



Department of
Conservation
Te Papa Atawhai

Summary of Submissions Report for Public Notification under 61C(2)(db) of the Crown Minerals Act 1991

Applicant/Permit Holder: Kokiri Lime Company Limited

Minerals Permit Number: Pending MP 60798.01

Permissions Record Number: 87595-AA

To: Wayne Costello, Operations Manager, South Westland (Minister's Delegate)

From: Deidre Ewart, Hearing Chair (Director-General of Conservation Delegate)



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1.0 Purpose of this report

Kokiri Lime Company Limited (KLC) have applied for an Access Arrangement (AA) to access 15 hectares (ha) of public conservation land (PCL) within pending Mining Permit (MP) application 60798.01 in order to undertake rock quarry operations. The application was considered to be significant by the Minister of Conservation (the Minister) by virtue of s 61C(2) of the Crown Minerals Act (CMA). The application was therefore publicly notified by the Department under s 61C of the CMA and in accordance with the public notice and right of objection process set out in s 49 of the Conservation Act 1987 (Conservation Act). Written submissions were lodged and a public hearing was also held to provide submitters an opportunity to speak to their submission.

In making a final decision on the AA application, the Minister is obliged to consider the matters set out in s61(2) of the Act:

“In considering whether to agree to an access arrangement in respect of Crown land, the appropriate Minister shall have regard to:

- a) the objectives of any Act under which the land is administered; and*
- b) any purpose for which the land is held by the Crown; and*
- c) any policy statement or management plan of the Crown in relation to the land; and*
- d) the safeguards against any potential adverse effects of carrying out the proposed programme of work; and*
- (da) the direct net economic and other benefits of the proposed activity in relation to which the access arrangement is sought; and*
- (db) if section 61C(3) applies, the recommendation of the Director-General of Conservation and summary referred to in that subsection; and*
- (e) such other matters as the appropriate Minister considers relevant”.*

This report has been drafted to provide the summary referred to in s61(2)(db). The purpose of this report is:

- 1) To summarise public submissions received during the notification process;
- 2) To summarise key points and issues discussed at the public hearing;

- 3) To provide recommendations as to the extent on which matters raised in the public notification process may be allowed or accepted for decision making under section 61(2) of the Act, and whether any further information may be required to assess them.

This report addresses one of several matters to be considered by the Minister in making a decision under s61(2) of the CMA. A full analysis of s61(2) matters will be provided by Department staff in a separate decision report that will address the content and recommendations made in this report.

2.0 Public notification and hearing process

As noted above, the application was considered to be significant by the Minister of Conservation (the Minister) in accordance with section 61C(2) of the Crown Minerals Act (CMA). The application was therefore publicly notified by the Department under s61C of the Act in accordance with s49 of the Conservation Act 1987.

Following the process set out in s49 of the Conservation Act 1987, the Department notified KLC's AA application in local West Coast newspapers and the departments website and provided submitters 20 working days to make a submission. To help inform submitters the notification provided access to the application and the Significance Assessment Report.

At the completion of the 20 day notification period, a total of 3 submissions were received. All 3 opposed the application. 2 of the submitters advised that they wished to be heard; Forest and Bird (F&B) and Federated Mountain Club (FMC). A public hearing was held in Hokitika on 17 March 2021.

A hearing panel (the Panel) was appointed by the Department. The Panel consisted of:

- Deidre Ewart (Chair) – Business Support Manager
- Victoria Tumai – Solicitor
- Lucy Croft - Permissions Advisor

KLC were invited to respond to submissions at the hearing, after the submitters were heard. The invitation offers the Applicant an opportunity to address issues and/or provide further information on issues raised in submissions and/or correct misunderstandings of information presented by submitters at the hearing.



3.0 Summary of submissions

The submissions are attached as Appendix 1 of this report. This section discusses key issues raised and where possible, consolidates the views of submitters into distinct matters. It is recommended the submissions are each read in full in support of this summary.

A total of 3 submissions were received. All 3 were opposed to the application.

