LEGAL RESEARCH FOUNDATION INC.

AN OUTLINE OF MINING LAW

by

Dr. Kenneth Palmer
LL.M. Harvard, Sjd Virginia, Dip.T.P.

Paper presented at Auckland Law Faculty Seminar Series 1982
at University of Auckland

ISSN 0111 - 3410 ISBN 0-908581-25-4

AN OUTLINE OF MINING LAW

Introduction

Twelve years ago the Legal Research Foundation sponsored the Australasian Mining Symposium held at the University of Auckland. During the proceedings, seven distinguished speakers covered such topics as Canadian trends in mining and New Zealand comparisons, an era of change in New Zealand mining law having regard to the pending Mining Bill 1970 (which became the Mining Act 1971), deep-sea mining, engineering aspects of mining, conservation in mining in America, financial aspects of mining, and taxation questions.[1] The present paper is on a much more modest scale, being limited to the legal procedures applying to land mining in New Zealand, but many of the observations made in the 1970 Symposium remain valid today. One reference is made to the paper presented by Mr Warwick M. White who stated:[2]

> "Today New Zealand is witnessing the beginning of a new mining era which may well create a new dimension to the economy of this country. . . ."

(and at the conclusion of this paper, analysing the Mining Bill, the statement is made) -

> "Mining is a risky and hazardous industry and makes immense demands for capital expenditure, but in those instances where exploration is successful, the rewards are great. In New Zealand, however, the industry is still very much in its infancy and requires encouragement at all levels of activity and not just to the large heavily capitalised corporate body. It is abundantly clear that large scale mining operations in New Zealand will demand considerable overseas capital and this will flow into New Zealand inevitably as economically viable mining prospects are proved. The area in which encouragement is most needed is at the early prospecting stages to those individuals and local companies, prepared to spend their capital on the risky business of exploration with the certain knowledge that if they do find an ore body of economic mineral significance, they must sell out their rights or take in overseas capital to develop a mining operation worthy of the size of their find. Any departmental restriction on this concept will stultify prospecting in New Zealand by New Zealanders, quicker than anything else and leave the field entirely open to overseas companies to take over our mineral mining industry without any reasonable opportunity for New Zealanders to participate in the rewards that will inevitably result. While the new Bill has much to commend it, it is, I submit, aligned too much towards bureaucratic centralisation and, at the same time, favours the large overseas mining corporation to the disadvantage of local interests."

Having regard to the above statement as to mining risks and bureaucratic restrictions favouring the ultimate takeover by overseas companies, the nature of the legislation relating to mining in the broader sense is considered. One may comment that, as to the Mining Amendment Act 1981 (in force 1 January 1982), a further dimension has been added in giving the environmentalists an equal footing with the mining privilege applicants. Whether the added objection rights will only exacerbate the problem of any local person endeavouring to undertake mining, in favour of the well-financed overseas companies, is a further open question. The old days of staking a claim, obtaining a licence and starting to dig, are long gone. Certainly, if the miner requires the use of water, then the separate water rights procedures are another hurdle to be surmounted.[3]

I. MINISTRY OF ENERGY

To understand the evolution of Government control of mining and energy utilisation, it is desirable to note the structure of ministerial control. Under the former Mining Act 1926, administration was carried out by the Minister of Mines under the Mines Department and, under that Act, the issue of licences was largely a function of the Wardens Courts in the mining districts created and of the District Commissioner of Crown Lands in areas outside the districts. The 1971 Act abolished the warden system and transferred the granting of mining privileges to the Minister under a discretionary permit system. At that time, the Minister of Mines could also have been the Minister of Works and Development and possibly the Minister of Internal Affairs and the Minister of Lands, so that some co-ordination existed between the various departments. However, the rationalisation of energy control commenced with the Ministry of Energy Resources Act 1972 (passed by the Labour Government), whereby this new Minister was to advise generally as to utilisation of energy resources. The rationalisation was completed under the Ministry of Energy Act 1977 (passed by the National Government) under which this new Minister absorbed the functions of the former Minister of Mines and took over the administration in particular of the Mining Act 1971, the former Coal Mines Act 1925, the Petroleum Act 1937 and the Geothermal Energy Act 1953, along with other energy-related statutes.[4]

The main functions of the new Ministry were to prepare policies for the utilisation of energy resources, but having regard (inter alia) to both needs and conservation, international responsibilities, and environmental and other social considerations (s 11). As to minerals in particular, the Ministry had the function of "the development and regulation of the mineral industry in New Zealand" and, in particular, the duty to promote and encourage exploration and proper development of the resources (s 13).

The end result of this rationalisation is that the promotion of mining is under the control of the Minister of Energy, who is unlikely to also hold the portfolios of the Minister of Works and Development (who administers the Town and Country Planning Act 1977), the Minister of Local Government (who administers the Local Government Act 1974), or the Minister of Lands (who administers the Reserves Act 1977 and the National Parks Act 1980, and has the development functions relating to Crown land). One may conclude that the fragmentation of land use control or utilisation points to the solution adopted in England, namely the establishment of an overall Ministry of the Environment, with control vested in one Minister. One would expect that, if such overall control is possible in the U.K., then it should also be possible in a much smaller country such as New Zealand. However, the provisions of the Mining Amendment Act 1981, perpetuating a separate approval system for mining privileges outside direct territorial authority regulation under district planning schemes, indicates a continuation of the status quo indefinitely. Hence, in this paper, the need to identify the procedures which may be available to applicants, landowners and environmental groups, as the case may be.[5]

II. MINING ACT 1971

In this part, references to the Act are to the Mining Act 1971 (as amended 1981), and references to Regulations are to the Mining Regulations 1981. The Act came into force on 1 April 1973. As noted, under the Act, the former wardens court jurisdiction was abolished, and the power to authorise the taking and use of water for mining purposes was vested in the Regional Water Board.

The Act relates to "mining operations for any 'mineral'" and, although defined in s 5 to include any mineral, mineral substance or metal, under s 2 the Act does not apply to coal mining, petroleum mining or geothermal energy utilisation.

(a) Ownership of Minerals

Concerning the minerals coming under the Act, the Act does not interfere with ordinary rights of ownership, except as to the Royal metals, namely gold and silver, which are deemed to always have been the property of the Crown (s 6). Of course, a purchaser of former Crown land may be subject to the reservation (s 8) in favour of the Crown reserving minerals to its continued ownership.[6]

The Act reserves to the landowner the liberty to mine on his own property without any mining privilege or licence, but this privilege is subject to the right of the Governor General by order in council to declare it to be in the public or national interest that no mining at all shall be carried on in particular areas or for specified minerals (s 7).[7]

(b) Land open for Mining

As the Act does not significantly interfere with ownership rights, nor confer powers of compulsory acquisition, the system is to provide for the opening of land for prospecting or mining, if necessary without the consent of the landowner.

