



Notified Concession Final Report to Decision Maker

Final Report to Decision Maker: Jan Hania; Director, Conservation Partnerships, North & Western South Island Region

Notified Application for a Notified Easement Concession

Applicant: Buller Coal Limited (BCL)

Permission Record Number: 34684-OTH

File: PAC-11-04-420-03

The purpose of this report is to provide a final thorough analysis of the application within the context of the legislation, the statutory planning framework and actual and potential effects, so the Decision Maker can consider the application and make a decision whether it should be granted or declined. As part of this assessment it analyses the submissions received from the public notification process.

1.0 Summary of Proposal

A decision in principle (subject to public notification) was made to grant this concession on the 20th May 2013. A copy of the Notified Concession Officer's Report to the Decision Maker (Officer's Report) is attached as Appendix 2 (DM 1191066). The Intention to Grant was publicly notified on 19th June 2013, and 246 submissions were received: 189 in support (128 of these were form submissions); 53 in opposition; and 4 neutral. Following the hearing one submitter, Forest and Bird [233], changed its submission from one of opposition, to a neutral one.

There were 21 submissions received after the notification period which were not accepted.

A hearing held in Westport on the 24th and 25th September 2013 heard 11 submitters by phone or in person. The outcomes of public notification are dealt with in sections 3 & 9 of this report.

Please note that a draft of this application was sent to the applicant for comment on 26 November 2013. They responded on 11 March 2014 and this response included a request to amend the proposed route of the road. BCL no longer wish to realign the road but rather to use the existing road between the Mt Rochfort turnoff and the Mining Permit boundary. This request is detailed and considered in section 8. The report (up to the end of section 7 has not been rewritten) but rather where the report refers to the original proposal to reroute the road the change is noted and the final recommendation is explained in response to each of the applicant's comments in section 8.

Type of Concession Sought: Notified Easement

Term Sought: 10 years

Description of the Proposed Activity: Upgrade, maintenance and use of Whareatea Road located on public conservation land for the purposes of access to and transport of coal from BCL's Escarpment Mine, Denniston Plateau.

Description of Locations where Activity is Proposed:

Whareatea Road is on Denniston Plateau, approximately 15km north east of Westport. The status of the land is Mount Rochfort Conservation Area.

A copy of the application is attached as Appendix 1.

2.0 Information Available for Consideration

2.1 Relationship to Officer's Report

This report is in addition to the Officer's Report which provided information to allow the Decision Maker to make a 'Decision in Principle' (subject to public notification). It does not repeat the analysis in the Officer's Report.

Section 3 of this report summarises and provides an analysis of the key themes and issues from submissions made during the public notification process. It also makes recommendations as to the extent to which the objections and comments should be allowed or accepted, as required by section 49(2)(d) of the Conservation Act 1987.

It summarises the main considerations the Minister must take into account when making the final decision in section 9.

A draft of this report and a draft easement were sent to the applicant for comment on 26 November 2013. Comments from the applicant were received on 11 March 2014 and are included in section 8 of the report.

2.2 Further Information Received

At the hearing the Chair requested that BCL address a number of matters in their opportunity to provide clarification during the hearing, and also further information to be supplied after the hearing. This further information was supplied on 8th October 2013 and can be found in Appendix 5. The key matters were around the road works carried out to date under the existing Easement, the applicant's response to possible restrictions on operating hours, and impacts on the Waimangaroa Water Supply Catchment. BCL also volunteered comments on the compensation conditions which were not a part of the public hearing process but do form part of the final report as detailed in section 7.2.

Further discussions were also had with BCL around clarification of the track names and factors to consider for any restrictions on operating hours.

2.3 Matters of Clarification since the Decision in Principle

A number of matters should be noted that have been clarified, or have come to light since the Decision in Principle. These will have some bearing on the consideration of the submissions received.

2.3.1 Denniston and Whareatea Roads

The Officer's Report noted (in para.291) that it is BCL's view that Denniston Road, which runs from State Highway 67 up onto the Denniston Plateau where it joins Whareatea Road, is a legal road vested in the Buller District Council. BCL considers it is therefore outside the scope of the concession application and that the Department is not the appropriate authority to be addressing road safety measures. The Department responded that it considered it appropriate to include those sections of the Road that are on public conservation land notwithstanding that the District Council is the lead agency for traffic safety.

In response to a submission from TNL Freighting and further comments from BCL made at the hearing it is accepted that where a road has been used historically by the public, constructed and maintained by the District Council and where the Department does not undertake maintenance nor require concessions from other commercial operators using the road, then the road at least to its formed width is public road and is not public conservation land.

Accordingly the recommendation in this report is that BCL does not require a concession for the use of Denniston Road nor the sealed section of the Whareatea Road, those areas are public road and not public conservation land. Therefore any submissions on Denniston Road and the sealed section of Whareatea Road are no longer considered to be within the scope of this application. Many of the submissions related to both the Denniston and Whareatea Roads interchangeably, and where the comments may also include or apply to the non-sealed section of Whareatea Road then those submissions are considered relevant.

