Submission on the Schedule 4 Stocktake Paper

by

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EXECUTIVE SUMMARY

When Schedule 4 was added to the Crown Minerals Act 1991 the Hon Dr Nick Smith was the Minister of Conservation. He commented during the third reading of the Bill that it "at long last puts some pegs in the sand in some very significant areas of New Zealand and says to the mining industries of New Zealand: 'These are no no-go areas.'" He said he would look forward to not having to consider mining applications in those areas where "nature should be able to rule the roost."

The rationale behind Schedule 4 was to protect significant natural areas and give the mining industry greater certainty about where it can and cannot mine. The Bill was introduced by the National Government in its second reading and supported by every party in Parliament at the time except for the Act Party. The Government is now proposing to remove protection for very significant conservation areas in New Zealand and undermine the certainty which was created by the addition of Schedule 4.

EDS strongly submits that the case has not been made for removal of any Schedule 4 land. In particular the analysis of the conservation values and the impact of mining activities on them are inadequate and insufficiently robust to justify such a decision. There is no proper analysis of the potential impacts on threatened or endangered species of flora and fauna. The impact on tourism and recreational values is similarly superficial with no adequate quantification of likely impacts on New Zealand's overall brand integrity. The information available is not adequate to justify the exercise of the proposed Ministerial powers to remove areas from Schedule 4.

If the proposed areas are removed from Schedule 4 and a mining permit is subsequently granted for those lands then the Minister of Conservation would have to consider whether or not to grant access to such lands. The Minister must have regard to:

(a) The objectives of any Act under which the land is administered; and
(b) Any purpose for which the land is held by the Crown; and
(c) Any policy statement or management plan of the Crown in relation to the land; and
(d) The safeguards against any potential adverse effects of carrying out the proposed programme of work; and
(e) Such other matters as the appropriate Minister considers relevant.

The purposes for which the Schedule 4 lands are held are inconsistent with mining. Paparoa National Park is held under the National Parks Act to preserve it as far as possible in its natural state. The objective of the Conservation Act is to promote the conservation of New Zealand's natural and historic resources. Conservation land on Great Barrier Island and the Coromandel Peninsula is within the Hauraki Gulf Marine Park. If the Minister was to grant access to this land for mining it would be completely contrary to the main objective of that Act which is to "recognise and protect in perpetuity the international and national significance of the land and the natural and historic resources within the Park."

It is contended that if the Minister of Conservation properly considers the relevant statutory criteria when deciding whether or not to grant access it is highly unlikely that access would be granted. Any proposed mining activity would have to have very minor effects and the values of these areas would need to be maintained before access could be granted. Therefore EDS strongly submits that it would be futile to remove these lands from Schedule 4 when access to them is unlikely to be granted anyway. Instead the Government should focus on assessing mineral resources held within land not in Schedule 4 of the CMA.

SUBMISSION

The Environmental Defence Society (EDS) is a professionally based environmental non-government entity. It focuses *inter alia* on environmental governance and brings together the disciplines of law, planning, science and related resource management specialties to advocate for best practice in environmental management of natural resources.

This is a submission on the discussion paper entitled *Maximising our Mineral Potential: Stocktake of Schedule 4 of the Crown Minerals Act and Beyond* (Ministry of Economic Development and Department of Conservation).

The format of this submission follows the questions asked in the discussion paper. However we have also provided additional commentary that does not easily fit the questions format. In particular, EDS examines the legal framework applying to the exercise of Ministerial powers with respect to Schedule 4 of the Crown Minerals Act (the **CMA**).

Our submission is therefore in 2 parts: ***Part One (EDS analysis of legal framework)*** and ***Part Two (Responses to specified questions)***

PART ONE: ANALYSIS OF LEGAL FRAMEWORK

Crown Minerals Act 1991

Rationale for Schedule 4

Schedule 4 was inserted into the CMA on 26 November 1997 by section 3 of the Crown Minerals Amendment Act (No 2) 1997 (the **Amendment Act**). The Amendment Act was originally named the Protected Areas (Prohibition on Mining) Bill which had its first reading in Parliament on 4 September 1990. The Bill was amended over seven years later and had its second and third readings on 19 and 20 November 1997.

