



Guidance for the determination of financial capability

This guideline indicates the nature of financial information that can be provided by applicants to show their financial capability to comply with conditions of the permit and to give effect to the work programme.

Under the Crown Minerals Act 1991 (the “Act”), the Minister of Energy and Resources must be satisfied of a permit participant’s financial capability to comply with, and give effect to a proposed work programme.

LEGISLATIVE CONTEXT

For the grant of a new permit under section 29A(2)(ii) of the Act, and any transfer, change of control and change of operator under sections 41, 41A and 41C respectively, the Minister must be satisfied of a permit participant’s financial capability to comply with and carry out the work programme, and pay any fees and royalties associated with the permit.

Clause 5.3(3) of the Minerals Programme for Minerals (Excluding Petroleum) 2013 (the “Minerals Programme”) sets out what is meant by financial capability. It states an applicant “will normally be required to demonstrate that it has sufficient funding available to undertake the proposed work programme”.

GENERAL PRINCIPLES

There is a range of commercial risk associated with the permits that NZP&M administers. Section 2B of the Act defines Tier 1 and Tier 2 permits. The purpose of the distinction between tiers is to allow different practices and procedures to apply to different minerals and/or permits so that regulatory efforts focus on operations that have the highest technical and geological complexity. This also applies to the rigour that NZP&M applies to assessing financial capability. The greater the complexity and risk of a proposed work programme, the greater the level of evidence required.

Tier 1 Permit applications

PROSPECTING

When prospecting permits are applied for, the applicant should ordinarily, as a minimum, be able to cover the costs of the work programme for the first two years and any money owing to the Crown.

EXPLORATION

When exploration permits are applied for by Newly Available Acreage (NAA) or Acceptable Work Programme Offer (AWPO), the applicant should ordinarily, as a minimum, be able to cover the costs of the work programme for the first two years or the first stage of the work programme and any money owing to the Crown. This includes fees for the first two years or for first stage of the work programme, which is generally two or three years.

When exploration permits are applied for under a competitive tender process, financial capability requirements will be set out in an Invitation for Bids.

MINING

When assessing financial capability for a Tier 1 mining permit a multi-faceted approach is generally taken. Various aspects of the application are considered, including the feasibility study (project economics), the financial viability of the project, and evidence of how the project will be funded.

Tier 2 Permit applications

The operational scale of Tier 2 permits can vary. For high-value, high-risk Tier 2 permits, the same or similar level of information for financial capability will ordinarily be required as for Tier 1 permit applications.

For most other Tier 2 permits, the scale of assessment and information or evidence required will be relative to the financial risk of the proposed operation. The main considerations are outlined below.

EXPLORATION

For Tier 2 exploration permits, as a minimum the applicant should ordinarily be able to cover the costs of the work programme for the first two years or the first stage of the work programme and any money owing to the Crown. This includes fees and royalties (where relevant) for the first two years or first stage of the work programme.

MINING

The applicant should be able to show that the proposed operation is economically viable.

The applicant should be able to show they can cover the capital required to commence mining, notably the ability to purchase or hire the equipment to be used during the mining operation.

If the applicant has the equipment required to start the operation then evidence of this should be provided.

Hobby mining permits

Hobby or recreation operations, as defined in Schedule 1 of the Minerals Programme, usually have low annual expenditures (around \$1,000 to \$10,000). Evidence to cover the expenditure of a year of the work programme would ordinarily suffice.

Transfers/Change of Control/Change of Operator

Where the applicant is seeking to transfer an interest in the permit, change the operator, or have notified a change of control, the financial capability of the applicant is assessed. In general, the considerations above apply to the assessment of financial capability as well as the location and size of the permit, the activities to be undertaken and any other relevant factors.

Holding multiple permits

NZP&M applies a portfolio approach to financial capability assessments of permit applicants. Where a proposed permit participant or related party has significant interest(s) held in more than one permit or licence in New Zealand and/or other jurisdictions, consideration is given to the ability to finance current permit obligations.

EVIDENCE OF FINANCIAL CAPABILITY

To assess a permit participant's financial capability to undertake a proposed work programme, NZP&M needs to understand the permit participant's financial situation. Information is required on:

- › the cost of the work programme
- › financial performance
- › financial position
- › cash flow
- › funding streams.

In cases where a proposed permit participant's net worth is significantly greater than the costs of the proposed work programme, evidence of that worth will normally provide sufficient evidence that adequate funding will be available to meet anticipated work programme costs.

Where a permit participant does not itself have sufficient profit, assets or cash flow to fund the work programme, evidence of the ability to fund the work programme from alternate sources is required. Funding may be sourced from a number of different areas including borrowing, stock offerings and capital injections from owners or shareholders. The parent company or other investor of the proposed permit participant may execute a deed of guarantee (in the form available as a template on the NZP&M website) or execute a letter of financial support.