As to Crown land, all land including National Parks and Public Reserves may be declared open with the consent of the appropriate Ministers. Maori land may likewise be declared open with the consent of owners, subject to approval of the Maori Land Court but, again, the overriding power to declare land open without consent applies to Maori land equally (ss 21-38). The Regulations provide for forms of consent to be signed by landowners and, upon signature, these become irrevocable but subject to the rights of objection given to landowners in respect of conditions of actual prospecting or mining. Also, the owners retain the rights to compensation for damage, and royalty rights, unless the actual ownership of the minerals has been transferred by agreement.[8]

The power to declare land open for mining by order in council, against the refusal of the landowner or owners, is contained in s 37. The power of the Minister of Energy to recommend to the Governor General that an order in council be made depends on a finding that "he considers it to be in the national interest to do so".

A recommendation of the Minister could be open to review by the High Court as to whether the Minister acted on relevant ground, but otherwise there is no statutory objection or adjudication right given to the owner concerned. A power of this nature is necessary, in that there is no other provision whereby a private owner can acquire compulsorily the property of another person.[9]

(c) Protected Areas

As a general rule, as to minerals reserved to the Crown, Crown land, and land declared open for mining, no mining activity may be conducted on land under crop for the time being, within 30 metres of a building, structure or garden, or within an urban district concerning land allotments of less than 2,000 m^2 (ss 8, 25, 37, 66). Disputes over these questions are referred to the District Court and if necessary to the High Court (ss 237, 238). These provisions significantly protect the home owner, especially in a township such as Waihi.[10]

(d) Prospector's Rights and Exploration Licences

(i) Prospector's rights. In substitution for the former Goldminer's right, any person may for the asking obtain a right to enter Crown land to prospect and obtain samples (s 44-46). No objection rights are given, but the method of prospecting is limited to the use of hand tools and as little damage as possible is to be caused to the surface of the land (1981 Amendment).[11]

(ii) Exploration licences. A new licence introduced under the 1971 Act is the exploration licence which may cover land up to 500 sq km whether or not open for mining. The issue of a licence is subject to existing exploration licences, but, where held, does confer priority in respect of an application for a prospecting or mining licence (ss 59-68).

The formal application procedures to the Secretary of Energy, and issue of the licence by the Minister, apply, as later outlined (ss 104, 104A). Also, the application is subject to the consultation provisions with regard to local authorities, and may be subject to objection before the Planning Tribunal (s 126, 1981 Amendment).

The method and programme of exploration is to be approved by the Minister and evidence of the financial standing, technical qualifications and ability to carry out the programme must be submitted (Reg 11). The licence may be refused where there is adequate knowledge of the mineral resources or a substantial interest in mining by other

(e) Prospecting Licences

Following the 1981 Amendment, two types of prospecting licence are available, namely an ordinary licence for up to 4,000 ha, and a "limited impact prospecting" licence which envisages a more restrictive prospecting activity (s 48A).

The rights of the holder of an ordinary prospecting licence are extensive (s 55). The holder may enter upon land which is open for mining (probably with the consent of the occupier) and subject to licence conditions may in fact carry out all necessary prospecting work, removal of speciments and samples, and for this purpose erect and use buildings, plant, and construct roads and helicopter pads as necessary. The limited impact licence restricts the degree of work which can be carried out.

Having regard to the uses authorised upon the ground of a licence, the application procedures and rights of consultation and objection (inserted 1981) become important.[13]

Although the holder of a prospecting licence no longer has any automatic right to convert the licence to a mining licence, he does obtain priority over later applicants.

(i) Application procedure. The application is made to the Secretary of Energy, using the forms prescribed in the Regulations, including consent forms, and various obligations apply to marking out the land where below 40 ha, or submitting a survey plan or title definition where above that area. The Regulations require the applicant to submit an environmental assessment of the impact of the proposed prospecting operation, and an assessment form is available from the Mines Division. The adequacy or comprehensiveness of the impact report must depend upon the scope of the prospecting activity planned.[14]

(ii) Referral to Lands Department and Catchment Board. Where the method of prospecting will disturb the surface of the land by dredging or water use, the application is referred, by the Secretary, to the Commissioner of Crown Lands and to the local Catchment Board, and these bodies may recommend conditions to be attached (ss 26, 27, (Crown land and sea bed), 103B).

In particular, s 103B (4) provides that final conditions may relate to -

"(a) Preventing, as far as is reasonably practicable, the destruction of the surface of the land:

"(b) Providing, as far as is reasonably practicable, for the restoration of the surface of the land:

"(c) Preventing, as far as is reasonably practicable, any conflict with the purposes of the Soil Conservation and Rivers Control Act 1941 and the Water and

"(d) Preventing, as far as is reasonably practicable, the destruction of or damage to areas of established scientific, wildlife, fishing, or historic interest, or established scenic significance.

One complaint has been made by environmental bodies that they are t informed at this stage of prospecting licence applications and cannot, erefore, make submissions to the Commissioner or the Catchment Board to the appropriate conditions to be recommended. However, the iticisms are not warranted having regard to the largely technical ture of these conditions and the broader rights of public submission on subsequent or contemporaneous referral of the application to the rritorial authority. [15]

((iii) Territorial Authority consultation. Under s 103C (inserted 81) as to prospecting or mining licences, it is mandatory for the nister to refer the application, including the works programme and vironmental assessment, to the territorial authority, which is to use public notice to be given (Form MD13) and, where there is signifi- nt Maori interest, the authority is to give notice to the District ori Council and the local Maori Land Advisory Committee.

The public notice does not in itself invite submissions, nor does e section confer on the public any specific objection or submission ghts, but it is implicit in the duty imposed upon the Council to con- der the application and to report to the Minister (within 40 days such longer period as allowed by the Minister), that any public res- nse should be taken into account. Specifically, under s 103C (4):

"(4) The territorial authority shall consider the application and shall, within 40 working days after receiving a copy of the application or within such longer period as the Minister may in any case allow, advise the Minister of its opinion, having regard to the economic, social, and environmental effects of the proposal on its district, as to—

"(a) Whether or not the application for the mining privilege should be granted; and

"(b) The conditions that should be attached to the mining privilege if it were to be granted,—

and if the reply is not received by the Minister within that period the Minister may proceed to establish the conditions to be attached to the grant of the mining privilege.

"(5) The Minister shall consider the reply of the territorial authority and, after giving the applicant an opportunity to comment on the reply, shall have regard to those recommendations in dealing with the application for the grant of the mining privilege.

e public notice duty is not applicable to a limited impact licence (s 48A(4)).

