



OFFICE OF THE HON MAX BRADFORD

# Minister for Enterprise and Commerce

Responsible for the Ministry of Commerce (including Energy and Industry)  
and the Department of Labour

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Damien O'Connor  
MP for West Coast/Tasman  
Parliament Buildings  
WELLINGTON

On 22 March 1999, you wrote to Rt Hon Sir Doug Graham asking for comment on a letter sent to you by Gerard Fahey of Glenharrow Holdings Ltd. Your letter has since been referred to me because the mining licence in question is administered by the Ministry of Commerce.

Mr Fahey's letter essentially raises two questions. The first question he raises is what is the effect of the Ngai Tahu (Pounamu Vesting) Act 1997 on the rights of existing privilege holders. The second and more important question raised in his letter is whether he still has a right of priority to a new mining licence under section 77(2) of the Mining Act 1971.

Initially I must point out that it is the Ministry's view that a mining licence cannot be renewed in respect of bowenite, serpentine, talc or quartz, not because of the effect of the Ngai Tahu (Pounamu Vesting) Act 1997, but because of the fact that a mining licence holder's right of priority to be granted a new mining licence under section 77(2) of the Mining Act 1971 was not preserved by the transitional provisions of the Crown Minerals Act 1991.

The reason for this view is that the Ministry considers that it is clear that the transitional provisions of the Crown Minerals Act 1991 are meant to only last for a limited time to enable the carry over from one regime to another. This limited nature is reflected in section 112 and its deeming of applications under the Mining Act 1971 to be applications under the Crown Minerals Act 1991.

The interests of existing privilege holders are provided for in section 30(8) and section 119 of the Crown Minerals Act 1991 which would normally enable an existing licence holder to apply for a new mining permit under the Crown Minerals Act before any other person.

Such a purposive approach is supported by section 5(j) of the Acts Interpretation Act 1924 and the case of Northland Milk Vendors v Northern Milk [1988] 1 NZLR 537 in which the Court of Appeal stated that:

'There are cases where, in the preparation of new legislation making sweeping changes in a particular field, a very real problem has certainly not been expressly provided for and possibly not even foreseen. The responsibility falling to the Courts as a result is to work out a practical interpretation appearing to accord best with the general intention of Parliament as embodied in the Act – that is to say, the spirit of the Act'

The intent and spirit, of the transitional provisions of the Crown Minerals Act 1991 is that mining licences under the Mining Act 1971 have a limited life and are not able to be renewed. Licences are to be replaced by permits.

For this reason, the Ministry considers that section 107 of the Crown Minerals Act 1991 should not be read so as to continue the effect of section 77(2) of the Mining Act 1971.

This being the case, with respect to talc and quartz, if Mr Fahey of Glenharrow Holdings Ltd wants to continue the mining operation following expiry of mining licence 32 2682 he is required to apply for a new mining permit under the Crown Minerals Act 1991. The process for applying for and allocation of mining permits is set out in the Minerals Programme for Minerals other than coal and petroleum (1 October 1996).

With respect to bowenite and serpentine, with the enactment of the Ngai Tahu (Pounamu Vesting) Act 1997 the Crown has vested all its rights to pounamu (including bowenite and serpentine) in the Takiwa of Ngai Tahu Whanui and the adjacent territorial sea in Te Runanga o Ngai Tahu.

These minerals are no longer the property of the Crown. Consequently, the Crown no longer has the power to allocate rights to prospect, explore or mine bowenite and serpentine within the rohe of Ngai Tahu and in the territorial sea adjacent.

If Mr Fahey wants to continue a mining operation in respect of bowenite and serpentine, he is free to negotiate with Te Runanga o Ngai Tahu for access to these mineral resources.

If Mr Fahey's is involved in a legal dispute with the Inland Revenue Department, I would recommend that you advise him to seek independent legal advice.

Yours sincerely



Hon Max Bradford  
Minister for Enterprise and Commerce