

# Falkland Islands

## Government

**Department Of Mineral Resources**

**Policy for a Mining  
Licensing Framework &  
Model Conditions for  
Prospecting, Exploring  
and Mining for Stone,  
Flint, Chalk, Gravel, Sand  
and Calcified Seaweed**

Rev 02



## **1 Introduction**

- 1.1** The rights to mine minerals (as defined in the Mining Ordinance) are held by the Crown, in practice the Falkland Islands Government (FIG).
- 1.2** This means that those wishing to explore for, or exploit, minerals cannot do so without permission of the Crown.
- 1.3** Whilst land may have been sold to private parties by the Crown, the rights to minerals in the land have been retained by the Crown. However, where land has been sold then a person wishing to explore for minerals will also need permission from the land owner to enter their land.
- 1.4** Some limited mineral extraction has taken place in the Falkland Islands (quarrying of stone and extraction of calcified seaweed). This has mostly been unregulated because it is carried out by FIG, who is exempt from the current regulatory framework, or is carried out by landowners who use the extracted material for use on their own land as provided for in the Mining Ordinance. There is renewed interest in quarrying for stone in connection with various capital projects and private sector development and for extracting calcified seaweed for land improvement.
- 1.5** The relevant legislation is the Mining Ordinance 2005 but this is deficient in that regulations were never made under that Ordinance for the Licensing of Mining activity or for model conditions to apply to mining (which includes quarrying activity). This means that it is currently impossible to licence any onshore mineral extraction.
- 1.6** The purpose of this policy document is to set out draft policy for a licensing framework and model conditions for licensing prospecting exploration and mining for stone, flint, chalk, gravel, sand and calcified seaweed ("Common Minerals") to be made into regulations under the Mining Ordinance 2005.
- 1.7** The intention for licensing Common Minerals is to have a framework which is proportionate and scalable to appropriately regulate the activity for which a licence is sought. Guidance notes and application forms will be produced alongside regulations to assist applicants and ensure this approach is embedded in the framework.

## **2 Background and Overarching Policy**

- 2.1** The first domestic mining legislation was made in 1918. The Mining Ordinance 1918 was a short Ordinance comprising of 13 sections.
- 2.2** In 2005 a new Mining Ordinance replaced the 1918 Mining Ordinance. The 2005 ordinance is a longer, more comprehensive piece of legislation running to 85 clauses and some 57 pages.

Its foundations lie in the 1918 Ordinance but it fills in many of the gaps and recognises changes in attitude to the environment and health and safety.

- 2.3** In summary, the 2005 Ordinance applies to minerals belonging to the Crown in the Falkland Islands, but does not include the seabed in territorial waters or the continental shelf, as these are covered in the Offshore Minerals Ordinance 1994. Its structure is similar to that of the Offshore Minerals Ordinance (which is currently being revised to separate licensing functions from safety and environmental regulation).

- 2.4** Minerals are defined in the ordinance as follows:

*“**“mineral”** means any substance, other than water, and whether that substance is in a solid, liquid or gaseous form, which has been formed by or is subject to geological process and any naturally occurring inorganic substance beneath or at the surface of the earth, and whether or not any such substance is under water;”*

- 2.5** ‘Mine’ as a verb is defined in the ordinance and includes:

*“any manner or method of mining operations” and “mining operations” includes “quarrying operations and means any mode or method of working whereby the earth or any rock structure, stone, fluid or mineral bearing substance may be disturbed, removed, washed, sifted, crushed, leached, roasted, distilled, evaporated, smelted or refined or dealt with for the purpose of obtaining any mineral therefrom whether it has previously been disturbed or not and includes-*

- (a) The removal of overburden by mechanical means or other means and the stacking, deposit, storage and treatment of any substance believed to contain any mineral;*
- (b) Operations by means of which salt or other evaporates may be harvested;*
- (c) Operations by means of which mineral is recovered from any water supply or body of water;*
- (d) Any acts reasonably incidental to or conducive to any of the foregoing.”*

- 2.6** Under the Mining Ordinance ‘prospecting’, ‘exploration’ and ‘mining’ have the following meanings:

*“**“prospecting”** means-*

- (a) any activity authorised to be carried out by or by virtue of a prospecting licence granted under the repealed Ordinance; and*
- (b) any activity undertaken for the purpose of identifying land likely to contain exploitable mineral deposits or occurrences; and includes-*
  - (i) geological, geochemical and geophysical surveys,*
  - (ii) the taking of samples by hand or hand-held methods, and*
  - (iii) aerial surveys,”*

From the above definition it can be seen that prospecting is a low impact, relatively non-invasive activity.

*“ **“exploration”** includes any activity undertaken for the purpose of identifying mineral deposits or occurrences and evaluating the feasibility of mining particular deposits or occurrences of one or more minerals (and includes any drilling, dredging or excavations (whether surface or sub-surface) that are reasonably necessary to determine the nature and size of a mineral deposit or occurrence) and “to explore” has a corresponding meaning;”*

As can be seen from this definition it will include all the activities that are defined as ‘prospecting’ but also includes drilling, dredging and excavation and feasibility studies into whether any minerals found can be mined.