2.3.2 Existing Easement; Current Application; Activity Undertaken; Subsequent Change of Application; and Effects of Changes

Existing Easement

BCL holds an existing Easement (WC-33364-OTH) for upgrade, maintenance and use of Whareatea Road. The Easement specifically allows BCL to upgrade the Road and replace a number of culverts. The activity is specified in Schedule 1 as:

“Upgrade and maintenance of the Whareatea Road (4km long x 10m wide) from the public conservation land boundary near Denniston to the northern boundary of Mining Permit 51-279 as demarcated by the pink concession boundary line in the plan in Schedule 4)

A right of way along the “Whareatea Road.”

The Easement specifies the total footprint covered by the Concession. Special Condition 2 states that:

“The Concessionaire must ensure that upgrade and maintenance of the Whareatea Road, including vegetation clearance, is kept within the existing road footprint, and to a maximum width of 10m”.

The Easement is a traditional right of way and does not specifically limit the type of vehicle or frequency of use, so that under the Easement BCL can haul coal without restriction along the road using trucks. However, the Department does have the ability to control vehicle use under Special Condition 24, which states that *“The Grantor may at any time impose restrictions on the number or type of vehicles passing over the Easement Land.”* In addition, Special Condition 25 gives the Department the ability to review the Concession conditions and impose further conditions to manage adverse effects if deemed necessary.

The existing Easement is due to expire on 31st May 2017.

Current Application

BCL’s current application for an easement supplied on 11th September 2012 states that *“[T]he works enabled by the [existing] concession are... limited in terms of physical scope and purpose for the commissioning of Escarpment Mine. They will not provide a road of sufficient dimension and to an engineering standard for use as a haul road. A further approval is... required to increase the width of the road beyond its existing footprint, with associated cuts and fill, to enable it to be safely and efficiently used as a haul road.”* The current application is to upgrade the road to a 6m unsealed carriageway with 0.5m shoulders on each side of the road.

The Officer’s Report in paragraph (para.) 40 notes that the disturbed edges vary between 4 to 8.5 m wide. It also notes (in para. 44) that shape files were used to map the area applied for and from the map the width of the proposed road was measured as being between 8-8.5 m including the road surface, swales, shoulder improvements and cut and fills.

The recommended Special Conditions in the Officer’s Report, however, only included: permitting widening to 6m and re-surfacing of the existing Whareatea Road footprint; constructing 0.5m swales on each side of the road and; and constructing 10 formal lay-bys. In other words, the recommended Special Conditions did not allow for other aspects of the road widening such as cut and fills, and the 6m plus 0.5m each side does not appear to be wide enough for BCL to sufficiently undertake the

activity. Furthermore, the existing Easement allows for a wider corridor than the current application proposes. Clarification around these matters was sought from BCL at the conclusion of the hearing.

Activity Undertaken Under Current Easement

Since the Decision in Principle and public notification BCL has upgraded the road surface including widening the running surface of the road in some sections within the actual footprint of the road (base). The existing Easement authorises the upgrade of the “existing road footprint, and to a maximum width of 10 m” and this has enabled BCL to undertake much of the road upgrade proposed in the application for this concession, from the end of the seal to the Mt Rochfort turnoff. This means that there are now areas where the width is in excess of the 7m (6m surface plus two 0.5 m swales) proposed under the current application. All lay-bys/carparks but the one at Mt Rochfort turnoff have also been constructed. This has all been done within the existing road footprint and within areas with little to no vegetation cover.

In BCL’s further information supplied at the request of the Hearing Chair on 8 October 2013 they stated:

“Buller Coal has no intention of altering the existing road footprint as far as the turn off to Mt Rochfort (there are very few areas where the application area diverges from existing road footprint – and any such divergences are very minor in nature); and for the footprint beyond the Mt Rochfort junction (which has only been partially formed from previous operations) BCL intends to form this road consistent with the current easement application.

And further:

“...clarification was sought during the hearing as to the areas where the existing footprint is generally up to 10m wide as against the application (which is for a running surface of less than 10m). BCL has no intention of reducing the existing road footprint as the slightly wider footprint enables a safer road particularly given the number of submitters around the conflicts of use along this road.”

BCL further requested the following condition:

The Concessionaire is permitted to undertake the following construction and maintenance activities:

- a Maintain the existing road (existing at the date of this concession) within its constructed footprint;*
- b widening to 6m and re-surfacing of the existing Wharetea road footprint (3,165m)*

BCL also suggested that the road be surveyed by LIDAR.

Change of Application and Subsequent Change of Recommended Conditions

The Department accepts that BCL has completed its upgrade as far as the Mt Rochfort turnoff including widening some sections of the running surface, and it has done so within the terms of their existing Easement. BCL has advised the Department that the road is up to 8.5m wide in some places (including swale drains), making it wider than the 7m proposed under this application. This existing road from the end of the seal to the Mt Rochfort turnoff is in existence, and has been authorised, and accordingly needs to be considered as such in relation to the current concession application. It is recommended that any new concession should be for the use and maintenance of the road footprint as currently formed.

