

Online submission

This is a submission that was made online via the Council's website.

Submitter No.	S352
Submitter Name	Marie Elder
Submitter first name	Marie
Submitter surname	Elder
Submitter is contact	Yes
Email	eldersole@gmail.com
Wish to be heard	Yes
Joint presentation	Yes
Trade competition	I could not gain an advantage in trade competition through this submission.
Directly affected	N/A
Withhold contact details?	No

Submission points

Plan section	Provision	Support/oppose	Reasons	Decision sought
Settlement Zone	Settlement Zone	Support	See supporting document 'TTPP submission Marie Elder	Retain zone allocation
Settlement Zone	SETZ - R1	Support	"1 unit per 1000m2 net site area in areas where there is on site servicing of wastewater, water supply and stormwater systems" REASON: to prevent over-development and over-clearance of this bush-clad area. Note: some sections are only 800sqm, so exceptions will need to be made for those.	

Settlement Zone	Overview	Support	<p>“Older settlements may have a main street with footpaths, streetlights and kerb and channel, but many locations do not have this infrastructure and this more rural character should generally prevail in any new development.” - overview</p> <p>SUPPORT: I fully support the above statement. REASON: in this coastal settlement [Ross subdivision, Te Miko] the informal roadside, dark night sky and minimal kerbing support a tranquil indigenous forest ambience and the remaining wildlife habitat. Formal footpaths and/or street lighting would detract greatly from these natural values.</p> <p>“The SETZ - Settlement Zone provides for residential activities as well as some commercial activities. Where industrial activities are proposed these need to be undertaken in an INZ - Industrial Zone.” - Overview</p> <p>SUPPORT REASON: in this coastal settlement limited development supports a tranquil indigenous forest ambience and the remaining wildlife habitat. Industrial activities are inappropriate.</p> <p>REQUEST: that the word ‘limited’ be inserted before ‘commercial activities’, given that once an imbalance of commercial over residential accommodation is reached, the soul is sucked out of small communities such as this, situated on a no exit-road of only around 500m. Buller District Council [BDC] recognised this at the time we invested in our property, in 1994, and should be acknowledged in these new rules, albeit too late to avoid the imbalance allowed to develop in the meantime [see also comments and tourist vs resident numbers on RULE 10, 7]</p> <p>Note: the TTPP overview refers to ‘settlements in Grey District’ but this should surely include Buller and Westland Districts.</p>	Minor amendments
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Settlement SETZ - R2 Amend
Zone

Retain draft Rule 2, with additions

R2, 1- 4,6: Rules on maximum height, site coverage, floor area and projection

SUPPORT

REASON: to protect as much natural habitat and ambience as is possible within a residential area.

R2, 5a: Rule for "the Kumara Junction Developments area": "A minimum 5m wide buffer strip of indigenous vegetation is to be retained on all boundaries. Native species will be retained or planted to ensure that, at maturity, buildings will be screened from the road and neighbouring allotments"

SUPPORT these provisions also being applied to the Ross subdivision, Punakaiki. And that, if a 5m buffer zone is not possible within a narrow section for example, a screen of native vegetation must still be in place.

REASON: we understood similar protections were originally part of the BDC rules for our subdivision and wish to see them reinstated.

Requests for additional rules [apologies if any of these are already covered elsewhere in the TTPP]

REQUEST: In addition to these rules, I ask for restrictions on clearance of native vegetation inside the 5m buffer zone, to this effect: when clearing an accessway and a building site, gravel to be laid only on the driveway area, until a building consent is issued, and then gravel to be laid only on the actual building footprint and immediately surrounding it [say a 2m skirt].

EXPLANATION: The above request is to prevent repeats of what has already happened on some sections in Te Miko: in the worst case an entire section has been cleared, a deep layer of gravel spread over the whole area, then building plans abandoned. The result is a gorse-filled gravel pit where once there was lush indigenous vegetation and wildlife habitat. The gorse has also been sprayed, further compromising the natural environment.

REQUEST: We also need a rule to protect the subdivision from widespread vegetation clearance to create commercial parking spaces, as has already happened at the far end of Ross Place. Restrictions could be put in place proportionate to building size.

REQUEST: Further protection of watercourses. The current requisite culvert is not enough in this karst landscape, for example two watercourses in Ross Place have been cleared of indigenous vegetation and filled in with copious loads of gravel, albeit with culverts, in recent years, one for a commercial carpark and one for a now-abandoned building project. This disturbance of natural watercourses by piling gravel into a depression through which water previously flowed from an observed network of channels, has apparently caused water to find other routes of flow, creating at least two issues downstream:

1. Truman Beach waterfall now runs muddy after rain, not noted previously, and
2. Pavers on a downstream neighbours' carpark now float after rain, again not noted before

REQUEST: A rule to restrict the development of tourist infrastructure within the subdivision, for example any widening of the road to accommodate tourist traffic. We have already seen bus-passing lanes proposed, in a 2013-14 resource consent application - I am not making this up. As well as an adverse effect on the

Settlement Zone	SETZ - R3	Support	<p>consent application. I am not making this up. As well as an adverse effect on the tranquil forest ambience and remaining wildlife habitat, widening or indeed further sealing of the road would increase vehicle speed, creating danger to vehicles, cyclists and pedestrians exiting discreet driveways and using the road.</p> <p>REASON: protect the existing outstanding natural environment and prevent intrusive development.</p>	Retain "New buildings are no more than 100m ² in ground floor area and additions to existing buildings add up to no more than 50m ² ground floor area"
Settlement Zone	SETZ - R6	Amend	<p>REASON: protect the existing outstanding natural environment and prevent intrusive development.</p>	Retain, adding REQUEST: that roadside signs e.g. advertising accommodation, should be small size and of non-intrusive colouring
Settlement Zone	SETZ - R7	Support	<p>REASON: protect the existing outstanding natural environment and prevent intrusive development</p>	Retain rule
Settlement Zone	SETZ - R9	Amend	<p>REASON: noise travels through the quiet forest and disturbs both residents and other visitors.</p>	<p>Retain, adding</p> <p>REQUEST: all visitors and guests of any 'Home Business' [including Air B&B and Backpackers] to not be permitted to socialise out of doors between the hours of 10pm and 8am and required to maintain quiet when moving about outside during these hours.</p>

Settlement Zone SETZ - R10 Amend

Retain for Ross subdivision, with additional rules

SUPPORT: for future accommodation development in the Ross subdivision, particularly where buildings are constructed purely for short-term rental [as opposed to holiday homes often used by the owner/s and otherwise available for short-term rental].

REASON: an imbalance of commercial over residential accommodation places an unreasonable burden on residents within a small community. I believe an insupportable imbalance has already been reached in our small coastal settlement, with, at last count, more than 100 visitor beds [57 in backpacker accommodation and at least 45 in unhosted holiday accommodation] compared with 12 permanent residents. The impact of visitor beds is particularly significant as all dwellings in our community are located on a narrow, unsealed no-exit road only around 550m in length. Permanent residents would prefer more residents as neighbours rather than a constant in-out flow of tourists.

Note 1: This rule should not necessarily apply to other areas in Buller, where communities are structured differently and should have a say regarding rules for their area. The existing large backpacker accommodation in Hartmount and Ross Place is a major cause of current visitor pressure on residents and infrastructure, as well as on the natural environment, much more so than the existing short-term rental holiday homes. The backpacker business has undertaken major clearance of indigenous vegetation for bus and car parking, and in season crowds of tourists overwhelm residents. It is also spread over multiple dwellings on several discrete properties throughout the entire [still partially] bush-clad subdivision, which leads to many daily vehicle movements, and also means visitor activity and noise cannot be adequately supervised by the ever-changing management personnel.

Note 2: I am unsure as to whether large-scale backpacker accommodation is even allowed for in the TTPP Coastal Settlement Rules, as it doesn't seem to fit any Rule category. Therefore, it may already be excluded under Rule 28, appropriate in a Coastal Settlement Precinct in an area of Outstanding Natural Character.

REQUEST: The above should certainly mean the existing backpacker accommodation is not permitted to expand further, nor permitted to clear further indigenous vegetation for parking.

REQUEST: A restriction on the number and size of buses entering this narrow bush road each day.

REQUEST: A specific prohibition on vehicles reversing in, or onto, Hartmount or Ross Place i.e. they must actually have turnaround room on site

REQUEST: Accommodation providers be required, where there are multiple units, to offer numbered parking spaces to be reserved when accommodation is booked, to ensure no parking overflow onto road or other people's property [as was happening in Hartmount Place pre-Covid].

REQUEST: Prevent any further clearance of indigenous vegetation to create commercial parking.

If I have misunderstood, and the more permissive Rule 11 is applied to our Coastal Settlement Precinct, I believe it should not be, and REQUEST permission to resubmit on that Rule.

Settlement Zone	SETZ - R10	Amend		<p><i>"In the Buller District the accommodation is homestay accommodation with a permanent resident living on site." - SETZ R10, 7</i></p> <p>SUPPORT: for future accommodation development in the Ross subdivision, particularly where buildings are constructed purely for short-term rental [as opposed to holiday homes often used by the owner/s and otherwise available for short-term rental].</p> <p>REASON: an imbalance of commercial over residential accommodation places an unreasonable burden on residents within a small community. I believe an insupportable imbalance has already been reached in our small coastal settlement, with, at last count, more than 100 visitor beds [57 in backpacker accommodation and at least 45 in unhosted holiday accommodation] compared with 12 permanent residents. The impact of visitor beds is particularly significant as all dwellings in our community are located on a narrow, unsealed no-exit road only around 550m in length. Permanent residents would prefer more residents as neighbours rather than a constant in-out flow of tourists.</p> <p>Note 1: This rule should not necessarily apply to other areas in Buller, where communities are structured differently and should have a say regarding rules for their area. The existing large backpacker accommodation in Hartmount and Ross Place is a major cause of current visitor pressure on residents and infrastructure, as well as on the natural environment, much more so than the existing short-term rental holiday homes. The backpacker business has undertaken major clearance of indigenous vegetation for bus and car parking, and in season crowds of tourists overwhelm residents. It is also spread over multiple dwellings on several discrete properties throughout the entire [still partially] bush-clad subdivision, which leads to many daily vehicle movements, and also means visitor activity and noise cannot be adequately supervised by the ever-changing management personnel.</p> <p>Note 2: I am unsure as to whether large-scale backpacker accommodation is even allowed for in the TTPP Coastal Settlement Rules, as it doesn't seem to fit any Rule category. Therefore, it may already be excluded under Rule 28, appropriate in a Coastal Settlement Precinct in an area of Outstanding Natural Character.</p> <p>REQUEST: The above should certainly mean the existing backpacker accommodation is not permitted to expand further, nor permitted to clear further indigenous vegetation for parking.</p> <p>REQUEST: A restriction on the number and size of buses entering this narrow bush road each day.</p> <p>REQUEST: A specific prohibition on vehicles reversing in, or onto, Hartmount or Ross Place i.e. they must actually have turnaround room on site</p> <p>REQUEST: Accommodation providers be required, where there are multiple units, to offer numbered parking spaces to be reserved when accommodation is booked, to ensure no parking overflow onto road or other people's property [as was happening in Hartmount Place pre-Covid].</p> <p>REQUEST: Prevent any further clearance of indigenous vegetation to create commercial parking.</p> <p>If I have misunderstood, and the more permissive Rule 11 is applied to our Coastal Settlement Precinct, I believe it should not be, and REQUEST permission to resubmit on that Rule.</p>
Settlement Zone	SETZ - R13	Support	protect the existing outstanding natural environment and prevent intrusive development	Retain rule
Settlement Zone	SETZ - R14	Support	protect the existing outstanding natural environment and prevent intrusive development	Retain rule

Notable Trees	Notable Trees	Support	It is reassuring to see the establishment of this schedule and there will be many more specimens in the district which could and should be added. Awareness of this is heightened by the loss of two ancient rata within 200m of our home in the last ten years. One was cut down because 'it might fall on the driveway one day' by owners who also cleared to the boundary and have now put their property on the market, and the other by an overseas owner who spent very little time on site before deciding to have the rata tree felled, perhaps because it would shade his Air B&B cabin site. We would not wish a repetition of these losses in the future.	Retain and expand schedule of trees
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Documents included with submission

Document name Final Decision - Barrytown JV Ltd - 10 Feb 2022 (1)

File [finaldecisionbarrytownjvLtd10feb20221.pdf](#)

Description Commissioners' decision on mining resource consent application Barrytown Flats

Document name TTPP submission Marie Elder

File [tppsubmissionmarieelder.pdf](#)

Description Full submission of Marie Elder, saved as pdf

Document name TTPP submission Marie Elder

File [tppsubmissionmarieelder.docx](#)

Description Full submission of Marie Elder, saved in Word

Mineral
Extraction
Zone

Mineral
Extraction
Zone

Oppose

BARRYTOWN FLATS

I am deeply concerned that this area is classified as Mineral Extraction Zone [MEZ] in the draft TTPP.

REQUEST: that the Barrytown Flats be re-zoned appropriately to reflect an area which includes significant wetlands, coastal forest remnants, the flightpath of the threatened tāiko, wildlife habitat including that of the critically endangered bittern, freshwater systems, farms, homes, and small-scale businesses providing livelihood to locals such as holiday accommodation, small-scale gold mining and horse wagon tours.

REASONS for this re-zoning and amendment request:

1. GRZ draft rules

As I understand the draft General Rural Zone [GRZ] rules, to re-zone as General Rural is still inappropriate without significant amendment. If rules allow 3-4ha to be mined at a time, without requiring resource consent, this would be highly permissive, and so threatening to endangered wildlife species, to indigenous stands of vegetation and wetlands, to physical landforms and waterways, to the livelihood of residents and to the visitor experience of our 'untamed natural wilderness'.

These draft GRZ rules would undermine the rights of rural residential neighbours who value environmental protections and/or have invested in rural property for a quiet, close-to-nature lifestyle, and/or are farming in harmony with the land, and/or are running a small, low-level business. In other words, the ratepayers whose lives are to be governed by the TTPP.

1. Consent declined

The area of the Barrytown Flats where the Barrytown JV Ltd [BJV] resource consent application 2021 for heavy mineral mining was declined is, in the TTPP draft, now classified as a MEZ. WCRC planners, at the 31 August 2022 TTPP consultation in Punakaiki, confirmed they had recommended to the TTPP committee this MEZ classification be changed, but that their recommendation was not accepted.

I urge that this decision be reconsidered.

If this Barrytown area and others like it remain as MEZs, the TTPP will sweep aside the careful consideration the resource consent process currently allows to ecological values, freshwater values, neighbouring wetland values, protection of the Westland petrel [in the case of Barrytown Flats] and the well-being of surrounding communities.

The TTPP would become a document which enables mineral extraction for profit at the expense of environmental protections and at the expense of local communities, completely at odds with the RMA's intention to 'control land use activities ... and protection in an integrated way'.

1. Te Whanaketanga 2050, Together for Tomorrow

Zoning Barrytown Flats as a MEZ would also fly in the face of the vision of the West Coast's own economic strategy 'Te Whanaketanga 2050, Together for Tomorrow':

"OUR VISION: To be recognised as leaders in the adoption of innovative, sustainable and regenerative economic, social, wellbeing and environmental solutions." - p8

And would seem to ignore its Mission Two: Strengthen and Diversify our Economy

*"Te Tai Poutini has untapped potential in the **green economy space** – from the unrealised value of our natural resources to the knowledge economy potential that exists from our strengths in conservation and biodiversity restoration." - p14 [my bold]*

And its "Priority Project: to build a Conservation Centre of Excellence Te Whāomoomo.

*"Our strengths in protecting and restoring the natural environment are an opportunity to build **a light footprint niche economy** on the Coast that develops, incubates, and shares knowledge on **conservation and biodiversity restoration.**" – p15 [my bold]*

These statements point towards planning support for existing and future projects such as the Conservation NZ restorative planting projects, the native nursery specialising in plants from this ecological district, regenerative farming practices, protecting the wetlands and coastal forest remnants, and protecting the ecosystems that support the Westland petrel and other wildlife species.

These Te Whanaketanga 2050 statements do not point towards encouraging excavation of the land.

1. Protection of Natural Environment

Mining on the Barrytown Flats would create a threat to the freshwater biodiversity of the many creek systems and freshwater springs, as detailed in submissions against the BJV application in 2021.

The endemic and threatened tāiko /Westland petrel would be further endangered by mine lighting and especially by night-time trucking, as evidenced in the concerns of the Department of Conservation, presented by Kate Simister to the BJV hearing. She concluded that even the mining company's additional evidence, given at the reconvened hearing, *"failed to identify the period of potential light attraction due to a lack of understanding of their biology and behaviour and did not sufficiently eliminate or mitigate the risks posed to tāiko, particularly given the proposed hours of mining activities and the additional vehicle lights on SH6"* – Commissioners' report, Feb 2022.

Matt Charteris, ecologist, also at the November 2021 hearing, concluded that habitat for at risk and threatened wetland and forest birds was present adjacent to the proposed mine, and that the potential adverse effects of the mining proposal on threatened and at-risk birds such as the cryptic and critically endangered bittern, would be 'significant'.

The lack of bird monitoring and protection plans as part of the BJV [now Tiga] 2021 application, even after being given an extra six weeks to amend the application, and their lack of evidence as to what [for example] level of change would be acceptable in Collins Creek before species were threatened, as noted by Sharon McGarry, Commissioner, indicates a low level of environmental awareness. The implication is that if mining were permitted on the Barrytown Flats without need of a resource consent, we would have to brace for major adverse environmental effects.

Mining excavations would also increase the vulnerability of the Barrytown Flats to flooding and coastal erosion due to lowered land levels.

1. No social licence to operate

Tiga Minerals, the mining company currently expressing a keen interest in mining the Barrytown Flats, cannot claim a social licence to operate, as nor can any other company. The vast majority of people living in the area object strongly to the prospect of a mine as a neighbour for a wide range of valid reasons: environmental, social, health, aesthetic, economic, highway structure and safety, and destruction of peace and tranquillity. The range and depth of feeling on these issues, and the anxiety and stress it created in the community, was made abundantly clear through the 2021 resource consent process.

I object to mining proponents' dismissal of objections as a NIMBY argument. Firstly, people have a right to object to proposals in their 'backyard' when they are likely to have an adverse effect on livelihoods, health, and the environment. Secondly, people are not necessarily objecting to mining per se, but pointing out that open cast mines do not have a place in a rural lifestyle setting in a sensitive natural ecosystem right next to neighbours and a highway which is a tourist attraction in itself and a lifeline for local people. Thirdly, it is not just near neighbours who are concerned about these mining proposals. I live around twenty kilometres from the Barrytown Flats so this is not my immediate backyard, I will not be directly affected except by the trucking of heavy mineral sands, and I strongly object to the mining proposals.

1. Trucking on SH6

Heavy trucking would be detrimental to the highway itself, causing increased wear and tear on a fragile, expensively high maintenance road already frequently closed or partially blocked by slips and/or subsidence.

The narrowness of the highway, with frequent tight and often climbing corners, means more heavy vehicles

would add significantly to user risk. Existing trucking often crosses the centre line to manoeuvre corners and narrow bridges, and we should not knowingly add to this existing risk to oncoming traffic.

Trucking noise, particularly if operating during night hours, would cause significant disruption to residents living near SH6. The verbal comment by one of BJV's noise experts that people might choose to move to a bedroom on the other side of the house, further from the highway, showed a lack of regard for residents' quality of life, while at the same time acknowledging trucking noise would in fact be disruptive to sleep and therefore detrimental to health and well-being.

The adverse effects of night-time trucking on the Westland petrel are well documented in the Department of Conservation evidence to the 2021 BJV hearing.

1. Employment: a mirage?

It is easy to make the claims that mining would be a large local employer of great benefit to the local economy. However, there is no guarantee that a sizeable proportion of the labour would actually be local.

It is worth noting the mining industry currently struggles to recruit labour. In July 2022, Stockton general manager export operations Ian Harvey was quoted in the News as saying the mine was battling to recruit staff and needed about 10 more skilled workers: "*It has been difficult, even finding operators.*"

And, Bathurst Resources chief executive Richard Tacon said at the NZ Resources 2022 Forum "*the industry was short of mining engineers, geo-staff and diesel mechanics.*" - Westport News 18 Oct 2022

Perhaps there is not a long queue of local people hoping more new mines will open on the Barrytown Flats so they can pounce on the jobs.

1. Threat to current Barrytown economy

Contrary to claims made by the mining fraternity, I believe the overall effect on the local Barrytown economy would be negative. It currently consists of farming blocks, some of which pursue environmentally aware farming methods such as protecting fragile wetland areas; lifestyle blocks; and small, low-impact businesses such as a native plant nursery, small-scale gold mining, visitor accommodation and horse wagon tours.

Proximity of mining operations to the highway, and the use of SH6 as a heavy mineral trucking route, would detract from the quality of life for residents and from the visitor experience. Anecdotal evidence indicates several would-be buyers have been dissuaded from purchasing properties in the area once they heard of the possibility of a mine, and another who did buy has said they would not have, had they known of a potential mining operation. Thus, the value of existing properties will be falling.

Mining operations would cause reputational damage to Barrytown, Punakaiki and the Coast Road, especially as a visitor destination. This is particularly ironic given \$25.6 million is currently being invested in Punakaiki to enhance the visitor experience at Dolomite Point.

I believe mining development in this area to be a short-sighted move which might benefit investors from afar but would be detrimental to the local area.

Concluding Comment

I also refer the TTPP committee to the attached '*Joint Report and Decision of Hearing Commissioners Ms Sharon McGarry (Chair), Ms Maria Bartlett and Dr Rob Lieffering 10 February 2022 in the matter of applications for resource consents associated with the operation of an open cast sand mineral mine, processing plant and load out facility on State Highway 6, Barrytown*'. This document contains summaries of the considered and considerable evidence submitted against mining on the Barrytown Flats. They make compelling reading.

SUBMISSION ON PROPOSED TE TAI POUTINI PLAN

SUBMITTER DETAILS

Marie Elder

Submitter No.	5352
Wish to be heard	Yes
Joint presentation	Yes
Trade competition	I could not gain an advantage in trade competition through this submission
Directly affected	N/A

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I started to enter my submission online but had some difficulty conforming my draft to the online format, especially where I have multiple requested amendments, with reasons for each one.

So am also uploading my full commentary as a complete 'supporting' document: 'TTPP submission Marie Elder' hoping this makes the information more accessible. I have attached it as a Word document as well as a PDF in case that is useful.

I am submitting on three parts of the plan:

1. SETZ rules relating to the Coastal Settlement of Te Miko where I live, just north of Punakaiki township [pp1- 6]
2. Schedule Two: Notable Trees [p6]
3. Zoning of the Barrytown Flats as a Mineral Extraction Zone [pp 7 - 10]

PART ONE

COASTAL SETTLEMENT PRECINCT OF TE MIKO, PUNAKAIKI

I refer variously here to the area where we live as a Coastal Settlement [TTPP term], Ross subdivision, Hartmount and/or Ross Place and Te Miko.

Zoning

Outstanding Natural Landscape

SUPPORT: It is appropriate this area be zoned Outstanding Natural Landscape. Umbrella protections are needed especially given its proximity to the wildlife habitat of the Paparoa National Park and its key role as part of the mountain, bush, and sea coastline connectivity.

Coastal Settlement Zone

SUPPORT: this seems appropriate zoning for Ross subdivision

TTPP Overview

“Older settlements may have a main street with footpaths, streetlights and kerb and channel, but many locations do not have this infrastructure and this more rural character should generally prevail in any new development.” - overview

SUPPORT: I fully support the above statement.

REASON: in this coastal settlement [Ross subdivision, Te Miko] the informal roadside, dark night sky and minimal kerbing support a tranquil indigenous forest ambience and the remaining wildlife habitat. Formal footpaths and/or street lighting would detract greatly from these natural values.

“The SETZ - Settlement Zone provides for residential activities as well as some commercial activities. Where industrial activities are proposed these need to be undertaken in an INZ - Industrial Zone.” - Overview

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REQUEST: that the word *‘limited’* be inserted before *‘commercial activities’*, given that once an imbalance of commercial over residential accommodation is reached, the soul is sucked out of small communities such as this, situated on a no exit-road of only around 500m. Buller District Council [BDC] recognised this at the time we invested in our property, in 1994, and should be acknowledged in these new rules, albeit too late to avoid the imbalance allowed to develop in the meantime [see also comments and tourist vs resident numbers on RULE 10, 7]

Note: the TTPP overview refers to *‘settlements in Grey District’* but should surely include Buller and Westland.

SETZ R1 Residential Activities and Residential Buildings - Density

"1 unit per 1000m2 net site area in areas where there is on site servicing of wastewater, water supply and stormwater systems"

SUPPORT

REASON: to prevent over-development and over-clearance of this bush-clad area.

Note: some sections are only 800sqm, so exceptions will need to be made for those.

SETZ R2 - Buildings and Sites - Design

R2, 1- 4,6: Rules on maximum height, site coverage, floor area and projection

SUPPORT

REASON: to protect as much natural habitat and ambience as is possible within a residential area.

R2, 5a: Rule for *"the Kumara Junction Developments area"*: *"A minimum 5m wide buffer strip of indigenous vegetation is to be retained on all boundaries. Native species will be retained or planted to ensure that, at maturity, buildings will be screened from the road and neighbouring allotments"*

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EXPLANATION: The above request is to prevent repeats of what has already happened on some sections in Te Miko: in the worst case an entire section has been cleared, a deep layer of gravel spread over the whole area, then building plans abandoned. The result is a gorse-filled gravel pit where once there was lush indigenous vegetation and wildlife habitat. The gorse has also been sprayed, further compromising the natural environment.

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SETZ - R3 Building Design in the Coastal Settlement Precinct

"New buildings are no more than 100m² in ground floor area and additions to existing buildings add up to no more than 50m² ground floor area"

SUPPORT

REASON: protect the existing outstanding natural environment and prevent intrusive development

SETZ – R6 Minor Structures

SUPPORT

REASON: protect the existing outstanding natural environment and prevent intrusive development.

REQUEST: that roadside signs e.g. advertising accommodation, should be small size and of non-intrusive colouring

SETZ – R7 Fences, walls and retaining walls

SUPPORT

REASON: protect the existing outstanding natural environment and prevent intrusive development

SETZ - R9 1 – 6 Home Business

SUPPORT

REQUEST: all visitors and guests of any 'Home Business' [including Air B&B and Backpackers] to not be permitted to socialise out of doors between the hours of 10pm and 8am and required to maintain quiet when moving about outside during these hours.

REASON: noise travels through the quiet forest and disturbs both residents and other visitors.

SETZ R10, 7 Residential visitor accommodation

"In the Buller District the accommodation is homestay accommodation with a permanent resident living on site." - SETZ R10, 7

SUPPORT: for future accommodation development in the Ross subdivision, particularly where buildings are constructed purely for short-term rental [as opposed to holiday homes often used by the owner/s and otherwise available for short-term rental].

