



Petition 2014/0141 of Catherine Wallace

Report of the Economic Development, Science and Innovation Committee

July 2019

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Jonathan Young
Chairperson

Petition 2014/0141 of Catherine Wallace

Recommendation

The Economic Development, Science and Innovation Committee has considered Petition 2014/0141 of Catherine Wallace and recommends that the House take note of its report.

Request to extend Schedule 4 of the Crown Minerals Act and ban mining in residential areas and under or near homes

The petition was presented to the House on 9 August 2017. It requests:

That the House of Representatives note that 4,687 people have signed a petition calling on the House of Representatives to: extend Schedule 4 of the Crown Minerals Act 1991 to include associated islands and waters to 12 nautical miles from Te Moehau to Te Aroha, encompassing the entire Coromandel Ecological District; and to extend the Crown Minerals Act 1991 to ban further blasting, underground and open cast mining within residential zones or within 400m of any residence in the Coromandel/Hauraki region.

The petitioner's concerns

The petition has two aims. The first is to extend the area covered by Schedule 4 of the Crown Minerals Act 1991 in the area from approximately Te Moehau to Te Aroha. The second is to ban blasting and open cast or underground mining beneath houses and within 400 metres of residences.

Request to extend coverage of Schedule 4 of the Crown Minerals Act

We heard that Schedule 4 of the Crown Minerals Act is intended to protect areas with high conservation value. The Minister charged with the administration of lands (normally the Minister of Conservation) cannot grant access to mine land covered by this schedule.

The petitioner would like all of southern Hauraki's conservation land to be covered by the schedule. She stresses that any extension of Schedule 4 must be negotiated with the area's hapū and iwi in a way that is consistent with the principles of the Treaty of Waitangi. For that reason, she has not proposed firm boundaries for the requested extension. However, she suggested that the extension could cover land about as far south as Te Aroha and east to Waihi Beach. The petitioner assured us that she is only asking that conservation land in this area be added to Schedule 4 of the Crown Minerals Act, not land that is currently used for other purposes.

Gold and silver are the main minerals mined in this area. The petitioner told us that, when these metals are mined, arsenic and cadmium must be stored in tailings dams. She described these dams as "physically, biologically and chemically unstable." The petitioner also said that chemicals used in processing ore can be very hazardous.

The petitioner also considers that excavation for mining is incompatible with environmental, conservation, recreational, tourism, and community values. In particular, she wants

protection for Karangahake Gorge, which is a major tourist attraction in the area for its walking and cycle trails. She said she believes mining in this area would compromise the recreational and tourism benefits created by the gorge.

We heard about the Archey's frog, which is one of four remaining native frog species. Archey's frog is described by the Department of Conservation (DOC) as evolutionarily distinct and globally endangered. The frog has only been found in the Coromandel Peninsula (in part of the proposed area for Schedule 4 coverage), the Whareorino Forest, and Pureora.

The petitioner argued that mining should not be allowed in areas where Archey's frogs are found. She told us that the frog's numbers dropped by 88 percent over five years in the late 1990s. She also said that there has been drilling in land inhabited by Archey's frogs, without advance public notification.

Request to ban mining beneath or near homes

The petitioner wants new legislation to stop miners from being able to blast or mine under people's homes and within 400 metres of residences. She pointed out that mining occurs under some homes in Waihi as being an example of why change is needed in this area.

The petitioner told us that residents of these homes in Waihi experience three mine blasts a day, five and a half days a week. She said this can have a negative effect on residents' mental and physical health. She maintained that blasting can also cause surface damage to houses, such as cracks in walls.

We heard that the land use consent issued by the Hauraki District Council requires the mining company OceanaGold to buy any residential property that is above or near mining activity if the owner asks it to. The petitioner argued that the way this arrangement is working is unsatisfactory. She said that homeowners selling under these conditions are disadvantaged because house prices are set using the market value of houses in Waihi. This does not reflect the cost of buying a house outside Waihi, which is often higher.

The petitioner said that the Mining Act 1971 contained a provision to prevent blasting under residences. That provision was not carried over into the Crown Minerals Act, and she would like to see it reinstated.

Submission from the Ministry of Business, Innovation and Employment

The Ministry of Business, Innovation and Employment (MBIE) provided contextual information about the petitioner's request. It did so in consultation with the Department of Conservation and the Ministry for the Environment.

Extending Schedule 4 of the Crown Minerals Act

MBIE told us that Schedule 4 can be amended by Order in Council on the recommendations of the Minister of Energy and Resources and the Minister of Conservation. Before those Ministers can recommend a change, they are required to consult interested and affected parties.

