act 1991, the Minister may require that land to which an application for a permit relates be surveyed in the prescribed manner before granting the permit. Where the Minister does consider it appropriate, then at the time the permit applicant is advised of the Minister's decision to grant the permit and of the proposed permit conditions the permit holder will also be advised that the grant of the permit is subject to the land area of the proposed permit being surveyed. As provided for in section 42 of the Crown Minerals Act 1991, the Minister may, at any time, require the holder of a current mining permit to arrange for a survey of all or part of the land to which the permit relates, to be undertaken.
- 9.2.2 The efficient allocation of permits requires that the physical boundary of the permit area is clearly defined and does not overlap with any other granted permit or existing privilege unless there is consent for this to occur or the Minister has determined that non-exclusive permits may be granted. Accordingly, all permits are defined by maps and plans that clearly identify and delineate the permit's area. For a prospecting or exploration permit, a plan delineating and identifying the land to which it relates, including for exploration permits, a schedule of certificate of title references for the land affected by the permit, is generally considered sufficient to adequately detail the physical boundary of the permit area. For mining permits, a precise definition of the permit boundaries is required and this will often necessitate that some form of survey is undertaken prior to the permit being granted. It may also necessitate that some form of survey be undertaken where there is a partial surrender or extension to a granted mining permit's area, as provided for in section 42 of the Crown Minerals Act 1991.
- 9.2.3 The purpose of a survey is to eliminate the possibility of overlaps between adjoining permits (or permits and existing privileges) and provide the accurate location and total area of a permit. In determining whether a survey is needed, the Minister will obtain expert advice from the Chief Surveyor or a qualified surveyor recommended by the Chief Surveyor. The Chief Surveyor or qualified surveyor will recommend to the Minister either that survey requirements are necessary and the reasons for the recommendation or will advise that a survey is not required because the land area of the proposed permit is considered to be already adequately defined. In many cases, for a proposed mining permit, some form of survey, which is of a standard to enable the boundaries of the mining permit to be marked out on the ground, at any time, will be necessary.

### ***WHEN A SURVEY MAY NOT BE REQUIRED***

- 9.2.4 Generally, a survey will not be required where:
- (a) The application is for a prospecting or exploration permit; or
  - (b) All of the land in a proposed mining permit<sup>45</sup> is already contained as a whole parcel or parcels in either a certificate of title or other instrument of title lodged with the District Land Registrar or a gazette notice; or
  - (c) The land in a proposed mining permit is already adequately defined on existing survey plans approved (as to survey) by the Chief Surveyor, for example, the permit application area may previously have been defined by approved survey plans; or
  - (d) The application plan for a mining permit (or partial surrender or extension to a granted mining permit area) is recommended by the Chief Surveyor as being sufficient for the purpose of clearly identifying the boundaries of the proposed permit (or amended permit).

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<sup>45</sup> This includes proposals to surrender part of or to extend the area of a granted permit.

- 9.2.5 Where a survey is not required for a proposed mining permit (or amended mining permit area, by way of partial surrender or extension of area), there may be a requirement that the final plan of the mining permit show a certificate signed and dated by the Chief Surveyor or a qualified surveyor that states along the following lines:

*“In my opinion, this plan satisfies the survey requirements of the Crown Minerals Act 1991 for Mining Permit Number ....”*

### **WHEN A SURVEY IS REQUIRED**

- 9.2.6 Generally, a survey will be required for mining permits when:
- (a) The proposed permit will create new boundary alignments; or
  - (b) Existing survey records are inadequate to support the definition of the proposed permit; or
  - (c) The proposed permit abuts an unsurveyed mining permit (or mining licence granted under the Mining Act 1971 or the Coal Mines Act 1979); or
  - (d) Provisions (a) to (d) in paragraph 9.2.4 are deemed not to apply.
- 9.2.7 Where it is determined that a survey is required, this will be undertaken as prescribed by regulations.<sup>46</sup> The permit applicant will be obliged to pay for the survey.

### **WHEN SURVEY COMPLETED**

- 9.2.8 On completion of a required survey, the permit applicant shall ensure that copies of the final plan with all the necessary approvals completed are forwarded to the Secretary, who will then arrange for the permit to be granted provided that the plans are in order and the other requirements to be met before a permit is granted have been met.
- 9.2.9 The final plan of the permit, (which will usually comprise either a certified survey or certified plan) will be incorporated into the permit documentation. In accordance with section 81(2) of the Crown Minerals Act 1991, every copy of a permit that has been lodged with the District Land Registrar will have a plan delineating and identifying the land to which it relates and a schedule identifying the certificate of title references for the land affected by the permit.

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<sup>46</sup> *From time to time, regulations shall be prescribed in accordance with section 105 of the Crown Minerals Act 1991.*

## 10 CHANGES TO PERMITS

### *INTRODUCTION*

- 10.1 Section 36 of the Crown Minerals Act 1991 provides that at any time during the currency of a permit the Minister may on such conditions as the Minister thinks fit and with the permit holder's approval;
- (a) Amend the permit's conditions; or
  - (b) Extend the area of land to which a permit relates; or
  - (c) Extend the minerals to which a permit relates; or
  - (d) Extend the duration of a permit.

The ability to request a change to a permit's conditions, area, minerals or duration provides the permit holder with greater flexibility to give effect to the permit, subject to the Minister agreeing to the proposed change. By such means, as circumstances alter, for example following the results of initial prospecting, exploration or mining, a permit holder has the opportunity to request that a modification be made to the permit to take into account the changed circumstances.

- 10.2 The Minister may also initiate changes to a permit either with the prior written consent of the permit holder or as provided for in the conditions of the permit.
- 10.3 Details of the information to be provided by a permit holder applying for a change to a permit are prescribed in relevant regulations.<sup>47</sup> An application will be assessed on the basis of the information included in the application and any subsequent information provided, with evaluation being undertaken in general accordance with the policy framework outlined in chapter 2 and the provisions of sections 36, 37 and 38 of the Crown Minerals Act 1991. Depending on the type of change being requested, various criteria will be taken into consideration in assessing the application. These are discussed by subject in paragraphs 10.7 to 10.49.
- 10.4 It should be noted that in accordance with section 38 of the Crown Minerals Act 1991, the Minister shall decline an application for a change to a permit if, in the opinion of the Minister, the permit holder has not substantially complied with the conditions of the permit. In determining whether the permit holder has not substantially complied with the conditions of the permit, the Minister will consider whether there is a significant and material difference between the actions of the permit holder and what is required by the conditions of the permit. Where the Minister proposes to decline an application for a change to a permit on the grounds of substantial non-compliance, section 38 sets out procedures the Minister shall follow for serving notice on the permit holder to this effect and for receiving and considering representations on the matter. When such a course of action is taken, in most cases, the Secretary would have raised the non-compliance with the permit holder through earlier correspondence.
- 10.5 Processing of applications for changes to permits should usually be completed within three months of receipt, except for applications which involve significant amendments to work programme conditions or land area of a permit, which should be completed within six months. If processing is likely to take longer than this, the permit holder will be advised.

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<sup>47</sup> *From time to time regulations shall be prescribed in accordance with section 105 of the Crown Minerals Act 1991.*

- 10.6 The Minister will grant a change to a permit by way of either a certificate of change of conditions or a certificate of extension, as the case may be, and the permit register will be noted accordingly. A copy of the certificate will be attached to the true copy of the permit (refer paragraphs 6.35, 7.49 and 8.50) as will any new plans and descriptions for the permit.<sup>48</sup>

### ***AMENDING PERMIT WORK PROGRAMME CONDITIONS***

- 10.7 A fundamental tenet of the permit allocation process is compliance with the defined minimum work programme. Whilst section 36 of the Crown Minerals Act 1991 provides for amendments to permit work programme conditions, the Minister expects to receive applications for such amendments only as a consequence of changed circumstances as a result of prospecting, exploration or mining activities to date which have affected the original permit work objectives. A work programme amendment may also be required due to an extension to the minerals or land area of a permit.
- 10.8 When assessing an application to change a permit's work programme, the Minister will take into account but is not limited to, the following matters:
- Prospecting, exploration or mining work, as the case may be, undertaken on the permit up to the time of application and the results of this;
  - Whether the proposed amended work programme will facilitate a more effective carrying out of activities under the permit or will allow the same objectives to be met with a lesser work programme;
  - Whether the permit holder has substantially complied with the permit (Section 38 Crown Minerals Act 1991);
  - Whether the proposed amendment is in accordance with good exploration or mining practice;
  - For prospecting and exploration permits, whether the proposed amended work programme has the objective of identifying the resource potential of the permit area in a timely manner and provides for prospecting or exploration over the full extent of the permit area;
  - For a mining permit, those matters detailed in paragraph 8.13 as considered relevant;
  - Any previous amendments to the permit work programme, insofar as they are relevant to the application under consideration;
  - Whether the proposed amendment is sought due to an inability to obtain an access arrangement under the Crown Minerals Act 1991 or consents under any other Act provided that negligence or default on the permit holder's part has not caused or contributed to the inability to obtain the access arrangement and the permit holder is making all reasonable efforts to progress the matter. (This is consistent with the principles of section 35(2) of the Crown Minerals Act 1991);
  - Any unforeseen natural or other disaster clearly beyond the permit holder's control which may prevent the permit holder progressing prospecting, exploration or mining operations in accordance with the work programme;
  - Whether the permit holder is unable to progress work because there is a need for legal agreements to be in place and these have not been finalised, provided that negligence or default on the part of the permit holder has not caused or contributed to these agreements not being finalised and the permit holder is making all reasonable efforts to progress the matter;

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<sup>48</sup> Section 82 of the Crown Minerals Act 1991 specifies the requirements for the lodging of certificates of extension of land and extension of minerals with the District Land Registrar.

- Whether an amendment to the work programme is necessary to give effect to the Minister's agreement to extend either the area of land covered by the permit or the duration of the permit or minerals to which a permit relates; and
- Whether the proposed amendment is sought due to the terms of an access arrangement under the Crown Minerals Act 1991 not allowing for certain activities to be undertaken or affecting the timing of certain activities. If the Minister or Secretary had raised with the permit holder, prior to granting the permit, any concerns about land access to undertake the said activities, this will be taken into account in assessing the application to change the permit's work programme.

10.9 In particular, the Minister will take into account whether agreeing to an amendment to a permit's work programme conditions would be inconsistent with the criteria on which the permit was allocated. For example, where an exploration permit is granted as a result of a cash bonus bidding tender on the condition that the permit holder will undertake defined minimum exploration work, the grant of the permit has been made within the general policy that there shall be no amendments allowed to the exploration permit's minimum work programme (subject to any reasonable requests to provide for the timely completion of work which has commenced but is not able to be completed within the stated minimum timeframe).

### ***AMENDING OTHER PERMIT CONDITIONS***

10.10 Permits may be granted with conditions related to royalties payable and administrative matters, for example, requirements to report on work undertaken on the permit.

10.11 In assessing an application to change any such permit conditions, the Minister will take into account, but is not limited to, the following matters as considered relevant:

- Whether the commercial viability of activities related to the permit is affected by the imposition of a condition on the permit and the amendment is being sought to alleviate this situation;
- Whether the permit holder is experiencing unreasonable administrative or financial difficulties by the imposition of a condition and the amendment is being sought to alleviate this situation;
- Whether the permit holder desires that a policy, procedure or provision in a replacement minerals programme will apply to the holder's permit as provided for in section 22(1)(a)(ii) of the Crown Minerals Act 1991.

### ***EXTENSION OF MINERALS TO WHICH A PERMIT RELATES***

10.12 Coal prospecting and exploration and mining permits may be granted in respect of coal and another specified mineral or minerals (including industrial rocks and building stones), and give the permit holder the right to prospect or explore or mine for coal and the specified mineral or minerals and no others. The permit holder may apply to extend the minerals to which a permit relates. A prospecting permit may relate to both Crown and privately owned minerals. Exploration and mining permits, however, may relate only to Crown owned minerals.

10.13 In considering whether to grant an application to extend the minerals to which a permit relates, in particular, the Minister shall have regard to whether or not such an extension will facilitate a more rational carrying out of activities under the permit (section 36(2), Crown Minerals Act 1991). In addition, matters that the Minister shall consider include, but are not limited to:

- Whether there is geological evidence to support the application;

- How the permit holder proposes to prospect, or explore or mine the additional mineral(s) and any impact this may have on the permit work programme obligations and other permit conditions. For a mining permit, this may affect permit royalty conditions, if another point of valuation is required and it may significantly affect the permit's production and mining scheme;
- Any complementary applications made at the same time as that to extend the minerals to which the permit relates, which seek a change to the permit conditions or area of land of the permit;
- Whether it would be more appropriate to grant a distinct permit over the additional mineral or minerals; and
- Where the permit holder proposes to extend the permit over other minerals, any relevant requirements of other Minerals Programmes.

10.14 As a condition of agreeing to grant an extension of minerals to which a permit relates, the Minister may require an amendment to the permit work programme conditions or, where a mining permit is held, the royalty conditions relating to the point of valuation.

### ***EXTENSION OF LAND TO WHICH A PERMIT RELATES***

10.15 A permit holder may apply to extend the land to which a permit relates. For example, a permit holder may have identified a coal deposit that extends to the boundary of the existing permit and may wish to evaluate the coal deposit beyond the land area of the existing permit boundary. Extensions to a permit may also be considered if the permit holder wishes to amalgamate adjoining permits to enable a rationalisation of permit activities (an application to surrender one of the adjoining permits would also have to be made and the applications considered together).

10.16 The receipt of an application to extend the land area is determined in accordance with the procedures outlined in paragraphs 5.2.1 to 5.2.23. In summary, such an application will be considered over all land other than:

- (a) Areas of land that are the subject of a granted permit or an existing privilege as defined in Part 2 of the Crown Minerals Act 1991, (other than those for petroleum) where the consent of the holder of the granted permit or existing privilege has not been obtained to the extension;
- (b) Areas of land that are not available for inclusion in any permit, in accordance with section 4.1 of this Minerals Programme and in accordance with section 15 of the Crown Minerals Act 1991;
- (c) Areas of land that are either under notified investigation for or are the subject of the tender of permits and are closed to applications by first acceptable work programme offer, extension of permit and special purpose mining permit applications; and
- (d) Areas of land that are the subject of an undecided permit application, received prior to the permit land extension application unless approval to the overlap has been obtained from the prior applicant.

Where an application to extend the land to which a permit relates cannot be processed as it is in second priority to another application, the extension application may at the request of the permit holder sit in second priority pending the outcome of the initial permit application.

10.17 As part of the processing of an application to extend the land area of a permit, the Secretary will advise tangata whenua hapu and iwi of the application and undertake consultation as set out in Chapter 3 of this minerals programme.

10.18 In considering whether to grant an application to extend a permit's land area, in particular, the Minister will have regard to whether or not such an extension will facilitate a more rational carrying out of activities under the permit (section 36(2), Crown Minerals Act 1991). In addition, matters that the Minister shall take into account include, but are not limited to:

- The geological evidence to support the application to extend the permit boundary, especially whether the proposed extension area covers the same coal deposit as that of the current permit;
- Prospecting, exploration or mining work undertaken on the permit up to the date of application and the results of this work and whether the permit holder has substantially complied with the conditions of the permit (section 38 Crown Minerals Act 1991);
- Any prospecting, exploration or mining work that is to be undertaken over the proposed land area of the extension to the permit, and how this relates to that undertaken or planned in the existing area of land of the permit;
- Whether extending the area of land of the permit will enable the permit holder to more effectively prospect, explore or mine over the permit;
- Any requests or comments from tangata whenua hapu and iwi regarding the proposed extension of area;
- Any other complementary requests to change the permit, for example, whether the permit holder, in conjunction with applying for an extension to the permit's land area, has applied for an extension of minerals or has given notice of part surrender of some of the permit's area under section 40 of the Crown Minerals Act 1991; and
- Whether extending the land area of the permit is inconsistent with the principles of the Crown Minerals Act 1991, in particular, that the land area of an exploration permit should be reduced in any subsequent terms, as set out in section 37 of the Act.

10.19 Generally, the Minister will grant extensions to the land area of a permit only where the extension area is immediately adjacent to the permit. Permit holders may apply to the Minister for dispensation of this general rule. The reasons why a permit over a discontinuous area is considered necessary should be clearly outlined. The Minister would be unlikely to consider a permit area extension that is not adjacent to the permit if geological continuity between the two areas could not be clearly established.

10.20 In the case of an application to extend the area of land of a prospecting permit, the Minister must also be satisfied that:

- (a) prospecting in the area of land that the permit holder proposes to add to the permit will materially add to the existing knowledge of the mineral resources of the area; and
- (b) There is little interest in exploring for, or mining, the mineral in all or part of the land to which the application relates.

