

Before the Independent Hearing
Commissioners

Under the Resource Management Act 1991

In the matter of A hearing on submissions on the proposed Te Tai o Poutini
Plan

Hearing Topic 3: General District Wide Matters

Submitter:

Birchfield Coal Mines Limited (S601 and FS232)

Papahaua Resources Limited (S500)

Rocky Mining Limited (S474)

TiGa Minerals and Metals Limited (S493 and FS104)

**WMS Group (HQ) Limited and WMS Land Co. Limited (S599
and FS231)**

Statement of Evidence of Katherine McKenzie

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Introduction

- 1 My full name is Katherine McKenzie.
- 2 I have a Bachelor of Arts majoring in Geography. I am an Associate Member of the New Zealand Planning Institute.
- 3 I am currently employed as Principal Planner at Tai Poutini Resources and have held that position since February 2021.
- 4 I have worked as a resource management professional for 16 years, and prior to joining Tai Poutini Resources I have held a variety of planning roles in private, local and central government sectors.
- 5 This evidence is provided in support of submissions by Birchfield Coal Mines Ltd (BCM), WMS Group (HQ) Limited and WMS Land Co. Limited (WMS Group), TiGa Minerals and Metals Limited (TiGa), Rocky Mining Limited (Rocky Mining) and Papahaua Resources Limited (Papahaua) (together referred to as “the submitters”) on Topic 3 of the Te Tai o Poutini Plan (**TTPP**). My role has been to provide planning advice on the TTPP in relation to general district wide matters. I assisted in the preparation of submissions on the TTPP for the submitters. I have previously provided planning advice to the submitters in relation to their activities, including for resource consent applications. I am familiar with the location and surrounding environments of the submitters’ sites as well as the West Coast region. I provided planning evidence for the Submitters for Topics 1 and 2 of the TTPP.
- 6 In preparing this statement of evidence I have considered the following documents:
 - (a) Company evidence presented for the Submitters on Topics 1 and 2;
 - (b) Planning provisions relevant to my area of expertise; and
 - (c) Section 42A report on Topic 3: General District Wide Matters prepared by Briar Belgrave (including evidence of Paul Wilson).

Code of Conduct for Expert Witnesses

- 7 While this is not a hearing before the Environment Court, I confirm that I have read the Code of Conduct for expert witnesses contained in the Environment Court of New Zealand Practice Note 2023 and that I have complied with it when preparing my evidence. Other than when I state I am relying on the advice of another person, this evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Scope of evidence

- 8 I have prepared evidence in relation to:
- (a) Relevant planning framework;
 - (b) The need to separate minerals extraction from earthworks;
 - (c) Lighting provisions; and
 - (d) Procedural matters.

Executive Summary

- 9 The Submitters have sought a number of amendments to the Earthworks and Light provisions to ensure that minerals extraction, exploration and prospecting is appropriately enabled, and that operational requirements are provided for.
- 10 My evidence relates to the following provisions:
- Earthworks Overview
 - EW-O1 – retain as notified;
 - EW-P1 – enable all earthworks subject to managing effects;
 - EW-R1, EW-R2, EW-R4, EW-R8 – revise headings to specifically exclude minerals extraction, exploration and prospecting;
 - LIGHT-O2, LIGHT-P2, LIGHT-P3 – amend to better reflect higher order policy direction and provide for operational requirements; and
 - LIGHT-R1 – delete provision to avoid unnecessary cost and regulation.

The relevant planning framework

- 11 I have provided evidence for the Topic 1 and Topic 2 hearings which sets out the relevant planning provisions and how they should be applied to the preparation of the TTPP. I do not intend to repeat this, however my evidence on the District Wide Matters should be read in context of my previous evidence on this matter.

The need to separate minerals extraction from earthworks

- 12 In their original submissions, the Submitters each highlighted the nature of their company operations which are all based within the West Coast Region, and rely on fixed in location minerals sourced here.

- 13 The West Coast Regional Policy Statement 2020 (RPS) identifies the importance of the minerals sector and primary production generally to the West Coast. The TTPP has taken the approach of elevating mineral extraction to a matter of strategic importance for the districts. The Strategic Direction chapter sets out how minerals extraction should be managed, so that it is sufficiently enabled while managing adverse effects. There was no precirculated evidence for the Topic 2 Hearing challenging this approach.
- 14 The RPS contains objectives and policies focused on enabling economic activity (Objective 4.1, Policy 4.1). Policy 4.2 is directive in that the TTPP must enable subdivision, use and development that gives effect to relevant national and regional policy direction, and generally reduce the regulatory burden. The overarching theme of the RPS is to enable resource use and development, while managing adverse effects.
- 15 The S42A report acknowledges that the TTPP drafting was not intended to capture mineral extraction within the earthworks provisions. However, in my view the TTPP provisions as notified are not clear despite the overview indicating that is not the case. The current definition of earthworks includes activities associated with mineral extraction, so unless the rules specifically exclude mineral extraction these rules could technically apply.