- 1) Federated Mountain Club (independent organisation/club)
- 2) Clare Backes (individual)
- 3) Forest and Bird (independent conservation organisation)

The key matters/issues raised by submitters included:

- the conservation values of the site including flora, fauna, amenity values (noise, recreational access), landscape values
- potential adverse effects of the activity on those values
- inconsistency with the Conservation Act and West Coast CMS
- climate change
- World Heritage recognition (WHA as recognised by UNESCO)
- land classification
- alternative locations
- sustainability of the activity

Conservation values

The submissions all made reference to the conservation values at place. No new ecological information for the site was presented. Some submitters chose to quote the values described in the Significance Assessment Report:

Key values included:

- The area is part of a nationally significant ecological system, made up of unmodified native podocarp forest including 500 + year old trees.
- The area (Karangarua state forest) was classified 'high value' by Coker and Imboden (1982)
- The uniqueness of the ecosystem
- The presence of native fauna
- Recreational values

Submitters quotes relating to the conservation values included:

"Aotearoa New Zealand's podocarp forest ecosystems are found no other place on earth, and in South Westland its significance is identified by the UNESCO". (F&B)

"The area is part of a nationally significant ecological system". (FMC)



Panel comment/recommendation

It is clear all three submitters felt the conservation values were such that the department should not consider allowing for a rock quarry at the site. In terms of relevance for s61(2) of the Act, the assessment of conservation values, including flora, fauna, landscape and amenity would be an integral part of the analysis of 61(2)(a) – (c).

In making the decision whether to grant and AA, s 61(2)(a) and (b) CMA requires the decision maker to have regard to the objectives of the Conservation Act and the purpose of the 15ha of PCL KLC seek access over. This requires consideration of the conservation values on the PCL. The amount of weight given to conservation values is something for the decision maker to determine alongside all the other matters listed in s 61(2).

F&B submitted: *“In F&B’s view, the ecological reports provided by the Department of Conservation understate the significance of the ecological values that will be destroyed by this proposal and appears to have misinterpreted the meaning of representative in terms of assessing significance”.* (F&B)

Panel comment/recommendation

In the Panels opinion, there is no validity to this comment. The departments ecologists are suitably qualified experts. The Panel notes the biodiversity values and significance of those values may be explored in more detail in the final decision report analysis under S61(2)(a) – (c), and further ecological reports and advice may be sought.

Mitigation and residual effects

Submitters comments include:

“No form of mitigation would restore the landscape nor bring back the old growth forest. The mine could not go ahead in such a way as to protect the forest and landform”. (FMC)

“The landform itself will be permanently destroyed”. (Clare Backes)

“The proposed activities would result in the loss of approximately 14 ha unmodified native forest habitat and many dozens of exceptionally large, old growth trees”. (FMC)

“The quarry would require regular blasting, blasting noise can travel up to 10km. The Copland Track is just 4.5 km away....it is likely the blasting will be clearly heard by those on the lower section of the track...”. (FMC)

Panel comment/recommendation

The submissions discussed adverse effects on the conservation values including landform, recreation effects, effects on flora and fauna, landscape and soundscape. It was clear from the submissions there would be unavoidable permanent effects, including the loss of intactness and naturalness by permanently altering a landform within a WHA.

The submitter’s views on the scale and significance of the adverse effects is something the decision maker can consider under s61(2)(a)-(c), particularly where it relates to the permanency of effects.

Submitters did not raise any specific measures to safeguard or mitigate adverse effects, except for recommending the application be declined, to avoid the loss of 14 ha of native forest and to consider alternative locations.



KLC's 'right of reply' included a number of specific measures to mitigate or safeguard adverse effects. The measures proposed are relevant to be assessed and considered *under s61(2)(d) the safeguards against any potential adverse effects of carrying out the proposed programme of work.*

Land classification/Conservation Act 1987

FMC & Clare Backes submitted the application is inconsistent with the purpose for which the land is held, under s25 of the Conservation Act: *"Every stewardship area shall be so managed that its natural and historic resources are protected"*.

Panel comment/recommendation

Land classification is relevant under s 61 (2)(b) CMA - *any purpose for which the land is held by the Crown*, the final decision report would include an analysis of the purpose for which the land is held.

Land classification - National Park comments

Two submissions recommended the land be considered as an addition to the Westland National Park.

FMC submitted:

"...the reclassification process, now prioritized by the Minister of Conservation, Hon Kiritapu Allan, should take place before any decision on a quarry application can take place". (FMC)

The Panel does not consider the submitter's comments relating to land reclassification taking place prior to the application being assessed as relevant, and not something the Decision Maker can take into consideration under s61(2) in the final decision report.

Te Wāhi Pounamu South West New Zealand World Heritage Area (WHA)

The submissions all made reference to the WHA status. Quotes relating to the WHA included:

"This is part of the Te Wāhipounamu World Heritage Area. There is an obligation on DOC to manage the area to preserve its uniqueness. Permanently destroying some features, including landforms and mature trees does not do this". (Clare Backes)

"The area is classified as a UNESCO World Heritage Site – Te Wāhipounamu South West New Zealand World Heritage Area – due to its internationally significant natural values, including pristine forests. When an area is given WHA status, the expectation is that these resources will remain protected. If they become reduced or lose their protection, World Heritage status can be lost". (FMC)

Panel comment/recommendation

WHA status is relevant under 61(2)(e) *any other matters that that Minister or those Ministers consider relevant*. As part of 612(e) the final decision report would include a full analysis of the WHA status.

