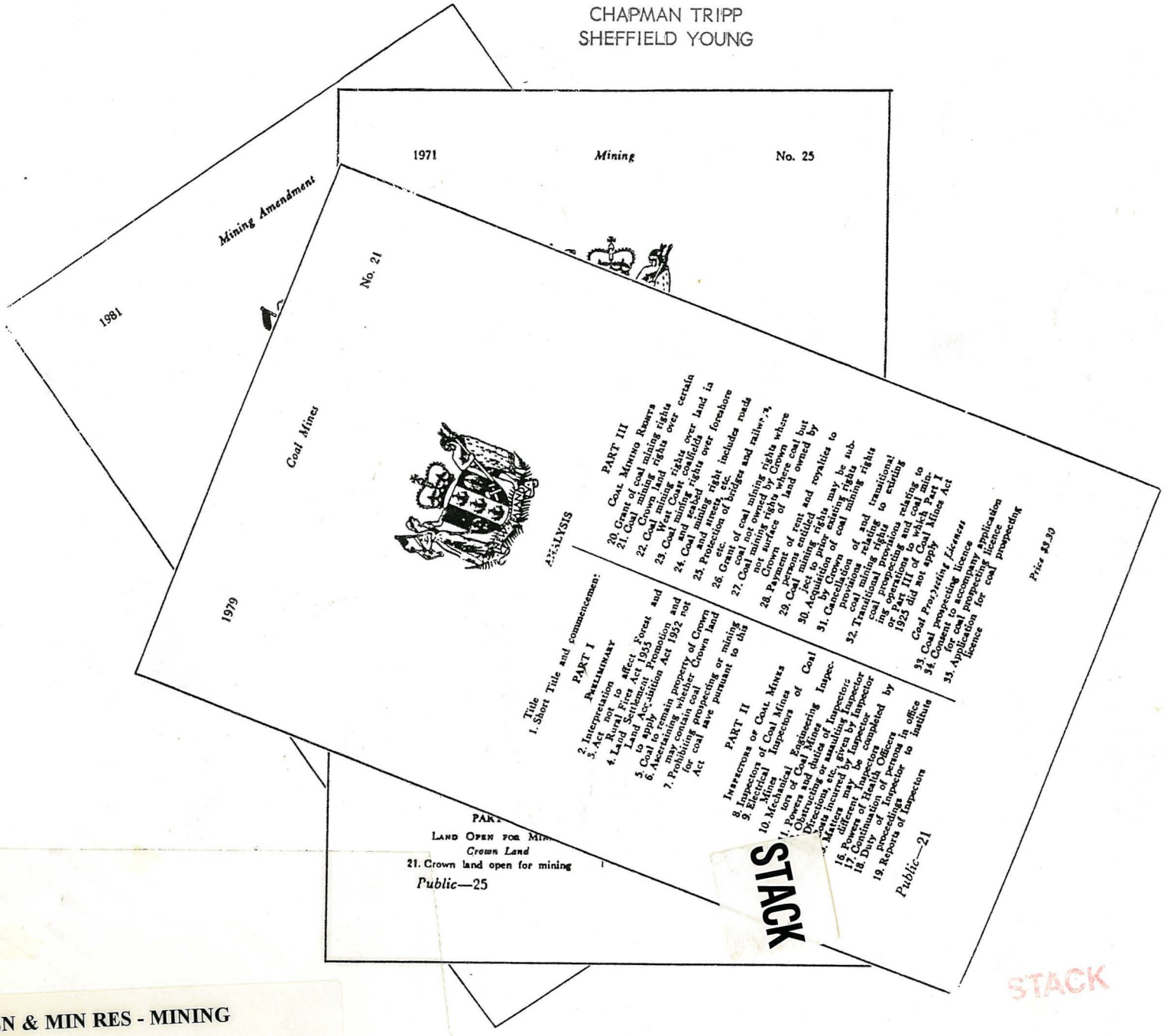
MINISTRY OF ENERGY

REVIEW OF MINING LEGISLATION

A DISCUSSION PAPER



APRIL 1986

FOREWORD

In its 1984 election policy the Government gave a commitment to review all legislation relating to prospecting and mining. This exercise has been under way for some time in the form of a complete review of all the mining legislation administered by the Mines Division of the Ministry of Energy.

A special effort has been made to give an opportunity to people outside government departments to take part in this exercise. Many of those interested in mining — the mining industry itself, territorial local bodies, catchment boards, private landowners, those concerned with Maori land, with the environment, and with conservation have already expressed their views.

These have assisted the review team to identify what seem to be the principal issues to be addressed. At my request these issues have now been set down in this discussion paper along with some of the options for possible legislative action.

In recent years there has grown up a vociferous opposition to the activities of prospectors and miners. This has been matched by substantial changes in mining law. These legislative changes have not managed to satisfy many of those who for one reason or another oppose mining nor have they alleviated to any degree the frustrations of the mining community.

What I want to see as a result of this review is a better balance between the interests of the mining industry, the importance of which to the New Zealand economy cannot be ignored, and the legitimate concerns of local bodies, landowners, and others affected by the activities of miners. I am certain that with a measure of goodwill it will be possible to improve on the position we have now.

Coal mining is in for a massive expansion over the next few years and it is extremely important for this growth to be subject to more effective rules than those which apply at present.

One of the organisations which will play a major role in the expansion of the coal industry is the State Coal Mines. Changes are already under way in the Ministry of Energy which will have a significant bearing on the future of this trading arm of the Mines Division. But in addition to this it is part of the policy of the present government that government organisations should conform to the fullest extent possible with the same rules as those which apply to the private sector. Effect will be given to this policy in the legislation which results from this review.

The importance of gold mining to New Zealand is sometimes questioned but the role it plays in providing employment in parts of the country where job opportunities are scarce, and in the saving of overseas funds, by substituting for imports, is of special significance. New Zealand could be about to reap benefits from the development of several gold deposits which have been re-evaluated in recent years. It is important to mineral explorers that deposits such as these can be developed into mines, but it is equally important that they are in the interest of New Zealand and that there are adequate controls placed on operations for the protection of the environment in which we live.

The products of the mining industry are basic to our way of life so that it is essential that mineral and coal production continue. It follows that prospecting to locate new deposits must also continue. At the same time the Government is determined to make better provision for those affected to have their views taken into account when applications for licences are being processed, and for such matters as landowners' rights, compensation and land restoration.

The task is not going to be easy and it will need the co-operation of all concerned if we are to achieve the best result. It will not be possible to satisfy everyone completely but I want all those who wish to, to make their contributions before the drafting of new legislation begins.

But this is not to be a one-sided exercise. The mining industry is making tremendous technical advances but it is finding it increasingly difficult to cope with ever more time-consuming administrative or legislative requirements. The industry has to be able to survive in a viable form and the members of the review team will keep this before them as they work their way through their task.

Among the principal objectives I have for this review are:

- The resolution of the Planning Act vs mining legislation debate.
- To ensure that adequate account is taken of environmental considerations.
- Improved means of public participation in the processing of licence applications.
- Better procedures for the processing of applications for licences.
- More attention to the interests of landowners, particularly in the areas addressing rights of entry on land, and compensation for damage done.
- More effective powers for inspectors to police licence conditions, with emphasis on environmental protection.

For me, the success of the review will be measured largely by the extent to which these goals are achieved.

I now invite members of the public to make written submissions on this discussion paper. Submissions should be marked "Review of Mining Legislation" and addressed to:

The Secretary of Energy
Ministry of Energy
Private Bag
WELLINGTON

They should reach the Secretary by 9th June, 1986.

The Secretary of Energy will then prepare for my information, a digest of the submissions he receives and indicate the principal issues raised in them. It is intended that the submissions and the digest of them will then be available to the public. This material will be among that studied by the review team in the course of preparing its recommendations on changes to mining legislation.

R.J. Ingaid

Minister of Energy
25/3/1986

REVIEW OF MINING LEGISLATION

A DISCUSSION PAPER

APRIL 1986

TABLE OF CONTENTS

CHAPTER 1: INTRODUCTION

In pursuance of government policy a mining legislation review team was established by the Mines Division of the Ministry of Energy in August 1985.

Terms of Reference

The review team's terms of reference call for a comprehensive review of all the mining legislation administered by the Mines Division, with particular attention to be paid to the rights of landowners, the application of the Town and Country Planning Act to mining, the effectiveness of public participation in the consideration of licence applications, the simplification of licensing procedures, the adequacy of existing provisions relating to the use of land and land rehabilitation, compensation and the pending introduction of new methods of underground coal mining. (See Appendix I for the full text of the review team's terms of reference).

The main legislation under review is:

The Mining Act 1971

The Coal Mines Act 1979

The Quarries and Tunnels Act 1982

The Continental Shelf Act 1964

The Iron and Steel Industry Act 1959

The Atomic Energy Act 1945.

Personnel of Review Team

The review team comprises:

A G Summers (Leader)	Retired Deputy Secretary of Energy
A B Cowie	Retired Chief Inspector of Mines and Quarries
P L Berry	Divisional Solicitor
P Anstey	Director of Licensing
R Andrews	Retired Inspector of Coal Mines

The review team was instructed to consult widely with affected government departments as well as other bodies and interest groups, and as part of this exercise sent out over 250 letters asking for written submissions. We would like to thank those who wrote to us in response to this invitation — nearly 100 of them. We received many valuable comments and suggestions for changes to the legislation. The more significant of these are mentioned in this paper; many others, which were more detailed in nature, will be taken into account at a later stage when a bill is being prepared.

