COMMENT ON MINING AND ENVIRONMENTAL LEGISLATION RELEVANT TO MINING VENTURES IN NEW ZEALAND

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The paper by Messrs. Curry and Holm traverses the legislative regime for minerals (including coal) in New Zealand, the 'corporatisation' of the Crown's coal mining operations, the statutory consents required for mining operations and proposals for reform. This commentary deals with the following specific aspects:

- subsequent developments for the reform of mining legislation;
- the 'corporatisation' of the Crown's coal mining operations with emphasis on the disposal of those operations and the prospect of unique opportunities for the private sector coal mining industry; and
- the taxation and rating of coal mining operations as opposed to 'specified mineral' operations.

SUBSEQUENT DEVELOPMENTS IN THE REFORM OF MINING LEGISLATION

The paper by Curry and Holm deals in part with proposals for the reform of the legislative regime (including coal mining) established by the Mining Act 1971 and the Coal Mines Act 1979. Since that paper was written there have been important developments.

First, however, these must be placed in the context of the history of proposals for reform. The review of mining legislation was commenced in 1985 in response to the Lange Government's commitment to fundamentally reform all legislation relating to prospecting and mining. This review initially concentrated on legislation administered by the Mines Division of the New Zealand Ministry of Energy. Subsequently, the Ministry's policy and regulatory functions were consolidated into a single policy and regulation division. This enabled all resource management and mining responsibilities to be grouped together and signalled a new determination to adopt a broader view of the issues in this area. It is intended to systematically extend the review process to include all legislation that relates to New Zealand's energy and mineral resources.[1] The Review Team particular to the mining legislation was established in August 1985 to review all mining legislation administered by the Ministry of Energy (except that relating to petroleum and geothermal energy); to consider the extent to which it had to be amended, consolidated or

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1 See Ministry of Energy, *Review of Mining Legislation, Summary of Public Submissions*, (August 1986), 1.

supplemented and to make recommendations accordingly.[2] Consequently, in October 1985 the Review Team (comprising five Ministry of Energy officials) sought general submissions on the principal issues to be addressed in the review process *e.g.* the rights of landowners and mineral ownership; the application of planning controls (including the possible regulation of mining under the Town & Country Planning Act 1977); the adequacy of environmental protection; the licensing system (including the extent of public participation) and associated consents; the multiplicity of statutes involved in mining various minerals and coal; and miscellaneous matters such as health and safety, royalties, economics and the status of the industry.[3] When inviting submissions on these matters the Review Team stated that its objective was to:

> ... rationalise and consolidate the law relating to minerals and mining so that it reflects a consistent approach to balanced mineral resource development.[4]

Following receipt of submissions the Ministry of Energy published a summary of the public submissions in which the Secretary of Energy emphasised the Ministry's view that there should be a common framework for all legislation affecting resource allocation and management. It stated that the framework should be:

- sufficiently broad to apply to all resources in the minerals and energy area;
- designed to provide a coherent basis for decision making;
- aimed to minimise legislative complexity and cost of administration, consistent with the achievement of desired objectives;
- aimed at achieving fundamental objectives in the resource area.

The Ministry's view was that the fundamental objective of resource legislation should be to achieve the wise development and use of resources for the economic and social benefit of the whole community, both existing and future.[5] The Review Team published its report in October 1986 and the paper summarises its main recommendations.[6] As foreshadowed by the Ministry, the fundamental recommendation was to incorporate the law relating to the administration and licensing of exploration, prospecting and mining for coal or gold and other minerals, in one statute (the Minerals Act). Under the Minerals Act, there would be a uniform procedure for applying for licences, objecting to applications and for considering applications.[7]

It is fair to say that while this fundamental recommendation has been welcomed, the general approach and the detailed recommendations of the Review Team have not been well received; there has been no action to implement them. Indeed, they have been discarded and the Lange

2 Ministry of Energy, *Report of the Review Team on Mining Legislation*, (October 1986), Appendix 1: Terms of reference for the Review Team.
3 See letter to Perry Wylie (now Perry Castle, Solicitors Wellington) and other interested parties dated 7 October 1987 from the Secretary of Energy, Ministry of Energy, requesting submissions.
4 *Ibid.*
5 Note 1, 1, 2.
6 Curry & Holm under section entitled 'Proposals for Reform ...'
7 Ministry of Energy, *Report of the Review Team on Mining Legislation* (October 1986), 4.