The rationale behind Schedule 4 was to protect significant natural areas and give the mining industry greater certainty about where it can and cannot mine. Another aim was to avoid costly litigation and result in a more efficient use of resources by directing the mining industry to focus on those areas where it was acceptable to undertake mining, subject to the usual resource consenting tests. The Bill was introduced by the National Government and supported by every party in Parliament at the time except for the Act Party.

The Bill was considered by the Minister of Energy Hon Max Bradford to represent "a reasonable approach that seeks to balance competing interests" and was described as providing "a fair and reasonable basis for protecting the conservation values of that special part of New Zealand."

The Minister of Conservation at the time was Hon Dr Nick Smith. He commented during the third reading of the Bill that it "at long last puts some pegs in the sand in some very significant areas of New Zealand and says to the mining industries of New Zealand: 'These are no no-go areas.'" In his final statement he said he would look forward to not having to consider mining applications in those areas where "nature should be able to rule the roost."

The Government is now proposing to remove protection for very significant conservation areas in New Zealand and undermine the certainty which was created by the Amendment Act. The purpose for which these Schedule 4 lands are held are not consistent with mining. It is contended that if the

Minister of Conservation properly considers the relevant statutory criteria when deciding whether or not to grant access it is highly unlikely that access would be granted for those lands that are currently in Schedule 4. This is discussed in greater detail below. It is in the interests of New Zealand that no land is removed from Schedule 4 and the mining industry focuses its resources on exploring options in other parts of the country.

Relevant statutory considerations in respect of Schedule 4 changes

The Minister of Energy and Resources and the Minister of Conservation may make a recommendation to the Governor-General that Schedule 4 be amended. There are requirements for the Ministers to consult those persons the Ministers believe are representative of interests likely to be substantially affected or representative of some aspect of the public interest.

Section 61(6) of the CMA provides that no amendments can be made to existing ecological areas which are in Schedule 4 unless the Ministers make a recommendation after making an assessment of the particular scientific value for which the land is held and the value of any Crown Minerals in the land. EDS contends that there has been minimal and wholly inadequate assessment of the scientific value for which the Otahu Ecological Area and the Parakawai Geological Area are held. This must be undertaken before the Ministers make any decisions in respect of these areas of land.

Minister of Energy and Resources' decision in respect of changes to Schedule 4

The Minister appears to have predetermined the outcome of the consultative process by engaging as an active advocate for the changes whilst being partly responsible for ultimate decisions. This might render his decisions biased, unsafe and vulnerable to judicial review.

Relevant statutory considerations in respect of whether to grant access to Crown land

If the Ministers were to amend Schedule 4 and a mining permit was subsequently granted for those lands then the Minister of Conservation would have to consider whether or not to grant access once a notice to obtain an access arrangement was served on him or her.

There is a requirement in section 18A of the National Parks Act for the Minister to consult the New Zealand Conservation Authority in respect of any notice requesting an access arrangement in respect of a national park.

Section 61(2) of the CMA provides that in considering whether to agree to an access arrangement for mining in respect of Crown land the Minister must have regard to:

(f) The objectives of any Act under which the land is administered; and
(g) Any purpose for which the land is held by the Crown; and
(h) Any policy statement or management plan of the Crown in relation to the land; and
(i) The safeguards against any potential adverse effects of carrying out the proposed programme of work; and
(j) Such other matters as the appropriate Minister considers relevant.

The objectives of every relevant Act and the purpose for which the relevant land is held by the Crown is discussed in detail below. Reference has also been made to policy statements of the Crown and relevant management plans. The conclusion reached is that while these matters do not have to

be taken into account when considering whether or not to amend Schedule 4, they will be relevant if any subsequent permit is granted.

An analysis of the relevant objectives, purposes and plans suggest that access to such Crown land would not be granted by the Minister. Mining is inconsistent with and contrary to the objectives, purposes and provisions relating to the protection of such land. Any proposed mining activity would have to have only very minor effects before the Minister could grant access for mining activities and the values of these areas would need to be maintained. Therefore EDS strongly submits that it would be futile to remove these lands from Schedule 4 when access to them is unlikely to be able to be granted.

Instead the Government should focus on assessing mineral resources held within land not in Schedule 4 of the CMA.

National Parks Act 1980

EDS notes that it is proposed to remove 3,313 hectares of land from the Paparoa National Park. It appears that the land in question is prospective for coal mining. There is no indication whether the mining would be undertaken by open cast or underground methods. We also note that in answer to a Parliamentary question on 25 March 2010 the Minister for the Environment confirmed on behalf of the Minister of Conservation that the National Parks Act "sets very high environmental tests for mining to be allowed. The Government will not be changing these tests or the Act."