*“ **“mining operations”** includes quarrying operations and means any mode or method of working whereby the earth or any rock structure, stone, fluid or mineral bearing substance may be disturbed, removed, washed, sifted, crushed, leached, roasted, distilled, evaporated, smelted or refined or dealt with for the purpose of obtaining any mineral therefrom whether it has been previously disturbed or not and includes-*

*(a) the removal of overburden by mechanical or other means and the stacking, deposit, storage and treatment of any substance believed to contain any mineral;*

*(b) operations by means of which salt or other evaporates may be harvested;*

*(c) operations by means of which mineral is recovered from any water supply or body of water;*

*(d) any acts reasonably incidental to or conducive to any of the foregoing,”*

- 2.7** Whilst mining is substantially different from prospecting and exploration in that it is no longer looking for minerals but is concerned with extraction, it is considered that a common suite of model conditions can apply to all three activities. The policy proposals set out in this paper are in respect of Common Minerals. The Ordinance allows for different model conditions for different types of minerals.
- 2.8** The 2005 Mining Ordinance (hereafter “the Ordinance”) sets out the terms of, and rights conferred by the three different types of licence: a prospecting licence to carry out low impact activities to search for minerals; an exploration licence to carry out more intensive activities (such as drilling) to search for and evaluate minerals; and a mining licence to extract minerals.
- 2.9** The Ordinance also contains a set of administrative provisions with respect to record keeping, registration of licences, notices etc., and associated provisions concerning criminal offences under the Ordinance.
- 2.10** The Ordinance, like its predecessor, contains wide regulation making powers.
- 2.11** The Ordinance provides for a person to be able to apply for and be granted a licence in accordance with Regulations. This paper sets out the draft policy for a regulatory framework to enable applications for and the granting of prospecting, exploration and mining licences.

The Ordinance also requires that licences must be subject to a set of Model Conditions. The Regulations and model conditions must be approved by the Secretary of State.

- 2.12** The Ordinance contains an exception for owners or lessees of land which allows them to prospect, explore and mine Common Minerals on their land but only for the purpose of using it on the same land. There is a limited ability for the onward disposal of minerals under this exception but only with the consent of the Governor
- 2.13** The overarching vision set out in the current FIG Islands Plan 2018-2022 is “to progress the sustainable economic, social and political development of the Falkland Islands for the benefit of all residents”. This Islands Plan policy statement has been taken into account when preparing this report. In relation to economic development, the Islands Plan promises that “We will remove barriers to growth and play an active role in driving the economy forward, encouraging both local and international investment”. Regulations to bring in a licensing regime under the Mining Ordinance are needed to facilitate development of and potential investment in this sector of the economy.

### **3 Current Interest in Common Minerals**

- 3.1** Interest in extracting calcified seaweed has periodically arisen as it has a use as an agent to modify soil acidity and improve the quality of soil. When requests have been made in the past to extract calcified seaweed, where it would have required licensing under the Mining Ordinance, it has instead been enabled by appointing the person wishing to extract the seaweed as a government contractor, thus avoiding the application of the Mining Ordinance. However, this is not a satisfactory position. There has currently been renewed interest expressed in the potential for larger scale extraction of calcified seaweed for land improvement.
- 3.2** There is also renewed interest from the private sector in quarrying for stone. The demand for stone is likely to increase in the context of proposed significant capital projects such as the port development, new power station, and continued housing development. Stone for public and private sector projects is currently sourced from the government-owned and managed quarry. Stone for maintaining public highways is also sourced from various borrow pits which are exempt from the Mining Ordinance requirements by virtue of being a Crown activity. Activities have occurred that need to be regularised going into the future, and there are currently products that are unavailable for sale to private sector developers (e.g. stone for capping roads).
- 3.3** If an application were made by an entity wishing to prospect, explore or mine for Common Minerals it would not currently be possible for any kind of prospecting/exploration/mining licence to be granted to them. This is due to the fact that the 2005 Mining Ordinance has not been fully implemented because the regulatory framework underpinning the Ordinance has not been put in place.

- 3.4** It is possible that for some mineral types, an applicant will not want to apply for a prospecting or exploration licence as the location of the mineral is known (e.g. an existing quarry or borrow pit, or a known calcified seaweed deposit on a shoreline). Applicants may choose to apply for a mining licence to enable mining activities to commence as soon as possible. This is permissible under the Ordinance and the proposed licensing framework.

