

liabilities by accredited Environmental Auditors under the *Environment Protection Act 1970* will also take additional time and attract additional costs.

The Minerals Council of Australia has welcomed the changes, stating that they appear to be a balanced response to improve the operation of mining laws and to bring the Victorian mining laws into modern regulatory practice.

GEOHERMAL ENERGY RESOURCES*

In April 2006, the Victorian Minister for Energy Industries and Resources, Theo Theophanous, issued a formal invitation for applications for exploration permits pursuant to the *Geothermal Energy Resources Act 2005* (Vic) (the *Act*). In the same month, the *Geothermal Energy Resources Regulations 2006* ('the *Regulations*') came into force.

The Regulations

The Act is aimed at the large-scale commercial exploration and development of Victoria's geothermal energy resources, and establishes three separate authorities:

- an exploration permit;
- a retention lease; and
- an extraction licence.

Under the Regulations, an exploration permit or extraction licence is not required for a geothermal energy resource that has a temperature of less than 70 degrees Celsius or is less than one kilometre below the surface.

The Regulations principally govern the identification, assessment and management of the environmental, health and safety hazards involved in undertaking geothermal energy operations. They also provide for certain samples and information to be collected and provided to the Minister (including the provision of an annual technical report by all authority holders), and prescribe various fees and other administrative matters.

The Government's Regulatory Impact Statement (on the Regulations) provides that the total indicative costs of the Regulations for an authority holder undertaking 'typical' exploration and extraction activities will be in the order of \$95,000 per annum.

Application for exploration permits

There are 31 available exploration areas across Victoria, which together cover the entire state. Applicants had until 11 October 2006 to lodge an application for an initial five-year permit.

Under section 20 of the Act, applications will be assessed on the following criteria:

* Brett Thornton, Articled Clerk and Scott Langford, Partner Allens Arthur Robinson. Also see legislative note on Geothermal Energy legislation in Australia in this volume at (2006) 25 ARELJ 330.

- the merits and benefits of the proposed work programs;
- the proposed expenditure;
- the likelihood that the work programs will be carried out;
- the effect the proposed exploration will have on public safety;
- the benefit of the proposed exploration relative to its economic, social and environmental impact; and
- the technical and financial resources available to the applicant.

Future developments

Tendering for exploration permits closed on 11 October. According to the relevant Department, the Government received ‘well over a dozen’ applications. Some exploration areas have more than one applicant, while other areas will obviously remain vacant following the process. Further details of the tender process will be available in early 2007, when the Government plans to issue the first exploration licences. The Government is yet to decide whether the remaining blocks will be offered through a similar tender process next year, or if they will be made available on a ‘first come, first served’ basis.

Unresolved issues

Some unresolved issues remain to be addressed under the Act or the Regulations. For example, the Act and Regulations do not deal specifically with the interaction of geothermal interests with potentially conflicting mining or petroleum interests. It will be interesting in due course to see whether such issues need to be resolved once exploration/extraction of geothermal energy commences.

TRIGGERING OF RIGHT OF PRE-EMPTION IN JOINT-VENTURE AGREEMENT*

Beaconsfield Gold NL & Anor v Allstate Prospecting Pty Ltd & Anor [2006] VSC 320 (8 September 2006)

Pre-emption right—change of ownership—meaning of ‘subsidiary’--Joint venture agreement.

Introduction

Beaconsfield Gold NL & Anor v Allstate Prospecting Pty Ltd & Anor is a recent decision of the Supreme Court of Victoria. The case was heard by Justice Hargrave. It centred around a pre-emptive rights clause in an unincorporated Joint Venture Agreement. The clause provides that if a Joint Venturer ceases to be a ‘subsidiary of another corporation’, a right of pre-emption in favour of the other Joint Venturers to acquire that Joint Venturer’s interest is triggered. The case turned on whether the clause is limited in its reach to a Joint Venturer ceasing to be a subsidiary of its immediate or direct holding company, or whether it extends to changes in ownership further up the relevant corporate chain. The term ‘subsidiary’ is not expressly defined in the Joint Venture Agreement, even though a definition of ‘related corporation’ is present.

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