

Before the Hearing Commissioners  
Appointed by the Grey District Council  
and West Coast Regional Council

Under the Resource Management Act 1991

In the matter of Resource consent applications by TiGa Minerals and Metals  
Ltd to establish and operate a mineral sands mine on State  
Highway 6, Barrytown (RC-2023-0046; LUN3154/23)

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**Supplementary Statement of Katherine McKenzie (Reply)**

19 March 2024

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**anderson  
lloyd.**

## Introduction

- 1 My name is Katherine McKenzie.
- 2 I am providing this statement to provide a revised set of consent conditions which have been proffered by the Applicant in reply, and an explanation of the amendments that have been made to these conditions throughout the course of the resource consent hearing. I have also responded to the hearing statements of Mr Geddes and Dr Durand.
- 3 As this statement is being circulated in advance of hearing from the Council officers and Mr Harding, it is anticipated that there may be some further amendments to consider once this has occurred. A final set of conditions will be provided with the legal reply of the Applicant.
- 4 In writing this statement I have considered:
  - (a) The submitter statements, oral presentations and evidence presented since the 7<sup>th</sup> of February 2024;
  - (b) The Supplementary Evidence of Mitchell Ryan dated 7<sup>th</sup> February 2024 and further Supplementary Evidence of Mitchell Ryan dated 19 March 2024 both in relation to radiation matters;
  - (c) The Joint Witness Statement prepared by Brett Sinclair and Jens Rekker in relation to hydrological matters dated 6 March 2024;
  - (d) The Supplementary Evidence of Cam Wylie dated 7<sup>th</sup> February 2024, the Supplementary Evidence of Stephen Miller dated 7<sup>th</sup> February 2024, and the Joint Witness Statement prepared by Brett Sinclair, Jens Rekker and Cameron Wylie dated 5 March 2024 in relation to mining parameters and geotechnical stability;
  - (e) The revised version of the Supplementary Statement of Stephen Miller dated 11 March 2024, in relation to carbon emissions for the activity;
  - (f) The Supplementary Evidence Statement of Dr Bramley dated 8 March 2024, including the attached updated Avian Management Plan and proposed Lighting Management Plan;
  - (g) The legal submissions of the Director General of Conservation (DgoC) and the supplementary statement of Kate Simister both dated 15<sup>th</sup> March 2024;
  - (h) The Statement of Evidence of Dr Susan Waugh for the Coast Road Resilience Group dated 17 March 2024; the lay evidence of Suzanne Hills (emissions) and Marie Elder (transport) for the Coast Road Resilience Group dated 15 March 2024;

- (i) The Supplementary Statement of Nick Fuller dated 7 March 2024; the Statement of Evidence of Mat Collins (transport peer review) dated 29 February 2024, the Joint Witness Statement by Nick Fuller and Mat Collins dated 14 March 2024, and the Supplementary Statement of Nick Fuller dated 19 March 2024, all in relation to transport matters;
  - (j) The Evidence of Mark Geddes dated 4 March 2024 in relation to the Panel's requests in Minute 8 regarding the TTPP provisions (lighting);
  - (k) The email from Inger Perkins (West Coast Penguin Trust) dated 18 March 2024, commenting on consent conditions;
  - (l) The Supplementary Evidence of Mark Geddes dated 18 March 2024;
  - (m) The Supplementary Evidence of Mr Harding dated 18 March 2024;
  - (n) The S42A Addendum of Dr Durand dated 18 March 2024 (19 March revision).
- 5 Having considered the information outlined above, my conclusions within my Evidence in Chief remain unchanged. In my opinion, consents can be granted for the proposal, subject to the imposition of the amended proffered conditions – attached to this evidence as and dated 19 March 2024. I consider the amended proposal remains within scope of what was applied for.
- 6 The proposal has no more than minor effects on the environment, effects on wetlands and indigenous biodiversity have been appropriately avoided or minimised, and is consistent with relevant plan provisions and national policy direction. The proposal ultimately meets the sustainable management purpose of the Resource Management Act.

### **Response to Mr Geddes' Supplementary Statement**

- 7 Mr Geddes has helpfully provided a set of recommended changes to conditions. I have carefully considered these conditions, and set out below where I disagree with the proposed amendments.
- (a) I disagree with Mr Geddes' suggestion in Condition 1.1 to include the management plans as approved. The purpose of management plans is to achieve certain key objectives while retaining some degree of flexibility as to how this is done. If specific versions of management plans are codified in conditions of consent, this creates difficulty in amending these plans in future and defeats the adaptive management intent of the conditions.

