

NEW ZEALAND

CONSERVATION AUTHORITY
TE POU ATAWHAI TAIAO O AOTEAROA

19 April 2010

Hon Kate Wilkinson
Minister of Conservation
Parliament Buildings
WELLINGTON

Dear Kate

Maximising our Mineral Potential: Stocktake of Schedule 4 of the Crown Minerals Act and beyond

Introduction

1. One of the principal statutory functions of the New Zealand Conservation Authority is to advise you on matters of national conservation importance.¹ Following our meeting on 14 and 15 April 2010 I am writing to inform you of the Authority's views on the proposals in the above mining discussion paper.

Executive Summary

2. The Authority supports in principle the Government's research and investigation programme of on-shore mineral resources and prospecting.
3. It does not support the removal of any land in a national park, no matter how small, from Schedule 4 of the CM Act. That conclusion is based principally on the philosophical and legislative underpinning of national parks, but also on wider economic and non-market considerations.
4. The proposal for joint Ministerial approval for access to Crown land is opposed not only because it is contrary to the scheme of the CM Act but also because inherent in it is a lowering of the bar for undertaking mining activities in all public conservation areas.
5. We have made a number of additional comments. We draw your attention in particular to two recommendations for changes to Schedule 4 of the CM Act, neither of which is addressed in the Discussion Paper (paragraphs 22 and 23), and a recommendation that consideration be given to public notification of proposed access arrangements (paragraph 30).

¹ Section 6B(1)(d) Conservation Act 1987

Consultation

6. We applaud the Government's decision to invite public submissions on what is undoubtedly a contentious issue. We note that in respect of amendments to Schedule 4 there is also a statutory consultation requirement.²

NZCA and National Parks

7. You will probably be aware that the Authority's predecessor was the National Parks and Reserves Authority, which had extensive functions relating to national parks. That connection and many functions relating to national parks are features retained in the current statutory structure. In particular, the Authority:
 - Prepares and approves statements of general policy for national parks.³ (The current General Policy for National Parks was adopted in April 2005.)
 - Approves all national park management plans and amendments to, and reviews of, them.³ (The Authority is currently considering drafts of the first management plan for Rakiura National Park and a partial review of the Kahurangi National Park Management Plan.)
 - Considers and makes proposals for the addition of lands to national parks and the establishment of new national parks and for this purpose may request the Department to undertake an investigation.⁴ (As you are aware, the Department is currently investigating the proposed "Kauri National Park" in Northland.)
 - Has a number of other functions in relation to national parks under the National Parks Act 1980 relevant to mining.
8. There is also a specific requirement under the CM Act for the Minister of Conservation to consult the Authority in respect of all proposed access arrangements for mining in national parks.⁵
9. With this symbiosis in mind, and while it has a broad statutory brief in relation to all public conservation land, the Authority does have a particular responsibility for national parks.

The Idea of National Parks in New Zealand

10. The essence of national parks is that they are set aside because of their inspirational power. They belong to every citizen, now and in the future, protected and unmodified, so as to be enjoyed by all.
11. In New Zealand national parks began with the gift by Ngati Tuwharetoa to the Crown in 1887 of the summits of Ruapehu, Tongariro and Ngauruhoe as the nucleus of Tongariro National Park. The Park was created by law in 1894. Other national parks followed, each with its own Act of Parliament. In 1952, the Acts governing the various national parks were consolidated. The principles established in the 1952 Act have flowed through, word for word, into the present legislation, the National Parks Act 1980.

² Section 61(5) Crown Minerals Act 1991

³ Section 18 National Parks Act 1980

⁴ Sections 8 and 18 National Parks Act 1980

⁵ Section 18A National Parks Act 1980

12. The key concepts in the National Parks Act 1980 are the preservation of certain places "as far as possible in their natural state" in perpetuity, because they are "so beautiful, unique or scientifically important that their preservation is in the national interest".⁶ They are preserved "for their intrinsic worth and for the benefit, use and enjoyment of the public".⁶ Another defining quality of national parks is that they are freely accessible to all: "The public shall have freedom of entry and access to the parks, so that they may receive in full measure the inspiration, enjoyment, recreation, and other benefits that may be derived from mountains, forests, sounds, seacoasts, lakes, rivers, and other natural features."⁷
13. Perhaps the most powerful signal of the status of national parks is the provision in the Act that "No area of land or foreshore included in any park shall be excluded from that park, except by Act of Parliament."⁸