10.21 As a condition to agreeing to the grant of an extension to the land of a permit, the Minister may require an amendment to the permit work programme conditions. The grant of an extension to the land of a permit may also be on the condition that the permit holder deposit with the Secretary, as security for compliance with the conditions of the permit, an additional monetary deposit or bond as may be required by the Minister taking into account the land which has been added to the permit.

## ***EXTENSION OF DURATION OF A PROSPECTING PERMIT***

- 10.23 A prospecting permit may be initially granted for a term of up to two years. Generally, it is considered that this should be sufficient time for the completion of a prospecting work programme and it would be unusual for an extension of duration to be granted beyond this time. There may be circumstances, however, when the prospecting permit holder can justify an extension to the duration of the permit. Section 36(4) of the Crown Minerals Act 1991 provides that a prospecting permit may have its duration extended to any date that is not more than four years from the date of commencement of the permit to enable further prospecting. One or more extensions may be granted within this timeframe.
- 10.24 Section 36 requires that an application to extend the duration of a permit must be forwarded and determined by the Minister before the expiry of the permit.
- 10.25 Where it appears that an application will not be processed before the permit expires, the Minister may grant a special interim extension of sufficient duration to enable the application to be processed. The grant of a special extension would be for administrative reasons only and, where this occurs, will state that the grant of the extension shall not have any bearing on the Minister's decision as to whether or not to extend the duration of the prospecting permit.
- 10.26 Every application to extend the duration of a prospecting permit is required to include a detailed proposed programme of the minimum work to be undertaken over the period of the extended duration, and an indication of likely expenditure on prospecting operations. As considered appropriate, this should be complemented by an explanation of the objectives of the proposed work programme having regard to prospecting results to date over the permit area, the permit's geology and coalbearing potential.
- 10.27 In considering whether to grant an extension of duration of a prospecting permit, the Minister will take into account, but is not limited to, the following matters:
- Those matters listed in paragraph 6.11 concerning assessment of a prospecting permit application's work programmes;
  - The timing and appropriateness of the proposed technical approach given prospecting results to date and the geology of the permit area;
  - Whether the extension is sought to enable the applicant to complete or extend a work programme already under way, and the Minister is satisfied an extension of time is justified from a geological perspective or because of unforeseen events beyond the permit holder's control (for example, major weather effects) and that this work could not have been reasonably completed during the first term of the permit; and
  - Whether the permit holder has substantially complied with the conditions of the permit during its first term (section 38 Crown Minerals Act 1991).

## ***EXTENSION OF DURATION OF AN EXPLORATION PERMIT***

- 10.28 An exploration permit may be granted for an initial term of up to five years (section 35, Crown Minerals Act 1991). Where a permit holder wishes to continue exploration beyond the initial term of the permit, application may be made to extend the permit's duration. The Minister may grant one or more extensions of duration, provided that the total term of the exploration permit is for a period not exceeding ten years from the commencement date of the permit (sections 36(4) and 37(1) of the Crown Minerals Act 1991).
- 10.29 Section 36 requires that an application to extend the duration of an exploration permit shall be forwarded and determined by the Minister prior to the current permit expiry date. Where it

appears that an application will not be processed before the permit expires the Minister may, under section 36 of the Crown Minerals Act 1991, grant a special interim extension of sufficient duration to enable the application to be processed. The grant of a special interim extension would be for administrative reasons only and, where this occurs, will state that the grant of the extension shall not have any bearing on the Minister's decision as to whether or not to extend the duration of the exploration permit.

10.30 There are specific requirements to be met before a subsequent term of an exploration permit may be granted. Where there has not been a coal deposit discovered, extending over more than half of the exploration permit or an extension of less than ten years from the commencement date of the permit is sought, then a subsequent term is considered in accordance with section 37(1) of the Crown Minerals Act 1991. This provides that where a subsequent term is granted, it shall be granted over an unbroken area of land that is not more than half the area comprised in the permit at the time of considering the extended duration application. This requires that the permit holder, at the time of making the application to extend the permit, indicates the area for which it is desired that the permit continue and the area to be relinquished, which shall be at least half the area of the permit at the time of considering the extended duration application. Any surrender of part or parts of the permit's area, prior to this time, is not taken into consideration in determining the extent of the area to be relinquished. Section 37(1) also requires that the subsequent term permit area must be a contiguous block and the land so situated that it will not prevent or seriously hinder the future exploration of the land that the permit holder proposes be no longer included in the permit.<sup>49</sup>

10.31 As well, before granting an extension to the duration of an exploration permit, the Minister must be satisfied that the proposed work programme will provide for the satisfactory exploration of the land in respect of which the subsequent term is sought in accordance with section 37(1)(b) of the Crown Minerals Act 1991. Accordingly, when making an application to extend the duration of an exploration permit, the permit holder is required to provide a proposed minimum programme of work to be carried out over the period of the extended duration. As considered appropriate this should be complemented by an explanation of the objectives of the proposed work having regard to work undertaken to date on the permit.

10.32 In considering whether to grant an extension of duration of an exploration permit, the Minister will take into account, but is not limited to, the following matters:

- Whether the work programme proposed has the objective of identifying the coal resource potential of the permit area and/or identifying coal deposits or evaluating the feasibility of mining a particular deposit;
- Whether the work proposed to be undertaken is appropriate to the size of the permit and the extended duration sought;
- Those matters outlined in paragraph 7.13 to 7.21 concerning assessment of an exploration permit application work programme considered relevant;
- The timing and appropriateness of the proposed technical approach given exploration results to date and the geology of the permit area;
- Whether the subsequent term work programme is consistent with any conditions specified in the current permit which state the grounds on which any subsequent term would be granted; and

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<sup>49</sup> *If an exploration permit holder has discovered a coal deposit and the extent of this is over more than half of the exploration permit, the permit holder may apply for an extension of the duration of the permit as provided for in section 37(2) of the Crown Minerals Act 1991, over all of the land comprised in the permit to which it is likely that the discovery relates. This type of application is discussed in paragraph 10.35 to 10.46. It is highly likely to apply to coal exploration permits where a duration beyond five years is needed.*

- Whether the permit holder has substantially complied with the conditions of the permit during its first term.
- 10.33 Where the Minister agrees to extend the duration of an exploration permit, this will be on the condition that the permit holder will undertake the approved minimum work programme.
- 10.34 The grant of an extension to the duration of an exploration permit may also be on the condition that the permit holder deposit with the Secretary, as security for compliance with the conditions of the permit, a replacement monetary deposit or bond as may be required by the Minister.

### ***EXTENSION OF DURATION OF EXPLORATION PERMIT TO APPRAISE A DISCOVERY***

- 10.35 If, as a result of exploration operations, a coal deposit is discovered (or the exploration permit was originally granted over a known coal deposit) and an extension of permit duration granted under section 37(1) would be insufficient to enable appraisal of the discovery (either because of the requirement to relinquish 50 percent of the permit area or because the duration cannot be extended beyond ten years), then a permit holder may apply for a special extension of duration of an exploration permit in accordance with section 37(2) of the Crown Minerals Act 1991. For clarification purposes only, a permit which has a term extended in this way shall be referred to as an "appraisal extension". Where granted, an appraisal extension allows the permit holder to complete the appraisal work for the discovery to the point where a decision can be made whether or not to apply for a mining permit in respect of the discovery.
- 10.36 Section 37(2) of the Act significantly provides for the exploration permit duration to go beyond ten years and for the requirement to reduce the exploration permit area not to apply if there is one or more discoveries over greater than half of the initial permit area.
- 10.37 A discovery is considered to have been made when exploration results indicate the presence of concentrations of coal, within a defined area, which may prove to be a mineable reserve or measured resource capable of being mined.
- 10.38 Appraisal work may include close spaced drilling, close spaced bulk sampling, exploratory tunnelling and shaft sinking to measure and prove the quantity, quality and amenability to extraction of the mineral resource. It also includes the preparation of a work programme for the development and mining of a discovery, which is required to be approved by the Minister, in accordance with section 43 of the Crown Minerals Act 1991, prior to the grant of a mining permit (unless the Minister specifically decides otherwise). It is expected that during an appraisal extension, mine feasibility and technical studies will be completed.
- 10.39 The grant of an appraisal extension is not for the purposes of allowing further general exploration and is not a means to mine a resource without obtaining a mining permit.
- 10.40 As required by relevant regulations, an application for an appraisal extension in brief should provide a detailed preliminary evaluation of the discovery made, (including a report on the geology of the discovery and preliminary reserve estimates) and a statement detailing the appraisal work programme proposed to be carried out and the reasons why such a programme is proposed.
- 10.41 The Minister will grant an appraisal extension if satisfied with technical merits of the application over that part of the land of the permit which the Minister determines is reasonably adequate to enable the permit holder to carry out the appraisal work for the discovery (refer section 37(3) of the Crown Minerals Act 1991). In determining this, it is recognised that whilst the extent of a coal discovery may be ascertained using data from drilling, tunnelling or other bulk excavation programmes, it is difficult to define the actual limits of a coal resource which is commonly based on economic considerations, particularly if there has not been significant appraisal work

undertaken. The Minister's objective will be to allow the permit holder a reasonably adequate area of land to enable appraisal and subsequent mining operations to be carried out in respect of the discovery and to maintain rights to the discovery.

- 10.42 The Minister may agree to grant an appraisal extension on the condition that the permit holder at a specified time justify holding the full land area of an appraisal permit. Such a mechanism may be imposed where the areal extent of a discovery has not been delineated adequately and the Minister allows the permit holder the benefit of better delineating the extent of a discovery within a restricted timeframe.
- 10.43 If there is more than one discovery, separate appraisal extensions can be granted, appropriate to each discovery.
- 10.44 An appraisal extension will be granted only if the Minister is satisfied that reasonable efforts will be made by the permit holder to carry out the appraisal of a discovery and the appraisal work programme is sufficient to complete this. The Minister, in considering the proposed work programme to be undertaken during an appraisal extension, will have regard to whether it is likely to achieve the objectives of determining the quality and the quantity of the coal resource, how it is to be mined and the proposed timing of the work. On the completion of appraisal operations, the permit holder will be expected to have made a comprehensive assessment of the extent and nature of the coal deposit. Such assessment should include an estimation of identified coal resources and reserves. The permit holder should, if a subsequent mining permit is to be applied for, also have developed a mine plan or scheme and a mining work programme.
- 10.45 There is no statutory limit on the duration of an appraisal extension. The Minister's general approach will be to not grant an appraisal extension duration beyond four years. Where necessary, the Minister may extend the duration of the appraisal extension, if the permit holder satisfies the Minister that the appraisal work programme cannot be completed within the original timeframe and that the permit holder is taking all reasonable steps to advance appraisal of the coal discovery.
- 10.46 If a permit holder wishes to obtain a subsequent mining permit in respect of a discovery appraised under an appraisal extension (as provided for in section 32(2) of the Crown Minerals Act 1991), any mining permit application must be forwarded before the expiry of the appraisal extension duration.

### ***EXTENSION OF DURATION OF A MINING PERMIT***

- 10.47 Mining permits may be granted for up to forty years. In determining the duration of a mining permit, the Minister will give the permit holder sufficient time to carry out all the proposed mining operations and to recover the coal resource in respect of which the permit is granted. From time to time, the permit holder may be unable to economically deplete the coal deposit within the term of the permit as provided for in section 36(5) of the Crown Minerals Act 1991. In such cases, the permit holder may apply to extend the duration of the mining permit.
- 10.48 The duration of a mining permit may be extended where the Minister is satisfied that:
- (a) The coal resource cannot be economically depleted before the permit expiry date and in this respect the Minister may consider the extent to which the inability to deplete the coal resource is due to causes or reasons beyond the permit holder's control;
  - (b) There is a satisfactory work programme for mining the coal deposit. Either the Minister will determine that the current work programme is satisfactory or shall request the permit holder to submit a new work programme (section 36(5)(b) Crown Minerals Act 1991). Whether or not the work programme is satisfactory will be evaluated in accordance with the procedures for evaluating a new mining permit work programme (refer paragraphs 8.16 to 8.21);

- (c) whether by extending the duration of the mining permit, the Crown will obtain a fair financial return from the extraction of its resource;
- (d) the permit holder has substantially complied with the conditions of the permit (refer to section 38 of the Crown Minerals Act 1991); and
- (e) whether extending the duration is consistent with the principle of efficient allocation of permit rights.

10.49 The Minister will grant an extended term of a mining permit only for a sufficient period of time that the Minister considers reasonable to enable the permit holder to economically deplete the resource and to undertake site rehabilitation work as necessary.

#### ***ADVICE TO OTHER PARTIES OF CHANGE TO PERMIT***

10.50 Following the grant of the change to a permit, the Secretary may advise the following parties of the change:

- (a) Land Information New Zealand (formerly the Department of Survey and Land Information) in order to update the mining industry land and map database;
- (b) The Occupational Health and Safety Inspector (Inspector of Coal Mines); and
- (c) The local authorities which have jurisdiction over the area of land to which the permit relates.

## 11 TRANSFERS AND OTHER DEALINGS WITH PERMITS

- 11.1 A granted permit is a property right which may be transferred, sold or otherwise dealt with subject to section 41 of the Crown Minerals Act 1991. This section requires the Minister's consent to agreements which provide for:
- (a) The transferring of a permit, for example, the trading of a permit from one party to another party; or
  - (b) The creation of any interest in or affecting any existing or future permit. For example, a permit holder may sell to another party a percentage interest in the permit; or
  - (c) The transferring or other dealing, either directly or indirectly, with any interest in or affecting any existing or future permit. For example, an agreement may be entered into which provides that if the permit holder is ever to sell the permit, then party 'x' has the first option to purchase; or
  - (d) The imposition of any obligation on the permit holder which relates to or affects the production of minerals from the land to which the permit relates or the proceeds of such production. This includes tribute or lease agreements which provide for a party other than the permit holder to work the permit and to obtain a percentage of the proceeds of production.

The Minister's consent, however, is not needed where an agreement is made by way of mortgage or other charge or is an access arrangement.

- 11.2 Where an agreement of the type described in paragraph 11.1 is to be made, in accordance with section 41(2) of the Crown Minerals Act 1991, this shall be entered into subject to the consent of the Minister, and an application for such consent is to be made within 3 months of entering into the agreement. Details of how to apply for the Minister's consent are prescribed in relevant regulations. Either an original or true copy of the agreement must be forwarded with the application. With respect to instruments of transfer or memoranda of lease, these shall be in the form prescribed by the Land Transfer Act 1952, as required by section 41(9) of the Crown Minerals Act 1991. (Forms may be obtained from the office of the District Land Registrar).
- 11.3 The Minister's consent to a transfer or other agreement affecting permit rights, is required in order that the Minister may consider such agreements generally in terms of the policy framework outlined in chapter 2 and whether the proposed new permit holder<sup>50</sup> will comply with the conditions of, and give proper effect to the permit.
- 11.4 In considering an application to consent to an agreement which will result in a new permit holder (be this by transfer of the permit or creation or transfer of operating interest in the permit), matters the Minister will take into account include but are not limited to the following as considered relevant:
- Whether the proposed new permit holder or holder of an operating interest in the permit has the financial and technical ability to comply with the conditions of, and give proper effect to, the permit;

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<sup>50</sup> *The permit holder may be one party or more than one party in a joint venture, partnership or otherwise. When there is a transfer of the permit or a change in the interests held in a permit (by transfer or creation), then there is a new permit holder. In other words, the permit holder, as an entity, has changed.*

- Other exploration or mining activities both in New Zealand and internationally that the proposed new permit holder or holder of an operating interest in the permit has been involved with, to the extent that these activities may affect the proposed permit holder's ability to comply with the conditions of, and give proper effect to, the permit. In particular, the Minister is interested in whether the proposed new permit holder or holder of an operating interest in the permit (or related companies), has complied with work programme conditions, the lodgement of data, the payment of fees and the conditions of consents associated with previously held permits or licences;
  - International obligations the Government may have which are relevant to the application for consent;
  - Verification of registration and incorporation as a New Zealand or international company and any legislative requirements that need to be met to invest and operate in New Zealand; and
  - Arrangements that the proposed new permit holder or changed holders of operating interest in the permit may need to make to replace the permit monetary deposit or bond (or part of the same) held by the Secretary (refer chapter 9.1).
- 11.5 In considering an application to consent to an agreement affecting a permit (other than as provided in paragraph 11.4), the matters which the Minister will take into account include, but are not limited to the following, as considered relevant:
- Whether the agreement may affect the operations of the permit, bearing in mind the duty of the permit holder to comply with the conditions of, and give proper effect to, the permit;
  - Whether the permit holder has applied to change the conditions of the permit or to change the granted permit in any other way, in conjunction with seeking the Minister's consent to an agreement affecting the permit; and
  - International obligations the Government may have which are relevant to the application for consent.
- 11.6 Taking into account the criteria outlined in paragraphs 11.4 and 11.5, if the Minister is concerned that the proposed new permit holder may not be able to give proper effect to the permit, the Minister will raise with the applicant the concerns held, and advise the applicant of the factor(s) that are considered to be relevant which are affecting the giving of the consent. Before deciding on the matter, the Minister will consider any comments that the applicant has to make.
- 11.7 As provided for in section 41(3) of the Crown Minerals Act 1991, the Minister may give consent to an agreement subject to such conditions as he or she thinks fit. In most cases, it is unlikely that the Minister will give conditional agreement. If there are conditions attached to a consent, it is likely that these will concern such matters as:
- Work programme obligations, including expenditure; and
  - A requirement that the new permit holder replace the permit monetary deposit or bond held by the Secretary (refer chapter 9.1).
- 11.8 Applications for the consent of the Minister to an agreement should be processed within 40 working days, provided that all relevant information and documentation have been supplied. On consent being given to an agreement, this will be noted in the true copy of the permit held by the Secretary and in the permit holder's copy of the permit by way of Certificate of Consent.

