

BEFORE AN EXPERT PANEL **FTAA-2605-1238**
BARRYTOWN MINERALS PROJECT – SOUTHERN BLOCK

UNDER THE **FAST-TRACK APPROVALS ACT 2024**

IN THE MATTER OF an application by Tāiko Critical Minerals Ltd

**SUBMISSIONS OF COUNSEL FOR THE ROYAL FOREST AND BIRD PROTECTION
SOCIETY INC**

28 September 2026

Royal Forest and Bird Protection Society of New Zealand

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Introduction

1. These legal submissions are filed on behalf of the Royal Forest & Bird Protection Society Inc (Forest & Bird) and primarily focus on avifauna and approvals required under the Resource Management Act 1991 (**RMA**). The lack of comment on wider matters should not be read as agreement with the applicant or as indicating no view; it reflects the procedural limitations of the Fast-track process.
2. These submissions address the significant legal issues raised by this application:
 - a. Key aspects of the FTAA scheme for deciding applications for approvals
 - b. Adverse impacts - avifauna
 - c. Assessment against relevant RMA provisions
 - d. Conditions
 - e. Section 85 assessment
3. The key adverse impacts include light-related disorientation and grounding of Westland petrel, habitat loss and ecological change across the Barrytown Flats, displacement of indigenous species, and cumulative effects (particularly when the neighbouring Central Block mining and Wet Concentrator Plant consents are considered). The proposal also risks significant adverse effects on kororā/little blue penguin, matuku/bittern, koitareke/marsh crane and pūweto/spotless crane.
4. Those impacts engage directive provisions in the New Zealand Coastal Policy Statement and National Policy Statement for Indigenous Biodiversity. Particularly the directives to avoid adverse effects on threatened and at-risk indigenous species and to adopt a precautionary approach where effects are uncertain, unknown, or potentially significant. The proposed conditions do not overcome those concerns: they contain material gaps and lack specific performance standards needed to ensure the adverse effects on avifauna are avoided.
5. Against that context, and given the uncertainty and limitations in the claimed regional benefits, the adverse impacts are sufficiently significant to be out of proportion to any established regional or national benefits. Forest & Bird therefore submits that the statutory threshold for decline under s 85 of the FTAA is met, and the application should be declined.

Key aspects of the FTAA scheme for deciding applications for approvals

6. The FTAA sets out the legal framework for obtaining approval of both listed and referred projects. The Barrytown Minerals Project is a listed project and is described in Schedule 2 of the FTAA as follows:

Tāiko Critical Minerals Limited	Barrytown Minerals Project	Establish and operate mine sites, processing facilities, and ancillary activities for mineral sand extraction activities, processing, and transporting product at Barrytown, West Coast Mining may be undertaken in stages Resource blocks include— • Southern Block (between Fagan Creek and Canoe Creek) • Central Block (north of Canoe Creek to the northern extent of Canoe Creek Lagoon) • Northern Block (south of Burke Road and north of Burke Road to Maher Swamp)	Approximately 700 hectares between Fagan Creek and Maher Swamp and between the coast and State Highway 6 at Barrytown Flats, Greymouth
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7. Subpart 3 of Part 2 of the FTAA (“Panel consideration of substantive application”) deals with the Panel’s consideration of a substantive application for this approval.
8. Section 40 states that the process for obtaining the approval under the FTAA “applies instead of the process for obtaining any corresponding approval under a specified Act.” The specified Acts for the purposes of this Application include the Resource Management Act 1991 (**RMA**) and the Wildlife Act 1953.
9. In accordance with section 42(4)(a) of the FTAA, the applicant is seeking approvals, among others, for a resource consent that would otherwise be applied for under the RMA.

Panel’s functions under the FTAA

10. The purpose of the Fast Track Approvals Act 2024 (FTAA) is to “facilitate the delivery of infrastructure and development projects with significant regional or national benefits.”¹
11. The Panel must, for each approval sought in a substantive application, decide under s 81(1) whether to:
 - a. Grant the approval and set any conditions to be imposed on the approval; or
 - b. Decline the approval.

¹ FTAA, s 3

12. Section 81(2) then sets out the requirements the Panel must address when making that decision, pointing the Panel to various statutory provisions that contain the information it must consider, the framework for making its decision, and the limits applying to decision-making:

- (2) For the purpose of making the decision, the panel—
 - (aaa) must, if the substantive application relates to an unlisted project, consider the Minister’s reasons for accepting the referral application that are stated in the notice given by the responsible agency under section 28(1):
 - (aab) must consider a relevant Government policy statement:
 - (a) must consider the substantive application and any advice, report, comment, or other information received by the panel under section 51, 52, 53, 55, [58](#), [67](#), 68, 69, 70, 72, or 90:
 - (b) must apply the applicable clauses set out in subsection (3) (see those clauses in relation to the weight to be given to the purpose of this Act when making the decision):
 - (c) must comply with section 82, if applicable:
 - (d) must comply with section 83 in setting conditions:
 - (e) may impose conditions under section 84:
 - (ea) may impose conditions under section 84A:
 - (f) may decline the approval only in accordance with section 85.

Assessment of resource consent application

13. For a resource consent, the relevant “applicable clauses” required under s 81(2)(b) are clauses 17 and 18 of Schedule 5 of the FTAA.²

14. The criteria referred clauses 17 to 18 largely adopt the Resource Management Act 1991 (“RMA”) provisions relevant to assessing resource consents, albeit with some important distinctions, including that the Expert Panel must give the greatest weight to purpose of the FTAA and that there is no section 104D assessment.

15. Clause 17 requires the panel to “take into account”, giving greatest weight to paragraph a:

- a. the purpose of the FTAA;
- b. the provisions of Parts 2, 3, 6, and 8 to 10 of the Resource Management Act 1991 that direct decision making on an application for a resource consent (but excluding section 104D of that Act); and
- c. the relevant provisions of any other legislation that directs decision making under the Resource Management Act 1991.

How to give “greatest weight” to the purpose of the FTAA

² FTAA, s 81(3)(a).

16. Each factor above must be assessed independently, uninfluenced by the purpose of the FTAA, before those factors are weighed in accordance with the prescribed hierarchy. The purpose of the FTAA, being to facilitate projects with significant regional or national benefits, can have no logical relevance to either the assessment of weighting or adverse impacts. That approach is supported by the Court of Appeal's decision in *Enterprise Miramar Peninsula Inc v Wellington City Council*.³ The approach in *Enterprise Miramar* has been applied in other FTAA panel decisions to date.⁴
17. When assessing the provisions contained in relevant planning instruments (such as the New Zealand Coastal Policy Statement), the Supreme Court's decision in *Royal Forest and Bird Protection Society v New Zealand Transport Agency* [2024] NZSC 26 (*East West Link*) is relevant. *East West Link* is relevant in two respects:
- a. it informs how the Panel should treat matters it is required to "take into account" under clause 17(1) of Sch 5 to the FTAA.
 - b. it confirms the correct approach to interpreting directive planning provisions (including environmental bottom lines).

"Take into account"

18. "Take into account" requires more than simply noticing or giving passing consideration to a matter. The Panel must engage substantively with the matters listed in clause 17 and, where those matters include directive planning provisions, apply them according to their terms. They must inform the Panel's assessment of adverse impacts and the significance of any inconsistency in the section 85 weighting exercise.
19. The Supreme Court in *East West Link* addressed the assessment of statutory weighting in the (overturned) High Court decision. In particular, the statutory obligation to "give effect" to the NZCPS and its "environmental bottom line" policies, such as NZCPS Policy 11. Powell J found that the Board of Inquiry considering the East West Link project only needed to satisfy "the softer regard/particular regard standards under ss 104 and 171" where "the requirement was merely to "give genuine attention and thought" to the NZCPS, rather than a duty to accept its requirements."⁵

³ *Enterprise Miramar Peninsula Incorporated v Wellington City Council* [2018] NZCA 541 at [52]-[53], [59].

⁴ See for example Bledisloe Wharf decision, Taranaki VTM draft decision (to decline), Maitahi Village Decision, and Waihi North decision.