This section providing for consultation and recommendations the territorial authority is important, in that it gives to the thority the opportunity to relate the prospecting proposal to the jectives and provisions of the district planning scheme, which

to the licence (s 4A). If the local authority does not actively take a stand at this stage, it may be difficult for the authority to raise any significant matters upon subsequent formal objection to the Planning Tribunal. Inaction initially may make any later change of mind more difficult to explain. [16]

(iv) Mandatory conditions. Whether or not conditions are recommended by the Commissioner for Crown Lands, the local Catchment Commission, or the territorial authority, it is mandatory for certain conditions to be imposed on prospecting licences pursuant to s 52. [17]

> **52. Conditions attached to all prospecting licences—** (1) Every prospecting licence shall be deemed to be granted subject to the following conditions:
> (a) That the licensee will vigorously and continuously carry out prospecting operations to the satisfaction of the Secretary;
> (b) That all minerals discovered be promptly reported by the licensee to the Secretary or an Inspector;
> (c) That all holes, pits, and trenches, and other disturbances to the surface of the land, made while prospecting, be filled in, unless otherwise directed by an Inspector;
> (ca) That all such steps as are reasonably practicable are taken by the licensee to prevent damage to areas of established scientific, wildlife, fishing, or historic interest, or established scenic significance;
> (d) That all necessary steps are taken by the licensee to prevent fire damage to trees and to prevent damage to livestock by the presence of dogs, the discharge of firearms, or otherwise; and
> (e) If the licence has been granted in respect of private land or Maori land, that security to the satisfaction of the Secretary be lodged to secure compliance with the conditions specified in this section.

In addition, the Minister may specifically impose conditions under s 103A (2) -

> "(2) On the granting of a mining privilege, the Minister may impose upon the holder of the mining privilege such conditions as the Minister thinks fit for the purpose of preventing, or reducing, or making good, injury to the surface of land to which the mining privilege relates or injury to anything on the surface of the land, or the disposal or discharge of any mineral, material, debris, tailings, refuse, or waste water produced from the exercise of the mining privilege.

Following the draft of the licence, provision remains for variation of the conditions (under s 103D) to correct errors or omissions and, at the request of the holder of the privilege, or on application by anybody proposing conditions, or at the Minister's own initiative. In effect,

the consultation procedures are followed afresh.

(v) Notice of proposed grant. The final stage involves the Minister giving to the applicant notice of the proposed grant, assuming it is to be allowed, together with notice of the proposed terms and conditions (s 104). Public notice is given of the proposed grant, which is available for inspection for not less than 40 days in the Office of the Territorial Authority and the newest office of the Inspector of Mines. In the end, if no formal objections are lodged to the Planning Tribunal, the Minister may issue the licence, although he retains the discretion at any time to decline the privilege (s 104A). Accordingly, until the licence is actually issued, the applicant has no certainty or real entitlement, other than any priorities which may be held arising out of an earlier exploration licence or a prospecting licence which has been renewed. The licence term is for three years with one right of renewal. The limitation on the term is designed to prevent companies or persons holding on indefinitely to the rights and priorities. [18]

(vi) Priority as to mining licence. Formerly, the 1971 Act conferred upon the holder of a prospecting licence the automatic right and entitlement to convert the licence to a mining licence, with no further public application or objection procedure. A fundamental change introduced under the 1981 Amendment is to delete the conversion right and to substitute merely a right to priority in respect of a mining licence application (s 57A). Furthermore, the applicant for the mining licence is subject to the same application, referral and objection procedures as faced in obtaining the initial prospecting licence. [19]

(f) Mining Licences

The Minister of Energy has the power to grant a mining licence, subject to conditions as he thinks fit in respect of any land open for mining (s 69). However, following the 1981 Amendment, a number of land preservation and environmental conditions are mandatory.

(i) Application procedure. The application is made in the prescribed form (MD5) to the Secretary of Energy, and must be accompanied by all necessary consents from landowners, and must include a programme of work and environmental assessment of the impact of the proposed mining operations. As in the case of a prospecting application, an environmental assessment form is available from the

Department, and should include details of access provision. The land concerned may not exceed 400 ha and the Minister may reduce the size in the grant. The area is to be marked out and a notice posted which is visible from a public road.[20]

(ii) Referral and consultation. As in the case of a prospecting licence, the Minister must refer the application to the Commissioner of Crown Lands, the appropriate Catchment Board, and the territorial authority for the area. As stated, these bodies may recommend conditions concerning protection of the land, and the territorial authority, after public notice, may advise the Minister as to whether, having regard to "the economic, social and environmental effects of the proposal", the application should be granted or not (ss 103B, 103C).

(iii) Ministerial discretion. Although the Minister has the discretion to decline the licence for relevant policy reasons, if the licence is likely to be approved, then s 69 (1A) states:

> "(1A) Before granting a mining licence under this section, the Minister shall have regard to -
>
> (a) the nature and extent of the mineral resource on or under the land and its relationship to other resources and industries in the area; and
>
> (b) the best and most efficient utilisation of that resource; and
>
> (c) any environmental and social factors involved in the development of that resource; and
>
> (d) the wise use and management of New Zealand's mineral resources."

Having regard to these provisions, it may be seen that the Catchment Boards and territorial authorities have an important role in fully informing the Minister as to the matters set out, and especially in respect of the impact or relationship of the proposed mining to district planning objectives for the area.[21]

The conditions which may be recommended by the catchment authority under s 103B (4) to prevent destruction of the surface of the land and to provide for restoration, and prevention of environmental damage generally are supplemented by the Minister's powers under s 103A, to impose conditions as to preventing unnecessary injury to the land and concerning disposal of waste including water wastes.

Subject to the objection rights to the Planning Tribunal, and time involved in those procedures, the Minister is directed to dispose of the application within 12 months, although the period may be extended by the Minister for special circumstances. As the Kopara Sawmilling case notes, this directive is designed to prevent applicants unduly tying up land for indefinite periods, to prevent competition by other persons.[22]

Where issued, the mining licence may be for a period up to 42 years and, subject to conditions as to a programme of work and expenditure, and a bond may be required to ensure restoration obligations are carried out (s 108A). The decision can be reviewed by the High Court.[23]

(g) Rights of Mining Licence Holder and Planning Obligations

Subject to the terms and conditions attached to a mining licence, the licence confers on the holder substantive development and land use rights in accordance with s 87. In essence, the holder may work and mine the land, take and remove materials, and "do all acts and things that are necessary to effectually carry out mining operations on or under the land". With regard to ownership, the holder of the licence becomes entitled to ownership of all minerals lawfully mined, subject only to obligations to pay a royalty to the landowner or occupier.[24]

As to the scope of "mining operations" authorised under s 87, the definition of these operations in s 5 extend the meaning to include not only the working of the land or subsoil, but also the construction of all necessary roads, buildings, dwellings and other works related to the operations. The "lawful use" of water for the purpose is included, but the lawful use will depend upon the separate grant of a water right by the regional Water Board (or the Planning Tribunal upon appeal).