- (b) I have previously recorded my position that an expert advisory panel is unwarranted.<sup>1</sup> I maintain this position. If an expert advisory panel was considered necessary, it could only have been warranted for WCRC hydrology aspects. Mr Sinclair, peer reviewer for WCRC confirmed (orally) at the hearing that water management is practicably achievable and the exercise of maintaining groundwater levels is not difficult, and that the applicant has undertaken onsite trials to demonstrate that water management goals can be achieved. Mr Geddes states that it is not necessary to use the Monte Carlo technique for assessing the bond, but offers no alternative. I have previously recorded my position on the bond conditions<sup>2</sup>, with suggested amendments to ensure that the scope of the bond is not unduly limited by Condition 4.5.
- (c) The only evidence before the Panel relating to avoiding school bus operation is from the Barrytown School, and I do not support the inclusion of other school bus runs in Condition 15.7.<sup>3</sup>
- (d) I do not agree with Mr Geddes that a 100m setback is required to avoid adverse effects on avifauna or his amendments made to Conditions 7.1 and 18.1, and 22.0 all requiring the 100m setback. Dr Bramley has considered the potential effects on avifauna and is comfortable with the 20m setback proposed (with the exception of the bird breeding season). Mr Miller has confirmed that the time spent within 100m of the lagoon for each panel is 5-7 weeks, only 6 of 10 panels are within 100m of the lagoon, and that the mining can be scheduled to avoid the bird breeding season.<sup>4</sup> Mr Harding while stating that 100m should be the minimum, is unsure what the setback should be.<sup>5</sup> Relying on a threshold for consideration of effects in the NESFM as the absolute minimum setback that must be enforced is in my view unreasonable. Because I disagree with this position, Condition 7.6 which Mr Geddes has struck out must remain in the condition set to avoid effects occurring within this 100m setback.
- (e) I disagree with providing remuneration to community members on the Community Liaison Group. The Applicant has agreed to covering the costs of the meeting, however the conditions require an invitation to be extended to certain people, and there is no requirement for these parties to participate if they do not wish to. I do not consider it necessary or sensible to pay people

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<sup>1</sup> Statement of Evidence of Katherine McKenzie, paragraph 188

<sup>2</sup> Statement of Evidence of Katherine McKenzie, paragraph 193

<sup>3</sup> Supplementary Statement of Mark Geddes dated 18 March 2024, paragraph 53

<sup>4</sup> Supplementary Statement of Stephen Miller dated 7 February 2024, paragraph 3

<sup>5</sup> Supplementary Statement of Mike Harding dated 18 March 2024, paragraphs 37-38

to attend, because this is not conducive to conducting an effective or efficient community focused meeting. I am not aware of any such groups on the West Coast where attendees are paid, and I have sat on such an advisory group as a resident for a large quarry proposal in Canterbury and was not offered payment.

- (f) Mr Geddes proposes amendments to Conditions 12.1, 15.1 and 15.2, all relating to controlling activities during daylight hours. Dr Bramley confirmed in questions from the panel, that the Westland Petrel is nocturnal, and would not be affected by lighting being used during the daytime, therefore these amendments are not necessary to control effects.
- (g) Mr Fuller has provided evidence<sup>6</sup> around the additional truck movements expected on top of the heavy mineral concentrate, being occasional fuel deliveries and septic tank disposal. I do not support the change to condition 15.7 because it would unduly limit these very infrequent other heavy vehicle movements.
- (h) Mr Fuller does not agree with Mr Geddes' proposed amendments to consent conditions 15.11 (stop trucking if there is a serious crash), and condition 15.14 (requirement to engage a traffic expert to conduct monitoring).<sup>7</sup> I agree with Mr Fuller and note that these conditions and in addition to the conditions proposed by the Council's traffic expert Mr Collins, all of which have been accepted by the Applicant except one relating to State Highway cyclist signage.
- (i) Mr Geddes proposes entirely deleting the suite of lighting conditions that have been extensively commented on by other highly qualified Westland Petrel experts, and stating that there will be no exterior lighting.<sup>8</sup> Taking such a position would frustrate the exercise of the consent and is not supported by expert evidence in my view. The Grey District Plan permits lighting of no more than 2.0 lux for any activity in the Rural Environmental Area. The proposed Te Tai o Poutini Plan proposes 2 lux overnight, but introduces additional requirements, such as directing light away from adjacent properties. I consider the complete exclusion of all lighting when there is a permitted level of lighting anticipated even in the most recent planning documents is an untenable position to hold.

