



Jonathan Young MP
Chairperson
Economic Development, Science and Innovation Committee
Parliament Buildings
Wellington

23 January 2018

Petition 2014/141 of Catherine Wallace

I am responding to your request of 30 November 2017 for assistance from the Ministry of Business, Innovation and Employment (MBIE) to help the Economic Development, Science and Innovation Committee (the Committee) consider the petition 2014/141 of Catherine Wallace.

This response is intended to provide some contextual information. It is not intended to represent the Government's position on the merits of the petition. It has been prepared in consultation with the Ministry for the Environment and the Department of Conservation.

The petition has two parts; extending Schedule Four of the Crown Minerals Act 1991 into southern Coromandel and banning further blasting, underground and open cast mining within residential zones or within 400m of residences. I will address these parts separately.

Extending Schedule Four of the Crown Minerals Act 1991

The Crown Minerals Act 1991 (CMA) is an Act to promote prospecting for, exploration for, and mining of Crown owned minerals for the benefit of New Zealand. Crown owned minerals include all petroleum, gold, silver and uranium existing in its natural condition and some other minerals, such as coal, depending on the specific circumstances.

Permits are issued under the CMA to prospect, explore and mine minerals. Permits do not give the permit holder automatic rights to access the permit area. Generally for exploration and mining activities, permit holders must also arrange land access with the landowner and occupier.

Where the land is owned by the Crown, the access arrangement is with the appropriate minister (usually the Minister of Conservation). If the land in question is listed in Schedule Four of the CMA, then mining activity is limited to certain low impact activities.

Schedule Four can only apply to Crown land and land in the common marine and coastal area. Schedule Four is intended to protect areas with high conservation value. It applies to all national parks, nature reserves, scientific reserves and any parts of a reserve set apart as wilderness or sanctuary areas. These areas do not need to be added to Schedule Four by name, they are included by nature of their status. For example, any new national park created would automatically be included in Schedule Four.

Some specific areas are also included by name in Schedule Four. These include, inter alia, "conservation land situated on the Coromandel Peninsula and lying north and north-west of State Highway 25A (Kopu-Hikuai road) and the road from Hikuai to Pauanui Beach known as the Hikuai Settlement Road" and "the internal waters of the Coromandel Peninsula".



Access arrangements for petroleum and minerals activity on Schedule Four land can only be entered into for the purpose of:

- constructing an emergency exit for an underground mining operation;
- activities that do not result in stripping of vegetation over an area exceeding 16 square metres or create any permanent impact on the profile of the land;
- minimum impact activities (as defined in the CMA, including taking samples by hand, and various low impact surveying methods);
- gold fossicking; or
- a special-purpose mining activity (meaning an activity carried out, typically by tourism operators, to demonstrate historical mining methods).

Permission must be sought from the Minister of Conservation before any activity can proceed on Schedule Four land.

Activities conducted beneath the surface of Schedule Four land that do not require access to the land or do not have detrimental effects (e.g. aerial surveying) do not require an access arrangement.

Amending Schedule Four

Schedule Four can be amended by Order in Council, on the recommendation of the Minister of Energy and Resources and Minister of Conservation. The relevant provisions are set out in Section 61(4) through Section 61 (10) of the CMA. Before a change can be recommended, consultation of interested or affected parties is required under Section 61 (5). Once land is added to Schedule Four, it cannot be removed.

Under Section 61 (6), an assessment of both the particular scientific value for which the land is held and the value of any Crown owned minerals in the land is required before an Order in Council can be made in respect of any land held under the Conservation Act 1987 for conservation purposes, that is declared an ecological area under Section 18(1) of the Conservation Act.

Were the Government to progress with the proposal to include the area in Schedule Four, broadly speaking the process would be to:

1. Identify the relevant conservation land proposed for inclusion in Schedule Four;
2. Consult with persons the Ministers have reason to believe are representative of interests likely to be substantially affected;
3. Make an assessment of the scientific value of any land that has been declared an ecological area under the Conservation Act, and the value of any Crown owned minerals in the land;
4. Make a recommendation to the Governor-General that an Order in Council is made to amend Schedule Four.