⁵ *Royal Forest & Bird Protection Society Inc v New Zealand Transport Agency* [2024] NZSC 26 at [140]

20. Likewise, the applicant and respondent Council argued before the Supreme Court that the “directive potency” of NZCPS Policy 11 was “diluted by the fact that ss 104 and 171 require only that consent authorities have regard or particular regard to it” which, it was said, “is materially different to the “give effect” standard applicable to plan preparation in Part 5; the standard at issue in *King Salmon*.”⁶

21. The Supreme Court held that Powell J erred in this approach. Directive policies had to be applied:⁷

[169]...[Powell J] erred in his application of the duties to have regard/particular regard relevant objectives and policies. Again, those duties do not invest consent authorities with a broad discretion to “give genuine attention and thought” to directive policies, only to then refuse to apply them. That would contradict what we have already described as the consistently strong “avoid” language employed from top to bottom in the RMA hierarchy of objectives and policies. It would also be to waste the significant resources invested by public and private stakeholders in the processes by which those objectives and policies are settled.

22. The same approach must be taken with direction to “take into account” the various factors in clause 17.⁸

23. This accords with the Supreme Court’s finding that it is not open to decision makers at the consent level to “undermine the choices made in planning documents of favouring environmental protection through avoidance policies if directly applicable to the relevant project.”⁹

Interpretation of planning provisions

24. *East West Link* is also authority for the following principles relevant to the interpretation and application of planning provisions under s 104 RMA:

- a. The term “avoid”, as used in the NZCPS, has its ordinary meaning of “not allow” or “prevent the occurrence of”.¹⁰
- b. Directive plan provisions have greater potency and leave decision-makers with less flexibility for choice as to the outcome of a particular decision than less directive plan provisions.¹¹

⁶ *Royal Forest & Bird Protection Society v New Zealand Transport Agency* [2024] NZSC 26 at [97]

⁷ *Royal Forest & Bird Protection Society v New Zealand Transport Agency* [2024] NZSC 26 at [169]

⁸ The panel in the Bledisloe North Wharf and Fergusson North Berth Extension application, following *Royal Forest and Protection Society and Auckland Transport Agency*, treated “take into account” as requiring it to “directly consider the matters so identified and give them genuine consideration; rather than mere lip service, such as by listing them and setting them aside.”

⁹ *Royal Forest & Bird Protection Society v New Zealand Transport Agency* [2024] NZSC 26 at [224]

¹⁰ *Royal Forest & Bird Protection Society Inc v New Zealand Transport Agency* [2024] NZSC 26 at [228]; see also *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, [2014] 1 NZLR 593 at [96]

¹¹ *Royal Forest & Bird Protection Society Inc v New Zealand Transport Agency* [2024] NZSC 26 at [72]

- c. There are directive policies in the NZCPS which are “very specific as to subject matter and concrete as to intended effect.” For example, NZCPS Policy 22(2) to “*require* that ... development will not result in a significant increase in sedimentation in the coastal marine area.”¹² Such policies provide no “wriggle room.”¹³
- d. The assessment under 104 requires a “fair appraisal of objectives and policies [of applicable planning instruments] read as a whole.”¹⁴ This does mean that relevant objectives and policies can “simply be put in a blender with the possible effect that stronger policies are weakened and weaker policies strengthened.”¹⁵

Assessing regional or national benefits

- 25. When taking the purpose of the FTAA into account, s 81(4) states the Panel must consider the extent of the project’s regional or national benefits.
- 26. The question of whether projects have “significant regional or national benefits” must involve a question of net benefits. A project whose regional or national costs outweigh (or even substantially reduce) its benefits is not a project with significant regional or national benefits. This net analysis arises in two ways: first, the concept of benefits must itself be a net concept (i.e. the benefits must be set off against the costs of achieving those benefits); and second, those net benefits must be balanced against the adverse impacts of the project in the s 85 weighting test.
- 27. This conforms with the approach taken by the Expert Panel that considered the Taranaki VTM application, which took the following three-step approach:¹⁶
 - a. First assessed the extent to which any regional or national benefits are established, and the extent to which there may be comparable disbenefits by assessing the veracity of the information provided about each;
 - b. Second, discounted any comparable established disbenefits from any established benefits; and
 - c. Third, for the purpose of s 85(3) FTAA, considered whether any adverse impacts (that have not already been accounted for as disbenefits) are sufficiently significant to be out of proportion to the extent of the project’s regional or national benefits.

Power to decline

¹² *Royal Forest & Bird Protection Society Inc v New Zealand Transport Agency* [2024] NZSC 26 at [104]

¹³ *Royal Forest & Bird Protection Society Inc v New Zealand Transport Agency* [2024] NZSC 26 at [104]

¹⁴ *Royal Forest & Bird Protection Society Inc v New Zealand Transport Agency* [2024] NZSC 26 at [79]-[80]

¹⁵ *Royal Forest & Bird Protection Society v New Zealand Transport Agency* [2024] NZSC 26 at [80];

¹⁶ Draft decision on the Taranaki VTM application 4 February 2026 at [93]

28. The circumstances the Panel may decline an application are constrained under section 85.
29. There are specific circumstances in which the Panel “must” decline an application.¹⁷ Forest & Bird’s assessment has not identified any reasons why the application “must” be declined as per s 85(1) of the FTAA.
30. The Panel may decline an approval if, in complying with s 81(2), it forms the view that there are 1 or more adverse impacts in relation to the approval sought; and those adverse impacts are “sufficiently significant to be out of proportion to the project’s regional or national benefits” that the Panel has considered under section 81(4), even after taking into account any modifications made by the applicant or conditions that the panel may set to address to those adverse impacts.¹⁸
31. Adverse impact means “any matter considered by the panel in complying with section 81(2) that weighs against granting the approval.”¹⁹ The Panel may not form the view that an adverse impact meets that threshold “solely on the basis that the adverse impact is inconsistent with or contrary to a provision of a specified Act or any other document that a panel must take into account or otherwise consider in complying with section 81(2)”.²⁰ The word “solely” and the reference to “a provision” is notable. The Panel may form the view that adverse impacts are sufficiently significant to be out of proportion due to a combination of inconsistencies with provisions or documents, or due to a combination of those inconsistencies with other adverse impacts.
32. Section 85(3) provides that an approval may be declined if adverse impacts are sufficiently significant to be “out of proportion” to the project’s regional or national benefits, even after taking into account any conditions. When applying this test, the Panel will have already assessed the nature and significance of the adverse impacts under section 81(2) of the FTAA and the project’s benefits under section 81(4).
33. When considering what “out of proportion” means, the Expert Panel in the Draft Taranaki VTM Decision, found that s 85(3) is inherently evaluative. It is not a like-for-like assessment that compares a particular impact with a particular benefit of the same time, but that it “requires incommensurable impacts to be considered and compared”.²¹ The Expert Panel in that process was assisted by submissions of South Taranaki District Council – who framed “out of proportion” as meaning that

¹⁷ FTAA, s 85(1) and (2).

¹⁸ FTAA, s 85(3)

¹⁹ FTAA s 85(5)

²⁰ FTAA, s 85(4)

²¹ Draft decision on the Taranaki VTM application 4 February 2026 at [247].

the identified adverse impacts (after mitigation by any consent conditions or modification) are “larger, worse, or more important than the benefit”.²²

34. There is no presumption the Panel should grant an approval. The statutory discretion to decline must be exercised in accordance with the statutory purpose. The statutory purpose of “facilitating” (meaning “to make easier the progress of”²³) developments with significant national or regional benefits is implemented by the expedited process and enabling consenting framework provided by the FTAA and does not indicate that all decisions will necessarily result in an approval. The structure of the FTAA indicates that Parliament did not intend listed projects to receive automatic approval. Had that been intended, the Act could have provided for approval subject to only conditions. Instead, the Act expressly preserves a discretion to decline approval where the statutory threshold in s 85 is met.

Regional benefits

35. The Expert Report of Professor Glenn Banks on behalf of the Coast Road Resilience Group points out that the alleged economic benefits are uncertain, potentially overstated, and may not be retained locally. Key points being:²⁴

- a. The benefits are not assessed on a net basis, and fails to account for environmental costs, landscape effects, recreational impacts, tourism effects and alternative land uses.
- b. The benefits may be modest once costs and risks are considered, including commodity price volatility, limited or unclear sensitivity testing, uncertainty around assumptions, and possible errors in the applicant’s figures.
- c. The benefits may accrue outside the local community, as the Applicant’s evidence fails to provide any breakdown of benefits, making it difficult to assess where revenues will actually go.
- d. GDP and export gains may not translate into local wellbeing, with West Coast’s long history of mining and continuing socio-economic deprivation, mining relating employment and export gains do not necessarily result in broad regional or community-wide benefits.

