

**STOCKTAKE OF SCHEDULE 4 OF CROWN MINERALS ACT AND BEYOND  
DISCUSSION DOCUMENT  
April 2010**

**Submission to:** Ministry of Economic Development

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## **Summary**

Solid Energy supports the proposals in the Discussion Document.

Section 61 of the Crown Minerals Act (1991) prohibits the Minister of Conservation from approving access arrangements for any Crown owned land in Schedule 4 to the Crown Minerals Act 1991 (CMA). It provides for addition of land to Schedule 4 only after consultation with affected parties or those representing some aspect of the public interest, in order to provide an acceptable balance between conservation and economic values.

In 2008 approximately 750,000 hectares was added to Schedule 4. Documents now public show that the path of administrative ease was preferred to any comprehensive analysis of the conservation values of that land or of its mineral potential, despite many submissions opposing this, and without further consultation regarding the decision not to do this specific analysis.

The primary concern is that any conservation land removed from Schedule 4 will automatically be mined, and with insufficient regard for exceptional environmental values. This is not possible. Other controls already in place mean that even if any exploration proceeded to mining, it could only occur in a controlled and responsible manner where all environmental values were fully considered.

## **Background**

### **1 About Solid Energy**

- 1.1 Solid Energy is New Zealand's largest energy producer, including coal, renewables and new energy developments, and is one of New Zealand's major exporters. We are directly responsible through our own and our contractors' staff for close to 2,000 direct jobs, and we support around 10,000 indirect jobs through our suppliers and communities.
- 1.2 We have thousands of customers, ranging from the world's premier steelmakers to New Zealand's largest companies to many small industrial and commercial businesses as well as hospitals, universities, schools, municipalities, and households through our Nature's Flame wood pellet and Switch pellet and solar appliance subsidiaries.
- 1.3 We undertake extensive and innovative research ranging from new energy to environmental solutions such as biodiversity enhancement, reduction of acid runoff impacts and acceleration of rehabilitation at mine sites, utilising what would otherwise be domestic and industrial waste products with no commercial application and sent to landfill.

## 2 Crown Minerals Act 1991 –Schedule 4

### ***Background to Schedule 4***

- 2.1 Section 61 of CMA provides that no applications for access arrangements may be accepted by the Minister of Conservation in respect of any Crown owned land described in the Schedule 4 to CMA.
- 2.2 Section 61(1A) and Schedule 4 were introduced into CMA by way of an amendment to that Act in 1997 (see Crown Minerals Amendment Act 1997 (No 2)). This was a short amending Act of only four sections plus a schedule.
- 2.3 There was a long history behind this amendment as well as an extended period of intensive public debate. This amending Act was based on previous Bills, the first being the Protected Areas (Prohibition on Mining) Bill 1990 and the second being the private member's bill of Judith Tizard - Coromandel Hauraki Gulf (Prohibition on Mining) Bill.
- 2.4 The amending Act provided an absolute protection for the land included in the Schedule through that Act.
- 2.5 Section 61 also went on to provide a mechanism by which additional land might be added to the Fourth Schedule. This requires a recommendation to the Governor-General from both the Minister of Energy and the Minister of Conservation. Such a recommendation can only be made after consultation with affected parties or those representing some aspect of the public interest.
- 2.6 Until the huge addition of land to the Schedule 4 (see below), made by the previous administration, the other provisions of the CMA, and related legislations such as the Resource Management Act 1991 ("RMA"), were considered sufficient to provide an acceptable balance between conservation and economic values.