Three members of the team visited the five eastern states of Australia in September 1985, for discussions on current mining legislation across the Tasman. One member of the team is to visit Canada for similar discussions.

In addition, the team has had some discussion with a range of interest groups and intends to have more over the next few weeks.

The information gathered by these means has been an important part of the team's deliberations to date and is reflected in this discussion paper.

The Discussion Paper

The paper lists the parts of the present legislation which appear to the review team at this stage to be most in need of change, provides background notes and commentary, and sets out options for possible legislative action.

Chapters 2, 3 and 4 deal with the background topics of mineral ownership, landowners' rights, and mining titles. The three final chapters deal with the assessment and processing of applications for statutory approvals for exploration, prospecting and mining.
The paper is not comprehensive. It deals in the main with the licensing provisions of the Mining Act and the Coal Mines Act. Other legislation has also been examined by the team and is commented on in this paper.

The Mining Industry

The greater part of New Zealand's mining industry comprises the mining and quarrying of coal, sand, gravel, rock, clay, limestone and ironsands. This paper covers the mining of all these materials as well as prospecting and mining for gold and other minerals.

The review team has had the opportunity of studying written submissions and of taking part in discussions where a wide range of attitudes to mining has been expressed. At one end of the scale are those who say that present mining practices fall short of the environmental standards they would set and who would like to see mining prohibited altogether in some parts of the country. At the other end of the scale are some miners who see their industry as being all but stifled by a proliferation of rules and by administrative delays, and with its future in doubt.

The review team's task is to find a way through this labyrinth of varying points of view. Already some key points have emerged.

There can be no doubt as to the importance of the mining industry to New Zealand. It is one of our primary industries and has always been at the core of modern industrial development. This is very simply illustrated by listing some of the other industries for which mining and quarrying supply essential raw materials — the building and construction industry (includes aggregates, cement, steel, glass etc), road making and road maintenance, agricultural fertilisers and the energy sector.

The review team is convinced that it takes far too long to obtain decisions on applications for mining privileges and coal mining rights — an average of nearly two years.

It is clear that in some areas there will have to be more effective controls on the mining industry. These are likely to come in the areas of State Coal Mines' operations, land rehabilitation and compensation generally.

There is also a need to reassess public participation in the processing of licence applications.

Although dealing with similar subjects, the Mining Act and the Coal Mines Act provide for different types of licences and set out different methods of processing licence applications. There is scope here for standardisation which the review team sees as best achieved by dealing with both matters in one piece of legislation covering both coal and minerals. This could be done without necessarily going so far as to incorporate other parts of the present legislation into one omnibus bill.

By its very nature and in common with other land uses, mining cannot avoid disturbing the environment in which it operates. In an era when concern for environmental protection and preservation has come increasingly to the fore, it was inevitable that there would be a clash of interests between miners and environmentalists. The mining industry has made progress in meeting the criticism made of it but has further to go to meet the reasonable concerns of the community. Even within the mining industry this would probably not be disputed.

The review team will want to strike a balance between competing viewpoints. Undoubtedly there will be additional controls on the mining industry and procedures involved with these could prolong the time taken to obtain a licence. The team has,

however, an objective of reducing the overall time taken to process mining applications and will be looking for ways by which this might be done without diminishing the effectiveness of control measures.

It is timely to be looking at where the mining industry now stands and to be endeavouring to set the scene for its progress over the remainder of the twentieth century. This discussion paper is a step towards this objective.

CHAPTER 2: MINERALS AND THEIR OWNERSHIP

Minerals and Mining

The introductory chapter of this report has pointed out the wide range of substances covered by the term "mineral". In addition, in this paper the term includes coal. Because both minerals and the land in which they occur belong to someone — not necessarily the same person — it becomes necessary to consider who owns the minerals and who owns the land before a proposed mining operation to recover the minerals is embarked upon.

Who Owns the Minerals?

In New Zealand and other countries having similar legal systems it was once the position that the person who owned the land also owned everything in the land down to the centre of the earth. This is the basis of a common misconception today, modern society having imposed many restrictions and statutory limitations on this old common-law concept of land ownership.

Everyone who owns land in New Zealand today does so ultimately because of some form of grant or recognition of title by the Crown. When title to land is granted by the Crown to a private person, the land is said to have been "alienated" by the Crown. For about the first half of the history of New Zealand since the British Crown first acquired sovereignty, alienations of land from the Crown usually carried with them ownership of the minerals in the land. The only exceptions were gold and silver — the so-called "royal metals" — which have always been reserved to the Crown by prerogative right. This reservation of gold and silver to the Crown is recognised in Section 6 of the Mining Act.

For most of this century, however, most alienations of land from the Crown have been subject to a reservation to the Crown of the ownership of all minerals in the land, along with the right to enter on the land and extract the minerals by mining for them. Throughout a similar period the Australian states have also followed this practice of retaining mineral ownership for the Crown when alienating land.

This "splitting" of mineral ownership from ownership of the rest of the land has resulted in a situation in New Zealand today where two neighbouring land owners who, on the face of it, appear to have identical land holdings, may in fact have quite different rights over their land.

In one case, if the original grant of title from the Crown took place last century, the present-day owner of the land would own all the minerals in the land, with the exception of gold and silver and of certain other minerals such as petroleum and uranium that have in recent years been vested in the Crown by Act of Parliament.

In the other case, the land may have been alienated from the Crown in more recent years, in which case the owner would have only a surface title to the land and would not own any of the minerals in it. Nor would he have the right to mine for those minerals, or to authorise anyone else to do so. This right remains with the Crown.

The picture is further complicated by the fact that the present legislation provides for the case where the minerals on one hand, and the rights of access and extraction needed to mine them on the other hand, are separately owned by different persons. The case where this is most commonly considerd to exist is that of gold and silver in private land. The gold and silver belong to the Crown, but the Crown is not regarded as owning the rights of access and extraction, and the landowner's consent is required before a licence to prospect or mine for the gold and silver will be granted. Whether this practice correctly reflects the legal position in New Zealand at present is not entirely free from doubt.

What difference does it make who owns the minerals?

In the case of the two neighbouring landowners, one of whom owns the mineral rights in his land whilst the other does not, quite a few practical differences flow from this difference in title.

If similar deposits of commercially valuable minerals (other than gold, silver and uranium) are known to exist in both pieces of land, then the landowner whose title

makes him the owner of the minerals in his land has rights that are clearly worth more than those of his neighbour. With the exception of coal (for which a licence is always required) he can extract and sell his minerals, or authorise someone else to do so on payment of an agreed royalty. His neighbour cannot do either of those things unless he obtains a mining licence and pays the prescribed royalty to the Crown on all minerals extracted.

Even though both pieces of land are held in fee simple under freehold titles, in terms of the Mining Act one is classified as "private" land whilst the other is classified as "Crown" land. The former can be mined only with the consent of the landowner, whilst in the latter case a prospecting or mining licence can be granted without the landholder's consent as he owns neither the minerals nor the right of access to them, but he does have other rights which are examined in the next chapter.

A similar situation in regard to landowners' consents exists under the Coal Mines Act.

With some exceptions (notably coal), licences are not required for mining privately owned minerals, although a consent under the Town and Country Planning legislation may be needed. The neighbouring "Crown" land can only be mined by a person holding a licence granted under the appropriate mining statute.

So far as the prospective miner is concerned, he is unable to mine the "private" land without the landowner's consent. This particular obstacle does not face him in the case of the neighbouring "Crown" land, but he would have to apply for and obtain a licence under the appropriate statute.

The Minister of Energy cannot grant licences over "private" land unless the landowner's consent has been obtained, but it is not always obvious from a certificate of title to land whether or not the title carries with it the rights to minerals within the land. For this reason an extensive search of land titles included in a licence application has to be carried out in order to determine whether the land within the application is open for mining, or whether some of it is "private" land that must be excluded from the application unless the landowner's consent has been obtained. This results in lengthy delays in processing applications for licences.

What improvements are needed?

There is considerable dissatisfaction with the situation set out above. Some landowners are unhappy at what seems to them to be an arbitrary distinction between their titles and those of their neighbours, or even between different parcels of land within their own holdings. Prospectors and miners are unhappy because there is not a uniform procedure for obtaining authority for their operations and because their applications for prospecting or mining licences are often held up for a long time while the position regarding mineral ownership is investigated. They may then have to exclude parts of the land from their application because consents are not available.

The wide difference in the rules applying to prospecting and mining, which depend for their application on who owns the minerals, is a matter which clearly calls for change. Many of the submissions that we have received reflect the concern which is felt on this subject and call for legislative reform to reduce or eliminate the complexities and inconsistencies of the present rules governing the ownership of minerals.

What are the options?