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Note 2: I am unsure as to whether large-scale backpacker accommodation is even allowed for in the TTPP Coastal Settlement Rules, as it doesn't seem to fit any Rule category. Therefore, it may already be excluded under Rule 28, appropriate in a Coastal Settlement Precinct in an area of Outstanding Natural Character.

REQUEST: The above should certainly mean the existing backpacker accommodation is not permitted to expand further, nor permitted to clear further indigenous vegetation for parking.

REQUEST: A restriction on the number and size of buses entering this narrow bush road each day.

REQUEST: A specific prohibition on vehicles reversing in, or onto, Hartmount or Ross Place i.e. they must actually have turnaround room on site

REQUEST: Accommodation providers be required, where there are multiple units, to offer numbered parking spaces to be reserved when accommodation is booked, to ensure no parking overflow onto road or other people's property [as was happening in Hartmount Place pre-Covid].

REQUEST: Prevent any further clearance of indigenous vegetation to create commercial parking.

If I have misunderstood, and the more permissive Rule 11 is applied to our Coastal Settlement Precinct, I believe it should not be, and REQUEST permission to resubmit on that Rule.

SETZ – R13 Retail activities

SUPPORT: retail activity in this coastal settlement should require resource consent

REASON: protect the existing outstanding natural environment and prevent intrusive development

**SETZ – R14 Commercial Activities other than Retail, Home Business or
Visitor accommodation**

SUPPORT: commercial activity in this coastal settlement should require resource consent

REASON: protect the existing outstanding natural environment and prevent intrusive development

PART TWO

Schedule Two: Notable Trees Te Rārangī Tuarua: Ngā Rākau Whamaumahara

SUPPORT

REASON: It is reassuring to see the establishment of this schedule and there will be many more specimens in the district which could and should be added. Awareness of this is heightened by the loss of two ancient rata within 200m of our home in the last ten years. One was cut down because 'it might fall on the driveway one day' by owners who also cleared to the boundary and have now put their property on the market, and the other by an overseas owner who spent very little time on site before deciding to have the rata tree felled, perhaps because it would shade his Air B&B cabin site. We would not wish a repetition of these losses in the future.

PART THREE

BARRYTOWN FLATS

I am deeply concerned that this area is classified as Mineral Extraction Zone [MEZ] in the draft TTPP.

REQUEST: that the Barrytown Flats be re-zoned appropriately to reflect an area which includes significant wetlands, coastal forest remnants, the flightpath of the threatened tāiko, wildlife habitat including that of the critically endangered bittern, freshwater systems, farms, homes, and small-scale businesses providing livelihood to locals such as holiday accommodation, small-scale gold mining and horse wagon tours.

REASONS for this re-zoning and amendment request:

1. GRZ draft rules

As I understand the draft General Rural Zone [GRZ] rules, to re-zone as General Rural is still inappropriate without significant amendment. If rules allow 3-4ha to be mined at a time, without requiring resource consent, this would be highly permissive, and so threatening to endangered wildlife species, to indigenous stands of vegetation and wetlands, to physical landforms and waterways, to the livelihood of residents and to the visitor experience of our 'untamed natural wilderness'.

These draft GRZ rules would undermine the rights of rural residential neighbours who value environmental protections and/or have invested in rural property for a quiet, close-to-nature lifestyle, and/or are farming in harmony with the land, and/or are running a small, low-level business. In other words, the ratepayers whose lives are to be governed by the TTPP.

2. Consent declined

The area of the Barrytown Flats where the Barrytown JV Ltd [BJV] resource consent application 2021 for heavy mineral mining was declined is, in the TTPP draft, now classified as a MEZ. WCRC planners, at the 31 August 2022 TTPP consultation in Punakaiki, confirmed they had recommended to the TTPP committee this MEZ classification be changed, but that their recommendation was not accepted.

I urge that this decision be reconsidered.

If this Barrytown area and others like it remain as MEZs, the TTPP will sweep aside the careful consideration the resource consent process currently allows to ecological values, freshwater values, neighbouring wetland values, protection of the Westland petrel [in the case of Barrytown Flats] and the well-being of surrounding communities.

The TTPP would become a document which enables mineral extraction for profit at the expense of environmental protections and at the expense of local communities, completely at odds with the RMA's intention to '*control land use activities ... and protection in an integrated way*'.

3. Te Whanaketanga 2050, Together for Tomorrow

Zoning Barrytown Flats as a MEZ would also fly in the face of the vision of the West Coast's own economic strategy 'Te Whanaketanga 2050, Together for Tomorrow':

“OUR VISION: To be recognised as leaders in the adoption of innovative, sustainable and regenerative economic, social, wellbeing and environmental solutions.” - p8

And would seem to ignore its Mission Two: Strengthen and Diversify our Economy

*“Te Tai Poutini has untapped potential in the **green economy space** – from the unrealised value of our natural resources to the knowledge economy potential that exists from our strengths in conservation and biodiversity restoration.” - p14 [my bold]*

And its “Priority Project: to build a Conservation Centre of Excellence Te Whāomomo.

*“Our strengths in protecting and restoring the natural environment are an opportunity to build a **light footprint niche economy** on the Coast that develops, incubates, and shares knowledge on **conservation and biodiversity restoration.**” – p15 [my bold]*

These statements point towards planning support for existing and future projects such as the Conservation NZ restorative planting projects, the native nursery specialising in plants from this ecological district, regenerative farming practices, protecting the wetlands and coastal forest remnants, and protecting the ecosystems that support the Westland petrel and other wildlife species.

These Te Whanaketanga 2050 statements do not point towards encouraging excavation of the land.

4. Protection of Natural Environment

Mining on the Barrytown Flats would create a threat to the freshwater biodiversity of the many creek systems and freshwater springs, as detailed in submissions against the BJV application in 2021.

The endemic and threatened tāiko /Westland petrel would be further endangered by mine lighting and especially by night-time trucking, as evidenced in the concerns of the Department of Conservation, presented by Kate Simister to the BJV hearing. She concluded that even the mining company’s additional evidence, given at the reconvened hearing, *“failed to identify the period of potential light attraction due to a lack of understanding of their biology and behaviour and did not sufficiently eliminate or mitigate the risks posed to tāiko, particularly given the proposed hours of mining activities and the additional vehicle lights on SH6”* – Commissioners’ report, Feb 2022.

Matt Charteris, ecologist, also at the November 2021 hearing, concluded that habitat for at risk and threatened wetland and forest birds was present adjacent to the proposed mine, and that the potential adverse effects of the mining proposal on threatened and at-risk birds such as the cryptic and critically endangered bittern, would be ‘significant’.

The lack of bird monitoring and protection plans as part of the BJV [now Tiga] 2021 application, even after being given an extra six weeks to amend the application, and their lack of evidence as to what [for example] level of change would be acceptable in Collins Creek before species were threatened, as noted by Sharon McGarry, Commissioner, indicates a low level of environmental awareness. The implication is that if mining were permitted on the Barrytown Flats without need of a resource consent, we would have to brace for major adverse environmental effects.

Mining excavations would also increase the vulnerability of the Barrytown Flats to flooding and coastal erosion due to lowered land levels.

5. No social licence to operate

Tiga Minerals, the mining company currently expressing a keen interest in mining the Barrytown Flats, cannot claim a social licence to operate, as nor can any other company. The vast majority of people living in the area object strongly to the prospect of a mine as a neighbour for a wide range of valid reasons: environmental, social, health, aesthetic, economic, highway structure and safety, and destruction of peace and tranquillity. The range and depth of feeling on these issues, and the anxiety and stress it created in the community, was made abundantly clear through the 2021 resource consent process.

I object to mining proponents' dismissal of objections as a NIMBY argument. Firstly, people have a right to object to proposals in their 'backyard' when they are likely to have an adverse effect on livelihoods, health, and the environment. Secondly, people are not necessarily objecting to mining per se, but pointing out that open cast mines do not have a place in a rural lifestyle setting in a sensitive natural ecosystem right next to neighbours and a highway which is a tourist attraction in itself and a lifeline for local people. Thirdly, it is not just near neighbours who are concerned about these mining proposals. I live around twenty kilometres from the Barrytown Flats so this is not my immediate backyard, I will not be directly affected except by the trucking of heavy mineral sands, and I strongly object to the mining proposals.

6. Trucking on SH6

Heavy trucking would be detrimental to the highway itself, causing increased wear and tear on a fragile, expensively high maintenance road already frequently closed or partially blocked by slips and/or subsidence. The narrowness of the highway, with frequent tight and often climbing corners, means more heavy vehicles would add significantly to user risk. Existing trucking often crosses the centre line to manoeuvre corners and narrow bridges, and we should not knowingly add to this existing risk to oncoming traffic.

Trucking noise, particularly if operating during night hours, would cause significant disruption to residents living near SH6. The verbal comment by one of BJV's noise experts that people might choose to move to a bedroom on the other side of the house, further from the highway, showed a lack of regard for residents' quality of life, while at the same time acknowledging trucking noise would in fact be disruptive to sleep and therefore detrimental to health and well-being.

The adverse effects of night-time trucking on the Westland petrel are well documented in the Department of Conservation evidence to the 2021 BJV hearing.

7. Employment: a mirage?

It is easy to make the claims that mining would be a large local employer of great benefit to the local economy. However, there is no guarantee that a sizeable proportion of the labour would actually be local.

It is worth noting the mining industry currently struggles to recruit labour. In July 2022, Stockton general manager export operations Ian Harvey was quoted in the News as saying the mine was battling to recruit staff and needed about 10 more skilled workers: "*It has been difficult, even finding operators.*"

And, Bathurst Resources chief executive Richard Tacon said at the NZ Resources 2022 Forum "*the industry was short of mining engineers, geo-staff and diesel mechanics.*" - Westport News 18 Oct 2022

Perhaps there is not a long queue of local people hoping more new mines will open on the Barrytown Flats so they can pounce on the jobs.

8. Threat to current Barrytown economy

Contrary to claims made by the mining fraternity, I believe the overall effect on the local Barrytown economy would be negative. It currently consists of farming blocks, some of which pursue environmentally aware farming methods such as protecting fragile wetland areas; lifestyle blocks; and small, low-impact businesses such as a native plant nursery, small-scale gold mining, visitor accommodation and horse wagon tours.

Proximity of mining operations to the highway, and the use of SH6 as a heavy mineral trucking route, would detract from the quality of life for residents and from the visitor experience. Anecdotal evidence indicates several would-be buyers have been dissuaded from purchasing properties in the area once they heard of the possibility of a mine, and another who did buy has said they would not have, had they known of a potential mining operation. Thus, the value of existing properties will be falling.

Mining operations would cause reputational damage to Barrytown, Punakaiki and the Coast Road, especially as a visitor destination. This is particularly ironic given \$25.6 million is currently being invested in Punakaiki to enhance the visitor experience at Dolomite Point.

I believe mining development in this area to be a short-sighted move which might benefit investors from afar but would be detrimental to the local area.

Concluding Comment

I also refer the TTPP committee to the attached '*Joint Report and Decision of Hearing Commissioners Ms Sharon McGarry (Chair), Ms Maria Bartlett and Dr Rob Lieffering 10 February 2022 in the matter of applications for resource consents associated with the operation of an open cast sand mineral mine, processing plant and load out facility on State Highway 6, Barrytown*'. This document contains summaries of the considered and considerable evidence submitted against mining on the Barrytown Flats. They make compelling reading.

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of applications for resource consents associated with the operation of an open cast sand mineral mine, processing plant and load out facility on State Highway 6, Barrytown

BETWEEN

BARRYTOWN JV LIMITED
Applicant

AND

WEST COAST REGIONAL COUNCIL
GREY DISTRICT COUNCIL
Consent Authorities

JOINT REPORT AND DECISION OF HEARING COMMISSIONERS

Ms Sharon McGarry (Chair), Ms Maria Bartlett and Dr Rob Lieffering

10 February 2022

Heard on the 22 – 24 September 2021 and 26 November 2021 at the offices of the West Coast Regional Council, 388 Main South Road, Paroa.

Representations and Appearances

Applicant:

Ms A. Booker, Counsel, Anderson Lloyd

Mr D. Straface, Director, Barrytown JV Limited

Mr L. McNeish, Resource Management Consultant, Tai Poutini Resources Limited

Mr D. Morris, self-employed mine planning engineer consultant

Dr P. Hoskin, Chief Science and Research Officer, New Zealand Institute for Minerals to Materials

Dr G. Bramley, Ecologist and Principal, the Ecology Company Limited

Mr N. Fuller, Senior Transport Engineer, Novo Group Limited

Mr J. Farren, Acoustic Consultant and Manager, Marshall Day Acoustics

Mr Z. Etheridge, Director, Kōmanawa Solutions Limited

Mr J. Ballingall, Economics Consultant and Partner, Sense Partners

Ms B. Faulkner, self-employed landscape architect

Mr C. Glasson, Landscape Architect, Glasson Huxtable Limited

Ms K. McKenzie, Principal Planner, Tai Poutini Resources Limited

Mr J. Berry, Project Manager, Barrytown JV Limited (reconvened hearing only)

Submitters:

Dr B. Weston

Mr M. Weston

Mr A. Ellis

Director General of Conservation

- **Ms V. Tumai**, Counsel, Department of Conservation
- **Ms K. Simister**, Ranger, Biodiversity, Department of Conservation

G. and G. Langridge, the GA Langridge Family Trust, R. Langridge and D. Vandenburg, and S. Langridge and R. Wildbore (referred to collectively as 'the Langridge family')

- **Mr D. van Mierlo**, Counsel
- **Ms H. Lough**, Environmental Engineer and Technical Director, Pattle Delamore Partners Limited
- **Mr M. Charteris**, self-employed ecologist
- **Ms R. Langridge**
- **Mr R. Wildbore**

- **Dr S. Freeman**
- **Ms S. Langridge**
- **Mr R. Nichol**, self-employed ecologist
- **Mr C. Findlay**
- **Mr N. Hegley**, Principal, Hegley Acoustic Consultants
- **Mr B. Stuart-Menteath**, self-employed natural history interpreter and founding trustee and Chairman of the Westland Petrel Conservation Trust
- **Mr P. Volk**
- **Mr B. Lunt**
- **Ms D. Langridge**
- **Ms Y. Legarth**, Planning and Resource Management Consultant, Resourceful Planning and Policy Limited (reconvened hearing only)
- **Mr W. Reeve**, Senior Acoustic Engineer, Acoustic Engineering Services Limited (reconvened hearing only)

Section 42A reporting officers:

Mr T. Ridge, Senior Consent Officer, West Coast Regional Council

- **Mr B. Sinclair**, Groundwater Scientist, Wallbridge Gilbert Aztec

Mr M. McEnaney, Team Leader Environmental Planning, Grey District Council

- **Mr D. Humpheson**, Senior Acoustic Specialist, Tonkin and Taylor Limited

It is the decision of the West Coast Regional Council and the Grey District Council, pursuant to section 104(6) of the Resource Management Act 1991, to DECLINE applications by Barrytown JV Limited for resource consents associated with the operation of an open cast sand mineral mine, heavy mineral concentrate processing plant and product load out facility.

BACKGROUND AND PROCEDURAL MATTERS

1. This is the report and decision of independent Hearing Commissioners Sharon McGarry, Maria Bartlett and Dr Rob Lieffering. We were delegated all the functions and powers under section 34A of the Resource Management Act 1991 (**RMA** or 'the Act') by the West Coast Regional Council (**WCRC**) and the Grey District Council (**GDC**) necessary to jointly hear and decide the applications lodged by Barrytown JV Limited ('the applicant') for resource consents associated with the operation of an open cast sand mineral mine, heavy mineral concentrate (**HMC**) processing plant and product load out facility at Barrytown Flats. The applications are referred to as WCRC – RC-2020-0159 and GDC – LUN2926/20.
2. The applications were lodged with both Councils on 17 December 2020 and were put on hold until 29 January 2021. A section 92¹ request for further information by the GDC was made on 10 February 2021 and the applicant's response to that request was received on 26 February 2021. A separate section 92 request by the WCRC was made on 17 February 2021 and the applicant's response was received on 12 April 2021. Following peer review of the application material and a 'liaison session' with interested parties on 13 April 2021, the applicant agreed to provide additional information and this was received by the WCRC on 3 May 2021.
3. The applications were limited notified by both Councils on 13 May 2021.
4. A total of eleven submissions were received; eight submissions on the GDC application and three on the WCRC application.
5. The WCRC undertook the role of the lead authority in this joint hearing process.
6. The applicant amended the applications by letter from Ms Kate McKenzie, Tai Poutini Resources Limited dated 12 July 2021.
7. A joint hearing was originally set down to commence on 5 August 2021. On 10 July 2021, we received a letter from Mr Dean van Mierlo (Counsel for the Langridge family) requesting an extension of the timeframe for the hearing until 23 August 2021 due to 'special circumstances'. We issued Minute #1 on 16 July 2021 responding to this request for an extension of time under section 37 and refused the request on the basis that neither of sections 37A(4)(b)(i) or (b)(ii) had been met. The Minute confirmed the set hearing date, the timeframe for the provision of evidence and outlined the hearing process.
8. We issued Minute #2 on 21 July 2021 responding to a further request from Ms Robyn Langridge on behalf of the Langridge family for an extension to the timeframe for the hearing on the basis of the damage and disruption caused by the significant storm event that occurred on the West Coast between 17-18 July 2021 and the Civil Defence emergency response. We granted the extension having considered that section 37A(4)(b)(i) 'special circumstances' applied. We advised the parties that the joint hearing would commence on

¹ All references to sections in this decision refer to sections of the RMA unless otherwise stated.

- 24 August 2021 and revised the timeframe for the pre-circulation of evidence prior to the hearing.
9. Having received email correspondence from Mr Andrew Ellis (a submitter), we issued Minute #3 on 13 August 2021 clarifying the requirements for the pre-circulation of evidence and hearing procedures for questions of clarification to expert witnesses, by submitting questions in writing through the Chair of the Hearing Panel.
 10. Following the sudden movement of the country into a COVID-19 Alert Level 4 lockdown mandate on 17 August 2021 (effective from 18 August 2021), we issued Minute #4 on 18 August 2021 postponing the rescheduled joint hearing until COVID-19 Alert Level 2 was reached.
 11. We issued Minute #5 on 7 September 2021 giving notice of the commencement of the joint hearing on 22 September 2021 under COVID-19 Alert Level 2 'Delta' restrictions. We outlined additional planning and health and safety requirements for the hearing and directed the provision of all documents to be tabled at the hearing to limit physical contact between the parties.
 12. Prior to the hearing, separate reports were produced pursuant to section 42A (**s42A reports**) by the WCRC's reporting officer, Mr Tony Ridge, and the GDC's reporting officer, Mr Michael McEnaney. Both s42A reports provided an analysis of the matters requiring consideration and recommended the resource consents sought be granted, subject to recommended consent conditions.
 13. The WCRC s42A report included a technical review of the assessment of hydrological effects by Mr Brett Sinclair, a Groundwater Scientist with Wallbridge Gilbert Aztec.
 14. The GDC s42A report included a technical review of the applicant's noise assessments by Mr Darran Humpheson, a Senior Acoustic Specialist with Tonkin and Taylor Limited.
 15. The s42A reports, the applicant's evidence and submitter expert evidence were pre-circulated in advance of the hearing². This evidence was pre-read by us and taken 'as read' at the hearing.
 16. Prior to the hearing, Mr Humpheson and Mr Farren provided a signed joint witness statement relating to acoustic effects dated 12 August 2021. We record that we did not direct these two witnesses to caucus³.
 17. We undertook a site visit on 21 September 2021, the day before the hearing. We were accompanied by Mr Luke McNeish (for the applicant), Ms Robyn Langridge (a submitter) and Ms Emma Carrad (a WCRC compliance officer). We viewed the application site and surrounding areas. We also viewed the application site from 3375 Coast Road (R. Langridge and D. Vandenberg), 3323 Coast Road (S. Langridge and R. Wildbore), 3195 Coast Road (G.

² In accordance with section 103B of the RMA.

³ Had we directed such caucusing we would have required Mr Hegley, a noise expert engaged by the Langridge family, to be involved.

and G. Langridge) and 3316 Coast Road (A. Ellis and J. Rogers). We thank these parties for allowing us to visit their properties.

18. The hearing commenced at 9.00 am on 22 September 2021. Evidence was heard over the course of three days. The hearing was adjourned at the end of the third day, without hearing from all witnesses scheduled to appear. After discussions with the applicant regarding a number of outstanding matters requiring the provision of further information, it was agreed the hearing would need to be reconvened on 26 November 2021.
19. Following the adjournment of the hearing, we issued Minute #6 on 29 September 2021 confirming the provision of further information from the applicant and revised proposed conditions based on discussions at the hearing by 15 October 2021. The Minute set out a timeframe for the provision of this information and for the receipt of further written comment and/or expert evidence relating to the further information from submitters and the Councils' reporting officers and their technical advisors; and confirmed the hearing would be reconvened on 26 November 2021 to enable completion of all witnesses scheduled to be heard at the initial hearing and for questions of clarification regarding the further information and further written comments from the hearing parties.
20. We issued Minute #7 on 10 November 2021 directing the provision of the legal submissions relating to the further information and further written comments by 19 November 2021, to enable these to be pre-read.
21. The joint hearing was reconvened on 26 November 2021 and was adjourned late the same day to enable the applicant to provide its written right of reply.
22. The applicant provided its written right of reply on 7 December 2021.
23. We formally closed the hearing on 19 January 2022.

THE APPLICATION

24. The resource consents applied for by the applicant from the WCRC were set out in Section 2.5 of the AEE, and amended in section 3.0 of the WCRC s42A report following consideration of the proposal to include discharge to water, as follows:

Consent Number	Consent Type	Activity
RC-2020-159-01	Land Use Consent	To undertake earthworks and vegetation clearance associated with minerals sand mining activities at Barrytown.
RC-2020-0159-02	Water Permit	To take and use water for the purpose of mineral sand mining and associated activities.
RC-2014-0159--03	Water Permit	To take groundwater associated with pit dewatering.

RC-2014-0159-04	Discharge Permit	To discharge water containing contaminants to land where it may enter water, namely Collins Creek, Canoe Creek and their tributaries.
RC-2014-0159-05	Discharge Permit	To discharge groundwater to water associated with pit dewatering, namely Collins Creek, Canoe Creek and their tributaries.
RC-2014-0159-06	Discharge Permit	To discharge contaminants to air namely dust associated with mineral sand mining and associated activities

25. The WCRC application was applied for as a discretionary activity. The WCRC s42A report and applicant's evidence considered the application on this basis. However, there was agreement at the adjournment of the reconvened hearing that an additional consent was required under Regulation 54 of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (**NES-FW**) as a non-complying activity.
26. The applicant sought land use consent from the GDC to authorise the operation of an open cast mine which breaches non-rural building coverage, traffic movements and noise standards under the provisions of the Grey District Plan (**GDP**). The GDC s42A report assessed these breaches as a discretionary activity.
27. The amendments to the applications made on 12 July 2021, before commencement of the hearing, included:
- (a) No mining in the southwest corner of the application site, with the mining area confined to the true right bank of Collins Creek;
 - (b) No diversion of Collins Creek;
 - (c) Mine setback of 20 metres (**m**) from the coastal lagoon, Collins Creek and the northern and southern internal property boundaries;
 - (d) Reduction of mine activity from 10 years to 8 years and the consent term from 15 to 13 years;
 - (e) Locating the processing plant set below ground level in the southwest corner of the application site, with 3 m high bunds constructed on the northern and eastern sides for the term of the consent;
 - (f) Constructing 2 m high bunds with plantings adjacent to State Highway 6 (**SH6**) and along part of the northern boundary;
 - (g) Native planting along the southern boundary and a 6 m wide strip around the edge of the coastal lagoon; and
 - (h) Construction of a wetland area in the northwest corner of the application site.
28. The applicant made further amendments to the application during the hearing and in its written right of reply, including:
- (a) Locating all buildings at ground level with a maximum height of 10 m;
 - (b) Moving the site access point onto the SH6 to the north;
 - (c) Incorporating the load-out area within the processing plant area; and
 - (d) Commencing mining excavations no less than 100 m from the northern and southern site boundaries until appropriate hydrological set backs are established based on groundwater monitoring.

29. The applicant confirmed at the re-convened hearing that no application had been made to take water from Canoe Creek and that any water take for processing water from this waterbody would be undertaken as a permitted activity.
30. We have assessed the applications on the basis of the proposed amendments and the final set of proposed conditions provided with the applicant's written right of reply.

THE EXISTING ENVIRONMENT

31. The existing environment was not described in any detail in the application documents or either of the s42A reports. We have therefore needed to rely on details provided in evidence and our site visit to form the following description of the application site and the existing environment.
32. The application site is located approximately 30 kilometres (**km**) north of Greymouth, north of Barrytown on the Barrytown Flats. The application site consists of approximately 115 hectares (**ha**) of land owned by Nikau Deer Farm Limited. The site is located within the 'coastal environment' (with the landward boundary extending to the ridgeline of the Paparoa Ranges) but is outside of the coastal marine area (**CMA**) as defined by the RMA. It is zoned Rural Environmental Area under the GDP, on poorly drained brown and gley soils. The land has been previously cleared of vegetation and drainage channels established (using 'humping and hollowing' methods) to enable pastoral farming and is currently grazed.
33. Barrytown Beach is located to the west of the site and is identified in the operative West Coast Regional Coastal Plan (**RCP**) as a coastal hazard area having farmland and natural values of wetlands and coastal vegetation threatened by beach erosion and wave inundation and vulnerable to sea level rise effects. The coastal margin is a naturally dynamic environment subject to changes in form affecting the interface between land, freshwater and coastal water. Mr Etheridge estimated the sea is approximately 250 m from the proposed mining activity (at its closest extent) and this area is elevated approximately 4-6m above mean sea level. There is an approximately 30 m difference in the land height between the SH6 to the east and the coast to the west⁴.
34. The overburden thickness covering the mineral deposits, consisting of sub-soil, clay, peat or alluvium, is less than 2 m at the western end of the site and increases up to 9 m towards the east. Previous investigations indicate heavy mineral deposits are present in two bands of between 1-8 m thick, with an estimated 4.9 million tonnes within the application site.
35. Aerial photography of the Barrytown Flats coastal plain⁵ shows the extent of physical modification on what was previously a lowland (coastal) forest and wetland mosaic. There are remnant forest stands to the north and south, and wetlands, including remnant natural wetlands to the west and north of the site, within land owned by the Langridge family

⁴ B Faulkner EIC, para 29

⁵ Approximately 18 km² from Razorback Point to Seventeen Mile Bluff as identified in Glasson Huxtable Landscape Architects Ltd Assessment of Landscape and Visual Effects 23 April 2021 (Glasson assessment), p6

(including Canoe Creek lagoon and margins to the northwest, 'Rusty lagoon' and the 'kahikatea swamp' forest block to the north), land administered by the Department of Conservation (**DOC**) (Langridge Scenic Reserve and Canoe Creek Conservation Area) and land owned by Nikau Deer Farm Limited on which the mine is proposed to be located (including Canoe Creek lagoon and margins to the west). The Paparoa Range rises to the east of SH6 and is identified as an Outstanding Natural Landscape (**ONL**) in the GDP, particularly within the Paparoa National Park. Remnant indigenous vegetation and habitat on the flats provides connection from the ranges to the sea.