The panel notes there is an internal department WHA team and the decision maker may wish to consider consultation and/or advice from this team, to support WHA analysis and WHA operational guidelines, and the obligations and responsibilities on the department in regards to managing such areas.



Climate Change

All 3 submissions made reference to climate change. One example from the written submissions includes:

“The loss of 14 ha of old growth forest is a step in the wrong direction regarding New Zealand’s carbon objectives. It is disappointing that DOC’s significant assessment report does not consider the impacts of removal of the forest with respect to carbon sequestration. FMC suggests work is undertaken to consider the role this forest plays with regard to carbon sequestration and that any decision on this application provides for the best outcome with respect to the aims of the Climate Change Response (Zero Carbon) Amendment Act”. (FMC)

Panel comment/recommendation

KLC’s application and right of reply also addresses climate change as an issue.

In terms of relevance for s61(2) of the Act, the assessment of the effects (positive and negative) of the activity on climate change would be analysed under s61(2)(e): *any other matters the Minister or those Ministers consider relevant.*

Both the Conservation General Policy 2005 and the West Coast Conservation Management Strategy note the importance of ecosystem services. The Conservation General Policy defines ecosystem services as *“a wide range of conditions and processes through which natural ecosystems, and the species that are part of them, help sustain and fulfil life.”* The West Coast CMS continues that: *“Such services need to be preserved in order to ensure the sustainability and resilience of the natural environment, human’s use of that environment and ultimately the survival of humans and other species.”*

Therefore, any activity that has the potential to increase the effects of climate change on ecosystem services is relevant, particularly as it relates directly to the assessment of adverse effects that underpin the analysis for s 61(2)(a)-(c).

The panel notes there is an internal departmental climate change team and the decision maker may wish to consider consultation and/or advice from this team, to support climate change analysis and the obligations and responsibilities on the department in regards to this matter.

Access

FMC and Clare Backes submitted the application would restrict recreational access into the area.

“The area in question is used by hunters, as the Sugar Loaf road provides excellent access to the Sugarloaf block. The public road is in fact the only way to reach the area..... it is likely recreational access will be lost”. (FMC)

Panel comment/recommendation

The Panel understands the public road is managed by the Westland District Council, as opposed to the department, and access may be considered a non-issue. However, as part of s61(2)(b) the final decision report would include an analysis of public access, as adverse effects of the activity such as blasting could potentially impact such access. The Panel acknowledges KLC’s right of reply included mitigation measures in regards to this potential issue that would be taken into account and addressed as part of the application.



Inconsistency with West Coast Conservation Management Strategy (CMS)

FMC submitted the application was inconsistent with the CMS but did not provide any specifics. F&B submitted the application was inconsistent with the CMS outcomes, particularly for indigenous biodiversity, and was also inconsistent with other statutory obligations to protect and maintain the indigenous biodiversity.

Panel comment/recommendation

The West Coast CMS is a relevant consideration under s61(2)(c) *any policy statement or management plan of the Crown in relation to the land*. As part of s61(2)(c), the final decision report would include an analysis of the application against the West Coast CMS.

Insufficient information

F&B submitted: *“there is insufficient information and independent technical reports for the general public to make an informed submission..... neither an expert invertebrate survey nor a landscape impact assessment appears to have been provided to the public”*. (F&B)

“The lack of expert information beyond that provided by the applicant and the Department of Conservation creates a significant challenge for making an informed submission. On that basis alone, the application should be declined”. (F&B)

Panel comment/recommendation

The department’s Significance Assessment Report included a report from two of the department’s ecologists, detailing the sites flora and fauna.

The application describes in brief the landscape values and the potential adverse effects on these values. The application states:

“The landscape can only be viewed from the air, no public walkways or public roading will have a visual observation point of the quarry. As the quarry develops in height it may become visible from SH6 from south to north approaching traffic. There a number of ways to mitigate such landscape effects, including buffering strips and planting”.

No independent Landscape Impact Assessment was included in the application. The decision maker should consider obtaining further information from the Applicant in regards to a landscape impacts assessment as well as the proposed mitigation measures from the applicant to aid in the final decision making process.

Alternative locations

All three submissions discussed alternative locations.

“There is no mention of other rock sources in the area, what other areas have been considered for quarrying? This is part of the concessions process as laid down in the Conservation Act”. (Clare Backes)

“A thorough assessment of alternatives is vital”. (F&B)

Panel comment/recommendation

The Panel reiterates the application is for an Access Arrangement, being considered under the Crowns Minerals Act, as opposed to being a concession, considered under the Conservation Act. Consideration of alternative locations does not apply to the CMA. The points raised regarding alternative locations is not a relevant matter in the s 61(2) CMA considerations.