The submissions, and our own investigations, point to a number of options for changes that would go some way toward alleviating the difficulties currently experienced. They reflect different viewpoints and are not all mutually exclusive. They include:

a Discontinuance by the Crown of its reservation of minerals and mining rights when Crown land is alienated and abandonment of all mineral rights hitherto reserved by the Crown, so that they pass to the present owners of the land.

b Resumption by the Crown of the ownership of minerals and mining rights that were in former years alienated with the land.

c Encouragement of private mineral owners to relinquish their mineral rights to the Crown by making the retention of those rights subject to payment of a tax that recognises the additional value of land containing private minerals.

d Statutory confirmation of the Crown's right to mine and remove gold and silver wherever they occur, without the landowner's consent.

e Statutory provision to ensure that in all cases the ownership of minerals in land includes the access and extraction rights needed for removal of the minerals (subject to statutory licensing and other requirements).

f Abolition of the present statutory requirements for consents by private mineral owners to the issue of prospecting and mining licences (without, however, affecting the mineral owners' entitlement to royalties and rents in respect of permitted mining operations).

g A final option is to make no change at all in the present system.

It is necessary to look more closely at each of these options.

Pros and Cons of the Options for Change

a Abandonment of Crown mineral reservation and ownership

Under the first option, the Crown would no longer reserve to itself ownership of minerals and mining rights when alienating Crown land to a private person. Also, the Crown would abandon

such minerals and mining rights as it has already reserved, in favour of the present owners of the land.

This option was put forward in only three of the more than 30 submissions received that dealt with mineral ownership and landowners' consents. A further four submissions supported a universal requirement for landowners' consents, which would achieve much the same result of enabling landowners effectively to prohibit any mining or prospecting on their land.

Despite minority support in the submissions, this would no doubt be welcomed by the many owners of freehold land whose titles at present contain a reservation of minerals and mining rights in favour of the Crown. It would, however, represent a complete reversal of the policy which has been followed for most of this century and would be strenuously opposed by the mining industry and others. The review committee's own investigations of Australian and other overseas mining legislation have not so far disclosed any precedent for the Crown's abandonment to private landowners of its existing rights over minerals in freehold land. The trend is in fact in the reverse direction (now to be examined).

b Resumption of Crown ownership of minerals

The second option is the reverse of the first. It is that the Crown resumes ownership of all minerals and mineral rights that have in past years been alienated by the Crown along with the land concerned. This has been strongly urged in a number of submissions received from the mining industry. It is also the solution that has been adopted in the Australian states of South Australia and Victoria in 1982 and 1983 respectively and is presently under consideration in Tasmania. In New South Wales, the Crown resumed ownership of coal in 1982. In each case, resumption of ownership rights by the Crown has been accompanied by a recognition of the interests of the existing owners, either by way of compensation for the value of the minerals, or by entitlement to royalty payments upon mining of the minerals, or by provision for a transition period in which the private mineral owner may affirm his rights by commencing mining operations and thereby establishing a "private mine" with rights of existing use.

In general, the resumption of ownership of minerals by the Crown is presented as the simplest option for overcoming the difficulties that surround the complicated system of mineral ownership in New Zealand. Those difficulties are an obstacle to development of the country's mineral resources and it is for this reason that steps have been taken in the other jurisdictions mentioned to resume Crown ownership of minerals and mining rights in private land.

c Taxation of private mineral rights, with option of abandonment

The third option — of encouraging the owner of private minerals to relinquish his mineral rights to the Crown through a system of mineral land tax — would as time went on result in a progressive increase in the proportion of freehold land where the

minerals and mining rights belonged to the Crown and not to the private landowner. This would give the Crown greater control over the development of the mineral resources of New Zealand and would at the same time encourage owners of private minerals to ascertain and develop the mineral potential of their land.

A detailed legislative precedent for this option is contained in the Mineral Land Tax Act 1979 of the Canadian province of British Columbia. It is also an option that has been urged in submissions presented to us in behalf of the New Zealand Mineral Explorers Association. There are, however, significant administrative difficulties involved in implementing this option, not the least of which would be the need to determine ownership of minerals in all titles before this system could be applied. More information is being sought on the British Columbian experience.

In none of the Canadian provinces has there been a general resumption of mineral ownership by the Crown, as has occurred in Victoria and South Australia.

d Confirmation of the Crown's right to mine for gold and silver

The "royal metals" (gold and silver) present something of a special case. They are and always have been owned by the Crown, even in otherwise "private" land, but the common (though not universal) understanding of the law in New Zealand is that the Crown does not have the right to mine and remove those metals from "private" land without the landowner's consent. Because this is a frustration of the Crown's right of ownership of gold and silver, a statutory confirmation of the Crown's right to mine and remove those metals, wherever they are found, would be a logical development. It would have the effect of making all freehold land containing gold and silver open for mining for those minerals without the need for obtaining the landowner's consent in the case of land presently classified as "private" land.

e Unification of ownership of minerals and rights of extraction

This option represents an extension of the previous option so that it covers all minerals, whether they are in Crown or private ownership. It confirms that ownership of minerals includes in all cases the associated rights of extraction.

Cases where minerals and the rights of access and extraction needed to mine them are owned by different persons are rare, except in the special case of gold and silver. Nevertheless the possibility of separate ownership of minerals and extraction rights is provided for in present legislation and is open to the same criticism as applies to the case of the Crown-owned "royal" metals, gold and silver.

f Abolition of the requirement for the consent of private mineral owners to the issue of prospecting and mining licences

This option is advocated in approximately one third of the submissions dealing with mineral ownership and landowners' consents. At the same time, the private mineral owner's continued entitlement to rent, royalties and compensation is recognised. The most favoured alternative to the present consent requirements is a compensation agreement, to be negotiated (or arbitrated in default of agreement) before entry on land to commence prospecting or mining operations.

In the Australian states, requirements for private landowners' consents to the issue of prospecting and mining licences are in general non-existent. There are the usual classes of protected land that exist in New Zealand — land under crop, or used as a yard, garden, orchard, etc, or the site of a building, cemetery, or waterworks.

In Canada, where there is considerable private ownership of minerals, the position regarding owners' consents differs from one province to another. Some provinces require the mineral operator to obtain the owner's consent or to expropriate the land before entry can be made. Other provinces (the majority) provide for an arbitration of compensation or give the mineral operator a general, but limited, right of entry. Compensation for loss or damage is always payable by the mineral operator.

g The "status quo"

The final option — that of leaving things substantially as they are — is only acceptable if the disadvantages of the present system are less than the disadvantages of any of the options for change. It is listed here for the sake of completeness but has few if any advocates.

In the area of mineral ownership — which is the subject of this chapter — the problems associated with the present New Zealand system are not peculiar to this country. They are (or have been) experienced to a greater or lesser extent in all of the Australian states and Canadian provinces. A number of those jurisdictions have adopted or are proposing to adopt one or other of the options examined above in order to lessen or remove those problems.
Thus:

- The option of replacing landowners' consents with arbitrated or negotiated compensation agreements is common throughout the Australian states. Comparable provisions exist in the legislation of several of the Canadian provinces.

- The option of direct Crown acquisition of privately owned minerals has been or is to be applied in four of the Australian states.

- The option of indirect Crown acquisition of private minerals (through a tax) has been applied in at least one Canadian province (British Columbia).

- In the Australian states the Crown's ownership of gold and silver is treated as including rights of access and extraction and therefore the right to authorise prospecting and mining for those metals (option (d) above). This is also the case in the majority of the Canadian provinces (although in Quebec the Government's authorisation is required before anyone can stake out lands in which only gold and silver have been reserved to the Crown).

The only change option for which no precedent has been found is option (a) above — the abandonment of Crown mineral reservation and ownership in favour of private landowners. Quite apart from national interest considerations involved in the Crown's ownership and control of New Zealand's mineral resources, this option probably could not be entertained unless the legislation also provided that the land affected was open for mining without the landowner's consent. To do otherwise would increase rather than reduce the difficulties now experienced in the development of mineral resources in private land, where the landowner has an effective right of veto on such development.

As already mentioned, the second and third of the options listed — resumption of mineral ownership by the Crown and the introduction of taxation measures encouraging abandonment of private minerals to Crown ownership — have been adopted and applied in comparable jurisdictions faced with problems similar to those in New Zealand. We have been informed by persons operating in those jurisdictions that they have been effective reforms — rather less so in the case of the taxation option than in the cases of general Crown resumption of ownership of private minerals and of the rights needed to mine them.

The other three options — linking mineral ownership and extraction rights (both Crown and private) and removing the requirement for private owners' consents — already exist in other jurisdictions. It was apparent to members of the review team during discussions with Australian state officials that the problems encountered under the different practice in New Zealand were absent or greatly reduced in the Australian states surveyed.

CHAPTER 3: RIGHTS OF LANDOWNERS

The ownership of land and of minerals are complex issues which were dealt with in the previous chapter. Here we deal with the rights of landowners and occupiers in respect of prospecting and mining by others on their land.

The rights which have to be considered are:

- The right of a landowner whose fee simple title gives him ownership of the minerals in his land, to consent or not, to the grant of a mining licence or a prospecting licence; the right to require conditions to be attached to this consent; and the question of whether a consent given in such a case for a prospecting licence should be binding on the landowner in the event of a subsequent mining licence application.
- The right to refuse access to his land for gold and silver prospecting and mining.
- The right of a landholder to notice of entry on to his land by a licence holder.
- The entitlement of a landholder whose fee simple title reserves mineral ownership to the Crown to ask for conditions to be placed on a licence.
- The right of a landholder to compensation for damage done and for loss of use of land due to prospecting or mining operations.

The classes of land which will be considered are as follows:

- Maori land.
- Freehold land where the mineral ownership is vested in the titleholder.
- Freehold land where the mineral ownership is reserved to the Crown and Crown leasehold land.