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<sup>6</sup> Supplementary Statement of Nick Fuller dated 19 March 2024, paragraphs 8-10

<sup>7</sup> Ibid. paragraphs 30-34

<sup>8</sup> Note that in the Appendix 1 version of conditions I have not marked Mr Geddes' deletion of the entirety of Condition 16.1-16.7 for readability.

- (j) Mr Geddes and I disagree on the frequency of noise monitoring (condition 17.4). I prefer Mr Farren's evidence that 3 monthly intervals are only required for the first 12 months of mining<sup>9</sup>, because once established the noise emissions will be relatively consistent.
  - (k) Mr Geddes proposes amendments to condition 18.9 (relating to Korora management). I note Ms Perkins from the West Coast Penguin Trust has provided comments on consent conditions as recently as today, and does not suggest removal of condition 18.9(iv) and the requirement for a Penguin Management Plan was a request of both the West Coast Penguin Trust<sup>10</sup> and the New Zealand Penguin Initiative<sup>11</sup>. I do not support his changes to this condition.
  - (l) Mr Geddes proposes including a condition prohibiting overhead wiring. This is presumably in response to Dr Waugh's new concern raised this week<sup>12</sup> and is not an issue that has previously been raised in evidence.
  - (m) Changes proposed to Condition 19.6 include a requirement to maintain existing "planting" which is perplexing – this is existing riparian vegetation and it is my view that it should not be a requirement of the Applicant to manage existing vegetation. The amendments also propose that the Wetland and Riparian Planting Plan confirm and delineate all wetland and riparian areas to be established and remain at the closure of the mine. I'm unclear of the reason for this inclusion, as I consider it is already covered by Condition 19.1.
  - (n) Mr Geddes proposes amendments to Condition 19.11 which requires a covenant over the area. The timeframe has been removed, which creates confusion about when the covenant is required and consequent enforcement issues. I have proposed amendments to the wording and a map identifying the covenant area as a schedule in Appendix 3.
- 8 Overall, I note that Mr Geddes has a strong view about the potential traffic effects of the proposal, and effects on avifauna. There also appears to be a view that the Applicant cannot or will not comply with consent conditions contributing to Mr Geddes' views, which is inappropriate.

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<sup>9</sup> Statement of Evidence of Jon Farren dated 19 January 2024, paragraph 55-56

<sup>10</sup> West Coast Penguin Trust Hearing Statement, dated 7 February 2024, page 3

<sup>11</sup> New Zealand Penguin Initiative Powerpoint Presentation dated 26 January 2024

<sup>12</sup> Statement of Evidence of Dr Susan Waugh dated 17 March 2024, paragraph 14

- 9 Mr Geddes' position on traffic effects is not entirely supported by the traffic evidence of both Mr Collins and Mr Fuller which is more moderate when considering the effects and recognises the strategic importance of the State Highway 6 route. The Road Controlling Authority have indicated that additional signage is nice to have, but not a requirement.<sup>13</sup> My preferred conditions of consent are supported by Mr Fuller.
- 10 Mr Geddes' position on avifauna effects does not appear to fully consider all relevant experts' evidence (particularly other more qualified experts on Westland Petrel matters). In contrast, Dr Bramley has carefully considered all of the expert evidence provided, and evaluated the effectiveness of a range of mitigation measures from each expert, and provided an AMP, LMP and conditions which will avoid adverse effects which the applicant has proffered. There have been considerable concessions offered by the Applicant since the inception of the project to accommodate the various experts' views and ensure adverse effects are avoided. I consider that the extent of mitigations proposed are sufficiently precautionary given the risk to the Westland Petrel population in particular. The extensive monitoring requirements accompanying all of the mitigation measures will ensure that any unanticipated effects are identified and addressed through review procedures set out in the consent conditions.
- 11 I disagree with the suggestion by Mr Geddes that the AMP "allows" for two interactions per month,<sup>14</sup> which is unhelpful. As is suggesting a single maintenance event may kill a number of birds<sup>15</sup> – I have not seen evidence to suggest this might occur. Rather, the AMP sets parameters should interactions occur. He also presumes that interactions mean groundings/fatalities, and in fact the definition of interactions<sup>16</sup> includes wildlife detections on a camera – that does not in any way suggest an interaction must be a grounding or a fatality. Every single interaction triggers the need for a review of the AMP and LMP to determine what measures can be taken to avoid further interactions (Condition 18.7). I do not interpret this to mean the AMP "allows" two interactions per month.

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<sup>13</sup> Supplementary Statement Nick Fuller dated 19 March 2024, Attachment 1 (Email from NZTA)

<sup>14</sup> Supplementary Statement of Evidence of Mark Geddes, dated 18 March 2024, paragraph 16

<sup>15</sup> Ibid. paragraph 19.