- 11.9 Where the agreement consented to by the Minister is an instrument of transfer or memorandum of lease, in accordance with section 41(10) of the Crown Minerals Act 1991, the Secretary will endorse the instrument of memorandum to the effect that the Minister has consented to the transfer or lease to which the instrument or memorandum relates. The endorsed instrument or memorandum is then required to be forwarded to the District Land Registrar for lodgement and acceptance (in accordance with section 41(10)). A transfer or lease of a permit shall not have any force or effect until the instrument of transfer or memorandum of lease has been lodged with, and accepted by, the District Land Registrar.
- 11.10 It is noted that section 91 of the Crown Minerals Act 1991 requires that the Secretary shall keep a register of permits in which there shall be entered brief particulars of all permits, including changes, transfers and leases. Accordingly, following the consent of the Minister to an agreement which results in a change to the permit holder or holders of operating interest in the permit (and where required, lodgement of the agreement with the District Land Registrar) brief particulars of the changed permit holder will be noted in the permit register.

## 12 UNIT DEVELOPMENT OF COAL EXPLORATION AND MINING PERMITS

- 12.1 The grant of a coal exploration or mining permit gives the permit holder a right to extract coal in the permit area, in the course of activities authorised by the permit, and to acquire ownership of it. As provided in section 30 of the Crown Minerals Act 1991, the right to prospect, explore or mine (depending on the permit type held) for coal is in respect of the land specified by the permit held, and subject to the conditions of the grant of the permit.
- 12.2 If, in the course of exploration, a coal deposit is discovered, the permit holder has the right to develop and mine the deposit (subject to an approved work programme and a subsequent mining permit being granted) but only so far as the deposit is found in the land specified by the permit. If the coal deposit extends beyond the boundaries of a permit, the permit holder has no rights to the extent of the discovery outside of the permit.
- 12.3 A coal deposit may extend across the boundary of two or more permits, and it is possible that the coal at or near the boundary will not be mined unless there is some co-operation between the permit holders. Without a development scheme for the whole deposit, the respective permit holders may, in the course of carrying out mining operations, sterilise or waste the resource alongside the boundary of the permits.

### *INITIATING A UNIT DEVELOPMENT SCHEME*

- 12.4 Section 46 of the Crown Minerals Act 1991 provides that where a coal deposit extends over the area or part of the area of more than one permit, the Minister **may**, on the request of one or more of the permit holders or of his or her own accord, require all the relevant permit holders to co-operate in the preparation of a development scheme for the working and development of the mineral deposit as a unit, with the objectives of preventing waste, avoiding unnecessary competitive extraction and securing the maximum ultimate recovery of the coal. The Minister will do so by issuing a notice of unit development to all the relevant permit holders. The notice shall specify the land in respect of which the Minister requires a development scheme to be submitted and shall specify a date by which the development scheme must be forwarded.
- 12.5 As noted, either the permit holder may apply to the Minister to issue a notice of unit development or the notice may be initiated by the Minister. There is no prescribed form for a permit holder to request the Minister to consider issuing a notice of unit development. A request, however, is required to be made in writing.
- 12.6 To achieve a unit development scheme, it will not be necessary for the Minister to serve a formal notice of unit development, if the Minister considers the relevant parties (permit holders or applicants) are co-operating sufficiently to achieve a unified development. Ideally, the permit holders should be able to formulate their own development scheme to their mutual benefit. For example, this could be achieved by adjacent mining permits having complementary work programmes, determined by mutual co-operation and submitted for approval as part of each mining permit application on the basis of being complementary. Co-operation between permit holders in such a manner is expected to occur in most cases.
- 12.7 The Minister's role in respect of unit development is:
- To prevent waste and secure the maximum ultimate recovery of coal;
  - To prevent unnecessary competitive extraction from a coal deposit; and

- In those situations where the Minister has to prepare a development scheme (section 46(4) of the Crown Minerals Act 1991), to ensure there is fair and equitable treatment of all the affected permit holders.

The maximum ultimate recovery of a coal deposit is dependent on a programme of work which is in accordance with good mining or exploration practice including avoidance of resource sterilisation and waste.

### ***EVALUATION OF A UNIT DEVELOPMENT SCHEME***

12.8 Where a unit development scheme requested by the Minister is prepared for the working and development of a coal deposit, it shall be submitted to the Minister for approval, pursuant to section 46(1) of the Crown Minerals Act 1991. The Minister will assess the development scheme in much the same manner as technically assessing an application for a mining permit (refer to paragraphs 8.13 to 8.21). The evaluation will be undertaken in general accordance with the policy framework outlined in chapter 2, with the Minister particularly concerned to obtain for the Crown a fair financial return from the extraction of its coal resources.

12.9 In addition to those matters noted in paragraph 8.13, matters that the Minister will take into consideration include, but are not limited to the following:

- Whether the proposed mining methods and mine scheme are in accordance with good exploration or mining practice, having regard to matters such as technical and commercial considerations. This includes the avoidance of waste and unnecessary sterilisation of the resource;
- Any approved work programme(s) pursuant to section 43 of the Crown Minerals Act 1991, relating to any of the permits which are subject to the notice of unit development, or any work programmes submitted for approval and under consideration;
- Any conditions of the permits which are subject to the notice of unit development;
- Proposals or agreements entered into by the relevant permit holders concerning obligations, liabilities and entitlement to production; and
- Whether exploration or prospecting work, with the aim of obtaining further information of the coal resources of the area or updating knowledge of the coal deposit and reducing uncertainty as to the location, rank and quality of the coal is proposed.

12.10 Where the Minister requires adjoining exploration permit holders to co-operate in the preparation of a unit development scheme, the Minister is likely to require the unit development scheme to be approved before approving a work programme submitted in accordance with a subsequent mining permit application made by any of the affected permit holders. The Minister may require that the evaluation of the unit development scheme and subsequent mining permit applications occurs in tandem.

### ***WITHHOLDING OF APPROVAL OF DEVELOPMENT SCHEME***

12.11 If the Minister is not satisfied that a proposed unit development scheme will prevent waste, avoid unnecessary competitive extraction and/or secure the maximum ultimate recovery of coal, then the Minister shall withhold approval of the proposed scheme and shall invite the permit holders to submit a modified development scheme for the Minister's approval within a reasonable period, which shall be specified by a further notice (section 46(3), Crown Minerals Act 1991).

## ***PREPARATION OF DEVELOPMENT SCHEME BY MINISTER***

- 12.12 As provided in section 46(4) of the Crown Minerals Act 1991, if a development scheme or modified development scheme is not submitted to the Minister within the period specified in the relevant notice given or any extended period agreed to (and the notice of unit development has not subsequently been cancelled), or if the modified development scheme is not approved, then the Minister shall prepare a development scheme that in the opinion of the Minister is fair and equitable to all the permit holders. The permit holders are required to conduct mining operations and perform in accordance with that scheme and to observe the conditions of that scheme.
- 12.13 The preparation of a development scheme by the Minister occurs only if the Minister is convinced that the relevant permit holders are not able to co-operate to achieve the scheme amongst themselves. The desirable course is for the permit holders to agree to a scheme and for this to be approved by the Minister.
- 12.14 If the Minister does have to determine a development scheme, the Minister will address, but not be limited to, the following matters:
- Estimating each permit holder's production entitlement. This will require an estimation of the coal resource and reserves in each affected permit. Other factors which may be relevant are whether one permit holder has incurred or may incur greater exploration, appraisal and development costs, or will provide more facilities than other permit holder(s);
  - Effective mining of the coal deposit in accordance with good exploration or mining practice with the objective of achieving the maximum recovery of the coal within technical and economic constraints;
  - The production schedule for the coal deposit which will be in accordance with good exploration or mining practice;
  - Each permit holder's liability for the costs of necessary ongoing mining operations;
  - Each permit holder's obligations in respect of liability under the Crown Minerals Act 1991 (sections 102 and 103) and the discharging of mining operations; and
  - The need for a unit operating agreement which provides for each permit holder's entitlement to the coal obtained as a result of operations undertaken in accordance with the unit development scheme. (This may be imposed as a condition of the development scheme, to be determined by the affected permit holders within a defined period).

## ***APPROVED DEVELOPMENT SCHEME***

- 12.15 The approval of a unit development scheme will be given in the form of a permit certificate or endorsement, issued in respect of all the affected permits. Compliance with the development scheme will be a condition of the permits and the development scheme will be a part of the permits which are public documents. If a unit development scheme is prepared simultaneously with a unit operating agreement, the Minister's consent to this may be separately required (refer chapter 11) and this document will not be a part of the permits.
- 12.16 Where the Minister determines a development scheme (rather than giving approval to a scheme), similar to the provisions outlined in paragraph 12.15, the determined scheme will be registered on the permit by endorsement or certificate.

## **13 SURRENDER OF ALL OR PART OF PERMIT AREA**

- 13.1 Section 40 of the Crown Minerals Act 1991 provides that a permit holder may surrender a permit or part of the area of a permit, by giving notice to the Secretary. By this means, a permit holder is not obliged to hold acreage in a permit which is no longer wanted and accordingly is not obliged to pay annual fees and to make ongoing work commitments. The manner of surrendering permits is outlined in the relevant regulations.<sup>51</sup>

### ***PARTIAL SURRENDERS OF PERMIT AREA***

- 13.2 In general, a permit holder would give notice to surrender part of the area of their permit for one of the following reasons:

- To reduce the area of the permit to that of ongoing interest and work;
- To redefine the permit's boundaries by means of a partial surrender in combination with an extension of the permit's area;
- To reduce the area of the permit because land access or another consent cannot be obtained to work the area to be surrendered.

- 13.3 The permit holder applies to the Secretary to surrender part of the area of a permit and this will be considered to be in order provided that:

- The notice is in accordance with the relevant regulations; and
- There are three original copies of an adequate permit plan and description which clearly defines the proposed new area of the permit (refer chapter 9.2).

- 13.4 Often a permit holder will desire to surrender part of the area of a permit in association with applications for other changes to a permit. Where such circumstances apply, the permit holder should make a conditional notice of partial surrender of the area of a permit. For example, this would ask that the Secretary accept the notice of partial surrender conditional upon the Minister agreeing to change the permit work programme conditions, or conditional upon the Minister agreeing to extend the area of the permit or some other change to the permit. As the partial surrender notice is conditional upon the Minister's approval of another application, the Secretary's acceptance of the partial surrender will be deferred until the outcome of the other application is known.

### ***FULL SURRENDER OF PERMIT***

- 13.5 Notice of full surrender of a permit may be given by the permit holder at any time to the Secretary. For some permits (particularly exploration permits), there may be work commitment options defined in the permit. For such permits, usually any notice of surrender would be received when the permit holder had completed any work committed to under the permit (and made a decision not to continue with the prospecting, exploration or mining of the permit area).

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<sup>51</sup> From time to time, regulations shall be prescribed in accordance with section 105 of the Crown Minerals Act 1991.

## ***ADMINISTRATIVE MATTERS***

- 13.6 Following acceptance of a notice to surrender part or all of the area of a permit, the Secretary shall lodge the notice with the District Land Registrar (section 40(9), Crown Minerals Act 1991). The District Land Registrar shall accordingly amend his or her permit records and, as appropriate, cancel the record of the permit against certificates of land title (section 89, Crown Minerals Act 1991). The Registrar advises the Secretary when this has been done. The Secretary then will endorse both the copies of the permit held by the Secretary and the permit holder noting the change in the permit area and will attach the new permit plans and descriptions. The permit register (section 91, Crown Minerals Act 1991) held by the Secretary will also be noted and the Secretary will advise Land Information New Zealand (formerly the Department of Survey and Land Information) in order to update the mining industry land and map database.
- 13.7 Where a permit is surrendered in whole or in part and payments have been made to the Crown in respect of the surrendered area (for example, annual fees which are paid in advance), then the permit holder is entitled to a refund of so much of the payments as have been made in respect of the land surrendered and the remaining part of the period subsequent to the effective date of surrender (section 40(5), Crown Minerals Act 1991).
- 13.8 Where there is full surrender of a permit, any monetary deposit or bond lodged to ensure compliance with the permit, will be released upon verification that all permit fees, royalties or other payments to the Crown in relation to the permit and the Crown Minerals Act 1991 have been paid (refer chapter 9.1).
- 13.9 Section 90(6) of the Crown Minerals Act 1991 requires that the permit holder, upon surrender or part surrender of a permit area under section 40 of the Act, shall provide to the Secretary certified copies of all reports lodged pursuant to the appropriate regulations, showing separately the details of the area of the land surrendered. Information and reports lodged over the surrendered area are publicly available for reference or copying.
- 13.10 It should be noted that, as provided in section 40(6) of the Crown Minerals Act 1991, the surrender of a permit does not release the permit holder from any liability in respect of:
- (a) The permit up to the date of surrender; and
  - (b) Any act under the permit up to the date of surrender giving rise to a cause of action.

## 14 GOOD EXPLORATION OR MINING PRACTICE

- 14.1 This section outlines some of the aspects of good exploration or mining practice that the Minister will have regard to in carrying out and exercising his or her functions and powers under the Crown Minerals Act 1991 with respect to prospecting, exploration and mining permits and permit applications. It should be noted that this section does not address those good exploration or mining practice components which are not relevant to the functions of the Crown Minerals Act 1991. In particular, this includes those aspects of good exploration or mining practice concerning health and safety matters and environmental effects. These latter issues are covered by the legislative requirements of the Health and Safety in Employment Act 1992 and the Resource Management Act 1991 respectively.
- 14.2 Good exploration or mining practice is the term used in the Crown Minerals Act 1991 (refer section 43). For prospecting permits and permit applications, the term good industry practice has been adopted as the reference to good exploration or mining practice, given that exploration or mining are not allowed under such permits.
- 14.3 Good exploration or mining practice cannot be defined unequivocally. Rather, it is a concept implying that a permit holder will undertake prospecting, exploration or mining in a technically competent manner and with a degree of diligence and prudence reasonably and ordinarily exercised by experienced operators engaged in similar activities under similar circumstances and conditions.
- 14.4 The Minister has regard to good exploration and mining practice when considering permit applications and applications to amend permit work programmes, to extend the land or minerals covered by a permit and to extend the duration of a permit. The Minister is concerned to ensure that, as a result of good exploration practice, areas of resource potential are clearly identified and that there is sound development and management of coal resources through good mining practice. In determining whether a proposed permit work programme and application for a permit or permit change are in accordance with good exploration or mining practice, matters that the Minister will have regard to, as considered relevant to the matter under consideration, include but are not limited to the following:
- That the methods of prospecting, exploration and/or mining proposed are suitable and will be technically effective, given the objectives of the work programme, the geology of the area, and the results of previous prospecting, exploration and/or mining;
  - That prospecting, exploration and mining activities are conducted in such a way as to ensure a reasonable amount of good quality objective data is obtained, which adds to the knowledge of the resource, within reasonable economic and technical constraints;
  - That exploration activities, mine development and production operations are designed and conducted so as to maximise extraction of a saleable commodity and avoid sterilisation and waste, within reasonable technical and economic constraints;
  - That for a mining project, there is ongoing appraisal and definition of the geology and structure of the coal deposit, in sufficient detail, in order to facilitate the most suitable mine development and production operations;
  - The ability of the permit holder (or permit applicant) to act in a technically competent manner and with reasonable diligence and prudence in undertaking the proposed programme of work;

- That the permit holder (or applicant) or an agent or contractors on behalf of the permit holder (or applicant) who is (or will be) responsible for permit operations, has the skills, training and experience to the required level needed to undertake the work programme, at all times, and to carry out all prospecting, exploration and/or mining operations in a skilful and effective manner.
- 14.5 In determining whether a permit application or permit change application and proposed prospecting, exploration or mining operations are in accordance with good exploration or mining practice, the Minister may obtain expert advice. The Minister may also refer to industry guidelines, standards, codes, principles and practices related to good exploration or mining practice.
- 14.6 Where the Minister has concerns that a permit application or permit change application may not be in accordance with good exploration or mining practice, or that a permit holder is not undertaking prospecting, exploration or mining in accordance with good exploration or mining practice, the concerns held will be raised with the permit holder. Before deciding on the matter the Minister will consider any comments that the permit applicant or holder has to make in relation to the issue.