### ***Last Additions to Schedule 4***

- 2.7 In 2006 the Government proposed the addition of a further (approx) 750,000 hectares to Schedule 4. It appears that the path of administrative ease was preferred to any comprehensive analysis of the conservation values of that land or of its mineral potential:
- "MED and DOC officials met on 22 July 2004 and concluded that the best way to implement the Labour Party 2002 election policy would be to add just the larger areas of conservation land to Schedule 4 by Order in Council. This would give clarity to miners and conservationists for most of the total area gazetted since 1991, while **avoiding potential problems arising from amending the Act and the unwieldiness of preparing maps, undertaking minerals investigations and consultation, and preparing orders in council to add each and every small new area of national park, etc, to Schedule 4.**"<sup>1</sup> Emphasis added*
- 2.8 The mining industry, including Solid Energy, made submissions against the proposal on the grounds that an adequate analysis should be undertaken of the conservation and mineral values of the land prior to final decisions. However in November 2008 (without further public consultation) this land was added to Schedule 4.
- 2.9 Effectively<sup>2</sup> land within Schedule 4 is closed to mining (and arguably in most cases to exploration) and any such proposal cannot even be considered by the Minister of Conservation. Potential economic and social benefits, together with proposed mitigations and offsets, cannot be weighed against the conservation values in the land.
- 2.10 We therefore support the current proposal to assess more fully the specific environmental, economic and social values of the land currently included in Schedule 4.

<sup>1</sup> Letter to New Zealand Minerals Industry Association from DOC dated 3 May 2006

<sup>2</sup> The exceptions are so limited that in reality on ground exploration and mining are prohibited

### 3 Controls over Access and Mining

3.1 In considering whether any or how much conservation land should be open to the potential for mining, the full context should be understood.

3.2 Schedule 4 of the CMA removes from the Minister of Conservation any discretion to consider whether or not the land in that Schedule might be mined.

3.3 For conservation land not in the schedule it remains possible that the Minister of Conservation may be requested to exercise his/her discretion in the consideration of an access arrangement. In addition to that access arrangement the applicant will need to obtain:

(a) A mining permit.

Under the Minerals Programme for Minerals Excluding Petroleum certain areas of New Zealand are already ineligible for any form of permit – see Schedule 2 of the Programme which lists 3½ pages of excluded land

Where the land is open for the grant of a permit the application is assessed against a number of rigorous criteria

(b) Resource consents under RMA.

The activity of mining may be prohibited by a district plan and without a plan change mining cannot take place. This already is the situation under, for example, the Thames-Coromandel District Plan and the Auckland District Plan.

Where mining is a non-complying or discretionary activity it will need to meet high hurdle tests to gain consent. The resource consenting process is a public one with rights of appeal to the Environment Court and on questions of law to the High Court etc.

The powers exist under RMA to decline the grant of an application; or grant it in part and impose bonds and other mechanisms to ensure that effects on the environment are avoided, remedied or mitigated.

3.4 An access arrangement over conservation land is assessed according to the tests set out in s.61 of CMA. These tests represent a high hurdle:

*“In considering whether to agree to an access arrangement in respect of Crown land, the appropriate Minister shall have regard to –*

- (a) *The objectives of any Act under which the land is administered; and*
- (b) *Any purpose for which the land is held by the Crown; and*
- (c) *Any policy statement or management plan of the Crown in relation to the land;*
- (d) *The safeguards against any potential adverse effects of carrying out the proposed programme of work; and*
- (e) *Such other matters as the appropriate Minister considers relevant.”*

3.5 Where land is within a National Park for example, even if the land is outside Schedule 4, any proposal to mine would have to be compatible with the objectives of the National Parks Act 1980 which provides:

#### **“Principles To Be Applied In National Parks**

##### **4 Parks to be maintained in natural state, and public to have right of entry**

- (1) It is hereby declared that the provisions of this Act shall have effect for the purpose of preserving in perpetuity as national parks, for their intrinsic worth and for the benefit, use, and enjoyment of the public, areas of New Zealand that contain scenery of such distinctive quality, ecological systems, or natural features so beautiful, unique, or scientifically important that their preservation is in the national interest.