Government has started the reform process again. The Government established an Inter-Departmental Committee[8] and in March 1987 that Committee issued a further discussion paper[9] which described the Committee's task as being:

> ... to consider the policy framework for the review of mining legislation.

and that the starting point is that:

> ... in a market led economy, the need for any form of Government intervention or monitoring of the distribution of costs and benefits arising from mineral or mining industry markets must relate to an actual or potential divergence between the outcomes of individual choice and those considered socially desirable[10]

Having received the recommendations of the Review Team, the Lange Government is signalling a different approach. Simply, the Review Team looked at the existing legislation with the objective of consolidating it into one statute but otherwise asked 'what is wrong with the status-quo?' The Lange Govenment, reflecting its market led economic policies, is asking a more fundamental question, namely 'in a market led economy, why do we need mining legislation?'. Consequently, this later discussion paper endeavours to identify values which may or may not be considered sufficiently important to warrant Government intervention in the market place *e.g.* it asks, what is it about minerals, or the mining industry in general, or some minerals in particular, which justifies Government intervention in the market place? The remaining sections of the discussion paper consider a range of mechanisms to achieve some of these values.

After the publication of this discussion paper the Secretary of Energy and the Secretary of Environment held a series of workshops attended by national representatives of the mining industry, local and regional Government, Maori and environmental groups, farming organisations and other groups and officials of Government Departments. These workshops considered six key questions relevant to a minerals policy for New Zealand:

— first, should the policy regime for minerals be any different from that for any other natural resource? The consensus of those attending the workshops was that there were several characteristics of minerals which require special treatment in a minerals policy *e.g.* minerals are non renewable resources, energy minerals have strategic value in meeting the nation's energy needs, minerals are different from other resources because their location and quantity is unknown until exploration and prospecting is carried out, which may have environmental impacts; the Crown owns a significant proportion of minerals, and in some cases the mining industry may have particular environmental impacts, some of which are of a long term nature; and the development of minerals can cause particular conflicts in resolving the rights of various parties *e.g.* rights of

8 Inter-Departmental Committee on the Review of Mining Legislation.

9 Inter-Departmental Committee on the Review of Mining Legislation, a *Discussion Paper on Policy Issues for the Review of Mining Legislation*, (March 1987).

10 *Ibid.* Introduction.

landowners, mineral owners, mineral developers and communities affected;

- secondly, what are the rights of communities and what is the best process for decision making in respect of those rights? The workshops were unable to reach any firm agreement on this aspect but it was agreed that it was difficult to deal with minerals legislation in isolation from other changes likely to recur in Town Planning and water and soil legislation. It was recommended to the Government that a further review of mineral legislation be deferred until a general resource management policy framework was available;
- thirdly, how does one take account of Maori values? The consensus was that the principles embodied in the Treaty of Waitangi are required to be accepted in the mineral legislation;
- fourthly, who should own minerals? The consensus was that the *status-quo* should be accepted;
- fifthly, what should be the respective rights of surface owners, mineral owners and mineral developers? The workshops agreed that rights for access to minerals for exploration, prospecting and mining should be resolved by voluntary negotiation between the mineral owner or developer and the surface owner. Naturally there was some disagreement as to the procedures which should apply if agreement could not be reached; and
- sixthly, how does one ensure that mineral resources are allocated so as to take account of broad national objectives and the needs of future generations? The workshops noted that the Government's policy was that resource allocation could generally be best achieved through the operation of market forces. It was agreed however that some aspects of mineral development could not be adequately dealt with by this means alone, and that the legislation should contain means for Government to influence resource management.[11]

At the time of writing, the Inter-Departmental Committee was due to report to the Government on 1 June 1987 for a decision on the policy issues raised by the discussion paper (as discussed by the workshops) and the drafting of appropriate legislation will then commence.

What will this new mining legislation do? Anyone participating in mining ventures in New Zealand should not place too much weight on the recommendations of the Review Team. Other than the concept of consolidated legislation, a new and different approach is likely to emerge. No doubt the new mining legislation will fulfil certain values or objectives *e.g.* it will:

- define and allocate property rights in respect of minerals;
- establish a process for recording and transferring those property rights; and
- regulate health and safety in the industry.

However, given the 'more market' philosophy of the Lange Government and the push in this direction by the Inter-Departmental Committee, one can foresee legislation that will:

- de-regulate environmental aspects of the industry;

11 Ministry of Energy, Press Release on Mining Legislation Discussions, (15 May 1987).

— de-regulate and leave to the market the extraction and resource depletion issues; and
— de-regulate and leave to the market relationships between the mineral owner, or developer and the surface landowner.