Adverse impacts

36. The statement of expert evidence of Dr Micol describes the adverse impacts the proposal will have on avifauna.²⁵ The proposed mining site is a well-known flyover for the Westland petrel, supporting an array of other important birds. Dr Micol’s

²² Draft decision on the Taranaki VTM application 4 February 2026 at [247].

²³ Collins New Zealand Dictionary, Harper Collins 2017

²⁴ Expert Report of Glenn Banks on behalf of the Coast Road Resilience Group dated 28 September 2026

²⁵ Expert Evidence of Dr Micol dated 28 September 2026, at [17]-[18], [38]-[68], [86]

evidence should be read alongside the adverse impacts described by other parties in this process. Even on Dr Micol's evidence alone, the adverse impacts are significant. When those impacts are considered alongside the deficiencies in economic assessment identified by Professor Glenn Banks, Forest & Bird submits the Panel cannot confidently conclude that the claimed benefits genuinely counterbalance those impacts.

Assessment against relevant RMA provisions

37. The key "provisions of the RMA that direct decision-making" for resource consent applications are s 104 and Part 2.

Section 104 considerations

38. Section 104 requires a consent authority to have regard to: (a) any actual and potential effects on the environment of allowing the activity, (ab) positive effects to offset or compensate for adverse effects, (b) any relevant provision of a national, regional or district planning instrument, and (c) any other matter that the consent authority considers relevant and reasonably necessary to determine the application. Under s 104(6), a consent authority may decline an application for a resource consent on the grounds that it has inadequate information to determine the application.

Effects

39. The information identifying actual and potential effects is described in the previous section.

40. Cumulative effects are an issue,²⁶ as the proposal creates an additional light source in conjunction with existing light – including those from consents for the neighbouring Central Block and Wet Concentrator Plan. TCML has obtained separate consents to mine the neighbouring "Central Block", and a subsequent consent to move the processing plant known as the "Wet Concentrator Plant".²⁷

41. With the Wet Concentrator Plant and consent to mine the Central Block, any further effects generated by this proposal will only add to or compound existing adverse effects. The evidence of Dr Micol is if the impacts associated with this proposal, existing threats and effects generated by neighbouring mining and the Wet

²⁶ RMA section 3(d). The RMA definition of "effect" includes "cumulative effects", being, "any cumulative effect which arises over time or in combination with other effect".

²⁷ See Forest & Bird's covering letter comments.

Concentrator Plant, may result in significant adverse effects, particularly on the Westland petrel.²⁸

42.

Project is contrary to relevant planning instruments

43. These submissions focus on the higher order planning instruments – the New Zealand Coastal Policy Statement (**NZCPS**) and National Policy Statement for Indigenous Biodiversity (**NPSIB**). This is because:

- a. the planning instruments sitting below either predate these key documents. The West Coast's Operative Regional Coastal Plan 2001 predates the NZCPS. The West Coast Regional Policy Statement²⁹ was prepared after the NZCPS, however it predates the NPSIB.
- b. The Proposed Te Tai o Poutini Plan (for the districts) is currently subject to appeals and therefore cannot be confirmed as giving effect to the higher order instruments.³⁰

44. In this scenario, the higher order instruments should be given pre-eminence as the lower order documents are effectively “incomplete”. This conforms with the Supreme Court's approach in *King Salmon* that in the absence of invalidity, incomplete coverage or uncertainty of meaning in the “intervening statutory documents” (i.e. the NZCPS), there is no need to look at Part 2 of the RMA.³¹ The same can be said for lower order documents and the need to look up to higher order instruments. The legal position on this is best summarised by the Environment Court in *Infinity Investments Group Holdings Ltd v Canterbury Regional Council*.³²

[35] The intermediate instruments which lie between Part 2 of the RMA on the one hand, and the relevant district or regional plan on the other, always need to be had regard to under section 104(1)(b) but the weight to be given to them will vary from case to case. In particular the weight will be affected by the same factors which trigger the “subject to Part 2” phrase. That is, if the district or regional plan in question is ambiguous, incomplete, or illegal then an answer should be looked for in one of the higher instruments.

45. Relatedly, as the NZCPS conforms with RMA requirements including Part 2 RMA,³³ and as none of the *King Salmon* caveats (uncertainty, incomplete coverage,

²⁸ Expert Evidence of Dr Micol dated 28 September 2026, at [58], [86]

²⁹ Dated 24 July 2020.

³⁰ As they are required to under s 67(3) RMA (regional plans) and s75(3) RMA(district plans).

³¹ *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38 at [259]

³² *Infinity Investment Group Holdings Limited v Canterbury Regional Council* [2017] NZEnvC 36.

³³ As confirmed in *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38 at [33].

uncertainty of meaning) apply to the NPSIB in this case, these submissions do not address Part 2 RMA in detail.

New Zealand Coastal Policy Statement 2010

46. The New Zealand Coastal Policy Statement (NZCPS) applies to the coastal environment which includes:

- (c) areas where coastal processes, influences or qualities are significant, including coastal lakes, lagoons, tidal estuaries, saltmarshes, coastal wetlands, and the margins of these;
- (d) areas at risk from coastal hazards;
- (e) coastal vegetation and the habitat of indigenous coastal species including migratory birds;
- ...
- (h) inter-related coastal marine and terrestrial systems, including the intertidal zone.

47. The NZCPS includes 6 objectives. In relation to the natural environment, the most relevant is Objective 1, which is to “safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems” by, among others, “maintaining the diversity of indigenous coastal flora and fauna”. In relation to use and development these are, in summary, to recognise that protection of the values of the coastal environment does not preclude development in appropriate places.³⁴

48. The NZCPS includes 29 policies for achieving its objectives – policies 3, 6, and 11 of most relevance to this application.

49. Policy 3 is particularly apposite as it requires decision-makers to:

- (1) Adopt a precautionary approach towards proposed activities whose effects on the coastal environment are uncertain, unknown, or little understood, but potentially significantly adverse.
- (2) In particular, adopt a precautionary approach to use and management of coastal resources potentially vulnerable to effects from climate change, so that:
 - (a) avoidable social and economic loss and harm to communities does not occur;
 - (b) natural adjustments for coastal processes, natural defences, ecosystems, habitat and species are allowed to occur; and
 - (c) the natural character, public access, amenity and other values of the coastal environment meet the needs of future generations.

50. The next critical policy directive is found at Policy 11: Indigenous Biological Diversity, which requires that decisions:

To protect indigenous biological diversity in the coastal environment:

- (a) avoid adverse effects of activities on:
 - (i) indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System lists;
 - (ii) taxa that are listed by the International Union for Conservation of Nature and Natural Resources as threatened;

³⁴ NZCPS Objective 6.

- (iii) indigenous ecosystems and vegetation types that are threatened in the coastal environment, or are naturally rare;
- (iv) habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare;
- (v) areas containing nationally significant examples of indigenous community types; and
- (vi) areas set aside for full or partial protection of indigenous biological diversity under other legislation;

51. It is evident that Policy 11(a)(i) of the NZCPS is engaged.³⁵ TCML's project is contrary to this policy. The only Westland petrel colony in the world nests in the cliffs immediately inland from the Barrytown flats. Dr Micol's evidence explains that the entire Barrytown flats is an important area for Westland Petrel, an at-risk species, particularly as it is a flyover for them. The species is very sensitive to light and can be easily disoriented by it, which can result in the birds coming to ground, - usually a fatal event as they cannot get back to the air. While it is proposed that the mining operations do not occur at night (between sunset to sunrise), there remain aspects of the operations involving artificial lighting that will still occur at this time, for example, trucking and loading of trucks.³⁶ Dredge pond lighting is also provided for at night – and while this is for “health and safety reasons” and “emergency repairs”,³⁷ no timeframes are set for the use of lights in these circumstances. The evidence of Dr Micol explains the adverse effects even small amounts of light can have on Westland petrel.³⁸

52. The site proposed for mining is also habitat to a range of other threatened and at-risk species, including kororā/little blue penguins and other avifauna.