Objectives of the National Parks Act

Section 4(1) of the National Parks Act clearly sets out that the main objective of the Act is to ensure that the provisions:

> "shall have effect for the purpose of preserving in perpetuity as national parks, for their intrinsic worth and for the benefit, use, and enjoyment of the public, areas of New Zealand that contain scenery of such distinctive quality, ecological systems, or natural features so beautiful, unique, or scientifically important that their preservation is in the national interest."

One of the principles of the Act is to ensure that indigenous plants and animals are preserved (Section 5(1) of the National Parks Act). There is a specific requirement that no person shall, without the prior written consent of the Minister, cut, destroy, or take any plant that is indigenous to New Zealand and growing in a national park. Similarly, no person may disturb, trap, take, hunt, or kill any animal that is indigenous to New Zealand and found within a national park without the prior written consent of the Minister. Section 5(3) of the National Parks Act provides that the Minister shall not give his or her consent unless the act consented to is consistent with the management plan for the park. It is extremely difficult to see how a coal mining operation would be consistent with the Paparoa National Park Management Plan given how invasive coal mining operations are and the adverse impacts on the surrounding environment.

The Minister of Conservation must have regard to the objectives and principles of the National Parks Act, as outlined above, when considering whether to agree to an access arrangement to allow mining in Paparoa National Park. These objectives affirm that parks are to be maintained in their natural state.

The objectives of the National Parks Act are inconsistent with allowing mining.

Purposes for which Paparoa National Park is held

The Minister of Conservation must also have regard to the purpose for which the Paparoa National Park is held when considering whether to agree to an access arrangement to allow mining in Paparoa National Park. Section 4(2) of the Act establishes that Paparoa National Park is held under the National Parks Act to preserve it as far as possible in its natural state, to preserve as far as possible the native plants and animals of the park, to maintain the Park's value as a soil, water, and forest conservation area, to preserve sites and objects of archaeological and historical interest and to allow public entry to the park 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."

The purposes for which Paparoa National Park is held are inconsistent with mining activities.

Paparoa National Park Management Plan

The Paparoa National Park Management Plan dated November 1992 and produced by the Department of Conservation is relevant to the Minister's consideration of whether to grant access to the National Park. The Plan notes at page 21 that mining activities are "incompatible with national park values and principles" and at page 99 that mining "is contrary to the concept of national parks as protected natural areas."

The following policies from page 99 of the Paparoa National Park Management Plan are relevant:

> 5.2.24 PROSPECTING, EXPLORATION AND MINING
>
> * TO GENERALLY OPPOSE THE ISSUE OF ANY MINERAL RELATED ACCESS ARRANGEMENT UNLESS IT CAN BE DEMONSTRATED THAT THE ENSUING DAMAGE WILL BE MINIMAL AND THAT THE MINING IS OF GREATER NATIONAL INTEREST THAN PARK VALUES;
>
> * TO CONSIDER EACH PROSPECTING, EXPLORATION OR MINING ACCESS ARRANGEMENT APPLICATION ON ITS MERITS;
>
> * TO SEEK STRICT CONTROLS TO PROTECT PARK VALUES IF AN ACCESS ARRANGEMENT IS TO BE GRANTED WITHIN THE PARK;
>
> * TO SEEK PROHIBITION OF ACCESS TO THE WESTLAND PETREL SPECIAL AREA UNDER THE CROWN MINERALS ACT 1991.

The Discussion Document describes the Inangahua Sector of the Paparoa National Park as including a significant proportion of limestone substrates. At page 11 of the Paparoa National Park Management Plan it discusses the adverse effects mining may cause on the Paparoa karst country:

> "The essence of the Paparoa karst country is its largely unmodified character. The quality of the water flowing through this area can be adversely affected by logging, mining and agriculture, which could stress the underground systems and cause irreversible damage. The fact that Paparoa provides the best example of forested lowland karst in the country was very important in its preservation as a national park. Also important was the diversity of its

> natural forest cover, resulting from complex geological, geomorphic, soil and climate patterns."

The Minister of Conservation must have regard to the possibility that further mining in this area could cause irreversible damage on the Paparoa karst country which has a largely unmodified character.