36. There is an area assessed by the GDC as a Significant Natural Area (**SNA**) (PUN – W034) which encompasses the northern part of Canoe Creek lagoon, all of Deverys lagoon and Rusty lagoon, although this is yet to be incorporated into statutory planning maps.
37. The application site is within the takiwā of Te Rūnanga o Ngāti Waewae (**Ngāti Waewae**) who are kaitiaki and mana whenua. Canoe Creek is identified in the GDP as significant to Poutini Ngāi Tahu, recorded as a wāhi taonga, used for gathering of cultural materials, and as a nohoanga (traditional campsite). Indigenous species listed in the Ngāi Tahu Claims Settlement Act 1998 (Schedule 97) are noted to be present, including karoro/black billed gull, kōtuku/white heron, matuku moana/reef heron, pārerā/grey duck, mātātā/southern fern bird, and pīhoihoi/pipit.
38. The site is situated within an area of high rainfall, with occasional dry spells. A number of waterbodies are located adjacent to, or within, the site including Collins Creek, Canoe Creek, Canoe Creek lagoon and wetland complex, Rusty lagoon, Deverys Creek, and Deverys lagoon and wetland complex. A drain (which may be a modified watercourse) runs along the northern boundary of the application site adjacent to a kahikatea swamp on the Langridge property and connects to the Rusty lagoon. A number of springs (some of which are used for potable supply and stockwater) were identified by the Langridge family as being between 10-130 m south of the southern boundary of the site.
39. The Kōmanawa Hydrological Assessment noted groundwater levels are high, ranging from 0-5 m below ground level within a sand and gravel aquifer estimated to be 20-30 m deep with a moderate transmissivity, unconfined and moderately stratified, flowing east to west across the site with groundwater at the surface further to the west. Sands at the site are estimated to have a hydraulic conductivity of 3 m/day. Groundwater on the flats is described as fresh with low dissolved salts, recharged by rainfall excess and surface water infiltration, with naturally slightly elevated iron and manganese concentrations. There is no indication of salinity in groundwater close to Barrytown Beach.
40. The site is located within the Punakaiki Ecological District. There is a range of indigenous flora and fauna present in the area. Threatened and at risk birds identified as utilising the wetlands and adjacent land include the matuku/Australasian bittern (nationally critical), kōtuku/white heron (nationally critical), black billed gull (nationally critical), pārerā/grey duck (nationally critical), black fronted tern (nationally endangered), Pacific reef heron (nationally endangered), tūturiwhatu/banded dotterel (nationally vulnerable), mātātā/southern fern bird (at risk, declining), pīhoihoi/pipit (at risk, declining), and royal

spoonbill (naturally uncommon). At risk marsh crane may also be present, but have not been sighted.

41. Neighbours adjoining the site include members of the Langridge family on the northern (R. Langridge and D. Vandenberg at 3375 Coast Road and S. Langridge and R. Wildbore at 3323 Coast Road) and southern boundaries (G. and G. Langridge at 3195 Coast Road), who have farmed the area since 1908; and J. Costello and B. O’Neill on the eastern boundary (3261 Coast Road). Whilst actively farmed and in proximity to the state highway, the site is described by submitters as peaceful and characterised by the sound of the sea (particularly at night) with dark skies at night.
42. As well as adjacent properties, the site can be viewed, at least in part, from SH6 (Coast Road) and the beach, and from elevated dwellings located at 3316 Coast Road (owned by A. Ellis and J. Rogers), 3172 Coast Road (owned by B. Weston), 3482 Coast Road (owned by G. Peterson) and 3428 Coast Road (owned by G. Broad), as well as distantly from the Paparoa Track. The residential property 3320 Coast Road is also in proximity to the site, across SH6.
43. SH6 runs along the eastern boundary of the site and is generally flat and straight along the flats. Average daily traffic volumes at the site vary, being at their peak during the summer tourist season, with low traffic volumes at night. A large unprotected⁶ rata tree is situated on road reserve adjacent to the proposed site access. SH6 is a Strategic Road administered by Waka Kotahi/New Zealand Transport Agency (**NZTA**) that incorporates the Coast Road Scenic Route and contains a number of tight corners along its route.
44. To the north, SH6 runs through Punakaiki, a popular tourist destination, to Westport. Around 170 residential dwellings are estimated to be located within 100 m of SH6 between the site and Westport. Approximately 3.6 km north of the site is the only known colony of tāiko/Westland petrel (at risk, naturally uncommon), with an estimated remaining population of between 4,000 -6,200 breeding pairs. Grounded fledgling birds disorientated by lights are commonly found in and around townships along SH6. To the south, SH6 runs through Rapahoe, with an estimated 38 residential dwellings within 100 m of the road.

NOTIFICATION AND SUBMISSIONS

45. The GDC application was limited notified on 13 May 2021⁷. Eight submissions to the application were received; all were in opposition to the application and stated they wished to be heard.
46. The WCRC application was also limited notified on 13 May 2021⁸. Three submissions were received; two in opposition and one in support, with two stating they wished to be heard.
47. The key issues raised in submissions were as follows:

⁶ Not identified as a protected tree in Appendix 6, Schedule 2 or Map No. 6 of the GDP.

⁷ Parties deemed affected were DOC, Te Rūnanga o Ngāti Waewae, B O’Neill & J Costello, G & G Langridge, R Langridge & partner, J Rogers & A Ellis, S Langridge & partner, S Martin & R Kilmister-Martin, M Morgan & M Radford, B & M Weston and M Weston

⁸ Parties deemed affected were DOC, Te Rūnanga o Ngāti Waewae, B O’Neill, G Langridge and Fish and Game – West Coast

- (a) Adverse effects of trucks on road safety and the surrounding community along the Coast Road (SH6);
 - (b) Adverse effects on freshwater values and terrestrial ecology;
 - (c) Adverse effects on historic and cultural values;
 - (d) Noise effects;
 - (e) Dust effects;
 - (f) Visual effects and lighting;
 - (g) Adverse effects on landscape, natural character and amenity values;
 - (h) Adverse impacts on property values;
 - (i) Coastal impacts, erosion and natural hazards;
 - (j) Inadequate information and inaccuracies in the applications;
 - (k) Reliance on Management Plans;
 - (l) Inconsistency with the West Coast Regional Policy Statement 2020 (**WCRPS**), the West Coast Land and Water Regional Plan (**LWRP**), the GDP, the New Zealand Coastal Policy Statement 2010 (**NZCPS**), the National Policy Statement for Freshwater Management 2020 (**NPS-FM**) and the purpose and principles of the RMA;
 - (m) Unproven economic benefits; and
 - (n) Effects on human health and well-being.
48. Prior to the hearing, Ngāti Waewae withdrew its wish to be heard.
49. The applicant provided written approvals from the Waka Kotahi/NZTA and the owners of 3261 Coast Road (J. Costello and B. O’Neill).

THE HEARING

Applicant’s case

50. **Ms Alex Booker**, Counsel, conducted the applicant’s case, presenting legal submissions and calling thirteen witnesses. She highlighted the highly modified nature of the application site and the absence of indigenous vegetation, wetlands, known archaeological or heritage sites, and outstanding natural features or landscapes. She submitted the proposal had been comprehensively assessed by technical experts, with ongoing engagement with willing affected persons. She submitted the proposal was of ‘short duration, transient and small scale’; would have no more than minor adverse environmental effects; and was ‘broadly’ consistent with the planning framework. She stated the altered topography would provide opportunities for the enhancement of existing pasture, land contouring and drainage patterns; and positive biodiversity effects from the proposed wetland, riparian planting and associated fencing. She highlighted the substantial economic benefits, which would enable the wellbeing of people and communities. She addressed the possible non-complying activity status of the application and considered it made no material difference given the application was designed to pass both section 104D non-complying gateways tests. She submitted the water management strategy was to maintain groundwater levels at pre-mining levels at the application site boundaries, except for a small reduction in flow over a short section of Collins Creek. She referred to the Radiation Safety Act 2016 (**RSA**) and the clear statutory language as to what constitutes a radioactive material. She submitted there was no need or authority for us to consider whether the heavy mineral

concentrate (**HMC**) is radioactive; and that samples of concentrated product tested were well below the acceptable level of radioactivity under the RSA.

51. Ms Booker provided further written legal submission at the reconvened hearing addressing the applicant's further information. She noted further amendments to the application reflected in the requested mine concept plans. She considered the design changes further reduced the extent of the mining footprint and associated effects, and were within scope of the original applications. She accepted the proposed water take from Canoe Creek was outside the scope of the applications, but noted this water could be taken as a permitted activity. She clarified the number of truck and trailer vehicle movements would be limited by consent conditions to those assessed in the Integrated Transport Assessment (**ITA**) included with the application. She highlighted SH6 had been lawfully established and forms part of the receiving environment. She submitted the proffered prohibition on truck movements on the road at night time during the period between 1 November and 31 January was volunteered as an *Augier* condition. She highlighted the revised visual assessment and photo simulations based on the site concept plans from four neighbouring residences and the conclusions of the experts that the visual effects would be less than minor at both the initial stages of planting and when planting matured. She noted Mr Glasson had provided visual simulations of the 'unlikely fanciful scenario' of the view from the Mr Ellis and Ms Rogers' residence without the existing trees in front of the deck and the conclusion by the experts any visual effects would be 'minor'. She noted the revised Avian Management Plan (**AMP**) and revised Water Management Plan (**WMP**) and submitted both reflected a precautionary approach. She also noted the additional noise monitoring undertaken for daytime mining operations in the northeast corner of the site and confirmation this can comply with the GDP limits, except on Sundays. She highlighted the relocated load out area would reduce night time noise effects for several dwellings including 3195 Coast Road (G. and G. Langridge). She noted the revised conditions require preparation of a Noise Management Plan and compliance noise monitoring. She also noted the requirement for a Dust Management Plan (**DMP**) and a Wetland and Riparian Planting Plan (**WRPP**). She concluded the applications passed both section 104D non-complying gateway tests and had 'no adverse effects', positive effects, and was consistent with the objectives and policies of the planning instruments.
52. **Mr David Straface**, a Director of Barrytown JV Limited, provide a written statement of evidence giving an overview of the company, the mineral sands project, mining history at the site, current and future operations, buildings, staff, and construction and dust management. He noted all options for export were currently being considered and the feasibility of a secondary processing plant (Mineral Separation Plant) at an industrial site on the West Coast was also being assessed. He highlighted the company's commitment to meeting its environmental and social responsibilities; and the economic benefits to the District and the creation of 47 full time equivalent (FTE) jobs (not including contractors).
53. In response to questions, Mr Straface stated that the route the HMC took when it left the site would be determined by transport logistics and the community's views. He told us that the 24/7 operation of the HMC processing plant was optimal given the high set up costs and the ongoing cost of shutdowns and start-ups. He confirmed reduced hours in operation may be viable, but are not optimal and would extend the life of the mine.

54. **Mr Luke McNeish**, a Resource Management Consultant with Tai Poutini Resources Limited, provided a statement of evidence outlining the applicant's engagement with landowners and the history of mining in the area.
55. **Mr David Morris**, a self-employed mine planning engineer consultant, provided a statement of evidence and summary outlining the extent of mining operations and the resource, the mining methodology to HMC, alternative options considered, and the end of mine life. He explained the 20 m buffer zones (which were later amended to 100 m) from the property boundaries were based on worst case failure zones for mine pit side walls. He noted any reduction in the proposed operating hours from a double to a single shift would approximately double the life of the mine to 9.7 years. He considered the expected 'void' at the end of mine life could easily be absorbed within the landform given approximately only 10% of the net volume of material mined would be removed as HMC. He considered there were many potential options for the final land profile and for restoring the current status quo for water distribution and productive land use. He also responded to Ms Lough's evidence confirming that 1 m was the maximum reduction in ground elevation (given no allowance for 'swell'), with an average of 0.5 m reduction across the site.
56. Based on Mr Morris's responses to our questions regarding the layout of the site and conveyance of materials around and from the site, it was apparent that further details were required for us to understand the proposal, including a concept plan of the site. This information was subsequently provided to us prior to the reconvened hearing by Mr Berry (discussed later).
57. **Dr Paul Hoskin**, Chief Science and Research Officer with the New Zealand Institute for Minerals to Materials, provided a written statement of evidence and a summary in relation to the obtainment of the two unprocessed sand mineral samples, the processing of the two samples into HMC, delivery of the samples to the Institute of Environmental Science and Research Limited (**ESR**), and the applicability of the RSA. He noted that the radiation testing undertaken by ESR concluded both samples were not radioactive material for the purposes of the RSA and that Act's provisions; and concluded that the IAEA Transport Regulations did not therefore apply. He considered natural variation of radiation levels across the site would not be significant. In response to questions, he agreed that two samples were not representative across the site, but that radiation levels would need to be an order of magnitude higher to be a concern and, in his opinion, this was unlikely. He considered it would be prudent to require intermittent testing of radiation levels over the life of the mine. He noted that the DSIR report referred to by Mr Lunt was problematic given the data were secondary sourced, uncertainty regarding the treatment and preparation of the samples, and differences in the mineral separation process proposed.
58. **Dr Gary Bramley**, an Ecologist and Principal with the Ecology Company Limited, provided a statement of evidence (dated 4 August 2021) describing the ecological context and values of the site and how the values would be affected by the proposal. Appended to his evidence was a draft AMP dated 3 August 2021. He assessed the ecological values at the mine site as 'negligible – low'. He considered ecological values immediately adjoining the site were limited to small areas of riparian vegetation, the aquatic values of Collins Creek and the values associated with the former dredge ponds (lagoon and George's Pond). He noted the 'high' ecological value of the ponds, particularly with respect to birds. He concluded that

the adverse effects on threatened and at risk bird species using the pond or mine site could be managed to be 'very low' through implementation of the AMP, physical separation, timing of works, planting to act as a buffer, and monitoring to inform adaptive management. He highlighted the importance of managing light spill from the processing plant operating at night to reduce the risk of disorienting and grounding tāiko/Westland petrel leaving the breeding colony (3.6 km north of the application site). He concluded no substantial adverse effects were anticipated on aquatic ecological values given proposed trigger levels to protect these values. He noted a small probability of permanent flow reduction in the upper portion of Collins Creek, but considered the WMP addressed this risk and the proposed riparian planting would mitigate potential adverse effects on dissolved oxygen and aquatic habitats generally. He identified the birds recorded (in the eBird database and during his site visit) and their conservation status in Attachment A of his evidence, including eight 'At risk' species and six 'Threatened' species. He searched the New Zealand Freshwater Fish database (collected from 1985 and 1987) for freshwater species recorded in Collins Creek, Deverys Creek and Canoe Creek and concluded the diversity of species represented a reasonably intact freshwater fish fauna. Although he noted this may have changed since 1987 and was not likely to have improved.

59. Dr Bramley considered disturbance effects on birds from earthworks, noise, vibration, lighting, traffic and machinery movements, and an increase in human activity and dust. He noted responses would vary for a range of physiological and ecological reasons and also over time and degree of exposure. He expected shy or secretive species such as the mātuku/bittern and Pacific reef heron would seek to avoid the area as long as mine noises are audible from their habitats (2-3 years based on proposed mining rates), whereas more robust species would become accustomed to the noise. He considered mining the area closest to the lagoon outside of the breeding season would mitigate any adverse effects on eggs and nestlings, and would allow time for them to adapt to the noise or relocate. He expected only a small subset of birds present would relocate. He concluded any unmitigated effect of noise would be at worst 'moderate' for highly sensitive species such as the mātuku/Australasian bittern. However, mitigation in the form of spatial separation, seasonal avoidance and planting to absorb noise, combined with the location below existing ground level would reduce the level of effects to 'low'.
60. Dr Bramley considered any adverse effects on the adjoining assessed SNA area and wetlands would be 'negligible' provided water levels and flows in the surrounding waterbodies were maintained. He acknowledged that any unmitigated water levels/flow reductions in the lagoon/ponds and Collins Creek could result in 'very high' and 'high' magnitude of local effects respectively, but that trigger levels in the WMP and management actions would ensure levels and flows were maintained. He considered the proposed construction of an additional wetland would have a positive ecological effect by increasing the habitat available for birds.
61. Dr Bramley's summary statement and rebuttal evidence (dated 19 September 2021) responded to the evidence of Ms Simister, Mr Charteris and Mr Nichol. He concluded that the adverse effects on threatened and at risk bird species using the application site and surrounding areas could be mitigated so that they were 'very low'.

62. At the reconvened hearing, Dr Bramley provided a further supplementary statement (dated 15 October 2021) responding to the further evidence of Ms Simister and a revised draft AMP (dated 13 October 2021) and a draft WRPP (dated 13 October 2021). He confirmed the adoption of six of Ms Simister’s recommendations to further reduce the risk to tāiko. He noted her outstanding recommendation related to ceasing night time operation of the processing plant in the event a dead tāiko was discovered. He concluded the risks to tāiko were ‘low’ with respect to mining and vehicles; and ‘very low’ with respect to the processing plant and load out. He considered adverse effects on streams and aquatic habitats and wetlands adjoining the site could be avoided and the proposal to commence mining 100 m from the site boundaries would assist in informing water management to achieve this goal.
63. **Mr Nick Fuller**, a Senior Transport Engineer, Novo Group Limited, provided a written statement of evidence and a summary addressing traffic safety and efficiency effects, the assessment of relevant RMA matters, matters raised by submitters and in the GDC s42A report, and proposed consent conditions. He noted there had been some changes to the proposal since the applicant’s ITA was prepared and set these out in his Table 1. He highlighted NZTA’s written approval. He noted that a superior access arrangement had been proposed to Diagram E of the NZTA Planning and Policy Manual and Diagram E of the transport chapter of the GDP, which he considered was significantly safer. He considered the traffic generation of the proposed activity was ‘low’ and the existing traffic levels on the road were also ‘low’, so there was ample capacity to accommodate the proposed activity without any noticeable change to the safe or efficient operation of SH6. He considered that the majority of the concerns raised relating to increased heavy traffic, amenity effects, road user safety and the state of the existing road pavement were matters within the remit of NZTA as road controlling authority. He noted that state highways were intended to accommodate traffic, including trucks, and that an increase of up to two trucks per hour was not a significant increase in volumes. He considered that an increase of 217 vehicles movements per day (40 truck and trailer movements plus 177 car movements) to be within the ‘tolerable’ threshold for an increase based on guidance from ‘Austroads Guide to Traffic Management Part 8 – Local Area Traffic Management’. He expected a low number of people walking and cycling outside of townships and considered there would be no noticeable change in safety. He concluded the adverse effects of the proposed activity on the surrounding transport network would be acceptable, which he clarified would be ‘less than minor’.
64. Mr Fuller provided a supplementary statement of the evidence (15 October 2021) clarifying the total of material to be removed from the site per year, proposed vehicle movement thresholds, the revised site layout and parking requirements. He considered the operation could be undertaken within the thresholds of the ITA.
65. **Mr Jon Farren**, an Acoustic Consultant and Manager with Marshall Day Acoustics (**MDA**), provided a written statement of evidence based on the applicant’s ‘Assessment of Noise Effects’ (dated 17 December 2020) prepared by MDA. He outlined the existing noise environment, the relevant noise standards, noise sources from the proposal, the assessment of effects, matters raised by submitters, and the noise assessment peer review. He noted that during the day traffic and surf noise were the dominant noise source, whereas at night the surf becomes the dominant noise source. He highlighted the average

daytime noise level at dwellings close to the road was 55 decibels (**dB**) L_{Aeq} and 40 to 50 dB L_{Aeq} at dwellings further away or more elevated from the road; and a night average 50 dB L_{Aeq} at all positions due to ambient noise from the surf. He noted that he had adopted the noise metric L_{Aeq} as opposed to the GDP's L_{A10} , as use of L_{Aeq} represents current best practice. He considered the GDP night time noise limit and Sunday limit of 45 dB L_{A10} was not appropriate or necessary to protect residential amenity. He noted truck movements on the road would result in a less than 1 dB increase in the daily average traffic noise. At night, he considered the maximum accelerating truck noise would be 45 to 55 dB L_{Aeq} , which is at the lower end of the maximum noise levels currently experienced at night by dwellings close to the road and below the World Health Organisation (**WHO**) recommended noise limit of 60 dB L_{Amax} for the protection of sleep. Based on his analysis, he considered it was unnecessary to restrict truck movements between 11 pm and 6 am to protect residents' amenity.

66. On the basis of the noise modelling undertaken, Mr Farren stated the daytime noise levels would be 50 dB L_{A10} or less at all dwellings (excluding 3261 Coast Road); and night time noise levels would be 45 dB L_{A10} or less at all dwellings (excluding 3261 Coast Road). He concluded the noise from the proposed activity would comply with the GDP provisions, resulting in 'acceptable' noise effects which would maintain an appropriate residential amenity. He confirmed the assessment of noise effects did not rely on the underlying existing noise environment in the vicinity of the site, despite the elevated ambient noise at night from the surf. However, he conducted an analysis of high and low tides during the continuous ambient monitoring and considered this did not support Mr Humpheson's assertion that elevated night time noise levels were because of the high tide conditions. He stated that some form of compliance monitoring would be appropriate, but should not be ongoing unless non-compliance was observed or on receipt of justifiable complaints.
67. Mr Farren referred to the JWS he prepared with Mr Humpheson and commented on the evidence of Mr Hegley and Mr Findlay. He disagreed with Mr Hegley that 40 dB L_{Aeq} at night is a more appropriate limit. He also disagreed with Mr Hegley's maximum night time limit of 65 dB L_{Amax} . He noted that applicant's commitment to implement the best practicable option (**BPO**) through the proposed processing plant setback, processing plant enclosure and bunding, and through the proposed consent conditions. He considered Punakaiki would experience a 'negligible change in average traffic noise effects' given an increase of 40 truck movements per day compared to current traffic volumes of approximately 1,150 vehicles per day. In response to questions, Mr Farren agreed to provide further predicted noise contours for mining in the northeast of the application site at the closest point to the dwelling at 3375 Coast Road.
68. Mr Farren provided a supplementary statement (dated 15 October 2021) providing additional noise modelling and predicted noise levels resulting from the revised site layout and relocated loadout area. He concluded the noise effects would comply with the GDP limits.
69. Mr Farren provided a second statement of evidence (dated 25 November 2021) at the reconvened hearing responding to the evidence of Messrs Humpheson, Hegley and Reeve. He considered the height and extent of the proposed landscaping bunds was sufficient to comply with the proposed noise limits. He considered traffic noise was an 'anticipated

effect' for dwellings adjacent to a state highway. He provided traffic volume data for Canoe Creek (Appendix A) and highlighted there were 'several vehicles' passing the site at night, which generate noise levels greater than the threshold suggested by Mr Reeve. He concluded there would be no 'step change' in noise effects from the proposed night time truck movements. While he still recommended 55 dB L_{eq} daytime and a 45 dB L_{Aeq} night time noise limit, he noted that he was confident that a 50 dB L_{eq} daytime and a 40 dB L_{Aeq} night time noise limit could be met at all dwellings (excluding 3261 Coast Road).

70. **Mr Zeb Etheridge**, a Director of Kōmanawa Solutions Limited, drafted the 'Hydrological Impact Report'⁹ (KSL 2020) accompanying the application and provided a statement of evidence and summary statement assessing the potential hydrological effects of the proposed mining operation. He also provided a draft WMP dated 15 June 2021. He concluded that the effects of any surface water diversions on the flow regime of Collins Creek, Deverys Creek, Canoe Creek or Canoe Creek lagoon water would be less than minor given the catchment area and water volumes involved¹⁰. He noted that temporary dewatering in the active excavation areas, in the order of 10-15 m deep at rates up to 20 litres per second (L/s), would be required by in-pit sump pumping and potentially well point dewatering (if the sediments were sufficiently transmissive). He referred to modelling results presented in KSL 2020 which indicated significant drawdown effects would occur in Deverys Creek, Canoe Creek and wetlands/ponds to the north of the site without returning water to the hydrological system. Although the effects of dewatering on Collins Creek were not modelled, he assumed significant effects would also occur if water was not returned to the hydrological system via an infiltration trench. He referred to the modelled stream depletion effects with dewatering recharge to the aquifer via infiltration trenches to ground, recharge wells and/or discharge channels to surface water. He provided a schematic cross section through Canoe Creek lagoon to illustrate his conceptual understanding of the hydrology and how the dewatering discharge would be managed to avoid water level effects in the lagoon (Appendix 1, Figure 1). He stated that further investigations would be undertaken to determine the best dewatering management solution to avoid adverse hydrological impacts.
71. Mr Etheridge assessed potential water quality impacts based on groundwater quality investigations in 1991¹¹ for a previous mineral sand mining proposal and visual observations of iron precipitate in Collins Creek and in the dredge pond. He considered the greatest water quality impacts related to iron and manganese precipitation in surface waterbodies from the discharges. He noted the mechanical mineral separation process had the potential to increase the concentration of dissolved elements, but that based on previous laboratory testing in 1995¹² for geologically similar mineral sand deposits at Cape Foulwind he did not expect unacceptable adverse effect on receiving water quality. He considered the discharge quality could be monitored and water quality objectives and limits set in the WMP.

⁹ Kōmanawa Solutions Limited 2020. Hydrological Impact Assessment for Mineral Sands Extraction. Report No: 20014-01-R2

¹⁰ Collins Creek is no longer proposed to be diverted. Drainage channels are expected to change within the footprint of mining activity while the mine is operating but the WCRC S42a report does not identify diversion of surface water as part of the proposed activity.

¹¹ Murray-North 1991. Environmental Impact Assessment – Westland Ilmenite Ltd. Barrytown Mineral Sands, West Coast.

¹² Tonkin and Taylor, 1995. Westport Titanium Project – Assessment of environmental effects.