53. The TCML project results in the extraction of a non-renewable resource and so will materially change the biophysical nature of the Barrytown flats – removing habitat, changing the ecology, and displacing species in a way that poses extinction risks.³⁹

54. For bitterns and crakes, Dr Micol's evidence is that the mining proposal will significantly adversely affect them.⁴⁰ For the Westland petrel, if the loss of a single Westland petrel from this proposal coincides with adverse effects from existing threats, the adverse effect will be “significant and cannot be sustained.”⁴¹ Dr Micol's evidence is that the proposed effects management measures and conditions are insufficient to ensure adverse effects will be avoided.⁴² Her evidence suggests

³⁵ See Expert Evidence of Dr Micol.

³⁶ Condition 11.1

³⁷ Barrytown Mineral Sand Mine Avian management Plan 2026 at 5.2.2.

³⁸ Expert Evidence of Dr Micol date 28 September 2026 at [48]-[58]

³⁹ See Expert Evidence of Dr Micol and covering letter attaching Evidence of Mr Harding Terrestrial Ecology Evidence on behalf of Grey District Council dated 12 December 2023 at [94].

⁴⁰ Expert Evidence of Dr Micol date 28 September 2026 at [47]

⁴¹ Expert Evidence of Dr Micol date 28 September 2026 at [58]

⁴² Expert Evidence of Dr Micol date 28 September 2026 at [69]-[84]

further measures that need to be employed should the Panel decide to grant approval, including measures to address noise, the need for a Light Management Plan, limits on the amount of lighting that be used at night (including preventing trucking and truck loading at night)⁴³, but that even with those measures in place, risks remain for Australasian bitter, reef heron, spotless crane and marsh crane.⁴⁴

55. Policy 6 of the NZPCS which relates to activities in the coastal environment does not provide TCML with a way to bypass the clear, specific directives in NZCPS Policy 11. This is because Policy 6 provides no equally directive policy for mining.

56. Conversely, Policy 3 requires the Panel to adopt a precautionary approach:

- a. towards proposed activities whose activities whose effects on the coastal environment are uncertain, unknown, or little understood, but potentially significantly adverse;⁴⁵ and
- b. to use and management of coastal resources potentially vulnerable to effects from climate change so that, among others, values of the coastal environment meet the needs of future generations.⁴⁶

57. The evidence of Dr Micol explains the ongoing threat climate change poses on Westland petrel – with severe storms causing damage to their single breeding ground.⁴⁷ Unique species such as Westland petrel form a part of New Zealand’s indigenous biodiversity, which Forest & Bird says is a vital *need* of future generations. They are necessary to maintain indigenous biodiversity and heritage – needs that future generations should not be deprived of.

58. The TCML proposal is contrary to the objectives and policies of the NZCPS when read as a whole.

The National Policy Statement for Indigenous Biodiversity

59. The NPSIB applies in the terrestrial environment throughout Aotearoa New Zealand, which is the land and associated natural and physical resources above mean high-water springs.⁴⁸

⁴³ Expert Evidence of Dr Micol date 28 September 2026 at [71]-[84], Appendix One.

⁴⁴ Expert Evidence of Dr Micol date 28 September 2026 at [87]

⁴⁵ NZCPS Policy 3(1)

⁴⁶ NZCPS Policy 3(2)(c)

⁴⁷ Expert Evidence of Dr Micol date 28 September 2026 at [37]

⁴⁸ NPSIB 1.3(1)

60. Both the NPSIB and the NZCPS apply in the terrestrial coastal environment⁴⁹. Where there is conflict between the NPSIB and NZCPS, the NZCPS prevails.⁵⁰

61. The overarching objective of the NPSIB is to maintain indigenous biodiversity across Aotearoa New Zealand so that there is at least no overall loss in indigenous biodiversity.⁵¹

62. The NPSIB then identifies a series of policies which give effect to the objective. For Forest & Bird, most relevant are Policies 3, 4, 13 and 15 which provide:

Policy 3: A precautionary approach is adopted when considering adverse effects on indigenous biodiversity.

Policy 4: Indigenous biodiversity is managed to promote resilience to the effects of climate change.

Policy 13: Restoration of indigenous biodiversity is promoted and provided for.

Policy 15: Areas outside SNAs that support highly mobile fauna are identified and managed to maintain their populations across their natural range, and information and awareness of highly mobile fauna is improved.

63. The directive nature of policy 3 is reflected in the equally directive implementation section 3.7 which provides:

3.7 Precautionary approach

(1) Local authorities must adopt a precautionary approach toward proposed activities where:

- (a) the effects on indigenous biodiversity are uncertain, unknown, or little understood;
- (b) those effects could cause significant or irreversible damage to indigenous biodiversity.

64. The direction that decision-makers “must adopt” a precautionary approach provides little “wriggle room”. This policy imperative is aligned with Policy 3 of the NZCPS.

65. Policy 4 and Policy 13 of the NPSIB are related. Managing indigenous biodiversity in a manner which promotes resilience to climate change includes promoting its restoration and the restoration of its habitat.

66. Under the NSPIB, matuku/bittern, koitareke/marsh crake, pūweto/spotless crake are identified as “specified highly mobile fauna” in Appendix 2. They are afforded protection under the NPSIB “whether or not they use areas outside the terrestrial environment (such as the coastal marine area or water bodies) for part of their life

⁴⁹ NPSIB 1.4(1)

⁵⁰ NPSIB 1.4(2)

⁵¹ NPSIB Objective 2.1(1)(a).

cycle.”⁵² Policy 15 is therefore relevant – whereby populations are to be maintained across their natural range. Better data collection, monitoring, best practice management of adverse effects on highly mobile fauna and their habitats, are supported by Policy 15.

67. The NPSIB also requires local authorities to recognise the interconnectedness of the whole environment, and the interactions between the terrestrial environment and the coastal environment.⁵³

68. Essentially, the direction in the NPSIB complements that in the NZCPS and confirms policy direction that the adverse effects of the mining proposal on threatened and at-risk species must be avoided.

Consent conditions

69. When it comes to consent conditions, the relevant provisions of Parts 6 (Resource Consents), and 10 (Subdivisions and reclamations) of the RMA apply to the panel, subject to all necessary modifications.⁵⁴ This includes section 108AA. Section 108AA(1) of the RMA sets out the following requirements for conditions:

108AA Requirements for conditions of resource consents

- a. A consent authority must not include a condition in a resource consent for an activity unless-
 - i. The applicant for the resource consent agrees to the condition; or
 - ii. The condition is directly connected to 1 or more of the following:
 - (i) an adverse effect of the activity on the environment;
 - (ii) an applicable district or regional rule, or a national environmental standard;
 - (iii) a wastewater environmental performance standard made under section 138 of the Water Services Act 2021;
 - (iv) a stormwater environmental performance standard made under section 139A of the Water Services Act 2021; or
 - iii. the condition relates to administrative matters that are essential for the efficient implementation of the relevant resource consent.

70. The Environment Court has emphasised that conditions must be clear, certain, enforceable, and properly justified.⁵⁵

71. Conditions must also meet established legal principles. In particular, it is important that conditions explicitly state clear performance standards (as opposed to leaving these to be determined at a later date); and that where expert certification is required, the condition must state clear parameters and specified standards in relation to this.⁵⁶

⁵² NPSIB 1.3(2)(b).

⁵³ NPSIB 3.4(a).

⁵⁴ Clause 18 of Schedule 5 FTAA

⁵⁵ *CJ Industries Limited v Tasman District Council* [2025] NZEnvC 213 at [343]

⁵⁶ *CJ Industries Limited v Tasman District Council* [2025] NZEnvC 213 at [343]

72. Section 83 of the FTAA states an overarching obligation on the Panel when setting conditions:

When exercising a discretion to set a condition under this Act, the panel must not set a condition that is more onerous than necessary to address the reason for which it is set in accordance with the provision of this Act that confers the discretion

73. The ordinary meaning of “onerous” is “difficult to carry out”.⁵⁷ It will require a panel to check that proposed conditions are not more “difficult to carry out” than is necessary to address the reason for the condition, and in some circumstances, it may have a substantive impact, for example where there are two equally effective alternative methods of controlling an effect proposed by participants and one is more onerous than the other

74. Further, section 83 does not detract from the need for clear, certain, and enforceable conditions, with parameters clearly set in conditions as opposed to left to management plans.⁵⁸

75. Further comments on the Applicant’s proposed conditions are set out in Appendix One to these submissions, and Appendix One to Dr Micol’s Expert Evidence.