The section of road south of the Mt Rochfort turnoff and the proposed re-routed 100 m section will still require authorisation for the construction, use and maintenance of a 6m (plus two times 0.5 m) width as was applied for in this application. BCL have stated that they may decide not to construct the new 100m section to the west of the existing road, instead relying on the existing Easement permitting the upgrade of the existing road footprint. (As noted in the summary of the proposal in section 1 at the

applicant's comment stage BCL informed the Department that they no longer wish to re-route the road, please see section 8 for further discussion).

For the purposes of clarity the best and most practicable way to define any permitted activity will be for BCL to supply a LIDAR or other suitable survey of the Whareatea Road on completion of road construction and prior to any hauling of coal along the road. The survey must show the edge of the road footprint, (including within the footprint: the road shoulder; lay-bys; the carpark at the Mt Rochfort turnoff and; culverts, swales and other drainage structures).

In addition, recommended Special Condition 15 of the Officer's Report required that BCL must surrender the existing concession once construction has been completed, rather than surrender it on any approval of the current application. This arises from the undesirability of there being two easement contracts with different requirements for the section between the end of the seal and the Mt Rochfort turnoff. It is recommended that once road construction has been completed, the Concessionaire must surrender their existing concession prior to any hauling of coal along the road.

The Effects of Changes

As BCL has constructed the road between the end of the seal and the Mt Rochfort turnoff within the current road footprint (i.e. without clearing vegetation) under the authorisation of its existing Easement, and has now changed the application for this stretch to simply maintenance and use, the adverse effects are considered to be less than the application that the Officer's Report had originally assessed.

The upgrade works are now limited to a 350m stretch of road between the Mt Rochfort turnoff and the proposed mine pit (albeit including the area that will include the greatest degree of modification). (Please note that this stretch no longer includes the 100m realignment.)

BCL's existing Easement expires in May 2017 providing BCL with a right of way until then. This application if approved would extend their right of way by an additional 7.5 years.

In conclusion, given the changes that have occurred since this application was lodged, some of the potential effects raised in the Officer's Report and the submissions have been reduced in extent by a substantial degree, or are no longer considered relevant. This will be noted throughout the following analysis of submissions where relevant.

2.2.3 Corrections to the Road Descriptions

One further correction is considered necessary for clarity and that is the description of a section of the road applied for and considered in the Officer's Report.

In para. 33 of the Officer's Report the second section proposed to be widened and re-surfaced should read "the existing track through Whareatea Mine Site (i.e. the track over the dewatering pad)". This change is therefore also required in the reference to this track in the report's appendix 3 – Special Conditions 3.b. (Please note this will no longer be relevant as the route is no longer proposed to go through this area.)

3.0 Public Notification and Summary of All Submissions and Recommendations as to the Extent to Which they Should be Allowed or Accepted Pursuant to Section 49(2) and (3) of the Conservation Act 1987

This section considers all the matters relevant to Section 49(2) and (3) regarding the public notification process and the Director General's responsibilities. It provides a summary of all objections and comments received, and a recommendation as to the extent to which they should be allowed and if allowed the extent to which they are accepted. It also recommends how any submissions accepted should be incorporated and any effect they may have on the original "Decision in Principle" to grant a concession.

Public Notification

The Intention to Grant was publicly notified on 19th June 2013, and 246 submissions were received: 189 in support (128 of these were form submissions); 53 in opposition; and 4 neutral. Following the hearing one submitter, Forest and Bird [233], changed its submission from one of opposition, to a neutral one.

There were 21 submissions received after the notification period, which were not accepted.

A hearing held in Westport on the 24th and 25th September 2013 heard 11 submitters by phone or in person. The outcomes of public notification are dealt with in this section and are summarised in section 9 of this report.

Two submitters queried the legality of the hearing process, in particular, the absence of the Director-General of Conservation and the delegation of his role at the hearing. This was noted by the Director-General's delegate. The concerns were not accepted as the Act does not require the actual attendance of the Director-General; also S.58 of the Conservation Act enables the Director-General to delegate his powers, which was so done.

Full copies of submissions can be found on file, along with BCL's opportunity to clarify matters raised during the hearing (Synopsis of submissions in reply on behalf of Buller Coal Limited). A summary of the key matters raised in each submission (Submission Summary) can be found at Appendix 3 (DM 1284550). A summary of notes from the hearing (Record of Comments made at Hearing), including BCL's synopsis, can be found at Appendix 4 DM1303036.

Summary of All Submissions and Recommendations as to the Extent to Which they Should be Allowed or Accepted Pursuant to Section 49(2)(d) of the Conservation Act 1987

Analysis of Submissions

Following the analysis of the 246 submissions and the hearing, a number of key themes/issues emerged. These are summarised in sections 3.2.1 to 3.2.6 below, with recommendations given as to the extent to which they should be allowed or accepted.

Terminology and Definitions

Allowed - refers to whether the contents of the submission are relevant (allowable) under Part 3B of the Conservation Act 1987 – only relevant matters can be considered.

Accepted - refers to whether the Director General's representative agrees with the comments or suggested changes proposed in the submission and whether the operating conditions of the concession should be altered.

Layout

Where submission points are summarised they are in italics.

Direct quotes are in italics and quotation marks.

3.1 Submission comments that cannot be considered

Only matters which can be considered under the Conservation Act 1987 can be considered by the Minister. The following matters raised in a number of submissions fall outside the scope of the legislation and are therefore not relevant for consideration as part of this process.