# 15 THE ROYALTY REGIME

## *INTRODUCTORY SUMMARY*

To provide for obtaining by the Crown of a fair financial return from coal, all mining permits shall be granted subject to conditions which require the permit holder to calculate and pay royalties to the Crown. Royalty is payable on any coal obtained under the permit that is either sold or used in the production process or otherwise gifted, exchanged or bartered or removed from the permit area without sale.

This section sets out the provisions on which the conditions in a permit relating to the payment of royalties and production of coal shall be based.

In summary, the royalty regime is a hybrid regime comprising a one percent **ad valorem royalty** component and a five percent **accounting profits royalty** component.

An **ad valorem royalty**, in brief, is a royalty payable on the basis of either a sales price received, or where there has been no sale or no **arm's length** sale, the deemed sales price. The **ad valorem royalty** is referred to in abbreviated form as an AVR.

In general terms, an **accounting profits royalty** is a mechanism whereby the resource owner receives a share of profits once all significant costs have been recovered by the producer. It is payable on the net accumulated accounting profit of production from a permit. It takes into account both prices received for products and the costs of extracting, processing and selling those products up to the **point of sale**. The **accounting profits royalty** is referred to in abbreviated form as an APR.

The hybrid royalty regime has been chosen to provide for the Crown a fair minimum royalty (achieved through the **ad valorem royalty** component) and a fair share of substantial profits (achieved through the **accounting profits royalty**). This is in accordance with the policy framework outlined in chapter 2 and provides for the obtaining by the Crown of a fair financial return from its coal.

## *THE COAL ROYALTY REGIME*

- 15.1 Where the Minister agrees to grant a mining permit, the permit shall be subject to conditions that impose requirements in relation to the calculation and payment of royalties to the Crown by the permit holder. The conditions which will be specified in each permit shall be written in accordance with the provisions outlined in this chapter. In this chapter, any reference to permit or permit holder is a reference to a mining permit or a mining permit holder respectively. These provisions do not apply to prospecting permits and exploration permits, or special purpose mining permits where production is not more than \$100,000 in value per annum.
- 15.2 Defined terms used in these royalty provisions are indicated in bold. All defined terms are noted in paragraph 15.63, which contains either a definition of the term or a reference to where the term is elsewhere defined. In calculating royalties, the permit holder shall be required to use accounting procedures which are in accordance with New Zealand **Generally Accepted Accounting Practice**, except where otherwise indicated.

## *WHEN IS A ROYALTY PAYABLE*

- 15.3 It shall be a condition of the permit that the permit holder shall be liable for the calculation and payment of royalties to the Crown in respect of all coal taken from the land comprised in the permit that is:

- (a) Sold; or
- (b) Gifted or exchanged or bartered or removed from the permit area without sale; or
- (c) Used in the production process (as a substitute for otherwise having to purchase coal for this purpose); or
- (d) Unsold on the surrender, expiry or revocation of the permit, that is, inventory or unsold stocks of any coal. (This does not include where coal has been extracted but returned to the land and thus its ownership is retained by the Crown);

except as otherwise provided in paragraph 15.4.

15.4 No royalty shall be payable by a permit holder when:

- (a) The **net sales revenues** from a permit are less than \$100,000 for a **reporting period**, except where the permit is part of a **production unit**; or
- (b) The **net sales revenues** from a permit average less than \$8,333 per month if the **reporting period** is less than 12 months, except where the permit is part of a **production unit**; or
- (c) The permit is part of a **production unit** and the combined **net sales revenues** of all permits and licences in the **production unit** are less than \$100,000 for a **reporting period**; or average less than \$8,333 per month, if the **reporting period** is less than 12 months.

### ***THE ROYALTY PAYABLE***

15.5 It shall be a condition of every permit that the permit holder shall calculate, and be liable to pay, the higher of either a one percent **ad valorem royalty** on **net sales revenues** or a five percent **accounting profits royalty** on **accounting profits** for every **reporting period** except:

- (a) Where paragraph 15.4 applies, no royalty shall be payable and the permit holder is not required to calculate either the **ad valorem royalty** or the **accounting profits royalty**; or
- (b) Where paragraph 15.6 applies, the permit holder shall only be required to calculate and pay the **ad valorem royalty**.

Where the permit holder is required to calculate both the **ad valorem royalty** and the **accounting profits royalty**, until all restoration costs are determined in respect of the permit, the permit holder shall be liable to pay the higher of a one percent **ad valorem royalty** on **net sales revenues** or a five percent **provisional accounting profits royalty** on **provisional accounting profits**. The **ad valorem royalty**, the **provisional accounting profits royalty** and the **accounting profits royalty** are determined in accordance with the provisions of paragraphs 15.9 to 15.42.

### ***SPECIAL PROVISION FOR SMALL PRODUCERS***<sup>52</sup>

15.6 Where **net sales revenues** for a mining permit or a **production unit** are \$1,000,000 (one million dollars) or less for a **reporting period**, the permit holder shall only be required to calculate and pay the one percent **ad valorem royalty**, and shall be exempt from the **provisional accounting profits royalty** or the **accounting profits royalty**.

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<sup>52</sup> This provision does not apply to permits which fall under the categories specified in 15.4 i.e. permits which are exempted from paying royalty.

- 15.7 Where the exemption in paragraph 15.6 applies but it is likely that **net sales revenues** will exceed \$1,000,000 in subsequent **reporting periods**, the permit holder is advised to maintain comprehensive records of **allowable APR deductions**. The permit holder may claim operating losses from earlier **reporting periods** against future **accounting profits**. In the first **reporting period** in which **net sales revenues** of a permit or the combined **net sales revenues** of a **production unit** exceed \$1,000,000, the permit holder shall calculate the **provisional accounting profits royalty** for that **reporting period** and the previous **reporting periods** as if **accounting profits royalty** had always been payable since the start of the permit operations. This means that the permit holder must calculate the **provisional accounting profits royalty** for each earlier **reporting period** (excluding those periods where no royalty is payable), and take account of operating losses in the following manner:

Any operating loss from an earlier **reporting period** shall be carried forward as an **allowable APR deduction** and offset against **provisional accounting profits** in the next and subsequent **reporting periods**. Operating losses in the form of **allowable APR deductions** may be carried forward either until they have been fully offset against **provisional accounting profits** or until the expiry of the permit, whichever comes first.

- 15.8 Where the Minister considers that the \$1,000,000 threshold for exemption from the **accounting profits royalty** should be raised for all mining permits, the Minister may amend the conditions of mining permits to provide for the new threshold.

### ***AD VALOREM ROYALTY***

- 15.9 The **ad valorem royalty** (AVR) shall be one percent of the **net sales revenues** from a permit. The calculation of **net sales revenues** is determined in accordance with the provisions outlined in paragraphs 15.12 to 15.19.

### ***ACCOUNTING PROFITS ROYALTY***

- 15.10 The **accounting profits royalty** (APR) shall be five percent of **accounting profits** from a mining permit. For any **reporting period**, **accounting profits** are the excess of **net sales revenues** (determined in accordance with paragraphs 15.12 to 15.19) over **net allowable APR deductions**. **Allowable APR deductions** are:

Pre-Production Costs (prospecting and exploration costs, land access costs, permit maintenance and consent costs, development costs, evaluation costs, and construction costs);

Production Costs;

**Depreciation;**

Administrative Costs;

Restoration Costs; and

Operating Losses Carried Forward.

**Net allowable APR deductions** for any **reporting period** are:

The sum of **allowable APR deductions**

Less any proceeds from hire, lease or rent of land or **fixed assets**

Less any gain on disposal of land or **fixed assets**

Plus any loss on disposal of land or **fixed assets**.

**Allowable APR deductions** and **net allowable APR deductions** are discussed further in paragraphs 15.20 to 15.42. In no case may **non allowable costs** be deducted in calculating **(provisional) accounting profits** for **(provisional) accounting profits royalty** purposes and, as provided for in paragraph 15.43, no deduction or allowance shall be made more than once in respect of any amount expended.

- 15.11 The **provisional accounting profits royalty** shall be 5 percent of **provisional accounting profits** from a permit. For any **reporting period**, **provisional accounting profits** are the excess of **net sales revenues** over the **net allowable APR deductions** referred to in paragraph 15.10. When restoration costs have been determined in accordance with paragraphs 15.31 and 15.33, the final **accounting profits**, upon which the final **accounting profits royalty** liability is calculated, can be determined.

### ***NET SALES REVENUES***

- 15.12 **Net sales revenues** are the basis of calculating the **ad valorem royalty** or **accounting profits royalty** or **provisional accounting profits royalty** liability in relation to a permit producing any coal on which a royalty is payable. For any **reporting period** (other than the final **reporting period** that ends on the expiry, surrender or revocation of a permit), **net sales revenues** are the sum of **gross sales** (G), plus the value of any coal not sold but on which royalty is payable, (V), plus the value of any coal used in the production process (P), minus any allowable **netbacks** (N) (or plus any **net forwards**), as defined in paragraphs 15.13 to 15.19 below.

i.e. **Net sales revenues** = (G) + (V) + (P) + (N).

For the **royalty return** prepared for the final **reporting period**, the fair value of closing inventory or unsold stocks of any coal produced on which royalty is payable (F) shall also be included in the calculation of **net sales revenues**.

i.e. **Net sales revenues** for the final **royalty return** = (G) + (V) + (P) + (F) + (N).

- 15.13 **Gross sales** means the total sales of coal in a **reporting period**, determined in accordance with **Generally Accepted Accounting Practice (GAAP)** and excluding goods and services tax (GST), always provided that:

- (a) Where a **forward sales contract** or a **take or pay contract** applies, then the sale of coal shall be included in **gross sales** at the **date of delivery**, and the sale price will be that received under the **forward sales contract** or under the default provisions of the **take or pay contract**;
- (b) If any of the sale prices have been denominated in a foreign currency, the exchange rate to be used for calculating the sale price will be the lower of the exchange rate actually received or the buy rate on the **date of sale** set by a major New Zealand trading bank;
- (c) If any **gross sale** amount has not been determined on a fully **arm's length** basis, for example, pursuant to a contract between **related parties**, then the coal shall be valued by the permit holder using an **arm's length value**, as approved by the Minister in accordance with paragraph 15.45; and
- (d) In determining **gross sales**, losses, gains and costs associated with **futures contracts** used for hedging or other purposes, and foreign currency losses and gains shall not be included. Payments received in respect of the default provisions of a **take or pay contract**, which are not recompensed with delivery of coal at a later date before the expiry of the permit also shall not be included in determining **gross sales**.

- 15.14 As noted in paragraph 15.3, and except as exempted under paragraph 15.4, a royalty is payable on any coal that is:

- (a) Gifted or exchanged or bartered or removed from the permit area without sale (but not placed into a stockpile or similar for the purpose of a future sale); or
- (b) Used in the production process, as a substitute for having to otherwise purchase coal for this purpose;

The value of coal not sold but on which royalty is payable shall be determined by multiplying the quantity of the coal not sold by the average price of the same type of coal sold at **arm's length** prices during the **reporting period**. If any of the values of coal have not been determined on a fully **arm's length basis** then the value of such coal shall be determined using an **arm's length value** as approved by the Minister in accordance with paragraph 15.45. In determining an appropriate price, the Minister will take into consideration that any coal used in the production process or otherwise gifted, exchanged or bartered or removed from the permit area without sale, may have a lesser value to a similar product being marketed.

15.15 Where a permit expires or is surrendered or revoked, and there is any coal that has been produced and not sold, the fair value of closing inventory or stock unsold shall be determined by the permit holder in consultation with the Secretary.

15.16 **Netbacks (net forwards)** means that portion of the sale price that represents the cost of transporting and/or storing and/or processing the coal between the **point of valuation** (refer paragraphs 15.18 to 15.19) and the **point of sale**. If the **point of sale** of coal is downstream from the **point of valuation**, **netbacks** should be deducted from **gross sales** to arrive at **net sales revenues**. If the **point of sale** is upstream from the **point of valuation**, the **net forwards** incurred between the **point of sale** and the **point of valuation** should be added to **gross sales** to arrive at **net sales revenues**. The permit holder may deduct the following as **netbacks**:

- (a) Direct costs of freight (transportation costs incurred to a party other than the permit holder) and transit insurance between the **point of valuation** and the **point of sale**;
- (b) Costs incurred by the permit holder in operating dedicated transportation facilities (including **depreciation of fixed assets, insurance** and maintenance, but not including interest charges) between the **point of valuation** and the **point of sale**;
- (c) Direct costs relating to storage and loading of coal on to ships, rail wagons, trucks or other forms of transport (beyond the **point of valuation** and outside the boundaries of the mining permit area but before the **point of sale**) incurred to a party other than the permit holder;
- (d) Costs incurred by the permit holder in operating dedicated storage facilities incurred by the permit holder (including maintenance, **insurance, depreciation of fixed assets** and land rental or rates but not including interest charges) beyond the **point of valuation** and outside of the boundaries of the mining permit but before the **point of sale**;
- (e) Costs incurred by the permit holder in operating dedicated facilities to load coal on to ships, rail wagons, trucks or other forms of transport (including **depreciation of fixed assets, insurance** and maintenance, but not including interest charges) beyond the **point of valuation** and outside of the boundaries of the mining permit but before the **point of sale**;
- (f) Processing costs incurred to a party other than the permit holder between the **point of valuation** and the **point of sale**<sup>53</sup>; and
- (g) The permit holder's share of costs incurred in operating transportation, storage and loading facilities shared between several permits or licences (including maintenance, **insurance** and **depreciation of fixed assets**, but not including interest charges) between the **point of valuation** and the **point of sale**.

15.17 If any of the costs of transporting, storing or processing have not been determined on a fully **arm's length basis**, for example, have been determined pursuant to a contract between **related**

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<sup>53</sup> Where the permit holder does further processing beyond the **point of valuation**, an **arm's length** price will be estimated at the **point of valuation** and no **netbacks** will be claimable.

**parties**, then the **netbacks** to be used shall be calculated by the permit holder using an **arm's length value**, as approved by the Minister in accordance with paragraph 15.45. The amount of **netbacks** may not exceed **gross sales**.

### ***POINT OF VALUATION***

- 15.18 The **point(s) of valuation** for calculating **net sales revenues** shall be defined by the Minister, in consultation with the permit holder at the time of granting a mining permit. The **point(s) of valuation** shall be defined at a point in the mining operations where the coal has attained a generally accepted saleable condition. In most cases, this is expected to be at the exit point of the storage facilities within the mining permit area or processing facilities associated with the mining operations. In most instances, the **point of valuation** will be defined at a point downstream of where the coal has been extracted from its natural location within the area of a permit and has undergone subsequent blending, processing, washing and/or sorting to the first point where it is saleable.<sup>54</sup> The **point of valuation** is expected to be the actual **point of sale**, and accordingly **netbacks** or **net forwards** will not generally arise or will not be significant.
- 15.19 When determining the **point of valuation**, the Minister has as the objective to obtain an **ad valorem royalty** take per unit of output for similar products that is broadly equitable between permit holders notwithstanding that permit holders may have different delivery and sales arrangements.

### ***ALLOWABLE APR DEDUCTIONS***

- 15.20 As noted in paragraph 15.10, the **accounting profits royalty** is calculated on the **accounting profits** from a permit. For any **reporting period**, **accounting profits** are the excess of **net sales revenues** over the **net allowable APR deductions**. **Net allowable APR deductions** are the sum of **allowable APR deductions** less any proceeds from hire, lease or rent of **fixed assets** less any gain on disposal of land or **fixed assets** plus any loss on disposal of land or **fixed assets**. The **allowable APR deductions** are outlined in paragraphs 15.21 to 15.37.
- 15.21 Prospecting and exploration costs, land access costs, development costs, permit maintenance and consent costs, evaluation costs, and construction costs may be deducted as pre-production costs. These are more fully described below.

