



**Forest
& Bird**
GIVING NATURE
A VOICE

Schedule 4 Stocktake
Ministry of Economic Development
PO Box 1473
Wellington 6140

26 May 2010

Submission: Stocktake of Schedule 4 of the Crown Minerals Act and beyond

Forest & Bird (The Royal Forest & Bird Protection Society of New Zealand Inc.) is New Zealand's largest independent conservation organisation, representing around 68,000 members and supporters.

Our members are people who care passionately about New Zealand's unique and special natural environment and native species, and want to make sure that these natural treasures are protected so that they can continue to be enjoyed by future generations.

Forest & Bird is very disappointed at the Government's proposals in the discussion paper. The decision to review Schedule 4 with a view to finding areas to mine, and the subsequent proposals to remove a number of areas from it to allow mining, have shattered confidence in this Government's commitment to conservation. That confidence can only be restored by abandoning these proposals.

All areas protected by Schedule 4 have outstanding ecological and landscape value, which is why they are included there. The Schedule was created in 1997 by a National Government to protect and safeguard the future of our core conservation areas after prolonged debate and a seven year Parliamentary process. The Schedule is an essential part of the legal framework that has allowed New Zealand to stand tall internationally as a leader in conservation policy. The Government's proposals have severely damaged that reputation. Indeed, some Ministers have displayed significant disrespect for New Zealand's protected areas network and the generations who have built it to be what it is – a key driver of our economy, a key element of our cultural identity and a cradle for our unique and precious natural heritage.

Forest & Bird commissioned independent researchers to report on key background issues inherent in the Government's proposal, and the resulting three research reports are appended to our submission. These answer three particular questions that the Government's discussion paper and associated documents do not address:

1. What is the net value to New Zealand of mineral resources in Schedule 4 areas?
2. What is the status of Schedule 4: its legislative context, history, and economic function?
3. What is the potential impact of mining on tourism?

We believe these questions are crucial for an informed and rational policy debate. The answers are highly critical of the economic and social basis for Government's proposals and reinforce our submission that Schedule 4 must be protected in its entirety.

The Government's unnecessarily confrontational and aggressive manner in seeking a debate on mining's potential for the economy has been extremely disappointing. The original announcement to a mining industry conference came as a complete surprise to us. Our worst fears were eventually realised as publicly-released Cabinet Papers showed that large swaths of Schedule 4 areas were initially considered for mining with little regard for other values. Continual accusations from Ministers that critics were simply 'hysterical' did not help. The eventually scaled-down proposals still lacked any recognition that the fundamental principles and values that are at stake.

Forest & Bird provides a voice for nature, and on this issue our voice has, by necessity, been loud. Our submission here does not beat around the bush, so to speak, making it clear that the majority of the proposals in the discussion paper are at best misguided, and at worst abhorrent. However, we sense that the Government is beginning to realise the proposals are unbalanced and publicly unacceptable. We hope that the decisions will therefore be very different to what is proposed. On Schedule 4 this means complete revocation of both the proposed removals and the intention to survey further Schedule 4 areas for future removal.

We look forward to working with the Government in future to protect and restore New Zealand's natural heritage: for our economy, for future generations, and for its own health and survival.

Should you have any queries regarding our comments, please do not hesitate to contact us.

Yours sincerely,



Mike Britton

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1. Introductory comments

New Zealand has a proud tradition of formally protecting our magnificent landscapes, ecosystems and wildlife. National parks are at the core of New Zealand's protected area network. The national parks network in New Zealand began with Te Heuheu Tukino's gift of Ruapehu and Tongariro to the nation on behalf of Tuwharetoa.¹ The 1997 provision in the Crown Minerals Act, prohibiting mineral activities in National Parks and other specially protected areas is not only consistent with the National Parks Act 1980, and local and international expectations for National Parks, but protects the covenant between Maori and Pakeha that Te Heuheu Tukino promulgated over 100 years ago. New Zealanders place very deep value upon protected areas, particularly national parks, and share a strong sense of moral duty to preserve them for future generations. This has been proudly displayed in the vast public response to the Government's proposals – from the quality of submissions to the number of people that marched in Auckland.

Forest & Bird is deeply concerned that the proposals in the discussion paper fail to respect the history of conservation protection in NZ, where generations of New Zealanders' and Governments of all political persuasions have progressively built a protected area network and worked to protect and restore New Zealand's natural heritage. In doing so, New Zealand has established a strong international reputation and agreed to significant international commitments to continue this work. The Government's mining proposals have taken scant regard for this, resulting in criticism from world bodies like the International Union for the Conservation of Nature and Natural Resources, the United States' Sierra Club and even the London Zoo. Such criticism of New Zealand's domestic environmental policy is almost unprecedented and not usual practice of these organisations. It reflects the wide-reaching significance of the Government proposals.

Protected areas play critical roles to the New Zealand economy and society that are underappreciated in the Government's proposals. Protected areas – and national parks in particular – are fundamental to New Zealand's tourism industry generating millions of dollars year in year out to the economy. Not only are they the places tourists like to visit when they are in this country, but they are the very basis of the marketing and branding campaigns that seek to bring those tourists to this country.

Protected areas' contribution to the economy and our society go well beyond tourism however. They provide a vast array of ecosystem services – some of which can be quantified and some of which are intangible and immeasurable. They include carbon storage, water quantity and quality, air quality, soil fertilisation, biodiversity, pollination, along with social and cultural identity and wellbeing. Protected areas also by definition preserve future opportunities and natural landscapes for future generations. Forest & Bird is disappointed at the low level of acknowledgement of these aspects of the 'conservation economy' that flow from protected areas, and the low level of acknowledgement of the risk to these that is posed by extractive operations such as mining.

Forest & Bird is proud to give nature a voice and to advocate for the intrinsic value of New Zealand's native plants and animals, which continue to struggle under the pressures of pests and habitat destruction. The already precarious position of New Zealand's precious biodiversity is fundamentally threatened by the Government's proposals.

The economic case

Forest & Bird contends that the Government has not made a justifiable economic case for significantly increased mining activity in New Zealand, let alone mining in currently protected Schedule 4 areas.

¹ <http://www.doc.govt.nz/publications/about-doc/role/policies-and-plans/general-policy-for-national-parks/introduction/he-aha-ai-te-whakangungu-he-kura-taiao-i-hokia/>

Increased mining activity could generate gross financial activity, but the crucial question is what net economic benefit would accrue to New Zealand after all costs and externalities are taken into account. The Government has presented no credible reason why this social and political consensus should be unravelled, and has underestimated the social and political, let alone environmental, consequences of doing so. We oppose all removals and all tax-payer funded mineral surveying of Schedule 4 areas.

To deepen public understanding of the economic basis and historical context of Schedule 4, Forest & Bird commissioned three independent research reports, which are appended to this submission.