As can be inferred from s 87, the substantive land use rights prima facie directly conflict with the system of planning control under the Town and Country Planning Act 1977. In the wellknown decision of Stewart v Grey County Council,[25] the Court of Appeal ruled that the licensing system under the Mining Act 1971 envisaged and conferred upon the Minister the exclusive power to grant licences, and the licences were not subject to any town planning control or district scheme regulation. Accordingly, the territorial authority had no direct powers of enforcement for land use or buildings carried out contrary to the planning scheme zonings. The Stewart case was decided under the 1953 Planning Act, but in Kopara Sawmilling Co v Birch,[26] Davison CJ applied the same ratio to the interpretation of the Town and Country Planning Act 1977. The 1977 Act indicated that, as the Crown was bound to observe regional planning schemes,

then at least provision at the regional level would bind the Minister as to the issue of mining licences. This possibility was distinguished by the Chief Justice, who indicated that, as there was no effective power of enforcement of the regional scheme, the Minister was not bound to observe any operative scheme. Whether one agrees with this reasoning or not - and, with respect, the reasoning must be considered doubtful - the matter has been placed beyond doubt by s 4A of the Mining Act:

> **2. Town and Country Planning Act 1977 not to apply—** The principal Act is hereby amended by inserting, after section 4, the following section:
>
> "4A. Except as specifically provided in this Act, nothing in the Town and Country Planning Act 1977 shall apply to the granting and lawful exercise of any mining privilege granted under this Act."

As there is no specific provision in the Mining Act relating to the effect of a regional scheme nor a district scheme, it is clear that the Minister's powers are not subject to any regional or district planning scheme. Hence, the need for the territorial authority to take an active part in the consultation procedure under s 103C, especially as to regulation of proposed buildings and works related to the mining venture. If no conditions are imposed on these matters, the holder of the privilege retains the right to erect plant and buildings in any position, without any control over size or appearance, subject only to possible conditions imposed by the Minister on the grant. The territorial authority retains no direct powers or rights to regulate or approve buildings and plant other than concerning matters of safety and construction as regulated by building by-laws, and the continuing obligations to obtain building permits. [27]

(h) Planning Tribunal Inquiries

As already stated, a major change introduced from 1 January 1982, pursuant to the 1981 Amendment, is to remove the former restricted right of objection to the Magistrate's Court (now the District Court), and to transfer the jurisdiction to the Planning Tribunal. Under the former procedures, the inquiry was primarily as to the validity of an objection rather than as to the substantive merits of the application and, due to the right to convert a prospecting licence to a mining licence, many difficulties arose with regard to the scope of evidence admissible on an objection to the prospecting licence.[28] In the Gold Mines of New Zealand case, namely Environmental Society Inc. v Patterson,[29] Speight J ruled that evidence should be admitted as to both prospecting and mining envisaged, with such evidence extending to any matters which could be considered relevant to the proposed activities. Due to the change in

procedures deleting the right to convert a licence, the scope of evidence admissible on an objection to a prospecting licence will necessarily be more limited than the type of evidence admissible concerning a mining licence application. These distinctions are relevant to the detail to be included where an objection is lodged. The rights are set out in s 126.

(i) Objection notice right. The right to formally object to the Planning Tribunal exists for 20 working days after the date of public notice by the Minister under s 104 that he proposes to grant a mining privilege. The privileges covered include an exploration licence, a prospecting licence, a limited impact prospecting licence, and any mining licence. The notice procedure and standing conferred is set out in s 126 (1)-(4):

> "126. (1) Within 20 working days after the date on which public notice pursuant to section 104 of this Act has been given of any application for a mining privilege, any person or body specified in subsection (2) of this section may object to the application or to any proposed conditions attached to the application by lodging a written notice of objection in the prescribed form, stating the grounds of the objection, with the Registrar of the Planning Tribunal.
>
> "(2) The following shall have the right to object under this section:
>
> "(a) Any person or body affected by the grant of the mining privilege:
>
> "(b) The territorial authority for any district adjacent to the district in which the land to which the application relates is situated:
>
> "(c) Any local authority (as defined in section 2 (1) of the Local Government Act 1974) in whose area or district the land to which the application relates is situated:
>
> "(d) Any body referred to in section 103B (2) (b) of this Act:
>
> "(e) Any body or person representing some relevant aspect of the public interest:
>
> "(f) In relation to any proposed conditions attached to the application, the applicant.
>
> "(3) A copy of the notice of objection shall be served on the applicant and on the Secretary either before or immediately after it is lodged with the Registrar.
>
> "(4) On receipt of the copy of the notice of objection, the Secretary shall forthwith forward a copy of the application for the mining privilege, including the work programmes and any environmental assessment, and the proposed conditions to be attached thereto to the Registrar of the Planning Tribunal.

As to the time limit for lodging an objection, the Planning Tribunal probably has the jurisdiction to extend the time where no other party is prejudiced by the waiver. The authority could also give directions as to service on other persons likely to be affected. [31]

The category of persons entitled to object under subsection (2) extends to a person or body "affected by the grant", which should be interpreted as a "person likely to be affected" should the grant be carried into operation. The wellknown legal standards for claiming to be affected would apply, namely that the person or body should establish an appreciable effect related to land use or enjoyment or economic benefit, different from the effect likely to be experienced by the public generally. Accordingly, neighbours and persons having a particular right or interest in using the land or working nearby may claim to have a sufficient interest to obtain standing. [32]

As to the ground in paragraph (e): "any body or person representing some relevant aspect of the public interest", the interpretation of the Planning Tribunal in the Remarkables Protection Committee case should be adopted, namely that "representing" indicates a body or person "standing for" as a matter of purposes or objectives, and goes beyond the interest of a particular individual alone. [33]

(ii) Nature of Inquiry. The function of the Tribunal upon receiving an objection, is set out in s 126 (5) (6):

> "(5) On receiving an objection under this section, the Planning Tribunal shall inquire into the objection and the application for the mining privilege and the proposed conditions to be attached thereto and for that purpose shall conduct a hearing at such time and place as it may appoint.
>
> "(6) For the purposes of conducting the inquiry, the Planning Tribunal shall have all the powers, duties, functions, and discretions conferred on it under Part VIII of the Town and Country Planning Act 1977, other than those under sections 150, 151, 152, 153, 155, 157, 159, 162, 163, and 164 of that Act.

As indicated, the role of the Planning Tribunal is one of a general inquiry into the application as well as into the objections, and there can be no presumption in favour of either the applications or the objections. Whether a mining privilege should be granted will be a matter of weighing up all the factors and coming to an overall judgment in the circumstances. [34]

(iii) Persons entitled to be present at the inquiry as set out in s 126 (7) (8):

> "(7) The following may be represented by counsel or otherwise, and may call evidence on any matter that should be taken into account in the inquiry:
> "(a) Any body or person specified in subsection (2) of this section:
> "(b) The Minister of Energy.
> "(8) Where an environmental impact report has been required in respect of any matter before the Planning Tribunal under this section, and the Commissioner for the Environment or an officer of the Commission for the Environment has prepared an audit of that report, he may be called by the Planning Tribunal to appear before it and give evidence in respect of his audit.