The following submitter comments are not able to be considered as part of this process:

- Denniston Road (see section 2.3.1)
- Any considered economic benefits or disadvantages
- The effects of burning coal – the haul road application is for access rather than mining coal
- The effects of coal on climate change - the haul road application is for access rather than mining coal
- The effects of dust/coal dust on the wider environment outside public conservation land where it is the responsibility of the Regional Council
- The ability of BCL to use their other consents, including providing 22 million dollars for pest and predator control for their Escarpment Mine – this is provided under the Access Arrangement for the mine rather than a consideration of this easement application for road access

3.2 Submission comments that can be considered

The issues raised in the submissions that can be considered are grouped into common themes and listed and then analysed below:

- 3.2.1 Submissions Regarding the Effects of the Proposed Activity and the Officer's Report Analysis of those Effects on Natural Values
 - 3.2.1.1 Browntop
 - 3.2.1.2 Rehabilitation
 - 3.2.1.3 Weed Control
 - 3.2.1.4 Effects of Dust on Flora, Fauna
 - 3.2.1.5 Freshwater
- 3.2.2 Submissions Regarding the Effects of the Proposed Activity and the Officer's Report Analysis of those Effects on Historic Values
- 3.2.3 Submissions Regarding the Effects of the Proposed Activity and the officer's Report Analysis of those Effects on Recreation Values
 - 3.2.3.1 Safety Concerns
 - 3.2.3.2 Effects of Dust on Visitors
 - 3.2.3.3 Effects of the Industrial Activity on Natural Quiet and Solitude
 - 3.2.3.4 Effects on Existing Concessionaires
- 3.2.4 Purpose for Which the Land is Held - Section 17U(3)
- 3.2.5 Consistency with Relevant Management Strategies and Plans – Section 17W
- 3.2.6 Completeness of Information – Sections 17S and 17T

3.2.1. Submissions Regarding the Effects of the Proposed Activity and the Analysis of those Effects on Natural Values

Submissions opposing any approval of the concession commented that the site was a unique area with high biodiversity and of national or international significance, concluding that the proposed impacts were unacceptable in this environment, in particular:

The Plateau has unique nature heritage values of such significance that they satisfy certain criteria of the World Heritage Convention and also Ramsar Wetlands Convention... Temperate grasslands remain the world's most threatened and least protected major biome, despite the services they contribute to human welfare [88. Sir Alan Mark]

The Buller Coal Plateaux is a complex series of geological formations and ecosystems providing habitat for an array of endemic species [233. Forest and Bird]

The Denniston plateau is a place of high conservation value, with internationally significant habitats and ecosystems [185. Deborah Rosin]

Submissions opposing the grant of the concession commented that given the unique and high values the application should be declined, particularly:

Given the unique nature conservation values on the parts of the Denniston Plateau implicated in this proposal...I formally recommend that this application be declined [88. Sir Alan Mark]

While the area of the environmental impact of widening the road will not be major, threatened species such as weka...are found in this area...the proposal will cause some fragmentation of the environment and affect wildlife beyond the immediate area of road widening...[123. Diana Zadavec]

Comment

The Department and the Officer's Report share the view that the plateau is an important area of unique geology and biodiversity that scores highly in a number of different classification systems, whether it be the Department's threatened species/ecosystems or priority areas, or under the RMA significance criteria, or international systems of classification such as in those used by Ramsar or the World Heritage Convention.

Where the Officer's Report differs from the submissions in opposition is in the degree and weighting of the actual effects of the proposed activity on the values and whether sufficient measures are available to minimise the effects to an acceptable level. This is particularly given there is an existing road for most of the area applied for. Wellington Botanical Society [70] *commended BCL for its efforts in reducing adverse effects by endeavouring to remain within the current disturbance zone.* It is also now noted as explained in section 2.3.2 that BCL have now undertaken much of the construction work within the existing road footprint and therefore the degree of some of these effects, particularly from road widening, will be less than previously estimated. The total to be cleared of intact native vegetation is now estimated at 0.10ha. The further 0.09 ha of vegetation clearance having been avoided. (Please note that this has been reduced further as BCL have confirmed they no longer wish to realign the road.)

It is however noted that, while on the whole the proposed management plans and conditions were considered appropriate, there were some submissions which suggested measures and conditions that could further avoid, remedy or mitigate the adverse effects anticipated. The key changes submitted were with regard to the use of browntop, rehabilitation measures, weed control, dust and runoff minimisation, and monitoring of freshwater. These suggestions are discussed individually below.

Recommendation

It is recommended that submissions relating to the natural values and effects on those values overall are allowed on the basis that they relate to matters of relevance to the Minister of Conservation.

It is recommended that submissions opposed to the proposal on this basis are not accepted as requiring the application to be declined as there was no evidence or compelling reasoning provided on these matters which would over-ride the analysis in the Officer's Report in respect of the overall effects on natural values. This recommendation needs to be read in the context of the construction work associated with most of the Easement area has been completed under an existing Easement.