The first looks at the nature, history and economic rationale for Schedule 4. It concludes that the legal framework regulating mining is already weaker than for other activities, but that Schedule 4 is a key part of it. Deletions, particularly by Ministers rather than Parliament, fundamentally undermine the Schedule because the “essence of protected status lies in the obstacles to its revocation”. Schedule 4 is viewed as an economically efficient legal mechanism that was arrived at after an exhaustive process and as such forms a social covenant designed to provide “durable protection”. Removing areas from the Schedule runs counter to this.

The second examines the figures offered by the Government to quantify the mineral, and therefore economic, potential of the proposals. It finds that the Government’s much used \$194 billion figure is “economically meaningless”. Using the Government’s own source figures, the report proposes a more meaningful estimate of just \$100 million return to New Zealand from mining in the areas of Schedule 4 proposed for removal – a one-off return equivalent to just \$36 per voter in New Zealand. It concludes that such a small return is unlikely to outweigh the economic, environmental and social costs of mining Schedule 4 areas.

The third assesses the potential impact of mining in Schedule 4 areas on the tourism industry. This impact is impossible to fully quantify, but is significant due to the scale of the tourism economy in New Zealand. The impacts can come from both real degradation of New Zealand’s natural environment and from perceived weakening of our tourism branding and reputation. Empirical studies illustrate the potential impact, which could be in the order of 1% of GDP – a figure similar to the current annual contribution of the entire mining and quarrying industry. It concludes that even if this economic risk did not eventuate, the economic gains from mining could not outweigh the non-monetarised losses to New Zealand of other inherent economic values.

Forest & Bird submits that, in the case of Schedule 4 areas, mining is inherently inappropriate regardless of potential economic benefit. The only economic situation Forest & Bird believes could justify reassessment of Schedule 4 areas is in a time of economic *necessity*, when a resource was required in the national interest and a Schedule 4 area was the *only* source of that resource. The current economic situation is a very long way from that scenario. The Government is reassessing Schedule 4 due to economic desire, not necessity; it is seeking resources that are available elsewhere in New Zealand; and in doing so it has completely failed to justify its actions economically, let alone in relation to conservation values.

More broadly, Forest & Bird is concerned that the Government’s policy objective to facilitate mining is focused on the areas of highest conservation values, rather than exploring potential on private and other Crown land in the first instance as is already allowed by law. We submit that the economic case for the Government to facilitate significantly more mining in New Zealand has not been made. However, if the Government is intent on facilitating more mining, it should start with prospecting private and other crown land, not conservation land, and leave Schedule 4 alone. It should also reform the regulatory controls on mining so they genuinely match the Government’s stated desire for all mining to be environmentally sustainable.

We question the assumptions that New Zealand is mineral rich; that exploiting mineral resources on conservation land can occur without environmental damage; and that mining has a large net economic benefit for New Zealand. The Government has not provided evidence or justification for these assumptions. The *NZ Herald* has noted “there is nothing in the stocktake about the possible economic upside, either in jobs or general benefits to GDP or direct financial gains for the Crown. The amounts the Government might expect as royalties from private companies exploiting non hydrocarbon deposits are likely to be small. The absence of an economic case, even theoretical, is an important omission.”² In contrast, the appended research reports confirm that the Schedule 4 mining proposals are not in New Zealand’s economic or social interest at all.

The Government’s proposals are led by a strong advocacy for mining. The discussion paper promotes the economic value of minerals and the mining industry in New Zealand while ignoring the economic costs and risks. Where evidence is presented to illustrate economic potential, it is selective and at times misleading. It also downplays the environmental and climate impacts of mining. Such biased analysis has no place in a Government discussion paper and is gravely disappointing to Forest & Bird.

We also challenge the Government’s broader economic strategy based on exploiting non-renewable natural capital – be it minerals from high value conservation land or water from our struggling rivers – and urge the Government to pursue a smarter, more sustainable and future-looking economic strategy.

The environmental impacts of mining

Forest & Bird asserts that all mining has an significant environmental impact, one that is often large-scale even in the case of smaller mines. Modern mining in particular tends to occur on a large scale to maximise economic return, and even with ‘responsible’ environmental mitigation techniques it causes unavoidable destruction and degradation of the environment. Small mines tend to apply lower environmental standards, increasing their relative impact on the environment. Mining is one of the most destructive developments that can occur on public conservation land, up with large dams and native forest logging.

Mining in conservation areas and in areas home to threatened species and important ecosystems usually has an even greater impact. There are many levels and types of environmental impact, all of which are well documented and well illustrated by past and current mining operations around the country. The type of mining will determine the particular set of real and potential impacts; and the type of mining is commonly determined by the geology of the location and the economic feasibility of mining methods. The significant direct impacts of mining operations include:

- Surface disturbance of the mine operation area, whether opencast or underground
- Soil contamination
- Water pollution and the downstream impact on water quality and aquatic biodiversity
- The loss of plant and animal species, habitats and ecosystems, sometimes irreplaceably
- The impacts and threats from large and often toxic tailings dams
- Destabilised landscapes, surface subsidence and downstream impacts of erosion and flooding
- The impact of access roads themselves, but also the pest and weed highways they form
- Climate change impacts from energy-intensive industry and the mining of fossil fuels

Current management regulation is insufficient to protect the environment, hence the need for Schedule 4 in core places. Ministers have claimed that the proposals are “a suite of measures to facilitate the environmentally responsible development of New Zealand’s extensive mineral estate”³ yet nothing in the

² http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10633882&pnum=0

³ <http://www.beehive.govt.nz/release/time+discuss+maximising+our+mineral+potential>

discussion paper seeks to improve the environmental responsibility of mining. If the Government is genuine in its distaste for open-cast mining and tailings dams on conservation land it should legislate to prohibit them.

While there are a number of well-known examples of mining operations wreaking havoc on the environment and conservation values – such as the fate of the *Powelliphanta augustus* snail on the Stockton plateau, the multiple pollution infringements of the Pike River and Globe Progress mines, and ongoing contamination and tailings problems from Coromandel gold mining – we present one case study below that is less well known.

Case Study: Te Puke Stone Enterprises & the Otawa Hochstetter's frog

Te Puke Stone Enterprises (TPSE), a quarry on conservation land near Te Puke, was issued a mining permit in 2006. Protection of the environment is managed through an access arrangement with the Department of Conservation (DOC) and by Environment Bay of Plenty (EBOP) and the Western Bay of Plenty District Council pursuant to resource consents and the Regional Water and Land Plan (Resource Management Act 1991).

Within the TPSE quarry area lives the genetically distinct Otawa Hochstetter's frog. This frog species is now confined to the two headwater tributaries and the lower Raparapahoe Stream (all within the quarry area). The species is now extinct from other streams in the general locality, where they have been recorded in the past 20 years.

The impact of TPSE's mining operation on the last remaining site of one of the world's rarest frogs illustrates the weakness of current laws.

Access arrangement

Protection of a 20m buffer zone alongside the Raparapahoe Stream is a condition of TPSE's access arrangement with DOC. Despite this, TPSE has destroyed native vegetation within the buffer zones. The average distance of earthworks from the stream edge is now 2-3 metres and even less in many areas.

