



Minerals Operational Guidelines

Crown Minerals Act 1991

Minerals Programme for Minerals (Excluding Petroleum) 2013

Guidance on technical capability

Introduction

Under the Crown Minerals Act 1991 (the “**Act**”) and the Minerals Programme for Minerals (Excluding Petroleum) 2013 (the “**Minerals Programme**”), the Minister must be satisfied that an applicant for a permit is likely to comply with and give effect to the proposed the work programme, taking into account the applicant’s technical capability. The legislation also links technical capability to work programme activities and to the concept of good industry practice throughout the life of a permit.

Technical capability is a serious consideration in the legislation. A permit application may be declined solely on the basis of assessment of the applicant’s technical capability.

Purpose

This guideline explains what NZP&M may consider in relation to technical capability. The guideline applies to:

- Applications for a prospecting, exploration or mining permit (section 29A of the Act)
- Work programme activities for all permits.
- The concept of good industry practice.

Legislative context

Technical capability is an explicit requirement in the legislation and is directly related to two other cornerstones of the Act: considerations of good industry practice and the ability to give proper effect to the work programme.

Crown Minerals Act

Section 29A (2)(a)(iii). Before granting a permit, the Minister must be satisfied that the proposed work programme provided by the applicant is consistent with good industry practice in respect of the proposed activities.

Section 29A (2)(b)(i). Before granting a permit, the Minister must be satisfied that the applicant is likely to comply with, and give proper effect to, the proposed work programme, taking into account the applicant's technical capability.

Section 2(1). Good industry practice is defined as "acting in a manner that is technically competent and at a level of diligence and prudence reasonably and ordinarily exercised by experienced operators engaged in a similar activity and under similar circumstances, but (for the purposes of this Act) does not include any aspect of the activity regulated under environmental legislation."

Section 41. The Minister must be satisfied that the transferee is likely to be able to comply with the conditions of, and give proper effect to, the permit.

Section 41C. The Minister must be satisfied that the proposed new operator is likely to comply with, and give proper effect to, the work programme for the permit.

Minerals Programme

Clause 1.3(10). This repeats the requirement of s 2(1) of the Act to act in a manner that is technically competent.

Clause 1.3(11)(a): Personnel and procedures. At all times the permit operator, contractors and their staff have the skills, training and experience required to carry out all prospecting, exploration and mining operations in a skilful, safe and effective manner.

Clause 5.1(2)(b)(i): The Minister must be satisfied that the applicant is likely to comply with the conditions of, and give proper effect to, the proposed work programme, taking into account the applicant's technical capability.

Clause 5.3(1): The applicant will be required to provide detailed information in support of its application to enable the Minister to consider whether the applicant is likely to comply with the conditions of, and give proper effect to, the proposed work programme. The Minister may, at his or her discretion, decline a permit application based on the applicant's technical capability, without proceeding to consider any other aspects of the application.

Clause 5.3(2): Technical capability. The Minister will focus on the technical capability of the proposed operator to undertake responsibility for day-to-day management of the proposed work programme in accordance with good industry practice. This will include reviewing the operator's previous and current record in undertaking work programmes that are similar to the proposed work programme.

Clause 12.9 (3)(a): Transfer of interest in a permit. The Minister will take into account whether the permit holder, following the transfer, will continue to have the technical capability to give proper effect to the permit.

Regulations

Applications for prospecting (Schedule 2 Part 1), exploration (Schedule 2 Part 2) and mining permits (Schedule 2 Part 3) require a statement of the technical qualifications of the applicant.

Applicable guidelines

General principles

- In assessing technical capability, NZP&M will focus on the technical capability of the proposed operator to undertake the day-to-day management of the proposed work programme in accordance with good industry practice. All relevant personnel, including staff, contractors, and consultants, may be considered by this assessment.
- The operator's record in undertaking work programmes that are similar to that proposed is important. Evidence of a successful track record in conducting similar or relevant work programme activities in accordance with good industry practice will, in most cases, be compelling evidence that the applicant has adequate technical capability.
- NZP&M will consider the relevance of an applicant's technical capability. This is expected to be appropriate for the scale and nature of the proposed operation and the target mineral or deposit. Evidence of technical capability adequately should reflect any unique challenges likely to be encountered.
- The concept of giving proper effect to the permit work programme allows NZP&M to consider an applicant's technical capability when assessing a transfer or a change of operator.

Commented [PM1]: MWC would encourage some recognition of skills and experience of operators that have worked in the industry for a number of years. As well as efforts made to reach the required level of qualification.

Information required

- Regulations require applicants to submit a statement of the qualifications of the applicant. This can include qualifications under the H&SE (Mining Operations and Quarrying Operations) Regulations 2013.
- An applicant should also provide detailed information on their technical capability¹. There are no specific requirements of what an applicant should submit as evidence of this, and the appropriate detail will vary from case to case. NZP&M may request additional information from the applicant and liaise with other relevant regulatory agencies. In a few instances, NZP&M may seek external technical advice. NZP&M has the

¹ Clause 5.3(1) of the Minerals Programme.

discretion to impose conditions² on the permit if necessary but would consult with permit holders before doing so.

