MINING AND THE RESOURCE MANAGEMENT ACT

"If we are unable to grow it or breathe it, then we must mine it. If we must mine it/let us do it wisely"

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Mining is essential. If we are going to retain, and improve, our standards of living, mining will continue throughout human history in order to provide energy and materials required for everyday life. Petroleum, coal, steel, copper, aluminium (and other metals), cement, aggregate, porcelain - these all derive from mining. But the bogey of them all is gold mining. We'll concentrate on this activity, for although there is reaction to all forms of mining, none is as extreme as applies to gold.

In this forum, discussion of the philosophical opposition to gold mining is inappropriate. For while the value of gold continues to remain above its real worth, we must expect that commercial interests will pursue it. It is our collective responsibility then to ensure that it is undertaken with appropriate regard to financial, community and environmental constraints.

Recent publicity, such as the "Assignment" television documentary on New Zealand gold mining screened in March, tends to imply that all gold mine operators are irresponsible or ineffective when it comes to environmental control. The documentary focused on the consequences of poor historical practice manifested at mine sites overseas, and in New Zealand at the Tui mine. It then linked these examples to illustrate potential risks associated with the current operations.

Undoubtedly, the mining industry, like most other primary industries, has been responsible for damage to the environment in the past. The Tui mine provides clear evidence of our own legacy (although it is interesting to note that most other old New Zealand mines generate a positive response due to their historical and tourism interest). However, practice within primary industries has changed in parallel with the application of more stringent regulatory controls. Through the Resource Management Act (RMA), the environmental controls applicable to developing and operating mines in New Zealand, and particularly gold mines, are some of the most stringent and comprehensive in the world.

The process of developing resource consent applications for any large mining project is an extensive and thorough one. Projects incorporate the recommendations developed by large teams of technical experts, both from within the applicant company and from independent consultants. Recommendations for mine development from all of these parties are based on current "best practice". The amalgamation of these recommendations provides a balance of operational and environmental constraints. In addition, inputs from the public, the Regulators and their technical advisors help shape the final project. All of these recommendations provide the basis for resource consent conditions that then dictate the way a mine is developed and operated.

Ongoing research and continued development in the industry will undoubtedly produce better methods of environmental protection in the future. The consenting process allows for this continuous improvement through routine and regular reviews of consents.

In this way, the lessons of the past are acknowledged and incorporated into modern mining operations. There is no expectation that past practices that are clearly environmentally and socially unacceptable will return.

Why then is gold mining perceived as so damaging to the environment?

The public image of mining is detrimentally affected by the willingness of environmental and anti-mining lobby groups to publicly denounce the industry, with or without scientific justification, while the industry itself adopts a siege mentality and prefers not to comment on either the negative or positive aspects of its activities.

Through its insularity, the mining industry has done itself a disservice. For many, there is a perception that the industry is arrogant, blinkered and conservative in its attitudes, that it cares about profit and not for people or the environment, that it continues to operate using the same outdated ideas and methods that were the cause of the historical examples for poor environmental stewardship. Until the industry accepts a responsibility to educate, to publicly acknowledge its failures and to proclaim its successes, this situation will continue.

But placing its poor public image aside, my contention is that the activity of mining can be, and currently is largely undertaken in an environmentally acceptable manner.

Is the RMA adequate to protect us from the evils of mining?

Looking back into recent history, before the introduction of the RMA, the mining industry operated under separate legislation that provided it with special status. At the end of our nation's pioneering phase, when the various mining-related Acts were passed and applied, it was not surprising that attempts were made to provide special legislation to control mining through limiting access to areas of special value.

However, since removal of mining's special legal status and the enactment of the RMA, there have been several further attempts to introduce legislation to restrict access to Crown land for the purposes of mining. The most recent examples of these are the PAPOM (Protected Areas Prohibition on Mining) and Tizard Bills, and there remains before the House a modified version of the PAPOM Bill. Are the effects of mining so bad that such legislation is necessary, or have these latter Bills arisen only because of the political mileage to be made from the continuing negative image of mining?

The introduction of special legislation against mining must be an indictment of the RMA. In fact, a Bill proposing to restrict mining is in direct conflict with the purpose of the RMA and if passed will introduce inconsistencies into our environmental law. The whole basis of the RMA was to provide a single piece of legislation under which all activities and industries could be undertaken without the need for special constraining legislation. In repealing the industry-based legislation, we have removed mining's special status. It is now

simply one of any number of potential activities to be undertaken at a particular site; its worth being measured against its effects on the natural and social environment.

To justify the proposed PAPOM Bill three things must be assumed; that the environmental effects of mining are significantly worse than the effects created by other activities, that all Crown land is of significant conservation value, and that there is insufficient power under existing legislation to prevent the mining of special conservation areas. I believe that none of these matters stand close examination.