72. Mr Etheridge concluded that saline intrusion due to upconing was unlikely to occur and could be monitored with trigger levels and an action plan through the WMP. He considered the proposed wetland constructed as part of the site rehabilitation would intercept runoff and channel seepage and would help remove dissolved iron and suspended sediment and possibly phosphorus. He noted the final rehabilitated ground level would be up to 1 m lower and that groundwater drainage may be required to restore the site to productive pasture. He highlighted that greater permeability of the backfilled material could reduce groundwater levels at the eastern side of the site and result in a flow reduction in Collins Creek of more than 10%. In addition, there was potential for reduced groundwater levels beneath SH6 and properties on the northern site boundary, which would need to be considered and managed appropriately via the WMP. He considered there would be no increase to coastal land exposure to natural hazards given the western limit of the proposed mining area is located 250 m from the ocean and 4-6 m above current mean sea level.
73. Mr Etheridge acknowledged spring discharges can be sensitive to relatively small changes in water table elevation and that mine dewatering could potentially reduce the flow rate depending on level of hydraulic continuity of groundwater levels. He noted the WMP provided details of the pre-mining baseline investigation and monitoring which would be undertaken to establish the degree of connectivity. He considered flow reductions in springs could be avoided by dewatering discharge adjacent to the springs and that the requirements for avoiding any sustained reduction in spring flows would be determined via the proposed pre-mining site investigation and dewatering trial, and monitoring during operational mining.
74. Mr Etheridge provided rebuttal evidence (dated 3 September 2021) responding to the evidence of Ms Lough and Mr Nichol. He considered the proposed water management approach was significantly robust to avoid unacceptable hydrological impacts and that he had included a requirement for baseline monitoring. He concluded that he had a high level of confidence that the effects can be managed to within an acceptable level through the conditions proposed and the WMP which '*...evolves as required in response to information gained and knowledge developed during the mining operation*' (para 28, pg.9).
75. Mr Etheridge provided a supplementary statement of evidence (dated 15 October 2021) and a revised WMP (dated 14 October 2021) at the reconvened hearing. His evidence set out the key dewatering objectives, management principles and target outcomes in a revised WMP, which had been encapsulated in consent conditions. He noted the revised WMP included a baseline monitoring programme, a comprehensive site investigation and a method for defining water management trigger and action levels. He concluded the WMP represented a precautionary approach with a suitable degree of certainty that adverse hydrological impacts can be avoided.
76. The revised WMP would require trigger levels to be established in groundwater bores around the perimeter of the subject site which would protect the values in the sensitive waterbodies to the north of the site as well as the springs to the south. These trigger values would be based on at least 12 months of baseline monitoring of the perimeter bores as well as bores further to the north of the site along Burke Road. In answers to questions Mr Etheridge stated that the trigger values would be subject to continuous review (through an

adaptive management approach) as more groundwater information was collected during mining and hence his preference for the trigger levels to be included in the WMP rather than specified in conditions of consent.

77. **Mr John Ballingall**, an Economics Consultant and Partner with Sense Partners, provided a statement of evidence outlining the economic impacts of the proposal, the assessment of relevant RMA matters and matters raised by submitters. He outlined the importance of mining for the Grey District and wider West Coast region for jobs and economic income. He considered the estimated creation of 47 FTE jobs was an underestimate given this did not include contractors. He noted downstream multiplier effects and estimated every additional mining job would generate around 1.4 further jobs in the local economy. He considered the proposal would deliver a meaningful increase in local and regional employment both directly and indirectly. He estimated the 47 new direct FTE jobs would generate \$4.4 million per year of additional income; and non-employment operating expenditure of \$27.4 million per year. He estimated the operation would generate around \$66.5 million of export earning per year once fully operational, which would boost the West Coast regional export revenue by around 21% per year and the Grey District gross domestic product by 3.2%. He estimated royalties and tax income across the mine's lifetime to be \$50.7 million. He considered the proposed mine represented an efficient use of land resources, relative to alternative uses. He concluded any adverse effect on tourism would be immaterial given the miniscule area affected. He concluded any economic costs associated with the proposal were unlikely to be significant or widely distributed and were limited to potential visual effects and noise effects.
78. In response to questions, Mr Ballingall acknowledged there was a high level of uncertainty with the estimates given the volatility of commodity prices. Following his presentation, he provided further written responses to our questions of clarification (dated 21 September 2021).
79. **Ms Bron Faulkner**, a self-employed landscape architect, was engaged by the applicant to provide an independent review and design input in relation to the landscape and visual aspects of the proposal. She provided a written statement of evidence and a summary on the effects on the natural character of the coastal environment, visual effects from public locations, visual effects for neighbours, and the effectiveness of the proposed mitigation measures. She concluded the proposed activities would impact the naturalness of the coastal environment for the duration of the works, but that this would be for a short time and of small magnitude. Over the long term, she considered the riparian and wetlands plantings would enhance the ecological qualities to some degree. She agreed with Mr Glasson that the proposed bunding and plantings would screen the site from most public views. She considered the mining activity would not be highly visible and that simply being visible does not constitute an adverse visual effect. She considered visible mining activity would comprise a relatively small area and would not be visually obtrusive or out of context with typical rural activities. Attached to her summary was a landscape plan showing the approximate portion of the application site visible from Mr Ellis and Ms Rogers' dwelling deck.
80. Ms Faulkner provided a supplementary statement of evidence (dated 15 October 2021) providing a review of the mine concept plans, further visual simulations and graphic

supplement, and the landscape plan and planting detail. She concurred with Mr Glasson's assessment.

81. **Mr Chris Glasson**, a Landscape Architect with Glasson Huxtable Limited, provided an Assessment of the Landscape and Visual Effects (dated 23 April 2021)¹³ and a written statement of evidence and summary. He highlighted the graduation of change across the coastal plain from the untouched landform and vegetation to the east of SH6 and the coastline, to the open pastoral grassland of much of the coastal plain. He considered the landscape exhibits a 'high value of naturalness', which has been reduced due to vegetation removal, a scattering of house and farming activity. He noted there are no ONLs within or directly adjacent to the site according to the GDP, but that the Paparoa Range, adjacent to 'the river' is listed as an ONL under the GDP. He concluded any adverse effects on the 'outstandingness' of the Paparoa Range would be very limited due to the separation distance and the small area of disturbance at any one time (less than 5 ha).
82. Mr Glasson's graphic supplement (Appendix 2 of his assessment report) provided an assessment of visual effects from four public viewpoints (two along State Highway 6 and two on the coastline). He also assessed the visual effects from the drive entrance to 3375 Coast Road (R. Langridge and D. Vandenberg) and 3195 Coast Road (G. and G. Langridge). He concluded any adverse landscape and visual effects from public viewpoints would be mitigated to 'low' on completion of the bunding; and further reduced to 'very low' after 3 years when planting have grown to 2.5 to 3 m in height. Similarly, he concluded any visual effects on the properties to the north would be 'low' given the partial views of the application site, screening from the kahikatea trees, the proposed bund and plantings and the small area disturbed. He concluded visual effects from G. and G. Langridge's dwelling would be 'moderate' initially, but would reduce to 'low' after the proposed planting along Collins Creek. He considered the dwelling at 3316 Coast Road (A. Ellis and J. Rogers) had limited views of the application site due to the tree coverage in front of the house and that this confined with the separation distance and small area disturbed would result in 'low' visual effects. He stated that a change in landscape did not necessarily constitute an adverse landscape or visual effect given it is dynamic and changing over time. He noted the GDP anticipates landscape change (albeit a temporary shift) and the scale of the change in the landscape was likely to generate 'low' adverse effects for the duration of mining.
83. In response to questions in relation to his graphic viewpoints, Mr Glasson stated that he had not viewed the application site from submitters' dwellings because he assumed submitters would not agree to access. He confirmed that his assessment had assumed the processing plant building would be below ground level. He noted Viewpoint 8B had not been provided, as Ms Faulkner had provided the photograph used in Viewpoint 8A. He also confirmed the annotation for Viewpoint 8A in his supplement was incorrect as the photograph was taken for the applicant and not GDC. He agreed photo simulations showing the immediate mitigation provided by the bunding and the longer-term mitigation provided by the plantings would be useful.
84. Mr Glasson provided a supplementary statement of evidence (dated 15 October 2021) addressing the further assessments requested and a revised assessment based on the

¹³ This replaced an earlier landscape and visual assessment provided with the applications in December 2020.

recently prepared mine site concept plans. He highlighted his recommendation that the bunding around the processing plant be increased to 2.5 m. He noted the bunds and plantings would be completed prior to mining activity; and the construction of the wetland within 12 months of completion of mining, with implementation of a Wetland and Riparian Planting Plan. He outlined the further photo simulations and photographs in the graphic supplement (October 2021). He concluded visual effects from all viewpoints ranged from 'low' to 'moderate', which was equated 'minor' adverse effects.

85. **Ms Katherine McKenzie**, a Principal Planner with Tai Poutini Resources Limited provided written statement of evidence, and a summary statement and rebuttal evidence for the initial hearing, but did not appear until the reconvened hearing due to time constraints. Ms McKenzie's evidence addressed the statutory framework, matters raised by submitters and in the s42A reports, and proposed consent conditions. She highlighted the proposal had been substantially refined and improved to address potential environmental effects. She was satisfied that, subject to imposing the proposed conditions of consent, the revised proposal would have 'no more than minor' effects on the environment. She considered the proposal was 'broadly consistent' with the relevant planning framework. She concluded the revised proposal was in accordance with Part 2 of the RMA and could be granted consent. Her evidence was drafted on the basis the overall activity status of the proposed activities was a discretionary activity. Appended to her statement was an assessment of the relevant objectives and policies of the RMA plans (Attachment C) and proposed conditions of consent (Attachment D).
86. Ms McKenzie's summary and rebuttal statement (21 September 2021) responded to submitter evidence and provided a further revised set of proposed consent conditions. It also addressed the written approval of J. Costello and B. O'Neill and the updated position of Ngāti Waewae. She stated that if the evidence of Mr Nichol was accepted it would trigger the need for an additional consent under the NES-FW and an overall non-complying activity status. She considered this was within the scope of the application. She remained of the opinion the proposal passed both gateway tests of section 104D, subject to the imposition of proposed conditions, and that any potential adverse effects on the identified wetlands would be less than minor in nature.
87. Ms McKenzie provided a supplementary statement of evidence (dated 15 October 2021) at the reconvened hearing addressing the further information provided since the initial hearing, further evidence from submitters and revised proposed conditions (appended to her supplementary statement). Her conclusions remained that the applications passed both section 104D gateway tests.
88. Ms McKenzie also provided a further summary statement and rebuttal evidence (dated 16 November 2021) addressing the further evidence of submitters and addendums of the Council officers. She generally agreed with the conclusions of Mr McEnaney and the changes to conditions proposed. She stated the applicant accepted the lower noise limits proposed by Mr McEnaney, but disagreed with a limit of 10 truck movements at night. She considered there was no basis for limiting heavy vehicles on SH6 from a planning perspective. She confirmed the applicant had accepted the majority of Mr Ridge's recommended conditions. She disagreed with the conclusions of Ms Legarth, noting that her evidence relied on the conclusions of experts for the submitters.

89. **Mr John Berry**, Project Manager for Barrytown JV Limited, provided a statement of evidence (dated 15 October 2021) for the reconvened hearing addressing the mine concept plans, quantities of ore for off-site trucking, planning timeframes and a draft DMP (appended to his statement).

Submitters

90. **Dr Brian Weston**, who owns and resides at 3172 Coast Road, presented a written statement expressing concerns relating to adverse noise, landscape and visual effects, mistakes in the applicant's evidence, truck and trailer noise and road safety. He explained they had recently sold the property but that the sale may not proceed because of the mine proposal. He noted the dwelling had extensive views northwest, which included the application site, and considered the view would be a continual reminder of the audible and visible activity on the site. He stated there had been no contact from the applicant on the incorrect basis that they would have 'no or very limited views', which was clearly wrong. He considered the changes in key attributes of the amenity would rate as a 'high' effect. He noted truck and trailer noise would affect most dwellings within 100 m of the road, with counts showing 170 dwellings to the north and 38 to the south (as far as Rapahoe). He considered the noise from the trucks and trailers would be an annoyance during the day and a major problem during the night. He stated night time operations were not appropriate and should not be allowed between 11 pm to 7 am. He was concerned SH6 had not be designed for trucks and trailers and provided appendices showing truck and trailer tracking curves and aerial photographs of some of the tight corners.
91. **Mr Michael Weston**, who resides at 3172 Coast Road with his parents Brian and Margaret Weston, presented a written statement outlying his deep concerns regarding the effects of the mining activity, other future mining operations, trucks and after hours operations. He noted he regularly travelled by bicycle between Canoe Creek, Punakaiki and Fox River. He highlighted 24/7 mining operations were unprecedented on the West Coast. He noted his family were familiar with the noise from gravel extraction in Canoe Creek, but accepted this given it was undertaken during the daytime and for a limited time (months). He highlighted the retreating coastline and considered any drop in land level would invite the sea in. He noted the uncertainty and sense of gloom and loss the surrounding community felt from this and future mining proposals hanging over their heads. He emphasised the hazard of large milk tankers on the road, despite these being relatively few in number, and the current ability to avoid biking at these times. He considered the continuous noise would disrupt sleep and there would be no break from the buzz of human activity. He noted people sought to live here because of the natural qualities of the land and the lifestyle it offers.
92. Mr Weston provided a supplementary statement (dated 4 November 2021) addressing the applicant's further information and evidence and confirmed this had not alleviated his concerns regarding noise (particularly at night) and use of the road by heavy trucks and trailers. He calculated there were 147 dwellings within 30 m of the road between Greymouth and Westport which would be directly affected by the increase in heavy trucks.

He provided a list of dwellings located within 30 m of the road (Attachment One) and a letter signed by 168 residents, ratepayers and/or road users (Attachment 2).

93. **Mr Andrew Ellis**, who resides at 3316 Coast Road, presented a written statement of evidence on behalf of himself and his partner Ms Jacqui Rogers voicing concerns regarding the applicant's disregard of people's opinions, the consent process, communication with the Councils, discrepancies and omissions in the reports, understated visual effects and noise effects. He noted that bunding would not mitigate any adverse visual or noise effects given the elevation of their property and the fact they were only 375 m away from the site. He disagreed with the conclusions reached by the applicant's landscape architects that the visual effects would be 'low' and objected to consideration of trees on their property as mitigation. He considered the noise would affect their property and would only be masked by the sound of the sea and traffic noise some of the time. He questioned the representativeness of the MDA modelling and data and noted local residents know the conditions and ambient noise levels. He emphasised that, despite the rata trees in front of their deck (which tend to be blown intermittently over), they had a clear line of sight to 60 ha of mining operations and this could not be diluted. He strongly encouraged the most stringent conditions possible on noise monitoring. He highlighted the low-lying coastal land was being steadily eroded and the 'high risk' of further coastal erosion given climate change. He considered the RPS 20/2021 had been written to accommodate proposal such as this and that the applicant had aggressively steered the Councils to limited notification. He noted there had been no consultation or engagement with them and no information provided (except a site map) prior to lodgement of the applications. He considered the decision to limited notify the applications was 'simply unfathomable on so many levels' and should be subject to judicial review. He urged us to see the deceptive nature of the applications and deny granting the consent. He noted that reopening their small bed and breakfast business when overseas tourist return would not be an option with continuous noise and visual intrusion, and would devalue their property. He considered that the applicant should have to negotiate a fair outcome with the directly affected parties who will live, see, hear and breathe the mine.
94. Mr Ellis provided a further personal evidential statement (dated 5 November 2021) responding to the further evidence. He considered Mr Glasson's evidence was deeply flawed; requested the most stringent conditions be imposed on night time noise if consents were to be granted; and provided additional photographs.
95. **Director General of Conservation** was represented at the hearing by Ms Victoria Tumai, Counsel for Department of Conservation. Ms Tumai presented legal submissions and called expert evidence from Ms Simister. Ms Tumai outlined the Director General's concerns regarding potential adverse effects on indigenous biodiversity and freshwater fish habitat, and the remaining concern for potential adverse effects in the tāiko. She stated the concerns had largely been addressed by withdrawal of the consent for diverting Collins Creek. She highlighted the needed to impose appropriate conditions to address any residual effects on freshwater values and considered there was insufficient information on the potential effects on surface water levels and potential changes in hydrology of the lagoon. She requested more details on the proposed coastal and riparian planting, and the design and purpose of the proposed wetland to understand any realistic benefits. She highlighted the significant avifauna values that could be utilising the site, including white

heron, mātuku/Australian bittern, banded dotterel, South Island fernbird and black shag; and the risks posed from habitat loss and disturbance (dust, noise and vibration). She considered management plans to address effects need to be considered before consent is granted. She highlighted the requirements of the Wildlife Act 1953, including disturbing 'absolutely protected wildlife' and the inability to seek authorisation for disturbing protected wildlife. She submitted all reasonable steps to avoid the disturbance of protected wildlife such as the tāiko and the matuku/Australian bittern must be taken and that not operating during the hours of darkness would be a good start. She noted the applicant had made no attempt to monitor birds utilising the surrounding area. She highlighted the relevance of NZCPS Policy 11 and the requirement to avoid adverse effects on threatened or at risk indigenous species and their habitats. Ms Tumai provided a copy of Supreme Court decision [2019] NZSC 111 regarding definitions and section 53 of the Wildlife Act 1953.

96. Ms Tumai provided further legal submission (dated 5 November 2021) responding to the further evidence. She submitted that the additional information provided greater certainty the effects on freshwater biodiversity would be mitigated. She highlighted the conclusions of Ms Simister and the remaining concerns regarding adverse effects on tāiko.
97. **Ms Kate Simister**, Ranger, Biodiversity for the Department of Conservation, provided a written statement of evidence on the status of and threats to tāiko/Westland petrel, the risk of artificial light from the proposed activities to tāiko, and the risk of increased vehicle lighting on SH6 to tāiko. She noted the relevance of the Convention on Migratory Species (2021) and the Agreement of the Conservation of Albatrosses and Petrels (2021) and associated Light Pollution Guidelines for Wildlife (Commonwealth of Australia 2020). She highlighted the endangered tāiko was only known to breed in the one location in the world, which was only 3.6 km from the application site. She considered there was significant uncertainty in relation to population numbers and the resilience of the population to the observed increased frequency and ongoing loss of breeding areas to landslides from extreme weather events. She noted threats from artificial lighting causing birds to become grounded and the high percentage of deaths during the breeding season and fledging period (mid-March and mid-January), with birds found grounded in Punakaiki, Greymouth, Hokitika and Westport. She made a number of recommendations to avoid and mitigate the risk, including no mining activities during the hours of darkness, compliance with lighting guidelines, reporting grounded birds to DOC, ceasing processing plant operations if more than one dead bird is found within 20 m of the plant, staff training and education, and limiting vehicle movements on SH6 during the hours of darkness if two or more tāiko are struck by vehicles in a calendar month.
98. Ms Simister provided a further statement of evidence (dated 21 September 2021) providing comment on the draft AMP and made a number of further recommendations. She considered the revised AMP (revision 4) failed to identify the period of potential light attraction due to a lack of understanding of their biology and behaviour and did not sufficiently eliminate or mitigate the risks posed to tāiko, particularly given the proposed hours of mining activities and the additional vehicle lights on SH6.
99. **Mr Dean van Mierlo**, Counsel, provided written legal submissions on behalf of the Langrange family and an assessment of the objectives and policies of the planning

documents undertaken by Dr Scott Freeman (Appendix 1). He highlighted the three generations of the Langridge family he represented and their 120 years living and farming on the Barrytown Flats by Canoe Creek. He noted the extent of community concern (over 100 km along the Coast Road) and the number of people seeking to be involved in the process. His submissions discussed the statutory framework and the key issues in relation to adverse effects on the hydrology and habitat values of the wetlands, Collins Creek and freshwater springs; adverse effects on the Australasian bittern and tāiko; adverse effects of trucking operations; adverse effects on natural character and amenity values; and adverse effects from radioactive components. He highlighted section 104(3)(d) states that a consent authority *must* not grant a resource consent that should have been notified and was not. He noted this was a jurisdictional barrier to the grant of consent if the adverse effects are found to be more than minor. He emphasised this was of constitutional importance given what flows is the ability to participate in the consent process and for appeal rights under the Act. He highlighted the RMA definition included temporary or permanent effects and any cumulative effects; and considered the applicant wrongly dismisses adverse effects of noise, dust, lighting, visual impacts as short term or temporary. He highlighted the definition of effects includes cumulative effects which arise over time or in combination with other effects, regardless of scale, intensity, duration or frequency; and include any potential effect of low probability which has a high potential impact. He noted that application of the permitted baseline is discretionary and that the mandatory application in the Council's notification decision was a fundamental error. He submitted the Councils had erred in processing the applications as a discretionary activity and had failed to understand and apply the NES-FW, in particular its implications on the overall activity status of the application being non-complying. He considered such a fundamental error underscores the fact the Councils' notification decisions were flawed and the applications should have been publicly notified. He submitted the submitter's evidence confirmed the adverse effects of the proposal would be more than minor and in fact substantial and significant. He noted the RMA definition of a wetland required consideration of the wetlands and lagoons and land water margins holistically as a connected natural ecosystem of plants and animals; and he considered these wetland values had been largely ignored by the applicant. He highlighted section 104(6) and submitted there were numerous examples of 'inadequate information'. He submitted the applicant's evidence was contradictory and ambiguous in relation to volumes of HMC, truck movements, truck sizes and weights, and the route and destination of trucks. He noted submitter concern regarding the independence and impartiality of the people employed by Tai Poutini Resources and the New Zealand Institute for Minerals to Materials given the commercial relationships. He disagreed that the mining proposal was deemed appropriate in the GDP given it did not have specific earthworks or mining rules in the rural zone and relies on the WCRC rules to manage earthworks and mining. He submitted earthworks and mining were only an 'anticipated activity' or 'deemed appropriate' if they are permitted under the relevant regional plans and the application is well outside of the LWRP. He highlighted Dr Bramley's evidence that bittern will avoid noise, that the loss of one individual would affect the population, and that bittern would be displaced from the best habitat in the ecological district. He concluded that neither of the two section 104D gateway tests were passed and consent must therefore be declined.

100. Mr van Mierlo provided supplementary legal submissions (dated 19 November 2021) at the reconvened hearing addressing the applicant's further information and evidence. He

confirmed the submitters continue to seek the decline of all consents under sections 104 and 104D. He highlighted concerns regarding residual adverse effects on amenity and natural character (including noise, visual, lighting and dust), threatened species and their habitat, wetland hydrology, Collins Creek and freshwater springs; and considered these would be more than minor. He submitted the proposed triggers for adaptive management and buffer distances were arbitrary and not based on monitoring to support them. He considered deferring collecting information and setting limits post consenting stage was inappropriate and unlawful, and undermined the limited notification process and submitters' rights. He concluded the application must be declined under section 104D, section 104(3)(d), and/or section 104(6), but that even if we did not find these reasons to be applicable then the application should be declined under section 104(1).

101. **Ms Hillary Lough**, an Environmental Engineer and Technical Director with Pattle Delamore Partners Limited, provided a statement of evidence (dated 16 August 2021) and a summary statement on behalf of the Langridge family reviewing the assessment of effects on groundwater and surface water. She highlighted the methodology required significant drawdowns of the water table (up to 15 m) and dewatering rates of up to 20 L/s. She noted the lack of assessment of any increased exposure to coastal land from natural hazards through specific assessment such as wave run up, high tide, storm surge and sea level rise, combined with current coastal erosion and future patterns. She noted lack of details regarding the proposed wetland to be created and its proposed use during and post mining; and no assessment of any resulting adverse changes to current hydrology or protection of the existing lagoon and wetlands from coastal storm damage or flooding. She highlighted the changes in drainage patterns and land elevation, and the creation of the proposed wetland would be permanent. She noted the KSL 2020 hydrological impact assessment had inferred groundwater depths and directions from off-site information. She considered that, given the scale of the activity and proximity to sensitive surface waterbodies (streams, lagoons, springs, swamps and wetlands), onsite groundwater information should have been collected to understand groundwater levels and implications for the proposed mining and subsequent effects. She highlighted significant uncertainty regarding groundwater conductivity values and the impact of uncertainty in the modelled parameters, and the resulting uncertainty in the model outputs. She noted the interaction between Deverys Creek, Collins Creek and Canoe Creek and groundwater was not well understood. She considered that combined concurrent stream gaugings with groundwater and surface water measurements could have been provided to better understand the interactions and to support the modelling undertaken.
102. Ms Lough highlighted the moderate to high ecological values of the surrounding wetlands and streams; and the potentially high to very high level of impacts from any reduction in wetted area or habitat from water level or flow changes from mining activities. She considered there was uncertainty whether these effects can be adequately and effectively mitigated based on the current information. She noted it may be difficult to return dewatered water in the required location at the time needed to provide successful mitigation of any hydrological changes. She noted the lack of investigation and assessment of existing wetland and groundwater levels, the feasibility of reinjection/soakage discharge, and water quality impacts. She recommended a number of additional consent conditions were required to set key limits (such as maximum rate of dewatering take, maximum drawdown/reduced water levels, maintaining a positive gradient, maximum volume of

material to be removed and maximum 1 m reduction in rehabilitated ground elevations) and collect baseline information. However, she considered the process to set trigger levels should be established before the consent is granted and appropriate buffer distances to surface water set based on further site-specific information. She noted the focus on wetlands with a clear surface water expression and lack of assessment on other wetland areas such as the Langridge kahikatea swap and the Langridge Scenic Reserve (DOC). She considered Collins Creek had the greatest potential to be affected by depletion effects and a loss of river extent due to its location. She noted the lack of detail regarding monitoring, including location and water quality for different waterbodies; discharge points, volumes, timing and quality standards for discharges to land and surface water; stormwater quality, discharge points and controls; spill management; and the use of flocculants.