It should be noted that Crown land subject to ministerial consent has not been dealt with in this chapter and that gold and silver are always reserved to the Crown.

Taking the land categories in order:

Maori Land

Maori land is open for prospecting or mining only with the written consent of the owners. In general this provides adequate protection because consent can always be withheld.

In the case of exploration licences, no owner's consent is required for Maori land, or for any other class of land, except to enter on or near to certain protected places eg land under crop, gardens, orchards, burial grounds, waterworks, air strips, etc. Other than these protected areas all that is at present required is that the licensee should give reasonable notice of entry, if practicable, to the owner and occupier of the land.

In 1983 the Public and Administrative Law Reform Committee recommended that 7 days' notice be given to land occupiers before entry is made on land by holders of exploration licences.

We received a submission which recommended that the holder of any licence on Maori land "should employ a kaumatua consultant from that tribal area for the duration of the work". If this suggestion is taken up it would only be necessary to legislate for it in the case of exploration licences. Under present law all other licences may be granted only within the consent of the Maori owners who in giving it could require the appointment of a kaumatua.

The same submission made the additional point that where land has been endowed by Maori people for some particular purpose, and subsequently the Minister of Energy seeks to bring the endowment within the operation of the Mining Act, he ought first to obtain the consent of those who made the endowment as well as that of the authority which administers it. This requirement, if adopted, could well be applied to all endowment land, Maori or otherwise.

Freehold land where mineral ownership is reserved to the titleholder

This class of land is defined as "private land" for the purposes of the Mining Act. It is open for prospecting or mining only with the consent of the titleholder. This definition needs to be borne in mind in reading the following paragraphs. In spite of what follows

and for so long as the present interpretation of the law relating to access to gold and silver is retained, the landowner is in control of the situation because his land is only open for mining with his consent and presumably he will only consent if he thinks it is in his interest to do so.

Consent to prospecting or mining may be granted subject to conditions to be attached to the licence but these conditions are appealable if considerd to be unreasonable. Without the consent of the landholder an application for a licence over private land is void. Consent once given is irrevocable and is binding on successors to the land title. Also, consent to a prospecting licence for minerals other than coal constitutes a consent to a subsequent mining licence. However, when a mining licence is applied for, a landowner may require additional conditions relating to protection and rehabilitation of his land to be placed on the licence.

The question as to whether a consent by a private landowner to a prospecting licence should carry over to a subsequent mining licence is a contentious one. Under the Coal Mines Act separate consents are required, but a Mining Act consent to prospecting is deemed to be a consent to subsequent mining. The view is held by some that if the holder of a prospecting licence wants to advance to a mining licence within the area he should in all cases be required to seek a new consent from the landowner.

Conversely it has been pointed out that a prospecting company could have expended several million dollars on prospecting work before reaching the mining application stage and that it would hardly be fair at that stage to expect a prospector to renegotiate a consent agreement with a landowner who by that time would be well aware of the mining potential of the land and would be in a position to hold him to ransom.

As has already been mentioned, the question of access to minerals on private land is complicated by the fact that gold and silver are always reserved to the Crown. On "private land" minerals other than gold and silver are vested in the land titleholder, together with the rights of access to enable the minerals to be mined. The landowner has also been regarded as controlling access to its gold and silver. This assumption gives rise to the anomalous situation where the Crown owns the gold and silver but has no right of access to work them.

The legal position in this respect is not clear and legislation to give the Crown access rights to its gold and silver, on land where the surface and other minerals are privately owned, needs to be considered.

The comments on notice of entry in the next section of this paper apply also to this category of land.

Freehold land where the mineral ownership is reserved to the Crown and Crown leasehold.

Currently both of these categories of land are open for prospecting and mining and no consent of the landowner or occupier is required.

Notice of entry by a licensee is not at present a statutory requirement although it is frequently made a condition of the licence. This is recognised by the review team as a deficiency in the present legislation as it affects landowners' rights.

In 1983 the Public and Administrative Law Reform Committee recommended that 7 days notice of first entry be given to all landowners and occupiers over whose property an exploration licence has been granted and reasonable notice to landowners and occupiers before entry on a prospecting licence area.

The recommendation of the Committee is one option for change to the present legislation, but it need not be regarded as the only option. Consideration could be given to extending this 7 day notice of first entry requirement to the holders of prospecting and mining licences on this class of land.

The right of a landowner to require conditions to be placed on a licence is not a matter for concern where a consent is required, because such conditions may be imposed as conditions of landholder's consent to the application. However, in the case of freehold

land where mineral rights are reserved to the Crown and on Crown leasehold, at the present time the landholder can only impose conditions on a licence by lodging an objection. He may if he wishes make a rider to his formal objection to the effect that his objection will be met if certain conditions are imposed on the licence. On receipt of a copy of the objection, the applicant may negotiate with the objector to get him to withdraw his objection and failing agreement in these negotiations, the matter of the objection is decided by the Planning Tribunal.

The situation whereby landowners only become aware of conditions after they have been established by the Minister and publicly advertised is seen as a deficiency in the Mining Act.

Compensation provisions for prospecting and mining operations

The compensation provisions of the Mining Act and the Coal Mines Act cover loss or damage caused by licensees. The Acts leave it to the landowner or occupier to claim whatever compensation he considers is due and if the parties cannot agree on the amount it is settled as if it were a claim under the Public Works Act. Landholders, although protected by these provisions of the Acts, frequently feel uneasy when miners come on their land because they may not be familiar with the proposed programme of work, what loss or damage might result from it and what they might be entitled to by way of compensation for any loss or damage suffered.

The proposal which follows could do much to remove the mistrust which sometimes exists between landholders and miners. It is a practice followed in Australia and is also embodied in a number of submissions made to us, including one by Federated Farmers of New Zealand. It is that it should be a statutory requirement that either before the grant of a licence or before entry on land for prospecting or mining, a compensation agreement should be drawn up between the landholder and the miner.

Such an agreement would set out in some detail the work proposed to be done by the licence holder and the basic amounts of compensation to be paid to the landholder for specific items such as drilling holes; payments for loss of farm production; and arrangements for controlling the effect of mining operations at sensitive periods in the farming calendar such as lambing time. An explanation covering the terms and conditions would be included in the prescribed formal request for a compensation agreement which the applicant would have to send to the landholder.

The parties would be expected to make their own agreement but if they could not agree there would have to be a provision in the Act for it to be settled by arbitration.

Even if compensation agreements of this kind were to be provided for, the present compensation provisions of the mining legislation should remain to cover matters such as loss and damage not covered in the agreements, or which may result from the activities of exploration licence holders.

CHAPTER 4: TITLES ISSUED UNDER MINING AND OTHER LEGISLATION

Exploration, prospecting and mining for minerals and coal are carried on under a variety of mining titles, or licences, which are authorised by several different pieces of legislation.

A list of the titles available at present is as follows:

Mining Act 1971
Prospector's Right
Exploration Licence
Limited Impact Prospecting Licence
Prospecting Licence
Mining Licence
Licences for roads, tramways, aerial ropeways, pipelines, tunnels and bridges etc
Easement Certificates
Special Site Licences.

Coal Mines Act 1979
Coal Prospecting Licence
Coal Mining Licence
Ancillary Coal Mining Licence.

Under the **Iron and Steel Industry Act 1959** and the **Continental Shelf Act 1964,** provision exists for the Minister of Energy to enter into agreements or to grant licences for prospecting or mining.

Other statutes such as the **Land Act 1948** and the **Harbours Act 1950** provide for the issue of permits for the removal of sand and gravel.

Comment follows on a number of these licences, agreements and permits and suggestions for possible changes are made.

Prospector's Right

This developed from the old miner's right and was a prerequisite to obtaining titles for prospecting and mining under the Mining Act 1926. This is not the case with the prospector's right under the present Mining Act.

A prospector's right is valid only on unoccupied Crown land and does not give any exclusive rights to the holder. Under the 1971 Act, the prospector's right has been used to a limited extent by prospectors sampling streams as a preliminary investigation before lodging a mining licence application and more often by recreational miners working on a part-time basis.

The situation now is that there is little if any unoccupied Crown land carrying gold in sufficient concentration to be worked by the holder of a prospector's right that has not been taken up already on an exclusive right, ie a prospecting or mining licence.

A number of submissions have been received saying that the prospector's right is now an anachronism and should be abolished.

Exploration Licence

This is basically a right to enter on any land to carry out operations which have minimal effect on the environment, for a preliminary investigation that will provide information to enable the explorer to identify areas which may be suitable for prospecting by more intensive methods eg diamond drilling.

The maximum term for an exploration licence is two years. The maximum area that can be held under one licence is 500 sq km and the minimum is 4000 ha. The holder of an exploration licence has a right in priority over other applicants to prospecting or mining licences in the area covered by the exploration licence.

A number of submissions we received make the point that the work programmes and

the conditions attached to exploration licences are not intended to permit operations having any greater impact on the environment than the average small group of trampers and go on to suggest that the objection system at present in force for these licences is not necessary. What needs to be considered here are legislative changes which delete mention of exploration licences from the objections procedures of the Mining Act and at the same time make it clear that the work permitted under an exploration licence must be of minimal impact on the environment.

Unless there are special circumstances, the Minister may not grant an exploration licence over land where "he considers that—

a there is adequate knowledge of the mineral resources of the area;

b there is substantial interest in mining in the area".