When this was observed by DOC (approximately 18 months ago) it instructed TPSE to replant the buffer zones. This was never enforced and the latest verbal advice from DOC to Forest & Bird staff is that the buffer area can "rejuvenate naturally". The buffer zones are currently being colonised by the normal range of invasive weeds.

Resource consents

Resource consent applications lodged with EBOP have languished for long periods of time. An earthworks application dated 1998 has only recently been withdrawn. Two other permit applications dated 2001 and 2005 were only declined in mid May 2010.* During these lengthy periods, breaches of the Regional Water and Land Plan have occurred without any response from EBOP. These include native vegetation removal, inadequate storm-water and sediment control and side-casting of earthworks material into native bush.

Large amounts of earth associated with a significant slip at the entrance to the quarry have been pushed into the Raparapahoe Stream by TPSE. This resulted in an offence notice being issued by EBOP in October 2009. Forest & Bird has been unable to obtain a copy of the offence notice, despite several requests, however, the latest verbal advice from EBOP is that the slip is stable and would be left to "rejuvenate naturally". At this point no sediment control has been undertaken by TPSE and the normal range of weeds is colonising the slip material.

**The original submission stated: "EBOP has not issued decisions associated with consent applications to undertake earthworks and discharge to water dated 1998, 2001 and 2005". This situation changed during the submission compilation period so has been updated to accurately reflect the current situation at the submission deadline.*

2. Schedule 4 assessments

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?

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

The assessments of Schedule 4 break the integrity of the Schedule, disrupt a hard-won balance between conservation and mining that already exists in the law, and fail to recognise that it is the principle (not the scale of removal areas) that is important. The assessment detail is also woefully inadequate. The conservation values of Schedule 4 areas and the integrity of their conservation status are paramount – that is why they are included in the Schedule – and nothing has changed to diminish their values and status. National parks are still preserved in perpetuity; protected reserves and sanctuaries still protect crucial wildlife and ecosystems; and the Coromandel and Hauraki Gulf is still unique.

Schedule 4 protects areas of high value *regardless* of their mineral potential, not just because the value was once deemed to exceed the mineral potential. Whether we know or want to know more about mineral potential is irrelevant in this situation. *We submit that it is therefore utterly inappropriate to reassess all areas listed in Schedule 4, and that no area should be removed from Schedule 4.*

Balancing conservation and mining

As the appended independent research report explains, Schedule 4 was the culmination of a long debate and ended a long period of social unrest around mining's impact on New Zealand's environment. The economically efficient solution was to identify areas of New Zealand with such high conservation value that they should be completely protected from mining and to delineate them from other areas where mining could occur case by case provided environmental tests were met. The assessment of which categories of public conservation land should not be mined was therefore conducted in the process of creating Schedule 4. For example, the Schedule includes two types of reserves under the Reserves Act: nature reserves and scientific reserves. It does not currently include the other five types of reserves: scenic, recreation, historic, Government purpose or local purpose.

The assessment was not one of measuring mineral potential against conservation values in particular areas, and protecting those places where the latter won out; it was primarily a matter of assessing which conservation classifications are incompatible with mining, and prohibited mining in those places. However, the balance was inevitably a political compromise: not all areas of conservation value incompatible with mining have been included in Schedule 4. The creation of the Schedule itself sought to 'balance' conservation protection and mining potential.

Scale of proposed removals

The integrity of Schedule 4 is what is at stake. The Schedule's purpose is to protect core conservation areas from mining, but if the Government is willing to periodically remove areas from this protection simply because mineral potential is identified and desired, then that protection is drastically devalued. The appended research paper on the history of Schedule 4 explains this in more depth.

It doesn't matter if a whole national park or a small sector is being proposed for removal – the integrity of Schedule 4 is broken, the protection it affords to the whole is no longer reliable, and the integrity of the categories of land it protects and the Acts of Parliament they rest under is maligned. Mining even a tiny area of a national park is tantamount to poking a hole in the eye of the Mona Lisa – it may be small but it

irreversibly damages the integrity of the masterpieces that are our national parks and other areas protected by Schedule 4. National parks in particular are preserved and maintained in perpetuity. This basic tenet must not be massaged or eroded.

The assessment

The assessment of each major conservation unit covered by Schedule 4 is not only inappropriate given in most instances it is the category that is protected, not the particular place; but the assessment of conservation values is woefully inadequate, incomplete and obviously done in a great hurry. For example, others have noted that two of the areas in the Coromandel are described as "high priority site(s) for DOC in terms of species and habitat protection", but no information is given about what species or habitat values are being put at risk. The assessments are so broad and simple that they are inevitably incomplete. Numerous particular conservation, landscape, biodiversity, recreational and inherent values are ignored or glossed over.

DOC internal correspondence, obtained by Forest & Bird under the Official Information Act, shows that conservancy staff were given just a matter of days to provide information on the conservation values of each major conservation unit. There was no actual assessment undertaken, just a compilation of broad conservation values which are no different to those known when Schedule 4 was created. This is in contrast to the rosy assessment of mineral potential, which is critiqued in the appended independent research report on valuing mineral resources.

The assessment also fails to take account of a number of contextual elements. Conservation values sit in a global context: our protected areas are part of a global network, our biodiversity challenge is part of a global challenge, and our tourism economy relies on protected areas and wildlife in a competitive global market. Further, international and domestic trends are towards biodiversity and habitat loss. This is a massive challenge that has attracted significant investment from the Government and people of New Zealand. Despite this, the challenge grows. Continued biodiversity decline and loss of habitat mean that the areas in Schedule 4 are even more valuable for conservation than they were.

Notwithstanding the inherent inappropriateness of this reassessment, we note that the evaluation of relative conservation and mineral values, in order to propose continued protection or removal from Schedule 4, is entirely subjective. It does not apply any explicit criteria and therefore has no legitimacy.

We submit that the law be amended so that any future removals require an Act of Parliament rather than a Ministerial consultation process. This would align the legal status of the Schedule closer to the legal status of national parks.

3. Schedule 4 removals

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?

Forest & Bird opposes all proposed removals from Schedule 4. The Schedule protects core conservation *categories* from mining – so any area that remains in those categories should remain in the Schedule. The only hypothetical situation where a removal could be countenanced is where an area loses its conservation status, e.g. a national park is revoked by Act of Parliament or a wildlife sanctuary is reclassified to a lower status because the wildlife it was established to protect is no longer present or able to be reintroduced there. Such situations would be incredibly rare, and none are known to have occurred since Schedule 4 was established in 1991.

In reality, all protected areas covered by Schedule 4 still retain the high conservation values that led them to have high conservation status and be included in Schedule 4. Since this status means mining activity in these areas is deliberately foregone, the level of mineral potential is irrelevant to a reassessment of their inclusion in Schedule 4. Therefore it is inappropriate to remove any areas currently protected by Schedule 4 on principle.