Examples of financial information that can be provided to show financial capability are set out below:

- › **Financial Statements of the Applicant** – this includes paid-up capital, current debt/equity ratio, earnings before tax and amortisation in the last financial year, profit after tax and amortisation in the last financial year.
 - **Publicly Listed Companies & State Owned Enterprises** – Latest audited financial statements of the company (not more than eighteen months old), and any associated group financial statements. Where more than six months has lapsed since the balance date, interim accounts should be provided. Annual corporate reports and supporting material for the past two years.
 - **Private Companies** – Latest audited financial statements of the company (not more than eighteen months old) demonstrating the company's capability to meet obligations related to exploration activities in New Zealand.
 - **Individuals** – Personal accounts prepared by an independent accountant, a certified list of assets and liabilities, bank statements.
- › A list of any current or known future financial commitments (New Zealand and international) including applications currently under consideration in all jurisdictions, together with the estimated costs of those commitments and a statement on whether these are likely to affect its ability to meet the costs. Where an applicant or a related company holds other permits or licences (whether in New Zealand or elsewhere) it must demonstrate it has sufficient financial capability to meet its obligations in relation to those other permits or licences as well as in relation to the permit applied for.

- › Information to clearly demonstrate how the proposed work programme will be funded.
 - If an applicant is relying on future cash flows or revenue, only cash flows from assets in production and the revenue produced to date will be considered. A forecast of future revenues and the extent to which that revenue is available to be applied to meet the costs of the proposed work is also necessary.
 - If an applicant is relying on future capital raising it should demonstrate a record of past successful capital raising and provides a detailed description of how it intends to go about raising that capital, together with a report from an independent expert on the prospects of that capital raising being successful.
 - If an applicant does not have the financial capability itself and is relying on financial support from a third party (such as an individual shareholder or parent company) it should typically provide a guarantee (or as a second best option, a letter of financial support) from the third party funder and full details of the uncommitted financial resources of the funder (e.g. financial statements, accountant letters).
- › Sufficient detail is required to enable an assessment of the liquidity of assets (e.g. cash at bank is more liquid than plant and equipment). Liquidity is a measure of a permit participant's ability to pay their debts when they fall due and the ability to pay short-term obligations. A shortage of liquidity is often a trigger for business failure. In its analysis, NZP&M will place greater weight on evidence of liquid assets that can be readily utilised to fund work programme activities. Evidence of non-liquid assets alone, such as property, will not generally be considered a strong indication of financial capability (because these are not readily available to fund activities).
- › NZP&M will take into account the following when assessing the scale of a permit participant's liabilities at the application date:
 - Any type of borrowing from persons or banks or personal income that is payable during the life of the permit
 - Any duty or responsibility to others that entails settlement by future transfer or use of assets
 - Provision of services, or other transaction yielding an economic benefit, at a specified or determinable date, on occurrence of a specified event, or on demand
 - A duty or responsibility that obligates the permit participant to another, leaving it little or no discretion to avoid settlement
 - A transaction or event obligating the permit participant that has already occurred.
- › Where an application is made to transfer a minority interest in a permit to an existing permit holder a letter of financial support or deed of guarantee is unlikely to be required.

This list is not exhaustive and further information may be required depending on the scale and complexity of the proposed work programme.

APPENDIX

Definition of key terms

Financial performance (income statement)

A statement of Financial Performance summarises the revenues, costs and expenses incurred during a specific period of time – usually a financial year. These records provide information that shows the ability of the permit participant to generate profit by increasing revenue and reducing costs. The statement is also known as a “statement of profit and loss”, an “income statement” or an “income and expense statement”.

Financial Position (balance sheet)

A statement of Financial Position summarises a permit participant's assets, liabilities and equity at a specific point in time. These three balance sheet segments give NZP&M an idea as to what the permit participant owns and owes, as well as the equity (net value) of the permit participant. It is usually expressed in the form of Assets – Liabilities = Equity.

Assets

Assets are items of property owned by the permit participant that are available to meet debts and other commitments. This includes assets to undertake the work programme proposed under the application.

Equity

Equity represents the value of the owners' investment in the permit participant. It is usually made up of capital injected into the entity, plus asset revaluation reserves, plus or minus retained profits or losses.

Cash Flow

If a permit participant uses accrual accounting, the income statement may not necessarily reflect changes in the cash positions. The Statement of Cash Flows provides aggregate data regarding all cash inflows a permit participant receives from both its ongoing operations and external investment sources, as well as all cash outflows that pay for business activities and investments within a given period.

Disclaimer

This document is a guideline only and is not intended to cover every possible situation. Where this guideline is inconsistent with the Act, relevant Minerals Programme or relevant regulations, the Act, Programme and regulations prevail. This guideline has no binding legal effect and should not be used as a substitute for obtaining independent legal advice.

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**NEW ZEALAND
PETROLEUM & MINERALS**

www.nzpam.govt.nz
nzpam@mbie.govt.nz

PO Box 1473, Wellington 6140,
New Zealand

FREEPHONE (WITHIN NEW ZEALAND): 0508 263 782
INTERNATIONAL CALLS: +64 3 962 6179 FAX: +64 4 471 0187

NZP&M is a division of the Ministry of Business, Innovation and Employment. We lead and actively manage New Zealand's petroleum and minerals portfolio ensuring the country's economic interests and assets are comprehensively protected. Our goal is to use our wider understanding of the energy and resources sector to increase national and regional prosperity via petroleum and minerals exploration and production.

As a government agency, we engage with Councils, iwi and communities about petroleum and minerals development and regulation of the industry. We manage compliance and revenue collection on behalf of the Crown and aim to maximise the return that these important industries deliver for the benefit of all New Zealanders.

We report to the New Zealand public through the Minister of Energy and Resources.