Sustainability

FMC submitted the current amount of short-term rock protection on the West Coast appeared unsustainable.

Panel comment/recommendation

The sustainability and economic aspects of the proposal would be addressed under *s61(2)(da) and (e) the direct net economic and other benefits of the proposed activity in relation to which the access arrangement is sought and such other matters*

No new mines

F&B made note of the Prime Ministers 2017 ‘speech from the throne’ that stated there would be “*no new mines on public conservation land*”.

Panel comment/recommendation

Whilst the ‘speech from the throne’ declares government’s priorities with respect to its legislative agenda, it is not legislation nor considered a policy statement as referred to in *s61(2)(c) any policy statement or management plan of the Crown in relation to the land*; and therefore is not a matter that the decision maker can have regard to under s61(2)(a) – (e) of the Act.

4.0 Applicant’s right of reply/ comments

KLC were offered the opportunity to speak at the public hearing at the conclusion of the public submissions. The ‘right of reply’ is provided so that an applicant can respond or clarify matters raised in submissions where it may be helpful for the Panel or aid the assessment of the application. They may also offer or discuss potential solutions, or ways forward for issues, where appropriate.

KLC acknowledged the submissions made by members of the public. A written summary was provided to the panel. It was agreed that this summary would be added to, and form part of, the AA application.

KLC’s right of reply states: “*On the granting of an access arrangement application an authority to enter and operate (AEO) is required, and it is at this stage when land impacts assessments for the annual period will be conducted and included in the annual work programs (AWP) submitted*”.

The Panel/department would clarify a “land impact assessment” of the AA area in its entirety is undertaken as part of the initial assessment under s61(2)(a) – (e), as opposed to via the AWP.

KLC reiterated (as discussed in the application) the old Sugarloaf quarry had operated as a quarry previously to the area becoming a world heritage area (approximately 1 ha of the 15 ha AA area applied for).

KLC elaborated the Sugarloaf Quarry has the same perimeters as other approved quarries within the WHA (Okuru Quarry).

The Panel would clarify the applicant has applied for 15 ha, not 1 ha, therefore the area applied for is not the same perimeters as has been approved elsewhere, and the assessment of the proposed AA area (15 ha) would include assessment of the existing modified 1 ha old quarry area (Sugarloaf Quarry).

KLC's right of reply included mention of a submission in support of the application, from NZTA. The Panel notes NZTA's submission was formally withdrawn and cannot be considered within the Summary of Submission Report/Public Notification formal process.

5.0 Summary and discussion

The submissions opposed the application and argued that the conservation values at the site and potential effects of the application on those values made the proposal unacceptable and inconsistent with the purpose for which the land is held, the Conservation Act and the West Coast CMS.

The decision on the AA application is being made under the Act (Crown Minerals Act 1991). The decision maker is therefore obliged to give effect to the purpose of the Act, *"to promote prospecting for, exploration for, and mining of Crown owned minerals for the benefit of New Zealand"*. Section 61(2) of the Act then requires the decision maker to have regard to other legislation where appropriate, in this case the Conservation Act.

Two submitters felt that because the application was at odds with the Conservation Act, and the Department's role in protecting the natural heritage of New Zealand, the application should be declined.

However, Section 61(2) of the Act requires a wider consideration, and one that balances the primary purpose of promoting minerals exploration and mining with conservation purposes. An important point is that "have regard to" and "give effect to" have different levels of obligation. "Give effect to" is an imperative, while "have regard to" is in effect lower in the hierarchy. In effect, s61(2)(a)-(c) of the Act directs the decision maker for this application to have regard to, but not give effect to, the Conservation Act and the Department's role in



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administering it. The core concerns of the submissions would be addressed through the assessments of s61(2)(a)-(c).



6.0 Recommendations

In addition to the recommendations set out in the submissions summary section as to the extent the issues/points raised in the submissions are allowed, to aid in the final decision making process, the panel also recommends:

- KLC provide further information relating to quarry design and layout, including diagrams and the described “perimeter vegetation stands” as described in the Application.

A handwritten signature in black ink, appearing to read 'Deidre Ewart'.

Deidre Ewart
Hearing Panel Chair
Department of Conservation
Date: 2 June 2021

Report written by panel Deidre Ewart, Lucy Croft, Victoria Tumai



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Appendix 1: Copy of Submissions



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Appendix 2: Applicants written right of reply



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Appendix 3: Significance Assessment Report



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Appendix 4: Application