In light of the above argument in principle, this submission briefly details the particular high conservation values of the areas proposed for removal for the purpose of illustrating the point that these areas remain as important to protect as they ever were. In some cases, it is even more important given the continued decline in biodiversity and habitat they protect, and the continued public interest in their protection.

Paparoa National Park

The discussion paper proposes to remove the ‘Inangahua Sector’ parts of Paparoa National Park from Schedule 4, mainly to access coal resources in the area. The discussion paper notes that the area has “generally high conservation values”, but proceeds to propose removing Schedule 4 protection.

Forest & Bird’s main objection to this proposal is that it fails to recognise the integrity of national parks and The National Parks Act 1980. All national park areas must be included in Schedule 4 in order to maintain the integrity to their purpose of “preserving in perpetuity”. *Removing Schedule 4 protection from an area of a National Park – not matter where or how small – irrevocably undermines the integrity of national parks.*

The four areas in the Inangahua Sector were added to the Park in the Forests (West Coast Accord) Act 2000, and as such their addition received the support of Parliament. Adjoining areas have also been proposed for addition to the Park since 1979, but additions to date have been piecemeal. One major step forward was the creation of the Paparoa Wilderness Area in the centre of the Paparoa Range, which creates a virtual bridge between the eastern and western sectors of the current Park. Ideally the Wilderness Area and other intervening areas would be added to the National Park to complete a geographically contiguous and ecologically integrated Park. There is contiguous native forest between all sectors of the Park.

Some have sought to diminish the value of the Inangahua Sector because it is not contiguous with the rest of the Paparoa National Park. However, the Park is non-contiguous *because* of mining. The vast bulk of conservation land in the Paparoa Ranges is suitable for being included in the National Park, but has been excluded to date primarily due to lobbying from development interests.

The Act of Parliament that added the Inangahua Sector to the Park was built on an independent review report of ex-Timberlands forests.⁴ The review panel assessed the areas' conservation values and concluded the following about these areas:

- Contains substantial areas (almost 80% of the forest) of unlogged lowland forest, with a significant proportion on limestone substrates.
- Include areas of lowland terrace beech forest (logged) in good condition and adjoining an area set aside to protect such protests (Fletcher Creek Ecological Area).
- High wildlife values, including threatened bird species (roroa/great spotted kiwi, kaka, kereru), and diverse forest on limestone substrates.
- All blocks adjoin more extensive areas of forest in protected area, and complement the forests within these areas.
- Perseverance and Whitecliffs blocks adjoin, and complement, the North Westland Wildlife Corridor; Pell Cree Block lies close to Coal Creek Ecological Area, and is part of an important low altitude link across the lower Inangahua valley.⁵

The review panel proceeded to conclude "Investigate as an addition to Paparoa National Park" as well as giving protection options if that did not transpire.⁶

The river terraces and foothills of eastern Paparoa National Park are blanketed in a thick layer of podocarp (rimu and kahikatea) and beech (red and silver) forest, watered by a healthy rainfall of 4-5 metres a year. As the discussion paper notes, nearly 80% of the Inangahua Sector is cloaked in original forest. Most of the rest is regenerating forest after past disturbance, often intact beech forests that have had large podocarp trees removed. It is not uncommon for areas of New Zealand's national parks, particular around their boundaries, to be regenerating from past practices that have impacted on them. Park-edge forests almost always provide essential habitat for wildlife in the national park.

In Paparoa's case, the Inangahua Sector is home to great spotted kiwi, kaka, kereru, weka, yellow-crowned parakeet and robin. Fernbirds live in the scrub and wetlands. The forests are crucial for feeding and sheltering in colder months for birds that live higher up the ranges at other times. The forest also contains the threatened fern *Asplenium cimmeriorum*.

Glacial action has carved out dramatic cliffs and sharp ridges, especially in the limestone substrate areas. River action has built broad terraces with majestic trees. It is very likely that any mining in this area will be open-cast rather than underground, resulting in significant destruction of the native forests and pollution of waterways.

Forest & Bird also notes that climate change is a major emerging threat to New Zealand's biodiversity, yet the main mining interest in the eastern Paparoa National Park is for coal, which will hasten climate change and its impact on New Zealand's unique and sensitive indigenous plants and animals.

Great Barrier Island

The discussion paper proposes to remove Schedule 4 protection from 705ha of Great Barrier Island's Te Ahumata Plateau. The island is part of the Hauraki Gulf Marine Park, which was instituted by Act of Parliament in 2000 in recognition of the "national significance" of conservation areas in the Hauraki Gulf. The Hauraki Gulf Marine Park is therefore akin to a national park for this marine area, and all the more

⁴ The full title being Report of an Independent Review Panel on the Conservation Values of Indigenous Forests currently management by Timberlands West Coast Ltd, November 2000.

⁵ Above report, page 127

⁶ Above report, page 128

important to Aucklanders because of the scarcity of national parks in the top of the North Island. This is recognised in a prohibition of mining in the Auckland District Plan.

The discussion paper describes the conservation values in these brief and simple terms on page 21:

Like much of the island, Te Ahumata Plateau is largely under regenerating shrublands, with some patches of remnant broadleaf forest. The plateau forms part of the contiguous sequence of regenerating forested areas along the spine of the island, which is one of the largest possum-free areas in New Zealand. Biodiversity values are not well known, but the native shrub daisy *Brachyglottis kirkii* var *angustior*, which is in serious decline, is found in the area. Great Barrier endemic species such as Chevron skink and the shrub daisy *Olearia allomii* may be present.

This is then summarised as “Regenerating vegetation; medium conservation value” in the table on page 10. We submit that this assessment is both woefully inadequate and greatly undervalues this area.

Biodiversity values

The discussion paper notes that the biodiversity values are not well known. Such a conclusion calls for more research into the biodiversity values so they can be adequately protected and restored, not a proposal for mining whereby unknown (and known) biodiversity values may be destroyed. Unfortunately, the rationalisation of DOC’s offices may result in fewer staff working on the island.

The discussion paper notes that the island is relatively unique in being possum free, which greatly benefits the speed and diversity of regeneration of indigenous vegetation and habitat. Great Barrier Island is also free of deer, mustelids (ferrets, stoats and weasels) and Norway rats. This is the primary reason why native fauna has survived there and is beginning to recover from the past 150 years of native forest clearance, as indigenous vegetation recovers and matures. The volcanic soil supports particular species and associations that make the island’s biodiversity unique, and very precious, including the endemic Great Barrier Island tree daisy that is in serious decline and a unique species of kanuka.

Threatened species

A number of threatened species would be put at risk by mining at Te Ahumata. Some of these are endemic to Great Barrier Island. Our threatened chevron skink & brown teal are just two of many species that will be pushed closer to extinction if mining operations start up in this area. On top of this, several other threatened forest and wetland birds will have their habitat destroyed, including black petrel, North Island kaka, banded rail, bittern, North Island fernbird and possibly Cook’s petrel.