Are the environmental effects of mining significantly worse than those associated with other activities? Mining involves large-scale earthworks, the safe storage of potentially hazardous materials, the management of discharges to prevent adverse environmental impacts, and rehabilitation. These activities, individually or in total, are common to many other types of development, e.g. road construction and maintenance, rural subdivision development, and of course landfilling. For all such activities, the potential impacts on water quality and land stability, if not controlled and managed in an appropriate manner, could have equal or worse effects than mining activities. This is particularly so given the often cursory examination of some of these activities by Regulators when compared with that given mining projects.

Does all of the Conservation estate have special conservation value and hence warrant special status? Clearly not. In a statement in July of this year, the Minister for the Environment, Simon Upton, recognised that the current thrust towards protecting the DoC estate has been inappropriately managed through the regional, and particularly the district, planning process . He was critical of the DoC's method of listing sites it considers significant and worthy of protection, and of the TLA's unquestioning acceptance of DoC's suggestions. He acknowledges that this endeavour has sought to protect areas that are not of national importance, and that the selection of sites was made without appropriate assessment, both aspects being requirements of the RMA.

With mining, as with any proposed activity on Crown land, not only is the RMA a hurdle to successful development, but permission must be sought from the land manager (the Minister of Conservation), to gain access to this land. In proposing special legislation to prevent mining access to the DoC estate, this controlling position seems to have been forgotten. What does the proposed legislation say about the perceived ability of a minister of the Crown, in this case the Minister of Conservation, to govern?

Therefore, any mine development on DoC-managed land, irrespective of its conservation value, already requires a written consent from the Minster before mining companies, or anyone else, can gain access. Therefore, the Minister is able to refuse access, or to impose conditions to restrict and control activities, to ensure an appropriate level of environmental protection. In short, the existing legislation provides adequate safeguard against irresponsible exploitation of the DoC estate by mining companies (or anyone else).

As something of an aside to this thread, through my contacts with the mining industry I can state that miners accept that there are, and must be, places of sufficient conservation value that mining, and in some cases most other activities, should be excluded. However, the situation as it currently stands is that there appears to be a thrust to lock up large areas

of prospective land in parks, reserves, areas of significant conservation value, and protected natural areas, purely to prevent mining, irrespective of the value of that land or its usefulness for other purposes.

Does the RMA work?

Yes, but it is cumbersome in the way it is applied. The present focus is on process rather than outcomes. It needs improvement, and rapidly. It might only score a 2 on the scale of 1 to 10, but it does work. Therefore, we should concentrate on getting this Act right, not on introducing additional, superfluous law.

In practice, the RMA has adequate controls and powers to allow for safe and environmentally sensitive mine development. As proven through the recent gold mine permitting processes, i.e. Macraes Gold Project Expansion in Otago and, more recently, the Waihi Gold Extension Project, these projects undergo rigorous examination by all parties. Much can be made of the past performance of the Companies as there is now several years of operational experience on which to base accurate predictions of the likely impacts of the proposed extensions. Over the past five to eight years, the environmental controls imposed on these operations have been shown to be adequate. It is reasonable to expect these controls to be adequate for the future.

Why not ban mining anyway, if it offers nothing positive?

The answer is in the first sentence of this paper. Additionally, as with most other industry, mining provides jobs and wealth. This aspect tends to be downplayed, or even derided, by all but the industry itself. Are the industry claims right, or is New Zealand accepting a degraded environment for absolutely no return, i.e. for the sake of offshore profits?

It is patently untrue that the only beneficiaries of gold mining are the offshore investors. Prior to the recent drop in gold price, the cost of producing gold was, say in round terms, 80% of its market value. Therefore, with the price of gold at NZ$700 per ounce, the effort in producing each ounce of gold was returning approximately NZ$550 to the New Zealand economy. On a conservative estimate that New Zealand currently produces 240,000 ounces per annum, this equates to NZ$135 million per annum to the New Zealand economy.

This makes mining a major contributor to the New Zealand economy. It is a large contributor to the local economies in which there are operating mines. The Coromandel-based mining companies directly employ 650 local people with a further 700 people employed from outside the region. $30 million are spent locally on wages and salaries each year. Spending on goods and services from support companies adds further to the contribution to the local and international economy. During the recent Macraes Mining hearing in Otago, a financial assessment showed that the net present value from mining over a period of about ten years was several thousand times greater than that returned from farming the same area of land in perpetuity.

If it works, should the RMA be improved?