### ***PROSPECTING AND EXPLORATION COSTS***

- 15.22 Prospecting and exploration costs that may be deducted are those that are associated with **economically recoverable reserves**. These are costs incurred by the permit holder:
- (i) In respect of the area defined in the mining permit, subsequent to the date that the mining permit was granted;
  - (ii) Within an area defined in an exploration permit or prospecting licence (granted under the Coal Mines Act 1979) from which the mining permit was derived, subsequent to the date that the respective exploration permit or prospecting licence was granted and before the mining permit was granted. This includes prospecting costs and exploration costs within any part of the exploration permit, even if part of the area was relinquished in accordance with section 37(1)(a) of the Crown Minerals Act 1991. If the exploration permit was derived from a prospecting permit, the prospecting costs incurred subsequent to the date that the

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<sup>54</sup> *Where there is a saleable product, it should be possible to load the product on to a public transport permanent way and it should be possible to establish a f.o.b./f.o.r. price for the product.*

prospecting permit was granted, and before the exploration permit was granted, may also be deducted;

- (iii) Within the area of any extensions of area to the mining permit, prior to their inclusion in the mining permit, provided that these were incurred under an exploration permit or prospecting licence held by the permit holder immediately prior to the area's inclusion in the mining permit, and the costs have not previously been claimed against another mining permit; and
- (iv) Other prospecting and exploration costs that the permit holder can demonstrate, to the satisfaction of the Secretary, have been incurred in the course of carrying out a complimentary set of integrated operations within the venture area from which the mining permit is drawn. The Secretary must also be satisfied that there was continuity of activity from prospecting to exploration to mining. For purposes of determining prospecting and exploration costs, the venture area from which the mining permit was drawn may not exceed 500 square kilometres. The Secretary's agreement to include such prospecting or exploration costs in pre-production costs shall be obtained in advance of them being included in a **royalty return**.

The value of any coal obtained as a result of exploration activities will be assessed when a claim for deduction of prospecting and exploration costs, in respect of (i) to (iv) above is made.

### ***LAND ACCESS COSTS***

15.23 Land access costs are those costs incurred to gain access to land to conduct mining operations. They are limited to a maximum of twice the government valuation of the land concerned, and include:

- (i) Payments made to land owners and/or occupiers to gain access to their land, such as lease, rent or gate-fee payments, but not coal royalty payments made to the landowner;
- (ii) Costs of purchasing land to gain access to that land. This includes the costs of purchasing buffer land, provided that the permit holder satisfies the Secretary that such land is necessary for efficient extraction of the coal. If a permit holder must purchase a land parcel larger than the area covered by the mining permit (for example, an entire farm), to gain access to the area to be mined, the cost (up to twice government valuation) of the whole land parcel may be deducted, provided that the permit holder satisfies the Secretary that such a land purchase was necessary. The Secretary will agree to the level of land access costs at the time of approving the pre-production costs for the mining permit; and
- (iii) Costs of purchasing land other than that required for mining as compensation for access to land for mining.

Provided that, where land is leased or rented or gate fees paid, the allowable deduction over the life of the mining permit shall be the lesser of the actual payments or twice the government valuation of the land to which the payments relate, as at the commencement date of the mining permit (with the payments being accounted for in nominal dollars); and, where land is purchased, the allowable deduction over the life of the permit shall be the lesser of the actual purchase price or twice the government valuation of the land at the commencement date of the mining permit. Where land is purchased after the commencement date of the mining permit the allowable deduction over the life of the permit shall be the lesser of the actual purchase price or twice the government valuation of the land at the date of purchase.

### ***PERMIT MAINTENANCE AND CONSENT COSTS***

- 15.24 Permit maintenance and consent costs means the payments made to the Crown and other governmental authorities by the permit holder:
- (i) To maintain an exploration permit and/or a mining permit, other than cash bonus bidding payments which are **non allowable costs**; and
  - (ii) To maintain associated resource consents, including costs associated with preparation of any environmental impact statement(s) which may be required under the Resource Management Act 1991.

Permit maintenance and consent costs do not include costs of acquiring rights to a permit.

### ***DEVELOPMENT COSTS***

- 15.25 Development costs are those costs incurred in establishing access to the natural resource and in other preparation for its commercial production up to the **point of valuation**. They include the cost of shafts, under-ground drives and permanent excavations, roads and tunnels and advance removal of overburden and waste rock. Development costs do not include land access costs and permit acquisition costs (refer paragraph 15.63(x)(v)).

### ***EVALUATION COSTS***

- 15.26 Evaluation costs are those costs incurred in determining the technical feasibility and commercial viability of a particular area containing natural resources. They include costs incurred in determination of the volume and grade of the natural resource, examination and testing of extraction methods and metallurgical or treatment processes, surveys of transportation and infrastructure requirements, and market and finance studies.

### ***CONSTRUCTION COSTS***

- 15.27 Construction costs are those costs incurred in establishing and commissioning facilities for the extraction, treatment and transportation of saleable product up to the **point of valuation**. Such facilities include infrastructure, buildings, machinery and equipment.

### ***PRODUCTION COSTS***

- 15.28 Production costs are operating costs incurred in the extraction, processing, sorting, refining or concentration of coal. Production costs include the costs of direct labour and materials up to the **point of valuation** and other indirect costs associated with the production of coal up to the **point of valuation**.

Examples of production costs are:

- (i) Costs of labour to operate and maintain equipment and facilities used in the production of coal. Labour costs may include remuneration elements such as wages and salaries, and reasonable fringe benefits as provided for in employment contracts such as housing, education, healthcare and recreation;
- (ii) Repairs and maintenance of equipment and facilities used in production;
- (iii) Materials, supplies and purchased fuel consumed and supplies used in operating mines and related equipment and facilities;
- (iv) Site maintenance costs during production; and

- (v) Costs for leasing or hiring of **fixed assets**. Leases of **fixed assets** shall be accounted for in accordance with **Generally Accepted Accounting Practice**, except that the interest component of **finance leases** shall be a non-allowable APR deduction.

Some support equipment or facilities may serve two or more prospecting, exploration or mining permits (or a mining permit and a mining licence granted under the Coal Mines Act 1979) or may also serve processing, transportation, storage, and marketing activities beyond the **point of valuation**. To the extent that support equipment and facilities are used in respect of two or more permits/licences and/or in more than one facet of a permit holder's business, the Secretary will reach agreement with the permit holder, prior to the filing of the first **royalty return**, concerning the allocation of all common production costs between the permits/licences and/or between different facets of a permit holder's business. In no circumstance may the total of such allocated costs exceed the total cost to be allocated.

### ***DEPRECIATION***

- 15.29 **Depreciation** is an **allowable APR deduction** for **fixed assets** used in the extraction or processing of coal prior to the **point of valuation**, except for those **fixed assets** amortised within pre-production costs. **Depreciation** shall be calculated in accordance with New Zealand **GAAP**. The permit holder shall submit with each **royalty return** a schedule of the **fixed assets** to which any **depreciation** charges in the **royalty return** relate. Where a **fixed asset** is shared among multiple mining permits and/or licences or shared between mining and some other activity, the allowable **depreciation** deduction for royalty purposes shall be calculated by apportioning the total **depreciation** expense for the **fixed asset** in the financial accounts of the permit holder among the various permits, licenses and/or activities according to the proportion of total production throughput or time usage of the asset for each permit, licence or activity.

### ***ADMINISTRATIVE COSTS***

- 15.30 Administrative costs are costs incurred by the permit holder directly associated with the provision of support services to the mining permit operations which are reasonable and necessary to effective and efficient production. **Insurance**, costs of negotiating sales contracts, communication, travel, audit, legal and office expenses are included in this definition.

### ***RESTORATION COSTS***

- 15.31 Restoration costs means for any mining permit the costs of abandoning and restoring sites and dismantling or demolishing equipment or structures used for the production of coal up to the **point of valuation**. Such costs may occur as part of ongoing development of a mining permit as well as when production in respect of the permit ceases. Restoration costs include all costs necessary to comply with legislative and resource consent requirements related to the abandonment and restoration of sites. Throughout the life of the permit, restoration costs are deductible as they are incurred. However during the final years of the permit's life, when there is minimal or no revenue accruing to the permit because production has declined or ended, restoration costs shall be accounted for in accordance with the provisions of unclaimed restoration costs in paragraph 15.33 below.

### ***OPERATING LOSSES CARRIED FORWARD***

- 15.32 An operating loss results if the **net allowable APR deductions** for the period exceed **net sales revenues** for that period. An **accounting profit** results if **net sales revenues** for the period exceed **net allowable APR deductions** for that period. Where deduction of **net allowable APR deductions** from **net sales revenues** results in an operating loss, this loss may be carried forward as an **allowable APR deduction** to subsequent **reporting periods**. Operating losses in

the form of **allowable APR deductions** may be carried forward either until they are fully offset against **provisional accounting profits** or until the expiry of the permit, whichever comes first.

### ***UNCLAIMED RESTORATION COSTS***

- 15.33 If production declines or ceases towards the end of a permit's life, the permit holder may incur significant restoration costs that cannot be offset against any remainder of **net sales revenues** after all other **allowable APR deductions** (net of the effects of renting, leasing, hiring or disposing of land or **fixed assets**) have been considered. If this occurs, the permit holder may accumulate unclaimed restoration costs in a separate "unclaimed restoration costs" account, and include them in the final **royalty return**. Any unclaimed restoration costs to be included in the final **royalty return** shall be reduced by proceeds from hire, rent or lease of land or **fixed assets** and gains from disposal of land or **fixed assets** that cannot be offset against **allowable APR deductions**. The balance of unclaimed restoration costs shall then be divided by the number of **reporting periods** in the life of the permit and be allocated equally to each of those periods. Final **accounting profits** for each **reporting period** will then be calculated. If the allocation of unclaimed restoration costs results in an operating loss in any period, that loss shall be carried forward in accordance with the provisions concerning operating losses. A one off deduction of costs related to the ongoing monitoring (beyond the duration of the permit) of the area of a mine development or associated mine works which may be required by local authorities under the Resource Management Act 1991, may be included under unclaimed restoration costs calculated in the final **royalty return**. The amount which may be deducted shall be agreed with the Secretary prior to such amount being included in the final return. The Secretary shall take into account the amount of any bonds or deposits held by the local authorities in respect of the restoration and monitoring requirements.
- 15.34 **Allowable APR deductions** for each **reporting period** must be adjusted to incorporate proceeds from the hiring, leasing or renting of land or **fixed assets** and any gain or loss arising from disposal of land or **fixed assets**, provided that the land or **fixed assets** concerned have been amortised within pre-production costs or depreciated in **allowable APR deductions** in earlier **reporting periods**.
- 15.35 Gain on disposal of land or **fixed assets** is any excess of proceeds from the sale of land or damage, loss or sale of **fixed assets** that have been amortised or depreciated in previous **reporting periods**, above the net book value of that land or those **fixed assets**. Loss on disposal of land or **fixed assets** is any shortfall of proceeds from sale of land or damage, loss or sale of **fixed assets** that have been amortised or depreciated in previous **reporting periods**, below the net book value of that land or those **fixed assets**. Proceeds from damage or loss of **fixed assets** include insurance payouts.

For royalty purposes, gains on disposal of land or **fixed assets** shall be limited to the difference between the net book value of the land or **fixed asset** and the original value of that land or **fixed asset**; that is, the net book value of the land or **fixed asset** plus the gain on disposal of the land or **fixed asset** should not exceed the original value of that land or **fixed asset**. For royalty purposes, the total of the proceeds from hiring, renting or leasing land or fixed assets shall be limited to the original value of that land or those fixed assets.

For land, in accordance with the provisions concerning land access costs (see paragraph 15.23), the original value of the land for royalty purposes will be limited to twice the government valuation of that land at the commencement date of the permit or at the date the land was purchased whichever occurs later.

The original value of the **fixed asset** includes the purchase price of the asset plus any improvements or additions or work done on the **fixed asset** to extend its life, or to improve its capacity or efficiency.

The net book value refers to the original cost less the accumulated depreciation.

The net book value of land is the original value of the land less the accumulated amortisation of that land included in Pre-production costs.

A disposal of **fixed asset** includes any transfer of those assets, either in whole or in part, from the mining permit. **Fixed assets** transferred shall be valued on an **arm's length** basis and any gain or loss above or below the net book value of those assets shall be included in the **royalty return**.

Land or **fixed assets** that remain unsold at the time of the final **royalty return** shall be valued on an **arm's length basis**, and any gain or loss above or below the net book value of that land or those assets shall be included in the final **royalty return**.

- 15.36 Gains on disposal of land or **fixed assets** shall be deducted from **allowable APR deductions**, and losses on disposal of land or **fixed assets** shall be added to **allowable APR deductions**. For **royalty returns** other than the final return, if the total of the gain on disposal of land or **fixed assets** and the proceeds from the hire, rent or lease of land or **fixed assets** exceed **allowable APR deductions**, the excess shall be carried forward as a gain on disposal and applied against **allowable APR deductions** in subsequent **reporting periods** until it is fully written off. For the final **royalty return**, if the total of the gain on disposal of land or **fixed assets** exceed **allowable APR deductions**, then the excess shall be deducted from accumulated unclaimed restoration costs. Any unclaimed restoration costs to be allocated over the life of the permit in the final **reporting period** will therefore be reduced by the total of the gain on disposal of land or **fixed assets** and proceeds from hire, rent or lease of land or **fixed assets** that cannot be offset against **allowable APR deductions**.
- 15.37 If any of the prospecting and exploration costs, land access costs, permit maintenance and consent costs, development costs, evaluation costs, construction costs, production costs, **depreciation**, administrative costs, restoration costs, unclaimed restoration costs, or gains or losses on disposal of land or **fixed assets** have not been determined on an **arm's length** basis, then the relevant costs to be used shall be calculated by the permit holder using an **arm's length value(s)** approved by the Minister in accordance with paragraph 15.45.

### ***ACCOUNTING FOR PRE-PRODUCTION COSTS***

- 15.38 As noted in paragraph 15.21, a permit holder may claim a deduction for pre-production costs. If a permit holder wishes to claim this deduction, the initial amount of these costs must be agreed with the Secretary prior to the filing of the first **royalty return** following the grant of the mining permit. In the case of pre-production costs incurred subsequent to the first **royalty return**, such as those prospecting and exploration costs described in paragraph 15.22 (iii) and (iv), the Secretary's agreement to the amount of these costs should be sought prior to their inclusion in **royalty returns**. Pre-production costs, as described in paragraph 15.21, shall be amortised over the expected period of extraction of the **economically recoverable reserves** from the permit to which they relate.
- 15.39 The amortisation charge for pre-production costs in each **reporting period** shall be determined on an output basis, that is, in the ratio of output in the period to the remaining **economically recoverable reserves** assessed at the start of the period. **Economically recoverable reserves** should be reviewed annually having regard to:
- (a) The security of tenure of the **venture area** (including special conditions attaching to land access, resource consents or the mining permit);
  - (b) The possibility that technological developments or discoveries may make the coal product obsolete or uneconomical at some future time;
  - (c) Changes in technology, market or economic conditions affecting either sales or prices or production costs, with a consequent impact on cut-off grades; and

- (d) Likely future changes in factors such as recovery rate, dilution rate, and production efficiencies during extraction, processing and transportation of products.

Estimates of **economically recoverable reserves** used in calculating amortisation of pre-production costs for royalty purposes should agree with the reserves reported in the annual work statement for each mining permit, and should be related to any reserve estimates contained in financial reporting to other external agencies.

- 15.40 Where a mining permit is preceded by a mining licence granted under the Coal Mines Act 1979, the pre-production costs that may be deducted for the first **royalty return** are:
- (i) The net book value of pre-production costs for the mining licence and the net book values of **fixed assets**, calculated in accordance with **GAAP** at the date of commencement of the mining permit;
  - (ii) Land access costs; and
  - (iii) Any additional pre-production costs and **fixed asset** purchases from the date of commencement of the mining permit.

The book values of pre-production costs and **fixed assets** will be approved by the Secretary prior to the filing of the first **royalty return** under the mining permit.

- 15.41 With respect to pre-production costs, paragraph 15.21 assumes that costs will be attributable to a single mining permit for deduction against **accounting profits royalty** liabilities. However, it is recognised that there may be cases in which the permit holder has developed several mining licences and/or mining permits from an exploration permit or prospecting licence area, on the basis of information gained during the term of the exploration permit or prospecting licence. In this case, the Minister will reach agreement with the permit holder, prior to the filing of the first **royalty return** concerning the allocation of pre-production costs between the first mining permit/licence and any additional mining permits.

### ***ALLOCATION OF COMMON COSTS AND REVENUES***

- 15.42 Where a project extracts both Crown and privately owned coal, the Secretary will reach agreement with the permit holder, prior to the filing of the first **royalty return**, concerning the allocation of common costs and revenues between the Crown owned coal and the privately owned coal. There may also be instances where several permits and/or licences are being worked together as a single project. Where this occurs, the Minister will reach agreement with the permit holder, prior to the filing of the first **royalty return** concerning the allocation of all common revenues and costs between the permits and/or licences.

### ***DEDUCTION ALLOWED ONLY ONCE***

- 15.43 Notwithstanding that an amount expended by a permit holder may fall under more than one category of deduction under these royalty provisions, no deduction or allowance shall be made more than once in respect of any amount expended.

### ***ARM'S LENGTH VALUE***

- 15.44 When a person is not, or having been, ceases to be, under the influence or control of another, s/he is said to be "at **arm's length**" with her/him. If such is not the situation, and there are contracts or transactions between the parties, then the contracts or transactions may be deemed to be not at **arm's length**. For example, contracts or transactions between **related parties**.

