

18 November 2024

Independent Hearings Panel  
Proposed Te Tai o Poutini Plan

By email: chu.zhao@wrc.govt.nz

Dear Commissioners

**Re: Topic 10B - Ecosystems and Indigenous Biodiversity**

- 1 Birchfield Coal Mines Limited (**BCML**) is a family owned and operated coal mining company based on the West Coast of the South Island. BCML made a submission on the Proposed Te Tai o Poutini Plan (**Proposed Plan**). In my capacity as Chief Executive Officer of BCML, I have provided evidence on behalf of BCML – including to seek an adjournment of this Topic. The adjournment was sought in an attempt to avoid the Proposed Plan including provisions made on the basis of outdated higher order documents, and the associated additional costs to ratepayers in rectifying this. As it stands, there are still significant reforms due to proceed in the next six months, including further changes to the National Policy Statement for Indigenous Biodiversity (**NPSIB**), and I consider that proceeding (particularly as proposed by the Officer) would be contrary to the strong government direction – ultimately creating significant costs for the ratepayer.
- 2 Notwithstanding this, I am unable to attend the hearing on the scheduled dates, and therefore respectfully seek that this letter is tabled for the Panel's consideration.
- 3 Through its submission, BCML sought some changes to the Ecosystems and Biodiversity Chapter, and supported retention of a number of the notified provisions. While BCML continues to seek the relief as originally identified in its submission, the focus of this letter is the Officer's recommended changes to ECO – R7 and the recommended introduction of ECO – R8A.

**ECO – R7 and ECO – R8A**

- 4 BCML's submission supported in part ECO-R5<sup>1</sup> and supported the retention of ECO-R7 as notified. The Officer's Report proposes changes to the indigenous vegetation rule framework at ECO – R5,<sup>2</sup> ECO – R7 and new proposed ECO – R8A. The Officer's Supplementary Statement proposes additional changes to ECO – R7 on the basis of the Resource Management (Freshwater and Other Matters) Amendment Act 2024, namely the removal of the coal mining sunset clause from the National Policy Statement for Indigenous Biodiversity (**NPSIB**) criteria that the Officer recommends is incorporated into ECO – R7.
- 5 I have had our team consider the recommended changes to assist the panel (given my evidence did not specifically cover the provisions). The new criteria recommended for ECO – R7, and new rule ECO – R8A, is opposed on the following basis:

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<sup>1</sup> BCML supported ECO – R5 and sought the including of a function and operational need matter of discretion.

<sup>2</sup> Rule ECO – R5 continues to function the same way as notified, that is that indigenous vegetation clearance is a restricted discretionary activity unless it is in one of the excluded areas listed in 1. i. – vi. Changes proposed to ECO – R5 are not opposed, and changes to include functional and operational need at c. are supported.

- (a) The changes (at ECO – R7 1.a. – e.) incorporate requirements contained in the NPSIB relating to management of effects in SNAs<sup>3</sup> and seek to apply them more widely to the other areas (i.e. areas of category one or two Threatened Environment Classification, ONLs, ONFs, HCNCs and OCNCs)<sup>4</sup> without any justification or analysis to support this application.
  - (b) There is no justification or analysis to support the default non-complying activity status for clearance (within an SNA or otherwise), the Officer's Report simply relies on a submission by Forest and Bird, without any s32/32AA analysis.
  - (c) The default non-complying activity status is extremely prohibitive in the context of the strongly worded objectives and policies proposed for the Ecosystems and Indigenous Biodiversity Chapter. Further, a non-complying activity status does not fit with the scheme of the plan, given that there were no other non-complying rules notified for the Natural Environment Chapters (i.e. Natural Features and Landscapes, Public Access and Natural Character and Margins of Waterbodies).
  - (d) No submission sought greater control over indigenous vegetation clearance in category one or two Threatened Environment Classification, ONLs, ONFs, HCNCs and OCNCs, and even the Forest and Bird submission recognised the ability for there to be some discretionary indigenous vegetation clearance within an SNA.<sup>5</sup>
  - (e) The changes (at ECO – R7 2. – 3.) cherry-pick exceptions/criteria from the NPSIB without providing any analysis as to why some are included and others aren't. For instance, the updated recommendation in the Supplementary Statement now includes mineral extraction exception without reference to the coal mining sunset clause, but still doesn't include specified infrastructure or aggregate extraction – it doesn't even include the ability to remove vegetation where clearance is to maintain or restore an SNA. In addition, the other requirements around functional or operational need and the assessment of alternatives are also absent.
  - (f) Incorporating only select NPSIB clauses does not give effect to the NPSIB, and attempting to incorporate these changes through the Officer's recommendations effectively circumvents the NPSIB requirement that amendments to policy statements and plans that are necessary to give effect to the NPSIB are to be publicly notified.<sup>6</sup>
  - (g) Regard must be given to the NPSIB through a section 104 assessment in any case – particularly given ECO – R7 is (as notified and supported) a discretionary activity rule.
- 6 I consider retaining ECO – R7 as notified, and not including the additional criteria and non-complying activity rule, still gives effect to the NPSIB, and is the most appropriate means of giving effect to the intent of the TTPP and the RMA.
- 7 Should the Commissioners require clarification on any matter, please contact me on the following email: phil@birchfieldcoal.co.nz.

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<sup>3</sup> NPSIB clause 3.10(2).

<sup>4</sup> By virtue of them being excluded from ECO – R5 1. i. - vi.

<sup>5</sup> The Forest and Bird submission sought a discretionary activity status for indigenous vegetation clearance outside an SNA (subject to confirmation an assessment demonstrated it was not within an SNA), or within an SNA and for a stipulated purpose (the purposes are stipulated in their proposed amendment to ECO – R5) with a non-compliance activity status of non-complying.

<sup>6</sup> NPSIB, clause 4.1 and 4.2.

Yours faithfully,

A handwritten signature in blue ink, consisting of a stylized 'P' followed by a cursive 'M' and a trailing flourish.

Phil McKinnel  
**Chief Executive Officer**  
**Birchfield Coal Mines Ltd**