In summary, there could be some exciting change ahead for the New Zealand mining industry.

The balance of this commentary considers aspects of the paper dealing with coal as it is anticipated that new opportunities will arise in the coal mining industry in New Zealand.

THE CORPORATISATION OF THE CROWN'S COAL MINING OPERATIONS AND NEW AND UNIQUE OPPORTUNITIES FOR THE PRIVATE SECTOR

Curry and Holm describe the legislation for the 'corporatisation' of the Crown's coal mining operations. However, it is important to note two aspects of this process:

— first, notwithstanding 'corporatisation', the Crown retains control and has not 'let go' of those operations it will transfer to the Coal Corporation (the corporation involved); and
— secondly, experience from 1 April 1987 (the watershed date for 'corporatisation' for a number of state trading activities in New Zealand) illustrates that not all of the Crown's operations may be transferred to the Coal Corporation and that some are to be made available to the private sector by unique means.

The Coal Corporation, like other corporations established under the State-Owned Enterprises Act 1986 to take over state trading activites, is a limited liability public company but otherwise its essential features are unique to company law in New Zeland. In this regard there are four essential features:

— although the Coal Corporation is a public company[12] the Minister of Finance and the Minister of Energy (as Minister responsible for the Corporation) are the only possible holders of voting shares and they cannot be disposed of[13];
— the decisions of the directors of the Coal Corporation and those made by management must be in accordance with the Corporation's statement of corporate intent.[14] This statement must deal with the (i) objectives of the Corporation, (ii) nature and scope of its activities, (iii) ratio of consolidated shareholders funds to total assets, (iv) accounting policies, (v) performance targets, (vi) dividend policies, (vii) procedures for the acquisition of interests in other commercial ventures, (viii) activities for which compensation from the Crown is sought and (ix) an estimate of the commercial value of the Crown's investment.[15] The purpose of this statement is to provide a means to ensure that the directors of the Corporation

12 State-Owned Enterprises Act 1986, s.30(2) and Certificate of Incorporation dated 24 February 1987.
13 *Ibid.* ss.10, 11.
14 *Ibid.* s.5.
15 *Ibid.* s.14(2).

are accountable to the shareholding Ministers. However, as noted in the paper, the shareholding Ministers may rewrite the statement.[16] Thus the Ministers can determine (because the directors must make decisions in accordance with the statement) the Corporation's activities. It is suggested below that the statement of corporate intent as determined by the Ministers may restrict the activities of the Corporation[17];

- shareholding Ministers may determine the dividends payable by the Corporation[18];
- the Corporation will be locked into the legislative requirements applicable to Government Departments *e.g.* the Government Audit Office shall be its auditor[19] and it will be subject to the Ombudsman Act 1975 and the Official Information Act 1982[20] (although this will be reviewed by a Select Committee during the financial year ending 31 March 1990[21]). Its half-yearly and annual reports, financial statements and Auditors Report must be tabled before the House of Representatives.[22] The Corporation must also comply with the State Servants Conditions of Employment Act 1977 insofar as it applies to State Enterprises.[23] This legislation places the Corporation in an industrial relations regime applicable to state servants.[24]

The essential features as described above show that while the Government has achieved the objective of establishing a vehicle which has no special assistance, is open to competition and must perform pursuant to a corporate plan in order to meet performance targets, the Government has also established a vehicle for conducting Crown coal mining operations which it controls in terms of objectives, activities and nature of performance. Other aspects of the 'corporatisation' process suggest that these controls may be utilised to establish room for the private sector (whether resident or non-resident of New Zealand) in undertaking what were Crown mining operations. Indeed, this may be a real objective of the Lange Government.

Curry and Holm deal briefly with the Government's attempt to ensure that the Coal Corporation conforms to the 'fullest extent possible with rules applying to the private sector'[25]. It is suggested that this legislation and more recent proposals for change indicates the point referred to in the preceding paragraph.

