Submission from the AQA on the Crown Minerals (Decommissioning and Other Matters) Amendment Bill 2021, and accompanying regulations

August 2021

Introduction

The Aggregate and Quarry Association (AQA) is the industry body representing Construction Material companies which produce an estimated 45 million tonnes of aggregate and quarried materials consumed in New Zealand each year.

Funded by its members, the AQA has a mandate to increase understanding of the need for aggregates to New Zealanders, improve our industry and users' technical knowledge of aggregates, and assist in developing a highly skilled workforce within a safe and sustainable work environment.

Background

In 2019, the New Zealand aggregate and quarrying sector produced 45 million tonnes of aggregates, including limestone and other products, with an economic contribution to New Zealand estimated at $3 billion. This included a wide range of industrial minerals including clay, limestone, perlite, halloysite, bentonite, zeolite, silica, dolomite and serpentine.

It is therefore vital that local aggregate resources throughout the country are identified, understood and effectively managed.

We make the following submission in relation to the Crown Minerals (Decommissioning and Other Matters) Amendment Bill 2021 (the Bill), and accompanying discussion document, which covers proposed regulations to support the Bill.

Objective of the Bill

The overarching objective of the Bill is improved regulation of the decommissioning of petroleum structures and installations.

We are concerned however that areas of the Bill do not only apply to petroleum decommissioning and as such will make it more difficult for a Crown minerals permit to be granted to smaller quarry operators, explorers and miners of minerals other than oil and gas.

Clause 8, and 10-13 of the Bill raise the bar for decisionmakers in granting a Crown minerals permit (section 29A of the Crown Minerals Act 1991 (CMA)), and in relation to transfers and dealings, and changes of operator and permit holder (section 41 and related sections of the CMA).

If the Bill becomes law, the decisionmaker will need to be satisfied that the permit applicant is "very likely" to comply with a work programme taking into account technical and financial capability, instead of "likely", as is currently the case. The same issue arises in respect of clauses 10-13, which covers ministerial approvals for such things as transfers and dealings, and changes of operator or permit holder.

We note that no reasoning has been provided for the Bill to apply proposed amendments to the above clauses to all permit holders, and not solely the petroleum sector.

Changing the weighting in decision making from "likely" to comply with a work programme (taking into account technical and financial capability) to "very likely", which is what the Bill does, will impact severely on alluvial gold mining, and smaller quarries and mines, which would appear to be an unintended consequence of the proposed changes in the Bill.

We recommend that the application of clauses 8, and 10-13 be limited to petroleum permit and licence applicants and holders only, to achieve the overarching objective of the Bill.

Explanatory note to the Bill

The Explanatory Note to the Bill is clearly aimed at improved regulation of the petroleum sector in relation to decommissioning however the use of imprecise language in the Explanatory Note doesn't specify petroleum permit holders but instead refers to permit holders generally as follows:

> "amending the permit acquisition provisions (sections 29A, 41, 41AE, and 41C) to require the decision-maker to have a higher level of confidence that the proposed permit holder will comply with the work programmes or permit conditions, health and safety and environmental requirements, and obligations relating to fees and royalties. In a recent High Court decision Greymouth Gas Turangi Ltd v Minister of Energy and Resources [2020] NZHC 2712, the High Court interpreted "likely" in the context of ascertaining whether an applicant is "likely" to comply with and give proper effect to the proposed work programme (section 29A(2)(b)) as an "outcome that is reasonably in prospect, that being an outcome that is a distinct possibility". The intent of these amendments is to shift the threshold higher than set by the court in the Greymouth judgment, to a level of confidence that is broadly midway between "more likely than not" and "certainty"."

It is inappropriate to apply a court decision concerning a petroleum company to the minerals sector generally as financial aspects of minerals prospecting and exploration are very different in their scale and nature from petroleum activities.

General Comments

We agree with the criteria for making changes to law and regulations outlined in paragraph 21 of the discussion document, particularly:

> "Flexibility to consider individual circumstances and risk profiles as needed and the extent to which the compliance and opportunity costs on industry and administrative costs to the Crown are proportional to the expected benefits from regulation"

Applying "very likely", instead of "likely", in respect of minerals activities fails to meet the above criteria, in light of the arguments we have already made on the fundamental

differences in the nature and scale between petroleum activities and minerals activities, in particular, in relation to mineral exploration juniors, and small mines and quarries.

The Bill and accompanying regulations should, therefore, stick to petroleum activities, and decommissioning in particular.

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