103. At the hearing, Ms Lough highlighted the reduction in land surface elevation (up to 1 m) post mining and the implications for ongoing drainage requirements, the protection of surface waterbodies, and increased vulnerability to coastal hazards. She outlined concerns regarding the effectiveness of the proposed water management and mitigation including infiltration constraints, establishing appropriate trigger levels, water quality impacts, alternative mining methods, understanding discharge locations, the adequacy of proposed buffer distances, stormwater volumes and management, and effects on the Langridge's springs. She concluded there was potential for significant adverse effects.
104. Ms Lough provided a supplementary statement of evidence (dated 5 November 2021) at the reconvened hearing reviewing the supplementary evidence of Mr Etheridge, the revised WMP and the revised proposed conditions. While she acknowledged the significant improvements in the proposed conditions and revised WMP, she concluded she remained concerned that the proposed large-scale dewatering (up to 15 m lowering of groundwater levels) and other related activities could result in significant adverse effects on nearby surface waterbodies and springs. She outlined her concerns primarily related to undertaking the required monitoring and investigations, including the setting of trigger levels, after the consent is granted. She considered this information should have been provided in advance of the consent decision making to demonstrate the activity can be appropriately controlled to avoid adverse effects on the sensitive receiving surface water environment. She considered the approach proposed would not enable participation by potentially affected parties and there remained a high degree of uncertainty that adverse effects can be adequately and effectively mitigated.
105. **Mr Matthew Charteris**, a self-employed ecologist, provided a written statement of evidence (dated 16 August 2021) and a summary statement (dated 20 September 2021) on behalf of the Langridge family assessing the avifauna habitat availability and quality associated with the Langridge property and the wetland areas adjacent to the mine site. He confirmed habitat for at risk and threatened wetland and forest birds was present adjacent to the proposed mine. He considered there was 'vital connectedness' between the spatially spread wetlands of the Barrytown Flats for the behaviour and security of the local threatened wetland avifauna; and remnant forests stands and the Paparoa forested hills for threatened forest avifauna. He considered the applicant's ecological assessment was inadequate in terms of cryptic species present or of species utilising the area seasonally. He stated further ecological investigations were required to assess the

- potential impacts and the importance of the habitat. He considered appropriate setbacks (at least 100 m) were required to mitigate adverse effects on avifauna.
106. Mr Charteris provided a supplementary statement of evidence (dated 5 November 2021) responding to the further evidence. He considered the proposed conditions and AMP would not avoid adverse effects on threatened and at risk birds. He concluded the potential adverse effects of the proposal on threatened and at risk birds would be 'significant'.
107. **Ms Robyn Langridge**, who resides at 3375 Coast Road with her partner Mr Dan Vandenberg and two-year-old child, provided a written statement at the hearing on behalf of the Langridge family and spoke to the evidence presented at the hearing. She outlined her family connections, history and knowledge in the area and her connection to the community. She highlighted the land in the flats area was all swamp before gold and 'black sanding' operations; and that the seaward lagoon and inland lagoon/pond SNA (Rusty lagoon) were formed by early sluicing in the area known as 'The Blow Up' up until about 1920. She noted the significant impacts of mining and farming on the landscape and the threat mining posed to the most biodiverse areas left of the Barrytown coastal flats. She considered, from just south of the application site (DOC Scenic Reserve) to the end of McMillan Road near Punakaiki in the north, was the most biodiverse and least modified end of the flats. She noted the important connectivity of their northern block and the Canoe Creek Conservation Area and Langridge Scenic Reserve in the coastal flat environment. She considered that inserting open casting mining next to this significant bird habitat would have effects that were considerably 'more than minor'. She submitted that the natural wetland and ecological values of the assessed SNA area and their surrounding northern block were clear in the evidence of Mr Charteris and Mr Nichol. She noted the SNA and their northern block, including lagoons, had functioned as a natural wetland habitat for at least 100 years. She recalled the migration of Canoe Creek to flow fully through the lagoons and its mouth flowing onto Burkes Road, with natural 'lagooning' behaviour. She highlighted the omnipresent fernbird and the importance of the vegetation on their northern block for habitat. She also noted the presence of matuku/Australasian bittern and hoped they moved between Mahers Swamp and their SNA, maybe even breeding on their land. She considered Dr Bramley's assessment should have included the wetland areas adjacent to the site (including the kahikatea swamp/forest) and that the proposed setbacks were too small to ensure bird habitat was not compromised. She also outlined other bird species they had observed within the SNA and freshwater fish and invertebrates observed in Deverys Creek.
108. Ms Langridge was very concerned about hydrological impacts on the surrounding waterways, the absence of onsite water level testing needed to understand water management on the site, and assertions that flow reductions or water quality impacts would be 'less than minor'. She noted recent drought conditions and 'unheard of' warm temperatures that had resulted in adverse effects on local waterways. She considered there was not enough information to assess whether the proposed reduction in flows in Collins Creek were acceptable. She expressed concern for the loss of their rural outlook and mountain to sea views, and its replacement with a mine wall and unnatural bund. She considered there was a real risk of increased wind effects given they were located in a high wind corridor. She noted concern regarding noise and dust effects, and potential health risks from radiation. She questioned the reliance on one test sample and the independence

of the testing. She considered the application should have been notified to numerous affected parties, including Golden Sands Horse and Wagon Tours and other elevated properties along SH6 who she said would be affected visually and by noise and loss of amenity, including 3482 Coast Road owned by Mr Petersen and 3428 Coast Road owned by Mr Broad. She highlighted the daily use of SH6 by businesses and individuals as a 'lifeline' and the recognised road safety issues in the West Coast Regional Land Transport Plan 2015-21; and considered the applications should have been publicly notified so that residents and ratepayers could have a say. She attached emails from Mr Beetham, the owner Golden Sands Horse and Wagon Tours (who run beach tours in the area), regarding impacts on his accommodation businesses and his email to the GDC urging public notification. She stated there had been no discussions with any member of the Langridge family, except one initial letter and a simple map, and that this should not be dressed up as engagement with the affected people and the community. She noted her father (G. Langridge) had identified the location of the two springs on their property, including the potable supply close to the house. She concluded by expressing how stressful the year had been for her family due to the proposal and expressed extreme frustration at the information being provided 'piecemeal'. She considered the consent process had been very unsatisfactory and their concerns dismissed.

109. Ms Langridge provided a supplementary statement of evidence (dated 5 November 2021) responding to the further evidence. She highlighted their dwelling was within the applicant's stated 200 m set back from mining activity and that the noise modelling had not been undertaken with no bund in place. She remained concerned the proposed bund and plantings would have a major adverse effect on their existing views and included inappropriate species for the area. She considered Mr Berry's evidence confirmed the applications were based on very little information about the mineral resource and therefore made Mr Straface and Mr Ballingall's economic claims highly speculative. She remained concerned about dust and radioactivity and considered that monitoring HMC level once a year was inadequate. She considered the applicant's approach was 'approve now, prove later' and considered the Councils did not have the capacity to monitor or enforce consent conditions.
110. **Mr Ross Wildbore**, who resides at 3323 Coast Road with his partner Ms Sharon Langridge and their three children, provided a written statement on behalf of the Langridge family. He was concerned that it appeared approval had been given for the transportation of HMC without any information being released to the neighbours and wider community. He questioned the volumes of HMC quoted and the number of truck loads per week, and the maximum pay load permitted; and noted discrepancies around car movements versus vehicle movements. He noted the change to run trucks north and south would have significant effects on all users of SH6, residents and visitors, and therefore the application should have been publicly notified. He considered the known 'pinch points' on the road were unsuitable for heavy vehicles. He noted the proposed road realignment would require complete removal of the existing vegetation (including the mature rata tree) and that there had been no communications with the landowner to the south (G. and G. Langridge). He stated he was not anti-mining but that, in this case, the wrong type of mine was located in the wrong place. He considered the mine was not of a 'short duration' with effects that were 'no more than minor' if you live next door to it; and that the mine would take equity from their properties and disturb the enjoyment of their home environment.

111. Mr Wildbore provided a supplementary statement of evidence (dated 5 November 2021) responding to the further evidence. He considered there were still inconsistencies in relation to truck movements and remained of the view the additional heavy traffic would result in unacceptable noise and disturbance of the neighbours.
112. **Dr Scott Freeman**, a son in law of Mr George and Mrs Gladys Langridge and partner of Ms Deb Langridge, provided a written statement he had prepared with his parents in law. He outlined their family's five generations of history with the property as its stewards and the high natural character of the area. He highlighted the 24/7 load out operation would be 300 m from their bedroom and the haul road and processing plant 30 m from their property boundary. He noted the predominant sound of the sea and its contribution to the measured ambient noise levels. He considered the measured ambient levels were not representative of noise levels experienced in their home. He questioned the accuracy of and confidence level of the noise modelling, application of the section 16 duty to avoid unreasonable noise and use of the notional boundary rather than the property boundary for compliance monitoring purposes. He considered the intensity (24/7) and duration (up to 8 years) of adverse effects would effectively dominate their lives. He expressed particular concern about night time noise and sleep disturbance, particularly for children and older people. He noted that the WHO guidelines recommend night time noise limits of 40 dB outside to protect vulnerable people from the adverse effects of night noise. He considered the proposal was an 'industrial activity' in a rural area and cannot be compared to other normal rural or farming activities, particularly given the 24/7 operation, processing plant, trucking operations and employment of 58 staff. He submitted noise levels should be measured at the property boundary, in line with the industrial and commercial environment zone rules under the GDP, to protect the amenity of the entire property and to avoid using the land between the legal boundary and the notional boundary as a noise buffer. He noted there were options to restrict operating hours and relocate the loading site. He highlighted the Tonkin and Taylor noise review suggested no truck movements at night time and that he supported this. He noted truck acceleration and braking would affect many residents due to the hills and corners. He highlighted the application site sits within an identified Coastal Hazard area (CHA9) in the RCP and that the reduction in land elevation and creation of the wetland may exacerbate coastal erosion and inundation further inland. He noted there had been no comprehensive coastal erosion report and that it was unclear what expertise Mr Etheridge had in this regard. He considered the applicant's radiation assessment did not address dose and that little is known about the specific exposure levels of thorium that result in harmful effects on people and animals. He stated lighting would impact the amenity of residents and birds using the Canoe Creek lagoons all year round, and there had been no assessment of these effects. He noted there had been no assessment of dust effects taking into account the factors on Policy 7.3.4 of the WCRC's Regional Air Quality Plan (**RAQP**) or any details as to how this would be managed.
113. Dr Freeman outlined concerns regarding adverse effects on the biodiversity values of the surrounding wetlands and lagoons and the assessed SNA area on their property, particularly on birds. He noted there had been no assessment of the springs on the Langridge's property or their biodiversity values. He stated that any impact on the springs would be very significant effects given they supply potable water for the house and stock. He noted the proposed activities would be visible from their house and land, would not be

in keeping with the existing landscape and would result in a loss of natural character of the Canoe Creek lagoons. He stated the additional traffic would be a 27% increase in traffic levels and did not take into account the increase in trucks. He highlighted Mr Ballingall's financial calculations were based on a production rate of one million tonnes of HMC per year, but that if only 365,000 tonnes can be transported annually the economic benefits are significantly inflated. He emphasised the proposed activity would occur for most of a decade and most of the Langridge's retirement, which is not short term or temporary as stated by the applicant's experts. He concluded the proposal was not well considered and did not properly identify or address its potential effects.

114. **Ms Sharon Langridge**, who resides at 3323 Coast Road with her partner Mr Ross Wildbore and their three children, provided a written statement at the hearing on behalf of the Langridge family and spoke to the evidence provided at the hearing. She outlined her family's history with the area, responded to new information and evidence, and addressed adverse effects. She noted the constant 'drip feeding' of information and the changes to significant details had made it difficult to construct a coherent, measured and timely response. She stated that uncertainty surrounding the proposal had caused stress and anxiety in the community. She questioned how well prepared the applicant was to undertake the operation and whether the application was incomplete. She highlighted the small businesses who live and operate along the trucking route and the reputational damage cause by siting an open cast mine adjacent to the 'Coastal Highway'. She noted Mr Ballingall had confirmed the negative effects (costs) would fall on the local community. She considered the mine was in the wrong place and community wellbeing had been disregarded. She noted Mr Straface's refusal to meet with the local community and lack of details of its plans until the last possible moment. She considered the mine site would devalue local properties when it appeared on a Land Information Memorandum (more commonly referred to as a 'LIM') report; and that the 'boom-bust' cycle of mining negates the claimed benefits to the local economy. She outlined concerns regarding noise effects given the continuous 24/7 non-rural noises, numbers of staff and hundreds of truck movements. She was concerned no bund was proposed for the southern boundary and that setbacks from both the southern and northern boundaries were inadequate given the 200 m setback from SH6 being proposed. She considered the applicant was 'wildly optimistic' how quickly native planting would grow and requested consideration of sourcing plants from the Punakaiki Ecological District only to avoid cross pollination and hybridisation with local species, and direct negative impacts on her nursery business. She stated the proposed plantings would not reduce noise or visual effects to a minor level. She noted the processing plant would not be set below ground level as claimed given the high water table and would not be bunded to the south, instead relying on vegetation screening on the Langridge property. She considered Mr Glasson's planting proposals were 'at best unrealistic, and at worst cynical' when he claims visual effects would be reducing to 'low' within three years given her parents would look from their dining table at a busy access, a site office, 50 car parks and a processing plant only 300 m away.
115. Ms Langridge highlighted the significant government investment (\$25.6 million) in the Dolomite Point Redevelopment Project at Punakaiki and its aims to enhance visitor experience and improve visitor safety. She considered increased number of heavy trucks passing through Punakaiki would do neither. She highlighted ferocious, volatile local winds and difficulties posed for managing dust, and potential adverse effects on roof water

collection. She was perplexed why the proposal had proceeded to this point without specific site data, especially hydrology tests, given the important freshwater systems and fragile coastal strip. She recalled the once solid coastal strip of flax which enclosed the current lagoons and the coastal erosion that had resulted in inundation from the sea with increasing frequency. She highlighted the observable advance of the sea by approximately 150 m and noted their property legal boundaries were now in the sea as a result. She noted there was no detail on the constructed wetland and considered it was an excuse to dig a pond, to divert water or because of a shortfall in backfill material. She concluded the cumulative effects of all of the adverse effects on the neighbours and the wider environment would be major and negative and could not be dismissed as 'no more than minor'.

116. Ms Langridge provided supplementary statement of evidence (dated 5 November 2021) responding to the further evidence. She noted that a range of activities could occur within the proposed 100 m buffer from the northern and southern boundaries, including mining with Council agreement. She expressed little confidence in Council staff judgment and highlighted this buffer was only in consideration of hydrology effects and did not consider noise, dust or the disturbance of wildlife. She considered the applicant's planting plan included invasive plant species and toxic tutu, and misrepresented local conditions. She highlighted the gap in the bund along the southern boundary, despite available space. She was concerned the location of the proposed wetland would contribute to an additional coastal hazard and opportunity for inundation of Rusty lagoon. She considered the mining noise would be 'highly annoying' and noted the predicted noise levels at the Langridge property boundary near the processing plant would be 60 dB given the inadequate 20 m set back. She concluded their substantive concerns had not been satisfactorily resolved.
117. **Mr Richard Nichol**, a self-employed ecologist, provided a statement of evidence (dated 16 August 2021) and a summary statement (dated 20 September 2021) on behalf of the Langridge family providing a wetland assessment¹⁴ of four randomly selected plots on the Langridge property to the north of the site. He found that two of the four sites (sites 206 and 207) were assessed as 'wetland', with both occurring within 100 m of the application site. He considered it was likely the incised drain along the southern boundary had already lowered water levels to the north where the wetland assessment was undertaken. He considered more further survey work was needed to accurately determine the full extent of the wetland(s).
118. **Mr Chris Findlay**, leasee and manager of the Punakaiki Beach Camp, provided a statement of evidence and a summary statement (dated 20 September 2021) on behalf of the Langridge family relating to the potential impacts on tourism. He highlighted the nationally and internationally renowned Coast Road drive and its scenic vistas and places of interest along the way. He considered visitors would avoid this section of the road if it was perceived to be a quarry route; and calculated travellers would meet 6-8 trucks over their time exploring the route. He was concerned the proposal would negatively impact the \$65 million invested into tourism connected with the Coast Road and the great boost in economic confidence as it created jobs as the development progresses. He was concerned

¹⁴ Clarkson, B. R. 2014. A vegetation tool for wetland determination in New Zealand. A report for Meridian Energy. Landcare Research.

the application site would be visible from the new Paparoa Great Walk. He concluded the adverse effects on tourism would be more than minor and that noise effects would be significant on the Punakaiki Village and businesses.

119. Mr Findlay provided supplementary statement of evidence (dated 5 November 2021) responding to the further evidence. He noted that bunding and screening from plantings would not mitigate visual effects from the Paparoa Great Walk. He noted the view of the coastal flats from the walk were 'rare and in a sense unique'. As requested at the initial hearing, he also provided photographs of the view of the application site from the Paparoa Great Walk.
120. **Mr Nevil Hegley**, a principal of Hegley Acoustic Consultants, provided a statement of evidence (dated 16 August 2021) and a summary statement (dated 20 September 2021) on behalf of the Langridge family providing evidence on the proposed noise controls and reviewing the applicant's noise assessment. He supported adoption of a lower noise limit than the permitted activity limits in the GDP given these were at the upper limit of what is considered 'reasonable' by the WHO in its guidelines and the New Zealand noise standards, and the 24/7 operation. He considered these noise levels were achievable through mitigation measures and were adopted as 'reasonable' in many areas throughout the country, and reflected ambient levels and the reasonable expectations of the residents. He noted it was unusual to have higher background levels at night time than during the daytime due to wind and sea conditions; and noted the ambient levels did not represent calm conditions at night. He noted the MDA noise assessment recommended a maximum night time noise level of 60 dB L_{AFmax} , but the assessment then recommended a level of 65 dB L_{AFmax} . He considered mining was more akin to an industrial activity than a rural activity and noted Rule 20.7.14 of the GDP adopted the measurement location at the property boundary of the site for an industrial activity rather than the notional boundary. He stated that if it is accepted mining reflects industrial activity then the site boundary should be adopted as the noise compliance point for this application and addressed concerns about noise amenity effects. He noted section 16 was applicable (duty to avoid unreasonable noise) even if noise was within the predetermined design level. He considered bunding/screening of the activity to neighbours should be required to mitigate noise effects. He supported restricting truck movements at night to protect core sleeping hours and noted this is often done by the Environment Court for quarries. He considered a night time limit of 40 dB L_{Aeq} and less than two truck movements per hour would have minor effects.
121. Mr Hegley provided a supplementary statement of evidence (dated 5 November 2021) responding to the further evidence. He noted it should be practical to meet a day time limit of 50 dB L_{Aeq} ; and that there was no new evidence to justify a level above 40 dB L_{Aeq} at night time or on Sundays. He considered the noise limits in the GDP should not automatically be considered reasonable, as it was the change to the existing noise environment that was important. He concluded a level of 50 dB L_{Aeq} at night time from trucks (based on Mr Farren's predictions) would have a more than minor effects for residents living within 35-40 m of SH6, even assuming no engine braking. He could see no reason why truck operations at night could not be restricted all year to eliminate the adverse effect of truck noise on residents. He considered this approach was supported by the Environment Court in relation to quarry trucks.

122. At the reconvened hearing, Mr Hegley again highlighted the section 16 requirement to adopt the BPO to minimise noise. He suggested investigating increasing the height and extent of bunding, and siting bunding close to the source of noise in order to adopt the BPO. He highlighted there was practically no traffic on the road at night time (as shown in Appendix A of Mr Farren’s second supplementary statement of evidence) and urged us to inspect the data carefully. He highlighted there was almost no traffic after 11 pm, even in summer, and very few trucks. He reiterated it was not what was permitted by the GDP that was relevant, but rather a comparison of what was proposed to what occurs now. He agreed that trucks using SH6 cannot be controlled but considered trucks leaving the site can be controlled. He concluded the proposal would result in a ‘step change’ in the night time noise environment, which would be a more than minor effect on residents close to SH6.
123. **Mr Bruce Stuart-Menteath**, self-employed natural history interpreter and founding trustee and Chairman of the Westland Petrel Conservation Trust, provided a statement of evidence (dated 16 August 2021) and a summary statement (dated 20 September 2021) on behalf of the Langridge family providing evidence on potential lighting effects on tāiko behaviour. He considered the applicant’s evidence had failed to recognise the scientific importance of the species, their behaviour, their slow breeding, and the cumulative impacts of human presence, including grounding after becoming disoriented by bright lights. He noted fledglings were particularly vulnerable to ‘fallout’ during their maiden flights which typically occurred from November to early January. He stated fallout numbers would be significantly higher than those recorded over the past 30 years given most were only found by chance discovery or when squashed on the road and poor recording by DOC. He observed regular fallout from vehicle lights on the road where there were no residences and considered any cumulative loss would affect the ability of the species to sustain itself. He noted fledgling behaviour should drive the AMP and that the consent conditions should be more specific, limiting brightness and requiring shielding. He highlighted the recent acknowledgement by NZTA of the fallout problem from streetlights in Punakaiki and the turning off of the streetlights from early November 2020 to early January 2021 to reduce fallout. He noted that despite this, 17 fledglings were still recovered in the Punakaiki area in November/December 2020. He considered LED vehicle headlights were a concern as they are active all night. He concluded the draft AMP failed to provide adequate mitigation of the likely effects on lighting on tāiko, promoted procedures that were unrealistic, and should adopt the lighting design recommendations of the Australian National Light Pollution Guidelines for Wildlife.
124. Mr Stuart-Menteath supplementary statement of evidence (dated 5 November 2021) responded to the further evidence. He highlighted the precautionary principle, the need for limitations on blue content in the light colour spectrum, and the inadequacy of the proposed conditions and AMP. He concluded the proposal would not avoid adverse cumulative effects on the tāiko population.
125. **Mr Peter Volk**, Manager of the Pancake Rocks Café and Paparoa Park Motel, provided a written statement of evidence on behalf of the Langridge family. Mr Volk highlighted that Dolomite Point is a significant tourist spot where over 500,000 visitors cross SH6 (over one million road crossings) to visit the Punakaiki Pancake Rocks and Blowholes Walk. He noted

long held safety concerns, with no pedestrian crossing possible in a 60 km/hr speed zone. He outlined the large scale government funding for a new visitor centre development, new car park and other infrastructure, and a cycleway. He stated there were many near misses with pedestrians without the rates of heavy trucks proposed. He was very concerned people would not sit outside the café due to the noise, dust, vibrations and visual impact of the trucks and that this use of this outdoor area was necessary to meet peak numbers of visitors. He noted there were very few freight trucks on the road and that milk trucks were very loud and noisy. He considered a significant increase in trucks was not compatible with promoting the drive as one of the 10 best coast road drives in the world, which is important for the tourism infrastructure. He considered SH6 had not been designed for heavy trucks and safety was already a big issue. He noted that overnight trucks would negatively affect his accommodation businesses and café staff who sleep close (30 m) to SH6. He considered the applications should have been publicly notified to enable affected people, like himself, to have their say.

126. **Mr Brian Lunt**, a Medical Physicist, provided a written statement of evidence (dated 16 August 2021) and an addendum (dated 17 September 2021) on behalf of the Langridge family addressing the relevance of DSIR Report DSIRPS-C-56 October 1991 (appended to his evidence) and the RSA. He considered the radioactive concentrations in the small number of samples analysed in the DSIR Report indicated the mining of mineral sands would need to be regulated under the RSA and would likely require a Source Licence to proceed to refine the mineral sands.
127. **Ms Deborah Langridge**, who has a proposed dwelling site on the northern block (Top farm), provided a written statement at the hearing on behalf of the Langridge family. She outlined the family farm perspective, their farming practices and potential mine effects, and protection of the assessed SNA values. She was concerned the currently clean and quiet environment would be polluted by incessant noise, dust, fumes, and unknown radioactive components creating poor living conditions for themselves and their animals. She was very concerned for protection of the springs located on the Langridge property to the south of the site, water logging or subsidence from water abstraction and injections, noise effects, the location of the processing plant and load out, protection of the dark sky, the effect of dust on paddocks, sleep disturbance, degradation of water quality and flows, the introduction of weeds, and the removal of native trees for the entrance and road realignment. She noted plans (since 2009) for a dwelling site on the northern block, 50 m from the application site boundary were ignored and imperilled by the proposal. She considered the mine would be out of character with the pristine beach and forested mountain view. She noted it would remove options for other potential uses of their property, hindering their economic potential. She considered the mine would 'significantly degrade' the SNA, not enhance it; and noted the time and money spent setting it up and paying rates for it meant that to protect it was a matter of national importance. She stated it was 'inappropriate' to have an extractive industry adjacent to an SNA. She noted they work and live on the land 24/7 and the natural surrounding are integral to their enjoyment of farm life, including the birds, the mountains, the naturalness, the clean uncrowded beach, the river, and the sound of the sea. She considered the applicant was inadequately prepared for the local climatic and natural hazard conditions. She concluded there were too many concerns and uncertainties for the proposal to be approved, particularly given

the applicant was trying to squeeze a mine into a very exposed, wet, ecologically sensitive site surrounded by families who value naturalness and quiet.

128. **Ms Yvonne Legarth**, a Planning and Resource Management Consultant for Resourceful Planning and Policy Limited, provided a written statement of evidence (dated 5 November 2021) at the reconvened hearing only on behalf of the Langridge family assessing the relevant objectives and policies of the planning instruments. On the basis of the submitters' evidence, she concluded the proposed activity had potential for significant adverse environmental effects and was contrary to the objectives and policies of the GDP, RPS, NPS-FM, NZCPS and Part 2 matters.
129. **Mr William Reeve**, a Senior Acoustic Engineer with Acoustic Engineering Services Limited, provided a statement of evidence (dated 5 November 2021), including a supporting letter report (dated 3 November 2021) at the reconvened hearing only on behalf of the Langridge family. He considered that sleep disturbance was a 'distinct possibility' for people in dwellings within 40 m of SH6, particularly with windows open for ventilation. He highlighted that, based on NZTA telemetry traffic profiles near the application site, there were currently no heavy vehicle movements between 9 pm and 5 am; and one light vehicle movement between 12 am and 4 am. He concluded the applicant's proposed night time truck movements (i.e. 10 truck movements during the core night time period) would result in more than a minor noise effects. He stated that, to ensure noise effects from heavy vehicles travelling on SH6 to and from the site are less than minor would require there to be no truck movements between 9 pm and 5 am.

Section 42A Reports

130. **Mr Michael McEnaney**, a Team Leader Environmental Planning employed by the GDC, spoke to his s42A report and provided additional written comment on the key information provided during the hearing. He acknowledged his report had considered the application as a discretionary activity and that it was now agreed to be a non-complying activity under the NES-FW due to some of the application site being located within 100 m of a natural wetland. His s42A report highlighted the permitted baseline for rural and non-rural activities on the site and considered these permitted uses could have greater adverse effects on the surrounding environment than what is proposed. He considered that '*...while these permitted uses, both rural and non-rural may not be in keeping with the character of the area the District Plan does anticipate them and thus has included provision for them to occur*' (pg. 10). He concluded that visual impacts, noise effects, lighting effects and traffic effects '*...would range from more than minor to minor to minor to less than minor*'; but that with the mitigation proposed actual effects on the surrounding environment would be no more than minor and the level of effect proposed was sustainable. He referred to the 'Ecological Impact Assessment' by Mr Mark Hansen, a Senior Ecologist employed by Tai Poutini Resources Limited and his recommendations for avoidance and mitigation of impacts. He highlighted the need to avoid lighting effects on fledgling tāiko/Westland petrel between November and January; and to restrict the number of vehicle movements at night or to cease truck movements between certain hours to mitigate amenity effects from road noise at night. He assessed the application against the relevant objectives and policies of the RPS and GDC and made an overall judgment it was consistent with the provisions. He considered Part 2 matters and stated that '*I consider a balance must be*

struck between the following competing considerations bearing in mind, what is “reasonable” in the circumstances’ (pg. 25).