The terms "adequate knowledge of the mineral resources" and "substantial interest in mining" are both matters of opinion and difficult to quantify. It can be said with some truth that there is never adequate knowledge of the mineral resources of some areas where new techniques of exploration mean reassessment of the resource and improved treatment processes make lower grade or difficult ores an economic possibility.

In granting exploration licences there is a need to protect the interests of existing licences and prior applications.

There is considerable competition between exploration companies for certain areas and so there is a tendency for some companies to take out large tracts of land under a number of exploration licences and to do the minimum of work on each of these areas that will justify the grant of the licences to them and at the same time endeavour to interest other companies to participate in joint ventures or farm-out agreements with them.

There is no harm in such agreements, in fact they distribute the work and the finance available but the holding of prospective mineral land on an exploration licence without investigating its mineral potential to the full is a practice not to be encouraged, particularly when the same licensee wants to apply for a second exploration licence immediately following the expiry of the first. A rule which states that the Minister will not grant a second exploration licence to the same applicant over the same land unless he is convinced that there are special circumstances which should be taken into account would avoid this misuse of an exploration licence and is a change which should be considered.

Limited Impact Prospecting Licence

This new licence was introduced in the 1981 Mining Amendment Act. It was hoped that by limiting the work that could be carried out and by reducing the term to two years a licence to prospect could be issued that, having a low impact on the environment, would not be controversial and would be able to be granted more quickly with less likelihood of objection and consequent Tribunal enquiry.

In practice these licences have taken just as long to be granted as normal prospecting licences and mining companies find that it is better to apply for a prospecting licence and get a 3-year term with a right of renewal. We received many submissions recommending that limited impact prospecting licences be discontinued.

Prospecting Licence

Mineral Prospecting Licences

This licence enables the holder to carry out operations having a greater impact on the environment than those permitted under an exploration licence. The operations permitted under a prospecting licence are listed in section 55 of the Mining Act.

There are some who consider that all of the operations listed in section 55 are permitted subject to conditions of the licence and to conditions imposed by the appropriate Minister under section 26. This they carry further to mean that the operations listed do not have to be stated in a work programme. This interpretation of section 55 means that reporting agencies are expected to report on applications without a clear knowledge of what the applicant intends to do. This leads to delays while enquiries are made so that suitable conditions may be formulated for the Minister's approval.

This matter should be cleared up and we suggest that the work permitted under a prospecting licence be limited by statute to that set out in the work programme accompanying the licence application.

Licence areas

Under the 1971 Mining Act a differentiation is made between prospecting licences which are greater than 40 ha in area and those which are less than 40 ha.

The differences involved are:

Prospecting licence over 40 ha

1 Does not require to be marked out on the ground.

2 The application for a licence or for the renewal of a licence requires:

   a a statement signed by the applicant which accompanies the application and which sets out details of the specific sum of money to be spent annually on prospecting;

   b the proposed timing and estimated cost of the various operations.

3 Requires a six-monthly report on operations and expenditure.

Prospecting licence under 40 ha

1 Requires to be marked out by pegs on the ground in the prescribed manner.

2 Does not require a statement of annual expenditure giving timing and estimated cost of operations.

3 Does not require a report.

Otherwise these licences are identical.

There does not seem to have been any inconvenience, confusion or complaints that prospecting licences over 40 ha are not marked out on the ground but rely for delineation simply on a plan and description which relates the prospecting licence area to cadastral boundaries, survey monuments or topographical features. It would therefore seem to be a step worthy of consideration that prospecting licences be rationalised so that all prospecting licence applications follow the procedures now followed for areas over 40 ha.

Coal prospecting licences

It should be noted that the provisions of the Coal Mines Act regarding coal prospecting licences differ from those described above. There is no area limitation for licences and no distinction is made between larger and smaller areas. Although marking out may be required in appropriate cases it is not mandatory to do so when an application is made.

Term of licences

There are a number of matters concerning the term of licences which may well be considered for review:

- Under present legislation prospecting licences are granted for a term of three years with a provision for one renewal. However, in a few cases a total of six years has proved to be insufficient time to evaluate a deposit to a stage where a mining licence application can be considered. To ensure that priority over the area is preserved for the prospector it would be necessary for the Minister to have the power to grant a third renewal up to three years if he is satisfied that the extra time is needed for prospecting.

  An alternative option suggested in at least two submissions would be to increase the term of a prospecting licence to five years with a right of renewal of a further five years in line with the mineral prospecting warrants formerly issued under the Mining Act 1926.

- Provision should be considered that when application has been made, within the prescribed period, for the renewal of a prospecting licence, the existing licence should not expire until the renewal application has been determined. Renewal is seldom refused and such a provision would allow for continuity of operations.

- When a mining licence has been applied for by the holder of a prospecting licence, over land within the prospecting licence area, it would seem logical to provide that the prospecting licence should not expire in so far as the land applied for under the mining licence is concerned, until the mining licence application has been determined, provided the application is made within the prescribed period.

Mining Licence

Under this heading two points are noted for possible legislative amendment:

- When a mining licence expires, if a new licence has been applied for within the prescribed period it would seem to be reasonable that the original licence should run on until the new licence application has been determined.

- The Mining Act provides that where a discrepancy occurs between the plan accompanying an application for a prospecting licence and the actual position of the pegs on the ground, then the boundaries of the area applied for shall be determined by the position of the pegs on the ground and the plan altered accordingly. It would seem logical to extend this provision to the pegging of mining licences. Comment would be appreciated.

  Note: This suggestion stands, even though elsewhere in this paper the continuing need to peg prospecting licences is questioned.

Licences for Roads etc and Special Site Licences

In the Mining Act there is a list of other purposes for which licences are available eg, roads, tramways, aerial ropeways, pipelines, tunnels and bridges. In addition the Act provides for the issue of easement certificates and also for special site licences which are mainly for mine building sites, ore treatment plant sites and tailings disposal sites. The statutory provisions covering these licences are now out of date.

Licences for roads etc are separate from special site licences because the latter may be granted only over unalienated Crown land and for a maximum area of 2 hectares per licence. There is no area limit for road etc licences nor are they confined to unalienated Crown land. The limitations on special site licences make them unsuitable, from a practical point of view, for a tailings site. There is seldom unalienated Crown land in the vicinity of a mineral deposit and 2 hectares would be too small for anything other than a very small operation.

The Coal Mines Act has a better arrangement. It combines all the subsidiary operations connected with coal mining — roads, buildings, structures — under one title known as an ancillary coal mining licence. There is no area limitation on this type of licence nor is it confined only to unalienated Crown land. It may be granted over any land which is open for mining.

Three possible options for change are:

- Replace all the various types of auxiliary licences provided for in the Mining Act with an "ancillary licence".
- All mining operations, even if separate from the main mining site, to be covered by a mining licence; either by a licence covering more than one area of land, or separate licences for each area.
- Allow sites separate from the main mining operation to come under the Town and Country Planning Act.

Coal Mines Act 1979

The review team has taken as one of its objectives the framing of a set of rules relating to mining titles which will, as nearly as possible, result in minerals and coal being treated in the same way. We have in mind to recommend that the licensing of minerals and coal would be covered by the same legislation with a minimum of special rules for the State Coal Mines. This still admits a number of options.
A possible new list of mining titles is:

exploration licence (minerals)	exploration licence (coal)
prospecting licence (minerals)	prospecting licence (coal)
mining licence (minerals)	mining licence (coal)
ancillary licence (minerals)	ancillary licence (coal)

For a short period up to 1982 the rules relating to the licensing of prospecting and mining for coal and for minerals were the same. In 1982 they were superseded as far as the Mining Act is concerned by the Mining Amendment Act 1981, but they still apply to coal mining. Very briefly, the difference is that under the Coal Mines Act objections must be made without the benefit of seeing the Minister's draft conditions and are considered by a District Court Judge or by the Minister. The Planning Tribunal is not involved.

In Part IV of the Coal Mines Act is the legislation which establishes the State Coal Mines. The Minister is empowered to acquire coal deposits which then form part of the State coal reserve. Then, to open a mine in the State coal reserve the Minister is simply required to give public notice of his intention, notify the local authority and consider any submissions he receives as a result. There is also a procedure in Part IV of the Coal Mines Act for parts of the State coal reserve to be leased to private coal miners.

The legislation relating to the State Coal Mines is of special significance because it governs the greater part of New Zealand's coal mining industry.

Although it is mentioned only briefly in this paper we nevertheless regard its overhaul as an important part of our task.

The general view is that the State Coal Mines should, to the fullest extent possible, conform to the same rules as the private sector of the industry and we see no reason why this should not be so. There are three matters which require detailed study. These are the method by which State coal mines should be authorised, the arrangements necessary for the transition from one set of legislative rules to another and the future administration of the State coal reserve.

Iron and Steel Industry Act 1959

One of the purposes of this Act was to assure the supply of raw material for the New Zealand steel industry by placing ironsands deposits under government control. The Act gives the Minister of Energy (or persons authorised by him) the exclusive right to prospect or mine for ironsands in an "ironsands area". There are two such areas remaining — a 3-mile wide strip of coastline on the west coast of the North Island from the Whangaehu river to the Kaipara Harbour and the Onekaka area in the South Island. In an ironsands area the Mining Act does not apply (to ironsands) and of particular concern is the fact that in the Iron and Steel Industry Act there is no provision for the advertising of applications, or for objections.