In the explanation to the policies in 5.2.24 , as outlined above, it is noted at page 99 that: "In order to protect significant values of the park, mining should be excluded from areas of particular scenic, scientific, cultural and historic or archaeological value or of high, or potentially high, public use." Schedule 4 was designed to ensure that these very areas were protected from mining activities.

General Policy for National Parks

The 'General Policy for National Parks' dated April 2005 and produced by the Department of Conservation for the New Zealand Conservation Authority outlines the following policies as being relevant to crown minerals in national parks:

> 10.8(a) The preservation of national park values and the benefit, use and enjoyment of the national park by the public, including public access, will be primary considerations in assessing prospecting, exploration and mining activities.
>
> 10.8(b) Proposed access arrangements to prospect, explore or mine in national parks will be considered on a case-by-case basis and will take into account the objectives of the National Parks Act 1980, the purpose for which the land is held, this General Policy, the relevant conservation management strategy, the national park management plan, the safeguards against any potential adverse effects of carrying out the proposed work, and such other matters as the Minister considers relevant.
>
> 10.8(c) Proposed access arrangements in relation to Crown-owned minerals in national parks or parts of national parks listed on the Fourth Schedule of the Crown Minerals Act 1991, will be considered only for those activities set out in section 61(1A) of the Act.
>
> 10.8(d) Access arrangements for the removal of pounamu from national parks within the takiwa of Ngai Tahu whanui will be considered only where the applicant has authorisation for collection from the kaitiaki runanga of Te Runanga o Ngai Tahu.
>
> 10.8(e) A national park management plan will identify if and where sand, shingle or other natural mineral material can be removed, consistent with the preservation of national park values.

The Minister of Conservation must have regard to the policies outlined above as they form a policy statement of the Crown in relation to the land. EDS highlights that policy 10.8(a) states that the preservation of national park values will be a primary consideration in assessing mining activities and that policy 10.8(c) provides that access is only for those activities set out in section 61(1A) of the Act.

Conservation Act 1987

EDS notes that it is proposed to remove the Otahu Ecological Area which is comprised of 396 hectares, the Parakawai Geological Area which is comprised of 68 hectares, 2,574 hectares of conservation land on the Coromandel Peninsula and 705 hectares of land on Great Barrier Island from Schedule 4. The land is administered by the Department of Conservation under the Conservation Act. Its status under that Act is shown in the table below:

Area of land proposed to be removed from Schedule 4	**Type of land under the Conservation Act**
Otahu Ecological Area	Ecological area
Parakawai Geological Area	Ecological area
Broken Hills, Coromandel Peninsula	Conservation park
Thames, Coromandel Peninsula	Conservation park/ Stewardship land
Hauraki Hill, Coromandel Peninsula	Stewardship land
Toatea-Kapanga, Coromandel Peninsula	Stewardship land
Matawai, Coromandel Peninsula	Stewardship land
Tapu/Te Kaka, Coromandel Peninsula	Stewardship land
Waiomu, Coromandel Peninsula	Conservation park
Te Ahumata Plateau , Great Barrier Island	Stewardship land

Objectives of the Conservation Act

The Minister of Conservation must have regard to the objective of the Conservation Act to promote the conservation of New Zealand's natural and historic resources when considering whether to agree to an access arrangement to allow mining on conservation land.

Purpose for which ecological areas are held

Ecological areas are managed to protect the value for which it is held (section 21 of the Conservation Act). The Minister must have regard to these values when considering whether or not to grant access for mining in an ecological area.

The particular scientific value for which the Otahu Ecological Area is held for is unclear as EDS has not been able to obtain a copy of the *Gazette* 1976 where the Otahu Ecological Area is described. The Discussion Document suggests that this area is held for the purpose of preserving its scientific value because it "is one of the few areas remaining in the Coromandel that provides a reasonably intact natural sequence of habitat from the upper reaches of stream tributaries in the mountains to marine habitats of the ocean."

EDS has also been unable to obtain a copy of the *Gazette* 1976 to determine the particular scientific value for which the Parakawai Geological Area is held for. The Discussion Document suggests that

the Parakawai Geological Area is held for the purpose of preserving distinctive geological features and the streams of this part of the park have high habitat values for threatened native freshwater species.