## **4 Approved Policy for a Licensing framework and Model Conditions under the Mining Ordinance**

- 4.1** FIG has approved a policy to put in place Licensing Regulations that set out the framework, procedure, forms and fees for Licence applications and determination in respect of gold and similar minerals. A similar policy framework is proposed for Common Minerals.
- 4.2** The purpose of the Licensing framework is:
- 4.2.1** To enable safe and environmentally responsible prospecting for, exploration for and mining of onshore Common Minerals.
  - 4.2.2** To ensure that there is a clear and transparent process for making and reviewing applications for a licence under the Mining Ordinance.
  - 4.2.3** To ensure that adequate and appropriate information is provided by applicants for a licence under the Mining Ordinance, and that determination of licences is made on relevant information.
  - 4.2.4** To ensure that licences are only granted to persons who can demonstrate an appropriate level of technical competence, financial standing and that they can execute the proposed work programme in a safe, competent and environmentally responsible manner. The Applicant must demonstrate competence which is appropriate to the complexity and risk of the work programme at each successive stage of activity proposed. The level of competence required, depending on the type of licence being applied for and complexity of work, will be determined by DMR and guidance will be available for applicants.
  - 4.2.5** To enable Licence Holders to move from prospecting to exploration and then to mining in a properly managed way. It is envisaged that some activities may only require a mining licence.
  - 4.2.6** To ensure that FIG recovers its costs incurred in regulating of mining activities. The principle of cost recovery will mean that the fees for applications and annual licence fees will be proportionate to the scope and scale of an application and the type of licence applied for to recover the costs of processing the application and proportionate regulation of the activity proposed.
- 4.3** The purpose of Model Conditions is to regulate the activities of prospecting, exploration and mining when a licence is granted therefore model conditions need to deal with:

- 4.3.1** Ensuring the activities are effectively locally managed.
- 4.3.2** Setting out an appropriate scope of works by the applicant and ensuring that it is carried out.
- 4.3.3** Ensuring that appropriate health and safety measures are put in place for those involved in or affected by the carrying out of the activities.
- 4.3.4** Ensuring the avoidance and minimisation of negative environmental impacts and appropriate mitigation and remedial works.
- 4.3.5** Ensuring that the Department of Mineral Resources (DMR) is provided with appropriate information about the progress and outcome of the licenced activities and has the right to use and publish this data.
- 4.3.6** Ensuring that FIG is indemnified against any costs or liability and that the licensee has appropriate insurance.

## **5 Proposed onshore minerals licensing framework for Common Minerals**

### **Identification of Licenced Areas**

- 5.1** The area of land for which an Applicant wishes to apply for a licence to prospect, explore or mine needs to be clearly identified. It needs to be clear what areas are applied for as this will directly relate to the fees to be charged under the licensing framework. It is integral to identifying and assessing environmental impacts, and it will ensure regulations are applied to the area in which activity is conducted.
- 5.2** There are a number of methods by which this could be achieved but the most appropriate way in the case of applications relating to Common Minerals is for the applicant to specify the area of land for which a licence is applied for by submitting a plan of an appropriate scale outlining the area supported by GPS reference points.

### **Applications for Land for Licensing**

- 5.3** The land to be licenced for applications relating to Common Minerals should include the land required to carry out all the activity related to the extraction of the mineral concerned. Applicants applying for a licence will be required to specify the area of land they wish to have licenced, the route of access to the public highway, together with details of their proposed scope of works. They will also be required to submit evidence of their resources to prove their ability to deliver those works. This will enable FIG to assess the viability of the proposed scope of works over the land requested, which can then result in a discussion with the entity regarding the area of land to be licenced, and the proposed scope of works. Following that, FIG can make the decision as to the extent of the licence area granted and the scope of works.

- 5.4** The Mining Ordinance prohibits the grant of licences in relation to some types of land. These include but are not limited to: Stanley Common, land in the boundary of Stanley or any settlement, and land close to a building, cemetery, waterworks, dam, yard, garden, plant nursery, tree plantation, airstrip or aerodrome.

#### **Open Door Licencing or Competitive Bids**

- 5.5** Under the Mining Ordinance the Governor (in Exco) may by notice offer allocation of mining licences by public tender. Currently there is no evidence to support the need for a competitive onshore minerals licensing round in respect of Common Minerals. Current interest in these minerals is limited to use within the Falkland Islands and having an 'open door' licencing process will enable applications to be submitted and considered as and when an applicant wishes to proceed with an application for a particular site. An open-door process, with an appropriate application process and fiscal regime, will be sufficient to manage applications and ensure that the Falkland Islands receives the appropriate benefits.

#### **Application Process**

- 5.6** Under the Mining Ordinance there are three types of licence that can be applied for. These are: a licence to prospect for minerals; a licence to explore for minerals; and a mining licence. Applications must state which licence is being applied for. The process for the application for each licence will be the same. The depth of detail of information required to support an application will vary according to the licence being applied for, but the type of information that an application must contain, in general terms, will be the same. For example an application for a small scale borrow pit will require basic information to enable the application to be determined as it will only affect a small area of land, is likely to be short-lived and worked by mechanical means; whereas an application to open a new quarry of the scale of Pony's Pass will require detailed information as it will be large scale, have a significant impact on the environment, may require the use of explosives and chemicals, and be worked for many years. However in both cases the basic categories of information required to determine the application will be the same.
- 5.7** Applications must be made to the Director of Mineral Resources. Applications should be made electronically. In order to ensure a consistent application process, an application form (together with guidance notes) will be made available which sets out the information required to enable an application to be considered. This form must be part of the proposed licensing regulations (a prescribed form)
- 5.8** An application that does not include all the required information will not be considered. DMR would expect to provide support and advice to Applicants throughout the licensing process, so the Applicant would be informed about any deficiencies in the application and have the opportunity to address those and re-submit the application.
- 5.9** An application must be accompanied by the required fee. The fee charged should reflect the amount of work required to consider the application, which could include seeking advice from technical experts such as BGS. Taking this into account it is considered that an appropriate licence application fee for a prospecting, exploration, or mining licence for



Common Minerals would be calculated taking a proportionate approach to the scope and scale of the proposed activity and recovery of the costs involved in assessing the application. A scale of fees will be devised and consulted on. The fee is payable on application and is not refundable even if a licence is not granted.