Subsection (7) confers substantive rights of appearance upon the persons or bodies specified in subsection (2), and on the Minister of Energy, whether such persons have filed formal objections to the Tribunal or not. However, if a formal objection is not filed, the scope of inquiry or relief may be limited to the originating documents. The evidence or submissions of the persons not filing objections could only be taken into account in assessing the application for the privilege and the objections lodged.[35]

(iv) Criteria for inquiry and evidence. A major improvement under the 1981 Amendment is the inclusion of particular criteria against which the application, objections and proposed conditions may be assessed. Formerly, no criteria were indicated and serious doubts and inconsistencie arose in practice. The criteria as stated in s 126 (9) are as follows:

> "(9) In conducting any inquiry under this section the Planning Tribunal shall have regard to—
> "(a) Whether the land should be used for mining operations:
> "(b) Whether the site of any proposed ancillary works is suitable:
> "(c) The economic, social, and environmental effects of the grant of the mining privilege:
> "(d) The matters specified in section 3 (1) of the Town and Country Planning Act 1977:
> "(e) In relation to mining licences, the matters specified in section 69 (1A) of this Act:
> "(f) Such other matters as the Planning Tribunal may consider relevant in any particular case.

Where the application concerns a mining licence in particular, the further matters in s 69 (1A), which the Minister must consider in any event, are imported:

> "(1A) Before granting a mining licence under this section, the Minister shall have regard to—
> "(a) The nature and extent of the mineral resource on or under the land and its relationship to other resources and industries in the area; and
> "(b) The best and most efficient utilisation of that resource; and
> "(c) Any environmental and social factors involved in the development of that resource; and
> "(d) The wise use and management of New Zealand's mineral resources."

The statutory intent with respect to the criteria is clearly to blend the planning objectives for the district, as reflected in any regional planning scheme and in the district planning scheme to the need to utilise minerals in situ, having regard to the nature and extent of the mineral resource, the best and most efficient utilisation of the resource, and the wise use and management of New Zealand's resources overall.

Hence, the evidence admissible may relate to any of the matters stated, and the Tribunal will be faced with the task of balancing up the criteria and issues and will be deciding in the end on the merits as to whether the licence should be approved or not. In particular, where the mining will have detrimental environmental consequences, the wise use and management of New Zealand's mineral resources overall may become a crucial factor. Where the resource is not available elsewhere and a need or demand for the resource is proved, then the mining proposal may be approved notwithstanding that it is clearly contrary to regional and district planning objectives.[36]

The reference to economic and social effects in subsection (9) (c) indicates that due weight is to be given to the employment potential and economic benefits which may arise from the grant.

The matters of national importance, referred to in paragraph (d), are not given any special priority in respect of the other paragraphs, and no presumption can necessarily be raised that the declared matters of national importance must be given greater weight than the other issues.

In the end result, the Planning Tribunal submits a written report to the Minister, and the report is final, subject to appeal on a question of law. The provisions are contained in s 126 (10)-(14):

> "(10) On completion of the inquiry, the Planning Tribunal shall prepare a written report on the objection and on whether, in the light of that report, the application for the mining privilege should be granted, and, if so, the changes, if any, that should be made to the relevant conditions attached thereto, and shall submit the report, together with such recommendations as it considers proper to make in the circumstances, to the Minister.
>
> "(11) At the same time as the Planning Tribunal submits its report to the Minister, it shall send a copy of the report and its recommendations to each objector and the applicant.
>
> "(12) Subject to subsection (13) of this section, no appeal shall lie from any report or recommendation of the Planning Tribunal under this section.
>
> "(13) Where any party to any proceedings under this section before the Planning Tribunal is dissatisfied with the report or any recommendation of the Planning Tribunal or of the Chairman sitting alone in accordance with section 135 of the Town and Country Planning Act 1977, as applied by subsection (6) of this section, as being erroneous in point of law, he may appeal to the High Court by way of case stated for the opinion of the Court on a question of law only and the provisions of subsections (2) to (11) of section 162 of the Town and Country Planning Act 1977 shall, with any necessary modifications, apply in respect of that report or recommendation in the same manner as they apply in respect of a determination of the Planning Tribunal under the Town and Country Planning Act 1977.
>
> "(14) Where there is an objection to the Planning Tribunal under this Act and an appeal to the Planning Tribunal under the Water and Soil Conservation Act 1967 relating to the same subject matter, the Planning Tribunal may, at its discretion, hear the objection and the appeal together.

As may be noted, the right of appeal on a point of law extends to findings of facts or inferences drawn from the documents and evidence before the Tribunal.[37] The right to have a joint appeal hearing as to a water right application indicates an intent to facilitate the procedures where a water right is also required for the mining venture.

(v) Implementation of report. Once the report is received by the Minister, and subject to any appeal on a question of law, the Minister's function is set out in s 126 (15):

> "(15) Subject to section 104A of this Act, on receipt of the report and recommendations of the Planning Tribunal, the Minister shall act in accordance therewith in making any decision on the application for the mining privilege."

The reference to s 104A is to the discretion held by the Minister to decline an application at any time. However, the Minister's discretion under s 104A could be limited by steps taken by the Minister, indicating that an application would be granted without any change of mind, and clearly the Minister could be required to justify any refusal of an application where recommended by the Planning Tribunal and not opposed at any stage by the Minister or his Department. A refusal would need to be based upon "relevant grounds", and may be subject to "legitimate expectations" indicated to the applicant by the Minister. [38]

Where the Planning Tribunal recommends the issue of a licence and the imposition of particular conditions, then the Minister must follow or adopt the recommendations, but the duty to "act in accordance therewith" would not prevent the Minister from adding conditions which were not inconsistent or clarified the expression of conditions. In effect, the Minister is not required to adopt precisely the recommendations, but to act consistently with the report. Where concerning a Crown application, the Planning Tribunal in fact makes a decision binding upon the Minister.

On hindsight, a simpler system to accommodate mining objectives with town and country planning objectives would have been to remove any immunity of mining activities from regional and district scheme control but to apply certain additional criteria to the Council and Planning Tribunal consideration of applications for mining privileges. However, for historical and political reasons relating to the division of functions between the government departments, this solution has not been adopted and the duplicate system has prevailed. Considered as a land use, mining is given a prominence which it probably does not deserve, and the applicants for mining licences are subjected to more rigorous procedures generally than other persons utilising land or resources.

(vi) Variation of conditions. As indicated, under s 103B, conditions may be varied from time to time upon application by the licence holder, or upon application by the Minister or any body which recommended the conditions. Except where corrections of errors and omissions are involved, the same consultation, referral and objection right procedures are followed. Further conditions could be imposed in respect of the variation, but the conditions could not extend to actual cancellation or substantial curtailment of existing privileges not subject to variation. [39]

(i) Dealings with mining privileges

Under the Act, provision is made for surrender of a privilege, forfeiture for breach of conditions, removal of buildings upon termination, approval of tribute agreements, dealing with the privilege as a chattel interest, and generally mining privileges are recorded by the District Land Registrar.[40] The privileges have full effect whether or not recorded on a certificate of title. The mining registration system is intended to confer certainty as to ownership and for that purpose to require entry of the mining licence on any relevant certificate of title (s 142).[41]

As to mining privileges preserved under the Mining Tenures Registration Act 1962, the rights accorded to licensees, including the right to freehold land (not being Maori ceded land) remain (ss 151, 247).[42]

A general right to compensation is given to the owner and occupier of any land for all loss or damage caused by the exercise of a mining privilege (s 220). The amount of compensation is determined in default of agreement by the Land Valuation Tribunal. [43]

As a general rule, it is an offence to carry on a mining operation without being duly licensed, but an exemption is made in favour of the owner of land who can do mining on his own property (s 41). The exemption is subject to the Minister's power to recommend an order in council preventing mining in all areas without a licence (s 7).[44]

(j) Water Right Applications

As already stated, the jurisdiction under the Mining Act 1971 conferred on the Minister of Energy does not extend to authorisation of any water right required for the mining purposes.