The chevron Skink *Oligosoma homalonotum* is New Zealand’s longest lizard – a skink that can grow up to 30 centimetres in length. It lives in tree trunks, debris and burrows near streams in native forest. Less than 250 sightings have been reported since it was first described in 1906 – it is diurnal but does not bask in the sun like other skinks. It is considered “nationally endangered”. It shares Great Barrier Island with other reptiles including the Auckland green gecko *Naultinus elegans elegans* and the ornate skink *Oligosoma ornatum*, which are both in “gradual decline”. Mining operations on Great Barrier Island threaten to contaminate or destroy the chevron skink’s wetland home, which will push it closer to extinction.

The black petrel *Procellaria parkinsoni* has been recorded nesting on Te Ahumata Plateau. This threatened species is now extinct on the North Island and it only nests in relatively small numbers on the high peaks of Little and Great Barrier Islands.

The Great Barrier Island kanuka *Kunzea sinclairii* and Great Barrier tree daisy *Olearia allomii* are also endemic to the island. The daisy is sweet scented and grows to about one metre in height. The kanuka is a stunted

variety that forms part of the forest ecosystem. It also has the rare *Dracophyllum patens*, which is found only on Great Barrier Island and a few sites in the Coromandel. Other rare plants include the sun orchid *Thelymitra cyanea*.

The old mining areas on Te Ahumata Plateau drain into the nationally important Kaitoke Wetland. This large wetland is home to New Zealand's most endangered endemic duck, the **brown teal** *Anas chlorotis*. Only 1000 are recorded remaining nationwide, across just three areas. Great Barrier is the only location where the population of brown teal is not declining. It is also home to the banded rail, bittern and fernbird, which was one of our most common birds in the 19th century, but has been adversely affected by the widespread destruction of its natural wetland habitat.

Impact of mining

Te Ahumata Plateau would most likely be mined with open cast methods, completely eliminating the biodiversity-rich indigenous forest and shrubland ecosystems that have grown back since the last episode of mining 100 years ago. Even if most mining was through underground rather than open-cast methods, the access roads, tailings and large-scale mining activity generally would have a significant impact on surface vegetation and water. Mining would involve processing vast amounts of rock for minute amounts of silver. These impacts are not consistent with the landscape or biodiversity values of the island.

Te Ahumata forms the stunning backdrop to Great Barrier Island's main settlement, Claris. It is also highly visible from the air. The paper rightly notes that the plateau is part of "the contiguous sequence of regenerating forested areas along the spine of the island". Most visitors to the island for 'a natural semi-wilderness experience' will fly over Te Ahumata Plateau before landing at the island's main airport at Claris. The site of mining infrastructure and disturbance is not compatible with the tourism values of Great Barrier Island, which is currently an exemplar of the "100% Pure New Zealand" brand. Nature tourism is the mainstay of the Great Barrier Island economy and the major employer through most of the year.

Mining in the proposed area is likely to also impact on part of the Hirakimata-Kaitoke Swamp Ecological Area, which is one of the last four critical habitats for the nationally endangered brown teal (pateke).

Coromandel areas

Parakawai Geological Area near Whangamata

Parakawai Geological Area was gazetted as a geological area for its nationally important features in 1980, and is the only such reserve on the Coromandel Peninsula. It is famous for the columnar jointing in the exposed basalts, similar to Ireland's Giant's Causeway and Ohira Bay on Chatham Island. The columns are almost perfect hexagons. This draws many tourists and is very significant area to tangata whenua, Ngati Pu. The reserve has a kauri and rimu forest, with regenerating forests and shrublands on areas formerly mined. North Island brown kiwi, Helm's butterfly and the rare paua snail are present there. The reserve has high recreational use and DOC has invested in track upgrades and new bridges to make areas even more accessible. Many visitors come to walk, to see the rocks and use the swimming holes.

Otahu Ecological Area

Otahu Ecological Area was gazetted in 1976. It is very significant, as the 396 ha covers the entire catchment of the upper Otahu Stream. This area is the largest indigenous forest area left in the southern Coromandel that escaped the previous land clearance from mining and agriculture. The valley floor forests are dominated by emergent rimu, kahikatea and puketea and the ridges and hill crests by kauri and tanekaha over mixed podocarp/hardwood forest. The forest fauna includes the Hochstetter's frog, North Island brown kiwi, paua snail and long-tailed bat. The logging of trees and mining has significantly reduced the habitat of long-tailed bats in the area. Long-tailed bats like to roost in trees that are 100-600 years old, such as kauri and kahikatea, so any deforestation caused by mining means they'll be homeless for hundreds of

years. This area and the adjacent Parakawai Geological Area are classified as “outstanding” landscapes by Stephen Brown, one of New Zealand’s leading landscape architects.

The impact of mining activities on this area would be significant, as the Otahu and adjacent Wentworth valleys drain into Whangamata Harbour. This harbour has significant sedimentation problems from erosion from forestry activities in steep, high-rainfall areas of the harbour catchment. This sediment is accelerating mangrove spread in the harbour and threatening the new marina. The DOC land in the Otahu and Wentworth valleys is a significant area of low sediment yield and any change to that would have devastating effects on the harbour. Neither the regional plan nor the district plan have sufficient controls to address sediment from prospecting or mining activities in the catchment.

Hikuai/Broken Hills near Tairua

Broken Hills has 100-year-old regenerating kauri forest within Coromandel Forest Park, with abundant native birds, and threatened species including North Island brown kiwi, long-tailed bats and Hochstetter’s frogs. The area is popular for most of the year, with a DOC campground immediately adjacent. It is a popular recreation area for tramping, swimming, kayaking and historical mine walks. Landscape architect Stephen Brown has noted that this area has stunning prominent pinnacles and bluffs, and is an “outstanding” landscape.

The Broken Hills area drains into the Tairua River, and sedimentation from mining activities will have similar effects to those noted for Whangamata Harbour. Sediment is also threatening this harbour, its kai moana, tidal flats and marina, without additional sediment from mining.

Thames Conservation land

The conservation land in the hills east and north of Thames is covered by regenerating kauri/podocarp and broadleaf forest, most of this 50-100 years old. The proposed mining areas have high recreational use, and DOC walking tracks link this area to other popular recreation areas in the central Coromandel Range. Tracks from this area link to the new hut at Crosbies clearing and other popular tracks in the Kauaeranga Valley. This is one of few places on the Coromandel Peninsula where native forest extends from sea level to ridge line.

Mining and even exploration increases risks of flooding and the more lethal and destructive debris flows into Thames township. Millions of dollars have been spent on soil conservation and bridge raising and this could be jeopardised

Matawai (309 Road)

The Matawai forest includes some fine sections of young native forest that skirt Castle Rock, a notable landmark and significant in the history of the tangata whenua. The catchment area for the Matawai Stream runs into the Waiau River, and it is the source of 80% of Coromandel’s town water supply. This area is water-short in summer and mining activities there could have major consequences for Coromandel town, whose population triples in the dry summer months.