3.2.1.1 Browntop

A number of submitters in opposition commented on the need for caution when using browntop *Agrostis capillaris* due to its aggressive nature, suggesting other native/endemic species be used in preference, or that browntop be applied only at a very low rate.

[88. Sir Alan Mark, oral submission] *Browntop would volunteer on its own anyway, and if browntop was used to prevent erosion it must be at a low rate...but with the proviso that the Department also be notified of any situations where sowing of browntop is thought necessary before sowing, as was suggested by the Wellington Botanical Society [70].*

Comment

Browntop is an aggressive exotic grass species that is already present on the plateau. Although it would not be introducing a new weed to the area, sowing at a higher rate would make succession by native

species more difficult and it is agreed that all efforts should be made to avoid its use. Sir Alan Mark [88] *acknowledged during the hearing that some appropriate species such as the locally endemic snow tussock Chionochloa juncea may be suitable but were difficult to obtain seed from due to a narrow seeding window. With other species it may also be difficult to obtain enough locally sourced seed.* Other areas that are steep and require hydro-seeding may be too wet for alternatives such as lichens. The Officer's Report identified the issue and recommended that indigenous species must be used in preference, but acknowledged that in some situations it may be appropriate where there is no other practicable erosion control.

Recommended Special Condition 15 in the Officer's Report states Browntop must *"only be used in areas where there is significant risk of soil loss and/or sediment generation, and where there is no other practicable erosion control method available"*. This is considered an appropriate condition but in addition the management of any browntop should be prescribed in the Revegetation and Weed Control Plan which will be the forum to discuss its use and where the Department's approval is required. It is also considered that clarification is needed in the conditions regarding the Plan process and the requirement for the Department to approve the Plans.

Recommendation

It is recommended that the submissions be allowed, and accepted in that sowing of browntop should be avoided where possible and its use must be reported to the Department. It is recommended that browntop and its application be referred to specifically in the items that must be prescribed in the 'Revegetation and Weed Control Plan' conditions. The process and review conditions of the plan should also be clarified. (This is no longer considered to be needed at all as there are no-longer any significant construction activities to be undertaken.)

3.2.1.2 Rehabilitation

Submissions relating to the method of rehabilitation were received from those opposed to the proposal. Wellington Botanical Society [70] commented: *"that the Department needs to be very clear about the outcomes it wants, and that it should establish short and medium term rehabilitation objectives before asking BCL to prepare the Revegetation and Weed Management Plan and the associated Plan for Monitoring Indirect Effects"*. They commented that rehabilitation appeared to have a goal of revegetation rather than restoring local natural ecosystems. The Society considered that *"BCL's recommendation to replant only with locally-sourced manuka seedlings and to allow for greater species diversity to arise over time through natural succession"* was not the best option. They considered that there were opportunities for more vegetation direct transfer (VDT) which would ensure shorter term recruitment of a greater range of species. They also noted that it was important that there not be double handling or stockpiling of the material for VDT.

Comment

It is agreed and noted that establishing medium term goals is important. It is also considered that ensuring shorter term species diversity through establishing some plants through VDT is a desirable objective. This is a rehabilitation method put forward by the applicant and specifying where it is appropriate is within the scope of the 'Revegetation and Weed Control Plan'. This plan would also ensure that clearance and rehabilitation methods are planned to ensure the viability of soil and plants. As the Society also noted there is a significant body of learnings and papers now available on rehabilitation methods from trials and rehabilitation undertaken on the Plateaux to date.

Again it is also noted that the Revegetation and Weed Control Plan requires clarification around the process and approval role of the Department in the Plan process and its approval.

Also, the Officer's Report Special Condition 5 requires that *if directed by the Department the Concessionaire must directly transplant the sections of intact vegetation to another location on the Plateau* (now the only intact vegetation area that may be disturbed is Area 4, as the other areas are no longer needed for upgrading of the road). (Please note that without the proposed realignment the direct transplant of intact vegetation is no longer required, although BCL may choose to carry out VDT of any small areas when constructing the carpark.)

Recommendation

It is recommended that the submissions be allowed and accepted but that no further conditions are necessary. Rather there will be clarification of the 'Revegetation and Weed Control Plan' conditions.

3.2.1.3 Weed Control

Concern was raised about *a number of potential weed issues such as: that the weed-control programme may only be required for one year; that the emptying of sediment traps will require agreed ecologically sound disposal and; disappointment that the Department had not responded positively to BCL considering re-vegetating the more historically disturbed road corridor to mitigate for vegetation clearance and further reducing weed habitat.* [70.Wellington Botanical Society]

Comment

It is agreed that (as provided for in the Officer's Report Special Condition 25) weed control must be for the term of any concession approved. This, along with the circumstances for disposing of sediment would be managed through the 'Revegetation and Weed Control Plan' approved by the Department and would come under the management of the required performance targets and identification of current weeds (i.e. species and locations) and prioritised weed control.

Again as noted in 3.2.1.2 there is the opportunity for areas to be revegetated where opportunities are available and this is provided for in The Officer's Report proposed Special Condition 5, which will also be managed through the Revegetation and Weed Control Plan.

Recommendation

It is recommended that the submissions be allowed and accepted but no further conditions are considered necessary.