Where a water right is necessary, either to take water, dam natural water, or discharge water or waste into other natural water, the ordinary water right application procedures apply. [45]

Now that the consultation and objection procedures have been reformed under the Mining Act 1971, it is no longer necessary nor proper to oppose on a water right application matters concerning the merits of the mining privilege application itself. 46

As the Catchment Board (which will probably be the Regional Water Board) is consulted as to the issue of a mining privilege pursuant to s 103B, the Catchment Board will have its rights to recommend conditions and to object to the Planning Tribunal against the issue of the mining licence. In essence, the refusal of a water right should be based upon matters relevant to the objectors under the Water and Soil Conservation Act 1967, and water right conditions should be limited again to the objectives of that statute. On the other hand - to the extent that the Clutha Dam case (Gilmore v National Water and Soil Conservation Authority) indicates that the end use of water is a relevant consideration - it does allow, within limits, the merits of the mining privilege to be considered. 47 The possible conflict or duplication of objectives is provided for in allowing for a combined appeal and inquiry before the Planning Tribunal (s 126 (14)).

III. COAL MINING

Considering pending proposals by the Government to develop further State coal mines, brief mention is made of the procedures under the Coal Mines Act 1979 (hereafter referred to as "the Act").

A significant feature of coal mining in New Zealand is the extensive State coal mining operation.

(a) State Coal Mines

The Minister of Energy has extensive powers under Part IV of the Act to establish State coal mines, and may acquire compulsorily land for the purpose. The right of acquisition would be subject now to the Public Works Act 1981, which lists works for the production of energy as essential works. In the event of doubt as to whether this category applied to a coal mine, the proposed development could be declared an essential work by order in council pursuant to s 3 of that Act. 48

Where land has been acquired by the Crown for a State coal mine, or rights of use obtained, under s 20 the Minister may, in his discretion, grant to any person a coal mining right "notwithstanding anything in any other Act" and, under s 109, all land set apart for a State coal mine may be dealt with under Part V of the Act. The Minister is empowered to construct and operate the State coal mine, and it is clear that the powers

constitute a separate code of authorisation and are not subject to any regional planning scheme or district planning scheme control, as to the land use. However, to the extent that s 116 of the Town and Country Planning Act 1977 requires "the construction or undertaking of any public work by the Crown" to be designated in a district scheme or to obtain planning consent, it could be argued that the obligations under s 116 apply. However, the Coal Mines Act 1979 is a later statute and in accordance with the principles enunciated in the Stewart case (supra) it is more likely that the Crown is not subject to any planning scheme regulation or obligations.[49] Pursuant to s 102 (3), the Minister is merely obliged to give public notice of intention to open and work a new State coal mine, to give notice to the local authority concerned, and to consider any submissions received. There is no further objection or inquiry right conferred on any person or party. In practice, the Minister may adopt the government guidelines requiring an environmental impact report to be prepared by the Department and placed before the local authority and persons affected, prior to commencing operations.[50]

(b) Other Coal Mining Rights

As a general rule, coal found on land owned by a private person belongs to that person, unless reserved to the Crown or disposed of by agreement. All mining operations require a licence.[51]

The owner may apply for a coal prospecting licence or a coal mining licence. As to the latter licence, it is mandatory to consider environmental factors and the general development and conservation of New Zealand's energy resources (s 41). The system for objection rights is similar to that which formerly applied to mining, prior to the 1981 Amendments. Any person may object to a proposed grant, without a status qualification, and the applicant may also object as to conditions.[52]

The objections are referred by the Minister to a District Court judge for investigation (s 68) and inquiry is primarily as to whether the objection should be allowed in full or part. No specific criterion is set out, and the inquiry does not expressly extend to the granting or not of the application. The role of the judge is to report on the merits of the objection and, after consideration of the report, the Minister of Energy retains the right to make the final decision to approve or decline the licence.[53]

Under s 20, the Minister's power is to issue a coal mining right "notwithstanding anything in any other Act", and the right of the holder extends to all acts and things necessary to carry out the coal mining operation (s 55).

The terms "coal mine" and "mining operations" are defined (s 2) to extend to "all activities related to the mine, including the erection and use of machinery, dams and buildings connected with the operation". Accordingly, to the extent that these activities, buildings and uses are authorised, the territorial authority has no planning control under the district planning scheme. It may be noted that, under this Act, "mining operations" does not extend to the construction of dwellings for workers, whereas dwellings are authorised under the Mining Act 1971.

Any buildings erected would be subject to the issue of a building permit according to the Council by-laws. The Minister has no power to issue a water licence, and application for a water right would be made to the Regional Water Board in the ordinary manner, or to the National Water and Soil Conservation Authority in respect of State coal mining.[54]

Rents are payable to the landowners where coal is taken, and compensation rights are conferred as to damage.[55]

IV PETROLEUM ACT 1937

An essential feature of this Act, administered by the Ministry of Energy, is the vesting under s 3 of all petroleum in the Crown as to ownership. There is no provision for payment of compensation to the unfortunate land occupier. In essence, the Minister may license the prospecting and extraction of petroleum products, but where petroleum is extracted from the ground the ownership is held by the licensee, subject to the payment of royalties to the Government. (s 18).[56]

(a) Prospecting Licences

The Minister has a discretion to grant prospecting licences, upon conditions. The licensee has certain rights to enter on private land, with or without consent of the occupier, but is under a duty to interfere as little as possible with the occupation and use of the land (s 7).

As to planning obligations, some doubt must exist as to whether or not planning consent may be required, if the extent of the exploration is such as to amount to a use of land. Section 7 (3) states that nothing in the Act or a prospecting licence shall "exempt the licensee from his obligation to comply with the requirements of any other Act or Regulations that may affect or apply to any operations carried out under the prospecting licence". Prima facie, there appears to be no exemption from planning obligations.[57]

If the holder of a prospecting licence discovers petroleum, and the holder has the capacity to carry out mining effectively, then the holder has the right to be granted an actual mining licence over an area of land which is reasonably adequate to enable mining "in accordance with recognised good oil field practice" (s 11).

The statutory provisions do not give any other indication of relevant criteria to be considered by the Minister. There are no objection rights conferred on any other person or body, but the Government environmental impact report procedures are applicable.

