

**BEFORE THE WEST COAST REGIONAL COUNCIL & GREY DISTRICT
COUNCIL OPERATING AS JOINT DECISION-MAKERS THROUGH THEIR
APPOINTED COMMISSIONER PANEL**

IN THE MATTER OF An application under Part 6 of the Resource
Management Act 1991

AND

IN THE MATTER OF An application by TIGA Minerals and Metals
Limited for resource consents. Reference
WCRC: RC-2023-0046 and GDC: LUN-
3154/23

AND

IN THE MATTER OF An application at a Site on Barrytown Flats, State
Highway 6, approximately 9km south of the
Punakaiki Township at 36km north of
Greymouth, to establish and operate a mineral
sands mine in an area of roughly 63 ha over 12
years, including the construction of associated
infrastructure, such as a processing plant and
associated facilities of an area of about 2.0 ha up
to 15m in height and for a minimum average of
50 truck movements per day

**MINUTE NO. 6 FURTHER HOUSEKEEPING MATTERS AND
OBSERVATIONS ARISING FROM PRE-HEARING READING BY THE
CHAIRPERSON**

Dated 10 January 2024

Introduction

- 1 As promised, I have pre-read the material provided, including the application, further information, submissions and the current reports on behalf of the Councils. This Minute aims to record my reflections that might assist the parties in preparing for the hearing and address some other housekeeping matters. This does not indicate any view of the Panel on the application's merits, and does not address transportation, landscape and other important issues. Because of the Applicant's autonomy in setting the parameters of its proposed activity, it is an aspect of the process to assess these parameters and their intended operation, including the offered conditions.
- 2 Given the evidence exchange timetable, I considered it prudent to identify these matters promptly.
- 3 This Minute does not incorporate any queries the other two Panel members may have. Consequently, while it would be beneficial for the Chairperson's queries outlined in this Minute to be addressed in the applicant's evidence and/or legal submissions, other queries will likely be posed to the applicant's counsel and expert witnesses during the hearing.

Incomplete Submissions

- 4 In reading the submissions, the website versions that I downloaded of the electronic versions of the following submissions were incomplete, and I ask Ms Barrow for the complete submissions:
 - (a) Submission no. 142 – Barrytown School Board and Trustees.
 - (b) Submission no. 301 – Dorothy Martel.

Canoe Creek Lagoon

- 5 The Site plan (ATT F – Amended Site Plan) does not identify Canoe Creek, Collins Creek and the Northern Drain or delineate and identify the Canoe

Creek Lagoon and Rusty Lagoon.¹ These features should be identified, and the lagoons should be spatially identified in the plans supporting the offered conditions of consent so that the conditions relate to a register of plans that show the Site features and areas for implementing management plan items as mentioned in the offered conditions.²

6 I also note the Site plan does not identify Pond 4 (at least by name), and it is unclear what the *overland path* refers to referenced in Table 4 – non-metal standards in the proposed offered conditions (see Offered Conditions v1³).

7 The materials note that the Canoe Creek Lagoon was identified in a technical report by Boffa Miskell for the Proposed Te Tai o Poutini Plan. However, the Canoe Creek Lagoon was not included as an SNA in the proposed plan. The terrestrial ecology peer review dated 12 December 2023 at [34]-[35] identifies the Canoe Creek Lagoon as meeting the requirements for an SNA. It is not the Panel’s role to pre-empt the Schedule 1 process, but I make the following observations and requests:

- (a) Can the Panel please have a copy of the Boffa Miskell technical report?
- (b) Please clarify whether there is any disagreement amongst ecologists about the importance of the values of the coastal lagoon. It seems to me that there is agreement that it has high ecological value.⁴
- (c) It may be useful to have spatially identified the ecologically significant turf vegetation and a description of its habitat context and parameters for ecological function.⁵

¹ See offered condition 29.1(iii) for a reference to the Rusty Lagoon.

² These are commonly referenced explicitly in Condition 1.