15.45 Where costs, prices and revenues used in determining royalties liabilities are not the result of **arm's length** transactions, the **arm's length value** of costs, prices and revenues used shall be such amount as is agreed between the permit holder and the Minister or, in the absence of agreement within such period as the Minister allows, shall be such amount as is determined by the Minister to be the value. Similarly, where **fixed assets** are not acquired or disposed of as a result of **arm's length** transactions, the **arm's length value** of the assets shall be such amount as is agreed between the permit holder and the Minister or, in the absence of agreement within such period as the Minister allows, shall be the amount as is determined by the Minister to be the value. The Minister, in determining the **arm's length value** may have regard to, but is not limited by, any of the following as relevant:

- The average price of any coal sold at **arm's length** by the permit holder during the **reporting period**;
- The grade of the coal produced;
- Prices paid to producers of a similar coal elsewhere in **arm's length** transactions;
- Prices and costs paid for similar assets or services elsewhere in **arm's length** transactions;
- The **point of sale** and **point of valuation**;
- The nature of the market for the coal being sold or transferred or otherwise used, or the asset or service being purchased or acquired;
- The terms of relevant contracts or sales agreements and the quantities specified therein and any renegotiation or variation provisions;
- The state of the market at the time the prices in the contracts or sales purchase, employment, service etc agreements were set; and
- Declarations made to the Inland Revenue Department for the purposes of fringe benefits tax.

In determining **arm's length value**, the Minister may seek advice from experts but, in any event, the Minister's decision is final.

### ***REPORTING PERIOD***

15.46 Every mining permit shall be granted with a condition specifying an annual **reporting period** as the basis for the calculation and payment of royalties by the permit holder. The **reporting period** shall be determined by the Minister in consultation with the mining permit applicant prior to the grant of the permit. The **reporting period** shall be either the financial year of the permit holder or some other fiscal year approved by the Minister.

15.47 A **reporting period** commences on the first day of the financial year of the permit holder or the fiscal year approved by the Minister, and ends on the last day of the financial year or fiscal year, except as otherwise provided in paragraphs 15.48 and 15.49.

15.48 The initial **reporting period** for a permit will usually be a portion of the financial year or fiscal year from the date of the grant of the permit to the date of the financial year end of the permit holder or fiscal year end approved by the Minister. Where a permit or an ownership interest in a permit is transferred to another party, the initial **reporting period** will commence on the date following the date of transfer of the permit.

15.49 The final **reporting period** commences on the first day of the financial year of the permit holder or the fiscal year approved by the Minister, and ends on the date of the expiry, surrender or revocation of the permit.

- 15.50 The permit holder shall provide to the Secretary a **royalty return** for every **reporting period** within the duration of the permit.
- 15.51 The **royalty return** shall be provided within 5 months of the end of the **reporting period**.

### ***ROYALTY RETURN***

- 15.52 The **royalty return** shall be in the form prescribed, from time to time, in relevant regulations. For permit holders with **net sales revenues** of \$100,000 or more for a **reporting period** (or averages \$8,333 or more per month if the **reporting period** is less than 12 months), in summary, the permit holder will be required where applicable to provide, on the **royalty return**, the following information:
- (a) A calculation of **gross sales** and **net sales revenues** for the **reporting period**;
  - (b) For the whole of the **reporting period**, details of:
    - Pre-production Costs;
    - Production Costs;
    - Depreciation**;
    - Administrative Costs;
    - Restoration Costs;
    - Operating Losses Carried Forward.
  - (c) A calculation of the **provisional accounting profits** for the **reporting period**;
  - (d) A calculation of **ad valorem royalty** and the **provisional accounting profits royalty** for the **reporting period**.

(All values on which royalties are to be calculated are GST exclusive.)

For the final **royalty return**, the permit holder will be required to take into account the fair value of closing inventory and unclaimed restoration costs in calculating final **accounting profits royalty** liabilities.

Permit holders with **net sales revenues** of \$1,000,000 or less for a **reporting period** (or average \$8,333 or less per month, if the **reporting period** is less than 12 months) and are exempted from the calculation and payment of the **accounting profits royalty**, do not need to supply the information in (b) and (c) (and in (d), would only need to supply a calculation of the **ad valorem royalty**).

- 15.53 For permits with **net sales revenues** of \$1,000,000 or less for a **reporting period** (or averages \$83,333 or less per month if the **reporting period** is less than 12 months), the declaration in the **royalty return** filed for the permit is required to be signed by the permit holder. Where the permit holder employs or engages the services of an **accountant** (in public practice), the **accountant** shall also sign the declaration.

For permits with **net sales revenues** over \$1,000,000 in a **reporting period** (or averages more than \$83,333 per month if the **reporting period** is less than 12 months) the declaration in the **royalty return** filed for the permit is required to be signed by the permit holder and the **royalty return** must also be accompanied by a written statement signed by either an **accountant** or an **auditor**. If the permit holder engages the services of an **auditor** to review financial statements or financial information as part of meeting the statutory requirements of the Companies Act 1993 or the Financial Reporting Act 1993, then the **auditor** must sign the written statement. The statement shall be in the form prescribed in relevant regulations. The statement shall be paid for by the permit holder.

- 15.54 Where the **net sales revenues** from the total production of any coal from a permit area are less than \$100,000 in a **reporting period**, or averages less than \$8,333 per month if the **reporting period** is less than 12 months, as provided in paragraph 15.4, a royalty is not payable. The permit holder, however, is required to forward a **royalty return** which, in summary, is a statement advising the amount and value of production.
- 15.55 The collection of royalties shall be administered by the Secretary. The Secretary shall review every **royalty return** and, if additional information or a detailed explanation of the basis of the **royalty return** is required, may request such information or explanation be provided by the permit holder within 30 days.<sup>55</sup> The Secretary may also audit **royalty returns** or appoint someone else to do this audit. The Secretary shall pay for any such audit.

### ***SALE OR TRANSFER OF ALL OR PART OF PERMIT INTEREST***

- 15.56 Where a permit has been sold or transferred, or an ownership interest in a permit has been sold or transferred, any balance of **operating losses**, unamortised pre-production costs and the net book values of **fixed assets** sold or transferred shall be carried forward and shall be available to the new permit holder to the same extent as if no transaction had taken place.

### ***PAYMENT AND REFUND OF ROYALTIES***

- 15.57 It shall be a condition of the permit that where **net sales revenues** for any half year (six months) in a **reporting period** average \$8,333 or more per month, the permit holder shall make an interim royalty payment to the Secretary of 1% of the **net sales revenues** for that six month period.

The permit holder shall make an interim payment of royalty:

- (a) Within 30 calendar days after the end of the first six months of a **reporting period**
- (b) Within 30 calendar days after the end of a **reporting period**

If the **reporting period** is less than 12 months, the permit holder is required to make one interim payment only. The interim payment shall be 1% of the **net sales revenues** for the **reporting period** and is due 30 days after the end of the **reporting period**.

If, upon completion of the **royalty return**, the amount of royalty due exceeds the total amount of interim payments made in respect of the **reporting period**, the permit holder shall be required to pay the balance within 5 months of the end of the **reporting period**. The **royalty return** and a cheque for any outstanding royalty payable shall be forwarded together. If, upon completion of the **royalty return**, the total of interim payments exceeds the amount of the royalty due for the **reporting period**, the overpayment of royalty will be refunded or may, at the request of the permit holder, be applied against future liabilities.

- 15.58 Where the royalty due is the **provisional accounting profits royalty**, the royalty shall be provisional pending the calculation of unclaimed restoration costs (refer paragraph 15.33.). Following the calculation and allocation of unclaimed restoration costs, the final **accounting profits royalty** shall be determined. After the Secretary is satisfied as to the validity of the final **royalty return**, a one time refund, if any, to the permit holder shall be made. A refund shall be made to the permit holder filing the final **royalty return** or to the persons and in the manner nominated by such permit holder.

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<sup>55</sup> Where information supplied is clearly of a commercial nature, it will be held in confidence as provided for under the Official Information Act 1982.

## ***BOOKS AND RECORDS***

- 15.59 It shall be a condition of the permit that the permit holder shall, for the purposes of supporting the **royalty return**, keep for seven years or until the acceptance of the final **royalty return** for which the permit holder is responsible, whichever occurs first, proper books of account and records maintained in accordance with accepted business practice to support:
- The amount and particulars of each expenditure in each category of deduction, including original invoices (or true copies) received from third parties and affiliates;
  - The basis of allocation of all allocated expenditures;
  - Details of the weight and grade of any coal produced from the permit on which royalty is payable, including details of the date, destination, value and basis of valuation of each shipment, transfer or other disposal;
  - Details of all land or **fixed assets** including all transfers, sales and other disposals of land or **fixed assets**, the costs of which have been recorded as **allowable APR deductions** or as allowable **netbacks** including details of original costs;
  - The amount and particulars of each transaction included in **gross sales**; and
  - Details of the basis on which **economically recoverable reserves** have been calculated including mine plans and maps used to estimate recoverable reserves.
- 15.60 Proper books and records, however compiled, recorded and stored, include:
- Registers or other records of information;
  - Accounts, account books or accounting records;
  - All work papers prepared to support each **royalty return**; and
  - Contracts, sales or exchange agreements.

The Secretary may require the permit holder to provide detailed records and supporting information to explain any aspect of the **royalty return**.

## ***FAILURE TO FILE A RETURN AND FAILURE TO PAY ROYALTY***

- 15.61 As noted, the requirement to file a **royalty return** and to pay royalty shall be set out as conditions of each permit. The Crown Minerals Act 1991 provides that it is an offence to fail to comply with the conditions of a permit. Therefore, every permit holder who fails to comply with a condition requiring the permit holder to file a **royalty return** or fails to pay royalties owed to the Crown commits an offence against section 100(2) and shall be liable on summary conviction to a fine not exceeding \$10,000 and, if the offence is a continuing one, to a further fine not exceeding \$1,000 for every day or part of a day during which the offence continues. In addition, section 39 of the Crown Minerals Act 1991 provides for revocation of a permit if the Minister has reason to believe that any permit holder is contravening or not making reasonable efforts to comply with the Act or any of the conditions of the permit (refer chapter 17).
- 15.62 There shall be a strict credit policy applied with regard to overdue returns and payments. Overdue returns and payments will be followed up and, if payment is not received within a reasonable period, then appropriate measures shall be implemented to collect the overdue

amount as a debt due to the Crown. These measures may include referral of the debt to a collection agency and legal action.

## ***DEFINITIONS***

15.63 Unless specifically defined, terms and references in these royalty provisions shall be interpreted in accordance with generally accepted usage in the Coal Industry.

In this Minerals Programme, unless the contrary intention appears: -

- (a) "Accountant" means:
- i a member of the New Zealand Society of Accountants' College of Chartered Accountants; or
  - ii a member, fellow, or associate of an association of accountants constituted outside New Zealand which is for the time being approved for the purposes of section 199 of the Companies Act 1993 by the Minister of Justice by notice in the *Gazette*;  
  
who is in public practice, employed by the permit holder or one who the permit holder engages to render accounting services.
- (b) "Accounting Profits" has the meaning expressed in paragraph 15.10 of these royalty provisions.
- (c) "Accounting Profits Royalty" means a royalty in respect of **accounting profits** from a permit determined in accordance with paragraphs 15.10 and 15.12 to 15.45.
- (d) "Ad Valorem Royalty" means a royalty in respect of **net sales revenues** resulting from a permit determined in accordance with paragraphs 15.9, 15.12 to 15.21 and 15.45.
- (e) "Allowable APR Deductions" has the meaning expressed in paragraphs 15.10 and 15.20.
- (f) "Arm's Length" has the meaning expressed in paragraph 15.44.
- (g) "Arm's Length Value" means in respect of costs and prices, those which a willing buyer and a willing seller, who are not **related parties**, would agree are fair in the circumstances. Paragraph 15.45 describes how to determine the arm's length value of costs and prices when this situation is not satisfied.
- (h) "Auditor" means:
- i A member of the New Zealand Society of Accountants who holds a certificate of public practice; or
  - ii An officer of the Audit Department authorised in writing by the Controller and Auditor-General to be an auditor of a company for the purposes of section 199 of the Companies Act 1993; or
  - iii A member, fellow, or associate of an association of accountants constituted outside New Zealand which is for the time being approved for the purposes of section 199 of the Companies Act 1993 by the Minister of Justice by notice in the *Gazette*.
- (i) "Date of Delivery" means the actual date coal is physically delivered to the purchaser or the purchaser's agent as in FOB or FOR sales.

- (j) “Date of Sale” means the date on which a sale is deemed to have occurred in accordance with **GAAP**, except for **forward sales contracts** and **take or pay contracts**, in which it means the date on which ownership is transferred to the purchaser or lender.
- (k) “Depreciation” means the expense for the **reporting period** calculated in accordance with **GAAP**.
- (l) “Economically Recoverable Reserves” means the estimated quantity of saleable product in an area containing natural resources which can be expected to be profitably extracted, processed and sold under current and foreseeable economic conditions and technology.
- (m) “Finance Lease” as defined in **GAAP** is a lease that transfers substantially all the risks and rewards incident to ownership of an asset to the lessee. Title may or may not eventually be transferred. This definition of a finance lease includes contracts for the hire of assets which contain a provision transferring the title to the asset upon the fulfilment of agreed conditions.
- (n) “Fixed Asset” is any asset owned or utilised by the permit holder by virtue of a **finance lease** that is expected to be used during more than one **reporting period** and is expected to benefit future operations. Fixed assets include buildings and equipment.
- (o) “Forward Sales Contract” means a contract to sell production from a mining permit at a future date. Forward sales contracts include contracts without a specified price or fixed date of delivery e.g. spot deferred contract.
- (p) “Futures Contract” means transactions undertaken for hedging purposes which involve the purchase and sale of contracts to supply coal on a recognised futures trading exchange.
- (q) “GAAP” means New Zealand **Generally Accepted Accounting Practice**.
- (r) “Generally Accepted Accounting Practice” is as defined in the Financial Reporting Act 1993.
- (s) “Gross Sales” has the meaning expressed in paragraph 15.13.
- (t) “Insurance” means costs incurred by the permit holder in keeping with normal business practices, which provide reasonable and prudent protection against risk of loss of assets, equipment, personnel or otherwise, related to the permit, and result from the payment of premiums to an insurance company.
- (u) “Net Allowable APR Deductions” is the sum of **allowable APR deductions** less any proceeds from hire, rent or lease of land or **fixed assets** less any gain on disposal of land or **fixed assets** plus any loss on disposal of land or **fixed assets**.
- (v) “Netbacks/Net Forwards” has the meaning expressed in paragraph 15.16.
- (w) “Net Sales Revenues” has the meaning expressed, and is determined, in accordance with paragraphs 15.12 to 15.19.
- (x) “Non Allowable Costs” include the following categories:
  - i Royalties payable to the Crown or any other party from the proceeds of production except royalties paid for a patent right on a processing plant;
  - ii Interest costs or cost of equity;
  - iii Interest component on finance lease;

- iv Income taxes and Goods and Services taxes;
  - v Permit acquisition costs which are costs incurred in purchasing title to an existing exploration permit or mining permit or an ownership interest therein;
  - vi Cash bonus bid payments;
  - vii Foreign exchange gains and losses;
  - viii Donations;
  - ix Directors Fees;
  - x Any other costs which do not fall into any of the categories of **allowable APR deduction** as specified in 15.20 to 15.42; and
  - xi Costs not incurred by the permit holder.
- (y) “Point of Sale” means the point at which sale of the product is deemed to have occurred in accordance with **GAAP**.
- (z) “Point of Valuation” has the meaning expressed and is determined in accordance with paragraphs 15.18 to 15.19.
- (aa) “Production Unit” means a mining project which comprises two or more permits or a permit and one or more mining licences (granted under the Coal Mines Act 1979) held by the permit holder, where the permit(s) and licence(s) are being worked together as a single project and this can be clearly established, for example, there is common ownership.
- (bb) “Provisional Accounting Profits” has the meaning expressed in paragraph 15.11.
- (cc) “Provisional Accounting Profits Royalty” means a royalty in respect of **provisional accounting profits** resulting from a mining permit, determined in accordance with paragraphs 15.11 to 15.42.
- (dd) “Related Parties” refers to:
- i Entities that directly or through one or more intermediaries, exercise control, or are controlled by, or are under common control of the permit holder; and similarly the corresponding set of entities when the relationship is based on significant influence. (Included are holding companies, subsidiaries and associates and fellow subsidiaries and associates, joint ventures and other contractual arrangements);
  - ii Individuals and their close family members or controlled trusts owning directly or indirectly, an interest in the voting power of the permit holder that gives them significant influence over that entity. (Close members of the family of an individual are those that may be expected to influence or be influenced by that person in their dealings with an entity);
  - iii Key management personnel, that is those persons having authority and responsibility for planning, directing and controlling the activities of the permit holder including directors and officers of companies and close members of the families of such individuals; and
  - iv Entities in which a substantial interest in the voting power is owned, directly or indirectly, by any person described in (ii) or (iii) over which such a person is able to exercise significant influence. This includes entities owned by directors or major

shareholders of the permit holder and entities that have a member of key management in common with the permit holder.