### **Contents of an Application**

**5.10** Applications must contain relevant and sufficient information to enable the application to be determined. The offshore minerals framework and advice from BGS regarding the information that an application should include have been taken into account in developing these proposals. The intention is to have an application process that is consistent for all types of applications but proportionate in regard to the scope and scale of the proposal and therefore the information required. The application for a licence must include:

**5.10.1** Identity of the Applicant- It is important that FIG know the identity of the Applicant, who has control over the Applicant, and have contact details for the Applicant. This will ensure that FIG can properly carry out due diligence to ensure that the Applicant is a fit and proper person to hold a licence and can easily communicate with the Applicant. Applicants are likely to be an incorporated body but could be an individual or an alternative legal entity, so the requirements in the regulations need to reflect this. This means that the regulations for an individual or partnership must require an Applicant(s) to provide details of their identity. This will include full name of the Applicant, and address. In addition, full contact details must be given to include a postal address, telephone number and email address. An incorporated body must provide the company name, place of registration and company number, registered office and details of the directors and persons having control (either because they have a majority of shares or some other form of control) must be provided. Where the Applicant is not resident in the Falkland Islands they must also have a local agent in the Falkland Islands and provide full contact details for that agent.

**5.10.2** Area applied for- It is important that it is clear what area of land the application is being made for. The area applied for should be the area which comprises of the site for all activities connected with the mining of Common Minerals. This should be by reference to a plan of the area showing the land outlined in red and GPS coordinates. A separate application must be made for each area of land for which a licence is applied for. Applicants are not guaranteed to be awarded a licence for all the land they ask for.

**5.10.3** Access to land – Applicants must set out what arrangements they have made to secure access to the areas of land they are applying for. Applicants must state the identity and address of the owners and other people having a legal interest in the land applied for and the steps taken to obtain the necessary access and permissions. Under the Mining Ordinance it is for the Applicant to obtain landowner consent for the activities they intend to carry out. There is provision for access to land without consent on notice (see section 35) for minimum impact activities (as defined) and a compulsory right of access process for other activity that has a greater impact e.g. exploratory drilling and compensation provisions (see sections 37-62).

**5.10.4 Financial Information** – The applicant must provide information demonstrating that it has sufficient financial capacity and resources to cover the obligations in the licence and to carry out the proposed work plan. The regulations do not need to specify precisely what particular information is required as it will vary dependent on the type of entity applying for a licence and the type of licence applied for. For example, for a limited company seeking to open a quarry this information could include final audited accounts from previous years, evidence of current financial resources, details of company structure, controlling and influencing entities and individuals. For an individual applying for a licence to dig a small borrow pit then current bank statements might be asked for. The regulations should set out a general requirement to provide such financial information as required by the Director of Mineral Resources. The proposed application form can then provide guidance to Applicants as to the types of information required but the Director shall have the right to ask for such additional relevant information as he considers may be required, prior to making a recommendation whether to grant or refuse the application.

**5.10.5 Technical Information** – The entity applying for the licence must be able to demonstrate that it has the technical capacity and experience to carry out the proposed prospecting, exploration, and mining activities applied for. This will include proportionate information about the entity's involvement in similar projects, experience of key personnel, and knowledge about the geology and minerals being sought. The regulations should set out a general requirement to provide such technical information as required by the Director. The proposed application form can then provide guidance to Applicants as to what technical competence they need to demonstrate. For example, an applicant wishing to excavate calcified seaweed would need to demonstrate a different level of expertise and experience to that of a company seeking to open a substantial quarry. In addition the Director has the right to ask for such additional relevant information as he considers may be required, prior to making a recommendation whether to grant or refuse the application.

**5.10.6 Scope of works** – Applicants must set out their proposed scope of works for the prospecting, exploration or mining activity that they intend to carry out under the term of the requisite licence. This should set out what they intend to do, where, when and how, and the estimated cost of delivering the work plan. This should include an estimate of benefits accruing to the Falkland Islands. Delivery of an approved scope of work and variations to that plan will be covered in the Model Conditions (see later). To enable DMR to consider a licence application, the Applicant will need to provide sufficient information as to the planned work, therefore regulations should include a general requirement to submit a scope of work as part of the application. Guidance will be available to Applicants as to what level of detail the scope of work should include, proportionate to the scope and scale of the work. The DMR will have the ability to request such additional information as may be required.

**5.10.7 Environmental considerations** –

**5.10.8** Applicants must consider the environmental impacts of any proposed activities. For any proposed work a high-level environmental screening and scoping exercise should be carried out to demonstrate whether any likely significant environmental impacts are foreseen and

to ensure that any sensitive species or habitats have been taken into account. This process will contribute to a determination by DMR as to whether a full EIS will be required, and whether an environmental monitoring and management plan is required, or whether any issues should be dealt with by way of additional conditions. Any associated plans/conditions may need to be revisited at regular intervals to ensure harmful impacts are appropriately managed. The management of environmental impacts should follow the mitigation hierarchy of avoidance, reduction, mitigation, remediation and offsetting identified impacts. DMR can provide further guidance, but the general principle will be that the level of environmental mitigation and management will be commensurate to the environmental impacts identified (section 7.1.10 lays out the proposed model condition). For example, a commercial extraction of calcified seaweed is likely to have significant effects on the environment and would be likely to require a full EIS, whereas extracting a relatively small quantity of stone from an existing borrow pit is unlikely to have significant effects on the environment and may have a simple monitoring condition applied.

