

He tono nā



**Te Rūnanga o NGĀI TAHU**

ki te

**MINISTRY OF ECONOMIC DEVELOPMENT  
DEPARTMENT OF CONSERVATION**

26 May 2010

## **1. EXECUTIVE SUMMARY**

- 1.1 The response of Te Rūnanga o Ngāi Tahu to the 'Stocktake of Schedule 4 of the Crown Minerals Act and beyond' focuses on concerns with proposals to promote mining on public conservation lands, in particular, the need for meaningful tangata whenua involvement in the application process; increased and improved monitoring of mining activities; the integrity and whakapapa of mining companies; and the real costs and benefits to the nation of these proposals. This is followed by responses to the specific proposals of the Discussion Paper. This response follows a Hui held at Te Wai Pounamu House (14 May 2010) between Ngāi Tahu and the Minister of Economic Development. This hui canvassed a range of matters, and the outcomes of these discussions and Te Rūnanga views are outlined below.

## **2. TE RŪNANGA O NGĀI TAHU**

- 2.1 This response is made on behalf of Te Rūnanga o Ngāi Tahu (Te Rūnanga). Te Rūnanga is statutorily recognised as the representative tribal body of Ngāi Tahu Whānui and was established as a body corporate on 24<sup>th</sup> April 1996 under section 6 of Te Rūnanga o Ngāi Tahu Act 1996 (the Act). We note the following relevant provisions of our constitutive documents:
- 2.2 Section 3 of the Act States:  
This Act binds the Crown and every person (including any body politic or corporate) whose rights are affected by any provisions of this Act.
- 2.3 Section 15(1) of the Act states:  
Te Rūnanga o Ngāi Tahu shall be recognised for all purposes as the representative of Ngāi Tahu Whānui.
- 2.4 The Charter of Te Rūnanga o Ngāi Tahu (1993) constitutes Te Rūnanga as the kaitiaki of the tribal interest.
- 2.5 Te Rūnanga respectfully requests that the Crown accord this response the status and weight due to the tribal collective, Ngāi Tahu Whānui, currently comprising over 44,000 members registered in accordance with section 8 of the Act .
- 2.6 Notwithstanding its statutory status as the representative voice of Ngāi Tahu Whānui Te Rūnanga o Ngāi Tahu accepts and respects the right of Papatipu Rūnanga and individuals to make their own responses to the Ministry of Economic Development and Department of Conservation. Te Rūnanga is aware that Te Rūnanga o Ngāti Waewae will be making a separate response.

## **3. GENERAL COMMENTS**

- 3.1 Much of the conservation land in Te Waipounamu comprises significant, and in some cases outstanding cultural values and landscapes for Ngāi Tahu. A cultural landscape consists of cultural layers including the whakapapa connections with the area, the history and stories of occupation, ancient trails (ara tāwhito), place names (wāhi ingoa), mahinga kai sites and resources, wāhi tapu and wāhi taonga (including

native species and important landmarks and features).

- 3.2 Proposals to increase the possibility to mine on conservation land are therefore met with caution, due to the potential adverse impacts on the mauri of the land, the wāhi tapu and wāhi taonga that lie within these areas, and the habitat of our remaining native species.
- 3.3 At the same time, however, it is important to recognise that the economic and social fabric of Ngāi Tahu culture is based upon mahinga kai and the sustainable utilisation of natural resources. Much of the Ngāi Tahu mātauranga (traditional knowledge), tikanga (processes and customs) and kawa (protocol and authority) relate to the practices and techniques associated with the sustainable harvest and extraction of natural resources.
- 3.4 Tangata whenua find it difficult to continue some of these practices because of the difficulty accessing traditional materials and indigenous species from within National Parks, due to restrictive policies and legislation. If mining is allowed to take place in National Parks, there should also be a re-examination of the legitimacy of current policies and legislation that restricts cultural practices which have minimal if any affect on conservation values. It would be inconsistent for the Crown to pursue options for mining within National Parks without addressing access to tangata whenua for traditional materials and indigenous species.
- 3.5 Given the extent of the Ngāi Tahu takiwā (see attached map), and the rangatiratanga of each Papatipu Rūnanga to determine matters within their own takiwā, this submission focuses on matters of general concern with the proposals to encourage mining on public conservation lands. Proposals relating to the Paparoa National Park will be addressed directly by Te Rūnanga o Ngāti Waewae, the Kaitiaki Rūnanga for this area, in their submission. Area specific matters are also made on behalf of Te Rūnanga o Kaikōura and Te Rūnanga o Makaawhio in relation to additions to Schedule 4.
- 3.6 ***Full involvement in assessing environmental and cultural effects of new proposals***
  - 3.6.1 Any permit application to mine within conservation lands needs to consider the effects on cultural values. The Department of Conservation's Treaty of Waitangi obligations under s.4 Conservation Act, as well as those contained within the Resource Management Act for local authorities, require a full assessment of effects on Ngāi Tahu values when determining access arrangements and resource consents in respect of mines. This needs to be provided for within DOC's standard operating procedures for access arrangements, as well as within local government RMA processes.
  - 3.6.2 Te Rūnanga notes the costs involved for Papatipu Rūnanga (in particular Ngāti Waewae and Te Rūnanga o Makaawhio on the West Coast) to assess proposals to prospect, explore and mine on conservation lands. Costs relate to the time taken to assess the effects of the proposal on cultural values. This can involve significant work including reading the lengthy and complex application documents, a site visit, discussions with Rūnanga members, possible meetings with the applicant and/or