Purpose for which conservation park land is held

Conservation parks are managed for the purpose of protecting natural and historic resources while providing for the facilitation of public recreation and enjoyment (section 19 of the Conservation Act). The discussion document states that Broken Hills is part of Coromandel Forest Park which is held as a conservation park. The Department of Conservation has confirmed that Waiomu is in a conservation park. Some of the areas near Thames that are identified in the discussion document are also in conservation parks. When considering whether or not to grant access for mining activities the Minister must have regard to the purpose for which these lands are held. Natural resources will not be protected if such activities are permitted to occur.

Purpose for which stewardship land is held

Stewardship land such as that at Tapu, Matawai, Toatea-Kapanga, Hauraki Hill and Thames is to be held for the purpose of protecting its natural and historic resources. If the Minister was to allow mining in these areas it would not protect these resources.

Auckland Conservation Management Strategy in relation to land held on Great Barrier Island

The Auckland Conservation Management Strategy dated June 1995 and published by the Department of Conservation is currently being reviewed and a revised draft version should be notified in June 2010. The relevant provisions of the existing Strategy are as follows:

> 4.2.2 Mesh conservation management with community development to reinforce an island identity which recognises the national and international significance of the natural and historic heritage of Great Barrier Island and its environmental quality.
>
> 4.2.3 Ensure the survival, as far as is possible, of all indigenous species of flora and fauna, both rare and commonplace, in their natural communities and habitats, and the preservation of the natural ecosystems and landscapes which give Great Barrier Island its own recognisable character.
>
> 4.2.4 Protect those elements of the natural environment which make Great Barrier Island an increasingly important refuge for species and habitat processes now extinct or endangered on mainland New Zealand.
>
> 4.2.6 Seek an appropriate "umbrella" protected status and image for lands administered by the Department on Great Barrier, which contributes to the protection of these areas as a precious and special conservation resource of national and international significance and which promotes that image for the island.
>
> 4.2.7 Preserve the outstanding historic sequences found on Great Barrier Island, through the conservation of a representative range of historic sites and landscapes.

4.3.2 Generate opportunities which contribute to the economic viability of the local community, and which are based on and support the protection and enhancement of significant natural and cultural values of the island.

The provisions which specifically relate to mining include the following:

4.12.14 Carry out investigations to enable the Minister of Conservation to consider making a joint recommendation, with the Minister of Energy, for an Order in Council to close the areas administered by the Department, which lie within this key area, to exploration and mining.

4.12.15 Until such time as the areas referred to above are closed to mining by an Order in Council, assess any application for a land access arrangement on its merit and in light of

(a) the objectives of the relevant legislation under which the land is held;
(b) any relevant policy statements, conservation management strategies or plans, including the values stated in Volumes I, II and III of this document;
(c) availability of means to safeguard against potential adverse effects of the proposed activity;
(d) an assessment of the effects on the environment generally, in accordance with the Fourth Schedule of the Resource Management Act 1991;
(e) having regard to the principles of the Treaty of Waitangi;
(f) whether the restoration proposed is adequate and can be achieved;
(g) whether there is adequate financial protection by way of an insurance or bond to ensure compliance with conditions and remedial action;
(h) any net conservation benefit which might be gained; and
(i) such other matters as the Minister may consider relevant, which may include public submissions received on the appropriate management of the area.

The above provisions were written in 1995 and one of the policies was to close the areas on Great Barrier Island administered by the Department to exploration and mining. Since then Te Ahumata Plateau has been added to Schedule 4 of the CMA to recognise its special values and close it to exploration and mining. The policies relating to mining were considered as an interim measure until the desired protection was obtained. EDS wishes to emphasise that policy 4.2.6 recognises that Great Barrier Island is a "precious and special conservation resource of national and international significance."

No mining should be allowed on Great Barrier Island.

Draft Waikato Conservation Management Strategy in relation to the land held on the Coromandel Peninsula

Although the Waikato Conservation Management Strategy is still only in draft form it does contain several relevant considerations which the Minister of Conservation should have regard to when deciding whether to grant access to mining in the Coromandel. These include comments about the biodiversity values of the Coromandel Forest Park and the Waiomu area.

Resource Management Act

Any proposal to mine any of the areas proposed to be removed from Schedule 4 will be subject to consenting requirements under the Resource Management Act (RMA). The RMA has established

regional and district plan provisions that apply to each of the areas under consideration. Section 61(2) of the CMA provides that when deciding whether or not to grant access in respect of Crown land the appropriate Minister can consider other matters which he or she considers relevant. EDS contends that it would be relevant for the Minister(s) to consider the planning status of the relevant areas as a guide to their respective values.