Ironsands areas may be diminished in size or abolished altogether, by notice in the Gazette and the ironsands in land so exempt would, unless they were privately owned, come back under the provisions of the Mining Act. The review team will be inquiring into the extent that ironsands areas can now be exempt by Gazette notice from the provisions of the Iron and Steel Industry Act.

Licences for the Removal of Minerals issued under other Legislation

Licences are issued for the mining of minerals under a number of Acts which are not administered by the Ministry of Energy. The main Acts involved are the Land Act 1948 and the Harbours Act 1950. Under their provisions permits and licences are issued for the removal of sand, gravel and other aggregate-type minerals. These permits and licences are issued more quickly than are licences under the Mining Act but are of comparatively short duration — usually being for a one-year term and reviewed annually thereafter. It is desirable that there be a means of issuing licences of this type for certain kinds of operations.

The review team will be looking at this legislation mainly to see that it is fully complementary to the Mining Act.

CHAPTER 5: ENVIRONMENTAL PROTECTION

We note that after a slow start the mining industry is beginning to take steps to improve the poor public image brought upon itself in part by a record of lack of concern for the environment. To be successful these steps need to involve everyone working in the industry in conscientious and sustained effort. If mining is to avoid increasing opposition to its activities there has to be a general change of attitude towards the environment by some licensees — a change which must be fostered by the industry itself. In these circumstances legislation can help little apart from setting the basic conditions for prospecting and mining and providing the means for their enforcement.

Our comments under this heading are brief because they build on a sound framework of environmental protection measures which are already in the Mining Act. Among the more specific of the provisions of this Act are these:

- Environmental assessments required with applications for both prospecting and mining licences. (Section 49 and section 70).

- Statutory conditions for all prospecting licences, requiring the filling in of holes and the protection of special areas. (Section 52).

- Before granting a mining licence the Minister to have regard for any environmental and social factors involved. (Section 69).

- Extensive provisions for the protection of land. (Section 103A).

- Objection procedures available to a wide range of affected persons and organisations, which are followed by a full inquiry by the Planning Tribunal. In conducting its inquiry the Planning Tribunal must have regard to the social and environmental effects of the grant of a licence and to the matters referred to in Section 3(1) of the Town and Country Planning Act 1977. This latter reference is to a list of matters declared to be of national importance and includes "The conservation, protection, and enhancement of the physical, cultural, and social environment". The Minister is then required to act in accordance with the Tribunal's report and recommendations. (Section 126).

We see this existing legislation, strengthened in the ways suggested below, being applied as widely as possible to all mining operations.

The powers in the Mining Act for an inspector to enforce the environmental conditions on a licence appear to be deficient. His options are to commence an action under section 117 for forfeiture of the licence (which allows the licence holder 30 days to remedy the breach), or to bring a prosecution under section 234, neither of which seem to be entirely appropriate. If an inspector finds that an environmental condition is not being complied with he should be able to take action on the spot. What seems to be needed is a power to order the immediate shut-down of mining operations until the breach is put right.

The after-effects of mining operations are not well covered in current legislation. We draw attention to sections 103A of the Mining Act, on the subject of land protection and to section 108A on deposits and bonding and advance the following comment as to what should be done:

- Retain the land protection and deposits and bonding provisions of the Mining Act, have them apply more widely to other forms of mining and consider whether the life of a deposit or bond should extend beyond the expiry of the licence.

- From a levy on mining operations, establish a fund which could be drawn upon in

cases of default, to meet the cost of damage and rehabilitation. There is a South Australian model for such a fund.

There is particular concern expressed about damage from land subsidence sometimes associated with coal mining. We regard this as another form of mining damage to be repaired and compensated for in the way we have suggested above. We note, however, that at least one Australian state has special legislation dealing with subsidence from all causes, coal mining included.

It has been pointed out that a miner's right to enter land comprised in a licence expires with the licence, but that he may need to re-enter the land at a later time to attend to its reinstatement. If this is a barrier to proper rehabilitation of land after mining it should be attended to in the legislation.

CHAPTER 6: • PUBLIC COMMENT
• THE TOWN AND COUNTRY PLANNING ACT
• LICENSING PROCEDURES

Public Comment

The most appropriate way to address this subject is in the context of the Mining Act 1971 as amended in 1981.

One of the principal issues which arose in 1980 when the Mining Act was being reviewed was a perceived lack of adequate provision for public participation in the assessment of applications for licences. As a result substantial changes were made in the 1981 Mining Amendment Act. Briefly these changes were:

- Territorial local authorities are notified of every licence application made.
- The local authority is required to advertise the fact that the application has been made and within 40 working days "advise the Minister of its opinion, having regard to the economic, social, and environmental effects of the proposal on its district, as to whether or not the application should be granted; and the conditions that should be attached to the mining privilege if it were to be granted".
- In due course the Minister sets draft conditions which are publicly notified and which may be objected to.
- Once an objection has been made the licence application becomes the subject of an inquiry by the Planning Tribunal, where objectors may be heard.
- The Minister is required to act in accordance with the Tribunal's report and recommendations subject to his discretionary power to decline an application.

Under the Coal Mines Act the provisions relating to public participation, for other than the State Coal Mines, are as they were in the Mining Act before the 1981 Amendment. That is to say applications are publicly advertised at an early stage, before conditions have been drafted; then objections may be made and these are considered by either the District Court or the Minister.

The State Coal Mines is subject to minimal requirements for notification and consideration of submissions received.

The Iron and Steel Industry Act and the Continental Shelf Act make no provision at all for public participation.

There is a need for greater consistency in this legislation.

The new provisions introduced by the 1981 Mining Amendment Act were obviously intended to be an improvement on the 1971 Act:

- There is provision for public notice by local authorities, of applications made, and where Maori interests are considered likely to be affected, notice to Maori organisations is required. This gives anyone affected by an application an opportunity to make his views known.
- Local authorities are required to report to the Minister at a stage when their views can be taken into account in framing the draft conditions to be attached to the licence if it is granted.
- The draft conditions are publicised and opportunity is given for affected persons to lodge objections to them.

- Any objection then triggers a full inquiry by the Planning Tribunal which in its deliberations must take into account the criteria that apply under the Town and Country Planning Act 1977 (TCPA).

- Finally the Tribunal's recommendations are binding on the Minister, subject to his discretionary power to decline an application.

Even though these changes have been in effect for four years and have had a good trial, we nevertheless have received a number of submissions expressing the view "that mining should come under the TCPA". These submissions have come in the main from local authorities but include government departments and private commentators.

We have also received submissions, fewer in number but expressing views just as strongly held, supporting the status quo. These have come mostly from mining interests but the list again includes government departments and others.

The Town and Country Planning Act

The submissions advocating greater control over mining through the TCPA differed in detail but nearly all envisaged Councils, through their district planning schemes, having the last word on whether or not mining operations are allowed to proceed. That is, Councils would be able to decide that mining should not proceed even though the Minister was prepared to grant a licence.

There were others who seemed to have in mind something quite different. They foresaw a time when all aprovals for mining projects would be dealt with by local authorities under the TCPA, rather than by the Minister of Energy under the mining legislation.

The options in this area are not well documented but could be:

- Retain the basic provisions of the Mining Act as amended in 1981 and bring other mining legislation as closely as possible into line with that Act.

- Make mining subject to the TCPA by requiring applicants for licences under mining legislation to get planning consents before a licence is issued or work begins on the licence area.

- Regulate mining under the TCPA by having local authorities grant all approvals.

Between the two options listed immediately above it is possible to have a number of intermediate options. For example:

- Environmental conditions imposed under the TCPA rather than the mining legislation.

- Mining regulated under the TCPA but not exploration or prospecting.

- Local authorities having the option to require the application to go through the planning procedures.

We do not propose to set out here arguments for and against these options. Instead we ask that further comment on this topic take into account the following points which seem to us to be relevant.

- In the processing of applications for licences there has to be a way for central government to put its policies into effect without having them over-ridden by a local authority.

- The priority system which runs through from exploration licences to mining licences and which is vital to the mining industry, has to be preserved.

- Any new procedure for dealing with licence applications should shorten rather than lengthen the time between filing the application and being able to start work on the licence area.

- Not all areas of interest for mining are covered by operative district planning schemes eg National Parks, State Forest land and the sea bed.

- A significant part of the mining industry (quarrying for privately owned rock and gravel etc) is already dealt with successfully under the TCPA. Could these and similar minerals, even though Crown-owned, be handled in this way quite outside the Mining Act?

- We note that while some local authorities sound out local opinion before reporting to the Minister on applications, others do not and some do not report at all.

Licensing Procedures

There has been long-standing criticism of the time it takes to secure a licence under the principal mining statutes; the Mining Act and the Coal Mines Act. The review team's terms of reference require it to pay particular attention to the simplification and speeding up of methods of dealing with applications for licences.

It has been stated elsewhere in this paper that integration of the legislation into a single act, particularly insofar as licensing is concerned, is a desirable objective. This would have the effect of standardising and to that extent simplifying the differing procedures presently provided for under a variety of statutes.

Insofar as speeding up the process is concerned, the present delays tend to be related to awaiting receipt of Chief Surveyor's reports and Ministerial consents (where these are required). The principal Acts presently apply no statutory time period to the provision of such reports and consents. Submissions have suggested that these should be provided on the same reporting timetable as that which is applied to agencies such as local authorities.