Appropriateness of Mining in National Parks

14. The key concepts cited in the previous paragraphs are in direct conflict with the imperatives of the mining industry. Mining is a purely economic activity. It is transitional, concerned only with exploitation; it enters onto land with which it has no association, and for which it has no affection, extracts what it wants and departs. Mining is not compatible with the essential nature and the legal framework of a national park. The advancement of one is necessarily to the detriment of the other. It is disingenuous to pretend otherwise. It is in the nature of mining that its location becomes a construction site. As well as modifying the landforms, mining activity closes off public access. The intrusion is not short-term: it persists for as long as the mining activity persists. The defining characteristics of national parks do not come and go; they do not gain or lose the qualities of being "beautiful, unique or scientifically important" in rhythm with the rise and fall of world commodity prices.
15. It is these fundamental aspects of national parks that compel us to reach the conclusion that all national parks should be in Schedule 4 and remain there. Schedule 4 should be neither a revolving door nor a holding place for land until a better place is found to put it.
16. We also remind you of the multi-party origin of Schedule 4. A Labour administration introduced the Bill into the House in 1990. A National administration passed it into law in 1997. After detailed consideration, much public debate, and a compromise hammered out, the categories of protected land were seen as appropriate to be placed in Schedule 4. The parliamentary debates at the time evidence the strong intention of putting a "line in the sand" for such areas. Mining potential has been given particular consideration in the decision-making process for national parks, especially the more recent ones – Paparoa, Kahurangi and Rakiura. Indeed the "new wave" of national parks have been consciously set aside, not just because they were considered "waste" land as may have applied earlier to our mountain lands. It concerns us that it is now proposed to reverse some of these negotiated covenants with the people of New Zealand.
17. We offer a practical suggestion, not specific to the current proposals. While not easy to envisage, were there ever to be an area in a national park which had low conservation values and which could be separated without impacting on the park overall then, if it also had high mineral prospects,

⁶ Section 4(1) National Parks Act 1980

⁷ Section 4(2)(e) National Parks Act 1980

⁸ Section 11 National Parks Act 1980

removal from the national park could be considered (with a consequential removal from Schedule 4). This approach is consistent with the principle that it is only when an area in the Schedule is seen, after a robust analysis, to have low conservation values that any balancing should be considered. It also enables national parks and the other protected area categories in Schedule 4 to remain inviolate from mining, as taonga for all New Zealanders

Other Categories of Specific Protected Areas

18. There are six other generic protected area categories listed in Schedule 4 (paragraphs 2 to 7) ranging from nature reserves through to Ramsar Wetlands. While usually much smaller in size, the biodiversity and other conservation values of these areas are on a par with, and may be greater than, those in national parks. The Discussion Paper does not propose that any of these areas be removed from Schedule 4; indeed it confirms that they will remain in Schedule 4. But, for completeness, we must record that our views above with respect to national parks apply equally to those protected area categories.

International Context

19. The Authority is a Government Agency Member of the International Union for the Conservation of Nature (IUCN). New Zealand is a State Member, through the Department of Conservation. You met with IUCN's Director-General, Julia Marton-Lefèvre, when she visited New Zealand last year. One of IUCN's strengths is that States are part of the network. This gives IUCN a neutral and convening power when gathering governments and civil society. IUCN's protected area categories are regarded as the global standard for the establishment, planning and management of protected areas.
20. IUCN's official position statement on mining is that:

"... mining is incompatible with IUCN Categories I to IV protected areas and should therefore be protected by law or other effective means. For categories V and VI minimal and local extraction is acceptable only when this is compatible with the objectives of the protected area and then only after the assessment of environmental impacts and subject to strict opening and use conditions."

(Resolution 2.8.2 IUCN World Conservation Congress Amman 2000)

Category II comprises "national parks" in the same sense as that term is used in New Zealand. The other protected area categories listed in Schedule 4 also fall within Categories I to IV. The Authority strongly believes that New Zealand should continue to follow these guidelines, at the very least with respect to national parks and those other protected area categories. For New Zealand, a country regarded as a leader in aspects of nature conservation, to do otherwise is likely to be seen as an affront to those in the world community who have worked ceaselessly, along with us, to protect the earth's wild places. This international reputational damage should not be discounted. We note that the two other jurisdictions on which our own national parks are most closely modelled, the United States and Canada, have such legislative protection in place.

Specific Proposals – Additions

21. The Authority has no specific comments on the proposed additions to Schedule 4. Quite independently of the Government's stocktake these were expected to be added to the Schedule in due course because of their protection status, reflecting their high conservation values.
22. The need to do this, however, highlights a gap, probably a drafting error, in the current legislation. This is that new national parks and additions to them (and the same for the other specified protected area categories) do not automatically go into Schedule 4. Instead an Order in Council and the process that precedes it is required. Assessment of the high conservation values of those areas is made when they are given protected area status in one of those categories. Accordingly the Authority **RECOMMENDS** that the CM Act be amended to clarify that all new national parks and the other protected area categories specified in Schedule 4 and additions to them become subject to Schedule 4 automatically on acquiring that protection status.
23. The Authority also considers that it is timely to remedy another oversight. While most of New Zealand's UNESCO World Heritage Sites are national parks or other Schedule 4 categories, some are not. That dichotomy may apply to future World Heritage Sites. Like national parks, and for similar reasons to those discussed earlier, World Heritage Sites must remain free of all mining activities other than the limited activities contemplated by the CM Act. Accordingly we **RECOMMEND** that an additional category be added to Schedule 4 to cover all UNESCO World Heritage Sites in New Zealand and that our recommendation in paragraph 22 above apply equally to that new category.