Location	**Relevant District Plan Provisions**
Great Barrier Island	Appendix A of the Auckland City Council District Plan - Hauraki Gulf Islands section Operative (1996) provides that mining of any mineral in the Hauraki Gulf Islands is a prohibited activity irrespective of whether it is authorised under the Crown Minerals Act 1991, other than any quarrying, prospecting, or exploration activity authorised in accordance with the Plan. Rule 4.4.2 of the Auckland City Council District Plan - Hauraki Gulf Islands section Proposed (2009) provides that mining of any mineral in the Hauraki Gulf Islands is a prohibited activity irrespective of whether it is authorised under the Crown Minerals Act 1991, other than any quarrying, prospecting, or exploration activity authorised in accordance with the Plan.
Coromandel Peninsula	Rule 412.5 of the Thames- Coromandel District Plan provides that mining is a non-complying activity in those zones shown as non-complying in Table 2 and where any one or more permitted activity standard for earthworks is exceeded. This includes rural, industrial A, industrial, housing and town centre zones. Rule 412.6 of the Thames- Coromandel District Plan provides that mining is a prohibited activity in those zones shown in Table 2 as prohibited activities if permitted activity standards for earthworks are exceeded. This includes coastal, conservation, recreation passive, recreation active and open space zones. The application of these two rules means that mining that exceeds earthworks standards is a non-complying or prohibited activity on all land in the Coromandel Peninsula apart from land in the 'Iwi Kainga Zone'.

Hauraki Gulf Marine Park Act 2000

The Hauraki Gulf Marine Park Act (HGMPA) provides further context and guidance as to the proposed changes relating to Great Barrier Island and the Coromandel Peninsula. The preamble of the HGMPA states that:

> "Hauraki Gulf has a quality and diversity of biology and landscape that makes it outstanding within New Zealand. The islands of the Gulf are valued as the habitats of plants and animals, once common, now rare, and are often the only places in the world where these species exist naturally"

Objectives of the Hauraki Gulf Marine Park Act

Section 7(1) of the HGMPA provides that one of the objectives of the Act is to recognise that the interrelationship between the Hauraki Gulf, its islands, and catchments and the ability of that interrelationship to sustain the life-supporting capacity of the environment of the Hauraki Gulf and its islands are matters of national significance. This objective should be of critical importance to the Minister of Conservation when making the decision as to whether or not to grant access to the Great Barrier Island and the Coromandel Peninsula for mining. This objective must also be given effect to in RMA plans affecting Great Barrier Island and the Coromandel Peninsula and consent authorities must have regard to it when considering any resource consent applications for mining in these areas under the RMA.

Section 8 of the HGMPA outlines that these areas should be managed for several specific objectives including the protection and, where appropriate, the enhancement of the life-supporting capacity of the environment and the natural and physical resources of the Hauraki Gulf, its islands, and catchments.

Purpose for which lands in the Hauraki Gulf Marine Park area are held

Section 32 of the HGMPA establishes that those lands included in the Hauraki Gulf Marine Park are to be held:

> (a) to recognise and protect in perpetuity the international and national significance of the land and the natural and historic resources within the Park:
>
> (b) to protect in perpetuity and for the benefit, use, and enjoyment of the people and communities of the Gulf and New Zealand, the natural and historic resources of the Park including scenery, ecological systems, or natural features that are so beautiful, unique, or scientifically important to be of national significance, for their intrinsic worth:
>
> (c) to recognise and have particular regard to the historic, traditional, cultural, and spiritual relationship of tangata whenua within the Hauraki Gulf, its islands and coastal areas, and the natural and historic resources of the Park:
>
> (d) to sustain the life-supporting capacity of the soil, air, water, and ecosystems of the Gulf in the Park.

Conservation land on Great Barrier Island and the Coromandel Peninsula are within the Hauraki Gulf Marine Park. If the Minister was to grant access to this land for mining it would be completely contrary to the objectives of the HGMPA under which the land is administered. The main objective is to "recognise and protect in perpetuity the international and national significance of the land and the natural and historic resources within the Park."

PART TWO: RESPONSES TO SPECIFIED QUESTIONS

Q1 On the areas proposed for removal from Schedule 4:

Section 7 of this document sets out the areas proposed for removal from Schedule 4. Do you think these areas should be removed from Schedule 4 so that applications for exploration and mining activity can be considered on a case-by-case basis? Yes or No? And why?

