



Mineral ownership and Land and Mineral Status (LMS) reports

The purpose of this document is to describe the nature of mineral ownership in New Zealand and explain Land and Mineral Status (LMS) reports, which are used to determine the ownership of a particular mineral in land parcels within a permit application area.

PURPOSE

Due to the history of land sales and Victorian Title, the Crown does not definitively know the extent of its minerals estate except for the minerals owned by the Crown under statute, namely gold, silver, uranium and petroleum (referred to as 'statute minerals').

Ownership of other minerals is dependent on the legislation in place when land was alienated from the Crown. It is usually recorded on land titles held by Land Information New Zealand but it may not be recorded. NZP&M does not itself hold mineral ownership information and establishes Crown mineral ownership by requesting LMS reports from exploration and mining permit applicants where the minerals sought are not 'statute minerals'.

LEGISLATIVE AND HISTORICAL CONTEXT

The Crown Minerals Act 1991¹ provides that all petroleum, gold, silver and uranium existing in its natural condition in land is the property of the Crown in New Zealand. All gold and silver is reserved to the Crown in New Zealand by way of a Royal Prerogative exercised by Queen Elizabeth I in 1568 (such doctrines were 'imported' into New Zealand). This doctrine was codified in New Zealand under the Land Act 1948 and earlier legislation. The Crown nationalised petroleum under the Petroleum Act 1937. The Crown nationalised uranium under the Atomic Energy Act 1945.

¹ Section 10

The ownership of minerals other than petroleum, gold, silver and uranium depends on the legislation in place at the time the Crown alienated land and the contracts. Following British settlement in New Zealand, when the Crown (and others) sold land, the rights to any minerals underneath were included in the land title, i.e. the seller did not 'reserve' mineral ownership to itself. This is known as 'Victorian title'.

Since the commencement of the Land Act 1948 all sales of Crown land (and where the Crown also owns minerals) have specifically excluded minerals, i.e. the Crown has reserved mineral rights to itself. The Crown Minerals Act upholds all earlier reservations to the Crown of minerals and makes clear that when the Crown sells land for which it owns mineral rights, those mineral rights are reserved to the Crown.

Private mineral ownership can be traded independently of the land itself meaning that minerals (including coal) can be owned by a party other than the land owner, or the crown.

The Crown generally owns all minerals in the territorial sea (out to 12 nautical miles)² and has vested rights in minerals in the exclusive economic zone³ (from 12 miles to 200 nautical miles offshore) and the continental shelf beyond (out to a maximum of 350 nautical miles offshore)⁴.

² The Marine and Coastal Area (Takutai Moana) Act 2011 provides the right for iwi, hapū and whānau to the ownership of non-nationalised minerals within areas where Customary Marine Title has been awarded.

³ An area of 4,083,744 km².

⁴ The Extended Continental Shelf is the area where the seabed and subsoil of New Zealand's submerged landmass extends beyond the EEZ.

GUIDANCE ON LAND AND MINERAL STATUS (LMS) REPORTS

Any applicant proposing to explore or mine minerals other than gold or silver⁵ or any offshore mineral must demonstrate who owns the mineral, thereby identifying whether the Crown Minerals Act applies. The tool used to identify ownership is known as a Land and Minerals Status report (“LMS report”). Note that if the primary target mineral is gold or silver an LMS report is not required unless other minerals (e.g. copper) will also be targeted. If a permit is granted for gold or silver, but the permit holder then wishes to target a non-statute mineral, an LMS report would be required for a change of minerals application.

An LMS report is not required for a prospecting permit as these permits can be granted over land containing Crown or privately owned minerals.

LMS reports are referred to in the Minerals Programme 2013⁶ and the Crown Minerals (Minerals Other than Petroleum) Regulations 2007⁷. These state that an application for a Tier 1

exploration or mining permit for minerals other than gold or silver must include an LMS report. This means that *Tier 1 permit applications are not complete and cannot be considered* without an LMS report – it does not mean that Tier 2 applications do not require an LMS report. The difference is that NZP&M does not require an LMS report for Tier 2 permits immediately upon application but will request one during the assessment process and before a permit can be granted.

NZP&M recommends that permit applicants requiring an LMS report use an Accredited Crown Property Supplier accredited to the government department Land Information New Zealand. A list of accredited suppliers can be accessed through this link: <http://www.linz.govt.nz/crown-property/acquisition-and-disposal-land/accredited-crown-property-service-providers/search-accredited-suppliers>.

For IT reasons, NZP&M prefers that LMS reports are provided in CSV format rather than in PDF format.

⁵ Applications for permits for prospecting for, exploring for, and mining uranium and thorium minerals will ordinarily be declined. Those minerals include, but are not limited to, uraninite, torbenite, autinite, coffinite, uranophane, rutherfordite, tyuyamunite, thorite, thorianite and uranothorite.

⁶ Chapter 6.3.

⁷ Part 2 Regulation 4C and Part 3 Regulation 9.

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.

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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.