The involvement of organisations other than those from whom reports are specifically required by the legislation can bring about delays and create frustration in formulating conditions.

Another matter is the wide range of parties who are given standing under the Mining Act to object to applications for licences of all kinds. Mention has been made of an option to remove exploration licence applications from the objection procedure altogether. The restriction of objection rights to the grant of prospecting licences to the owners and occupiers or any person having a direct interest in the land involved would remove significant delays in the grant of those licences. If this were adopted it would be necessary to maintain full objection rights over protected areas (eg. parks and reserves).

These are the main issues affecting the delays in granting licences. There is a considerable number of other matters such as the standard of preparation of applications and the rules applying to priority which have a bearing on the processing of applications. These are beyond the scope of this paper but will nevertheless be considered in the course of the review.

CHAPTER 7: JUDICIAL INQUIRY AND FINAL DECISION

This chapter examines the respective roles and responsibilities of the various authorities that may be involved in conducting inquiries or making decisions on the authorising of mineral prospecting and mining proposals.

In reviewing the procedures involved and the submissions received, the review committee has borne in mind the need to achieve a balance between the kind of mining operation proposed, its level of importance, the nature and level of the decisions that would be required in authorising that proposal, and the appropriate level of authority that should be called on to make the necessary decisions.

It is inappropriate that decisions on major proposals of national importance be left in the hands of a local authority and, conversely, that decisions of purely local significance be made a government or ministerial responsibility.

It is equally inappropriate that judicial or administrative tribunals should be called upon to make decisions which, because of their national importance or their bearing on government policies, are properly the responsibility of the executive.

With these considerations in mind, we turn to the present legislation governing the authorising of different kinds of prospecting and mining operations and related matters. In particular, we look at what kinds of decisions are required and who is required to make those decisions.

Present Statutory Regimes for Authorising Mining Proposals

The present legislation relating to mining provides a number of different statutory regimes under which authorities of different kinds are issued for prospecting or mining proposals, or related matters.
These regimes differ according to the kind of minerals involved; also (in most cases) according to whether the minerals are owned by the Crown or by other persons and in some cases according to the government department that is responsible for administration of the land containing the minerals.

In the main, what follows deals with the authorisation of prospecting and mining proposals by way of licences issued under the Mining Act 1971 and the Coal Mines Act 1979.

Licence Applications under the Mining Act and the Coal Mines Act

For a short period before 1982, the Mining Act and the Coal Mines Act provided essentially similar procedures for receiving and determining objections to applications for prospecting or mining licences under those Acts, and for making the final decision to grant or refuse the licence applied for.

Objections had to be lodged within a short time after the filing and public advertisement of an application for a licence. Objections on questions of law were determined by a District Court and the Minister of Energy acted in accordance with the Court's decision in disposing of the application. Objections on other grounds were determined by the Minister without reference to the Court or, if either party or the Minister so wished, referred to a District Court Judge for inquiry and report. The Minister, in making his decision on the application, was required to have regard to the Judge's report, but did not have to follow it.

That is still the procedure for dealing with objections under the Coal Mines Act and for making the decision on the grant or refusal of a licence.

The corresponding procedures under the Mining Act were, however, radically altered by amendment of that Act in 1981. All objections to licence applications are now lodged with the Registrar of the Planning Tribunal after the licence conditions have been established by the Minister and publicly notified. Unless the objections are subsequently withdrawn the Tribunal conducts a comprehensive inquiry into the application and the objections and reports to the Minister of Energy. The Minister is required to act in accordance with the Tribunal's report and recommendations, save that he has a discretion to decline an application which the Tribunal has recommended be granted. Because of judicial decisions relating to the exercise of such discretionary powers, the Minister's discretion is not as wide as the words of the Act might lead one to believe. For most practical purposes, therefore, the decision rests with the Planning Tribunal.

Other Executive Decision-making Powers

Under both Acts, various other Ministers of the Crown who administer a number of important categories of Crown lands have power to give or withhold consent to prospecting or mining operations on land administered by them and to impose conditions on any consent they may give. In one case last year, a consent given by the Minister of Forests was withdrawn after a Planning Tribunal inquiry had resulted in a recommendation that the licence be granted. The effect was that the Minister of Energy was unable to grant the licence, despite the Tribunal's recommendation.

These decision-making powers of other Ministers in regard to applications for mining and prospecting licences have been criticised from different aspects in several of the submissions received. It has been suggested that a disappointed applicant should have a right of appeal to a judicial body against such decisions of other Ministers. It has also been suggested that the lands administered by those Ministers be treated in the same way as privately-owned land containing Crown-owned minerals — namely, that the land be open for mining without the consent of the occupier (who in such cases would be the appropriate Minister).

Other Mining Statutes

Under the **Atomic Energy Act 1945,** the Mining Act procedures apply to all applications for licences to prospect or mine for uranium or other "prescribed substances" covered by that Act.

Under the **Continental Shelf Act 1964,** licences to prospect or mine for minerals on the continental shelf are granted at the absolute discretion of the Minister of Energy. There is no provision for objection to applications for such licences. (The continental shelf is seabed lying beyond New Zealand's 12-mile territorial sea boundaries, but within its 200-mile exclusive economic zone).

Under the **Iron and Steel Industry Act 1959,** authorisations to prospect or mine for ironsands in any "ironsands area" to which the Act applies are likewise issued at the discretion of the Minister of Energy, subject to certain powers vested in the Ministers of Transport, Trade and Industry, Works & Development and Forests. Again, there is no provision for public objection to the issue of such authorisations.

The Mining Act and the Coal Mines Act do not apply to the issue of licences under the Continental Shelf Act and the Mining Act does not apply to ironsands in ironsands areas covered by the Iron and Steel Industry Act.

A considerable proportion of all mining in New Zealand — principally for road metal, sand and shingle, but also for other privately owned minerals — is not licensed under any of the above statutes, but is controlled by local authorities under the Town and Country Planning Act 1977, or by other Ministers or statutory authorities under provisions in non-mining statutes such as the Public Works Act 1981, the Harbours Act 1950 and the Land Act 1948.

With the exception of applications under the Town and Country Planning Act (in cases where mining is not a use permitted as of right), applications for licences and permits under the non-mining statutes mentioned are not subject to procedures for objection or public participation.

Who Should Make the Decisions?

In the submissions received by the review team, there has been considerable questioning of the respective roles of the different authorities involved in making decisions that lead to the issue of licences under the mining legislation.

Criticism has also been directed at the differences between those roles under the separate statutory regimes outlined above and in particular those of the Mining Act and the Coal Mines Act.

A number of the submissions received during the review reflect the principle that decisions should be made at the level of responsibility most appropriate to the kind of decision called for.

Submissions on that topic point to a distinction between mining proposals that are of national significance and those that are of merely local significance. Most commonly, it is suggested that this is determined by the scale of the proposed operation and/or the nature or economic importance of the mineral deposit that is the target of the operation.

One submission, at least, proposes that this distinction be based on a classification of minerals into "strategic" and "non-strategic" minerals. Minerals in the former category are seen as being of national importance, whilst the others are of lesser or local importance only.

In general, the submissions proposed that the final decision on the issue of licences for mining proposals in the "national significance" category should be made at the executive level, by the Minister or in certain cases by the Executive Council. The Planning Tribunal or other judicial body is not seen as the appropriate forum for a final decision on whether it is in the national interest that a particular mining proposal should proceed in such a case. At the same time the Planning Tribunal (in particular) is recognised as having a valuable role to play in other respects, notably in the determination of disputes and objections.

Role of the Planning Tribunal

There are indications that the Planning Tribunal itself shares this view. In one reported case *(Smith v Waimate West County* (1980) 7 NZTPA 241, 259) the Tribunal considered the requirement of section 3(1)(b) of the Town and Country Planning Act 1977 that "the wise use and management of New Zealand's resources" be taken into account as a matter of national importance in the preparation, implementation and administration of district planning schemes. The Tribunal observed that this provision was aimed at ensuring in a planning sense that an opportunity is afforded to make use of resources, but that it did not require the local Council nor the Planning Tribunal to inquire into the value or economics of the end product to be manufactured from a national resource.

In its decision in that case, the Tribunal also adopted and quoted the following submission by counsel:

> "It is inherently unlikely that matters of the kind mentioned (ie economic appraisal) should have been intended to be decided by local authorities especially when matters of national importance are involved. Local authorities are neither qualified nor appropriate bodies to determine national issues of resource use. They must recognise and provide for wise use in the context of their local functions accepting where appropriate decisions of other authorities acting within their proper spheres".

In a paper entitled "Resource Management by Judicial Process — A Review of an Unsatisfactory Situation" presented on 26 November 1983 to an Environmental Defence Society seminar on "Planning for Major Resource Utilisation", Judge A R Turner CMG, Principal Planning Judge, asked:

> "Is it appropriate that the Courts or other judicial bodies should become involved in the resolution of policy issues? Is that a proper role for a judicial body? How can the Courts ascertain the preference of the majority of the community? How can the Courts persuade the community that a course of action not obviously beneficial will have the most beneficial long term effects? Should the Courts have the authority to make decisions which impose costs upon the community when they are not directly answerable to nor elected by the community?"