**5.10.9 Insurance Arrangements** – Applicants must provide evidence that they have (or will have before activities under the licence commence) adequate insurance in place to cover the risks of liability to FIG, the public and affected landowners.

**5.10.10 Duties of the Governor (as set out in section 14 of the Mining Ordinance 2005)** – In addition to the above it should be noted that in exercising the power to grant licences and make model conditions the Governor has a duty to balance the need

- “(a) in connection with any licence granted in relation to any Crown minerals in any land to secure the effective and co-ordinated development of Crown minerals of the like kind in any adjacent or neighbouring land with the need
- (b) to secure so far as may be possible economic and other benefits to the residents of the Falkland Islands apart from enhancement of the Crown's revenues and the need
- (c) to minimise any adverse effect upon the environment and to refuse to permit any activity which in his opinion would have an unacceptable degree of environmental impact,”

### **Consideration of Licence Applications**

**5.11** Applications must be properly and transparently considered. Under the Ordinance, Licences can be granted by the Governor (in Exco). DMR will provide Guidance to supplement the Regulations, setting out the administrative process within DMR for considering applications.

**5.11.1** Initial consideration of a licence application will be by DMR (taking advice from experts as required).

**5.11.2** An application cannot be considered and will not be remitted to ExCo for a decision until it has been completed and the fee has been paid. Therefore, there will be an initial check that all the required information has been provided and the requisite fee has been paid. The fee will be calculated on a cost recovery basis and will be proportionate to the scale of activity being applied for. Fees will be determined by DMR and will be published in the gazette and

local media. If an incomplete application is submitted then the Applicant must be informed of the deficiencies in the application. The Applicant will be allowed to resubmit the application with the deficiencies addressed without payment of a further fee provided that the application is for the same licence area and same type of licence and made within 28 days of being notified of the deficiency.

- 5.11.3** Once the application is complete then the application and information provided will be assessed by DMR (taking expert advice as required). The purpose of the assessment is to determine whether the land includes any land that cannot be licensed (section 11 (2)(b)), the Applicant is able to and intends to comply with the conditions of the licence if granted (section 11(5)) and the application enables the Governor (in ExCo) to undertake the balancing exercise described in section 14 (1(c)). This assessment will include consideration of the Applicant's financial standing, technical competence, adequacy of insurance and financial security, adequacy of the proposed work programme, potential environmental impacts, potential economic and other benefits to the residents of the Falkland Islands if the licence is granted, how the proposed licence relates to the requirement to secure the effective and coordinated development of minerals of a similar kind in nearby land and the financial, technical and practical ability of the Applicant to safely deliver the proposed work programme in the licenced area and in the duration of the licence.
- 5.11.4** The outcome of the assessment will culminate in a recommendation to the Governor in Exco, covering: if the licence applied for meets or does not meet the requirements of the Mining Ordinance and the proposed Licensing regulations; whether it should be granted or refused; or that the application does not meet the conditions set out in section 11(3) and the grant of a licence requires prior consent of the Secretary of State. (It may be that for small scale proposals a delegation could be considered as an alternative to taking the matter to Executive Council.)
- 5.11.5** An Applicant may withdraw an application at any time. No refund of fee will be made if the application is withdrawn.
- 5.11.6** If the application is refused, the Applicant will be given reasons as to why the licence application was refused.
- 5.11.7** If the Licence is granted it will be subject to the Model Conditions that apply to that Licence and may be subject to additional conditions as recommended by DMR and approved by the Governor (in Exco) and the Secretary of State. The Mining Ordinance provides the power to impose conditions additional to those in the Model Conditions. Additional conditions will only be considered where they are necessary and they will be appropriate and proportionate to the issue that needs to be addressed.

#### **Variation of Conditions on a Licence**

- 5.12** During the currency of a Licence it may be necessary or desirable to vary the conditions of the Licence due to a change in circumstances. A variation may be sought by the Licence Holder or by DMR.

- 5.12.1** If the Licence Holder wishes to apply to vary the terms of the Licence that has been granted then they will need to apply to DMR for a variation. An application for a variation must set out clearly the variation that is being requested and the reasons for the request for the variation. The Licence Holder will also need to provide any relevant information that supports the request for a variation. The application must be submitted electronically.
- 5.12.2** DMR will consider the request for a variation (and take expert advice if necessary) and make a recommendation to the Governor (in Exco) for approval. If the application for a variation is not approved then the Licence Holder will be given reasons for the refusal. If the variation is approved then the Licence will be varied to record the approved variation.
- 5.12.3** If DMR wishes to vary the Licence then under the Mining Ordinance this can be done with the consent of the Licence Holder. In terms of process, DMR must notify the Licence Holder of the proposed variation and the reasons for the proposed variation together with any supporting information, and seek the Licence holder's agreement.