<sup>16</sup> The definition of interactions is specified in an advice note in Condition 18.7 as: "*the presence of a bird or birds within close proximity to the mining infrastructure, including buildings, vehicles and plant where they are or could be put at risk.*"

## Response to Dr Durand's s42A Addendum

- 12 Dr Durand's addendum is focused on matters which I believe have already been extensively canvassed throughout the course of the hearing, and does not offer any recommended conditions that I can comment on.
- 13 With regard to the status of wetlands surrounding the site, I reiterate that the policy context remains similar, regardless of their status – CMA wetland or inland wetland, artificial wetland or natural (because Rusty Pond is an SNA regardless of whether it is natural or not). The policy directive is to avoid adverse effects and that is what the Applicant's current proposal and proffered conditions of consent achieve.
- 14 Dr Durand dismisses the fact that the CMA boundary for the Collins and Deverys Creek waterbodies that feed the lagoon is defined in both the operative and proposed Regional Coastal Plans, and does not consider the interconnected definitions of "coastal marine area" and "river mouth" in the RMA, which I consider to be material in trying to navigate this complex delineation. In relation to rivers, the CMA boundary has been agreed in the Regional Coastal Plan in accordance with the RMA, and any waters downstream of this mark must be CMA by extension. This matter was discussed in detail at the hearing, and my position remains unchanged that the coastal lagoon (including the adjacent wetland areas which are a result of intermitted inundation by the lagoon) is within the CMA.
- 15 The application of the functional need test has also been extensively canvassed in legal submissions and throughout the hearing. I do not consider the Cabinet papers referred to by Dr Durand provide any additional context to the interpretation of the NESFM regulations, and remain firmly of the view that the Applicant has demonstrated that there is a mineral resource to be extracted within 100m of the adjacent wetlands, and the Applicant's evidence has addressed the functional need for mineral extraction activities and ancillary activities to occur within this location.
- 16 Regarding greenhouse gas emissions, I disagree that a change to section 70A and section 104E of the RMA all of a sudden changes the interpretation of a rule in a plan.<sup>17</sup> I reiterate that the West Coast Regional Air Quality Plan clearly permits discharges from mobile sources such as motor vehicle emissions. The West Coast Regional Air Quality Plan does not indicate in any of the methods set out in Chapter 9 that the objectives and policies of this chapter (which relates specifically to greenhouse gas emissions) will be regulated through regional rules in a plan, and the reasons state:

*"These issues of air pollution that have global significance are assessed on a national rather than regional basis. A consistent approach to management of*

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<sup>17</sup> Mr Durand appears to support this view in paragraph 116 of his s42a addendum.



*emissions is required and, therefore, a nationally coordinated approach is supported in this Plan. Regulation at a regional level is therefore not considered appropriate as a method of implementing the policies relating to global issues.”*

- 17 When evaluating whether a proposal needs a consent or not, it is the activity itself that must be considered. It is farcical to suggest that the emissions of this activity are dangerous (when considering the ordinary meaning of dangerous - able or likely to cause harm or injury) and determine that a resource consent is therefore required under the Regional Air Quality Plan. Both Mr Durand and Ms Warnock are conflating a compliance assessment for a rule in a plan and an assessment of cumulative effects requiring assessment under section 104. The proposal, in my view, will not produce emissions which are dangerous, and resource consent is not required for greenhouse gas emissions. I am unaware of any other mine or quarry on the West Coast which has been required to obtain an air discharge permit for greenhouse gas emissions since the changes preventing consideration of these matters to the RMA were made in November 2022 to repeal section 104E. If Mr Durand’s logic applies, the requirement for consent could extend to all earthworks activities involving diesel powered machinery, because any amount of greenhouse gas emission is dangerous.

### **Resource Consent Conditions**

- 18 The Applicant provided revised conditions of consent on 7 February 2024, following the hearing of the majority of experts presenting as part of the Applicant’s case. Further amendments have now been made to the proffered conditions of consent to reflect questions from the Panel, and the statements/evidence of submitters.
- 19 The current set of conditions proffered by the Applicant are contained in **Appendix 1** (changes version) and in **Appendix 2** (clean version) of this statement and dated 19 March 2024. The most recent changes (since the 7<sup>th</sup> of February version) are marked in pink text, and this revision includes Mr Geddes’ suggested changes highlighted in green – where I disagree with these changes I have recorded this as strikethrough text highlighted in grey. The reasons for disagreement are set out above. The Schedules which are referred to in the conditions are contained in **Appendix 3**.
- 20 In these condition sets, the sequence of conditions within each condition set has sometimes been amended to provide greater clarity and flow, so some previous condition references may no longer be accurate. The following sections of my statement thread together and outline the changes made by the Applicant to proffered conditions of consent both in the 7<sup>th</sup> of February and 19<sup>th</sup> of March iterations.