The State-Owned Enterprises Act 1986 provides the legislative regime for the establishment of state enterprises to conduct Crown trading

16 *Ibid.* s.13(1)(a).
17 See below.
18 State-Owned Enterprises Act 1986 s.13(1)(b).
19 *Ibid.* s.19(1).
20 *Ibid.* s.32(1).
21 *Ibid.* s.31.
22 *Ibid.* s.17.
23 *Ibid.* s.8.
24 See State Servants Conditions of Employment Act 1974 (as amended by the State Servants Conditions of Employment Amendment Act 1987).
25 See Curry & Holm under the section entitled 'State Coal Mines . . .'

activities. At the same time this Act amended the Coal Mines Act 1979 by inserting Part IIIA; this grants the Coal Corporation coal prospecting, mining and ancillary mining licences in respect of those Crown coal mining operations described in an agreement for the transfer of assets from the Crown to the Coal Corporation.[26] These provisions were effective as from 1 April 1987[27] it being implicit that it was expected that there would be such an agreement for the transfer of assets in place prior to 1 April 1987. Furthermore, Part IV of the Coal Mines Act 1979 which empowered the Crown to undertake coal mining operations was at the same time amended by the State-Owned Enterprises Act 1986 to limit that power; from 1 April 1987 the Crown may only use its Part IV powers to render or maintain its coal mining operations in proper condition for sale or other disposal.[28] It is submitted that the legislation contemplated all the Crown's coal mining operations being transferred to the Coal Corporation and therefore subject to the appropriate licences granted by the new Part IIIA of the Coal Mines Act 1979. If there was a delay in reaching an agreement for the transfer of those operations to the Coal Corporation (so that it took place after 1 April 1987), the Crown was empowered only to maintain those operations pending disposal pursuant to such an agreement after 1 April 1987.

However, as at the time of writing this commentary there has been no agreement for the transfer of assets from the Crown to the Coal Corporation. The State-Owned Enterprises Act 1986 requires such agreements or other documents entered into by the Crown pursuant to the Act to be tabled before the House of Representatives.[29] The most recent document entered into by the Crown under the Act in respect of the Coal Corporation and tabled in the House of Representatives is an Authority dated 30 April 1987 by the Crown in favour of the Coal Corporation; this authorises the Corporation to manage the Crown's coal mining operations as at 31 March 1987 pending an agreement for transfer of assets being entered into by 30 June 1987, failing which, the Authority shall lapse.[30] What then of the agreement for transfer of assets which should have been in place prior to 1 April 1987?

Clearly, there has been some difficulty in the negotiation of the agreement for the transfer of assets. In early April 1987 two directors of the Coal Corporation resigned, their reasons reported as being dissatisfaction with the Crown's valuation of the transfer price for its mining operations and the future direction of those operations which was implicit in that valuation; *i.e.* Coal Corporation was to take short term decisions as opposed to a long term development approach.[31]

26 Coal Mines Act 1979 s.101B. (as amended by s.32(1) of the State-Owned Enterprises Act 1986).
27 State-Owned Enterprises Act 1986, s.1(2).
28 Coal Mines Act 1979 s.120A (as amended by s.32(1) of the State-Owned Enterprises Act 1986).
29 State-Owned Enterprises Act 1986, s.23(2).
30 An Authority by the Minister of Finance and the Minister of Energy dated 30 April 1986 entered into under s.23(1)(b) of the State-Owned Enterprises Act 1986 and tabled in the House of Representatives on 12 May 1987.
31 See *Evening Post*, 7 and 8 April 1987.

Then on 5 May 1987, being after the Authority to carry on the Crown's mining operations was entered into, the Government by Supplementary Order Paper to a State-Enterprise Restructuring Bill proposed a further amendment to the Coal Mines Act 1979. The proposal is to amend the Act so that notwithstanding the State-Owned Enterprises Act 1986 or other provisions of the Coal Mines Act 1979, the Crown can sell or otherwise dispose of Crown coal mining operations not included in a transfer agreement to such persons and in such manner as the Crown sees fit.[32] The persons to whom the operations will be sold or otherwise disposed of are automatically granted prospecting or mining licences as appropriate.[33] It is suggested that since 1 April 1987 the Government has changed its attitude in relation to the Coal Corporation and its place in the industry in New Zealand. Crown coal mining operations which, given a satisfactory negotiation of a transfer price, would have been transferred to the Coal Corporation and licensed under Part IIIA of the Coal Mines Act 1979, may now be subject to sale or other disposal (whether by tender, auction, or other bidding process) to the private sector coal mining industry in New Zealand. The 'fast track' licensing procedure established by the proposed provisions will provide a unique means for the private sector coal mining industry to acquire Crown coal mining operations on a basis whereby they are introduced immediately into the coal mining licensing regime.