- (ee) "Reporting Period" means the financial year of the permit holder or fiscal year (not exceeding 12 months) defined in the permit as the reporting period for the permit (refer also to paragraph 15.46 to 15.49).
- (ff) "Royalty Return" means a detailed statement of the permit holder's activities in the form prescribed from time to time in regulations made under the Crown Minerals Act 1991 (refer also to paragraphs 15.52 to 15.55).
- (gg) "Take or Pay Contract" means a contract between a producer and a purchaser whereby a purchaser agrees to take or pay for a minimum quantity of product per year whether or not the purchaser takes delivery of the product. Usually, any product paid for but not taken in a particular period may be taken at some later time subject to limitations.

## 16 COMPLIANCE WITH PERMIT AND ACT

- 16.1 At all times, the permit holder is expected to make reasonable efforts to comply with the conditions of the permit held and the Crown Minerals Act 1991 and relevant regulations made in accordance with section 105 of the Act.
- 16.2 As outlined in chapters 6, 7 and 8, permits shall be granted subject to conditions (refer paragraphs 6.29 to 6.32; 7.41 and 7.42; 8.43 and 8.44; and 8.57).
- 16.3 Compliance by the permit holder with the Crown Minerals Act 1991 and the relevant regulations includes the payment of any permit fees specified, filing of **royalty returns** where applicable, and the lodgement of data, in accordance with section 90 of the Crown Minerals Act 1991 and specific requirements of regulations.
- 16.4 There will be ongoing monitoring by the Secretary of a permit holder's compliance with the permit conditions, the Act and regulations. As noted, a permit holder must regularly report on all permit activities. Permit work programme commitments are checked against the reports of activity, for compliance monitoring purposes. Similarly, permit **royalty returns** are audited on an ongoing basis and referenced against annual work statements or reports.
- 16.5 Where the Secretary has reason to believe that the permit holder has not substantially complied with the conditions of the permit (and has not been exempted or excused from such compliance) or with the Crown Minerals Act 1991 or regulations made in accordance with the Act, then the Secretary will request an explanation and seek advice on how the matter has or is being rectified. If the Secretary does not receive a satisfactory response, then the Secretary will report to the Minister on the matter and this may initiate permit revocation proceedings (refer chapter 17).
- 16.6 The Minister must be satisfied that the permit holder has substantially complied with the conditions of the permit or that the permit holder has been exempted or excused from such compliance, before considering any application to amend the conditions of a permit, to extend the minerals or land to which a permit relates or to extend the duration of a permit (refer sections 2(3) and 38(1) of the Crown Minerals Act 1991). If the Minister is not satisfied on either of these two counts, then the Minister shall decline the application and give written notice to the permit holder, pursuant to section 38(1) of the Crown Minerals Act 1991.
- 16.7 Prior to doing this, where the Minister proposes to decline an application to change a permit, the Minister shall first serve a notice on the applicant (the permit holder) which:
- (a) States that the Minister believes there has been non-compliance with permit conditions;
  - (b) Specifies the respects in which the permit holder has not complied with the conditions; and
  - (c) States that the application will be declined within 20 working days of the service of the notice, unless the permit holder shows that there has been substantial compliance with the permit conditions (refer section 38(2) of the Crown Minerals Act 1991).
- 16.8 Before determining whether to decline an application to change a permit on the grounds of non-compliance, the Minister will consider any representations made by the permit holder. If a permit holder has an application to change a permit declined on the grounds of non-compliance, the permit holder may appeal the Minister's decision to the High Court, not later than 20 working days after notification of the Minister's decision (refer sections 38(2) and 38(4) of the Crown Minerals Act 1991).

- 16.9 Section 100(2) of the Crown Minerals Act 1991 provides that it is an offence to fail to comply with permit conditions and with the Crown Minerals Act. In accordance with section 101(2) of the Act, every person who commits an offence against section 100(2) is liable on summary conviction to be fined.

## 17 REVOCATION OF PERMIT

- 17.1 If the Minister has reason to believe that a permit holder is contravening or not making reasonable efforts to comply with the Crown Minerals Act 1991 or relevant regulations made in accordance with section 105 of the Act or any of the conditions of a permit, then as provided for in section 39 of the Crown Minerals Act 1991, the Minister may initiate permit revocation. Permit revocation is a penalty measure and accordingly is considered a very serious matter. The fact that a person has had a permit revoked may be a consideration against the grant of future permits to that person or a related company.
- 17.2 Section 39 of the Crown Minerals Act 1991 outlines in detail the procedures to be followed to revoke a permit. The Secretary is required to report to the Minister on those matters a permit holder is believed to be in contravention or non-compliance with.
- 17.3 The Secretary's report will detail such matters as the following:
- The permit condition(s) the permit holder has not complied with or the section of the Crown Minerals Act 1991 or regulations made in accordance with the Act that the permit holder has contravened;
  - Correspondence (verbal and written) that has been held between the permit holder and the Secretary concerning the non-compliance or contravention and the views (if known) of the permit holder on the matter;
  - The permit's history, as considered relevant;
  - An evaluation of the non-compliance or contravention having regard to the policy framework as outlined in chapter 2; and
  - An evaluation of the non-compliance or contravention having regard to the permit allocation process or any changes to the permit subsequently approved.
- 17.4 If the Minister is satisfied that a permit holder is not complying with the conditions of the permit or the requirements of the Crown Minerals Act 1991 or regulations made in accordance with the Act, or is not making reasonable efforts to rectify non-compliance or contravention, then the Minister shall agree to the permit holder being served a notice which:
- (a) Specifies the alleged contravention or non-compliance.
  - (b) Requires the permit holder within 20 working days after the service of the notice (or such longer time as the Minister specifies) to remedy or make reasonable efforts to remedy, the contravention or non-compliance, or show reasonable cause for its occurrence, or show that it has not in fact occurred.
  - (c) States that failure to comply with the requirements of the notice may result in permit revocation.
- 17.5 At the end of 20 working days (or such longer time as the Minister specifies) the Secretary shall report again to the Minister and shall recommend either that the permit be revoked or that no further action be taken. The Secretary's report will outline, but is not limited to, such matters as:
- Action that the permit holder has taken, or is taking, to put in order the non-compliance or contravention matter(s) the Minister raised with the permit holder.
  - A summary of any views of the permit holder which have been expressed in verbal or written correspondence to the Secretary.

- Any alternative action the permit holder has proposed, for example, permit surrender or part surrender or an application to amend a permit work programme.
  - Any evidence presented by the permit holder to prove that the alleged contravention or non-compliance has not occurred.
  - An evaluation of the alleged contravention or non-compliance having regard to any of the matters above and the policy framework as outlined in chapter 2.
- 17.6 If, after having given consideration to the Secretary's report, the Minister is satisfied that a permit holder has failed to comply with the requirements of a notice served (as detailed in paragraph 17.4 and section 39(1) of the Crown Minerals Act 1991), then the Minister will take action to revoke the permit. The Minister shall serve a further written notice on the permit holder, which declares that 20 working days after the date of service of the notice, the permit either shall be revoked or shall become the property of the Minister, subject to the permit holder appealing this decision to the High Court. In the notice, the Minister shall specify the reason for the Minister's decision (section 39(2), Crown Minerals Act 1991).
- 17.7 As indicated in paragraph 17.6, a permit holder who has been served a notice of revocation may appeal against the Minister's decision to the High Court, not later than 20 working days after the date of service of the notice. Pending the determination of any appeal, the permit in respect of which the appeal is made shall for all purposes continue in force unless it sooner expires (or is surrendered). (Refer to sections 39(5) and 39(6) of the Crown Minerals Act 1991.)
- 17.8 Following the revocation of a permit, the Secretary shall lodge a copy of the notice of revocation served on the permit holder with the District Land Registrar (section 39(8) Crown Minerals Act 1991). The District Land Registrar will then note his or her records (section 89 Crown Minerals Act 1991). The Secretary will also note the permit register (refer section 91, Crown Minerals Act 1991) and advise Land Information New Zealand (formerly Department of Survey and Land Information) in order to update the mining industry land and map database. The Secretary may also inform the relevant occupational health and safety inspectors and district and regional councils with responsibilities over the area of the revoked permit.
- 17.9 Upon revocation, the Minister may direct that the monetary deposit or bond held in respect of the permit will be applied in full or part to recover outstanding fees or other payments outstanding (for example, royalties) in respect of the revoked permit. The return of the monetary deposit or bond, less any amount that has been applied, will then be arranged (refer chapter 9.1).
- 17.10 The revocation of a permit (or the transfer of a permit to the Minister in accordance with section 39(3) of the Crown Minerals Act 1991) will not release the permit holder from any liability in respect of:
- (a) The permit, or any condition of it, up to the date of revocation (or transfer); and
  - (b) Any act under the permit up to the date of revocation (or transfer) giving rise to a cause of action.
- 17.11 As noted, the Minister will either revoke a permit or direct that a permit shall be transferred to the Minister in accordance with section 39 of the Crown Minerals Act 1991. For example, the latter course of action may be taken in respect of a mining permit which is operational and the permit holder has breached conditions of the permit. Section 39(3) of the Act provides that the Minister may then sell the permit or any part of it.

# APPENDIX I

## SUMMARY OF THE REASONS FOR AND AGAINST ADOPTING THE ALLOCATION FRAMEWORK

### *INTRODUCTION*

1. In accordance with section 15(1)(e) of the Crown Minerals Act 1991, the following summarises the reasons for and against adopting the policies, procedures and provisions for the allocation of coal permits. The permit allocation options are described and the advantages and disadvantages of these options are summarised. A more detailed assessment can be obtained from the publication “Crown Minerals Act 1991; Evaluation of Allocation and Pricing Regimes; Ministry of Commerce (1992)”.

### *ALLOCATION POLICY*

2. A principal policy objective guiding the determination of the policies, procedures and provisions of this Minerals Programme has been to provide for the efficient allocation of rights to prospect, explore and mine Crown owned coal. The interpretation of efficient allocation of rights is discussed in paragraphs 2.13 and 2.14. Allocation is the process of matching prospecting, exploration and mining opportunities with those who wish to take advantage of these opportunities.
3. There are two basic approaches to allocation:
  - (a) A mechanism generally referred to as priority in time allocation whereby allocation is based on the first party to register an interest. There may also be defined allocation criteria which have to be met; and
  - (b) A mechanism whereby defined exploration acreage is advertised by a form of public tender and different parties compete for the same opportunity by some sort of bidding process, the most competitive bid being successful.
4. The traditional form of allocation for permits to prospect, explore and mine for coal is priority in time allocation. Priority in time allocation is deemed to be appropriate where there is little evidence of competition for a resource. First acceptable work programme offer, which is the principal allocation option available under this Minerals Programme, is an example of this allocation method.
5. Where there is competitive interest in a resource, then public competitive tender bidding allocation methods are considered to be the most efficient. These are considered the most likely allocation methods to result in a permit being allocated to the party that most values the exploration and development of the resource involved. That party is considered most likely to effectively work the permit area. Cash bonus bidding and work programme bidding are examples of competitive tender bidding allocation methods. Under this Minerals Programme cash bonus bidding may be used to allocate permits in areas of high prospectivity and competitive interest.

### *PRIORITY IN TIME ALLOCATION: ADVANTAGES AND DISADVANTAGES*

6. Typically, priority in time allocation provides for interested parties to apply for a permit at any time and for the first application received to be considered in priority over any subsequent applications. In most instances, the applicant would need to also satisfy some defined criteria

prior to a permit being granted. For example, the applicant may be required to commit to undertake some minimum level of work, or to spend a minimum amount of money on prospecting, exploration or mining, or to use only certain work methods. The first application received over an area is considered entirely on its own merits and not in comparison with any others.

7. Priority in time allocation enables the applicant to obtain a permit fairly quickly, dependant on administrative processing. As such, if an interested party has resources immediately available to invest, these can be used to advantage.
8. Priority in time allocation also provides a more secure investment approach. Having identified an area of interest, the explorer can immediately secure exploration rights and then determine the prospectivity and value of the area. In comparison, with a competitive bidding allocation method the explorer may undertake considerable work and expenditure prior to making a bid, which then may not be successful.
9. Priority in time allocation is considered particularly effective for frontier areas. It also provides low cost access to permits and thus avoids any bias against small-scale explorers with limited resources.
10. The major disadvantage of this type of allocation method may occur where there is competitive interest in an area. In such circumstances, the timing of an application may have priority over the merit of an application and, therefore, the area may not be awarded to the company which most values exploring and developing the resources of the area. This objective may subsequently be achieved, however, if permits are exclusively defined and freely tradeable.
11. For the resource owner, if priority in time is to work as an efficient allocation method, there must be clear criteria or conditions of allocation defined to achieve the resource owners desired objectives for the management of its coal resources. First acceptable work programme offer is a priority in time allocation method which emphasises that the Crown, as resource owner, wants investment in and effective development of its coal resources in accordance with the policy framework outlined in chapter 2. Allocation of a permit is based on there being an acceptable work programme. This guarantees to the resource owner that there will be at least a minimum amount of work carried out and that further information about its coal resources will be obtained as a consequence.
12. The coal industry favours priority in time allocation subject to a permit being worked in accordance with prescribed permit conditions. This is an internationally accepted allocation method for coal and other minerals.
13. Overall, first acceptable work programme offer is considered to be the most suitable permit allocation method for coal, except in situations where there is expected to be competitive interest.

### ***COMPETITIVE TENDER ALLOCATION: ADVANTAGES AND DISADVANTAGES***

14. Competitive tender allocation provides for interested parties to bid for a nominated permit block or blocks in respect of specified minerals by a stated date. The tender allocation may be subject to the successful bidders complying with defined conditions. There are two types of bidding upon which permit grant is usually based: cash bidding (or cash bonus bidding) and work programme bidding.

### ***CASH BIDDING AND CASH BONUS BIDDING***

15. Cash bidding (also referred to as pure cash bidding), involves an interested party making a cash offer or bid for a defined block or permit, in a competitive tendering procedure. The cash bid is used as the allocation tool and also incorporates a one off, upfront economic rent or

royalty payment. There may be some basic prescribed conditions to be met if a permit is purchased, for example, a requirement to undertake some specified work in a defined period, and there may be a reserve price required to be met before allocation occurs.

16. Cash bonus bidding involves an interested party making a cash offer or bid as with cash bidding. With cash bonus bidding, however, the permit holder is required to pay a royalty to the Crown on any production as well as the cash paid with the original purchase.
17. There are various ways the cash (bonus) bid payment can be made. These include an up front cash payment, or an instalment payment commitment made over a defined period, or a commitment payment discounted with successive exploration work, as well as variations on these approaches.
18. Cash (bonus) bidding allocation resembles cash purchasing at an auction. This allocation method has the advantage of being very transparent and easy to understand.
19. With cash (bonus) bidding allocation, the resource owner may have minimal control on the extent or type of exploration work that will be undertaken on a permit. If this is a concern, a condition of holding a permit could be a minimal work obligation to be met for a permit to continue to be held after a defined period.
20. Coal exploration and mining companies tend to be opposed to any type of cash bidding. It is argued that the cash bid raises the cost of investment and, in respect of exploration, may reduce the level of funding available for working the permit, in that the set amount of money allocated to a project has to be divided between the cash bid and exploration work.
21. Cash bonus bidding, by requiring royalty payments on any coal production, is considered to be more likely to meet the requirements of the Crown Minerals Act 1991 for a fair financial return to the Crown, than cash bidding. Any decision that New Zealand will use cash bonus bidding allocation needs to recognise that cash bonus bidding allocation could raise the entry costs of exploration and mining in New Zealand, and assuming the same level of exploration, would raise the average cost of exploration. However, in the circumstances where cash bonus bidding may be used, the level of commercial risk would likely be lower.

### ***WORK PROGRAMME BIDDING***

22. Work programme bidding involves making a bid in a competitive situation on the basis of committing to exploration work over the duration of a permit term. The successful work programme bidder is the person considered to be most prepared to commit to investing in working a permit area in accordance with established criteria and determining the permit area's potential.
23. There is a disadvantage that, with work programme bidding, companies will propose unnecessary work or inefficient work schedules in order to be the successful bidder. In particular, there is potential for inappropriate work proposals in areas of high competition.
24. A variation of work programme bidding is staged work programme bidding which involves committing to a work programme for an initial period and having, at defined stages, the right to commit to further work, surrender the permit or amend the work programme conditions. Staged work programme bidding is considered a more effective variant, in that progressive commitments to work are made in the light of additional information on which to progress investment decisions. A criticism of work programme bidding, without commitment stages, is that it locks a company into investing in a programme of work which, with time, may not be appropriate and/or efficient.
25. Work programme bidding is potentially complex to administer and where there is strong competition for a permit, it can be difficult to identify the best bid.