Section 85 assessment

Section 85(3) and weighting

76. For the purposes of s 85(3) it is necessary for the Panel to assess the “adverse impacts of the project” and the “project’s regional or national benefits”. On these requirements, Forest & Bird submits:

- a. care must be taken by the Panel not to underassess the relative significance of adverse impacts simply because they are not readily quantifiable in monetary terms.
- b. The highly constrained nature of the process under the FTAA means that informational deficiencies should be construed against the Applicant.

77. Forest & Bird’s assessment has identified the following adverse impacts meeting the section 85(3) threshold, individually and collectively (adverse impacts that are sufficiently significant to be out of proportion to any regional benefits):

- a. **Adverse effects on Threatened and At-Risk species** – The proposed mining site and wider surrounds are a well-known habitat, including flyover, supporting rich bird fauna. This includes threatened and at-risk avifauna, including Westland petrel, kororā/little blue penguin, matuku/bittern,

⁵⁷ Collins New Zealand Dictionary, 2017 Harper Collins.

⁵⁸ See also Maitahi Village Decision 18 September 2025 at [684]

koitareke/marsh crane and pūweto/spotless crane. The proposal will have significant adverse impacts on these species. The key effects include light-related disorientation and grounding of Westland petrel, habitat loss and ecological change across the Barrytown Flats, displacement of indigenous species, noise-related effects on avifauna, and significant cumulative effects when the Central Block and Wet Concentrator Plant consents are taken into account.

- b. **Inadequate or uncertain mitigation through conditions** - those effects are compounded by deficiencies in the proposed conditions and by the absence of sufficiently specific and certain controls to ensure adverse effects on avifauna are avoided or appropriately managed. Even accounting for any further changes to proposed conditions, the consents for the Central Block and WCP pose ongoing risks of adverse effects to avifauna, and this proposal only serves to compound those risks.
- c. **Conflict with higher-order planning instruments** – the project is contrary to the NZCPS and NPSIB, particularly the direction to adopt a precautionary approach and to avoid adverse effects on threatened and at-risk species.
- d. **Effects on future generations** – the project will affect an area already subject to climate change threats – particularly on Westland petrel habitat. The needs of future generations include the ability to experience New Zealand’s indigenous wildlife in a healthy and resilient environment; those needs should not be further compromised.

78. By contrast, the evidence does not clearly establish that there will be regional benefits. The regional benefits assessment is incomplete and does not adequately show that the project will deliver significant net regional or national benefits.

79. Forest & Bird’s position is that the application should be declined. The adverse impacts of the project – especially when addressed through the lens of caution required under both the New Zealand Coastal Policy Statement and National Policy Statement for Indigenous Biodiversity – outweigh the economic benefit. If the Panel were minded to grant the application, which Forest & Bird reiterates it strongly opposes, then it is imperative that robust conditions are imposed,⁵⁹ to ensure environmental outcomes promised are achieved.

Dated 28 September 2026



M Downing

Counsel for the Royal Forest & Bird Protection Society Inc.

⁵⁹ See Appendix One to Dr Micol’s Expert Evidence, and Appendix One of these submissions.

Appendix One: Further comments on TCML's proposed conditions

Proposed Condition	Comment
1.4 a. Within 2 months of the commencement of these consents, the Consent Holder must appoint an Accountable Person to be responsible for ensuring compliance with all conditions of these consents. The Accountable Person must be based on-site for a minimum of 4 hours per day, for three days per week. The Accountable Person must: i. Review, submit and ensure compliance with all management plans listed in the conditions of these consents; ii. Ensure there is another person who can provide cover in the event they are sick or unavailable, and to provide for succession ('Nominated Cover Person'); iii. Be the point of contact between the Consent Holder, the Consent Authorities, and the community generally, and pro-actively engage with these parties as required; iv. Deliver on reporting requirements required by the conditions of these consents. b. The Consent Authorities must be advised of the name and contact details of the Accountable Person and the Nominated Cover Person when they are appointed. In the event that the Accountable Person or Nominated Cover Person change, the Consent Authorities must be notified. A sign must be erected at the property boundary adjacent to the site access road, which provides the name and contact details of the Accountable Person and Nominated Cover Person required to be appointed under sub-clause a	In relation to clause (a) of the condition, the Accountable Person should be appointed prior to any activities authorised by the consents occurring. Key compliance, pre-commencement reporting and management plan preparation obligations arise prior to or on Day 1 of site establishment. Requiring appointment prior to commencement in addition to within 2 months of the consent being granted ensures clear accountability and oversight from the outset. Avoiding an enforceability gap during the initial setup phase.
3.0 Review of Conditions 3.1 Pursuant to Section 128(1) of the Resource Management Act 1991, the Consent Authorities may review any of the conditions of these consents by serving notice on the Consent Holder within a period of 60 working days, commencing on each anniversary of the date of commencement of these consents for any of the following purposes: a. To deal with any unanticipated adverse effect on the environment which may arise from the exercise of the consents which is appropriate to deal with at a later stage. b. To assess the effectiveness and appropriateness of imposed monitoring parameters, monitoring regimes and monitoring frequencies and to alter these accordingly. c. To ensure that any management plan required by conditions gives effect to conditions of these consents.	An additional condition is required to enable out of sequence reviews if the activities are found to be having an adverse effect on avifauna (particularly Westland Petrel). This can be drawn from Condition 3.2 the conditions for the Central Block: <i>Notwithstanding the annual review, the Consent Authority may review the conditions of this consent at any time to</i>

	<i>avoid adverse effects on Westland Petrel, in response to reporting under conditions 18.7, 18.8 or 18.15, where an interaction or interactions have continued to occur despite implementation of further mitigation measures in accordance with conditions 18.7 or 18.8.</i>						
<table border="1"> <tr> <td colspan="2" data-bbox="192 507 344 555">6.0 Management Plans</td></tr> <tr> <td data-bbox="192 555 344 719">6.1</td><td data-bbox="344 555 1422 719"> At least 40 working days prior to undertaking any activities authorised by these consents, the Consent Holder must submit the following management plans to the respective Consent Authorities for certification: a. Noise Management Plan b. Avian Management Plan </td></tr> <tr> <td data-bbox="192 719 344 1169"></td><td data-bbox="344 719 1422 1169"> c. Lizard Management Plan d. Native Freshwater Fish Capture and Relocation Plan e. Dust Management Plan f. Rehabilitation Management Plan g. Water Management Plan h. Erosion and Sediment Control Plan Advice Notes: • These are collectively referred to as 'Management Plans'. • Where a plan requires the input of an appropriately qualified professional, the Consent Authorities may engage an appropriately qualified person to peer review the plan as part of the certification process. The cost of any required peer reviews will be met by the Consent Holder. </td></tr> </table>	6.0 Management Plans		6.1	At least 40 working days prior to undertaking any activities authorised by these consents, the Consent Holder must submit the following management plans to the respective Consent Authorities for certification: a. Noise Management Plan b. Avian Management Plan		c. Lizard Management Plan d. Native Freshwater Fish Capture and Relocation Plan e. Dust Management Plan f. Rehabilitation Management Plan g. Water Management Plan h. Erosion and Sediment Control Plan Advice Notes: • These are collectively referred to as 'Management Plans'. • Where a plan requires the input of an appropriately qualified professional, the Consent Authorities may engage an appropriately qualified person to peer review the plan as part of the certification process. The cost of any required peer reviews will be met by the Consent Holder.	Technical management plans require specialist expertise. All of the listed management plans must therefore be prepared by an appropriately qualified and experienced person. Each management plan has its own specific purpose, minimum content requirements, and condition 6.2 also applies. This condition should be updated to include “prepared in accordance with Condition xyz” to a – h. Cross references to 6.2 should also be added.
6.0 Management Plans							
6.1	At least 40 working days prior to undertaking any activities authorised by these consents, the Consent Holder must submit the following management plans to the respective Consent Authorities for certification: a. Noise Management Plan b. Avian Management Plan						
	c. Lizard Management Plan d. Native Freshwater Fish Capture and Relocation Plan e. Dust Management Plan f. Rehabilitation Management Plan g. Water Management Plan h. Erosion and Sediment Control Plan Advice Notes: • These are collectively referred to as 'Management Plans'. • Where a plan requires the input of an appropriately qualified professional, the Consent Authorities may engage an appropriately qualified person to peer review the plan as part of the certification process. The cost of any required peer reviews will be met by the Consent Holder.						
	The previous mine consent required a Wetland Construction and Riparian Planting Plan along with a Lighting Management Plan. These plans will be important to providing protection to the species who utilise the site for habitat, and to avoid adverse effects on the Westland Petrel. These plans should be included in						