3.2.1.4 Effects of Dust on Flora and Fauna

A number of submissions in opposition noted that dust may be an issue for both flora and fauna, in smothering or otherwise adversely affecting organisms.

Examples include: Diana Zadravec [123] who expressed concern that wildlife would be impacted by *"dust during the establishment and operation of the project (this will be significantly increased compared to current use). This is of particular concern in regards to reptiles and terrestrial invertebrates including land snails, as their ecology is not fully understood."*

Comment

No information was provided on any further measures that could assist with mitigation. It is noted that the Officer's Report did not recommend specifically that the effects of dust on flora and fauna be monitored, although the Monitoring Plan for Indirect Vegetation Effects would provide for this in part. It is considered that also monitoring dust itself would be a useful tool for being able to correlate and attribute, or not, any adverse effects observed through the vegetation surveys. It is recommended therefore that dust monitoring (every 15 days) should be a requirement in the special conditions. It is noted that the current draft Noise Dust and Lighting Management Plan required for the associated Escarpment Mine resource consents also requires this to be undertaken along the Whareatea Road.

If significant dust is found to be having significant adverse effects on flora, conditions will allow the Department to require BCL to further avoid or mitigate any dust effects.

No information was provided on the adverse effects of dust on fauna. It is considered that the monitoring for effects on flora will provide a useful indicator.

Recommendation

It is recommended that the submissions be allowed and accepted and that conditions requiring the Concessionaire to monitor dust should be included.

3.2.1.5 Freshwater

Submissions in support and opposition related their concern about the effects of coal dust and runoff from the road entering the waterways and affecting water quality, for either ecosystem or water take reasons.

Submitters in opposition included Clean Energy Future Nelson [244] who stated: “*Coal dust and other pollutants will negatively affect endemic species, and possibly pollute the land and water. I am concerned that no mention has been made of the effects of coal dust and other pollutants (e.g. PM10 emissions) on the receiving environment. Such pollutants are known to cause significant damage to flora, fauna and water quality.*”

A submitter in support commented that, for water take reasons, measures were noted that could be put in place to limit runoff and dust entering waterways such as: earth bunds; culvert design; and speed limits. During the hearing the submitter agreed that the Special Conditions in the Officer’s Report were appropriate but also questioned whether BCL could contribute to monitoring of the water quality.

Comment

Waimangaroa Community currently take water from Conns Creek which drains from the western side of the plateau. The upper catchment for this take includes the two dams/ water bodies that come to within about 30 m from the Whareatea Road on the plateau. The water is untreated. This information was not provided in the Officer’s Report.

BCL in their further information provided on 8 October 2013 stated that they were meeting with the Buller District Council and the Waimangaroa Community to resolve any concerns. BCL considered that the water take was out of the scope of the concession hearing due to the nature of the take and other threats to the supply. BCL then stated that “*the Department should acknowledge the fact that BCL are working with the relevant parties; and no further restrictions should be placed on the concession in relation to this matter*”.

The Department agrees that councils are responsible for managing the water take, however in terms of managing conservation values, the Department is interested in maintaining the quality of the water in the dam/water body as suitable for aquatic life.

Given the proximity and proposed volume of traffic on the Whareatea Road it is considered appropriate to ensure that there are no adverse effects from the proposal on the water body, and so water monitoring is considered appropriate. Monitoring should be undertaken in the largest dam at the nearest point to the Whareatea Road on a monthly basis and conditions should include a requirement that there be no discharge that causes or results in any of the following:

- a. Conspicuous oil or grease films, scums or foams, or floatable or suspended materials;
- b. Conspicuous change in the colour or visual clarity;
- c. Emission of objectionable odour; and
- d. Significant adverse effects on aquatic life
- e. Total suspended solids should not exceed 15 (Median concentrations, g/m³)
- f. Turbidity should not exceed 15 NTU

Recommendation

It is recommended that the submission regarding potential effects on water quality be partially allowed as the methods of maintaining water quality for freshwater habitat is a relevant matter for the Minister to consider. The responsibility for BCL to monitor the catchment for water take purposes is not a relevant matter for the Minister to consider.

It is recommended that the submission on measures for avoiding adverse effects of dust and runoff on the water quality of the dams be accepted and it is recommended that a further condition on monitoring is required to ensure the aquatic life supporting qualities of the dam are not adversely affected to an unacceptable degree.

3.2.2 Submissions Regarding the Effects of the Proposed Activity and the Department's Analysis of those Effects on Historic Values

A number of submissions commented on the historic values but this was primarily in relationship to visitors being able to access or enjoy them.

Statements such as the following were submitted:

In granting an easement the Department of Conservation will be failing to meet its obligations to preserve and protect "natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations". [38. Jane Young]

"The attraction of the Denniston Plateau is the juxtaposition of a seemingly desolate landscape, which is incredibly rich and varied on a small scale, and the evidence of extensive historic occupation and employment. The proposed easement and truck movements are a significant risk to these values."

WCENT is particularly concerned about the concrete dewatering pad which would be partially buried by the road and very likely damaged by the millions of tonnes of coal to be carted over it." [234. West Coast Environment Network Inc.]