We heard that the broad process for including new land in Schedule 4 involves:

- identifying the relevant conservation land proposed for inclusion
- consulting the people that the Ministers have reason to believe are representative of interests that are likely to be substantially affected
- assessing the scientific value of land that has been declared an ecological area under the Conservation Act and the value of any Crown-owned minerals in the land
- recommending to the Governor-General that an Order in Council be made to amend Schedule 4.

MBIE said that some, but not all, of the conservation land in the proposed area for Schedule 4 coverage could be considered of high value. It pointed out that some land in the proposed area is already covered by Schedule 4. Some of the area also has known mineral resource that is likely to be of significant value to the Crown.

Restricting mining activities in residential zones, and under or within 400 metres of homes

MBIE told us that amending the Crown Minerals Act is unlikely to be the best legislative way to restrict mining in residential zones and under or within 400 metres of homes. It said the issue would be better dealt with under the Resource Management Act 1991 (the RMA).

We heard that the RMA is an effects-based Act. That means it regulates a range of activities based on the effects those activities create and the options that exist to minimise or mitigate the effects. We also heard that central government has only limited authority to intervene in local issues, unless they are of national significance. However, the Government could provide a national direction on the effects of mining by either amending the RMA or issuing a National Environmental Standard (NES)¹ under the RMA.

NESs are usually issued for activities where the effects are similar across the country. However, the Ministry for the Environment said it believes that mining is best managed at a local level. This is because the noise, vibration, and environmental effects vary depending on the types of mining techniques used and site-specific factors like geology.

We were told that the RMA already has mechanisms for the relevant local authority to identify and address any negative effects on nearby residents and the environment.

Submission from Oceana Gold (New Zealand) Limited

Oceana Gold (New Zealand) Limited is a gold mining company that operates in Waihi and other areas. Its parent company, OceanaGold Corporation, has global operations.

OceanaGold told us it believes it is welcome in the community of Waihi. We heard it has recently started a resource consenting process to mine in Waihi for 11 more years. Submissions from the public on the process were made at four times the rate of the Auckland Unitary Plan (once population differences are taken into account). We were told

¹ National environmental standards are regulations that prescribe standards for environmental matters. The Government sets standards to ensure a consistent standard for an activity or resource use. Examples of current NESs include air quality and electricity transmission activities.

that 80 percent of submitters supported the mine's proposal for 11 more years of mining, 14 percent opposed it, and the rest were undecided.

OceanaGold has committed to not having open pits, tailings facilities, or processing plants in conservation areas. They told us they reached consensus on this with environmental NGOs and members of the community. However, OceanaGold thinks it should be able to do underground mining on some conservation land because it believes it can do so without compromising the environmental, cultural, or recreational values of that land. We were also told that underground mining would not produce emissions, although OceanaGold does monitor for emissions and tests the air quality at its mines.

We asked about the environmental effects of tailings dams. Some of us pointed out that taxpayers have spent tens of millions of dollars fixing problems caused by tailings dams, and wanted to give certainty to the Waihi community. OceanaGold told us that those problems occurred long in the past when there was not adequate regulation. It also said that Waihi has had tailings dams for 30 years without problems. We heard that OceanaGold's tailings dams are built to the highest engineering standards and are rigorously monitored for things like structural defects.

We asked about the economic benefits OceanaGold provides to the Waihi community. Some of us feel those benefits are not shared by the community at large, and pointed to the fact that Waihi scored poorly on an index for social deprivation produced by Otago University. OceanaGold responded that one company cannot fix all the problems in a region. However, it believes it adds to the spending potential of the region, contributing 0.44 percent (\$86 million) to regional GDP, and is responsible for 4.4 percent of Hauraki's employment.

Submission from the Department of Conservation

When we heard from the Department of Conservation, it noted that the area proposed to be covered by Schedule 4 of the Crown Minerals Act has a number of endangered and endemic species, including skinks, geckos, and kiwi. DOC does not hold exhaustive information on the conservation value of all of the land proposed to be covered. However, DOC believes that 7,339 hectares of that land represents the best example of its eco-system type in New Zealand and has been identified by DOC's prioritisation system as the highest priority to manage.

It also pointed out some of the land that the submitter proposes for inclusion in the Schedule is being considered as redress for Treaty settlements as part of the Hauraki Collective, Individual Hauraki iwi, Ngāti Hauā, and Tauranga Moana iwi settlements. DOC noted that the petitioner purposely has not specified a boundary for this reason.

DOC told us that land status can sometimes change while that land is being considered for redress in a Treaty settlement. However, including land in Schedule 4 of the Crown Minerals Act would require consulting with the area's iwi and hapū in any case.

We asked whether any iwi or hapū have requested that Schedule 4 not apply to land that is subject to Treaty settlements. DOC said it could not comment on any current negotiations, but it is not aware of any legislated settlements that have led to a change in the application of Schedule 4. DOC also said that in other settlements that involved conservation land as part of redress, iwi have been clear they did not want the land's status to change. This is

because those iwi wanted to reserve their right to use the land for any economic activities they thought fit.