Tokatea-Kapanga (near Coromandel town)

The Tokatea-Kapanga area is steep, with predominantly regenerating bush and numerous small streams that feed into the Whangarahi River, which flows through Coromandel town. This area forms a magnificent backdrop to Coromandel town and has been identified as an outstanding landscape. The Kiwi Recovery Programme operates with the support of the local community and, unlike most kiwi populations, this is one of the few recovering populations of kiwi in the country.

Hauraki Hill (Jack's Point) in Coromandel town

This area is right in Coromandel town, adjacent to the main wharf, on Coromandel Harbour. It is covered in regenerating forest and is an area that has been planted with thousands of young kauri, as part of the Coromandel Millennium project – Kauri 2000.

Waiomu – Thames Coast

The Waiomu area is a mix of regenerating podocarp-broadleaf forest, with stands of regenerating and mature kauri forest within the Waiomu Ecological Area. The area has high recreational use, particularly into the Kauri Grove Track, and other popular walking tracks link to Crosbies Clearing and the Tapu-Coroglen Road.

Mining and even exploration increases risks of life-taking floods, which have occurred at Waiomu in the past. Mining activities, including de-watering the proposed mine site will have a major impact on the adjacent Waiomu Ecological Area, which includes the outstanding Waiomu Kauri Grove. The fractured nature of the rock at Monowai would make re-sealing the mine to prevent toxic acid mine drainage virtually impossible as was highlighted at earlier hearings to reopen Monowai. Millions of dollars have been spent on soil conservation and flood prevention in this area.

Tapu

The Tapu area is a mix of regenerating podocarp-broadleaf and kauri forest, with improving wildlife values. Local residents have been doing active forest protection for more than 20 years, planting native trees and carrying out rodent and mustelid control, with DOC doing animal pest control (possums and goats) and weed control (Pinasta Pine) on adjacent land since 1999. There, native forest and wildlife are recovering, with kiwi having been heard in the Te Kaka Stream.

Local people living on the Tapu valley floor would be directly affected by any changes from mining in the catchment, especially during any of the severe cyclonic rainstorms that frequent this area.

4. Schedule 4 additions

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?

Forest & Bird supports the proposed additions to Schedule 4. These areas all conform to the core conservation area categories listed in Schedule 4 of the Crown Minerals Act and therefore should be added.

Any proposed *additions* to Schedule 4 are of a completely different order to proposed *removals*. They in no way balance or offset each other, and the implication of the discussion document that they do is illogical and inappropriate.

Automatic addition

New areas that conform to Schedule 4 categories should be automatically covered by the Schedule. We understand that this was the likely intention of Parliament in 1997 when the Schedule was created.⁷ The Schedule lists *categories* of conservation status like “national parks”; not individual conservation units like “Abel Tasman National Park”. The intention was that any areas elevated to one of the categories listed in Schedule 4, or areas added to existing conservation units listed in Schedule 4, would be deemed as included in Schedule 4.

For example, Schedule 4 includes “1. All land within a national park held and administered under the National Parks Act 1980”.⁸ It is intended that all national parks, and all parts of each individual national park, are covered by Schedule 4. It should be therefore unnecessary to add a new national park (such as Rakiura National Park created in 2002, and added in 2008), or add new parcels of land added to a national park recently (such as the “Abel Tasman National Park recent additions” proposed for addition) to Schedule 4. The apparent drafting mistake that causes this problem must be amended to ensure that the Act is interpreted to automatically add such areas as Parliament intended.

We recommend a minor amendment to s61 of the Crown Minerals Act 1991 to clarify that the intention of the Act is to include or automatically add all conservation units covered by the categories listed in Schedule 4 of that Act.

Further additions

We also recommend that a Select Committee consider additional categories of protected land be added to Schedule 4. The appropriate additions would be those protected area categories that are in line with the 2000 resolution of the International Union for the Conservation of Nature and Natural Resources (IUCN) that mining be prohibited in IUCN Protected Management Categories I to IV.⁹ The vast majority of New Zealand protected areas conforming to Categories I to IV are currently included in Schedule 4, but some are not. The appropriate additions would likely include New Zealand’s national reserves, world heritage areas, marine mammal sanctuaries and most ecological areas. The appropriate categories to include should be examined by a Select Committee or other public consultation process.

⁷ The Parliamentary Commissioner for the Environment and the New Zealand Conservation Authority share this interpretation in their published submissions and likewise recommend that the ambiguity of automatic additions be rectified.

⁸ Crown Minerals Act 1991 Schedule 4: <http://www.legislation.govt.nz/act/public/1991/0070/latest/DLM247378.html>

⁹ Resolution 2.82 of the World Conservation Congress meeting in Amman, Jordan on 4-11 October 2000.

5. Areas for further investigation

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.

Forest & Bird is very disappointed that the Government has not sought to consult on where this research and investigation programme should *not* occur.

At the time of submitting, information on exactly where the research and investigation programme will be conducted has not been forthcoming. The discussion paper simply lists broad areas (e.g. “Central North Island”), and maps on the Crown Minerals website showing areas closed for permitting while the programme is conducted confuse further by including vast areas (e.g. Mt Aspiring National Park) that do not always match the list in the discussion paper or statements from Ministers. We therefore restrict our submission to broad principles, and some specific areas known to be part of the survey.

In principle, *we oppose the use of public funds to prospect for minerals on public conservation land* that, if mined, will primarily benefit private companies. Our opposition is most strong when the state-sponsored prospecting is for non-strategic minerals like gold and polluting fuels like coal. Mining companies have enough information to apply for permits to conduct their own prospecting at their own cost. It is unfair that \$4 million of public money will be used to subsidise private mining companies in this way at a time when the budget for conservation has been cut by \$53 million over four years.

Schedule 4

We most firmly oppose prospecting in Schedule 4 areas with a view to removing areas from the Schedule to allow mining. These include areas in Northland, Coromandel, Paparoa National Park, Rakiura National Park and potentially more areas within the broad, but ambiguous, descriptions given.

The law does not prohibit prospecting in Schedule 4 areas, but it does prohibit access for all significant exploration and mining. A number of companies have prospecting permits that spread onto Schedule 4 areas, but the companies know that mining access is prohibited in these areas. The Government’s proposed research and investigation programme includes a number of Schedule 4 areas, and it is being conducted with the express purpose of finding places to mine. This is unacceptable. It is one thing to conduct publicly-funded scientific research to better understand New Zealand’s geology and mineral resources; it is another thing to do that research with the express intent of looking for places in Schedule 4 to mine.

We note that Cabinet initially approved a research and investigation programme that expressly *excluded* Schedule 4 areas, despite Ministers’ earlier proposals to include them. Cabinet later reversed that decision to re-include these areas, for unknown reasons. We submit that Cabinet had it right the first time: that *any publicly-funded programme should not include Schedule 4 areas on principle*. Coromandel and Paparoa are discussed elsewhere in this submission, but we wish to discuss Rakiura National Park briefly.