Comment

This last submission quoted was the only specific concern raised about the effects on the historic features themselves. This impact would be on the section of road that has not been upgraded under the existing Easement. Where the Officer's Report differs from the submissions in opposition, is in the degree and weighting of the effects of the proposed activity on the historic values and whether sufficient measures are available to minimise the effects to an acceptable level. Potential damage to the dewatering pad was identified in the Application and the Officer's Report. The mitigation measure of capping the pad with sand and a geo-textile fabric, to cushion the truck movements, was considered appropriate to mitigate the impact although it was acknowledged that some damage may still occur.

No information was provided that would lead to a different recommendation from the Officer's Report on the effects on the historic features and no further measures to avoid, remedy or mitigate have been shown to be necessary. It is considered that the potential effects on the dewatering pad are acceptable.

Analysis of the effects on visitor's ability to enjoy the historic features and landscape is discussed under section 3.2.3.

Recommendation

It is recommended that submissions relating to the historic values and effects on those values are allowed on the basis that they relate to matters of relevance to the Minister of Conservation. (Please note that as BCL no longer wish to re-route the road there would no longer be any effects on the dewatering pad.)

It is recommended that submissions opposed to the proposal are not accepted as requiring the application to be declined as there was no evidence or compelling reasoning on these matters which would over-ride the analysis in the Officer's Report in respect of effects on historic values.

3.2.3 Submissions Regarding the Effects of the Proposed Activity and the Department's Analysis of those Effects on Recreation Values Overall

Submissions opposing and supporting the application noted the popularity of the plateau for a wide range of people and activities:

At present an estimated 23,000 visitors use this road to access the Denniston Plateau for a variety of activities including wildlife viewing, mountain biking, and simply experiencing the unique landscape that is Denniston. [3. Vanessa Smith]

“...it is of high interest to members of Forest & Bird. Not only for its protection, but also for its accessibility to allow appreciation. I have escorted members and supporters of Forest & Bird on the plateau on a number of occasions. They have ranged from young families to retired people- and have included a wide range of interests and physical abilities...” [233. Forest & Bird]

The bulk of the submissions received were about: the effects of the proposal on access for visitors and BCL; and on recreational opportunities and people’s ability to enjoy the public conservation land. Most of those submissions in support of the application made comments regarding the improved safety for all visitors from the widening of the road. Submissions opposing the application noted that Denniston Plateau was a relatively accessible important historic landscape, with unique natural features found nowhere else in the world. They cited a number of key reasons for opposing the application including: safety and the perception of safety; the effects of noise and dust; and the effects of the presence of the industrial activity on the sense of natural quiet and solitude.

Some submitters stated that the Denniston-Whareatea Road is the only access to the plateau and the heavy truck traffic would intimidate, discourage, or potentially harm those wishing to visit. Many also submitted that the effects of the proposed activity on the road would be felt far wider than on just the road itself, but also on those recreating across the wider plateau.

Comment

The use of the Whareatea Road as far as the proposed Escarpment Mine at the time of the application was limited to 4WD from near the turnoff to Mt Rochfort. It is noted that while use was not high it may now increase subsequent to the road upgrade being carried out under BCL’s existing concession. Without doubt, Denniston Plateau is currently an accessible unique recreational site in terms of its natural and historical features and landscapes, and is appreciated by many for a range of activities as indicated by the submissions. It is against this background that the proposed rate of coal truck passes and mine traffic, is likely to have an impact on those visitors on or near the Whareatea Road.

In recognition of this, BCL proposed substantial mitigation as detailed in the Officer’s Report. However, as also noted in the Report: (summarised from paras. 167 and 168) *if the activity were to be approved with the proposed mitigation and conditions it was assessed that the effects would be adequately avoided, remedied, or mitigated; but there would be some residual adverse effects on visitors. It was stated that public notification would then help to inform the Department of the values held, of the effects on those values and of any other mitigation measures that may be available.*

During the public notification process, no new information came to light about the values held. What was apparent from the submissions, however, was the degree to which the site was valued. Also, from those in opposition, the degree of concern about having to experience what they considered risk and intimidation from frequent heavy vehicle encounters and a loss of an ability to enjoy and appreciate the conservation values. This was due to the effects from the proposal of dust and noise and the proposal’s likely impact on solitude and natural quiet in this environment. Those issues along with safety will be detailed further below. It is considered that further mitigation measures/conditions were raised by submitters which can be employed to address these issues to an acceptable level as also discussed below.

Recommendation

It is recommended that submissions relating to the recreational values and effects on those values overall are allowed on the basis that they relate to matters of relevance to the Minister of Conservation.

It is recommended that submissions opposed to the proposal on this basis are not accepted as requiring the application to be declined. There was no evidence or compelling reasoning on these matters which would over-ride the analysis in the Officer’s Report in respect of effects on recreational values. There were, however, a number of measures identified that would help to avoid, remedy and mitigate any adverse effects and they are also discussed in the sections below.

It is recommended that submissions in support, on the grounds of the benefits the road upgrade will have on safety are not accepted as a reason to approve the application. Most of the road has already

been upgraded under BCL's existing concession. Any further upgrade of the road at Whareatea Mine is a necessary consequence of the proposed coal haulage.