³ For the purpose of the hearing of the Offered Conditions v1 refers to “ATTTP – Proposed Conditions of Consent revised”.

⁴ See ATT M – Barrytown – ECIA-Final 170423 at Section 8.2.

⁵ The relevant species appear to be vegetation, which was mostly indigenous and included species such as *Myriophyllum triphyllum*, *Potamogeton suboblongus*, *Centella uniflora*, bachelor’s button (*Cotula coronopifolia*) and *Lobelia anceps*. The extent of this turf vegetation in particular, is probably affected to a high degree by the dynamic nature of the lagoon and the regular (daily, seasonal) changes in the water level; per Ecological Response Memorandum 12 June 2023.

- (d) Have the ecological values, including aquatic species, been adequately characterised?
- 8 More generally, I make the following observations about the hydrology evidence as it relates to the lagoon(s):
- (a) The mechanism for achieving hydrological protection of the Canoe Creek Lagoon is unclear to me. For example, it would be helpful to understand how mining in, for example, Panel 5 of the mining program) manages hydraulic impacts by the discharges from Pond 4. The same is true for mining in Panel 10 relative to the lagoon to the north. This is not an observation that it cannot work, but it is unclear how it would work and eliminate the potential for localised changes in hydrology.
- (b) Based on v1 of the Offered Conditions, management of the water level of the Canoe Creek Lagoon is based on a median level, yet the ecological evidence describes the natural condition as being dynamic and having fluctuating water levels. What are the implications of using a median value for managing such a dynamic ecosystem?
- (c) How do the ‘dependencies’ work as controlling parameters in Table A Condition 25.2?
- (d) The Water Management Plan and Komanawa report (consistent with the ECIA) aim for a low impact in the relevant Boffa Miskell effect band for level variation, but the conditions aim to maintain the median. Are these materials well-aligned?

Landscape Management

- 9 Condition 19.2 of v1 of the Offered Conditions refers to a Landscape Mitigation Plan dated April 2023 (Schedule 4). I cannot find this in the materials I have, which relevantly include:
- (a) ATT C1 – Landscape Memorandum.

- (b) ATT C2 - Revised Landscape Assessment.
 - (c) ATT C3 – Barrytown Graphic Supplement.
- 10 These elements are captured in Figures 1 and 2 of the Wetland and Riparian Plan. It is worth considering whether these can be usefully incorporated into the register of plans as part of the offered conditions.⁶

Remediation and Restoration

11 The Applicant's materials refer to the progressive remediation of the Site. There are also proposals to restore areas as natural functioning ecosystems at the end of the mining process, including rehabilitating Pond 4 as a self-sustaining inland wetland. Restoration measures are not captured in a Restoration Plan, and the restoration elements appear in the Wetland and Riparian Plan – ref: Att M1 - Wetland and Riparian Plan.⁷ My observations and questions are:

- (a) Are the restoration measures to be captured in an evaluation under RMA, s 104(1(ab))? If so, are these benefits adequately identified, characterised, and quantified in the ECIA?
- (b) To what extent are these benefits secured in the long term? The long-term plan is to return the land to pastoral farming, in which case the long-term benefits, such as stock exclusion and other protection measures from fencing, may be more securely achieved by conditions of the type referred to in RMA, s 108(ii)(d). Has this been considered?

Effects on Tāiko

12 As Ms Warnock for the Director-General of Conservation, observed in her earlier memorandum, many submitters are concerned about the potential effects on the Westland magenta Petrel (Tāiko). From the material read so far, the Chairperson presently does not have:

⁶ The Applicant can provide this plan to Ms Barrow if it already exists.

⁷ These could be usefully included in the plan register.

- (a) A clear picture spatial extent of the Tāiko breeding area and its relationship to the Site.
 - (b) The evidence establishing causation or correlation between lighting and disorientation of birds (generally or for a specific age cohort) and its incidence. This reinforces the need for detailed evidence on the degree of effect and its relative significance and the sufficiency of measures proposed by the Applicant in the Avian Management Plan.
- 13 The Avian Management Plan does not appear to propose adaptation responses to the discovery of Taiko mortalities and, hence, does not appear to propose an adaptive management regime. The question arises - is it set up to achieve the goals expressed within it?