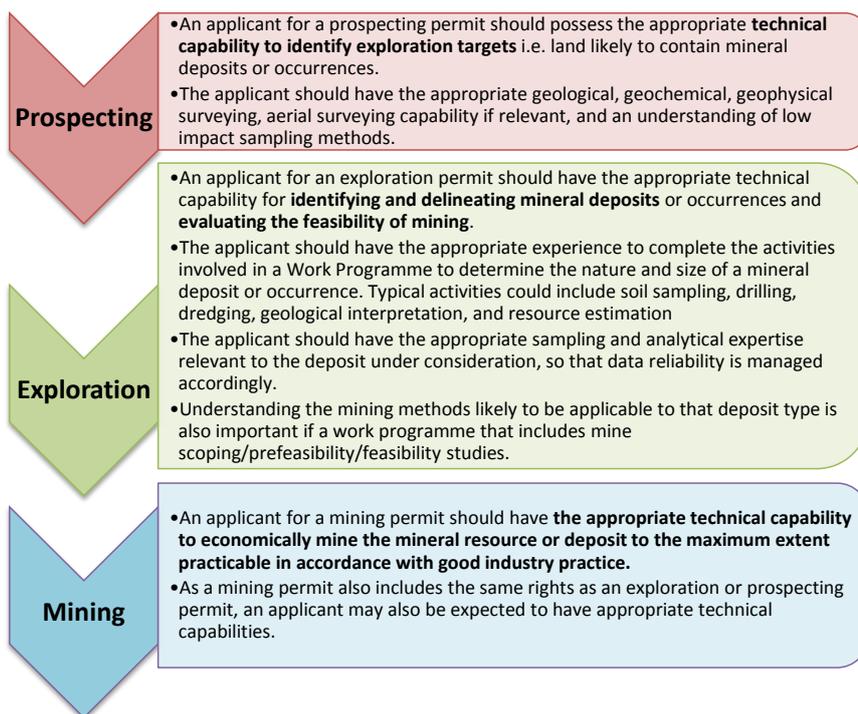
Specific considerations

NZP&M's considerations of technical capability may include:

- The proposed scale and type of work programme or mining operation
- The target mineral or commodity
- The deposit type and style of mineralisation
- Geological and structural complexity
- Geographical location and any associated challenges
- Engineering and geotechnical requirements of mining operation
- The quality of the supporting technical material in the application.

More specific considerations are site-specific, but the approach taken in assessing technical capability is summarised in the table below.

Commented [PM2]: Applicants may have significant real world experience gained over a number of years working in the mining industry and there should be an avenue for a recognition of this experience.



² Clause 12.12 (7) and (8) of the Minerals Programme and Section 41D of the Act: The Minister may impose conditions on a permit.

Technical capability for offshore mining and unprecedented activities

NZP&M recognises that offshore mining is a new activity in New Zealand. Applicants wanting to operate in the offshore environment may not have had previous seabed exploration or mining experience, either in New Zealand or internationally. In such cases, an applicant may be asked to provide evidence of capabilities that are transferrable to the offshore environment or of arrangements made with operators that have. Considerations that fall under Maritime New Zealand's jurisdiction³ may be relevant to NZP&M's assessment of technical capability.

Determining technical capability when dealing with unprecedented activities or circumstances poses some challenges when a precedent has not been set in New Zealand. The concept of good industry practice relies heavily on what is normally exhibited by experienced operators.⁴

Technical capability in relation to health and safety legislation

Consideration of technical capability can cross over into matters that are primarily the concern of health and safety legislation⁵. An example of this is whether or not an operator for a Tier 1 mining permit, opencast or underground, has the appropriate geotechnical expertise. This immediately connects consideration of technical capability under the Act with Principal Hazard Management Plans under the Health and Safety in Employment Act 1992⁶. Officials are not required to repeat assessments that fall under other jurisdictions; however NZP&M may liaise and consider the views of other agencies prior to granting a permit.

Disclaimer

This document is a guideline only and is not intended to cover every possible situation. If 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.

New Zealand Petroleum and Minerals (NZP&M) is not responsible for the results of any action taken on the basis of information in this guideline, or for any errors or omissions in this guideline. NZP&M may vary this guideline at any time without notice.

There may be factors taken into account in any application process, transaction or decision that are not covered by this or any other guideline. Adherence to this guideline does not guarantee a particular outcome. NZP&M retains the discretion to decline any application where the statutory requirements for that application are not met.

³ Maritime Transport Act 1994.

⁴ Section 2(1) of the Act.

⁵ Refer to Health and Safety Operational Guidelines for further detail.

⁶ This Act will be replaced when the Health and Safety at Work Act 2015 comes into force on 4 April 2016.