#### **Duration of Licence**

- 5.13** The maximum duration of a Licence for prospecting is 4 years (section 18) and for exploration the initial term is for 5 years (section 19), as provided for in the Mining Ordinance. A Mining licence (initial duration 21 years) may be extended (section 22).

#### **Revocation of Licence**

- 5.14** The Mining Ordinance (see section 30) provides for revocation of a Licence where the licensee is in contravention of the Ordinance or of the model conditions of the licence and a process to be followed. This does not need to be covered by the proposed Licence regulations. A separate paper is to be submitted to Exco with proposals for updating the criminal offence provisions in the Ordinance.

#### **Surrender of Licence**

- 5.15** The Mining Ordinance (see section 31) provides for surrender of a Licence and this does not need to be covered by the proposed Licensing regulations.

#### **Transfer & Assignment of Licences**

- 5.16** The Mining Ordinance (see section 32) provides for transfer and assignment of licences, subject to the written consent of the Governor (in Exco) and this does not need to be covered by the proposed regulations.

#### **Offences**

- 5.17** The proposed regulations should include criminal offences for giving false information in relation to a licence application and for failing to comply with a licence condition, or a requirement relating to the restoration, remediation or improvement of land in the licence area. These matters are not provided for in the Ordinance itself but can be included in the regulations. The penalty for such offences

## **6 Model Conditions**

- 6.1** Licences cannot be granted until Model Conditions have been approved by the Secretary of State (SoS) as part of the Licensing regulations, which are also subject to SoS approval. There should be Model Conditions covering each type of licence i.e. prospecting, exploration, and mining. At present there are no Model Conditions for any type of mining activity. Model Conditions are intended to regulate the activity once the Licence has been granted i.e. the Licence is granted subject to the Model Conditions with which the licence holder must comply.
- 6.2** In the context of the Falkland Islands, the demand for licences relating to Common Minerals is likely to be limited to stone, sand and calcified seaweed. For these three minerals it is likely that there will be a greater demand for licences in respect of stone and sand than calcified seaweed. There are limited volumes of calcified seaweed available for extraction whereas the demand for stone is likely to increase due to the anticipated capital projects and the continued need for stone as a construction and capping material.
- 6.3** In addition it is likely that an applicant seeking a licence for stone or calcified seaweed will apply for a mining licence rather than a prospecting or exploration licence. The location of calcified seaweed is largely known; therefore applicants are unlikely to apply for a prospecting or exploration licence. In respect of extracting stone, the geology is fairly well understood and there are quarries/borrow pits that are in use or have been in use which are likely candidates for a licence.
- 6.4** It is considered that, given the above, one set of model conditions can be made that apply to prospecting, exploration and mining for Common Minerals, with the option of additional conditions or requirements at the discretion of DMR.

## **7 Model Conditions for Prospecting, Exploration and Mining Licences for Common Minerals**

- 7.1** The Model Conditions are primarily concerned with the conduct of the Licence Holder and the activities that person will be carrying out. The aspects that need to be covered by Model Conditions for the three different licences are set out below along with proposals as to what the appropriate conditions should be.
- 7.1.1** Local Agent – if the licensee is non-resident or a company incorporated overseas, it will be important that DMR have a clear line of communication with a locally-appointed accountable person engaged by the Licence Holder. This will ensure that any issues that arise can be quickly raised with a person who has authority to ensure they are dealt with and, if necessary, there is a local accessible contact that notices etc. can be served on.

It is proposed that the Model Condition be drafted along the following lines:

*Before commencing the work plan authorised by the Licence, the Licence Holder (if they are non-resident in the Falkland Islands) must appoint an agent. The agent must be resident in the Falkland Islands for the duration of the work programme and is the point of contact and the person on whom notices can be served on behalf of the Licence Holder. Address and full contact details must be provided and updated immediately if they change.*

- 7.1.2** Obligation To Carry Out Scope of Works – Applicants will have submitted their proposed Scope of Works as part of their application for a licence. It is important that there is a Scope of Works agreed and carried out for the licence duration. The reason for this is to ensure that DMR know what activity is to be carried out, at what scale, in what manner, and at which locations. It is likely that during the licence period, as work is carried out and more information is gathered about the possible presence or absence of minerals, the Scope of Works agreed with the licence holder will need to be varied. This is desirable and should be done in agreement with DMR.

It is proposed that the Model Condition should be drafted along the following lines:

*The licence holder must carry out expediently and with due diligence the Scope of Works agreed between the Director and the Licence Holder as set out in the Schedule to the Licence granted to the Licence holder. The Scope of Works may be varied in agreement with DMR.*

- 7.1.3** Conduct Of Scope of Works – It is important that the works are carried out in a professional manner, and carried out safely whether the activity is small scale or large scale. Prospecting, exploring and mining will involve use of vehicles, equipment, a team of workers and work which - if not properly managed - has potential for causing injury and harm. The Licence Holder must therefore ensure that the work is carried out to industry standards and in a safe way. It is proposed that this requirement can be set as a general condition but giving DMR the power to require the Licence Holder to submit detailed information of the measures they will employ to ensure good working practices and safe systems of work. For example more detail will be required for large scale quarrying activity that may use heavy plant and machinery, explosives and have greater risks to those that work and visit the site compared to the excavation of calcified seaweed using a single excavator loading into a lorry.