The Coal Corporation's shareholding Ministers may through their ability to determine the Corporation's statement of corporate intent, be content to restrict the Corporation's participation in the coal mining industry and give the private sector ample opportunity to develop. Whether this occurs or not in the next several months will be of real interest.

TAXATION AND RATING OF COAL MINING OPERATIONS

The three different regimes for the taxation of mining operators, as outlined by Curry and Holm, are:

- the regime in sections 215 to 222 of the Income Tax Act 1976 relating to 'specified minerals' (*i.e.* gold, silver and certain other precious or semi-precious metals);
- the regime in sections 214A, 214B and 214C of the Income Tax Act 1976 relating to petroleum; and
- the regime under section 74 of the Income Tax Act 1976 relating to minerals other than specified minerals and petroleum (*e.g.* coal).

The Curry and Holm paper also outlines the taxation regime in sections 215 to 222 of the Income Tax Act 1976 relating to 'specified minerals'.[34] However, in view of the establishment of the Coal Corporation and the suggested increased opportunities for private sector in the coal mining industry, the regime under section 74 of the Income Tax Act 1976 in relation to the mining of coal deserves some mention.

32 Supplementary Order Paper dated 4 May 1987 in relation to the State Enterprise Restructuring Bill, Schedule 2A, s.20A(1).
33 *Ibid.* s.20A(2).
34 See Curry & Holm under section entitled 'Taxation of Mining Operators'.

Section 74(2)(b) provides that the assessable income of any person shall be deemed to include:

> all profits or gains derived in any income year from the extraction, removal, or sale of any *minerals*, timber, or flax, whether by the owner of the land from which they are obtained or by any other person, reduced by an amount equal to the cost of those minerals or of that timber or flax:
>
> > Provided that in any case where profits or gains from any *minerals*, timber or flax are derived in two or more income years and an estimated proportion of the total cost thereof is claimed as a deduction in respect of each of those years, the total amount of those deductions in respect of all those years shall not exceed the total cost of the *minerals*, timber or flax. [emphasis added].

Thus the amount rendered assessable for income tax is the proceeds of sale of coal less the cost of that coal, and such shall be taxed at the normal rate (*i.e.* 48 percent for corporate income tax).

The deduction of costs in undertaking coal mining operations may be on alternative bases. First, a coal mining expense may be capitalised to a cost of coal account. Deduction of the expense is permitted only when the coal (to which the expense relates) is mined and sold. Progressive deduction of expenses in this manner cannot exceed the sum total of all expenses which make up the cost of mining the coal. Secondly, it appears that ordinary revenue expenses like interest, salaries, wages and other annual expenses may be deducted currently under section 104 of the Income Tax Act 1976 (the general provision for deduction of expenses incurred in the production of assessable income).

The case law and general literature in relation to the section 74 regime (and indeed the development of the legislation itself) has been preoccupied by its application to the extraction, removal and sale of timber as opposed to minerals other than 'specified minerals' and petroleum, *e.g.* coal. As a consequence, the case law and practice that has emerged in relation to the extraction, removal and sale of timber, must be considered to determine application of the section 74 regime to coal.

For example, section 74(3) permits those carrying on a forestry business (but not coal mining) to deduct expenditure on rent, rates, land tax, insurance, administration overhead and general repair and maintenance to the extent that they would not otherwise be deductible. Prior to 9 November 1984, the provision was expressly confined to companies,[35] and in light of that restriction the Taxation Review Authority held that an individual could not rely on the general deduction provisions of section 104 of the Income Tax Act 1976 to claim a deduction of forestry expenses of a revenue nature.[36] The rationale was that section 74 was an exclusive provision in relation to the deduction of forestry expenses (and by implication coal mining expenses).[37] The Taxation Review Authority decision had grave implications for the coal industry because there are no provisions in section 74 other than sub-section (2)(b) dealing with the deduction of expenses in relation to minerals (*cf.* expenses in relation to timber). Consequently, on the face of it the coal mining operator had to

35 See second proviso to s.74(2)(b) of the Income Tax Act 1976 repealed by s.11(1), Income Tax Amendment No. 10 Act 1984.

36 TRA Case 85 (1982) 5 TRNZ 809.

37 *Ibid.* 816.

include all expenses in the cost of coal account and deduct the same upon the sale of coal.