## General amendments

- 21 Conditions have been tidied up, to use consistent language, provide clarity and certainty about what the conditions are seeking to achieve and how they will be enforced, and respond to submitter concerns. These amendments include:
- (a) Condition 4.5 has been amended to clarify that the method for calculating the bond quantum is not intended to limit the scope of the bond, which is to cover compliance with all consent conditions.
  - (b) Condition 5.1 has been amended to require an Annual Work Programme to be submitted on the anniversary of mining activities commencing, rather than the commencement anniversary.
  - (c) Condition 6.6 has been amended to ensure that Consent Authorities have the ability to engage an appropriately qualified person to assess management plans when they are submitted for certification.
  - (d) Condition 7.1 has been amended to require the delineation of wetlands by a suitably qualified professional on the site to accurately determine the location of specified setbacks when the activity commences (noting that these areas can change over time), and a cross reference to landscaping conditions which require a strip of planting around the coastal lagoon edge. This cross reference will ensure that the planting location is accurately defined prior to planting commencing.
  - (e) Conditions 7.5 and 7.6 have been included to ensure that geotechnical conditions within each panel are well understood, and pit wall parameters are set to ensure pit wall stability prior to mining within panels which are in close proximity to wetlands<sup>18</sup>. A further amendment was made to Condition 7.5 to ensure the geotechnical report considers the placement of water management mitigation infrastructure when assessing pit wall stability. I understand from Mr Rekker that the joint witness conferencing considered conditions of consent, and the JWS prepared by Cam Wylie, Jens Rekker and Brett Sinclair did not require any amendments to these conditions.
  - (f) Condition 7.7 requires the Applicant to use mains supplied electricity for powering the processing plant, which will significantly reduce carbon emissions associated with the activity.
  - (g) Refinements were made to Conditions 8.6, 8.7, 8.8 and 8.9 to provide additional clarity to the radiation monitoring requirements, and actions to be

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<sup>18</sup> Supplementary Evidence Cam Wylie dated 7 February 2024

taken should the thresholds for the material (1 Bq/g) and Radon (300Bq/m<sup>3</sup>) are exceeded.<sup>19</sup> A further amendment has been amended to provide clarity around how and when the radiation monitoring data is collected and analysed. In response to submitters, Mr Ryan prepared a further statement<sup>20</sup> providing additional information about the composition of drill hole samples across the site, and confirming that he does not consider further pre-mining radiation sampling necessary.

- (h) Condition 9.2 has been amended to refer to the creation of the future wetland as an important part of the rehabilitation of the site.
- (i) Condition 11.1 has been amended to include additional parties within the Community Liaison Group, and a requirement for the Applicant to cover administrative costs. Condition 11.2 has also been amended to ensure that any traffic concerns are a matter for the CLG and are reported to the West Coast Regional Land Transport Committee.
- (j) Condition 12.3 has been added, to exclude trucking from occurring on Sundays, to provide respite to residents along State Highway 6.
- (k) Condition 19.2 has been updated to provide clarity about the extent of planting along Collins Creek, and ensure that all planting areas are fenced to exclude livestock. Conditions 19.6 and 19.7 have been amended to ensure that the Wetland and Riparian Planting Plan distinguishes between pre-mining planting and the future wetland extension which will be planted at the completion of mining.
- (l) Condition 19.11 has been included, which requires the consent holder to exclude livestock and not undertake farming within the proposed wetland area. This will be secured beyond the term of consent in the form of a covenant in favour of Grey District Council registered on the title for the property. This will provide certainty that there will be enduring positive benefits for indigenous biodiversity relating to the construction of this wetland.
- (m) Conditions 24.5 and 29.1 have been updated to refer to maintaining water levels within piezometers rather than maintaining water levels within adjacent water bodies (because it is not possible to monitor these, and by maintaining levels in piezometers, there is confidence that adjacent water body levels will also be maintained).

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<sup>19</sup> Supplementary Evidence Mitch Ryan dated 7 February 2024

<sup>20</sup> Supplementary Evidence Mitch Ryan dated 19 March 2024

- (n) A small amendment has been made to Condition 26.2 to require continuous automated monitoring of all water pumped from Pond 4 to various locations for water mitigation measures.
- (o) Condition 27.3 has been added to require mitigation measures to be put in place should wind speeds exceed 20km/hr.