the Department of Conservation, writing a Cultural Impact Report, responding to the Access Arrangement consultation process/submission writing for RMA matters, pre-hearing meeting/s for RMA matters, mitigation meetings with the applicant, the preparation and presentation of evidence at resource consent hearings, and if granted, monitoring of the cultural conditions of the consent.

- 3.6.3 Except for large mining applications where some of the work is paid for by the applicant, this work is predominantly resourced by Papatipu Rūnanga. This is considered inappropriate, as ensuring cultural values are protected from adverse impacts of mining operations is a requirement of all mining related legislation (including the Conservation Act, Crown Minerals Act and the Resource Management Act). Active protection of Māori interests is a fundamental principle of the Treaty of Waitangi. The costs incurred by tangata whenua in assessing mining proposals, especially those on public conservation lands, should be met by the applicant via the Crown as part of the application process. For example, via the Department of Conservation, through s.76 (1) (a) and (d) Crown Minerals Act 1991.
- 3.6.4 It is requested that the Ministry contact Te Rūnanga to discuss how these matters can be addressed in a proactive fashion in order that Papatipu Rūnanga can participate meaningfully in the application process, thereby ensuring that the impacts on cultural values are appropriately addressed, without cost to the Rūnanga.
- 3.6.5 Applications should contain sufficient information to enable Ngāi Tahu to assess how the adverse effects of the proposal can be avoided, remedied or mitigated in respect of the land in general (the mauri) including proposals for restoration of the land; whether any wāhi tapu or wāhi taonga will be directly or indirectly affected; how water quality will be protected both during and after mining has occurred; ecosystem and taonga species protection; and how potential adverse impacts on future generations will be addressed.
- 3.7 *Involvement in monitoring conditions on access arrangements and resource management consents***
- 3.7.1 Papatipu Rūnanga should also be resourced to participate in monitoring to ensure the cultural components of permit conditions are being adhered to. Again, this should be resourced through the Department of Conservation, via s.76 (1) (d) Crown Minerals Act 1991.
- 3.7.2 Currently, Te Rūnanga does not have confidence that there is sufficient enforcement of conditions on mining access arrangements and resource consents, especially given the infrequent monitoring occurring. Te Rūnanga is also concerned that when conditions are breached there are few direct financial consequences to the mining company, and therefore little incentive to rectify any breaches. Decreases in mineral values on the global market may result in increased operational costs and decreased compliance with the conditions pertaining to environmental matters. Te Rūnanga considers that lack of compliance and insufficient enforcement is unacceptable.
- 3.7.3 Te Rūnanga strongly advocate for increased resourcing to DOC, local government

and tangata whenua for regular monitoring of mining operations, as well as increased support to agencies to take prosecutions when conditions are breached. Te Rūnanga and the community can only have confidence in mining operations if conditions are being complied with. Lack of monitoring and enforcement of conditions undermines the consenting processes. Tangata whenua involvement in monitoring conditions of resource consents, mining permits and access arrangements will promote greater iwi and community confidence in mining company performance and compliance.

- 3.7.4 It is also proposed that final liability for mining operations should rest with the Ministry. This is appropriate given the risks of mining and the need to ensure there is increased accountability on the Crown agency receiving the benefits and responsible for the mineral permits.