EDS contends that all the areas proposed for removal from Schedule 4 should not be removed. The case has not been made for such removal and in particular the analysis of the conservation values and the impact of mining activities on them is inadequate and insufficiently robust to justify such a decision.

Q2 On the areas proposed for addition to Schedule 4:

Section 8 of this document sets out the areas proposed for addition to Schedule 4. Do you agree with the proposal to add these areas to Schedule 4? Yes or No? And why?

EDS supports the addition of all of the proposed areas to Schedule 4.

Q3 On the assessment of areas:

The assessment of areas covered by Schedule 4 and those proposed for addition is outlined in sections 7 and 8 of this document and Appendices 1 and 2.

(a) What are your views on the assessment of the various values (conservation, cultural, tourism and recreation, mineral, other) of the land areas discussed?

The assessment of the various values listed is superficial. In particular the assessment of the conservation values is insufficiently robust to justify removing any areas from Schedule 4. There is no proper analysis of the potential impacts on threatened or endangered species of flora and fauna. The impact on tourism and recreational values is similarly superficial with no adequate quantification of likely impacts on particular sites or on New Zealand's overall brand integrity. The information available is not adequate to justify the exercise of the proposed Ministerial powers to remove areas from Schedule 4.

(b) Do you have any additional information that may be important for Ministers to make their decisions?

EDS submits that Ministers should assess the broader legislative framework applying to the management of the areas proposed for removal. Whist that framework does not trump the Crown Minerals Act it is nonetheless indicative of the values implicit in the areas proposed for removal.

Ministers do not have an unfettered power to make the proposed changes and must act within the law.

Q4 On the proposal to further investigate the mineral potential of some areas:

The Government is carrying out a research and investigation programme on the mineral potential of areas with significant mineral potential over the next nine months, including the Coromandel, parts of Paparoa National park and Rakiura National Park, and a number of non-Schedule 4 areas.

(a) Do you have any comments on the type of information that would be the most useful to mineral investors?

No.

(b) Are there any particular areas that the Government should consider including in its investigation programme?

The investigation programme should focus on non-Schedule 4 lands.

Q5 On a new contestable conservation fund:

Section 9 describes a proposed contestable conservation fund the Government proposes to establish, which would be made up of a percentage of the money the Crown receives from minerals (except petroleum) from public conservation areas.

(a) A broad objective, to enhance conservation outcomes for New Zealand, is proposed for the fund. Do you agree with the proposed objective?

No.

(b) What do you think the fund should be used for? What should its priorities be?

The fund should be limited in its application to Crown-owned and private land being mined but is not a justification for removing areas presently protected by Schedule 4.

(c) An independent panel appointed by the Minister of Energy and Resources and the Minister of Conservation is proposed to run the fund. Do you think this is a good idea?

No. The appointments should be made by the Minister of Conservation acting alone.

(d) It is proposed that half of royalties from public conservation areas are contributed to the fund, with a minimum of $2 million per year for the first four years, and a maximum of $10 million per year. Do you think the amounts proposed for the fund are appropriate?

No. There should be no cap. The quantum of royalties should be increased. There should be a 40% tax on all super-profits from the mining industry in New Zealand to line our tax regime up with that in Australia. This is especially important as most mining companies operating in New Zealand are Australian or are operating in Australia.

(e) Do you have any other comments that might help the Government to make decisions on a new conservation fund?

We are prepared to discuss this matter further once the schedule 4 decisions have been made..

Q6 On approval of access arrangements:

In section 6 it is proposed that the joint approval of the land-holding Minister and the Minister of Energy and Resources be required for an access arrangement on Crown land for mineral exploration or development. Do you think this is appropriate? Why or why not?

No. This is not appropriate. The Minister of Energy and Resources is conflicted because of his interests in fostering mining. The decision regarding access should be made by the land-holding Minister. Access to Crown land held for conservation purposes for mining should be subject to the same regime as for other activities.

Q7 On any other issues:

Do you have any further suggestions or comments on what has been said in this document?

The quality of the analysis is poor and has not reached a threshold adequate to justify any removal of lands from Schedule 4.The way the government has handled this matter has been confrontational and has polarised public opinion from the outset. We favour a more collaborative approach to policy making akin to that adopted by the land and Water Forum involving all stakeholders in a moderated discussion.