"It takes too long and costs too much" is the consistent claim of applicants under the RMA. I believe that in the main we achieve our environmental objectives, but the complaint is well justified. The time, cost and difficulty in permitting a mine in New Zealand under the current regime is a disincentive to overseas investment (to say nothing of the effect that the introduction of an additional piece of legislation designed to further inhibit mining development would have). It also hampers new, locally-driven projects and expansion of existing operations. All other things being equal, removing some of these hurdles, while maintaining a strong environmental-protection focus, is a justifiable reason for improving the Act.

My contention is that the delays are primarily due to the way in which regulatory authorities currently apply the Act, rather than the Act itself. Under the current administration of the RMA, the system is more process driven than outcome driven. That is, it is at least as important to be seen to follow the procedure as it is to focus on the important issues and to produce a decision that is based around appropriate consideration of those issues. Again the examples are the recent and ongoing Waihi and Macraes mine extension projects. These show that even for operations that are well managed, and have acceptable environmental performances as gauged by several years of operation, there remains a requirement to re-examine, often in minute detail, the same issues as were originally examined when the operations were first permitted.

With regard to mining, the Macraes Gold Project Expansion shows that projects can be permitted under reasonably short time periods; this project taking less than 9 months from the start of the project to the hearing. However, the more common practice is that the studies and background investigations required to meet the demands of a regulatory authorities take a considerable time. An example is the Waihi Gold Project which to date has taken about three years to reach a hearing, scheduled for November this year. There is clearly additional expense associated with the extended times taken to permit a project under RMA, e.g. lost-opportunity cost, additional consulting and regulatory costs. However, whether the permitting period is short or long, the experience in both of the above examples is that the RMA process is extremely expensive.

One of the difficulties I see is that Councils seem unprepared to take a stand against, or disregard, trivial submissions. There appears to be no effort made to establish priorities on the critical environmental issues associated with an application. This means that a company may need to put a considerable effort into what is essentially a known or comparatively trivial issue to address a submission. The example above of Macraes and Waihi Gold's need to revisit known aspects of their operations in great detail applies. The result is wastage of both the applicants and Councils' time, money and resources,

In his July statement, Simon Upton clearly accepted a need to improve the efficiency of the consent process. He proposes more monitoring of the implementation of the RMA with an objective of steering people towards good practice. This is to be done through the establishment of a Reference Group. It is pleasing to note that the intention of the RMA monitoring programme will be focused largely on matters of process.

Whether this group review will provide a timely improvement remains to be seen. While I personally would like to see real progress from this effort, even without an MfE-initiated

streamlining of the process, it is likely that there will be improvement over time. This will rely on greater regulatory confidence in using the full provisions of the Act, which in turn will require a reasonable body of legal precedent, and should be assisted by the completion of good, workable district and regional plans and policy statements.

Without question, it would have been most helpful if, following enactment of the RMA, MfE had provided templates and guidelines on how Regional Policy Statements, Regional and District Plans, and s32 assessments should have been formulated. It seems that Councils still would benefit from guidance of this nature as it should speed up these processes and provide some degree of consistency across the country. There appears to be no intention of pursuing this approach, nor is there any apparent acceptance that such guidelines would be beneficial.

The current approach applied to the RMA not only saddles applicants with high permitting costs, but our resource users are also faced with large ongoing compliance costs. It is also interesting to note that the Minister of Commerce, John Luxton, seems committed to reducing the cost of government including regulatory and compliance costs associated with the RMA. His message given in a speech during June 1997 was that business must be allowed to get on with its job of creating wealth without excessive regulatory and complying costs penalising them for doing so. Luxton's suggestion is to develop policy that supports and encourages good practice, and in this he echoes Upton's proposal.

In Australia, the mining industry has its own standard code of practice for environmental management. It is appropriate that similar codes be adopted here in New Zealand, if this means the cost of consenting and compliance and the time involved in these can be significantly reduced. However, while time will hopefully improve the permitting and compliance impediment for other resource users, under the present regime it seems extremely unlikely that significant cost and time savings can be expected for industries like mining. It will require a full acceptance of the effect-based model, and a shift in public perception, before the RMA will work effectively for this industry.

In summary, I believe the best way for the mining industry to improve its public image, and thereby reduce the current strong level of resistance, is for it to embark on a more active education programme. A start has been made; the New Zealand Minerals Industry Association, and the mining companies belonging to this organisation, have been sponsoring a series of handbooks on mineralogy and mining. However, if a true understanding of the advantages and problems associated with mining are to be more readily accepted, then a wider-reaching and more vigorous education programme will probably be required. This should result in a culture or an environment where performance rather than politics dominates. The RMA can then be applied to this industry on an equal basis to that used for other industries, and hopefully we will have developed a proper balance between development and environmental protection.