#### **Amendments in response to Avian matters**

- 22 On 8 March 2024, Dr Bramley provided a revised Avian Management Plan and a Lighting Management Plan<sup>21</sup>. A full set of conditions were contained in each plan, setting out the most recent amendments to avian and lighting conditions that he and I discussed after considering the evidence of the DGoC, Dr Susan Waugh, the New Zealand Penguin Initiative, the West Coast Penguin Trust, Mr Bruce Stuart-Menteath and others, primarily in relation to Westland Petrel and Korora concerns.
- 23 Ms Perkins (West Coast Penguin Trust) helpfully provided comments on consent conditions, received late on Monday 18<sup>th</sup> March. In discussion with Dr Bramley, I have made adjustments to conditions where necessary (I will address further below), and some other matters will be able to be incorporated into the next version of the Avian Management Plan prior to certification by the consent authority.
- 24 Dr Bramley's evidence sets out in detail why and where amendments have been made, and I agree with the changes which are designed to avoid adverse effects on the Westland Petrel and Korora in particular.
- 25 Following Dr Bramley's evidence, Ms Simister and Ms Waugh have also provided comments on the conditions. Dr Bramley's AMP and LMP set out revised conditions of consent, and the table in the first part of Ms Simister's evidence<sup>22</sup> focuses on a prior version of the conditions. I have considered additional amendments to conditions based on the second part of her statement, which references the conditions Dr Bramley considered necessary to avoid adverse effects on avifauna.
- 26 Amendments have been made as follows:
  - (a) Condition 12.2 has been amended to provide further clarity about when processing plant shifts will operate, which I presume to be the concern Ms Simister has in relation to knowing the hours of operation<sup>23</sup>. I do not consider it necessary to stipulate a start and finish time for mining because this must

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<sup>21</sup> Supplementary Statement of Evidence of Gary Bramley, dated 8 March 2024

<sup>22</sup> Supplementary Statement of Evidence of Kate Simister, dated 15 March 2024

<sup>23</sup> Ibid. paragraph 22

be during daylight hours as per Condition 12.1; and trucking must occur during daylight hours as per Condition 15.1, and due to Condition 15.3 below. I consider the limits on hours of operation for mining and trucking are clearly articulated in conditions of consent. It is not necessary to regulate daytime hours of operation to avoid effects.

- (b) Condition 13.4 has been added to provide certainty that there will not be any windows in the processing plant building.
- (c) Condition 15.3 has been added to require the Applicant to provide passenger transport for shift workers, primarily to avoid increased light vehicle movements during the hours of darkness to reduce the risk to Westland Petrels and Korora. The consent holder is required by this condition to report the composition of staff and travel arrangements to the Consent Authority, and there is no “exceptional circumstances” caveat provided for as suggested.<sup>24</sup>
- (d) Condition 16.2 has been amended to specifically refer to the section of the Australian Government’s National Light Pollution Guidelines for Wildlife which details mitigation measures for seabirds, additional specific requirements for lighting on the site, including the use of timers and sensors and a maximum light temperature of 2000K, requiring blackout blinds on any windows in ancillary buildings, and requiring mobile lighting to adhere to these principle where practicable. I have updated the condition to refer to the 2023 version<sup>25</sup>, which was used by Dr Bramley and I when considering the most recent amendments to the conditions (the incorrect reference to the 2020 version was an oversight). It is my understanding from reading the Light Pollution Guidelines that these have been developed with industrial activities and their associated legislative requirements (i.e. health and safety) in mind, and it is illogical to suggest that the two requirements are mutually exclusive.<sup>26</sup> The conditions already adequately cover the requirement for black-out blinds, which is sufficient to address any light emissions from windows, as well as a requirement to provide a detailed lighting plan (Condition 16.5), to conduct a lighting audit once installed (Condition 16.6) which will identify any non-compliances, and a requirement to rectify any defects found during the audit (Condition 16.7).<sup>27</sup>

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<sup>24</sup> Statement of Evidence of Susan Waugh, dated 17 March 2024, paragraph 7

<sup>25</sup> Supplementary Statement of Evidence of Kate Simister, dated 15 March 2024, paragraph A

<sup>26</sup> Legal Submissions from Counsel on behalf of the Director General of Conservation, 15<sup>th</sup> March 2024, paragraph 5

<sup>27</sup> Statement of Evidence of Susan Waugh, dated 17 March 2024, paragraph 6