26. Overall, for areas where there is expected to be, or there is known, strong competitive interest for exploration or mining of coal, it is considered that the most appropriate allocation mechanism is competitive cash bonus bidding. This is likely to result in the party most desirous of developing and investing in an area obtaining the permit and is less administratively complex than work programme bidding allocation.

### ***EXCLUSIVE OR NON-EXCLUSIVE PERMITS***

27. In determining the most efficient allocation system to use, not only do different allocation methods have to be considered but also whether or not it is appropriate for the permits allocated to be exclusive or non-exclusive.
28. An exclusive permit gives to the permit holder exclusive rights to prospect and/or explore and/or mine the land covered by the permit. In other words, no other party may enter on the land covered by the permit for these purposes without the specific agreement of the permit holder. Typically, an exclusive permit would be granted on the basis that the permit holder retains the right to a subsequent permit (for example, as provided under section 32 of the Crown Minerals Act 1991). This means that, if the holder of an exploration permit makes a discovery and wishes to mine it, provided the exploration permit is still valid, only the permit holder has the right to apply for, and be granted, a permit to mine the discovery.
29. With non-exclusive permits, more than one party may have rights to prospect or explore over the same area. It is not appropriate for a non-exclusive permit holder to have subsequent permit rights. Non-exclusive permits are possible for prospecting and exploration. They are usually not considered for mining. With respect to non-exclusive permits, allocation is usually on an on-demand basis.
30. For the allocation of coal permits, exclusive permits, with subsequent permit rights, are considered most appropriate. They allow for a permit holder to invest in prospecting, exploration or mining as appropriate with the certainty that the permit holder can benefit solely from this investment. A clearly defined property right is necessary to facilitate effective and efficient prospecting, exploration or mining. To this end, under this Minerals Programme the policy has been adopted that no more than one permit will be granted in respect of coal and minerals other than petroleum over any single piece of land, except where the existing permit or licence holder agrees otherwise or the area is specifically designated for non-exclusive permits. Non-exclusive permits are appropriate when the purpose of the permit is to obtain reconnaissance data or information.

## **APPENDIX II**

### **SUMMARY OF THE REASONS FOR AND AGAINST ADOPTING THE ROYALTY REGIME**

1. The coal royalty regime to apply was outlined in chapter 15. In accordance with section 15(1)(e) of the Crown Minerals Act 1991, this appendix summarises the reasons for and against adopting the royalty regime policies, procedures and provisions. It sets out the objectives of the royalty regime, briefly reviews various royalty alternatives and the advantages and disadvantages of these and summarises the work undertaken on the assessment and choice of the form and rates of the royalty regime adopted. A more detailed assessment can be obtained from the publication “Crown Minerals Act 1991 : Evaluation of Allocation and Pricing Regimes”, Ministry of Commerce (1992).
2. Royalties are payments to the owner of a resource for the rights to extract or use a particular mineral and may be payable whether the owner is the government or a private individual. In respect of coal, the Crown Minerals Act 1991 provides the legal basis for the imposition of royalties by the Crown. A private resource owner would use a contract to achieve the same end. Royalties are not taxes.
3. The Crown Minerals Act 1991 specifies at section 12, that policies, procedures and provisions to be applied in respect of the management of coal should provide for the obtaining by the Crown of a fair financial return from its coal. Chapter 2 outlined the criteria for achieving this, in particular:
  - The Crown, as an owner of coal, should obtain a guaranteed minimum royalty payment from the extraction of its coal resources;
  - The Crown, as an owner of coal, should benefit in sharing in any substantial profits arising from a coal development;
  - The royalty regime should be clearly outlined and easy to comply with and administer; and
  - The royalty regime should not impose unreasonable transaction costs and should be sufficiently attractive so as not to deter investment.

The interpretation of a fair financial return is discussed in paragraphs 2.15 to 2.17.

4. Within this policy framework, coal royalty regime options were evaluated. The concept of economic rent was used as a guide to determining an efficient price. Economic rent is the residual that remains open to claim by the resource owner when all economic costs have been recovered by the resource developer.

#### ***ROYALTY OPTIONS***

5. A resource owner may obtain a price for the extraction of a resource by either charging in advance for its use (an ex ante basis) or charging on the basis of production (an ex post basis).

#### ***EX ANTE MECHANISMS***

6. Ex ante pricing methods generally require a high level of knowledge regarding the probable size and profitability of the resource if a fair return is to be achieved. Cash bidding is an example of a pure ex ante pricing method. (As described in Appendix 1, this involves a once and for all payment by the producer following competitive allocation by auction with no subsequent royalty liabilities).

7. With respect to coal, at the allocation stage, there is rarely sufficient information on the identification of the resource and the extraction potential of an area for cash bidding to achieve a fair price. This form of royalty has therefore been rejected as an option.
8. Cash bonus bidding combines cash bidding with a subsequent liability to pay royalties and is a mixture of ex ante and ex post pricing. As cash bonus bidding combines a subsequent liability to pay a royalty on minerals extracted, this method is more likely to achieve a fair price, even though it is expected, bidders will discount their bids against assessments of the future levels of royalty payable. Therefore, cash bonus bidding may best meet the objective of a fair financial return when there are high levels of resource information available and competitive conditions.

### ***EX POST MECHANISMS***

9. Ex post pricing methods include specific rate royalties, ad valorem royalties, profit based royalties and equity interest in projects.

### ***SPECIFIC RATE ROYALTY***

10. A specific rate royalty is a specified price to be paid based on either the crude volume or tonnage produced. Specific rate royalties do not take account of either the market value of the resource nor the costs of extraction and production, and accordingly can be viewed as the least efficient form of royalty from an economic viewpoint. Specific rate royalties have been widely used in New Zealand as a means of pricing coal and minerals, despite their lack of sensitivity to prices and costs. They are viewed as relatively easy to administer, though problems arise in indexing their levels to ensure that the resource owner maintains a fair financial return in periods of inflation.

### ***AD VALOREM ROYALTY***

11. An ad valorem royalty collects a fixed percentage of the price received on mineral production which is sold. This royalty method is more economically efficient than a specific rate royalty as it varies according to the price received by the producer. As a rule, however, it does not recognise all extraction and production costs. This royalty method has been applied to coal in New Zealand. The definition of an appropriate point-of-valuation and the determination of associated accounting rules for netbacks can result in problems in the design and implementation of ad valorem royalty regimes.

### ***PROFIT BASED ROYALTIES***

12. Profit based royalties take into account both output prices and input costs, and from an economic viewpoint are generally more efficient. There are two main types: a resource rent royalty, and an accounting profits royalty.

### ***RESOURCE RENT ROYALTY***

13. The resource rent royalty is a profit based mechanism that is based directly on the concept of economic rent and attempts to give an economic assessment of the surplus that is available for sharing between the resource owner and the resource developer. Resource rent royalties are levied on the excess of revenues over operating and capital expenditures. Allowable costs include a minimum return to the operator on any investment made.

14. Problems can arise with resource rent royalties if the minimum return to the operator is set too low (as this penalises producers) or too high (as the Crown will collect less royalty revenue). There are also likely to be administrative complexities relating to the need to regularly update the estimate of the economic cost of capital. In addition, if used as the sole royalty mechanism, resource rent royalties may engender sovereign risk as producers may not pay royalties until a project nears the end of its economic life or indeed pay no royalties whatsoever. On this basis, the resource rent royalty has, therefore, been rejected as an option for the pricing of minerals in New Zealand.

### ***ACCOUNTING PROFITS ROYALTY***

15. An accounting profits royalty assesses profit for royalty purposes primarily in financial terms, using defined accounting conventions relating to the treatment of profits, operating expenses and capital expenditures. Capital recognition can be restricted to depreciation (including, say, the immediate write-off of capital expenditures against royalty liabilities) but can also include recognition of actual or notional interest payments (though this is likely to increase administrative and compliance burdens). Accounting profit royalties are used internationally to price higher value minerals.
16. One of the potential drawbacks of accounting profits royalties (and also the resource rent royalty) is the imposition of higher compliance and administrative costs. Such costs may be a particular burden to small producers. These will be minimised if there is a high degree of compatibility between the royalty reporting rules and generally accepted accounting practice.
17. Used alone, the accounting profits approach could guarantee the Crown a share of any substantial profits arising from a mining project. However, as with the resource rent royalty, it is likely that some producers would only incur accounting profits liabilities late in the life of a project, or may not pay any royalties at all.

### ***EQUITY INTEREST***

18. Taking an equity interest in a project is another way in which a resource owner can share in the economic rent that is generated by a project. The most economically efficient form of equity interest is one in which the resource owner shares profits with the developer and meets a proportionate share of all costs, including the cost of unsuccessful and successful exploration. This is known as a contributory interest. It is also possible that the owner may not contribute to the cost of exploration or development. This is known as a carried interest. A further variant is the carried/contributory interest in which the resource owner's cost liability is limited to development, production and operating costs should a project proceed.
19. Most equity interest arrangements involve the direct participation of the resource owner in the development process. This requires the Crown to put up the necessary venture capital and therefore exposes the Crown to the risk that it will not make an appropriate return on its investment. These arrangements do not guarantee the Crown a minimum return on its resources and, therefore, are not recommended as a means of generating a fair financial return for the Crown.

### ***ASSESSMENT OF ROYALTY OPTIONS***

20. As noted above, each type of royalty has its own set of advantages and disadvantages from the economic, financial, accounting, compliance and administrative viewpoints. It was concluded that no single royalty form could meet the multiple objectives the Crown has specified of a guaranteed minimum return, reserving the right to share in any substantial profits and a regime which is clear and can be complied with without imposing unreasonable transaction costs. To meet multiple objectives of this kind, it is necessary to have a hybrid royalty that combines an output or price related royalty form with a profit related form. It is also necessary to apply thresholds.

21. The pricing regime adopted combines a low level ad valorem royalty with an accounting profits royalty, with producers being asked to calculate their liabilities to both components in any one royalty period and pay the higher of the two liabilities; except where net sales revenues are less than \$1 million per year then only the ad valorem royalty need be calculated and paid; and where net sales revenues are less than \$100,000 per year or \$8,333 per month, no royalty is payable.
23. The low level ad valorem component guarantees that the Crown would receive a minimum return from the extraction and use of its coal without significantly influencing the timing of investment decisions, while the accounting profits component preserves the Crown's right to share in any substantial profits that arise.<sup>56</sup>
24. The eventual selection of the hybrid ad valorem: accounting profits royalty was facilitated by a thorough review of the available options that included economic and financial modelling exercises. The primary objective of the modelling work was to analyse the dynamic efficiency consequences of alternative royalty regimes and, in particular, to determine the effect on investment go-decisions.
25. The cash flow models were also used to simulate the levels and timing of private, tax and royalty revenues.
26. The salient results of the modelling work were:
  - The work on alternative modes of allocation in the mineral industries confirms that pure cash bidding is not appropriate to New Zealand. However, cash bonus bidding may be possible as a component of the overall allocation and pricing regime, where there are high levels of prospectivity and competition in new areas, and/or valuable permits have been forfeited or surrendered.
  - In the case of the pricing of coal resources, it has to be recognised that the investment context is relatively uncertain, with institutional constraints emanating from the regulatory framework and the access regime of the Crown Minerals Act 1991 which grants surface landowners an effective veto over development. Looking at the results of the modelling work, it is apparent that there are limited opportunities (on past or current experience) for the Crown to earn significant royalty returns, without prejudicing "go-decisions" on new projects.
  - At current price-cost relationships, there can be particularly damaging effects of ad valorem royalties (even if they are set at rates as low as 2.5 percent) during the early years of project development when production and stocks are building up and profits are minimal.
  - The results point to the merits of selecting an AVR:APR hybrid as the recommended royalty regime, with an initial 1 percent AVR rate (to meet the Crown's claim to a fair minimum basic return) that would be superseded by a 5 percent APR if and when the project becomes more lucrative (to provide an opportunity for the Crown to claim a share of any super-normal profits that may arise from lucky strikes). Royalty yields from this regime are broadly comparable to those that would eventuate from a 2.5 percent single instrument ad valorem royalty.
  - In recognition that the costs of collecting the royalty may outweigh the royalty potentially able to be collected, it has been decided not to require a royalty where net sales revenues are less than \$100,000 per year. In light of this, no royalties are payable under prospecting permits or exploration permits as little or no production will occur from such permits. Royalties are also not payable under special purpose mining permits where production is less than \$100,000 in value per year.

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<sup>56</sup> *The threshold of \$1 million net sales revenues per year to be exceeded before it is necessary for a producer to calculate the accounting profits royalty recognises that there are substantial compliance costs associated with calculating the liability to pay this royalty. The threshold of \$100,000 net sales revenues per year below which no royalty is payable recognises that it would cost the Crown more to collect and administer royalty liabilities from such producers than any revenues to be obtained.*

## APPENDIX III

### CONSULTATION WITH MAORI ON THE PREPARATION OF MINERALS PROGRAMME FOR COAL

- i As noted in chapter 3, the Minister and Secretary are committed to a process of consultation with Maori on the management of coal under the Crown Minerals Act 1991. Consultation involves a process in which the Minister and Secretary are committed to a dialogue with tangata whenua hapu and iwi and are receptive to Maori views and give those views full consideration. An example of the operation of this process was consultation on the preparation of this Minerals Programme. This appendix summarises this process.
- ii Prior to commencing preparation of minerals programmes, a series of regional and national hui (meetings) were held, attended by the Minister and/ or the Secretary, officials and Maori. The regional hui were held in February and March 1992 on the following marae: Mihiroa (Pakipaki, near Hastings); Te Pae O Hauraki (near Paeroa); Te Rehua (Christchurch); Murihiku (near Invercargill); Taiporohenui (Hawera); and Waimononi (near Kaitaia). These were followed by a national hui on 11 April 1992 held in Wellington. The kaupapa (purpose) of the consultation process was to inform, to listen to Maori and to establish a process for protecting areas of land important to the mana of iwi. This involved informing Maori about the Crown Minerals Act 1991 and the opportunities it provides for Maori involvement; generally discussing the protection of areas of importance to the mana of iwi; obtaining initial views on the management of Crown owned minerals; and listening to all matters raised by tangata whenua at the hui.
- iii Following the hui in 1992, there was detailed drafting of minerals programmes, including the Draft Minerals Programme for Coal. The views expressed by Maori at the hui were incorporated into the Draft Minerals Programme particularly as concerns:
  - (a) The proposed procedures and provisions for consultation with tangata whenua hapu and iwi on permit applications and applications to amend a permit to either extend the land and/ or minerals covered by an existing permit; and
  - (b) The criteria that the Minister shall have regard to in considering requests from tangata whenua hapu and iwi as a consequence of consultation.
- iv In August 1995, the Minister forwarded to representatives of tangata whenua hapu and iwi an Iwi Discussion Document “He Tuhinga Matapakinga”, which provided supplementary information on the Draft Minerals Programmes.

The Secretary complemented this advice by holding a series of regional hui to provide a briefing on the Draft Minerals Programme for Metallic and Non-Metallic Minerals, the Draft Minerals Programme for Industrial Rocks and Building Stones and also the Draft Minerals Programme for Coal, the Discussion document for Iwi, and to receive preliminary views of Maori on the issues raised. The meetings were attended by either the Minister or the Acting Secretary of Commerce, or the General Manager of the Energy and Resources Division, the Ministry of Commerce kaumatua and other Ministry of Commerce and Te Puni Kokiri staff and members of iwi. The regional hui were held in September and October 1995 at Dunedin, Hokitika, Nelson, Wellington, Wanganui, Taranaki, Hastings, Rotorua, Gisborne, Thames, Auckland and Whangarei.

## **CONCLUDING EXPLANATORY NOTE**

The preparation of the Minerals Programme for Coal was undertaken in accordance with sections 13 to 17 of the Crown Minerals Act 1991. It was preceded by a Draft Minerals Programme for Coal. In accordance with section 16 of the Act, on 30 September 1995 public notice was given of the Draft Programme and that submissions would be received. Notice was also given to all iwi and the Draft Programme was made available for inspection and purchase.

Submissions were then received and considered by the Secretary in accordance with section 17 of the Crown Minerals Act 1991, and a report and recommendations on the submissions was made by the Secretary to the Minister. Following the consideration of this report, the Minister prepared a revised Draft Minerals Programme for Coal which was publicly notified.

The Minerals Programme for Coal shall remain effective until a replacement Minerals Programme for Coal is issued. From time to time, changes to the Minerals Programme may be made in accordance with sections 14 and 18 of the Crown Minerals Act 1991. Section 20 of the Act requires the Minister to undertake a review within ten years of the date of issue, and for a replacement Minerals Programme to be prepared whether or not any changes are proposed.