- (2) It is hereby further declared that, having regard to the general purposes specified in subsection (1) of this section, national parks shall be so administered and maintained under the provisions of this Act that—
- (a) They shall be preserved as far as possible in their natural state:
  - (b) Except where the Authority otherwise determines, the native plants and animals of the parks shall as far as possible be preserved and the introduced plants and animals shall as far as possible be exterminated:
  - (c) Sites and objects of archaeological and historical interest shall as far as possible be preserved:
  - (d) Their value as soil, water, and forest conservation areas shall be maintained:
  - (e) Subject to the provisions of this Act and to the imposition of such conditions and restrictions as may be necessary for the preservation of the native plants and animals or for the welfare in general of the parks, the public shall have freedom of entry and access to the parks, so that they may receive in full measure the inspiration, enjoyment, recreation, and other benefits that may be derived from mountains, forests, sounds, seacoasts, lakes, rivers, and other natural features.”

3.6 Concerns have been expressed that conservation land not in Schedule 4 will automatically be mined. The reality is that this has not happened to date and given the other controls already in place (and described above) future mining can only occur in a controlled, responsible and measured way.

#### **4 Paparaoa National Park – Inangahua Sector**

- 4.1 Solid Energy holds coal exploration permit (EP) 40-461 which covers areas both inside and outside the Paparaoa National Park at Inangahua. To date we have spent \$500,000 on drilling and have budgeted a further \$2m (at least) prior to any possible future application for a mining permit.
- 4.2 Our work to date shows that the Brunner Coal Measures and associated coal seam exist throughout the EP. Our preliminary resource estimates are 5 million tonnes of coal (Indicated) and 12 million tonnes (Inferred) making a total estimated coal resource of 17 million tonnes. This makes up only around 25% of the EP area and it is possible (based on work to date) that there could be a further 25 million tonnes of coal within the EP (and potentially more within this coalfield). This assessment makes this coal one of the most important energy resources in the northern South Island. More certainty over the nature and economic value of this resource requires completion of the work programme that we have already budgeted.
- 4.3 The coal is of a sub-bituminous A rank (with a energy content slightly higher than Huntly coals) and is highly reactive. Solid Energy regards this coal as a potentially very important future South Island energy resource than could provide energy affordability and security for a wide range of industrial, commercial and institutional (eg schools, hospitals) users in the central/northern South Island within a decade or less. We therefore regard the future ability to access this coal as essential to New Zealand’s future energy options, and as an important part of our business going forward.
- 4.4 The Paparaoa National Park also overlaps further known coal resources at the Hart Creek Sector of the Inangahua Coalfield where other parties hold permits and in which coal resources of around 3 million tonnes have been estimated. Although these are not Solid Energy resources we believe similar comments to those made above apply.
- 4.5 The Discussion Document proposes taking out of Schedule 4 those parts of the Inangahua coal field that were included in the Schedule in 2008 without proper analysis. For the reasons given above, we support this.

## **5 Joint Decision Making of Ministers of Conservation and Energy and Resources**

- 5.1 The Discussion Document proposes that there be joint approval of the relevant land holding Minister and the Minister of Energy and Resources for access arrangements under s.61 of the Crown Minerals Act 1991.
- 5.2 Where this would permit decision making to balance environmental and development needs and effects this is to be supported.

## **6 Contestable Conservation Fund**

- 6.1 Solid Energy supports the proposed conservation fund.
- 6.2 We note that the current proposal is for the fund to be contestable. While we do not have a specific view on this, Solid Energy is involved in a wide range of environmental enhancement activities. We carry these out in accordance with our Business Sustainability Principles, one of which is our Environmental Policy Statement:

*The cumulative result of all the activities we undertake will have a positive net effect on the New Zealand environment.*

- 6.3 Many of these activities are carried out in close partnership with the Department of Conservation. We believe the significant synergies we achieve through this approach substantially increase the environmental enhancement value we obtain.
- 6.4 We therefore suggest that the Department of Conservation should be considered as one vehicle for the management and delivery of activities under the Conservation Fund, in partnership with others, on the basis that this is likely to lead to greater overall environmental enhancement outcomes for New Zealand provided the parameters and criteria are set clearly to maximise outcomes and to avoid simply replicating or displacing existing funded activities.

## **7 Further Investigations**

- 7.1 It is also proposed to investigate further discrete areas of land within Schedule 4 that might also be taken out of the Schedule.
- 7.2 Again, given the existing checks and balances that exist, we support this proposal.