It is proposed that the Model Condition should be drafted along the following lines:

*The Licence Holder must execute the Scope of Works authorised by the Licence in a proper and workmanlike manner and in accordance with relevant industry good practice. All works, buildings, vehicles and other equipment used in connection with the work authorised must be kept in good repair and condition. The Licence Holder must ensure the health, safety and welfare of persons employed to carry out the work programme and the public. If required by DMR, the Licence Holder must provide details of the standards, practices and procedures applied by the Licence Holder to comply with this condition.*

- 7.1.4** Progress Reports – In order that DMR can satisfy itself that the Scope of Works is being progressed and that DMR is aware of likely changes to the Scope of Works it is necessary for the Licence Holder to make reports on progress to DMR. The frequency and detail required will be proportionate to the scope and scale of the activity.

It is proposed that the Model Condition should be drafted along the following lines:

*The Licence Holder will submit updated plans, plans of work, progress reports, technical reports and investigations to DMR as required.*

- 7.1.5** Records Of Minerals Extracted – it is useful for records to be kept of the type and volume of minerals extracted, exported, sold and disposed of so that DMR knows what minerals and what quantity of minerals are being extracted to build up DMR's information on on-shore minerals, and also to help DMR monitor compliance with the licence conditions. The detail required by DMR will be proportionate to the scale of the activity.

It is proposed that the Model Condition should be framed along the following lines:

*The Licence Holder must keep records of the quantities of minerals extracted, sold or disposed of in a form as required by DMR. These records and supporting evidence must be available for inspection by DMR at any point during the term of the Licence and for a period of 12 months after the expiry of the Licence unless otherwise agreed with the DMR.*

- 7.1.6** Findings of Minerals – It is important that DMR has the right to require the licence holder to provide data about the geology, presence and absence of minerals. It may be relevant to making future licensing decisions in relation to potential mining opportunities. It is proposed that a Model Condition should be drafted along the following lines.

*The Licence Holder must at the request of DMR provide copies of all reports, interpretations, maps and other technical data obtained on all work. In addition, the Licence Holder must keep and submit to DMR within three months all information obtained in relation to the existence, location, character, extent and value of all minerals in the land covered by the licence and the results of any analysis, test, trial or experiment carried out on the minerals.*

- 7.1.7** DMR Rights of Access – To ensure that the proposed conditions are complied with, DMR needs the right to make checks and inspect the way in which the Licence Holder is carrying out the work activities, their records, and any extracted minerals. Without the ability to make such checks, DMR will not be able to properly regulate the Licence Holder. Such monitoring will be proportionate to the scope and scale of the licenced activity, so for example, excavation from a borrow pit at a non-sensitive site will require minimal monitoring compared to excavating seaweed close to an environmentally sensitive area. It is proposed that there should be a Model Condition along the following lines:



*The Licence Holder must allow Officers of DMR and any other personnel authorised by DMR to enter and inspect the Licence Holder's offices, works, buildings, vehicles and other equipment, materials, records and extracted minerals at all reasonable times.*

- 7.1.8** Indemnity – Although the physical and financial risks attached to prospecting are relatively low there is a possibility for things to go wrong which could result in legal claims for damages and demands for compensation or other types of claims. FIG as the licencing body, could potentially be joined as a party to such claims that may be made against the Licence Holder. In order to protect DMR, there needs to be a condition that requires the Licence Holder to indemnify DMR so that, should any claims be brought that are concerned with the activities of the Licence Holder, any claim against DMR is met by the Licence Holder. It is proposed that there should be a Model Condition along the following lines.

*The Licence Holder must at all times keep the Falkland Islands Government indemnified against all actions, proceedings, costs, charges, claims and demands whatsoever and howsoever arising which may be brought by any third party by reason of any matter or thing done or purported to have been done by or on behalf of the Licence Holder or any breach of licence condition.*

- 7.1.9** Insurance – As part of the application process applicants have to provide information and evidence that they have or will have appropriate insurances in place to cover the risks of the proposed activity. However there needs to be assurance that insurance policies are in place and are kept current and adequate compared to the risks. It is therefore necessary to have a Model Condition that requires this. It is proposed that there should be a Model Condition along the following lines.

*The Licence Holder must have in place adequate levels of public liability insurance, and such other insurances as may reasonably be required by DMR and provide evidence of those policies on request from DMR.*

- 7.1.10** Environmental Impact – Mineral extraction could potentially cause damage, harm or disturbance to land, water, wildlife, people and the environment generally. The environmental impact from extracting common minerals will vary according to the scale, duration, method of extraction and location of the activity. In all cases it is important that harm to the environment is avoided, minimised and that residual impacts are remedied or addressed in other ways. As per 5.10.7, an applicant will have to submit an environmental screening report, which will contain a high-level assessment of likely significant environmental impacts. DMR will consider the screening report and determine whether the Applicant needs to undertake a full environmental impact assessment (EIA) and submit an environmental impact statement (EIS). The Applicant may request a formal scoping opinion on the information to be supplied in the Environmental Statement, in line with the existing Planning process. Appendix **A** lists environmental issues that DMR will consider, which may help applicants to understand what impacts may occur. Guidance will be made available

to applicants which will help them gauge the level of environmental assessment that they need to carry out.