Earthworks Overview Section

- 16 The S42A report proposes amendments to the Overview Paragraph 3 to make it clear that the earthworks provisions do not include mineral extraction. However the text directly above contradicts this by *stating "In addition to the provisions in this chapter, earthworks and land disturbance are also subject to additional provisions in some zone chapters and a number of Part 2: District-Wide Matters chapters, including:"* This text specifically indicates that the mineral extraction rules apply in addition to the earthworks rules. I support changing the overview text to give effect to the S42A officer's intent, but suggest this wording is amended as follows:

"Other relevant Te Tai o Poutini Plan provisions

In addition to the provisions in this chapter, earthworks and land disturbance are also subject to additional provisions in some zone chapters and a number of Part 2: District-Wide Matters chapters, including:

- Overlay Chapters - the Overlay Chapters have earthworks provisions in relation to Historic Heritage; Notable Trees; Sites and Areas of Significance to Māori; Ecosystems and Indigenous Biodiversity; Natural Features and Landscapes; Natural Character and Margins of Waterbodies; Natural Hazards; and the Coastal Environment. ~~Where earthworks are~~

~~located within an overlay area (as identified in the planning maps) then the relevant overlay chapter provisions apply.~~

- Earthworks Associated with Mineral Extraction - the Zone and Overlay Chapters have provisions in relation to which manage mineral extraction and its ancillary activities. The Earthworks rules within this section do not apply to mineral extraction, mineral prospecting or mineral exploration, including earthworks.”

EW-O1

- 17 The submitters supported the Earthworks objective on the basis that changes were sought to the Earthworks definition to exclude mineral extraction, exploration and prospecting. I acknowledge that the definition of earthworks is a National Planning Standards 2019 definition, and therefore cannot be amended. In the context of this objective not specifically excluding minerals extraction, exploration and processing it is of no consequence. The objective achieves the same intent as the strategic direction in the TTPP. EW-O1 is supported as notified.
- 18 However, amendments in my view are required to the rules which would otherwise capture mineral extraction, exploration and prospecting.

EW-P1

- 19 The Submitters sought amendments to EW-P1 to ensure that all forms of earthworks are enabled, not just temporary and small scale earthworks. Without amendments to this policy, the suite of policies for the Earthworks section do not correspond appropriately to the objective which seeks to provide for earthworks generally, because there is no enabling policy for anything other than temporary or small scale earthworks. This would also be contrary to the enabling framework of the RPS.
- 20 The S42A report notes that EW-P1 “seeks to enable a range of earthworks which would have limited effects on the environment”. I contend that EW-P1 as drafted provides a very narrow scope and does not enable a range of earthworks as envisioned within EW-O1. Earthworks of any scale must be enabled to adequately provide for subdivision, use and development, provided the effects are managed. As EW-P1 also requires earthworks to be managed in relation to significant adverse effects, it is my view that there is no particular concern with broadening the scope of this policy to be more enabling of all forms of earthworks.
- 21 My recommended wording for EW-P1 is:

“Enable ~~temporary and small scale~~ earthworks for the subdivision, use and development of land, the provision of utilities, and hazard mitigation, while managing those with the potential to create significant adverse effects.”

EW-R1

22 The submitters sought amendments to EW-R1 to avoid circumstances where mining results in some vegetative matter being excavated, and then becomes part of the fill material involved in recontouring the land following excavation. This frequently occurs during mining activities. If mineral extraction, exploration and prospecting activities are not excluded from the earthworks provisions, then there might be a situation where the replacement of virgin material from the same site, does not meet the definition of cleanfill (vegetation is putrescible) and would be captured by these rules. The S42A report assumes that vegetation is cleanfill. It is not according to the definition of cleanfill material from the National Planning Standards 2019. The Technical Guidelines for Disposal to Land (which superseded the MfE Guide to Management of Cleanfills document) provides further guidance on what is considered cleanfill, and this must contain no more than 2% biodegradable materials¹. I don't consider this document can be relied upon because it is inconsistent with the NPS definition.

23 The submissions also stated that if mineral extraction, exploration and prospecting was excluded from the earthworks provisions, then this would not be such a concern.