We are aware that the Government intends to implement a policy to prevent any new mining on conservation land. We were told that, until the policy is implemented, all current policy settings still apply. We asked whether the petition could be pre-empting the Government's decision on this issue. DOC said the answer to that would depend on how the policy is implemented. DOC was unable to provide a timeframe for the policy because that is a ministerial decision.

We asked the department how mining may affect Archey's frogs. DOC confirmed that it has only found the frogs north of the Karangahake Gorge, in Whareorino Forest, and in Pureora. It has done non-exhaustive surveys south of the gorge and has not found any Archey's frogs there, but cannot rule out that they may be located in other areas.

Other evidence we considered

Terra Firma Mining

Terra Firma Mining is a company that provides advice to the tunnelling and underground mining industry. It told us that it agrees there should not be open cast mining or tailings dams on conservation land. However, it said it believes processing plants should be allowed underground, because they can have benefits like reducing the need to transport mined materials offsite.

Hauraki District Council

The Hauraki District Council's Mayor and five councillors wrote to let us know their views on the petition. They do not agree with the petitioner's request to change legislation to ban blasting and open cast or underground mining in residential zones and under or within 400 metres of homes. They believe this should be addressed through the RMA.

They said the consequences of extending the coverage of Schedule 4 of the Crown Minerals Act are unclear. That would need to be clarified before the council could decide whether or not it agreed. However, they noted that a significant amount of economic investment has already been made to explore mineral resources.

They also told us they support:

- banning coal mining on or under conservation land
- banning new open-pit mining and quarrying on conservation land, regardless of the mineral that may be extracted
- banning tailings dams and processing plants on conservation land
- not allowing exploration or mining permits on conservation land where there are significant ecological, conservation, and bio-diversity benefits.

They would also support the Karangahake Gorge being covered by Schedule 4 of the Crown Minerals Act because of its outstanding natural features and the tourism benefits it provides the area.

New Talisman Gold Mines Limited

New Talisman Gold Mines Limited operates the Talisman Gold Mine, which is located in Karangahake's Kaimai Mamaku Conservation Park. It wrote to us saying it disagrees with the evidence the petitioner provided about the nature of some mining activities in conservation areas. It said New Talisman does only a small amount of activity on the surface of conservation land, and the area it mines is not accessible by the public.

New Talisman told us it believes mining can be done in conservation areas in a way that has very limited effect on the surface of the land with only very minor environmental effects. It said the Talisman Gold Mine has not had any environmental issues arise in its 20 years of operating. It believes it would be unjustified to prevent the mining of what it believes to be a world-class resource when the environmental effects are so low.

Our response to the petition

We appreciate the time and effort that went into researching and preparing the submissions we received from the petitioner and submitters.

The conservation land that the petitioner proposes for inclusion in Schedule 4 of the Crown Minerals Act includes areas that are currently being considered for redress as part of Treaty settlements. For that reason, we do not think it is appropriate for us to make any recommendations on whether the status of this land should change.

Green Party minority view

The Green member agrees with the intent of the petition. He notes the proposed Schedule 4 extension area has been kept undefined by the petitioner to allow negotiation with iwi and hapū consistent with the Treaty of Waitangi and it is possible to progress both discussions regarding extending Schedule 4 and Treaty settlements. He believes mining delivers minimal local benefits while threatening this outstanding ecosystem and we are best placed to develop a circular economy and recycle resources currently landfilled to fulfil our material needs.

Appendix

Committee procedure

The petition was referred to us from the Local Government and Environment Committee on 8 November 2017. We met between 30 November 2017 and 25 July 2019 to consider it. We received written submissions from the petitioner, Oceana Gold New Zealand Limited, the Ministry of Business, Innovation and Employment, the Department of Conservation, Terra Firma Mining Limited, the Mayor of the Hauraki District Council and five councillors, New Talisman Mining Limited, and Number One Electrical Solutions. We heard oral evidence from the petitioner, Oceana Gold New Zealand Limited, Terra Firma Mining Limited, and the Department of Conservation.

Committee members

Jonathan Young (Chairperson)
Tamati Coffey
Hon Jacqui Dean (until 21 March 2018)
Paul Eagle (until 15 August 2018)
Andrew Falloon (from 21 March 2018)
Hon Christopher Finlayson (until 21 March 2018)
Hon Paul Goldsmith (from 21 March 2018)
Gareth Hughes
Melissa Lee
Jo Luxton (from 15 August 2018)
Clayton Mitchell
Dr Parmjeet Parmar (until 9 May 2018)
Hon Aupito William Sio (until 24 October 2018)
Hon Poto Williams (from 24 October 2018)
Lawrence Yule (from 9 May 2018)