Specific Proposals – Removals (Other Conservation Areas)

24. The Authority does not wish to comment on the detail of the proposal to remove other conservation areas outside national parks from Schedule 4. Rather some general comments are appropriate. The first arises from the fact that such areas were seen, after detailed consideration and much public debate, as appropriate to be placed in Schedule 4. The point made in paragraph 16 above on the process and compromises made when Schedule 4 was enacted applies equally to those areas.
25. Second, while the Discussion Paper talks in its introduction section of the
"need to consider how to balance the conservation and other values of this land with its economic potential and whether the two uses of the land are compatible"
that balancing exercise does not, on the face of the Paper, appear to have been undertaken for those areas. It appears to be sufficient that they have good mining prospects irrespective of their conservation values.
26. Finally, we emphasize that the conservation values should not be assessed narrowly but should patently take into account ecosystem services such as the values of protected areas to local communities, for tourism, recreation, and water and soil protection purposes.

Joint Ministerial Approval for access to Crown land

27. The Authority does not support the proposal for the Minister of Energy and Resources to be the joint decision maker with the Minister of Conservation (or other relevant Minister) for access arrangements to Crown land. There are a number of reasons for this. In the scheme of the CM Act the Minister of Energy and Resources is responsible for providing the minerals programme, granting permits and approving work programmes. In contrast access arrangements are made with the owners and occupiers of land. Using the example of public conservation land and waters, the Minister of Conservation is, on behalf of all New Zealanders, the "owner". Mirroring numerous responsibilities that the Minister has under conservation legislation he or she should be the "appropriate Minister". The criteria in the CM Act which the relevant Minister must consider make it clear that the purpose of the Act under which an area is administered is paramount, not mining legislation. Put another way, the effects on the area for which access is sought are critical and it is the owner of the land who is peculiarly competent to assess them and come to a decision having regard to the criteria.
28. Further, the stated reason for the proposal, namely to bring in the national significance and economic benefits of a proposal, would undermine the *raison d'être* for protected lands by lowering the bar for management of such lands.
29. Finally, the principle of ministerial responsibility and independence in decision-making is undermined. Applied in reverse, this principle would have perverse outcomes. It would set a precedent for other joint ministerial decision-making for other exploitative uses.

Public Input on Applications for Access to Conservation Areas

30. A concession for mining activities under the Conservation Act 1987 and other conservation legislation is required only in very limited circumstances. Essentially an access arrangement is the CM Act equivalent of a concession. The Authority notes that there is no provision for public input into the Ministerial decision on an application for an access arrangement to public conservation land or inland waters. In contrast all significant concession applications are required to be publicly notified. On its face this appears to be an anomaly. There are good arguments supporting the view that applications for access arrangements for mining, at least for those above certain prescribed thresholds, should be notified and be subject to input from the public. Accordingly the Authority **RECOMMENDS** that a cross-departmental review be undertaken of this aspect of the CM Act with the object of ensuring more consistency between the two statutory regimes.

Management Planning

31. As you are aware the Authority plays a crucial statutory role in conservation management planning – specifically general policies, conservation management strategies and national park management plans. Management planning documents are associated with a rigorous and robust public engagement process which results in agreement between the Government and the NZ public about how public lands will be managed. These processes, and others under the Resource Management Act 1991 and the Hauraki Gulf Marine Park Act 2000, provide safeguards and integrity to the management of protected lands. The Authority respects these processes and urges the Government to uphold them.

Section 4 Conservation Act (Treaty of Waitangi) Issues

32. Treaty settlement negotiations are proceeding on the assumption that national parks are off-limits to mining. A reversal of this assumption may have consequences that the Government has not considered.

Other Big Picture Issues

33. Economic analysis of mining proposals and the marketing value of the New Zealand brand go beyond the Authority's brief and will, no doubt, be subject to detailed analysis by others. However, the Authority draws your attention to the significant economic value arising from the tourism industry which, in New Zealand, is substantially based on our national parks, and from the ecosystem services arising from protected lands⁹. Notwithstanding the above, the primary values of national parks and other public conservation lands are intangible, and not readily quantifiable. For many, the primary human value is the experience of the environment in its natural state, with which the activity of mining is in direct conflict.
34. Finally, the Authority considers that the issue of maximising New Zealand's mineral potential should be considered within the larger environmental context. This includes global climate change and a transition to a reduced carbon footprint, the value or potential values of restoring previously degraded land, and the contribution of regenerating ecosystems.

Further Discussion

35. The Authority would appreciate the opportunity to discuss this topic with you in person. We **enclose** an additional copy of the letter for forwarding to your colleague, the Hon Gerry Brownlee, Minister of Energy and Resources.

Yours sincerely



Don Ross
Chairperson,
New Zealand Conservation Authority

⁹ Department of Conservation. 2006. The value of conservation – What does conservation contribute to the economy?