		the required management plan, and their minimum content requirements should draw from the Central Block consent requirements.
6.2	a. The purpose of the Management Plans is to implement the relevant conditions of these consents. All Management Plans must include (where relevant): i. The purpose/objective of the plan; ii. Reference to the conditions of these consents that the management plan implements; iii. How each of the relevant conditions have been given effect to; iv. Procedures for implementing the relevant plan; v. Plan auditing check lists; vi. Monitoring programmes and/or monitoring protocols; vii. Feedback mechanisms for adaptive management, including circumstances in which a material change to the management plan would be required; viii. An organisational chart showing staff and contractor positions and responsibilities for plan implementation; ix. Relevant training and induction procedures and training schedules for staff and contractors; and x. Reporting procedures and format for providing the results of any monitoring or surveys required by the plan. b. Where plans require the input of an appropriately qualified professional, the Consent Holder must engage an appropriately qualified person to prepare the Plan.	“Where relevant” is open to interpretation, and for all management plans the matters listed will be relevant and should be deleted. Each management plan appears to have a standalone condition setting out content requirements. To avoid duplication and confusion this condition could be incorporated into each management plan condition. Or an advice note could be added that this condition applies in addition to the relevant condition setting out the purpose/objective and minimum content requirements of each management plan. As set out earlier, all the plans, given their technical nature, require them to be prepared by a suitably qualified person. Clause (b) should be deleted and replaced with “plans must be prepared by an appropriately qualified and experienced person”.

6.5	The Consent Holder may amend a management plan at any time to take into account: - Any positive measure/s to ensure the stated objectives of the management plan are achieved; - Any changes required to further reduce the potential for adverse effects as a result of actions identified in the Annual Work Programme; and - Any required actions identified as a result of monitoring to address a. or b. Where the preparation of a management plan required the input of an appropriately qualified person, any amendment to that management plan must also be undertaken by an appropriately qualified person.	Given the technical nature of these plans, amendments to them will be required to be done by a suitably qualified person. This condition must be updated to reflect that. The previously granted consent for the Central Block allowed for amendments to take into account: “Any changes or opportunities to reduce actual or potential adverse effects on the environment in response to concerns, comments or complaints received from the Consent Authorities and the Community Liaison Group”. This is important to include albeit with the Department of Conservation included, as plans can be amended in response to environmental concerns or complaints.”
6.6	Any amended management plan must be provided to the Consent Authorities within 20 working days of its review, for recertification in accordance with Condition 6.1. Advice Note: The Consent Authorities may engage an appropriately qualified person to peer review the amendments.	This condition enables implementation of amendments to be made prior to formal certification by the consent authorities. Amendments may inadvertently be inconsistent with the conditions of the consent, and in that case should not be certified and the management plan should not be amended. This condition needs to be updated to avoid this eventuality.

7.0 Method of Operations		It is not clear at which point the setbacks start. Usually, the edge of these features would be used. Either way the point at which the setback starts needs to be incorporated into the condition. Furthermore, the setbacks should be delineated by a suitably qualified person as defining the edges of creeks and mean high water springs in particular is a technical exercise. This condition does not exclude any activities from the areas and presumably should. Furthermore, the condition does not set out what they are to be marked with, nor how long the markings need to stay in place. These matters must be covered in the condition. The mine boundaries and consent boundary are undefined terms. They should be defined through a definitions table in the consent conditions, so they are consistently applied.
7.1	a. The mine boundaries must be clearly marked on the ground as per Schedule 1 before any earthworks take place, with the following setbacks applied: i. 20m from the consent boundary; ii. 20m from Granite Creek iii. 20m from Fagan Creek; iv. 50m from the mean high water spring v. 20m from the proposed SNA PUN-049; vi. 20m from all private property boundaries not within the consent area as shown on Schedule 1; vii. 200m from dwellings other than where noise bunds are proposed.	
7.2	For Condition 7.1(a)(iv), the mine boundaries from the mean high water spring must be clearly marked at the start of each mining section: • Section 1: Canoe Creek to Granite Creek • Section 2: South of Granite Creek to Cargill Road • Section 3: South of Cargill Road to Southern Boundary	

		Mine boundaries, mining section and mean high water spring are all terms that should be defined to avoid uncertainty.
7.3	The maximum area of site disturbance must not exceed 16.0 hectares. Advice Note: The disturbed area includes the stripped area ahead of mining, mining void and active rehabilitation areas (including borrow areas).	It is not clear what timeframe this 16.0-hectare limit applies. To avoid confusion, the condition must state the timeframe i.e. at any one time, per year, during mining season etc. Site disturbance is another term that will need to be defined.
9.0 Rehabilitation		Progressive rehabilitation needs to be defined so it is clear at what stages rehabilitation, reinstatement, planting, construction of the wetland are all required.
9.1	The Consent Holder must carry out progressive rehabilitation, to achieve the following requirements: a. Reinstatement of productive pasture;	
	b. Reinstatement of existing creek and drainage patterns to reflect pre-mining catchment areas ensuring no loss of extent and values, with appropriate riparian planting, in accordance with Condition 28.2; c. Construction of wetland and riparian areas in accordance with Condition 16.7.	

9.2	At the completion of mining (final mine closure), the mine area must be fully rehabilitated, in general accordance with a Rehabilitation Management Plan. The objectives of the Rehabilitation Management Plan are: - To create a final landform with a similar contour and profile at final mine closure as that which existed prior to mining but with improved drainage across the site; - To establish vegetation cover on all areas disturbed by mining activity; - To protect freshwater values associated with natural waterways; - To reinstate existing creek and drainage patterns to reflect pre-mining catchment areas ensuring no loss of extent and values; and - To construct and establish a permanent wetland area that contributes to ecological enhancement, hydrological function and landscape integration at final mine closure. Advice Notes: - Final mine closure is the completion of all mining and progressive rehabilitation works. - All Management Plans are required to adhere to the requirements of Condition 6.0.	This condition is uncertain and vague in many respects. For example, “Improved drainage across the site” is difficult to define. Performance standards for drainage need to be included in place of this statement. This is particularly important for hydrology of the recreated wetlands “to establish vegetation cover” and “mining activity” are similarly difficult to define. Performance standards setting out the extents (in m²) and vegetation types to be used to establish cover along with the heights they must reach over a certain timeframe need to be included in this condition. Mining activity must be defined so it is clear what areas require vegetation cover to be established to comply with this condition. - Freshwater values will be reinstated across the site rather than protected, due to them being destroyed and moved during the lifetime of the mine. In any case the values associated with each waterway must be defined in this condition.
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		- The extent and type of wetland similarly needs to be defined, and performance standards set. - The condition does not set out what the purpose of the plan is. At the completion of mining (final mine closure) is inconsistent with previous conditions around progressive rehabilitation. Management plans should only be used to implement conditions of consent. The rehabilitation outcomes sought by this condition (updated to address the uncertainties set out above) therefore need to be included as conditions of consent. The Rehabilitation Plan does not include the following matters: - Removal of buildings, equipment and structures (which will be required to rehabilitate the site) - Post-mining weed and pest control requirements (which will be required to address adverse effects on indigenous species)
9.4	If for any reason active mining ceases for more than 6 months, all disturbed areas must be rehabilitated as required by the conditions of these consents within 12 months from the date of the last mining activity.	The consent for the Central Block only authorised a ceasing of 3 months prior to