131. In his additional written comments provided at the hearing, Mr McEnaney reaffirmed the activities did not meet the definition of rural activities and were therefore non-rural activities under the provisions of the GDP. He concluded effects of the level and character of noise, particularly at night, could be addressed by imposing a lower 50 dB_{LAeq} on Sundays and public holidays. He was satisfied the effects on ecology would be no more than minor through the provision of mitigation measures. He expressed uncertainty as to the mitigation proposed for avoiding more than minor adverse effects on tāiko/Westland petrel given that imposing a restriction of no truck movements at night would mitigate the greatest threat. In light of the further evidence to be provided by the applicant, he reserved his assessment of effects on transport and visual effects. He acknowledged that application of any permitted baseline was not mandatory and that his notification decision report had erred in stating that any permitted effects in the GDP *must* be disregarded. However, he remained of the view it was ‘relevant and rightly applied’. He noted the Rural Environment Area zone rules of the GDP were very permissive and that some effects of permitted activities could be greater than those not permitted, such as the effects of buildings on amenity. He set out the definition of ‘industrial activity’ under the GDP and RMA. While he acknowledged aspects of the proposed activity appeared to meet the definitions, he considered it was the relevant Rural Environment Area zone rules that must be assessed.
132. In response to questions at the hearing, Mr McEnaney stated that the lower noise limits recommended for Sundays and public holidays were achievable and should be applied. He accepted that ecological effects would generally be no more than minor with the exception of effects on the tāiko/Westland petrel, where it was uncertain whether the effects would be less than minor. However, he noted he had considered that a restriction on truck movements would avoid any adverse effects.
133. Mr McEnaney provided an addendum to his s42A report (dated 18 November 2021) and a review of the applicant’s revised conditions. He concluded that that any potential adverse effects on tāiko would be no more than minor with the implementation of the further recommendations of Dr Bramley. He noted compliance with the GDP noise standards for a non-rural activity and concluded this was consistent with the objectives and policies of the GDP and RPS. He considered the truck movements proposed were within the scope of the application and that all vehicle movements (including light vehicles and passenger vans) should be recorded and reported. He concurred with Ms McKenzie’s assessment and highlighted the relevance of the permitted baseline
134. At the reconvened hearing, Mr McEnaney considered there was sufficient information to determine the effects of the application. On the basis of the evidence of Mr Humpheson, given verbally at the reconvened hearing, he concluded the adverse noise effects of 10 truck movements at night, as proposed by the applicant, on the amenity of residents along SH6 would be more than minor. He considered that, in weighing the relevant objectives and policies of the GDP, the application could pass the section 104D(1)(b) non-complying gateway test only if restrictions were imposed on truck movements at night. He confirmed that, without limiting truck movements at night to less than 10, the application would not pass either of the section 104D gateway tests and must therefore be declined.

135. **Mr Darran Humpheson**, a Senior Acoustic Specialist for Tonkin and Taylor Ltd, provided an acoustic review of the MDA noise assessment (17 December 2020) for the GDC setting out the key operating activities, the existing noise environment, the assessment criteria, predicted noise levels, assessment of noise effects and consent conditions. He noted monitoring had not measured lower background levels night at low tide. He agreed with MDA that stripping of topsoil and overburden were not construction activities and therefore the construction noise limits (NZS6803) did not apply. He noted the MDA proposed noise limits did not include a reduced limit for Sundays and public holidays and would generate continuous noise with no respite or reduction in noise for local residents. He highlighted Policy 19.4.5 of the GDP which stated that activities should not adversely affect the amenities of the rural area or adjoining properties. He noted that *'Whilst the noise of vehicles on a road is a permitted activity, the noise effects of these vehicles accelerating is a consideration with respect to the impact on residential amenity. To preserve residential amenity there should be a restriction on the number of laden truck movements at night, for example between the hours of 11pm to 6am, i.e. there would be a 1 hour period at either end of the night time when truck movements could occur. This would preserve the core sleeping hours.'* (pg. 4). He highlighted that the noise generated from the processing plant would increase background noise levels by 10 dBA at 3261 Coast Road¹⁵ at night and that this was a significant increase in background noise levels. He considered that without any means of respite, the noise amenity value of residents would be affected, especially as the processing plant will operate at night.
136. At the hearing, Mr Humpheson highlighted the importance of requiring the BPO for noise mitigation and the ability to comply with lower noise limits. He agreed with the further noise modelling asked for by us and supported movement of the load out area further into the application site. He noted the importance of controlling noise at the source and considered further noise mitigation during the final design work could further reduce noise levels providing for better amenity and respite, in line with the GDP.
137. Mr Humpheson provided a review of the supplementary noise evidence (dated 16 November 2021). He agreed with Mr Hegley that, with an extension of the northern bund and a 0.5 m increase in height, noise effects would be below 50 dB L_{Aeq}. He noted that with the new location for the load out a night time noise limit of 40 dB L_{Aeq} was achievable. With regard to truck noise, he concluded that, provided the number of trucks was in the order of 10 truck movements at night and trucks didn't use engine braking, then the noise effects would be 'reasonable'.
138. At the reconvened hearing, Mr Humpheson confirmed his agreement to noise limits of 50 dBA during the day (for 7 days) and 40 dBA at night time, which would result in acceptable noise effects. He noted the evidence of Mr Reeve regarding truck movements at night and the predicted change to the existing noise environment (particularly between midnight and 4 am). He considered this change in the night time noise amenity of residents would be more than a minor effect. He noted it was difficult to assess the actual change given the uncertainty of which direction the trucks would travel. He considered the applicant's

¹⁵ Adverse effects on 3261 Coast Road cannot be considered as written approval has been provided. We record Mr Humpheson's observation to illustrate assessment of the elevation of noise above background levels.

proposed conditions did not address truck movements at night in February and March, and the close proximity of many houses to the road.

139. **Mr Tony Ridge**, a Senior Consent Officer employed by the WCRC, spoke to his s42A report and provided an addendum to his s42A report responding to the key issues raised during the hearing. He acknowledged his report had considered the application as a discretionary activity, but considered that the consents required had been applied for. He considered there were no scope issues. He outlined relevant water management and compliance limits in addition to section 107. He considered appropriate discharge standards and receiving water quality standards and associated mixing zones could be set through the WMP. He noted consideration should be given to protection of the created wetland through a covenant. He recommended a survey of drainage patterns in the consented mining area should be undertaken before commencing activities and after rehabilitation to ensure it reflected these patterns to within 10% accuracy. He supported the requirement for a certified DMP and recommended passive monitoring via dust monitors placed at strategic locations. He noted the increased proposed 100 m setback from Collins Creek and wetland, Canoe Creek lagoon, Rusty lagoon wetland and the drain along the northern boundary.
140. Mr Ridge provided further addendum to his s42A report and comments on the applicant's revised conditions at the reconvened hearing. He considered the constructed wetland and 50 m strip of planting would provide more protection from coastal inundation than currently provided by the pasture. He recommended passive and active dust monitoring to address concerns regarding dust and radioactivity; and monitoring benthic ecology in Collins Creek. He agreed with the planning assessment of Ms McKenzie that the application passed both gateway tests of section 104D. He considered the application demonstrated compliance with the relevant planning provisions. He concluded granting the consents sought would achieve the purpose of the RMA.
141. **Mr Brett Sinclair**, a consultant Groundwater Scientist (working for Wallbridge Gilbert Aztec) engaged by the WCRC, provided a letter report which was attached to Mr Ridge's s42A report. He noted that uncertainties in the mine planning presented by the applicant meant that an adaptive management approach to water management planning was necessary and he considered this to be appropriate. He stated the adaptive management approach should include the planning and implementation of investigative work together with an appropriate monitoring programme, trigger conditions, and effects mitigation measures. He summarised the potential effects of the proposed mining, in particular the effects of groundwater drawdown resulting in stream flow depletions, spring flow depletions, water level reductions in nearby wetlands/lagoons, up-coning of saline water from the Tasman Sea, and reduction in groundwater levels to the east of the site and associated ground settlement. He noted that there would potentially be post-mining changes to groundwater gradients and levels, and these may also lead to diversion of water from adjacent streams (in particular Collins Creek). He also highlighted the potential for receiving water effects given the different water quality characteristics of groundwater and the receiving water quality.
142. In terms of the applicant's groundwater modelling, Mr Sinclair considered that, while details of the groundwater model may be called into question, the overall outcomes were considered to be reasonable with regard to model objectives – these being demonstration

of groundwater drawdown around the pit and the conceptual viability of the use of artificial groundwater recharge systems to manage the effects of the drawdown. While Mr Sinclair was of the view that the groundwater model was appropriate for these purposes, he had concerns regarding 'the translation of the conceptual measures to be a practically viable water management system' – that is, he was unsure whether putting the concepts into practice was possible. Mr Sinclair noted that only generic conceptual designs for the recharge system had been provided and that the applicant needed to demonstrate the practical viability of these. He highlighted the availability of space on-site to install the recharge system and to monitor its performance as being a key issue.

143. Mr Sinclair stated the information provided by the applicant did not provide good guidance regarding the width of set-back required between the mine and nearby waterbodies requiring protection. He recommended a minimum distance of 100 m be applied to all excavations for ore extraction adjacent to surface water features.
144. Mr Sinclair considered the concerns raised by submitters (as detailed in the evidence of Ms Lough) regarding the capacity of shallow recharge basins to return all of the abstracted groundwater to the surrounding groundwater system were 'reasonable and valid'.
145. Mr Sinclair discussed discharges and outlined various ways in which the discharged water could be managed and treated prior to discharge, including the use of flocculants. He highlighted iron and manganese as being potential contaminants that may be elevated which, if discharged, may result in adverse effects within receiving waterbodies. He also highlighted that the fine sediments, which may be present in the discharge, can deposit on the beds of receiving waterbodies. Mr Sinclair made a number of recommendations in respect of conditions of consent that should be imposed should consent be granted.
146. Mr Sinclair provided a supplementary review of the information provided during the hearing and after the adjournment (dated 19 November 2021) and appeared at the reconvened hearing to answer questions. He noted the significant amount of new information and evidence from submitters since his initial review of the applications. He made general comments about the proposed adaptive management approach to water management planning through the WMP, Erosion and Sediment Control Plan (**ESCP**), WRPP, and Mine Closure Plan (**MCP**). He outlined the key requirements of the plans, including certification by the Council and updates to provide for adaptive management. He highlighted the mining technique to be applied at the site had not yet been finalised but that the assessment of potential water management issues assumed mining would be undertaken in a dry pit environment. He noted dredging techniques for ore extraction would raise environmental risks and had not been covered in the application. He noted the creation of the proposed wetland would help accommodate the deficit in backfill volume and an overall reduction in the land surface of 0.5 m. He noted that the wetland design and WRPP may need to address the management of iron precipitation from groundwater flows. He recommended limiting groundwater drawdown permitted under the consent to the projected drawdown presented in Figure 5 of KSL 2020.
147. Mr Sinclair accepted that the applicant had addressed the concerns raised through a range of management measures presented at a conceptual level, but noted the applicant may not

have a clear understanding of the nature and extent of the engineered systems required to achieve the stated effects mitigation; or of the significant costs involved with such systems.

148. In answers to questions Mr Sinclair stated he was not ‘particularly enthusiastic’ about allowing the groundwater trigger levels within the site perimeter bores to be tweaked/amended following commencement of mining as proposed by Mr Etheridge. He also stated that monitoring the water levels in the adjacent wetlands and the spring flows would be preferred rather than using the perimeter monitoring bores, however that would require access authorisations from the neighbouring property owners.

Applicant’s Right of Reply

149. Ms Booker provided a written right of reply (dated 7 December 2021) on behalf of the applicant and a final set of proposed consent conditions. She submitted the applications were a ‘well considered and comprehensively assessed project that will promote sustainable management’. She noted further changes to conditions were being proposed requiring mining operations to cease if a second dead tāiko (in four weeks) was found within 50 m of the field mining unit or processing plant; and those operations would only recommence when recommendations to prevent additional mortality was prepared by a suitably qualified ecologist and agreed with DOC. She also noted yearly funding for monitoring and research into at risk or threatened bird species known to be present within the vicinity of the application site while the mine was operational. She submitted there would be changes in the current rural environment, but that these were of short duration on a highly modified rural site. She stated extractive activities are anticipated in the rural environment in the Grey District and wider West Coast region and are vital for the economic wellbeing of residents. She highlighted a recent High Court decision that clarified natural wetlands in the CMA were subject to the NES-FW, but noted this did not change the assessment of effects and the requirement to maintain water levels of the wetland areas within their normal range. She summarised the applicant’s evidence on environmental effects and addressed notification, Ms Legarth’s planning evidence, sections 105 and 107 and other matters. She outlined further changes the applicant had made to the final set of conditions of consent to reflect recommendations made during the hearing.

ASSESSMENT

150. In assessing the applications, we have considered the application documentation and assessment of environmental effects (AEE), the s42A reports and technical reviews, all submissions received, and the evidence provided during and after the hearing.
151. We have taken time to fully summarise all the evidence presented at the hearing. This approach enables us to focus on the principal issues in contention without addressing every point made. However, we record that we have considered all of the matters raised in the evidence provided to us in making our decision.

Status of the Application

152. The starting point for our assessment of the applications is to determine the status of the proposed activity. By the end of the hearing process there was agreement between the

parties that the status of the WCRC application is non-complying activity under the NES-FW. This was confirmed by Ms Booker in the written right of reply.

153. We consider it is appropriate to bundle all the activities together, including those requiring consent from the WCRC and the GDC, in a holistic manner as they are all intricately linked and not separable, resulting in the overall activity status as being **non-complying**.

Statutory Considerations

154. For these applications we are required to have regard to the matters listed in sections 104, 104D, 105 and 107 of the Act.

155. In accordance with section 104(1), and subject to Part 2, which contains the RMA's purpose and principles, we must have regard to-

- (a) *Any actual and potential effects on the environment of allowing the activity;*
- (ab) *Any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment or to compensate for any adverse effects on the environment that will result from allowing the activity;*
- (b) *Any relevant provisions of a national environmental standard, other regulations, a national policy statement, a New Zealand coastal policy statement, a regional policy statement or a proposed regional policy statement, a plan or proposed plan; and*
- (c) *Any other matters the consent authority considers relevant and reasonably necessary to determine the application.*

157. Section 104(2) states that when forming an opinion for the purposes of section 104(1)(a) regarding actual and potential effects on the environment, we may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect. This referred to as consideration of the 'permitted baseline' and we discuss this below.
158. In terms of section 104(3)(a)(ii), in considering the applications, we must not have regard to any effect on any person who has given written approval to the application. On this basis, we have disregarded the effects of the proposed activity on J. Costello and B. O'Neill (owners of 3261 Coast Road) and effects on the operation, including safety, of SH6 (NZTA).
159. Section 104(3)(d) states that we must not grant a resource consent of the application should have been notified and was not.
160. Section 104(6) allows us to decline an application if we determine there is inadequate information to determine the application.
161. In making our assessment under section 104D(1) of the RMA, we can only grant consent for a non-complying activity, if either of the following 'gateway tests' is passed:
- (a) *The adverse effects of the activity on the environment will be minor; or*
 - (b) *The application is for an activity that will not be contrary to the objectives and policies of –*
 - (i) *the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*

- (ii) the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity; or*
 - (iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.*
- 162. In terms of section 105, when considering section 15 (discharge) matters, we must, in addition to section 104(1), have regard to-
 - (a) The nature of the discharge and the sensitivity of the receiving environment to adverse effects; and*
 - (b) The applicant's reason for the proposed choice; and*
 - (c) Any possible alternative methods of discharge, including discharge to any other receiving environment.*
- 163. In terms of section 107(1), we are prevented from granting consent allowing any discharge into a receiving environment which would, after reasonable mixing, give rise to all or any of the following effects unless one of the three exceptions specified in section 107(2) exist (i.e. exceptional circumstances, temporary discharges, and/or maintenance works)-
 - (c) The production of any conspicuous oil or grease films, scums or foams, or floatable or suspended material:*
 - (d) Any conspicuous change in the colour or visual clarity:*
 - (e) Any emission of objectionable odour:*
 - (f) The rendering of fresh water unsuitable for consumption by farm animals:*
 - (g) Any significant adverse effects on aquatic life.*

Existing Environment

- 164. In making our assessment, we are required to consider the actual and potential effects of the activities on the existing environment. The existing environment is that which exists at the time this determination is made and includes lawful existing activities, non-fanciful permitted activities and activities authorised by existing resource consents.
- 165. Earlier in this decision we have taken the time to describe the existing environment from the evidence provided. We note that much of this was provided by submitters. This forms the baseline for our assessment.
- 166. We accept that SH6 is a strategic route of the highest order and that its operation forms part of the receiving environment; and that use of the road by heavy vehicles is anticipated. We acknowledge NZTA has given written approval for any effects of the proposal on the effective, efficient and safe operation of the roading network. However, we consider the amenity effects of truck movements to and from the site are directly related to the proposed activities for which resource consent is sought. We consider noise and amenity effects on the surrounding environment and any cumulative ecological effects from allowing the proposal are relevant, and that without a confirmed direction of travel from the site, it is appropriate for us to assess the effects assuming all vehicle movements travel both south and north of the site. This is addressed in relation to our assessment of noise effects below.
- 167. Ms Booker submitted the proposed future dwelling site identified by Ms R. Langridge on their northern block did not form part of the existing environment, as construction of a

dwelling is not a permitted activity and earthworks within 100 m of the wetlands requires a consent. No evidence was presented challenging this. We find the proposed dwelling site is not part of the existing environment.

Permitted Baseline

168. Application of the permitted baseline under section 104(2) is discretionary. The applicant's evidence and s42A reports appear to have applied the permitted baseline and rely heavily on this to determine the level of 'acceptable' effects. It was difficult for us throughout the hearing process to determine from the evidence where conclusions reached relied on application of the permitted baseline and where they did not. However, we accept the submissions of Ms Booker in reply that the 'technical assessments have not relied on the permitted baseline' (our emphasis).
169. Ms Booker submitted the relevance of the permitted baseline to our assessment of transport effects from lawful use of the road, visual effects of the building and bunds, and land disturbance.
170. Ms McKenzie considered a number of permitted activity provisions should be applied with regard to lighting, noise and visual effects (buildings and 5 ha of disturbed area/earthworks).
171. Mr van Mierlo submitted the permitted baseline needed to be applied in a realistic manner, where permitted developments are credible and not purely hypothetical. He considered 'humping and hollowing' or up to 5 ha per annum as a permitted baseline for sand mining was not credible given the site had already been subject to this, the proposed depth of mining and significantly different effects, and the restrictions of the NES-FW.
172. Ms Legarth considered potential effects allowed by any permitted activity should not be disregarded because there were aspects of the proposal where the scale of effects are significant or uncertain.
173. Mr McEnaney stated in his addendum that the permitted baseline was of 'significant relevance' and was helpful. He highlighted that mining was not unique to rural areas of the Grey District and that 16 alluvial gold mines with WCRC consents were currently operating within the GDP permitted activity rules. Mr McEnaney applied the permitted baseline to any effect of the proposed bunds and screen planting and the bulk and location of the buildings.
174. We consider there is no applicable permitted baseline for noise effects from non-rural activities in the rural zone given the continuous nature of the proposed activities. Similarly, we consider there is no applicable permitted baseline for earthworks and land disturbance from non-rural activities in the rural zone, excluding the construction of bunds.
175. The proposed activity accords with a maximum permitted building height of 10 m within the Rural Environment Area zone, but exceeds the permitted thresholds for built area. We consider the scale, nature and proposed intensity of use (24/7) exceed what would normally be undertaken in conjunction with permitted non-rural activities in the rural zone.

176. We have not considered potential adverse effects of the proposed bunds and associated plantings given these activities can occur as a permitted activity and are sometimes used on property boundaries in the rural environment.

Actual and potential effects on the environment

177. We have considered all of the actual and potential effects on the environment assessed in the s42A reports and raised in submissions. We begin with a section which deals with the adequacy of information because this is the most critical aspect which has driven our decision on the applications. Following our discussion on adequacy of information we present discussion and findings on the key matters we have adequate information on. Given the amount of evidence which we received on them, we consider it appropriate, for the sake of completeness, to provide our findings and observations on these matters.

Adequacy of Information

178. Having adequate information put in front of us is critical for us to be able to determine actual and potential effects and to determine how the various activities align with the statutory planning documents and, therefore, whether the applications should be granted or not. This is a fundamental matter which is specifically reflected in section 104(6) whereby applications may be declined on the grounds we consider we have inadequate information to determine the applications. In this case we find we have inadequate information in terms of a number of the key actual and potential effects, particularly regarding hydrological effects, but also water quality effects and ecological effects. We discuss these below.

Hydrological Effects

179. The abstraction of groundwater from the mining area (dewatering), its management, and the potential for unacceptable adverse effects on adjacent sensitive waterbodies was a significant matter in contention.
180. There are several sensitive waterbodies around the site, including wetlands/swamps on the Langridge property to the north (including the kahikatea swamp), Rusty lagoon and the watercourse leading to it (northern boundary drain), Deverys Creek and connected lagoon and wetland, Collins Creek, Canoe Creek and lagoon and wetland complex, and springs on the Langridge property to the south of the site. These waterbodies rely entirely, or in part, on groundwater recharge to maintain their water levels/flows and dewatering during mining has the potential to reduce (lower) water levels and flows within these sensitive waterbodies.
181. The applicant's assessment of the potential adverse effects associated with the proposed groundwater abstraction is based on modelling which, in turn, is based in part on hydrological tests (including pump tests) undertaken within bores/piezometers to the north and south of the site (along Burke Road and adjacent to Canoe Creek, respectively). No site-specific groundwater information was collected, either in respect of aquifer pump tests or recharge behaviour/capacity. We agree with the applicant and Mr Sinclair that the use of

off-site groundwater information in developing a groundwater model for the area is appropriate, however we agree with Ms Lough that, given the scale of the proposed dewatering (and for that matter the required recharge system(s)), site-specific groundwater information should have been collected to provide a better understanding of groundwater levels in and around the site and how the local groundwater system will behave in terms of drawdown extents, the proposed recharge system(s) and in terms of longer term changes to drainage patterns from changes in the composition of sub-soils and sands. There does not appear to have been any impediment to the collection of this site-specific information as part of the preparation of the assessment of environmental effects. Mr Etheridge considered that a baseline monitoring programme, including a comprehensive site investigation to establish the connectivity between the dewatering area and adjacent sensitive waterbodies, is required to be undertaken, however he considered it appropriate to leave this until after the consent is granted. We disagree.

182. Likewise, the applicant proposes to demonstrate the practicality of the proposed groundwater recharge system(s) after consent is granted but before mining commences. We disagree. The success of the groundwater recharge system(s) is critically important to ensure abstracted water is returned to groundwater in the right locations to ensure unacceptable adverse effects on nearby sensitive waterbodies and on land stability are avoided. Demonstrating the practicality of the recharge system(s) could, and should, have been provided to us. As highlighted by Mr Sinclair, the groundwater management solutions proposed by the applicant are conceptual and his concerns remain as to whether these concepts can be translated into practice. We share those concerns. These concerns could, (and in our view should) have been addressed by undertaking the required investigations as part of preparing the application.

183. In order to protect the values and uses of the adjacent sensitive waterbodies, wetlands and springs, the applicant landed¹⁶ on a regime whereby perimeter bores/piezometers (and additional bores along Burke Road) would be installed and monitored for at least 12 months prior to mining commencing. The results of this baseline monitoring would be used to develop 'triggers' – these being minimum groundwater levels within the perimeter bores that must be maintained. Two proposed triggers were proposed to protect nearby wetlands and springs, one being that the dewatering would not be allowed to reduce the water level in the perimeter monitoring bores to below the 'natural' 25th percentile low level and the second being that any reduction to below the median level (but above the 25th percentile) would not be allowed for a period of more than three months¹⁷. The idea of applying these trigger levels within the perimeter bores being that any groundwater level reductions further away from these bores (i.e. within the sensitive waterbodies around the site) will be less. Ideally the water levels/flows in the adjacent sensitive waterbodies would be monitored as well but we acknowledge that would rely in some cases on gaining access rights from third parties which may, or may not, be forthcoming. While we are not fundamentally opposed to the concept of using trigger levels in this way, we do have a

¹⁶ We use the word 'landed' here because it is clear that the applicant has made significant amendments to its groundwater management approach throughout the course of the hearing. There is nothing inherently wrong with that approach and changes in response to submitters concerns and questions from commissioners often lead to such changes.

¹⁷ Whilst the median value and three month restriction on lowered flows were discussed in evidence and at the hearing, the final set of proposed conditions dated December 2021 only references the 25th percentile in relation to reduced water levels in wetlands to the north with no time restriction on that change in water level. Any reference to the median value is also absent in relation to water levels in Canoe Creek lagoon and the dredge ponds although the three month time restriction is applied.

number of concerns regarding the applicant's proposed approach and discuss these in the next paragraphs.

184. The applicant has undertaken no assessments of the values that exist in the wetlands/swamps on the Langridge property to the north of the site nor assessed the springs on the Langridge property to the south. The only evidence we have been provided on the wetlands/swamps on the Langridge property is from Mr Nichol (called as a witness by the Langridge family) who undertook an assessment of some of the wetlands on the Langridge property. He noted it was highly likely there were other wetland areas on the property. Mr Nichol stated that reduced groundwater levels could result in the death of some species, depending on magnitude and duration of reduced groundwater levels, and that there were risks that such adverse effects may be irreversible. He considered more work was necessary to determine the sensitivities of the adjacent wetlands to groundwater lowering and fluctuations. Dr Bramley, who has not visited the wetland(s) on the Langridge property, provided advice to Mr Etheridge in terms of the appropriate statistics for the trigger levels for the perimeter bores. However, we have concerns that the proposed trigger levels may not be sufficiently protective for the wetland(s) without site specific investigations being undertaken to establish the species present and their sensitivities to groundwater lowering and fluctuations. There is therefore a risk that the applicant could comply with the trigger levels requirements by maintaining groundwater levels just above the 25th percentile level for extended periods resulting in an unnatural 'flat-lining' effect which may not protect the values within the wetland(s) from unacceptable adverse effects. We find that we have been provided with inadequate information on the specific values of the wetlands to be certain that the proposed trigger levels will provide sufficient protection for the values that exist in the wetland(s) to the north of the site. This issue is related to the applicant's proposed establishment of the trigger values discussed in the next paragraph.
185. The applicant is proposing to collect at least 12 months of baseline groundwater data and would then develop the trigger values for the perimeter bores. We have concerns about this approach because the 12 month monitoring period may not be representative of a 'normal' year as it may be unusually dry or wet, meaning the trigger level statistics that are derived from the collected dataset may not be appropriate to protect the values of the sensitive waterbodies near the site. Further, Mr Etheridge advised us that the trigger values would continue to be 'tweaked' as further monitoring information is collected once mining commences. As discussed previously, we have no fundamental issue with the use of trigger levels within perimeter monitoring bores as a mechanism to provide protection for the sensitive waterbodies around the site. However, we consider that these trigger levels should be established and then codified in the conditions of consent (at the time the consent is granted) as they are effectively environmental bottom lines which all parties should be able to rely on to ensure the protection they try to achieve is provided and complied with. The development of appropriate trigger levels requires information on the sensitivities of the waterbodies sought to be protected (discussed in the previous paragraph) as well as detailed baseline information. Allowing for the trigger levels (environmental bottom lines) to be developed through pre-commencement monitoring and then using these to inform the creation of a response management plan, in this case the Monitoring and Mitigation Plan (**MMP**) is, in our view, highly inappropriate and probably *ultra vires*. This was a point made to us by Mr Van Mierlo where he referred to

the Trans-Tasman Resources Limited decision where the majority of the Supreme Court found that doing so “...inappropriately deprived the public of the right be heard on a fundamental aspect of the application”¹⁸. Further, any ability to ‘tweak’ trigger levels by the applicant/consent holder without proper scrutiny and review is also inappropriate. Any changes to environmental bottom lines should be by way of an application to change the respective condition of consent, not by amending a management plan and having that amended plan certified by an officer of the consent authority. That proposed approach would result in us delegating our decision making to that officer, which is *ultra vires*.