Based on either the high-level screening report or the full EIS, DMR may direct that an Environmental Plan is required to monitor and manage environmental impacts and any proposed mitigation. On completion of a project, sites must be restored to a condition approved by DMR. It is therefore proposed that conditions are created that require a licence holder to avoid, manage and mitigate adverse environmental impact during the carrying out of the activity, along the following lines:

*Before commencing activities under the work programme the Licence Holder must carry out a high-level assessment of the potential environmental impacts and may need to have a plan setting out the steps they will take to avoid, minimise, mitigate, or remedy those impacts and submit these to DMR for approval.*

*The Licence Holder must carry out the work programme in a manner that avoids and minimises harm to the environment and where harm occurs take reasonable steps to mitigate and remedy that harm.*

*Where, as part of the application the Licence holder has agreed an environmental plan with DMR the Licence holder must implement the environmental plan and report to DMR in accordance with the agreed environmental plan or as required by DMR and before the expiry of the licence.*

- 7.1.11 Removal of Equipment** – In addition to properly managing the environmental impacts, it is important that the Licence Holder does not leave anything behind after completing the work programme. This could include things like vehicles, waste materials, equipment, temporary buildings, containers and similar. The Licence Holder should be required to ensure that all such items are removed from the licensed areas. It is proposed that there should be a Model Condition setting out this requirement along the following lines:

*The Licence Holder must remove and properly dispose of all equipment, vehicles, buildings and waste materials, placed or erected on the licensed area in connection with carrying out the work programme before the date on which the Licence expires.*

- 7.1.12 Payment of Fees** – It is important that DMR receives an appropriate annual licence fee for the duration of the licence in order to cover the costs of regulation. The costs of regulation may include activities such as site visits, inspections, monitoring, reporting requirements, enforcement and taking appropriate expert advice where required. It is also important that there is prompt payment of all fees, charges, taxes and any other payments that may be due from the Licence Holder in connection with the Licence. Failure to make such payments on time may be the first sign of weakness in the financial capacity of the Licence Holder. It is therefore proposed that in addition to having the ability to require financial security from

the Licence Holder, they should also be required to pay all charges etc. promptly, as a licence condition along the following lines.

*The Licence Holder will pay to DMR an annual licence fee of £xxxx per hectare/100 sqm/??? of licenced land. The fee is due annually at the commencement of each year starting from the date the licence is granted.*

*The Licence Holder must pay on or before the due date all fees, charges, taxes and other payments that are or may become payable in connection with the Licence.*

- 7.1.13** Statutory Compliance – Whilst it may seem a statement of the obvious that Licence Holders will need to comply with all other applicable laws it is considered worth stating clearly that this is still required (and implicitly the granting of a licence does not override any other applicable laws). It is therefore proposed that there should be a Model Condition along the following lines.

*The Licence Holder must comply with all applicable statutory provisions (including those of the Mining Ordinance 2005) and the requirements of any competent authority for the time being in force relating to the exercise of the rights granted by the Licence.*

- 7.1.14** Governing Law – Whilst it may seem obvious that the law of the Falkland Islands applies to the Licence and licenced activities it is worth making this clear. It is proposed that there should be a Model Condition along the following lines.

*The Law applying to this Licence is the Law of the Falkland Islands.*

## **8 Conclusion**

- 8.1** This policy paper proposes a licensing framework for on-shore minerals and Model Conditions for prospecting, exploration and mining. This is the current need bearing in mind the approaches that have been received to resume mining for stone and calcified seaweed from private sector businesses, private individuals, and farmers.

## 9 Appendix A

The principal environmental issues that should be considered, bearing in mind that not all issues will be relevant at every site to the same degree, include:

- noise associated with the operation
- dust;
- air quality;
- lighting;
- visual impact on the local and wider landscape;
- landscape character;
- archaeological and heritage
- traffic; *and impact on road network, winter haulage restrictions etc. similarly damage to tracks and land if accessing beaches/areas without roads, disturbance and erosion)*
- risk of contamination to land;
- soil resources;
- Erosion risk *(risk of coastal erosion particularly with regard to calcified seaweed (and subsequent impacts on coastal habitats for spp.)*
- geological structure;
- impact on agricultural land; *appropriate fencing for livestock if required (also covered under safety mitigation with appropriate fencing and signage)*
- blast vibration; *(do we intend to have a separate “blast license” or mechanism for limiting blasting if it is intended or required – may want an addendum/additional environmental assessment if this is considered separately or at a later date than the initial quarrying license)*
- flood risk;
- land stability/subsidence;
- internationally, nationally or locally designated wildlife sites, protected habitats and species, and ecological networks;
- impacts on nationally protected landscapes *(none in FI currently)*
- nationally protected geological and geo-morphological sites and features; *(none in FI currently)*
- site restoration and aftercare;
- surface and, in some cases, ground water issues; *(and coastal waters – silting up of areas, poor water quality, impacts of filter feeders in area if removing calcified seaweed etc)*
- water abstraction.
- *Strategic impact on FI priorities – net zero context, environment strategy. sustainability etc*