		rehabilitation. Forest & Bird considers that term in this consent should be consistent with the Central Block.
10.0	Complaints and Non-Compliance	There is no requirement for establishing the complaints register and procedure. Without this, there is a risk of the surrounding community and environmental groups not understanding how they can make a complaint, and to who complaints should be made.
10.2	Upon receipt of any complaint, the Consent Holder must promptly investigate the complaint, take action to remedy or mitigate the cause of the complaint and within 24 hours inform the Consent Authorities of the details of the complaint and any action taken.	“Promptly investigate the complaint” is subject to interpretation. The condition does not require the Consent Holder to inform the Consent Authorities of the details of the investigation and findings. We suggest refining the condition as follows: “Upon receipt of any complaint, the Consent Holder must immediately investigate the complaint, take action to remedy or mitigate the cause of the complaint and within 24 hours inform the Consent Authorities of the details of the complaint, subsequent investigation, investigation findings and any action taken.”
10.3	Complaints which may infer non-compliance with the conditions of these consents, must be referred to the Consent Authorities within 48 hours of their receipt.	Arguably such a complaint would be more serious. It is not clear why a 48-hour period is given. The period for referral should be 24 hours in line with Condition 10.2.

11.0 Hours of operation 11.1 a. Mining, overburden and topsoil stripping, bund development and any related activities must not operate during the hours of darkness. For the purpose of this condition, hours of darkness are between sunset to sunrise. b. Mining shall not occur between the hours of 0600 and 0700 within 500m of the dwellings located at Lot 2 DP2178, 23, 37, 41, 43 and 50 Warren Road, and 64, 67, 86 and 101 Cargill Road. c. Mining shall not be undertaken on Sunday. Advice Notes: • Sunrise and sunset times can be found at https://www.sunrise-and-sunset.com/en/sun/new-zealand/greymouth • In addition to Condition 12.1, further restrictions on noise are contained in Conditions 13.1 – 13.4 Noise.	The Central Block consent applied hours of operation restrictions to trucking and loading of trucks. Per Dr Micol's Expert Evidence, changes are required to avoid adverse effects on petrel, particularly during hours of darkness. Mining, overburden and top soil stripping, bund development and any related activities are terms that could benefit from being defined. This would ensure the activities that are subject to hours of operation are clearly defined and application of this condition clear. For the purposes of Condition 11.1 (a), should be added to the first advice note. The second advice note may contain a cross-reference error.
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12.1	The consent holder shall ensure that all operational mining activities on site do not exceed the following noise limits at or within the notional boundary of any dwelling: - Daytime 0700 to 2200 55 dB L_{Aeq}(15 min) - Night-time 2200 to 0700 45 dB L_{Aeq}(15 min) and 75 dB L_{AFmax} when measured and assessed in accordance with the latest New Zealand noise standards: NZS 6801:2008 “Acoustics – Measurement of environmental sound” and NZS 6802:2008 “Acoustics -Environmental Noise”. Advice Note: ‘Notional boundary’ is defined as a line 20 metres from any side of a dwelling or the legal boundary where this is closer to the dwelling.		If there are any processing activities not already authorised by other consents, then processing activities should be included in the noise limits.
12.3	The Consent Holder must prepare a Noise Management Plan (NMP) to control day-to-day noise emissions from the site. The purpose is to ensure that disturbance to neighbours bordering the Application Site is avoided or minimised. This NMP must be submitted to the Consent Authority for certification 40 working days prior to commencement of the commencement of on-site works. As a minimum, the NMP must include: - The person responsible for implementing the NMP - Applicable noise conditions relating to noise - Training of staff relating to how to minimise noise and vibration - Mining risk analysis for noise generation - Method for handling noise complaints - Noise monitoring methodology, including frequency, duration, and location.		Per Dr Micol’s Expert Evidence, noise is likely to impact avifauna. The Noise Management Plan purpose should be to control the day-to-day noise emissions from the site and ensure the noise limits set out in Condition 12.1 and 12.2 are met.
	Advice Note: All Management Plans are required to adhere to the requirements of Condition 6.0.		

12.4	a. The Consent Holder must engage a suitability qualified and experienced acoustic consultant to undertake compliance noise monitoring within 30 days of mining or processing operations occurring and thereafter at 3 monthly intervals for the first 12 months of the mining operation. Thereafter, compliance noise monitoring must be undertaken on an annual basis. b. All noise monitoring must be submitted to the Consent Authority within two weeks of completion of each monitoring event. c. If compliance with Condition 12.1 is not achieved, the Consent Holder must: - investigate the reasons for non-compliance and within 20 working days implement additional mitigation measures to achieve compliance with those noise limits. - submit a report to the Consent Authority within 30 working days of the relevant monitoring event detailing the additional mitigation measures that were implemented. d. If additional mitigation measures are implemented, the Consent Holder must engage a suitability qualified and experienced acoustic consultant to undertake further compliance noise monitoring within 10 working days of any mitigation measure being implemented to determine the effectiveness of that mitigation. e. If compliance with Condition 12.1 is still not achieved the Consent Holder must repeat the requirements of c. and d. until compliance is achieved.	Noise monitoring should occur during two periods of high noise during construction activities. As we set out earlier, mining and processing operations requires a definition. This condition does not drive any consideration of the NMP and updates to it. If compliance is not achieved, then the source of noise must be stopped. This should be inserted as a requirement of the condition.
13.0 Avian Management 13.1	a. Prior to and during each breeding season, the Consent Holder shall undertake regular surveys of all areas scheduled for mining to identify any bird breeding or nesting activity. Where surveys indicate that nesting is likely to occur, the Consent Holder shall implement appropriate deterrence measures, including walkovers, visual cues, audio bird scarers, and strategic placement of machinery, to discourage birds from establishing nests. Advice Note: Conditions relating to the Avian Management Plan are Conditions 13.7 – 13.9.	Clause (a) should be specific about which bird's breeding seasons and the times of years The surveys required by this condition need to be included in the condition. Clause (b) does not include a process for where surveys find that nesting has or is occurring. Appropriate deterrence measures are broad, and as set out in the evidence of Dr Micol, will result in adverse effects on

		birds. The deterrence measures must be revised.
13.2	Staff, contractors and visitors associated with the mining activity must not be permitted to bring dogs to the site at any time, except for conservation purposes.	Staff, contractors and visitors not associated with the mining activity are not covered by this condition. Redrafting required: <i>Staff, contractors and visitors to the site must not be permitted to bring dogs to the site at any time, except for conservation purposes.</i>
13.3	a. The Consent Holder must deploy wildlife cameras at suitable locations to detect target wildlife (particularly Kororā and Tāiko) including low spots and creek mouths along the coastal edge of the mine disturbance area and other locations likely to detect activity as determined by a suitably qualified ecologist and set to record for at least 10 nights every month. b. The cameras must be equipped with passive infrared receptors (or other mechanisms to enable night vision capability and motion detection) and be installed by a suitably qualified ecologist. c. Imagery must be reviewed for wildlife interactions at least weekly by a suitably qualified ecologist, retained for a minimum of 6 months, and be made available to the Consent Authority or the Department of Conservation on request.	This condition requires a trigger to ensure that activities that would result in adverse effects on detected wildlife do not occur or are appropriately managed if the target wildlife is detected. The actual wildlife being targeted must be stated in place of the broad terms “target wildlife.” This is to ensure the location and review of imagery is appropriately informed. See Appendix One of Dr Micol’s Expert Evidence for further amendments requirements.
13.4	a. Any interactions with wildlife recorded as a result of the monitoring requirements in the Avian Management Plan including the wildlife cameras required by Condition 13.3, must be reported to the Consent Authority and the Department of Conservation on a weekly	Clause (a) needs a timeframe for the reporting i.e. for the duration of the consent. With respect to wildlife interactions, there may be instances where