However, in *V.H. Farnsworth v. Commissioner of Inland Revenue*[38] the High Court recognised that forestry expenses may be deducted under section 104 of the Income Tax Act 1976; this decision was not available to the Taxation Review Authority in the case referred to in the preceding paragraph. Furthermore, in *A.M. Bisley & Co. Limited v. Commissioner of Inland Revenue*[39] the High Court expressed the view in a case concerning the deduction of interest incurred for forestry operations, that the interest was deductible under either section 74(3) or section 104 of the Income Tax Act 1976 and on this basis there was common ground between the Commissioner of Inland Revenue and the taxpayer.[40] Consequently, it is submitted that section 74 is not a code, and that revenue expenses which could be deducted under section 104 will be able to be deducted, and that other expenses in respect of the 'cost of coal' can be accumulated in the 'cost of coal' account for the purposes of deduction upon the sale of coal.

What expenses will the Commissioner of Inland Revenue allow for the purposes of the 'cost of coal' account in determining the net proceeds of the sale of coal and, therefore, the assessable income? Again, there is published material dealing with the practice for those carrying on forestry operations;[41] but there is nothing published for those carrying on coal mining operations. However, drawing upon the published material the following points are evident.

The Commissioner of Inland Revenue will treat the following items as capital expenditure and not as a 'cost of coal', nor deductible as a revenue expense under section 104:

- cost of acquiring the surface land;
- any legal, survey or valuation fees incurred in acquiring the surface land; and
- cost of permanent roads to obtain access to the surface land.

The Commissioner will also not permit a deduction by way of depreciation on any of these items. He will, however, permit a deduction by way of depreciation under section 108 of the Income Tax Act 1976 for the following items:

- any buildings acquired or erected for use in the coal mining operation;
- motor cars, plant and machinery not used wholly and principally for the development of coal mining operations.[42]

The items to be included in the 'cost of coal' account will include expenses incurred in obtaining the appropriate licences and all development expenditure.[43]

38 (1982) 5 TRNZ 754.
39 (1985) 7 NZTC 5,082, 5,092.
40 *Ibid.* 5,082.
41 For example, *New Zealand Income Tax Law and Practice*, Commerce Clearing House (New Zealand), 31, 803 and *Staples Guide to New Zealand Income Tax Practice*, 46th ed., para. 1027.
42 *New Zealand Income Tax Law and Practice, op. cit.* 31, 802.
43 *Ibid.* and *Staples Guide to New Zealand Income Tax Practice, op. cit.* para. 1028.

In most cases the coal will be sold progressively as it is mined. In such cases it is necessary to calculate how much of the total cost of the coal should be apportioned to the coal sold in each income year. The Commissioner will apportion this by reference to the proportion of the total cost of coal which is equal to that proportion of coal extracted from the estimated coal reserves. The Commissioner will recognise that there will be differences from year to year in the estimate of the coal reserves. He will reopen assessments for the past four years and spread the discrepancy evenly over each of those years by increasing the deduction previously allowed in respect of the cost of coal sold.[44]

Finally, it is relevant to mention the coal mining operator's liability for rates. Under section 62 of the Rating Act 1967 the occupier of land is primarily liable for rates. But, to rate land it must have a roll value ascertained under section 3 of the Valuation of Land Act 1951.[45] Under section 30(4), land which is occupied by two or more persons with different degrees of interest, will be separately valued with the valuation being made on the interest of each occupier. Accordingly, each occupier is primarily liable for the rates assessed on each separate valuation. Since the holder of a coal mining licence under the Coal Mines Act 1979 obtains exclusive possession of the coal to which the licence relates and coal is land within the meaning of 'land' in the Rating Act 1967,[46] the holder of a coal mining licence is an occupier of land and will be primarily liable for rates. Consequently, a separate valuation will be assessed for the coal mining licensee's interest and in addition to those of other occupiers of the land subject to the coal mining licence. The principles for the valuation of this interest are established *R. v. Buller County and Valuer General.*[47] The Court approved the use of the 'Hoskold' formula being a method which had been widely used by the New Zealand Valuation Department for the valuation of coal for many years; this being a formula based on the net present value of the profits recoverable over the life of the coal mine, allowing a reasonable return on capital invested and for a sinking fund sufficient to repay the capital invested. However, the Court pointed out that the use of this or any other formula as a means of valuation is permissible only in the absence of direct evidence of sales.

44 Above note 42, 31, 803.
45 Rating Act 1967, s.51.
46 *Night Caps Coal Company Limited v. Valuer General* (1906) 25 NZLR 977.
47 [1956] NZLR 726.