(b) Mining Licences

The Minister has the power to grant a mining licence, in his discretion, for petroleum (s 12). The licence is granted for an initial term and then a specified term. The statutory intent is to require the holder to actively carry out the work programme or to lose any priority rights to other applicants. The Minister must approve a work programme "in accordance with recognised good oil field practice", which emphasises the financial aspects in particular, but no other specific environmental conditions are required by the Act.[58] Once again, the rights of the licensee in relation to planning control obligations under the district scheme are not entirely clear, as s 14 (3) indicates that the licensee is not exempt from the "requirements of any other Act or Regulation that may affect or apply to any operations carried out under the mining licence". It would appear that planning consent is necessary for any permanent drilling sites not authorised under the district scheme zoning.[59]

The Minister retains special powers to postpone development of petroleum discoveries, to revoke licences or reduce prospecting or mining areas where required by the national interest. The Minister may direct that petroleum be refined within New Zealand (s 19) and generally may control the transfer of licences between parties (s 22).

A power of compulsory acquisition is conferred under s 35 (at the request of the licensee, as if the land was required for a public work). This power would be subject to the Public Works Act 1981 and it would be necessary for the particular work to be declared "an essential work" under that statute. Some doubt exists as to the power.[60]

(c) Pipe Lines

Pursuant to Part II of the Act (as substituted by the Petroleum Amendment Act (No 2) 1980), extensive powers are conferred upon the Minister at the request of any private or public applicant, to authorise the construction of a pipe line for conveyance of natural gas and petroleum products (s 50).

The application is referred to the Minister, who must have regard to the public interest, the financial ability of the applicant, and the effect of the construction on national park or public reserve land. If necessary, the Minister may appoint a commission of inquiry and the Planning Tribunal, or a judge thereof, could be appointed for this purpose (s 54). 61

Having regard to the powers of the holder of a pipe line authorisation under s 68, which confers an absolute right to construct the pipe line, to operate, renew and repair the line , "notwithstanding the provisions of any other Act, regulation, by-law, certificate of title, or other authority", it is clear that the Minister's powers are not subject to compliance with any regional or district planning scheme, nor Council by-law or regulation. On the other hand, these other planning documents are not irrelevant and could be properly considered by a commission of inquiry in determining whether or not to recommend to the Minister the grant of the application. The Minister's obligation is to duly consider the application and to have regard to any recommendation by the commission, but the Minister's decision is final and is not limited by the recommendations (s 55).

V. GEOTHERMAL ENERGY ACT 1953

Under this Act, the sole right to tap and use geothermal energy is vested in the Crown (s 3), but no actual transfer of ownership occurs under this vesting of utilisation rights. In fact, compensation may be payable to a landowner where an existing bore is required by the Minister to be closed in the public interest (s 12).

Within the City of Rotorua, the Rotorua City Geothermal Energy Empowering Act 1967 delegates to that Council equivalent powers to regulate the taking of geothermal energy. 62

Until the decision of the Court of Appeal in Keam v Minister of Works and Development [1982], 63 doubt existed as to whether the 1953 Act conferred an exclusive right on the Minister to authorise the taking of geothermal energy without a further water right licence from the Regional Water Board or the National Water and Soil Conservation Authority. That decision construed the Water and Soil Conservation Act 1967 to take priority and to require a water right in addition to obtaining a licence from the Minister. The 1981 Amendments to the Water and Soil Conservation Act confirm the ruling of the Court.

Accordingly, as to future geothermal energy use, the lack of criteria and safeguards under the Geothermal Energy Act against undue exploitation of this energy resource may be mitigated and balanced by the more general concern under the 1967 Act to weigh up more carefully the advantages of the energy use as against the likely disadvantages and detriment to the environment resulting.[64]

CONCLUSION

The outline of mining law does not cover every aspect of the statutory provisions in the areas considered, nor does it cover uranium resources coming under the Atomic Energy Act 1945. The greatest emphasis has been given to applications under the Mining Act 1971, to alert the reader to the substantial changes to procedure following the 1981 Amendment. The continued lack of any direct regulation under district planning schemes requires a knowledge of the consultation and objection rights in order to ensure that the duties faced by an applicant are appreciated and that the rights afforded to landowners and environmental groups are understood. In time, precedents may be set for the approval of particular types of mining, and standard conditions will no doubt be applied.[65] In many cases, special scientific knowledge will be required to ensure that conditions imposed are adequate and capable of enforcement. For many sound social and economic reasons, the granting of prospecting and mining licences should be encouraged. Townships such as Thames would never have existed had the hurdles faced by a present-day applicant been in effect last century. Provided that applicants, landowners, and objectors act with a degree of responsibility and reasonableness, the statutory provisions should promote the public good.

Footnotes

1 1970 Australasian Mining Symposium, Collected Papers (Legal Research Foundation, $2).

2 Supra, p 24, 42 respectively.

3 The 1981 Amendments result largely from submissions made by the Environmental Defence Society to the relevant Ministers. See Application by Amoco Minerals N.Z. Ltd, Planning Tribunal (No 1 Division) Report, 17 August 1982 (D917, 939) (recommending grant of prospecting licences for Coromandel Peninsula subject to conditions and exclusion of a specified scenic coastal area).

4 Ministry of Energy Act 1977, First Schedule.

5 The overriding provisions of the National Development Act 1979 could be invoked by the Minister of National Development as to a major mining proposal (public or private), but that Act will not be analysed in this paper. As to legal issues thereunder, see CREEDNZ Inc v Governor-General [1981] 1 NZLR 172 (Ministerial pre-determination); Environmental Defence Society Inc v South Pacific Aluminium Ltd (No 3) [1981] 1 NZLR 216 (urgency factor);(No 4 Decision) ibid, 530 (Environmental Impact Report adequacy).

6 Crown rights prevail whether or not noted on the land title: Miller v Minister of Mines [1961] NZLR 820; [1963] NZLR 560.

7 Mining Act 1971, s 41 (2) (owner's exemption subject to order under s 7). The scope of the owner's right to authorise mining by another person is not clear.

8 Cf Kawau Copper and Sulphur Developments Ltd v District Land Registrar [1980] 2 NZLR 529 (reservation of minerals under transfer creating interest in land).

9 For principles relating to a discretion, see cases, supra n 5. Also Stewart v Grey County Council [1978] NZLR 577, for mining on land declared open by order.

10 Roads, bridges and railways are also protected: ss 110, 111. Civil compensation is payable for all damage caused to other land or property: s 220. Disputes as to land in privileges may be settled by the District Court: s 237A.

11 The Mining Regulations 1981, Regs 5-7: licence may be issued by Post Office.

12 Except as to protected areas (s 66), a right of entry on land is granted under s 39, allowing extraction and removal of samples, predominantly by hand.

13 The Amoco Minerals case, supra n 3, is important as the first major Tribunal decision under the 1981 procedures.

14 Mining Act 1971, ss 53, 54, 107, 112-115. Environmental impact reports should be reasonably informative: Amoco case, supra n 3; Environmental Defence Society Inc v South Pacific Aluminium Ltd (No 4) [1981] 1 NZLR 530. Also, infra n 50.