186. In terms of potential adverse effects of the dewatering on nearby streams, the applicant proposes to manage the dewatering and recharge system(s) such that the seven day mean annual low flows are not reduced by specified percentages (25% for Collins Creek and 10% for Canoe and Deverys Creeks). Baseline flow monitoring for a period of at least 12 months would occur in Collins Creek to establish the flow statistic that would be used for compliance during mining. Dr Bramley considered that maintaining 75% of the seven day mean annual low flow in Collins Creek would ‘assist in avoiding adverse effects’ on the threatened and at-risk fish species and aquatic habitat within this waterbody. However, we were provided with little evidence to confirm this trigger level would provide protection to the instream fauna and habitats. Further, our concerns regarding basing trigger levels on statistics (in this case flow statistics for Collins Creek) from a 12 month baseline period, as discussed in paragraph 185, apply equally to the trigger level proposed for Collins Creek. We note also that no protection is proposed for the northern boundary drain that feeds Rusty Lagoon, which may contain habitat values but we have no information to confirm the nature of values present in this watercourse and the lagoon.
187. We have very little evidence relating to the existing coastal hazard risk at the site or the likely change in risk posed by reducing the land elevation by up to 1 m and the creation of the proposed wetland in the northwest corner of the site. We acknowledge the application site is within an identified coastal hazard area and is vulnerable to flooding, sea level rise and inundation from the sea. In looking at the site within the context of the Barrytown Flats, we accept the view that the location between Deverys Creek and Canoe Creek, with the coastal lagoons and wetlands (whether partly man made or not), is highly dynamic, vulnerable to inundation and sensitive to physical change. We find we have inadequate information to conclude any adverse long-term effects from reducing the elevation of land, creating a new wetland and permanent changes in drainage patterns and flows from the changed composition of sub-soils and sands will be acceptable.
188. In summary, in terms of hydrological effects we find:
- a) We have inadequate information on the extent to which the proposed groundwater dewatering, recharge and long-term changes in sub-soils and sands will adversely affect groundwater levels and flows within sensitive waterbodies around the site and the magnitude of such effects;
 - b) The information gaps on the groundwater system are proposed to be filled by the applicant by way of detailed groundwater investigations, development of trigger values, and demonstrating the practicality of the recharge system(s) and remediation methods after the consent is granted but before mining commences. This information could

¹⁸ [2021] NZSC 17, para 11

- have, and more importantly should have, been collected and provided to us as decision makers before a decision on the application is made. It is not appropriate that collection of this critical information is left to after a consent is granted;
- c) We have inadequate information on the values and sensitivities of the wetland(s) on the Langridge's property to the north of the site;
 - d) We have inadequate information on whether the proposed trigger levels and the approach proposed to develop them, will provide sufficient protection for the values and uses of the sensitive waterbodies and springs around the site;
 - e) The application of trigger levels within perimeter monitoring bores is appropriate (but ideally monitoring water levels and flows within the sensitive waterbodies is preferred), however the triggers should have been developed as part of preparing the consent application and then codified in consent conditions. Such triggers form environmental bottom lines and should not be developed (and submitted to the consent authority for certification) after a consent is granted where they are used to inform a response management plan (the MMP); and
 - f) We have inadequate information to conclude any adverse long-term effects from reducing the elevation of land, creating a new wetland and changing the composition of sub-soils and sands will be acceptable.

Water Quality Effects

189. We find there is a lack of understanding of the current groundwater and surface water quality at the site and there is potential for the discharge of suspended solids and metals, such as iron and manganese, to be discharged directly to water. Mr Etheridge advised us that the applicant is proposing to collect at least 12 months of baseline information on groundwater and surface water quality (as set out in the WMP). The results of this monitoring would be used to 'determine whether elevated concentrations of any potentially harmful parameters may be present in the dewatering discharges from the mine operations'. This is information that could have, and should have, been collected as part of preparing the AEE rather than collecting it after consent is granted.
190. In addition, the WMP stated the baseline monitoring would be used to develop proposed discharge water quality standards for any parameters for which there are no limits already defined in the consent conditions. The proposed conditions presented at the reconvened hearing only included a single discharge standard (for total suspended solids) and receiving water standards for three parameters (total suspended solids, turbidity, and colour) which would need to be met 'downstream of the discharge point'. In its written right of reply the applicant included additional receiving water standards for a range of metals and metalloids, these being the 95% protection level of the ANZECC guidelines. However, we received no evidence to show that: 1) this is the appropriate level of protection for the ecological values that may exist within the receiving waterbodies; 2) the zone of reasonable mixing is appropriate for the sensitivities of the receiving waterbodies; or 3) the discharges will be able to comply with these receiving water standards.
191. We consider the applicant has provided inadequate information to characterise the nature of the discharges and to collect this information following grant of consent is not appropriate. We are required, under section 105, to have regard to the nature of the

discharge and the sensitivity of the receiving environment and have inadequate information to fulfil this requirement.

192. There is a need to develop appropriate discharge limits or receiving water standards for different receiving waterbodies based on protection of existing water quality and ecological values. It is likely that Rusty lagoon and wetland has different water quality characteristics to other waterbodies, such as Canoe Creek lagoon and Collins Creek.
193. We consider appropriate discharge standards or receiving water quality standards need to be linked to the protection of the values present in the receiving waters, some of which are significant and have 'at risk' conservation statuses. This baseline information on the existing quality and values of potentially affected waterbodies is required before appropriate limits and standards can be assessed and/or imposed as consent conditions. This is information that could have, and should have, been provided so that we could have made an informed decision. Leaving such critical matters to the WMP or the discretion of an officer of the consent authority is not appropriate for the same reasons as discussed in paragraph 185.

Ecological Effects

194. The key mitigation of effects on threatened and at risk birds is through implementation of the AMP. Ms Booker set out the requirements of the AMP that were recorded in conditions including maintaining buffer zones from the lagoon and assessed SNA area; detecting breeding, discouraging nesting and management of nest sites; minimising light sources, restricting mining to 10 pm and no truck movements in darkness between 1 Nov – 31 January each year; and reporting to Ngāti Waewae, DOC and the GDC. Ms Booker also highlighted there would be at least one year of monitoring prior to mining near high value areas. She submitted the precautionary approach had been carried through in the proposed conditions to address any residual uncertainty; and that an adaptive management regime to further reduce the potential adverse effects was appropriate given the low and very low risks posed to tāiko.
195. Ms Booker considered that we should appropriately exclude 'minor or transitory effects' on tāiko given their conservation ranking (at risk – naturally uncommon), meaning they are not so rare that the loss of one or two individuals would adversely affect the population or cause extinction. She submitted that if 'unforeseen' effects did arise the proposal could be modified before an effect becomes adverse on the population. She noted the applicant had made significant changes to reduce lighting and vehicle movements; and that it was not feasible, appropriate or necessary to consider no mining, processing or trucking during further extended night time periods. She considered Ms Simister had 'misunderstood' night time operations, particularly in the mining pit, and that risks to tāiko were assessed as 'low'.
196. We disagree with Ms Booker that any minor or transitory effects on the tāiko should be excluded given the requirement of the NZCPS Policy 11 to avoid adverse effects on at risk species, and given that such effects may result in adverse cumulative effects on the population. This position is supported by Court decisions, including as noted by Mr van Mierlo.

197. Mr van Mierlo highlighted Dr Bramley's evidence that matuku/Australasian bittern would avoid noise and that the loss of one individual would affect the population. He submitted that the proposed activities would displace bittern from the best habitat in the ecological district; and that 'monitoring to inform adaptive management' to manage the impacts was not appropriate to manage the adverse effects on a critically threatened species in the coastal environment. He made similar submissions regarding effects on tāiko. He considered this approach did not 'avoid' adverse effects as required by Policy 11 of the NZCPS but rather anticipates adverse effects. He submitted the processing plant is within the coastal environment and close to significant bird habitat and the tāiko breeding colony.
198. The evidence of Dr Bramley and Mr Charteris confirms that the application site is surrounded by important habitat for a range of indigenous birds, including many of which are threatened and at risk. We agree with Mr Charteris that, when viewed within the context of the Barrytown Flats, the immediately surrounding areas are likely to be some of the best remaining habitats and provide connectedness to other remnant habitats and the forested Paparoa Range.
199. We remain unconvinced that discouraging nesting and any management of nests will 'avoid' adverse effects on threatened or at risk species. We consider that disturbance of any such bird species present, in order to deter nesting or to disturb a nest, can be avoided and would not be allowed under the Wildlife Act without authorisation from DOC. However, it is difficult to assess this risk given there are no baseline data of the seasonal use of the site to give a picture of all the species likely to be present. Mr Hansen's survey and Dr Bramley's evidence are only a 'snap shot' of species utilising the area. The evidence of Mr Charteris and residents supports the view there are likely to be other important bird species utilising the general area at various times of the year, given the remnant lagoon and wetland and presence of indigenous vegetation. In turn, it is difficult to assess the adequacy of the proposed set back buffers without knowing the sensitivity the species that may be present. We therefore find we have inadequate information to conclude that any adverse effect on threatened and at risk bird species will be sufficiently avoided as required by Policy 11 of the NZCPS.
200. We also note that Dr Bramley considered that any change in water levels in the wetlands or lagoon could result in significant adverse ecological effects. Given our findings on potential hydrological and water quality effects, we find there is potential for significant effects on birds utilising the surrounding wetlands.
201. We note the evidence of Mr Stuart-Menteath that if the Australian Government's National Light Pollution Guidelines for Wildlife were followed a tāiko/Westland petrel specific impact assessment would have been prepared and provided. He also noted that no research had been cited supporting the claim that the loss of 2-3 birds per year from fallout at the mine site was a loss that could be sustained, particularly given the uncertainty of birds currently lost to fallout.
202. We accept that building and lighting design could reduce the risk posed to tāiko from the processing plant to low with implementation of the AMP and the conditions of consent.

203. The revised AMP addressed the recommendations of Ms Simister to reduce the risk to tāiko. We note that breeding occurs between March and November, with juveniles continuing to fledge into late December. We accept that the risk period of potential light attraction for birds of all life stages is at minimum from 15 March to 15 January. We also accept that the hours immediately after sunset is a period of vulnerability, with high bird movements close to the shore. We find that the increased number of vehicle movements during the hours of darkness, particularly directly in front of the breeding colony flight path, will increase the risk of birds grounded onto the road and consequently injured or killed by being struck by a vehicle. We agree with Mr Stuart-Menteath that this is more than a minor cumulative effect on the existing fallout levels and that adverse effects are therefore not avoided. We also agree with Ms Simister that this adverse effect could be avoided by not operating trucks from the site after the hours of darkness. However, this is not what is proposed by the applicant.
204. Overall, we agree with Ms Simister that there is significant uncertainty regarding the cumulative adverse effects on the tāiko population from increased vehicle movements along SH6 that would result from the proposed mining operation. Given the proximity to the breeding colony (3.6 km), the recognised existing rates of fallout caused by vehicle lights and the increases of traffic proposed during the hours of darkness, we find there is potential for unacceptable cumulative effects on the tāiko population. We agree with Ms Simister that the AMP and conditions of consent proposed do not sufficiently avoid adverse effects.
205. We are satisfied the applicant's draft Wetland and Riparian Planting Plan gives more certainty with respect to ecological outcomes and increased confidence of positive effects eventuating.
206. We have also considered potential adverse effects on freshwater ecological values. We note the absence of any field work to confirm the presence of freshwater fish and invertebrate species. The applicant is relying on database records and the assumption that there will be no more than minor changes to water flows and levels, to reach a conclusion that any adverse effect will be minor. We consider there is inadequate information on the freshwater ecological values present and note the potential for depletion effects in Collins Creek and water quality effects.

Section 104(6) – Overall Findings on Adequacy of Information

207. For the reasons outlined in the previous three sections, we find we have inadequate information on hydrological effects, water quality effects and ecological effects to determine the application. Accordingly, we have decided, pursuant to section 104(6), that the applications should be declined on the grounds that we have inadequate information to determine the applications.

Findings on Other Matters

208. As we discussed earlier in this decision, while we have determined the application should be declined due to having inadequate information on hydrological, water quality and ecological effects, significant evidence was provided to us on other matters which were in

contention, and we consider it appropriate to provide our findings on those matters for the sake of completeness.

Property Values

209. We find that any perceived adverse impact on property values is not strictly an environmental effect under the RMA, but that this forms part of our consideration of noise effects and adverse effects on landscape and natural character, and amenity values. We consider effects on amenity values in relation to dust, noise, traffic and lighting later in this decision, but accept that all of these cumulatively contribute to amenity effects.

Dust Effects

210. We consider that, given the configuration of the site, the scale of disturbance and the mitigation proposed, that the dust effects can be appropriately managed and mitigated thorough implementation of a certified DMP and consent conditions. Despite a lack of expert evidence in this area, we are satisfied that appropriate limits and standards could be set, and compliance monitoring undertaken, to ensure that dust effects are internalised and minimised using the BPO. Installing a meteorological station, proposed limits on onsite vehicle speeds, dust suppression measures and controls during topsoil stripping and construction of bunds are accepted avoidance and mitigation measures. We consider any off-site dust emissions could be avoided by requiring loaded trucks and trailers to be covered before leaving the site. Overall, we find that the imposition of appropriate conditions could ensure off-site dust effects are minor and acceptable.

Radioactivity

211. We consider it is not a matter for us as to whether any produced HMC will be regulated under the RSA and accept this is a matter for the applicant to address outside of the RMA consent process. However, we consider the presence of radioactive material relevant to our consideration of the potential effects of dust and any risks posed to the surrounding environment. We accept that the applicant may well need to undertake further investigations to discharge any obligations under the RSA and other applicable laws. We acknowledge the health concerns raised by submitters in relation to dust and potential health effects from exposure to radioactive components. We are satisfied the applicant would be required to comply with the provisions of the any relevant law before processing, storing and transporting the HMC product. We consider workplace health and safety requirements and specific transportation measures are not relevant resource management matters. We also recognise the applicant proposed to follow Australian guidelines in response to submitter concerns regarding potential health effects from dust.

Traffic

212. There were discrepancies and inconsistencies in the applicant's evidence in relation to truck movements, vehicle movements and light/heavy vehicle numbers. However, the application stated 215 equivalent vehicle movements per day, which included both heavy and light vehicles. The applicant's transport assessment stated 335 equivalent vehicle

movements per day. The written approval from NZTA noted the proposal would generate up to 200 heavy vehicle movements per week.

213. Mr Fuller confirmed that the proposed activity could operate within the thresholds of the ITA of 200 truck movements per week (100 loaded trucks), 40 truck movements per day, and an average of two trucks per hour with a maximum of four per hour. He outlined three scenarios of operation (seven days per week, six days per week, and five days per week), which showed these thresholds could be met. His scenarios showed average truck movements over 24 hours ranged from 1.25 to 1.7 per hour under the scenarios. He also considered a scenario of a daylight operation and calculated this would result in 30 truck movements per day (15 loaded trucks) and an average of 3 truck movements per hour. He considered this remained a low traffic volume and would remain acceptable. He stated that the ITA threshold of 135 light vehicles per day would be met by providing passenger vans to transport at least 42% of staff to the site.
214. We are satisfied the applicant could operate the mine within the key threshold limits of the ITA. Overall, we find that the imposition of conditions reflecting the threshold limits of the ITA could have been appropriate and any adverse effects on the effective, efficient and safe operation of the roading network would be minor. We acknowledge the condition of the existing road, access onto SH6 and the safe operation of the highway (including for cyclists and pedestrians) are matters for NZTA. We are satisfied that moving the site access further north will help internalise adverse effects and minimise any road realignment required.

Tourism

215. We have had regard to potential effects on tourism. We consider these substantially relate to the use of the road by heavy vehicles. We address this in relation to potential noise and amenity effects from trucks using the road. We do not accept that the mere presence of the mine will result in a drop in the numbers of tourists visiting the area. We accept that tourism and mining can coexist if well planned. We consider any views of the application site from the Paparoa Great Walk will be distant and adverse visual effects insignificant from this area given the panoramic vista.

Economic Effects

216. We accept the proposed mine will have significant positive social and economic effects as set out in the evidence of Mr Ballingall. We agree with submitters that assessments of economic benefit are highly uncertain due to fluctuating commodity prices. Nevertheless, we accept the economic benefits and employment opportunities are regionally significant over the life of the mine. We accept that positive effects are relevant to our consideration under section 104(1)(a), but that these cannot be balanced against adverse effects under section 104D(1)(a).

Natural Character, Landscape and Visual Effects

217. The application site is not identified in the relevant planning documents as an ONL or an Outstanding Natural Feature; or identified as having outstanding or high natural character in the assessment's commissioned by the GDC (Dickie 1995 and Brown 2013).

218. Submitters strongly disputed Mr Glasson’s comments that the application site was ‘neither rare, unique or memorable’. This was summarised by Mr van Mierlo who considered that within its natural context, the environment within which the proposed mine sites sits, is indeed rare, unique and memorable. He submitted it included some of the last remnant areas of sand plain forest and wetland vegetation of the Barrytown Flats; one of the few intact vegetation sequences that connects Paparoa National Park to the east with the coastal marine area to the west; and habitat (possibly the best) for a range of threatened species, which contribute to the natural character and amenity values. He submitted that the noise, dust, lighting and hydrological impacts both individually and collectively, cannot sensibly be reconciled with the requirement to preserve the natural character of the coastal environment (NZCPS Policy 13). Submitters considered the mining operation would result in a significant change to the natural character of the coastal environment.
219. This contrasted with conclusions of Mr Glasson and Ms Faulkner that any adverse effects on natural character would be short term and largely minimal in nature due to the setback of mining from the coast.
220. We accept the coastal environment surrounding the site has some high natural character values/elements, however we note that the area has not been identified or mapped as having outstanding natural character by the GDC. While the application site is highly modified, it is surrounded by lands and waters with high or very high natural character (Paparoa National Park and the coastal lagoon/wetland complex). We agree with submitters that the applicant’s landscape experts have placed too much weight on the temporary nature of the proposed activity and have dismissed any natural character effects as ‘short term’. Overall, while we consider the adverse effects on the natural character values of the area to be more than minor, we do not consider them to be ‘significant’ – this being the test under Policy 13(1)(b) of the NZCPS for areas not identified or mapped as having outstanding natural character.
221. Mr Glasson and Ms Faulkner concluded any adverse visual effects would from submitters viewpoints range from ‘very low’ to ‘moderate’, which equated to ‘minor’ for both the first year of mining (year 3) and eighth year of mining (year 10). We accept that the bunds and plantings proposed will screen the application site from SH6, coastline and dwellings to the north. We agree with the experts that the processing plant will not be visible from Mr Ellis and Ms Rogers’s deck and that the active mining area will form only a small part of their expansive views. We agree that this effect is mitigated by distance from the site and that even with the removal of all the existing trees (which is unlikely) the proposed activities will not have more than a minor adverse effect on their existing views.
222. Mr Glasson stated that he had not applied the permitted baseline to his concluding assessments in paragraph 41.0 of this supplementary statement of evidence for the dwellings to the north of the property. He noted that without the proposed bund along the northern boundary the effects from the processing plant would be low and the effects of mining activity closest to the property would be low to moderate.
223. Overall, we are satisfied that with the imposition of consent conditions the landscape and visual effects of the proposal are likely to be minor. We accept that the conditions would

enable adjoining property owners to choose not to have the proposed bund constructed to mitigate effects.

Noise Effects

224. The applicant's noise modelling indicates the proposal can comply with the GDP limits, except for on Sundays.
225. The revised conditions require the preparation of a Noise Management Plan (NMP) to be prepared by a suitably qualified and experience acoustic engineer. The NMP requires demonstration of compliance with noise limits at all times, implementation of the BPO to minimise noise and compliance noise monitoring.
226. We note agreement between the noise experts that the proposed activities can be undertaken within a daytime noise limit of 50 dB L_{Aeq} and a night time limit of 40 dB L_{Aeq} . There was also agreement that this should be measured at the notional boundary.
227. We accept the evidence of Mr McEnaney that the proposed activities are 'non-rural activities' under the GDP and that noise effects should be measured at the notional boundary and not at the property boundary.
228. We are satisfied with methodology used to undertake the noise assessment and accept that many of the assumptions are likely to make the predicted results conservative. The modelling undertaken by Mr Farren indicates increasing the height and extent of landscaping bunds will have little effect on reducing noise effects. We accept this, but acknowledge section 16 requires the applicant to adopt the BPO to minimise noise.
229. On the basis of the evidence of the noise experts, we find that compliance with a daytime noise limit of 50 dB L_{Aeq} and a night time limit of 40 dB L_{Aeq} will ensure noise effects at surrounding dwellings are likely to be minor and therefore acceptable.
230. Ms Booker considered the evidence of Mr Reeve should not be allowed given it did not respond to the further information. She submitted potential adverse effects from trucks using the road had been adequately assessed despite noise on public roads being exempt from assessment under the GDP noise standards. She considered that any claim of adverse noise effects and potential sleep disturbance already existed and there was no step change in noise effects from the additional trucks. She noted that although there was caselaw for controlling effects within the immediate vicinity of sites on roads through restricting activity onsite, it was not appropriate in this case given access is directly onto the SH and NZTA had provided written approval. She submitted that residents living in proximity to SH6 must expect road traffic noise from use of the road.
231. In the applicant's written right of reply, Ms Booker submitted that the applicant would accept night time restrictions of 10 truck movements if we found noise and/or amenity effects were more than minor. We consider we are required to assess the level of activity proposed – it is not up to us to impose restrictions to mitigate effects.

232. We agree with Ms Booker that an assessment of amenity values must start with an understanding of the subjective, based on the articulation by those who enjoy the values, but that it must be tested objectively with reference to the GDP and referenced caselaw. We have listened to the submissions from potentially affected people along SH6 and weighed the evidence of the experts with reference to the statutory documents and referenced caselaw. On this basis, we find that the change in the current night time noise environment and amenity will be more than minor, and consequently unacceptable, given the very low current level of traffic after 11 pm, and the proposed night time operation for seven days week. Appendix A of Mr Farren's evidence shows very little traffic from 11 pm and no heavy vehicles. We found the evidence of Mr Reeve to be helpful and consider the applicant had the opportunity to respond to this.
233. We note that the experts have identified there are no specific noise limits applicable to wildlife, such that all assessments by the acoustic experts are confined to actual and potential effects on people residing in the area.

Relevant Planning Provisions

234. An analysis of the relevant provisions of the NPS-FM, NZCPS, RPS, LWRP, RAQP and GDP was provided in the application documentation, the s42A reports, the evidence of Ms McKenzie for the applicant, and the legal submissions of Mr van Mierlo and the evidence of Ms Legarth for the Langridge family. In addition, some policy assessment was provided by Mr Glasson in his landscape assessment and Dr Bramley in his evidence in chief.
235. There was very little discussion or assessment of the NES-FW; and no assessment of the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010. These statutory documents are included in our assessment below.

Resource Management (National Environmental Standards for Freshwater) Regulations 2020

236. In having regard to the NES-FW, we are satisfied that Regulation 52 and Regulation 54 apply in relation to the kahikatea swamp block to the north of the application site and any natural wetlands (including coastal lagoons) within 100 m of the application site (including those within the CMA). We understand that there may be some partial drainage (Regulation 52) as a consequence of the activity, even if only temporarily. Regulation 54 applies regardless due to the proposed taking and discharge of water within 100m of natural wetlands.
237. We have had regard to the general conditions of Regulation 55 as it pertains to natural wetlands. We note the general conditions were not discussed in the application documentation, the s42a reports or addendums, or in evidence by any party.
238. Regulation 55(3)(c) states that the proposed activity must not alter the natural movement of water into, within, or from any natural wetland, unless the activity is temporary and subject to particular conditions under Regulation 55(5), including that the hydrological regime of the natural wetland must be returned to its original condition no later than 14 days after the start of the activity. The proposal seeks to enable a drawdown of monitoring bores adjacent to natural wetlands to the 25th percentile of the range of the aquifer for the time that the activity is occurring, which would potentially alter the natural movement of water into, within and from natural wetlands.

239. Regulation 55(7) relates to earth stability and drainage and states that the activity must not create or contribute to instability or subsidence of a slope or land surface, erosion of the bed or bank of any natural wetland, a change in the points of flows into and out of a natural wetland, constriction of flows into or out of natural wetlands, or flooding or overland flow into or out of any natural wetland. The applicant is relying on implementation of the WMP and yet to be determined trigger levels to maintain the hydrological status quo. The evidence provided suggests there will likely be changes in flow points to and levels within the natural wetlands and that it will be difficult to ensure groundwater recharge systems can maintain water flows/levels where these are reduced. We accept there is potential for permanent hydrological changes in surrounding natural wetlands following cessation of mining activity at the site.
240. The applicant may well be able to comply with Regulation 55(8) but has not proposed to re-vegetate disturbed areas within three months as part of the WCRC land use consent. Regulation 55(9) states that the activity must not disturb the roosting or nesting of indigenous birds during their breeding season, which is at odds with Section 3.2 of the draft AMP where methods are discussed to discourage nesting within the mining area by means of disturbance.
241. Overall, we find that the proposed activity is likely to be inconsistent with outcomes sought by the NES-FW for the protection of the natural wetlands around the site.