24 It is my view that the submitters' relief is best achieved by excluding mineral extraction, exploration and prospecting activities from the earthworks provisions. Accordingly I recommend the title of the rule is amended as follows:

“EW-R1 Earthworks (excluding mineral extraction, exploration and prospecting)
General Standards”

EW-R2, EW-R4, EW-R8

25 The S42A report rejects the submitters' relief on these provisions (to exclude mineral extraction, exploration and prospecting), because the overview text already achieves this. As noted above, I consider that the provisions need to be clear and concise (as required by Section 18A RMA) and I do not consider as drafted they are. Rules are interpreted primarily with reference to definitions within the plan, and because the earthworks definition includes activities associated with mining, it

¹ Technical Guidelines for Disposal to Land – Revision 3.1, page 78

is my view that any reasonable planning professional will interpret the rules as applying to these activities unless they are clearly excluded.

- 26 The submitters' relief and the S42A officer's intention can be achieved by amending the title of the rules as follows:

"EW-R2 Earthworks excluding minerals extraction, exploration and prospecting activities - All Zones"

"EW- R4 Earthworks excluding minerals extraction, exploration and prospecting activities in the GRUZ - General Rural Zone, RLZ - Rural Lifestyle Zone, any INZ - Industrial Zone, FUZ - Future Urban Zone, AIRPZ - Airport Zone, any OSRZ - Open Space and Recreation Zone and the MPZ - Māori Purpose Zone"

"EW - R8 Earthworks excluding minerals extraction, exploration and prospecting activities in any Zone not meeting Permitted Activity standards"

Light provisions

LIGHT-O2

- 27 The submitters sought amendments to LIGHT-O2 to ensure that the objective appropriately provides for operational lighting and is not unnecessarily constrained where there is no higher order policy document requiring this. The night sky is specifically recognised in the NZCPS as a matter which may contribute to the natural character of the coastal environment. There is no other recognition of the need to protect this quality and the proposed wording of the objective sought blanket protection of views of the night sky. I agree with the S42A report which states this is inappropriate.
- 28 The S42A report recommends that the objective is amended to "protect" the habitats and ecosystems of indigenous vegetation and fauna and the species themselves. Without qualification, this alteration could be highly problematic for operational lighting requirements. It is my view that any protectionist policy should only relate to adverse effects on significant indigenous biodiversity (consistent with the NPSIB), and to require otherwise could cause significant issues, especially within townships and for infrastructure.
- 29 In my view, the wording proposed by submitters which best gives effect to higher order documents is that of Westpower Ltd, as it provides discretion as to the appropriate level of response to an effect depending on which documents might apply to a particular activity. For example, a consent application for lighting within the coastal environment may require a certain degree of avoidance of effects on views of the night sky, where such a requirement may not exist further inland. The

proposed wording would allow this interpretation of the objective in light of other documents. I recommend wording as follows:

“LIGHT - O2 Artificial outdoor lighting is located, designed and operated to ~~maintain~~ ensure that adverse effects on the character and amenity values within zones, ~~so that it does not adversely affect~~ the health and safety of people, the safe operation of the transport network, ~~protects~~—views of the night sky, the habitats and ecosystems of nocturnal native fauna and the species themselves are avoided, remedied or mitigated.”

LIGHT-P1

30 The submitters sought amendments to LIGHT-P1 through original and further submissions, to both remove the requirement to protect the health and wellbeing of people and ecosystems and also to recognise the locational, operational and functional needs of activities when considering provision for lighting.

31 I do not agree with the proposed amendments to LIGHT-P1 in the S42A report regarding the requirement to protect ecosystems for the same reasons that I disagree with the recommendations for LIGHT-O2. The NPSIB only requires protection within SNAs. This provision goes further and seeks protection of ecosystems generally, which is inconsistent with the NPSIB which seeks to maintain biodiversity rather than absolutely protect it.

32 I am also of the view that there are some activities which have specific functional, locational and operational requirements for lighting that cannot be avoided and may not otherwise be appropriate. For example, ports within the coastal environment have specific operational requirements for lighting, and in the context of a port environment that lighting might be appropriate. The wording originally sought by Westpower Ltd and supported by the submitters should also be included to ensure these requirements are taken into consideration when assessing an activity against this policy.

33 I recommend the wording of LIGHT P1 is as follows:

“LIGHT-P1 Provide for the use of artificial outdoor lighting that:

- a. Allows people and communities to enjoy and use sites and facilities during night time hours and contributes to the security and safety of private and public spaces;
- b. Maintains the character and amenity values of the zone and surrounding area;
- c. Supports the social, cultural, and economic wellbeing or health and safety of people and communities, including road safety;

- d. Minimises sky glow and light spill; and
- e. ~~Protects~~Minimises adverse effects on the health and well-being of people and ecosystems; and
- f. Recognises the technical, locational, functional or operational requirements of activities.”