### **3.8 Conservation Benefits**

- 3.8.1 Te Rūnanga has a clear expectation that all present and future mining proposals, especially those on conservation land, will result in a net conservation benefit. This means that the benefits of conservation gains (achieved through initiatives such as ecological restoration projects) must significantly outweigh the adverse impacts on conservation values that will result from mining activities. As far as practicable, restoration and environmental compensation projects must take place in as close proximity to the mining footprint as possible. This may need to take place outside the mining footprint for long term mining operations where restoration may not be possible within the permit area. The conservation benefits should also start accruing within a generation.

### **3.9 Integrity and whakapapa of mining companies**

- 3.9.1 Te Rūnanga considers that the past performance of mining applicants, particularly in relation to best practice and compliance, should be taken into account when considering applications to mine, and that this is an assessment criteria in any tendering process.
- 3.9.2 Mining companies operating within New Zealand should have policies in place to actively pursue and use best environmental practices available, in order that their cumulative net effect within a region is one of conservation net benefit. This should be a requirement for any mining company using public conservation lands.
- 3.9.3 It is also preferable that as far as practicable, income generated from mining related activities be retained in New Zealand rather than go offshore. To this end, Te Rūnanga recommends that, when assessing applications to mine, the Crown has regard to the extent to which the mining company (and associated service industries) are New Zealand owned and operated.

### **3.10 Alternative Sites**

- 3.10.1 The focus on public conservation lands for mining opportunities is questionable if the minerals are readily available on alternative sites. If minerals are found only within public conservation lands, and are of significant value, this may warrant further investigation. Otherwise, given the high cultural and conservation values

present, public conservation lands should be avoided.

### **3.11 Costs versus benefits**

- 3.11.1 The real costs of mining include the environmental and cultural values that are lost or degraded when mining takes place. This includes ecosystem services (water, soil, climate regulation and pollination) which are essential for both the environment and the economy to function. For Ngāi Tahu in particular, conservation lands typically contain a high concentration of culturally significant sites and taonga species and any loss of these is of great concern.
- 3.11.2 Almost by definition, mining is an invasive form of development and it has proven difficult to mine without causing significant environmental and cultural impacts. 'Key hole' mining such as that in the Pike River development is a relatively recent development and remains the exception rather than the rule. It is important for Te Rūnanga that the costs associated with environmental and cultural impacts are given due weight during the assessment of mining related applications (both under the RMA and Crown Minerals Act). This may necessitate a dollar value being attributed to the externalities caused by mining activities to ensure they are duly accounted for.
- 3.11.3 While it is acknowledged there are positive employment opportunities created by mining, there is concern about the limited long-term security of mining jobs, due to the changing global economic climate. Te Rūnanga is concerned that in order to overcome the threat of job losses, political pressure may be exerted to extend mining operations into new areas. If mines occur within public conservation lands, then extension into potentially more sensitive areas may occur. Accordingly, Te Rūnanga insists that there must always be a rigorous assessment and opportunity for public scrutiny before any additional conservation land is made available for mining.
- 3.11.4 Te Rūnanga is concerned that the income generating potential for New Zealand of mining operations may have been overstated. The economic benefit directly received from mining, via royalties, appears low. With many foreign owned mining companies, there is little economic benefit except for job creation. This increases the importance of ensuring that, as far as possible, mining companies are New Zealand owned and operated. Without that, the financial benefit from mining is considerably debateable, especially in light of what is being lost in exchange.
- 3.11.5 The cost to New Zealand's 'clean green' image is also potentially high. Mining on conservation lands, particularly National Parks and areas of high conservation values, is in direct conflict with the '100% Pure New Zealand' international marketing campaign. This campaign has recently received an injection of \$30 million in recognition of the importance of the tourism industry to the economy. In contrast, coal mining provided royalties of only \$1 million in the 08/09 year. The recent quote from the Prime Minister in respect to this boost to the tourism sector is noted as somewhat ironical: "We have the raw materials in our beautiful scenery...and now we have the funding to sell that message even more strongly all over the world" (Minister of Tourism, Media Statement 13/5/10).

- 3.11.6 While Te Rūnanga appreciates that there remains a strong international demand for high quality coal resources, it considers the contribution of coal mining to the depletion of the ozone layer globally is a cost that needs to be taken into account during the Stocktake of Crown Minerals on public conservation lands. Plans for the creation of new coal mining opportunities are at odds with New Zealand's commitment to reduce CO<sup>2</sup> emissions and Ngāi Tahu's own iwi management plan policies.
- 3.11.7 While Te Rūnanga acknowledges the need to explore alternative ways of generating income for the country, it is concerned that the costs of mining on conservation lands appear to outweigh the benefits. Te Rūnanga cautions the Crown to consider *all* costs before it promotes mining on conservation land. For Ngāi Tahu public conservation lands are important not only because they protect environmental and landscape values, but also because they have acted over many years to protect a range of Ngāi Tahu cultural values, such as mahinga kai areas. If these values are removed or degraded through mining related activities, it will prove difficult if not impossible to restore them for future generations.