Resource Management (Measurement and Reporting of Water Takes) Regulations 2010

242. These regulations were not discussed in the WCRC application documentation, the WCRC s42A report, or in evidence by any party.
243. In our view, aspects of the proposed activity would qualify as non-consumptive under Regulation 4(2), but not when water is taken from groundwater and discharged onto land where it may then enter surface water, or direct to surface water. Regulation 5 states that where a rate of take is not specified (as proposed in the conditions of the WCRC water take permit) then a default rate of 20 L/s applies. We note that although applicant evidence refers to a 20 L/s rate of dewatering, this has not been specified as a maximum rate of take.
244. Regulation 6 requires that permit holders keep a record of water taken. We note that the proposed conditions do not specify the requirements of the regulations under either Regulation 6 or Regulation 9. These regulations are applicable from 3 September 2022 in accordance with Regulation 12. It is proposed that reporting procedures are to be contained in the MMP which will be submitted to council at least two months prior to the start of mining operations. The draft MMP currently only requires annual reporting to council.
245. We find that the activity as proposed is inconsistent with these regulations.

National Policy Statement for Freshwater Management 2020

246. The suite of operative and proposed West Coast RMA plans have yet to give effect to the NPS-FM having been notified or made operative prior to September 2020. Consequently, the fundamental concept of Te Mana o Te Wai, including its principles and the hierarchy of obligations contained in clause 1.3, Objective 2.1.1 and Policy 2.2.1 of the NPS-FM, has not

been given effect to in the relevant statutory planning documents. For this reason, it is appropriate that relevant plan provisions yet to be updated to give effect to the NPS-FM are read in the context of the principles and hierarchy of obligations. None of these planning assessments addressed the question of reading lower order documents in light of the hierarchy of obligations in the NPS-FM. However, in response to questions, the planning witnesses agreed this was appropriate.

247. Ms Booker highlighted the principles of Te Mana o Te Wai in her supplementary legal submissions and the position reached by Ngāti Waewae through the process. The applicant's planning analyses provided with the WCRC and GDC applications concluded that an assessment of no more than minor effects on waterbodies was equivalent to consistency with Objective 2.1.1 in the NPS-FM. The conclusions of Ms McKenzie relied on the draft WMP (and presumably associated conditions) to ensure the health and well-being of waterbodies is not compromised; and monitoring of potable supplies (presumably springs and waterbodies on the Langridge properties) to address the second priority. In discussion of positive effects of proposed riparian planting Dr Bramley referenced Te Mana o Te Wai.
248. The WCRC s42A report relied on the applicant's assessment and the GDC s42A report did not identify the NPS-FM as relevant.
249. Ms Legarth concluded the proposal was contrary to the concept of Te Mana o te Wai based on the evidence of Ms Lough.
250. As discussed earlier in this decision, we find the kahikatea swamp block to the north of the application site and other wetlands and lagoons within 100 m of the application site are natural wetlands according to the definition in the NPS-FM¹⁹. We are satisfied that the effects management hierarchy applies to effects on these identified wetlands and to effects on rivers and streams. We also accept that there is a functional need for the mining to take place in this location due to the mineral resource being *in situ*. However, the effects management hierarchy must still be applied. We have had regard to the principles of mana whakahaere, kaitiakitanga, manaakitanga, governance, stewardship, care and respect in reaching our decision.
251. We find there are threatened and at risk species and important mahinga kai species associated with the interconnected waterbodies in the existing environment. Compulsory values in Appendix 1A of the NPS-FM include threatened species and require all components of ecosystem health to be managed (water quality, water quantity, habitat, aquatic life and ecological processes). We are guided by these compulsory values, the principles and the effects management hierarchy.
252. We find that the revised WMP and associated consent conditions do not provide sufficient certainty that temporary or permanent effects on freshwater ecosystems and their associated values will be avoided, remedied or mitigated. While we understand the intention of the applicant is to first avoid effects and otherwise remedy or mitigate them, the NPS-FM anticipates that the effects management hierarchy will be applied through the conditions.

¹⁹ Clause 3.21 of the NPS-FM 2020

253. We are not satisfied that all reasonable and practicable steps have been taken to address uncertainty²⁰, as we observe that site specific baseline information could have already been gathered (to establish appropriate trigger levels to manage identified values for instance) and the proposed methods tested on site to demonstrate their practicality and effectiveness, in what we understand to be a complex and interconnected hydrological environment.
254. In relation to other relevant policies of the NPS-FM, we note for completeness that in relation to Policy 2.2.2, Ngāti Waewae have been involved with the processing of the applications and we have had regard to the compulsory value of mahinga kai. We have had regard to the need for integrated management of groundwater and surface water (Policy 2.2.3), the need to protect the values of natural inland wetlands (Policy 2.2.6), to avoid loss of river extent and values to the extent practicable (Policy 2.2.7), and to protect the habitat of indigenous freshwater species (Policy 2.2.9), as well as provide for the well-being of communities (Policy 2.2.15). In relation to Policy 2.2.11, in the event of temporary or permanent reduction in the flows or levels of Collins Creek (or any other affected waterbody) it is not clear that this has been identified as an allocation of freshwater. In the event of a permanent reduction in water flows or levels, there would likely be reduced available allocation over the long term.
255. Overall, we find we have inadequate information to determine whether the proposed activities will achieve the outcomes sought by the NPS-FM.

New Zealand Coastal Policy Statement 2010

256. The RPS, the RCP, and the RLWP give effect to the provisions of the NZCPS.
257. We have had regard to the relevant objectives and policies of the NZCPS objectives including maintaining natural biological and physical processes and protecting representative or significant natural ecosystems (Objective 1); encouraging restoration (Objective 2); recognising tangata whenua, providing for involvement and protecting characteristics of special value (Objective 3); protecting or restoring natural defences to coastal hazards taking into account climate change (Objective 5); and recognising that functionally some uses must occur in the coastal environment (Objective 6). The wetlands and lagoons surrounding the site, including natural wetlands, qualify as significant natural ecosystems that are to be protected. The creation of a wetland and riparian restoration is proposed as part of the activity. Tangata whenua have been involved and characteristics of value to Poutini Ngāi Tahu have been identified for protection. The need to protect the coastal hazard area has been considered. The functional need for proposed activity to occur in this location is accepted.
258. Poutini Ngāi Tahu have been involved in the processing of this application consistent with the applicable Mana Whakahono a Rohe agreement (Policy 2). We have applied a precautionary approach in our decision making where there is uncertainty and potential adverse effects unknown or not well understood (Policy 3). We have considered the effects of the proposed activity on the coastal marine area, particularly Canoe Creek lagoon wetland complex (Policy 4); and the need to avoid effects on DOC managed lands and waters (Policy 5). We have considered the need to manage visual impacts and the

²⁰ Clause 1.6(2)(b) of the NPS

imposition of appropriate setbacks and buffers to protect natural character and significant biological diversity (Policy 6). The site is not identified as an area of outstanding natural character but the natural character of the area is recognised as including all the matters specified in Policy 13(2). We recognise that some restoration is proposed as part of the activity following the completion of mining (Policy 14). We accept the Canoe Creek lagoon and wetland complex is an identified natural feature (Policy 15). We are satisfied that historic heritage relevant to Poutini Ngāi Tahu has been identified for protection (Policy 17). The management of potential sedimentation and discharge of contaminants from the proposed activity is proposed to be managed via the Water Management Plan and Monitoring and Mitigation Plan (Policies 22 and 23) as discussed in the sections on hydrology and water quality effects. The adjacent beach is an identified coastal hazard area relevant to Policies 24 to 26.

259. Policy 11 is particularly relevant to this proposal due the prevalence of threatened and at risk species, including birds and freshwater fish species, utilising waterbodies to the south, west and north of the site, as well as the tāiko/Westland petrel. Policy 11 requires the avoidance of adverse effects on threatened or at risk indigenous taxa and their habitats. Policy 11 was not discussed in the application documentation or AEE but was traversed during the hearing, discussed earlier in this decision.
260. The GDC s42A report concluded the application was consistent with Policy 11 (and a number of other policies) given mitigation measures would avoid adverse effects on indigenous biodiversity. The addendum to the GDC s42A report discussed potential effects on tāiko and concluded the effects would be reduced to a level of 'no more than minor' through the mitigation measures proposed. The WCRC s42A report relied on the applicant's planning assessment.
261. Ms McKenzie assessed Policy 11 in 'Attachment C' of her evidence in chief and relied on the AMP and the WMP to conclude potential adverse effects on indigenous biodiversity would be avoided. She maintained this position in her supplementary evidence in relation to the updated proposed conditions and draft management plans. She considered adverse effects on threatened species and habitats which were 'minor or transitory effects' were acceptable.
262. Ms Legarth concluded the proposal was contrary to Policy 11 on the basis that it had not been established that proposed setback distances to Canoe Creek lagoon would avoid potential impacts and highlighted use of adaptive management as a concern regarding the protection of threatened species.
263. Mr Van Mierlo's opening legal submissions specifically addressed Policy 11 as it pertained to habitat of the matuku/Australasian bittern. He highlighted evidence for the applicant that the bittern can be expected to seek to avoid noise. He also discussed adaptive management, noting that this requires a response to observed effect, which is not consistent with the obligation to avoid adverse effects. He referenced the Environment Court case *Pierau vs Auckland City Council* in which the precautionary approach (NZCPS Policy 3) was applied in decision regarding the effects of noise on bittern. He submitted the same logic must be followed in relation to discussion of effects on tāiko. In his supplementary legal submissions, he noted that Policy 11 does not distinguish between adverse effects that are significant, minor or less than minor.

264. In legal submissions for the Director General, Ms Tumai highlighted the NZCPS guidance note which references avoiding (not allowing) adverse effects on identified threatened and at risk species and their habitats.
265. Ms Booker discussed Policy 11 in her legal submissions in support of further information highlighting the importance of considering the level of risk. In terms of risk, we note that expert evidence identified that more than two dead tāiko within a year may result in a population level effect. Ms Booker submits in reply that the combination of conditions and management plans satisfies requirement to avoid adverse effects on threatened and at risk species.
266. We determine that adaptive management need not be considered inconsistent with avoiding adverse effects provided that any triggers set for adaptive response are set to avoid adverse effects occurring. We are, however, not satisfied that this is the case with the proposed conditions and management plans in relation to threatened and at risk species and their habitats within and adjacent to the site of activity.
267. Overall, we find the activity as proposed is likely to be inconsistent with Policy 11 of the NZCPS, but we have inadequate information to conclusively determine this.
268. We accept the coastal environment surrounding the site has some high natural character values/elements, however we note that the area has not been identified or mapped as having outstanding natural character by the GDC. Overall, while we have found the adverse effects on the natural character values of the area to be more than minor, we do not consider them to be 'significant' – this being the test under Policy 13(1)(b) of the NZCPS for areas not identified or mapped as having outstanding natural character. Accordingly, we find the application would be consistent with Policy 13 of the NZCPS.

West Coast Regional Policy Statement 2020

269. Ms Booker submitted the RPS and RMA plans had a strong economic focus throughout in acknowledging development can have adverse effects on the environment. She considered the application site is appropriately located, including by necessity due to the location of the sand strandlines. She highlighted the ongoing engagement with willing affected parties and the narrowing of issues through the testing of evidence that had occurred. She emphasised the application would enable the wellbeing of people and communities while achieving section 5(2). Ms Booker highlighted Policies 9.1 and 9.3 of the RPS.
270. We accept that the proposed activity is consistent with direction in the RPS and relevant plans and proposed plans with regards to supporting economic activity in the region and in the Grey District.
271. We have considered Objectives 9.1 to 9.4 which seek to protect indigenous biological diversity, preserve natural character and manage coastal hazard risks, while enabling appropriate use and development. We understand 'appropriateness' in relation to guidance provided in relevant policies. Policy 9.1(a) specifically references Policy 11, 13 and 15 matters of the NZCPS as relevant when identifying and protecting indigenous biological diversity and natural character. Policy 9.1(b) requires avoidance of adverse effects on significant indigenous biological diversity, which is that described in Policy 11 of the NZCPS. The matter of avoidance of adverse effects has already been discussed in the

NZCPS section presented earlier in this decision. We recognise that the proposal includes some restoration and rehabilitation of natural character in relation to riparian margins (Policy 9.9).

272. Policy 9.7 requires coastal hazard risk to be assessed over a 100 year timeframe, which has not specifically occurred in this case. Objective 11.1 and associated policies focussed on avoiding or minimising risks and impacts of natural hazards have similar relevance. We refer to our findings in the hydrology section as they pertain to coastal hazard risk in considering consistency with this policy and find that we do not have sufficient information to make a determination.
273. Overall, we find the activity as proposed is likely to be inconsistent with the relevant objectives and policies in Chapter 9 of the RPS but we have inadequate information to conclusively determine this.

West Coast Regional Land and Water Plan 2014

274. The extent to which Objectives 3.2.2, 3.2.3, 3.2.4, 4.2.1, 6.2.1, 7.2.1, 8.2.1 and 10.2.3 are achieved is reliant upon proposed water management, which we do not consider sufficiently certain to be able to determine that these objectives will be achieved, or that their associated policies will be appropriately applied. Policy 3.3.1 prioritises avoiding adverse effects on habitats of threatened species and on Poutini Ngāi Tahu values and uses, relevant to potentially affected waterbodies and Canoe Creek lagoon. Policy 3.3.10 guides assessment of natural character of waterbodies including in relation to flows and water levels as a natural character feature, such that providing for natural character in accordance with this policy is also dependent on proposed water management and understanding of the baseline environment. Policy 4.3.5 guides new land drainage activities, including to ensure that activities do not reduce the flow in receiving waterbodies by more than 10%. Some land drainage is anticipated such that the proposal is expected to reduce MALF by up to 25% in Collins Creek, both temporarily and potentially over the long term. Policy 7.3.1 applies as there is no existing allocation on Collins Creek, such that no minimum flow is required, however we read this policy also in relation to the level of acceptable flow reduction in Policy 4.3.10. The applicant has not applied to take water from Collins Creek but flows may be permanently reduced. Policy 10.3.2 prioritises avoiding depletion of any surface water resource as a result of taking water from an aquifer, which we understand is the intent of the applicant's proposed conditions however depletion of surface water is anticipated. Policy 10.3.6 relates to measuring the groundwater take, a matter already discussed in the section covering the Regulations for measuring water takes.
275. Priority is given in the plan to protecting wetlands that are significant in terms of ecological criteria in Schedule 3, because of the higher proportion of wetlands remaining on the West Coast compared to other regions. Ecological criteria for rarity is met due to the presence of nationally threatened species in the wetland complex such that Policy 6.3.4 applies, which requires that values of wetlands are identified. This has not occurred for all wetlands in the interconnected wetland complex adjacent to the site.
276. In relation to water quality, Policy 8.3.2 is for discharges to achieve natural concentrations of metals and non-metals in receiving waters, whilst the proposal instead refers to toxicant guidelines. Applying Policy 8.3.5 and Policy 8.3.6 also requires better understanding of the

baseline environment than we have and assessment of matters to guide the setting of zones of reasonable mixing which has not been provided.

277. Overall, we find the activity as proposed is likely to be inconsistent with the relevant objectives and policies in the RLWP but we have inadequate information to conclusively determine this.

Regional Coastal Plan for the West Coast 2000

278. Objective 6.3.2 is to avoid, remedy or mitigate cross boundary effects on the coastal marine area from adjacent activities through other regional plans. Policy 6.4.1.3 is to recognise coastal hazard areas, including Pakiroa/Barrytown Beach (CHA9) in Schedule 3. Policy 6.4.2.1 is to recognise the action of coastal processes which could have potential for adverse effects on adjacent land, and Policy 6.4.2.3 is to recognise elements of natural character that include water quality and coastal ecosystems. Achieving this objective and these related policies is dependent on understanding of the relationship of the final land form with coastal processes and sea level rise, of which we have an incomplete understanding, and proposed water management, as with relevant objectives and policies in the regional land and water plan previously discussed. Objective 12.3.1 is to manage and control noise levels within the CMA, having particular regard to a number of matters under Policy 12.4.1 which have been assessed in relation to this application.

279. We note also for completeness the proposed West Coast Regional Coastal Plan 2016 which has been notified but is on hold in terms of processing to a decision. Pakiroa/Barrytown Beach remains a coastal hazard area in the proposed plan (CHA14).

280. Overall, we find the activity as proposed is likely to be inconsistent with Objective 6.3.2 and associated policies in the RCP but we have inadequate information to conclusively determine this.

West Coast Regional Air Plan 2002

281. Objective 7.3.1 is to protect human health, property, structures and ecosystems from the adverse effects of discharges of dust to air, through the application of Policies 7.4.1, 7.4.2 and 7.4.3. As discussed in our assessment of effects, we are satisfied that it is possible to manage dust from the activity to minimise adverse effects on visibility, property and human health in accordance with the expectations of the air plan, including in relation to managing potentially objectionable effects as assessed by the regional council in accordance with Policy 7.4.3.

282. Overall, we are satisfied that the activity as proposed is consistent with Objective 7.3.1 and associated policies in the RAP.

Grey District Plan 2005

283. Objectives 19.3.1 and 19.3.2 and associated policies are applicable to the Rural zone of the plan. We are satisfied that Policy 19.4.3 anticipates the activity and that the buildings and structures, subject to proposed conditions, are not contrary to Policy 19.4.4 regarding effects on rural character or amenities of adjoining properties. On the basis that the proposed increase in night time truck movements has the potential to create sleep

disturbance every night and therefore adversely affect amenity values, we consider the proposal contrary to Policy 19.4.5.

284. Objective 5.3.1 and associated policies Policy 5.4.2 and Policy 5.4.3 require protection of significant habitats of indigenous fauna, and effects on ecological integrity, habitat function, values and natural character are therefore to be avoided remedied or mitigated. We are not satisfied that the activity as proposed would achieve this objective in relation to disturbance of threatened and at risk fauna.
285. Objective 7.3.1 seeks to preserve the natural character of the coastal environment, having particular regard under Policy 7.4.1 to the extent of potential modification, presence of natural habitats, life supporting capacity of ecosystems, presence of Ngāi Tahu values, maintenance and enhancement of water quality and coastal hazard areas. Proposed plantings adjacent to the CMA and Collins Creek would contribute positively to natural character and we recognise that the proposed activity would occur in a modified area in accordance with Policy 7.4.1.
286. Overall, we consider that the activity as proposed is largely consistent with relevant objectives and policies of the GDP applicable to the location of activity, with the exception of adverse impacts on amenity values from night time truck movements. We have inadequate information to conclude significant habitats of indigenous fauna will be sufficiently protected based on the information we have.

Section 104(1)(c) - Other Matters

287. We were advised there was no relevant iwi management plan. We note, however, that the regional land and water plan has been drafted taking into account the Ngāi Tahu Freshwater Policy and Poutini Ngāi Tahu pounamu management plans as relevant iwi management plans.
288. We have had regard to the Tai Poutini West Coast Economic Development Strategy (**EDS**) and the New Zealand Government published 'Minerals and Petroleum Resource Strategy (November 2019).
289. We have had regard to the requirements of the Convention on Migratory Species (2021) and the Agreement of the Conservation of Albatrosses and Petrels (2021) and associated Light Pollution Guidelines for Wildlife (Commonwealth of Australia 2020). We have also had regard to the requirements of the Wildlife Act 1953 for 'absolutely protected wildlife'.
290. We agree with Ms Booker that the commercial viability of the proposal is not a relevant matter for our consideration.

Section 104(3)(d) – Restriction on Granting Consent if Notification Required

291. Section 104(3)(d) states that we must not grant a resource consent if the application should have been 'notified' and was not. Mr van Mierlo advised us that the applications should have been publicly notified (not limited notified) because the adverse effects of the proposed activities are more than minor and, as such, the application 'must not' now be granted as directed by section 104(3)(d).

292. We note that section 104(3)(d) uses the term ‘notified’, which Mr van Mierlo interprets as meaning ‘publicly notified’. Section 2AA includes definitions that relate to notification and there are separate definitions for ‘limited notification’, ‘notification’, and ‘public notification’. Section 104(3)(d) does not specify ‘public notification’ (or ‘publicly notified’) but, rather, uses the more general term ‘notified’, which appears to align with ‘notification’ in section 2AA. Notification in section 2AA means public notification or limited notification and the latter process was used in this case. We note that the Environment Court arrived at this same position at paragraph [240] in *Te Rūnganga o Ngāti Awa v Bay of Plenty Regional Council* [NZEnvC 196, 2019], a case quoted by Ms Booker in her written right of reply. Accordingly, we find that section 104(3)(d) is not applicable in this case.

Section 104(6) and 104(7) – Adequacy of Information

293. We previously discussed the adequacy of information in paragraphs 178 to 207 of this decision and do not repeat that here, save our findings that our overall decision to decline the resource consents is on the grounds of inadequate information having been provided by the applicant in respect of ecological, hydrological and water quality effects.

294. In making our assessment on adequacy of information, we have, as required by section 104(7), had regard to the various requests for further information made of the applicant and the applicant’s responses to those information requests. We note further information was requested by both Councils prior to the hearing as well as ourselves during the hearing.

Section 104D – Non-complying Activity Gateway Tests

295. Section 104D presents two ‘gateway tests’ for non-complying activities, one of which must be passed before consent can be granted – the two tests being: 1) the adverse effects of the activity will be minor; or 2) the application is for an activity that will not be contrary to the objectives and policies of the relevant plan(s).

296. We have determined we have inadequate information on actual or potential adverse effects of the proposed activity on ecology, hydrology and water quality and therefore we cannot determine whether these effects will be minor or not, nor whether they are contrary to the objectives and policies of the relevant plans.

297. For completeness, we have found that some of the adverse effects for which we have adequate information are more than minor, namely the cumulative effects on tāiko (from night time vehicle movements) and the effects on the night time noise environment/amenity from vehicle movements. Whilst the effects on tāiko are contrary to Policy 11 of the NZCPS, that is not relevant under section 104D as it only the relevant plans (regional plans and district plan) that are considered, not any higher order planning documents such as the NZCPS. However, in terms of the effects on night time noise/amenity from vehicle movements, Mr McEnaney considered the activity would not pass either of the two section 104D gateway tests unless the applicant adopted his recommended restriction of no more than 10 vehicle movements during the night. We interpret Mr McEnaney’s position to mean that the activity would be contrary to the relevant objectives and policies of the GDP. We note that in reply, Ms Booker suggested if we found the use of the road at night would create more than minor noise and/or amenity effects, the applicant would ‘accept’ a restriction of 10 truck movements at night. We do not accept this approach is appropriate given it is not for us to impose measures to reduce

the effects to minor, but rather to assess the effects of what is proposed by the applicant. However, we record here that our decision does not turn on this matter and is based on inadequate information having been provided.

Sections 105 and 107

298. In terms of section 105, as discussed earlier in our decision we have inadequate information regarding the nature of the proposed discharges and the sensitivity of the receiving environment. Without this information we are unable to determine the effects of the discharges.

299. In terms of section 107 matters, we have inadequate information to be satisfied the proposed mitigation measures avoid any conspicuous change in the colour or visual clarity or any significant adverse effects on aquatic life and the life supporting capacity of the receiving waters. Further, we have inadequate information on whether the proposed downstream compliance points represent an appropriate 'zone of reasonable mixing'.

Part 2 of the RMA

300. All the considerations we have described are subject to Part 2. In accordance with Part 2, we consider Section 6(a), Section 6(c), Section 6(e) and Section 6(h) to be particularly relevant matters of national importance to be recognised and provided for in our decision. We refer to our assessments regarding proposed water management and natural character effects, the significant habitats of indigenous fauna actually and potentially affected by the proposed activity, as well as the relationship of Poutini Ngāi Tahu with waters and taonga species actually and potentially affected, and assessments of risk from natural hazards. In relation to Section 7 we have had particular regard to the full range of other matters relevant to the proposal, save for those associated with energy. We have also taken into account principles of the Treaty of Waitangi in coming to our conclusion, considering the role and positions of Ngāti Waewae through the processing of the application.

301. We disagree with Mr McEnaney that a balance must be struck between competing considerations, bearing in mind what is reasonable. The Courts have made it clear that it is not appropriate to balance relevant Part 2 matters. Ultimately, our assessment of relevant Part 2 matters is impacted by absence of information critical to an informed decision regarding ability to meet the foreseeable needs of future generations, safeguarding life-supporting capacity of water and ecosystems, and avoiding, remedying or mitigating any adverse effects of the proposed activity on the environment.

Conclusion

302. The applicant has provided inadequate information on the actual and potential adverse ecological, hydrological and water quality effects associated with the proposed activities. The information could have, and in our view should have, been provided so that we could make an informed decision on whether or not the adverse effects were acceptable. There was clearly a lack of recognition of the potential effects of the proposed activities on the aquifer, surrounding natural wetlands and springs in the application, and this resulted in an inadequate assessment of effects being put in front of us. Ms Booker's claim there are 'no adverse effects' may go some way to understanding the genesis of the inadequacies in the

information provided. We strongly disagree that it is a 'well-planned and comprehensively assessed' proposal.

303. The applicant has tried to 'fill the gaps' in terms of information requirements throughout the hearing process and while that is not unusual in such proceedings, in this case the critical information which was lacking was not able to be provided. We would best describe the application as being 'premature'. Had site specific information on the aquifer, its behaviour in relation to dewatering and recharge systems been collected and presented to us to show that adverse effects on surrounding sensitive waterbodies were able to be managed to an acceptable degree (taking into account their sensitivities and values which also requires additional investigations), then our decision may have been quite different. We strongly disagree with the applicant that the inadequacy of information can be addressed through collecting the required information following the grant of consent.
304. The information which is missing is of such importance to our decision making that we are left with no alternative but to decline the applications under section 104(6).
305. In terms of the matters for which we have been provided with adequate information, we are generally comfortable, with the exception of night time vehicle movements, that, subject to the applicant's final set of proposed conditions, the adverse effects of the proposed activities would be acceptable. Our residual concerns about the adverse effects of night time vehicle movements are that these will result in unacceptable effects on the noise environment/amenity for residents who live beside SH6 and could result in unacceptable cumulative effects on tāiko. It is not our place to impose conditions to mitigate effects, however we record here that the applicant could have offered to further restrict night time vehicle movements which would have minimised these effects to an acceptable level and 'avoided' effects on tāiko as required by Policy 11 of the NZCPS. Should the applicant be considering lodging new applications for the proposed mining, we would urge that they consider additional restrictions on night time vehicle movements to address these actual and potential effects.

Decision

306. It is the decision of the West Coast Regional Council and the Grey District Council, pursuant to section 104(6) of the Resource Management Act 1991, to **DECLINE** applications by Barrytown JV Limited for resource consents to operate an open cast sand mineral mine, processing plant and load out facility.

Dated at Christchurch this 10th day of February 2022



Sharon McGarry
Independent Hearings Commissioner (Chair)



Maria Bartlett
Independent Hearing Commissioner



Rob Lieffering
Independent Hearing Commissioner