LIGHT-P3

- 34 The Submitters sought deletion of the word “including” from LIGHT-P3(c). I note that the S42A report recommends including consideration of functional or operational needs to qualify the requirement to minimise effects on views of the night sky and intrinsically dark landscapes, which I support.
- 35 The S42A report indicates that Submitters should have provided evidence to prove that intrinsically dark landscapes are limited to locations of outstanding natural coastal character. In my view the only support for this policy is within the NZCPS, which requires avoidance of all adverse effects on natural character in outstanding natural character areas, and avoid only significant adverse effects on natural character outside of these areas. The NZCPS, and other higher order policy documents (and Part 2 of the RMA) place emphasis on protecting significant and outstanding features, not all features.
- 36 I note that c. d. and e. all commence with “minimises” and should instead be “minimise”.
- 37 I recommend LIGHT-P3 should be worded as follows:

Control the intensity, location and direction of any artificial outdoor lighting to:

- a. Ensure that any artificial outdoor lighting avoids conflict with existing light sensitive areas and uses;
- b. Internalise light spill within the site where the outdoor lighting is located;
- c. ~~Minimises~~ adverse effects on views of the night sky and intrinsically dark landscapes ~~including~~ in areas of outstanding coastal natural character, while recognising the functional or operational needs of the area of activity;
- d. ~~Minimises~~ adverse effects on the significant habitats of light sensitive native fauna and the species themselves; and
- e. ~~Minimises~~ adverse effects on the health and safety of people and communities in the surrounding area.

LIGHT-R1

- 38 The Submitters sought to delete LIGHT-R1. I support this. It is my view that this rule requires too much discretion, is not effects based and may have unintended consequences for activities and infrastructure. How is a street light supposed to be emitting light away from a state highway or arterial or principal road? The appropriate lux limits for the relevant environment are a better threshold for determining an environmental effect in my view. The proposed amendments in the S42A report are a step in the right direction, however in my view LIGHT-R1 contains additional and unnecessary regulation.
- 39 It is my experience through my involvement with land use developments as a planner that lighting designs are able to be generated by lighting suppliers and electricians, and do not require the input of a lighting engineer apart from in exceptional circumstances. This rule could be interpreted as requiring a lighting engineer to calculate the light spill for every outdoor light, which in my view is excessive, costly and unnecessary from an effects perspective. The evidence of Paul Wilson (appended to the S42A report) recommends this inclusion, however I cannot find any reference to a similar requirement in the plans that the S42A Report references as justification for the inclusion of requiring this to be undertaken by a suitably qualified professional.
- 40 The West Coast Regional Policy Statement contains this directive policy:
“Policy 4.2. Regional and district plans must:
a) Contain regulation that is the most effective and efficient way of achieving resource management objective(s), taking into account the costs, benefits and risks;
b) Be as consistent as possible;
c) Be as simple as possible;
d) Use or support good management practices;
e) Minimise compliance costs where possible;
f) Enable subdivision, use and development that gives effect to relevant national and regional policy direction; and
g) Focus on effects and, where suitable, use performance standards.”
- 41 It is my view a simple lux limit, which has been standard practice in District Plans, should be sufficient to manage effects, and allow authorities to take action when an issue arises and would better achieve the direction in the WCRPS.

Procedural matters

- 42 The Submitters did not specifically submit on the Earthworks Overview text, however their submissions explicitly sought that the TTPP did not apply earthworks rules to mineral extraction activities. The amendments to the overview section of the Earthworks provisions are consequential to the relief sought in relation to the earthworks definition and the earthworks rule. The relief sought in the submissions included consequential relief to give effect to the matters raised in their submissions, and in my view the suggested changes to the Overview text are within scope of the submitters' original submissions.

Conclusion

- 43 The submitters have sought amendments to the Earthworks provisions to ensure that the provisions clearly exclude minerals extraction, exploration and processing, which the S42A report confirms was the intention of the TTPP drafting. It is my view that this is best achieved through amending the heading of the rules to make it explicit that these activities are not covered by the earthworks provisions.
- 44 The submitters have sought amendments to Light provisions to ensure that they sufficiently provide for operational requirements, and are not unduly restrictive. I have suggested a number of amendments to better reflect the policy direction of higher order documents.

Katherine McKenzie

Dated this 16th day of October 2023