#### **4. SPECIFIC PROPOSALS**

##### **4.1 Areas proposed for removal from Schedule 4**

- 4.1.1 The Paparoa National Park is within the takiwā of Te Rūnanga o Ngāti Waewae. Te Rūnanga understands that Te Rūnanga o Ngāti Waewae will be making a submission in respect of the proposal to remove parts of the Paparoa National Park from Schedule Four.

##### **4.2 Areas proposed for addition to Schedule 4**

- 4.2.1 Te Rūnanga o Makaawhio requests that the headland known as Heretaniwha Point, located at Maitahi/Bruce Bay in South Westland be added to Schedule 4, to protect it from prospecting, exploration and mining applications. The Rūnanga are strongly opposed to any investigation of the headland due to the area's significant historical and cultural value to their hapū, Kāti Māhaki ki Makaawhio. This headland was the point referred to in Māui's discovery of New Zealand, and is the "rereka wairua" or the spiritual leaping place of the departed. Te Rūnanga o Makaawhio would like to discuss their desire to protect this area with the Ministry.

##### **4.3 Further Investigation of other areas**

- 4.3.1 Te Rūnanga o Kaikōura are strongly opposed to the further investigation of the Tapuaenuku Complex in the inland Kaikōura Range. This area is of immense cultural significance to Ngāi Tahu, and as such this area has a Tōpuni status through the Ngāi Tahu Claims Settlement Act 1998.
- 4.3.2 Te Rūnanga o Kaikōura requests that the Te Tapuae o Uenuku Tōpuni site and associated lands, including the Ka Whata Tū Rakihouia Conservation Park, be added to Schedule 4 as an area to be protected from prospecting, exploration and mining applications.

#### **4.4 New Contestable Conservation Fund**

- 4.4.1 The proposed objective of the Fund is supported, on the proviso that this will not impact on funding for the Department of Conservation.
- 4.4.2 It is understood that this Fund will consist of 50% of royalties of all new mines on conservation land (not just from those areas which have been removed from Schedule 4). The \$10 million cap is considered paltry, however, especially in light of government funding being employed to undertake further investigations of mineral potential within conservation lands. It is considered that there is a need to increase royalties especially for minerals found within public conservation lands, with this money being used to enhance conservation values
- 4.4.3 Te Rūnanga is concerned that DOC's already meagre operating budget has been cut by \$53 million in this government's term. The Department's work, in particular in respect to predator and weed control, is considered essential for the recovery of native species. Cuts in funding have implications for the success of this work. The government needs to adequately resource protection of the values that make New Zealand so unique, especially if it is marketing a 100% Pure New Zealand.

#### **4.5 Approval of access arrangements**

- 4.5.1 Te Rūnanga strongly opposes the proposal for joint approval of the Minister of Conservation and the Minister of Energy and Resources for access arrangements on public conservation lands for mineral exploration or development.
- 4.5.2 The proposal weakens the purpose for which the public conservation lands are held. These lands are held for conservation purposes first and foremost, and to introduce a mining purpose for their use is contrary to the legislation.
- 4.5.3 A joint decision will weaken the Treaty responsibilities the Minister of Conservation has through section 4 of the Conservation Act – “to give effect to the principles of the Treaty of Waitangi”. This is significantly stronger than s.4 of the Crown Minerals Act, “shall have regard to the principles of the Treaty of Waitangi”. If the proposal is to proceed, Te Rūnanga asserts that the stronger Treaty clause should apply.
- 4.5.4 The current decision making process over access arrangements are held by the Crown. Ngāi Tahu's involvement in the decision making process needs to be strengthened so as to “give effect to the principles of the Treaty of Waitangi”. For example, a mandatory requirement should be introduced for the Minister of Conservation to consult with Ngāi Tahu prior to making final decisions on access arrangements within its takiwā. The areas held as public conservation lands are critical for Ngāi Tahu's cultural well being, and as a Treaty partner, it is considered that greater involvement in decision making is appropriate.

**5. CONTACT**

**5.1 Any queries in respect to this submission should be made to:**

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