	basis from 1 November to 31 January each year, and on a monthly basis from 1 February to 31 October. b. Footage must be made available to the Department of Conservation and the consenting authority as set out in Condition 13.3. c. Any grounded taiko discovered must be reported to the Department of Conservation via their 0800 DOC HOT line as soon as possible. d. In the event that a grounded seabird is discovered, a lighting audit will be undertaken to ensure lighting at the site complies with the requirements set out in the Avian Management Plan and the latest version of the Australian Government National Light Pollution Guidelines for Wildlife.	reporting needs to occur sooner than a week. The condition should allow for this eventuality. Regarding (c) and (d), grounded seabirds requires an actual protocol, which may include stopping works, delineation of an area and stopping works within it.
13.5	a. The Consent Holder must engage a suitably qualified expert to carry out annual penguin surveys of Pakiroa beach and the mine area within 500m of the mining disturbance area to detect the presence of Kororā. If available, the Consent Holder must use a certified conservation dog. If a certified conservation dog is unavailable or unable to complete the survey, human surveys and increased camera monitoring will be undertaken in accordance with the advice of a suitably qualified ecologist. b. The first survey must be conducted within the first 12 months of the commencement date of the resource consent, and at least two annual surveys must be completed before mining commences. c. If penguins or burrows are detected the GPS location must be recorded and the Consent Holder must undertake the following management actions: - If penguins are detected using the mining area to access other habitats, any existing access ways must be maintained and/or works affecting that accessway must be completed in the period April – June (outside the breeding and moult period). - Any potential penguin burrows identified must be investigated, including use of a burrowscope, to determine whether Kororā are using them. - Where any penguin burrows are compromised by mining (i.e. there are direct effects), replacement artificial burrows or nest boxes must be installed at a rate of 2:1. Any additional nest boxes provided must be located within the vegetated coastal foreshore habitat associated with any identified accessways. - If penguins are found within the application site, a specific Penguin Management Plan must be developed by a suitably qualified and experienced ecologist on behalf of the applicant in consultation with the West Coast Penguin Trust. The West Coast Penguin Trust must be reimbursed for reasonable time and expenses associated with consultation on the Penguin Management Plan. - Any deceased penguins found on or near the mine site must be provided to the Department of Conservation for necropsy.	The problems with this condition are addressed in the evidence of Dr Micol. In particular, the condition provides for damage of penguin accessways. Similar to the comments above, the survey needs a trigger to ensure that activities that require management do not occur prior to the surveys occurring. This condition does not require ongoing surveys over the lifetime of the consent. Clause (a) needs to be updated. Access ways requires a definition so it is clear what areas need to be maintained. With respect to iii. “vegetated coastal foreshore habitat associated with any identified accessways” is vague. Can this be identified on a map now, at least the vegetated coastal foreshore habitat?

		With respect to iv. a purpose statement is required for the Penguin Management Plan, along with minimum content requirements. Any dead penguins need to be provided to the Department of Conservation immediately. This should be added to clause v.
13.6	a. The Consent Holder must erect and maintain a penguin fence for each section of mining identified in the Avian Management Plan to deter Kororā from entering hazardous areas. b. The penguin fence must be comprised of geosynthetic mesh to a height of at least 900mm above ground and buried at least 300mm below the ground and with posts no greater than 4m apart. c. The fence installation must be certified by a suitably qualified ecologist as preventing the ingress of Kororā to the active mine disturbance area. d. The certification must be supplied to the Consent Authority prior to mining commencing. e. Upon completion of all mining activities and associated site rehabilitation, all penguin fencing must be removed. Advice Note: The requirement to erect a penguin fence only applies if Kororā are detected within 500m proximity of the active mining disturbance area during pre-mining surveys. If no Kororā are detected within 500m of the active mine disturbance area a penguin fence is deemed unnecessary.	This condition requires a trigger i.e. prior to commencement of any activities authorised by this consent, or prior to [month] each year for the duration of this consent. With regard to clause (d) the condition needs to detail what the statement must include and certification needs a trigger. We suggest the following: “Upon completion of the penguin fence, the ecologist must prepare a written statement certifying that the penguin fence installed meets the requirements of Condition 13.6.” Forest & Bird’s understanding is that the site will be mined in parts, hence e. needs to be adapted to allow some fencing

		removal as the site is mined and progressively rehabilitated. With respect to the advice note, that consent if granted will enable mining over a long time-frame. Kororā may not been detected pre-mining, but may be in later seasons, and in that case a fence would not be required with this advice note.
13.7	The Consent Holder must conduct activities on site in general accordance with an Avian Management Plan (AMP) prepared by a suitably qualified ecologist or ornithologist. The objectives of the AMP are: - To ensure adverse effects on the threatened and at risk birds present in the vicinity of the site and any other threatened and at risk species detected by subsequent monitoring are avoided. - To ensure safe ongoing use of the site and its environs by the birds which currently occur in the area. Advice Note: - All Management Plans are required to adhere to the requirements of Condition 6.0. - Threatened or at-risk bird species refers to the Conservation Status according to the New Zealand Threat Classification System.	Activities must be undertaken in accordance with the Avian Management Plan. The current condition only requires “general” accordance – “general” should be deleted. The management plan should be prepared in consultation with the Department of Conservation.
13.8	The AMP must detail: - A description of the site - A description of the threatened and at risk indigenous birds likely to be present in these habitats and which species require specific mitigation measures - A description of the measures that are required to be implemented to avoid effects on threatened and at risk indigenous birds. - A procedure for managing and responding to Westland Petrel or other wildlife being found on the mine site; - Details of the penguin fence for each Section of mining described in condition 13.6. - Lighting management at the site to comply with the guidelines in Condition 17.2. - A description of the monitoring requirements to assess the effectiveness of the AMP.	The avian habitats (both on site and surrounds) should be detailed in the AMP. Clause (a) should be updated to read: “a description of the site and surrounding avian habitats” Lighting management must comply with Condition 17.2, not the guidelines. This

		needs to be captured in an amendment to clause f.
13.9	The AMP must be reviewed annually by the Consent Holder. Any proposed amendments to the AMP must be submitted to Council for certification and must: - Achieve the AMP's objectives including avoiding effects on any threatened or at-risk indigenous bird species; - Comply with the conditions of this resource consent; - Have been reviewed by an appropriately qualified and experienced ecologist or ornithologist; - Have been provided in advance to Te Rūnanga o Ngāti Waewae and the Buller/Kawatiri office of the Department of Conservation for comment (and feedback received collated and submitted with the amendments to be provided to Council); and - Follow the certification process set out in Condition 6.1. Advice Note: - Any disturbance or relocation of avifauna may require a permit from the Department of Conservation under the Wildlife Act (1953).	Given the technical nature of the plan, any amendments need to <i>prepared by</i> an appropriately qualified and experienced ecologist or ornithologist, not <i>reviewed</i>. Clause (c) needs to be updated to require this.
13.10	- The Consent Holder must engage a suitably qualified expert(s) to undertake all monitoring of avian species from the commencement of consent until at least one year following the cessation of mining activities on this site. - The monitoring must be carried out in accordance with the monitoring requirements in the AMP.	The types of monitoring for effectiveness of the AMP should be known by now. The required monitoring should therefore be set through this condition prior to granting of this consent.

17.0 Lighting			Lighting requires careful management to avoid effects on avifauna. Condition 17.1 permits higher lux on site as the condition only applies to light on adjoining properties. A lux spill needs to be set within the site. The lighting design conditions need to be specific. This specificity was included in consents for the Central Block (but not for the Wet Concentrator Plant). Per the evidence of Dr Micol, the conditions for the Central Block need to be replicated.
17.1	Lighting must not exceed 2.0 lux spill (horizontal and vertical) of light onto any adjoining property, measured at any point more than 2m inside the boundary of the adjoining property or the closest window on the adjoining property whichever is the closest.		
17.2	Lighting must be designed in a manner which adheres to the Australian Government's National Light Pollution Guidelines for Wildlife May 2023 (or subsequent revision), including but not limited to: a. All fixed lighting must be directed downward, shielded to avoid light spill outside of permitted limits, operate primarily in the yellow orange spectrum, and be filtered to reduce blue and violet wavelengths; b. Lights must only illuminate the object or area intended; c. Fixed lights must be mounted as close to the ground as practicable while still achieving site lighting requirements; and d. External lighting must use the lowest intensity lighting possible, while ensuring compliance with workplace health and safety requirements.		