- (e) Conditions 16.3 and 16.4 set out the requirement for lighting to be managed in accordance with a Lighting Management Plan, and what the contents of that plan should include. I have also added in a requirement to develop the lighting plan in consultation with a suitably qualified lighting professional<sup>28</sup>, although I note that the key part of any LMP requiring input from a lighting professional is the detailed lighting plan which is already required by Condition 16.5.
- (f) Condition 16.5 has been amended to allow the Department of Conservation to comment on the detailed lighting plan for the site, and a requirement for the Applicant to consider recommendations and amend the lighting plan. The applicant has provided a preliminary lighting plan to enable the Department of Conservation to provide feedback on the specific details/locations of lighting. Mr Lawson has confirmed (see Appendix 4) that this lighting plan was developed by a team including Kevin Price, an electrical engineer consulting to IHC mining, with 8 years' experience in providing electrical and lighting design for mines (i.e. he is suitably qualified). He also confirms that the team is confident that lighting can meet health and safety requirements and the lighting guidelines. This preliminary design which was provided for the Department of Conservation to evaluate does not in any way affect the requirement in Condition 16.5 for the applicant to provide a full design statement at the detailed design stage,<sup>29</sup> Condition 16.6 has also been amended to ensure that the Department of Conservation are provided a copy of the lighting audit which will be completed once the lighting is installed.
- (g) Condition 17.6 has been amended to delete the reference to strobe lights.<sup>30</sup>
- (h) Condition 18.1 has been amended to better reflect the bird breeding season (including the month of August).
- (i) Condition 18.2 has been added to require setbacks from any nest of threatened or at-risk species found within the mining area. This is within the Avian Management Plan, and I considered it should be a condition of consent because it is a key measure to avoid effects on threatened and at-risk species.
- (j) Condition 18.5 has been amended to allow greater flexibility in wildlife camera locations (i.e. not just along the Coast). This is in response to

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<sup>28</sup> Supplementary Statement of Evidence of Kate Simister, dated 15 March 2024, paragraph 26

<sup>29</sup> Supplementary Statement of Evidence of Kate Simister, dated 15 March 2024, paragraph 27

<sup>30</sup> Ibid. paragraph A

concerns by the New Zealand Penguin Initiative that Korora sometimes can be found up rivers, not just along the coastline.

- (k) Condition 18.6 has been amended to require camera footage to be provided to the Department of Conservation on request.
- (l) Conditions 18.7 and 18.8 have been updated to include the requirement to consult with a suitably qualified lighting professional when reviewing the AMP if a petrel interaction occurs.<sup>31</sup> In addition, the requirement to consult with the Department of Conservation has been added to Condition 18.7 to address Dr Waugh's concerns about transparency.<sup>32</sup> There is no assumption in the conditions of consent (or the associated AMP) that petrels will only be found around buildings.<sup>33</sup> I also note that Dr Waugh has presumed that an interaction is a grounding, and this is not the definition of an interaction, as I have outlined in paragraph 10 above.
- (m) Condition 18.9 now ensures that at least two annual Korora surveys are completed prior to mining commencing to increase knowledge about any local populations. In addition, any dead Korora will be provided to the Department of Conservation for necropsy, and a Penguin Management Plan will be required if Korora are found within the mine site. The period outside breeding and moulting has been amended to exclude March.<sup>34</sup> I do not agree with Ms Perkins suggested wording change to condition 18.9(iv), because I think the wording proposed makes the condition less precise, and there will be ample time with two annual surveys prior to mining to detect Korora and implement a Penguin Management Plan prior to mining commencing.
- (n) Condition 18.10 was inserted in the 7<sup>th</sup> of February version of conditions requiring a penguin fence to be installed around the perimeter of the coastal lagoon planting, and has been updated to require the installation of a penguin fence in the circumstance where Korora are detected within 500m of the mine disturbance area (i.e. if no Korora are found, a penguin fence is not deemed necessary).

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<sup>31</sup> Ibid. paragraph 30

<sup>32</sup> Statement of Evidence of Susan Waugh, dated 17 March 2024, paragraph 12

<sup>33</sup> Statement of Evidence of Susan Waugh, dated 17 March 2024, paragraph 10

<sup>34</sup> Inger Perkins (West Coast Penguin Trust) email dated 18 March 2024

- (o) Condition 18.11 has been updated as per Ms Simister's recommendation to include the word 'safe' in the third objective of the AMP.<sup>35</sup>
  - (p) Condition 18.15 has been updated to include reporting on vehicle strikes involving Westland Petrel.<sup>36</sup>
- 27 The amendments to conditions have been made with the express purpose of avoiding adverse effects on threatened and at risk species, in response to concerns raised in evidence and suggestions by submitters. In particular, the lack of night time trucking, assurance through conditions that staff will travel in limited numbers of vehicles during night time hours, and the provision of further information around lighting and how it will be managed on site are significant changes to the project, which will further avoid adverse effects on Westland Petrel and Korora.