15 Conditions recommended under s 103B are not mandatory and may be amended

or declined by the Minister (or Tribunal). Cf s 26 (6) - Ministerial conditions allowing entry on Crown reserve land binding.

16 The public notice (MD13) could have added a statement inviting public submissions by a set date (e.g. 21 days). The Council must notify the United Council as to mining licence applications.

17 The Tribunal may impose more onerous conditions; Amoco decision, supra n 3, at D 933. The Minister has a general discretion as to conditions under s 48 (1).

18 Kopara Sawmilling Co Ltd v Birch [1982] NZ Recent Law 115 (issue 4), referring to Willis v Gardner [1917] NZLR 602.

19 Cf Environmental Defence Society Inc v Patterson and Gold Mines of NZ Ltd [1981] NZ Recent Law 355. The case supported the need for the Amendments in 1981 to reform procedures.

20 Mining Act 1971, ss 69-71, 104, 105. The programme of work (s 84) and environmental assessment obligations may be relaxed by the Secretary of Energy, Reg 25, and Kopara decision, supra n 18, issue 4. Also Amoco decisions, supra n 3, (Land notice on post ruled adequate).

21 Actual mining conditions recommended could be site-specific and differ substantially from prospecting conditions, but the recommendations are not binding on the Minister or the Tribunal.

22 Kopara, n 18.

23 Kopara Sawmilling Co Ltd v Birch (1981) 8 NZTPA 166, 169 (interpreting s 133); also [1982] NZ Recent Law 115.

24 Mining Act 1971, s 85, 87.

25 [1978] 2 NZLR 577, CA.

26 Supra, n 23.

27 Where the land site is physically unsuitable, the Council could decline to issue a permit under s 641, Local Government Act 1974 (subject to right of Appeal to the Tribunal).

28 Cf Brooker v Mahakipawa Gold Fields Ltd [1935] NZLR s 111; GLR 607.

29 [1981] NZ Recent Law 355.

30 See Amoco decision, supra n 3, at D 928: ". . . the end in view (mining) must be borne in mind along with all other relevant considerations."

31 Time extension and service directions under TCPA, ss 154, 154A.

32 Blencraft Manufacturing Co Ltd v Fletcher Development Co Ltd [1974] 1 NZLR 295; 5 NZTPA 33.

33 Remarkables Protection Committee v Lake County Council (1980) 7 NZTPA 273; Nature Conservation Council v Southland County Council (1980) 7 NZTPA 464. Also Environmental Defence Society v South Pacific Aluminium Ltd (No 3) [1981] 1 NZLR 216, 220.

34 See Environmental Defence Society v Patterson [1981] NZ Recent Law 355, 356, per Speight J. Also Amoco decision, supra n 3, at D 927.

35 The Commissioner for the Environment could be called as a witness by a party: Amoco case, supra n 3.

36 See Amoco case, supra n 3, at D 928.

37 Meadow Mushrooms Ltd v Paparua County Council (1980) 8 NZTPA 76.

38 As to the legitimate expectation doctrine, see Smitty's Industries Ltd v Attorney-General [1980] 1 NZLR 355, 367-370 (proper reasons to be given for declining application).

39 Mining Act 1971, ss 103D, 103E. The variation power overcomes doubts raised in Kopara case [1982] NZ Recent Law 115, 118 (issue 7 - deletion of conditions preventing raising of finance upheld).

40 Ibid, ss 116-125, 131-134, 138-151. As to default, cf Bell v Gibson [1934] NZLR s 207.

41 Registration removes the element of uncertainty of title following the Miller decision, supra n 6.

42 Ibid, ss 151, 247. See New Zealand Insurance Co Ltd v Attorney-General [1980] 2 NZLR 660 (historical basis of tenure of licences, granted in perpetuity).

43 Ibid, ss 216-222. For assessment principles, see Dijkmans v Howick Borough [1971] NZLR 400, 409 (restoration costs recoverable); Tawharanui Farm Ltd v Auckland Regional Authority [1976] 2 NZLR 230, 235 (land potential applied); Drower v Minister of Works and Development [1980] 2 NZLR 691 (land inflation factor awarded). As to the valuation of a mine itself: R v Buller County [1956] NZLR 726 (Hoskolds profits method applied).

44 As noted, supra n 7, the extent of the owner's rights to authorise mining is uncertain.

45 Water and Soil Conservation Act 1967. For transitional provisions for existing water privileges at 1 April 1973, see Water and Soil Conservation Act 1971, ss 1-34.

46 Cf Amoco Minerals (NZ) Ltd v Hauraki Regional Water Board (1982) 8 NZTPA 344, 346 (water rights conditions).

47 Gilmore v National Water and Soil Conservation Authority (1982) 8 NZTPA 298, 303, 304. Cf Amoco cases, supra n 3 and n 46.

48 Coal Mines Act 1979, s 105; Public Works Act 1981, ss 2, 3, 22.

49 Stewart case, supra n 25. The obligation to observe an operative regional scheme is uncertain; cf Kopara decision, supra n 23.

50 See D.A.R. Williams, Environmental Law (1980), 238-257, 303-310 (impact report obligations, guidelines and procedures).

51 Coal Mines Act 1979, ss 5, 7.

52 Ibid, ss 61-57.

53 Cf Environmental Defence Society Inc v Patterson [1981] NZ Recent Law 355, supra n 29.

54 For procedures, supra nn 45-47.

55 Coal Mines Act 1979, s 53 (rent) , 83 (compensation).

56 The Minister may exempt a mining operation from all or any provisions of the Act: Petroleum Act 1937, s 2 (2). As to application procedures: Petroleum Regulations 1978.

57 Cf s 14 (3), infra, n 59.

58 Ibid, s 14A. The environmental protection procedures, supra n 50, would normally apply.

59 The separate code interpretation appears to be negated: cf Stewart v Grey County Council [1978] 2 NZLR 577; Kopara case, supra n 23, at 169-171.

60 Prima facie, the Public Works Act 1981, s 3, cannot be applied to a private applicant under s 35, as not being for a public work purpose.

61 Petroleum Act 1937, ss 50-67. The environmental protection report procedures would normally apply, supra n 50.

62 Strictly the delegation occurs under s 9A, Geothermal Energy Act 1953 (as from 31 January 1968).

63 (1982) 8 NZTPA 240, affirming Tribunal decision, 7 NZTPA 11, disallowing test boring at Rerewhakaaitu.

64 Cf NZ Maori Arts and Crafts Institute v N.W.S.C.A.(1980) 7 NZTPA 365. Also O'Shannessy v Rotorua District Council; N.Z. Maori Arts & Crafts Institute v Rotorua District Council (1982) Planning Tribunal - D 706 - specified departure planning application to install heat exchanger on residential property adjacent to Whakarewarewa to follow outcome of by-law application to Council.

65 The Amoco decisions, supra nn 3 and 46, provide sound precedents for standard conditions applicable to prospecting licences and water use.