Area proposed by the petition for inclusion in Schedule Four

The petition text lacks specificity as to where the proposed extension would apply. The submission from Catherine Wallace includes a map, which I have used as a proxy for where the proposed extension to Schedule Four would apply. To assist the Committee, I have attached a map showing the conservation land and the existing mineral permits in the area indicated.

Much of the area indicated in this map is not Crown land, and cannot therefore be included in Schedule Four. There are also active mineral permits in the proposed area and therefore there are natural justice implications in how these existing permits are treated. Operators of these permits would need to be consulted under Section 61 (5) alongside other affected parties.

The proposed area is likely to include a range of conservation land, with some but not all of it considered high value. For example, there are already sections of land in the proposed area included in Schedule Four. There are also known mineral resources in the area, and these are likely to be of significant value to the Crown. As such, a detailed assessment would be required to meet the requirements of Section 61(6) of the CMA.

The Department of Conservation has advised that there are several areas of conservation value within the proposed extension. There are some 'threatened'¹ and 'at risk'² plant and animal species present in the area, including frogs, tuatara, geckos, skinks and birds. A more detailed desktop study could be completed to provide a more comprehensive analysis of conservation value of specific areas within the proposed extension.

Restrictions on mining activities within residential zones or 400m of a residence

The petition proposes that changes are made to the CMA to prevent mining activities from occurring in close proximity to residential housing. The CMA is not likely to be the best legislative mechanism for this proposal. Should the proposal be progressed, the most appropriate legislative framework would be the Resource Management Act 1991 (RMA).

The RMA is an effects-based Act. This means it regulates a range of activities based on the effects those activities create and what options exist to minimise or mitigate those effects. Typically, decisions under the RMA are devolved to local authorities. Specifically, under Section 31 (a) of the Resource Management Act (RMA), territorial councils have been delegated the function of establishing, implementing, and reviewing of objectives, policies, and methods to manage the use, development, or protection of land and associated natural and physical resources of the district.

The Ministry for the Environment advise that the central government has limited authority to intervene in local issues unless they are of national significance as regulated in Section 24 of the Act. It would be possible however, either through an amendment to the RMA or a National Environmental Standard (NES) issued under the RMA, for the Government to provide national direction on the effects of mining and associated activities on residential housing. This direction would then be reflected in regional and district plans across the country in a consistent way. This could include making these activities prohibited.

Careful consideration would need to be given on how uniform the effects associated with mining are. National direction via an NES under the RMA is usually reserved for activities where the effects are similar across the country, and it makes sense to make one national standard rather than many local standards.

The Ministry for the Environment views mining as an activity that is best managed at the local or district level because noise, vibration and other environmental effects vary depending on the types of mining techniques used and site specific factors such as the geology and depth of the ore.

There are likely to be examples where mining within a residential zone or within 400 metres of a residence have minimal or no negative effects on those residences. There are also areas where mining's impact on residential areas has negative effects that need to be avoided or

¹ Threatened species are at greatest risk of extinction. They are either extremely rare, rare following severe historical decline, declining at an extremely high rate, or both uncommon and declining.

² At risk species are not considered Threatened but could quickly become so if declines continue or if a new threat arises.

mitigated, and areas where no mining should take place. However, there are already mechanisms in place under the RMA for these to be identified and addressed by the relevant local authority.

Taking away the ability of a local authority to allow mining within 400 metres of a residence or within a residential zone could have unintended consequences. If considering a NES, the Government would need to evaluate the costs, benefits and alternatives to the proposal.

I hope the material provided is of assistance to the Committee. Please do not hesitate to contact me if you require further information or clarification of the material provided.

Kind regards,

A handwritten signature in black ink, appearing to be 'MP', with a long horizontal stroke extending to the right.

Dr Marcos Pelenur
Manager, Resource Markets Policy
Building, Resources and Markets, MBIE



Coromandel Conservation Land