#### **Amendments in response to Transport matters**

- 28 Following the peer review of transport matters by Mat Collins, a Joint Witness Statement was produced by Nick Fuller and Mat Collins which indicated that the primary area of disagreement between the two transport experts relates to the merits of requiring the applicant to fund signage and markings to improve safety conditions for cyclists on State Highway 6. Mr Fuller has prepared a supplementary statement addressing this matter and considers that with the suite of measures already volunteered by the applicant, the signage and markings are not required to mitigate the effects of the proposal. Rather, they address an existing safety issue on the road. I agree with this position, and note that feedback provided by NZTA confirms that other activities could be established elsewhere on the road network which would have similar effects, and there would be no mechanism to control these effects.<sup>37</sup> For example in the Grey District, there are no vehicle movement limits in the Grey District Plan for activities originating from Industrial or Commercial zoned land.
- 29 Amendments to the conditions proffered by the applicant include:
- (a) Condition 15.1 has been amended to require trucks to only use the southern route toward Greymouth.
  - (b) Condition 15.7 has been amended to better reflect the Barrytown School bus operation times. As noted above, I disagree with Mr Geddes' suggestion

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<sup>35</sup> Statement of Evidence of Susan Waugh, dated 17 March 2024, paragraph 31

<sup>36</sup> Ibid. paragraph 32

<sup>37</sup> Supplementary Statement Nick Fuller dated 19 March 2024, Attachment 1 (Email from NZTA)



that the high school bus timetable should also be accommodated because there is no evidence to support this.

- (c) Condition 15.8 has been added to require fleet communication to ensure northbound trucks wait for southbound trucks to clear the tight road geometry section of State Highway 6 around Ten Mile Creek.
  - (d) Condition 15.10 has been updated to reflect the suggested amendments to the Transport Management Plan by both Nick Fuller<sup>38</sup> and Mat Collins<sup>39</sup>, consideration of areas where air brakes should be avoided, communication within the fleet to alert other drivers to road hazards and the presence of cyclists and pedestrians, and a requirement to report to the West Coast Regional Land Transport Committee on areas of concern.
  - (e) Conditions 15.11 and 15.12 have been added to set out circumstances where the Transport Management Plan must be reviewed to ensure that it remains fit for purpose.
  - (f) Condition 15.13 has been added, which will require the trucking fleet to be equipped with a GPS monitoring system. This will enable complaints to be investigated efficiently and effectively, and will provide an important tool for monitoring compliance with the transport conditions of consent.
- 30 I consider that the amendments to transport conditions as proffered by the applicant adequately mitigate the transport effects of the proposal, particularly as they relate to pedestrian and cycle safety. The proposal is to truck goods along a State Highway. The Grey District Plan classifies State Highway 6 as a Strategic Route which is defined as: “roads and motorways which form part of a network of national strategic importance, which are a significant element in the national economy, for which a high level of user service must be provided at all times and are a significant element in the regional economy.” The West Coast Regional Policy Statement identifies the State Highway network as Regionally Significant Infrastructure. I do not consider it the Applicant’s sole responsibility to address existing cycle safety concerns with the State Highway, and agree with Mr Fuller that the conditions proffered by the Applicant focus on the effects of the proposal, and how to adequately avoid those effects.

## **Conclusion**

- 31 I remain of the opinion that the effects of the proposal have been appropriately avoided (where required by the NZCPS and NPSIB), remedied or mitigated, such

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<sup>38</sup> Supplementary Statement Nick Fuller dated 7 February 2024

<sup>39</sup> Transport peer review by Mat Collins dated 29 February 2024

that they are no more than minor in nature. The latest suite of conditions proffered by the applicant contains extensive avoidance measures for the Westland Petrel and Korora in particular, which were the focus of many submissions and expert evidence. All different expert views on the protection of these important avifauna have been carefully considered, and additional conditions proffered as appropriate.

- 32 Subject to the attached proffered conditions being imposed, I am of the view that the proposal meets the sustainable management purpose of the RMA, and consent is able to be granted for the proposal.

**Katherine McKenzie**

Dated this 19<sup>th</sup> day of March 2024.

Appendix 1: Revised Conditions of Consent – Changes Version

Appendix 2: Revised Conditions of Consent – Reply Version

Appendix 3: Schedules to Conditions

Appendix 4: Email from Tom Lawson confirming preliminary lighting plan design team