Rakiura National Park

We utterly oppose the intention to remove areas of Rakiura National Park from Schedule 4 if mineral potential is found, and therefore we oppose a research and investigation programme with this intent. Our opposition is based on the arguments outlined earlier in relation to the integrity of Schedule 4 and the National Parks Act. We note that the minerals sought on Rakiura/Stewart Island include gold and rare earth elements. Geologist Stephen Leary has noted that it is geology that determines mining methods, and that

“without open-pit mining on Stewart Island it would be ‘physically impossible’ to extract \$7b of minerals [estimated to be accessible]”.¹⁰

Rakiura is a kiwi stronghold. About half of the 30,000 remaining Tokoeka kiwi species reside on Rakiura. Tokoeka were once found in Canterbury, Otago and Southland, but are now confined to the southern South Island and Stewart Island. DOC’s Kiwi Recovery Plan states this species is in ‘gradual decline’ and, noting that they have ‘no direct management’, they are expected to decline from 15,000 in 2008 to 12,500 in 2018.¹¹ Mining on Stewart Island would worsen this already poor situation.

Other public conservation land

We also note with alarm the other public conservation areas that are known to be included in the research and investigation programme, including areas in Northland being investigated for a ‘Kauri National Park’. We include one area below as an example of what conservation values are at risk from mining in conservation areas unprotected by Schedule 4. We suggest that the first areas for prospecting should be already modified lands, whether in private or Crown ownership, not public conservation lands.

Case study: Dun Mountain Ophiolite Belt, targeted in the research and investigation programme

The Dun Mountain mineral complex is geologically rare and is nationally important. Stretching from the Red Hills in Tasman and South Marlborough, through Nelson District and on to D’Urville Island, this rare mineral belt is not only geologically interesting, but the paucity of soils provides for a biologically important range of species across three ecological districts.

The geology of this region is complex, and the ultramafic zones meet the National Priority Three for protection: “to protect indigenous vegetation associated with ‘originally rare’ terrestrial ecosystem types...” It is highlighted within the Nelson Biodiversity Strategy as an area of national importance.

Concentration of minerals in the Dun Mountain Ultramafic Group is high enough to be toxic or severely restrict plant growth. Many endemic species extend throughout the zone, notably the dominant tussock *Chionochloa defracta*; as well as *Olearia serpentina*, *Astelia* and *Colobanthus* species. The nationally endangered *Scutellaria novae-zelandiae* is also present. Some species are also present at their southern limit in this range, as well as other threatened species, e.g. *Korthalsella salicornioides*, *Coprosma obconica*, *Pimelea tomentosa*, *Sophora longicarinata*, *Polystichum sylvaticum* and yellow mistletoe. Rare species like black maire are also represented.

Faunal species in the mineral belt include a wide variety of indigenous bird species, rare sightings of blue duck and lizards. A species of land snail, *Powelliphanta hochstetteri consobrina* is also present. Limestone features, such as the Maitai Cave, throughout the mineral belt also provide important habitat for other protected species. The mixed igneous and sedimentary rocks of the Patuki Melange support a range of forest types including beech-podocarp, and stunted beech, pink pine and mountain cedar.

Mining in this area would be inappropriate as the minerals are sparse and would require extensive open-cast mining to access. The resulting release of tailings and minerals into the associated rivers would cause localised pollution in both the waterways and Tasman Bay. Historic mines in the past highlight the damage that can be done, although the remnants of these smaller mines provide some cultural heritage. The area is well-known and used for recreation and has high scenic and amenity value. There is even a national cycle trail proposed for this area.

¹⁰ <http://www.stuff.co.nz/business/3509148/Govt-mining-figures-misleading-geologist>

¹¹ <http://www.doc.govt.nz/upload/documents/science-and-technical/tsrp60entire.pdf>

6. Facilitating development

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?

Forest & Bird is concerned that “facilitating development” of mining on public conservation land can only come at the expense of protected conservation values. Public conservation land outside of Schedule 4 is able to be accessed for mining provided legal tests are met under the Crown Minerals Act for an access arrangement and under the Resource Management Act for resource consents. Moves to weaken these tests and processes are unacceptable as they will further endanger conservation values. Such moves also run counter to Government claims we have stringent environmental controls that will ensure only ‘environmentally friendly’ mining takes place.

It is our experience that the environmental tests and processes under current legislation are too weak to adequately protect conservation values from mining in inappropriate places and from poor mining practices. In the light of the issues raised below, *we submit that Parliament should hold a Select Committee enquiry into mining regulation in public conservation areas and its impact on wildlife and the environment.*

Mining’s privilege under the current laws

The current legal framework for assessing approving mining operations on public conservation land is weak. It provides a privileged process for mining operations that is significantly different to the process for assessing and approving other extractive and non-extractive operations on the same land. While the tests and process under the Resource Management Act are the same, the tests and process under the Conservation Act and Crown Minerals Act are very different for mining and non-mining activity on public conservation land.

Assessment and approval of access to mine on public conservation land is controlled by the Crown Minerals Act 1991. Mining requires an access arrangement from the Minister of Conservation, but does not generally require a concession under the Conservation Act 1987, like all other commercial activities accessing or impacting on public conservation land, including low-impact, non-extractive activities like mountain guiding. This privileges mining in two ways of concern: the test against conservation values is much weaker, and the degree of public participation in decision-making is weaker. The legal test for a mining access arrangement in the Crown Minerals Act 1991 s61(2) is (emphasis added):

In considering whether to agree to an access arrangement in respect of Crown land, the appropriate Minister shall 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 test for a commercial concession in the Conservation Act 1987 is subject to s17U(3):

The Minister *shall not grant* an application for a concession if the proposed activity is contrary to the provisions of this Act or the purposes for which the land concerned is held.

We submit that access arrangements should be subject to a test similar to concession tests that prevent access arrangements that are contrary to the provisions of the Conservation Act and “the purposes for which the land concerned is held”. “Having regard” to these is insufficient to protect conservation values.

Public consultation requirements also differ between these Acts. The Crown Minerals Act 1991 s61 neither requires nor suggests public consultation on access arrangements. In contrast, the Conservation Act 1987 s17T(4) and (5) provide mandatory and discretionary public notification requirements. We submit that mining *access arrangements should be subject to public notification requirements*. Since most mining operations will have significant impacts, it would be appropriate to have notification thresholds that recognise this.

Boundaries

It is important to note that many conservation area boundaries in New Zealand have been set to deliberately exclude areas with mining potential. Extensive areas of the Paparoa Ranges worthy of inclusion in Paparoa National Park are excluded because of their mining potential. The eastern and western parts of the park remain disconnected for this reason. A decision of the Energy and Conservation Ministers in 2009 to give Crown Minerals the right to adjust conservation boundaries when conservation land is classified or reclassified, before the public is notified of the proposed boundaries, gives the mining industry additional privilege to determine protected area boundaries. These decisions are made without public scrutiny, however, a 2009 decision to exclude an area from the Oteake Conservation Park, despite its high conservation values and a recommendation by DOC for inclusion, illustrates how mining potential already means that conservation areas are regularly given a lower status than they deserve so mining can be more easily approved. This lowers the bar and results in poorer outcomes for conservation. Crown Minerals' special right to adjust boundaries should be revoked.