In another paper presented by Judge Turner to the 1984 conference of the Australasian Institute of Mining and Metallurgy and entitled "Applications for Mining Privileges in the light of the Mining Amendment Act 1981", Judge Turner said:

> "Another important question which arises out of the 1981 Amendment is that of where final responsibility for making decisions over the use of natural resources such as minerals should lie. Some people consider that there are good reasons why that final responsibility should not rest with a judicial tribunal. There are those who argue that the responsibility is properly an administrative or political one. The Mining Act is ambivalent on the question. It requires the Planning Tribunal to report (on such applications as come before it) on whether the application should be granted, but reserves power to the minister to decline it".

Options for Change

A number of options for change in the area of judicial inquiry and responsibility for final decision on mining proposals have been presented to and examined by the review team. These are set out in the following paragraphs a to e.

a Legislative consistency and integration of licensing procedures

The most obvious need is for consistency in the statutory decision-making processes that apply to comparable exploration, prospecting and mining proposals. This is particularly so in regard to the quite different procedures currently provided for in the two principal mining statutes — the Coal Mines Act and the Mining Act. Integration of these procedures is favoured in the majority of submissions dealing with this aspect of the review.

An option favoured by many who have made submissions to the review team is that the Planning Tribunal be retained as the judicial body responsible for the investigation and effective determination of objections to mineral licence applications, with extension of their jurisdiction to licences presently applied for under the Coal Mines Act and possibly other mining statutes.

b Use of the Town and Country Planning Act procedures

Another group of submissions favours the option of subjecting all mining proposals and at least some prospecting proposals to planning controls under operative district and regional schemes in terms of the Town and Country Planning Act 1977. This option envisages that in most cases mining proposals would be subject to the local Council's consent to the operation as a conditional use, pursuant to a notified application with opportunity for objection. At the present time, applications for licences under the Mining Act and the Coal Mines Act are not subject to the planning procedures of the Town and Country Planning Act. These apply only to mining operations which concern privately owned minerals and therefore do not require a licence under the Mining Act.

Under the last-mentioned option, the Planning Tribunal would have its normal appellate role in hearing and determining appeals from decisions of the local Council.

c Classification of Minerals

An option that has been examined and is advanced in different ways in several submissions involves the classification of minerals or mining proposals in terms of their national importance. Under this proposal, minerals or proposals of particular importance for economic or other nationally significant reasons would be subject to licensing procedures in which the final decision to grant or refuse a licence was made by the Minister of Energy, rather than by a local authority or by a judicial body such as the Planning Tribunal.

It is suggested that other minerals (those not classified as being of national importance) could be licensed under simplified procedures involving approval (where appropriate or possible) by the local Council under the Town and Country Planning legislation, followed by a formal grant of a mining licence with largely standard conditions appropriate to the type of operation proposed. (Attractively simple as this proposal appears at first sight, the wide difference between mining proposals in kind, scale, method and location is likely to present difficulties in many cases if this course is adopted).

d Exclusion of Construction Materials

A further option that has been proposed and one that corresponds with the path followed in several of the Australian states, is to exclude construction materials (stone, gravel, sand, shingle, and the like) from the scope of the mining legislation. Effectively, this would be achieved by a definition of "minerals" that excluded such materials. The result would be that such materials would no longer belong to the Crown. Under this option, the extraction of construction materials would be regulated either (in the case of privately owned land) in terms of the applicable planning controls under the Town and Country Planning Act or (in the case of Crown land) by the issue of permits by the government department responsible for administering the land. It would not be subject to the issue of licences under the mining legislation.

Minerals other than construction materials would be subject to licensing procedures under mineral licensing legislation (preferably integrated into a single licensing statute).

e Consultative Committee or Forum

Finally, there is an option that has been proposed as far back as the 1981 review of the Mining Act and that has again been put forward in submissions received during this review. It is specifically designed to provide for effective public participation in the licensing process and at the same time to accelerate and simplify the consultation procedures leading to decisions on the grant of licences and on the conditions to be attached to them.

It consists in the bringing together of representatives of all the affected parties — applicant, landowners, local authorities, ie. public interest groups and bodies from whom consents or reports are required — in a round-table forum or consultative committee, possibly under the auspices of a standing investigatory committee convened in the Ministry of Energy and having advisory or regulatory powers. The purposes of the forum would include receiving reports, hearing recommendations and proposing the conditions to be attached to the licence. Subsequent procedures of ministerial (or administrative) approval of the proposed conditions and notification for public objection may be substantially the same as under the Mining Act at present. The number of bodies from whom consents or reports are required as part of the

decision-making process on licence applications lends the round-table or forum proposal a certain initial attractiveness. Administrative difficulties in establishing such forums, however, coupled with the sheer volume of licence applications to be considered, reduce the practicality of this proposal. As one of its main objects is to simplify and accelerate the consultation and decision-making processes leading to the grant of the licence, its value is largely lost if these results cannot be achieved.

The Canadian experience with investigatory bodies of the general kind envisaged in this proposal is currently being further investigated by the review committee. To date, however, that experience does not appear to have been altogether encouraging.

Not all of the options outlined above are mutually exclusive and indeed elements of them may well be combined to provide a range of alternative options, some of which are reflected in individual submissions received.

APPENDIX I

Review of Mining Legislation

Terms of Reference for the Review Team

- To conduct a comprehensive review of all mining legislation administered by the Ministry of Energy, except that relating to petroleum and geothermal energy;
- to consider the extent to which the legislation requires to be amended, consolidated, or supplemented so as to provide for a better and more consistent approach to the management of New Zealand's mineral resources and the regulation of mining. This consideration is to include consequential amendments to Regulations;
- to confer as necessary with other Government departments on aspects of their legislation that permit or affect mining and with other interested parties;
- to confer with the Chief Inspector of Coal Mines and the Chief Inspector of Mines, Quarries and Tunnels in reviewing safety provisions;
- to make recommendations accordingly.

Particular attention is to be paid to:

a The ownership of minerals and the rights and interests of the owners and occupiers of land.

b The application of planning and environmental legislation and controls to mineral exploration and developments, including the possible regulation of mining under the Town and Country Planning Act 1977.

c The effectiveness of public participation in the consideration of licence applications on both local and national levels.

d The simplification and speeding up of methods of dealing with applications for licences.

e The adequacy of existing provisions to ensure that mining proposals are in New Zealand's best interests and represent the best use of land resources.

f The adequacy of existing provisions relating to land rehabilitation and compensation.

g Any legislative changes necessary because of the pending introduction of new methods of underground coal mining.

For the purpose of undertaking this review, the review team is to consult widely with affected Government departments and other bodies and interest groups.

October 1985

APPENDIX II

List of Those Who Made Submissions

Aggregates Association of New Zealand (Inc)
Akaroa County Council
Amax Exploration (New Zealand) Inc
Auckland Harbour Board
Baker M
Bates T E
BHP Minerals (New Zealand) Limited
BP New Zealand Limited
BSU Consultants
Canyon Resources Pty Limited
Central Goldfields Mining Limited
Christie Dr A B
Commission for the Environment
CRA Exploration Pty Limited
Cyprus Minerals New Zealand Limited
Department of Education
Department of Internal Affairs
Department of Justice
Department of Lands and Survey
Department of Maori Affairs
Department of Scientific & Industrial Research
- Head Office
- Ecology Division
- New Zealand Geological Survey
- Marine & Freshwater Science Division
- Soil Bureau

Department of Trade and Industry
Valuation Department
Dewhurst R H
Energy & Natural Resources Law Association
Federated Farmers of New Zealand Inc
Fisher Prof D E
Fricker A G
Gabites Porter & Partners
Golden Bay County Council
Great Barrier Island County Council
Greymouth Borough Engineer
Hauraki Catchment Board
Huntly Borough Council
Inangahua County Council
Jasper S L
Jones Lloyd S
Kaurex Corporation Limited
Kidman E
KRTA Limited
L & M Mining Limited
Lake County Council
McAllum Bros Limited
McInroe A L
McOnie Alan
Mineral Resources (NZ) Limited
Mines Division
Ministry of Defence
Ministry of Works & Development
National Advisory Council on the Employment of Women
National Council of Women of New Zealand (Inc)
New Zealand Cement Holdings Limited (per Anthony, Polson & Co) *Continued overleaf*

APPENDIX II *(continued)*

New Zealand Catchment Authorities Association
New Zealand Contractors Federation (Inc)
New Zealand Fishing Industry Board
New Zealand Forest Service
New Zealand Historic Places Trust
New Zealand Institute of Mining
New Zealand Mineral Explorers Association
New Zealand Railways
Otago Catchment Board
Otago Miners & Prospectors Association
Otago University Department of Mineral Technology
Palmer Dr K A
Perry Wylie, Barristers & Solicitors
Private Coalmine Proprietors Federation
Read P W A
Roberts P J
Rocklabs
Rural Bank
St George J D (Otago School of Mineral Technology, Otago University)
Southland County Council
Tainui Maori Trust Board
Taupo County Council
Te Aroha Borough Council
Thames Valley United Council
Turner Haulage Limited
Waikato United Council
Wallace County Council
Waihi Beach/Golden Valley Action Group
Waihi Land & Property Protection Committee
Waitaki Catchment Commission
Wells J and others
West Coast Commercial Goldminers Associate
Westland County Council
Whangarei County Council
Winstone Quarries Limited