Other Observations about the Applicant's Offered Conditions

- 14 Several proposed conditions require the Applicant to implement management plans. For example, condition 6.1 is the global condition; notably, condition 24.1 concerns the Water Management Plan.
- 15 Despite conditions requiring compliance with specific management plans included in offered conditions, the conditions also provide the power to amend management plans. Conditions expressed in absolute terms requiring implementation of a specific management plan version do not sit comfortably with the power to amend management plans. That problem is compounded when the conditions do not express explicit environmental outcomes that the management plans must achieve, making it possible for critical environmental parameters to be diluted over time.⁸
- 16 I make the following additional observations:
- (a) If the conditions are expressed as requiring conformity with specific management plans, then the Panel must evaluate the sufficiency of any environmental outcomes in the plans and the sufficiency of

⁸ A point covered in the Director General of Conservation's Submission leading to request to be notified of any changes to the AMP.

those plans to achieve the outcomes. That is a broader enquiry than drafting conditions that make clear outcomes that the management plans must meet.⁹ Is that intended?

- (b) It is conventional to make management plans the method by which explicit environmental bottom lines are achieved as expressed in conditions through goals or objectives.¹⁰ Besides the benefit of not entrenching management plan versions by conditions to enable adaptation to achieve the goals, an advantage of this approach is establishing environmental *grundnorms* for environmental performance within the conditions. Sometimes, the outcomes are already expressed in the management plan itself.¹¹ However, I do not comment on the quality of the drafting, which may be inadequate to meet the standards for a condition.
- (c) Despite (a) and (b) in the case of at least the Avian Management Plan,¹² as it encompasses measures for addressing effects on Tāiko, may warrant assessment for its completeness and appropriateness at the hearing as its efficacy appears to be a key issue?
- (d) Following the above, the questions for each technical expert will be:

⁹ However, in either case, practicability is relevant, and the content of draft management plans is useful to evaluate feasibility.

¹⁰ Management plans are commonly used for major construction projects. Management plans are a suitable mechanism for ensuring that conditions are complied with and detailed environmental effects are managed appropriately. Management plans avoid cluttering the conditions with excessive detail, particularly with regard to how certain construction works or mitigation actions will occur. The caveat is that each management plan condition must specify the purpose or objective of the plan; ideally which conditions it is designed to assist with implementing; the minimum contents of the plan; who is to prepare it; and who else should be consulted or involved in that process.

Commonly conditions will specify that a management plan is to be submitted to the appropriate council and thereafter 'certified', which for all intents and purposes is an approval process. Ideally, the condition should set out a process for reviewing or amending the plan as a project proceeds. If there is conflict between the management plan and the conditions, then the conditions must prevail.

¹¹ An example is the objectives set in the Rehabilitation and Management Plan in Section 1 (AITTO – Rehabilitation Management Plan).

¹² This may be true of others such as the Water Management Plan.

- (i) What conditions implement their requirements or support their conclusions?
- (ii) How does the expert understand the conditions will work to meet those requirements?

Tangata Whenua

17 Further information on the engagement with Ngati Waewae and the mitigation proposed to address cultural effects would be useful.

Director-General of Conservation's Submission

18 The Director-General desires to present the Director's entire case in one hearing slot. Given the potential relationship between the Director's technical experts and the unifying threads that well-crafted legal submissions can draw, that seems understandable. Therefore, the Director-General will present its entire submission by AVL comprising legal submissions and evidence from two technical ecology experts, Kate Simister and Jane Marshall.

19 That AVL hearing is likely to be in the week of the 26th of February and will be recorded.

Timetable

20 Ms Barrow will send parties the indicative hearing timetable with this Minute or shortly after.



John Maassen
Commissioner (Chairperson)