Joint ministerial approval process

Forest & Bird strenuously opposes the proposal. We note that the Parliamentary Commissioner for the Environment, the New Zealand Conservation Authority, the IUCN, the Tourism Industry Association of New Zealand have also rejected this proposal. We concur with these submitters' reasons why the Minister of Conservation must retain exclusive governance over access arrangements. The reasons are:

- Public conservation land is held in trust by the Minister of Conservation on behalf of the New Zealand public. It is for the Minister of Conservation as representative landowner to decide who should or should not have access to it.
- The framework of the Crown Minerals Act gives the Minister of Energy decision-making power over minerals, but the landowner decision-making power over land access. The principle underlying the Act is that the landowner – whether public or private – has a right to decline access. It is therefore the sole prerogative of the Conservation Minister to grant access on conservation land.
- The Conservation Minister's decision must have regard to the Acts governing the land in question (either the National Parks, Reserves or Conservation Acts). These Acts govern the appropriate use of that land and set the purpose for its protection. As the NZ Conservation Authority has noted, the landowner is "peculiarly competent" to assess the effects on the land, which are critical.
- The Conservation Minister can already have regard to other matters considered relevant, which could include the Energy Minister's priorities. The rationale for this proposal – to bring "national significance" and "economic benefits" into the decision – can therefore already be regarded. However, the landowner's primary consideration must be for the land's particular values.
- Finally, there is no justification given for this proposal. No evidence is presented that "national significance" and "economic benefits" are currently being disregarded. Indeed, the high rate of access arrangement approval and current number of mining operations on public conservation land indicate that there is instead justification to raise the bar to ensure mining on public conservation land does not threaten conservation values. Instead this proposal essentially lowers the bar.

7. Royalties fund

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.

Forest & Bird supports the use of some royalties from mining on public conservation land to enhance conservation outcomes, but such a fund should not replace core funding or pretend to offset the impact of mining. Any such funding must supplement, rather than substitute, core conservation funding. It could be used to restore conservation land damaged by past mining, but it must not be used as mitigation for the impact of current or future mining. The proposed design of the fund states it will not substitute core funding or be used for mining mitigation or compensation. However, the reason the fund has been proposed at this time and in this discussion paper, and the way it has been portrayed by Ministers, is concerning because it comes at a time when core conservation funding has been severely reduced and the fund is promoted as if it would 'offset' mining in Schedule 4 areas.

Conservation funding

The discussion document notes that a new fund will enable additional conservation activities in the following fair description of the funding context:

New funding for conservation since the adoption of the New Zealand Biodiversity Strategy (2000) has helped to maintain and enhance the protection of New Zealand's conservation assets. Despite the gains, however, broader negative trends require more attention. ... The existing contestable conservation funds are increasingly oversubscribed as more and more communities become engaged in conservation activities.

However, the proposed royalties fund comes in the wake of a large cut (\$53 million over four years) to Vote Conservation in Budget 2009 and continued in Budget 2010. These cuts included the cancellation of an existing, and popular, contestable conservation fund – the Community Conservation Fund of \$2 million per year. Forest & Bird strongly advocates the restoration of core conservation funding to adequate levels. The proposed royalties fund is no substitute for adequate core funding. Given the current funding context, the statement in the discussion paper that “[t]he fund would not impact on the money that DOC receives from the Crown for its conservation work” (page 34) is somewhat disingenuous.

We recommend that a restoration of core conservation funding is the only way to genuinely address the “broader negative trends”, i.e. the continued decline of biodiversity and degradation of ecosystems through habitat destruction and pest impacts.

Offsetting protection from mining?

Alarmingly, the proposed royalties fund is portrayed as somehow offsetting impacts of potential mining in Schedule 4 areas. The fund is proposed “[i]n order to ensure that conservation benefits from any mineral activity that might in future be allowed in Schedule 4 areas” (page 34). Further, when the area proposed for removal was reduced by Cabinet in February 2010, the minimum size of the fund was reduced from \$4 million to \$2 million per annum. The discussion paper rightly states that the fund should not “be used to mitigate the effects of modern mine sites or to provide compensation as appropriate for mining activities” (page 34), but the implication of the fund is that it is an attempt to offset the indirect impact of mining in Schedule 4 areas. We should not need to destroy conservation values in order to generate funds to attempt to restore them. Funding for mitigation or compensation, direct or indirect, can never fully replace the loss of conservation value: we cannot recreate original habitat like that which has taken thousands of years to

evolve and form; we cannot bring back species from extinction; and we cannot restore the wildness of nature once it has been modified.

We recommend that the Government proceed with providing a proportion of royalties from mining on public conservation land for conservation purposes, whether a contestable fund or a contribution to core conservation funding, but in no way linked to decisions on Schedule 4.

The scope and scale of the fund

Given the existing impact of mining on public conservation land and the scale of the “broader negative trends” in conservation, the minimum level of the proposed royalties fund should be expanded. If Government policies do result in an expansion of mining on public conservation land – notwithstanding our complete opposition to mining in Schedule 4 areas and concern at the less-than-adequate protection for conservation values from mining elsewhere – then it is also appropriate that the scale of the fund is increased. To these ends we propose that:

- Any new royalties fund should be a *minimum of \$4 million per annum*, as Cabinet initially agreed
- The proportion of royalties should be *50% (or more) of all royalties and levies from all mineral and hydrocarbon mining* (not just mineral royalties) accessed from conservation areas (including coal, oil, natural gas and coal-seam gas)
- The *fund should not have a maximum cap*

The design and administration of the fund

First, it is important to note that where mining impacts cannot be “avoided, remedied or mitigated”, or where they are incompatible with conservation values under the relevant conservation laws, the access arrangement or resource consents should be declined. The fund must not interfere with these legal tests.

The fund need not be restricted completely to conservation activity on public conservation land, given that endangered wildlife and degraded habitats exist throughout the country. However, mining on public conservation land often – with notable exceptions – has a higher impact than mining on other land and the fund should not be biased towards protection of conservation values on private land, which are often a legal responsibility of the landowner. The fund must be guided by conservation priorities.

The fund objective means it is essential that the Minister of Conservation be solely responsible for the appointment of the independent panel. It is inappropriate for the Minister of Energy to share this role. DOC is best placed to administer the fund as it currently administers a number of similar funds independent of their core funding and the department is uniquely placed to provide information on conservation priorities based on scientific evidence and in light of strategic plans such as the *Biodiversity Strategy 2000*.

The objective of the fund – to enhance conservation outcomes for New Zealand – is supported, although it is very broad and the effectiveness of the fund will come down to the criteria and final design. We stress that an essential element to enhancing conservation outcome is community engagement in conservation action, and to that end we submit that the fund should prioritise support for projects that engage the community, volunteers and not-for-profit groups in conservation projects. However, more clarity on the Government’s intentions is required before we can contribute further to the fund’s design. We offer to assist in the fund’s detailed design.