3.2.3.1 Safety

Many of the submissions expressed concerns about Denniston Road being steep, narrow and winding. As previously discussed in section 2.3.1 submissions on the Denniston Road (and to the end of the seal on Whareatea Road), are no longer considered within the scope of this concession process. Although it is not possible to distinguish which sections were being referred to in every submission, it can be surmised that many of the submissions were also expressing concerns regarding the proposed use of Whareatea Road, and those comments can be considered.

They include comments from those in support such as from Johnson Bros. Transport [178]:

"Whareatea Rd

Upgrade to this road as proposed will result in a safer road for all users:

- *Realignment of the corners will make it easier for truck and trailer units, improving sight lines even where the vegetation is relatively low. It is noticeable that the proposed alignment varies little from the existing carriageway.*
- *Wider carriageway will make it safer for passing oncoming vehicles*
- *Provision of lay-bys"*

Also:

"Johnson Bros Transport is fully supportive of Buller Coal's Escarpment Mine roading proposal. We already operate on this road daily and are therefore fully aware of the challenges and difficulties presented. We are confident that with the proposed changes and improvements, and with Buller Coal's intent to make this work, there will be minimal impact to the environment and other people living in and using the area.

We acknowledge that the number of vehicle movements will increase significantly, but we firmly believe the impact can be mitigated. As an experienced transport operator, we know what the hazards, risks and impacts could potentially be. We are also cognisant of the challenges opponents to this will present but know that we can minimise or eliminate their concerns".

From recreational visitors:

"As a mountain-biker I travel and use the Denniston road along with almost every accessible area of the Denniston Plateau several times each month. In this respect I feel that it is vital that the road is widened for the safety of both truck drivers and other road users and that the proposed methods and condition imposed for the upgrade will minimise any harm to the environment. Furthermore, this would avoid or minimise adverse risk to human life." [31. Tom Gray]

"I am a recreational user of the Denniston plateau. I enjoy Mountain biking and often walk up to Mt Rochford [sic] and have a vehicle collect me from the summit. Safety is paramount, I am well aware of how quickly visibility disappears on the plateau....I support the layby areas for recreational use, the improved mountainbike tracks up the hill as well as at North Beach." [69. Joanne Howard]

And comments from those against the proposal include:

As a keen mountain biker I have ridden on Denniston on several occasions. I would not feel safe to do so knowing that I would likely meet a huge truck on the access road. [3. Vanessa Smith]

“Frequent trips by huge coal-laden truck and trailer units (“width 2.7 metres including side-mirrors”) means danger for other road users (usual car width is about 1.5m). There will be “no requirement for these to use the laybys proposed” ie bikers like me will be expected to shelter in laybys as these large units thunder by. Great. And this on public land - not acceptable.” [68. Dr Russell Tregonning]

Comment

As seen above with regard to safety, there were submitters both for and against the proposal with quite different views as to the effect on visitors. It is noted that those in support were positive about the widening of the road and other proposed mitigation measures such as the provision of lay-bys and alternative mountain-biking tracks. What they did share in common with those against the proposal was recognition that safety should be a key concern on the plateau presently, and in future, if any concession were to be approved.

Consideration of safety matters is not explicitly listed in section 17U as a ‘Matter to be considered by Minister’. Nevertheless, it is something that may be considered by the Minister (particularly given the provisions of the Occupiers Liability Act 1962 and the Health and Safety in Employment Act 1992). Section 17U (1)(b) of the Conservation Act requires consideration of ‘the effects of the activity, structure, or facility’. Effects encompass a wide range of matters and may include the degree of danger or hazard introduced to other visitors by a new concession activity. Accordingly any measures that can be taken that minimise foreseen risk should be taken.

The responsibilities of the Minister of Conservation under the Occupiers Liability Act 1962 and Health and Safety in Employment Act 1992 mean that the Minister has a duty to take all reasonable steps to ensure that (in this case) persons using the road would be reasonably safe. This duty on the Minister is achieved via the concession special conditions requiring the concessionaire to: prepare and implement a Traffic Management Plan in accordance with the Code of Practice for Temporary Traffic Management and which must be prepared by a suitably qualified person(s) and; to obtain and comply with all other authorisations required under New Zealand law which relate to safety.

With safety considered a significant issue, some submitters commended BCL for trying to improve the road while also minimising impacts on the natural values. Others made comments that mine safety should always come before environmental considerations. Transport companies submitted that they considered that BCL had the balance right and that the proposed conditions were appropriate, Johnson Bros Transport [178]: *“Improvements to the road will make it easier for all users and will reduce possible damage to the adjacent ground and vegetation.”* Interestingly while many submissions were for the proposed widening they did not submit that the road should be wider still.

Mainly, submitters were simply for or against and did not suggest further mitigation measures and conditions that could help manage any adverse impacts. The exception to this was West Coast Environment Network Inc [234.] who suggested that if approved there should be times set aside where BCL cease activity each day.

The following was suggested as a means to improve the mitigation proposed in the Officer’s Report:

In consideration of the Department's responsibilities to provide a range of recreational (opportunities), we (suggest) that public education on the risks of travelling on the road is insufficient mitigation. There should be actual opportunities for the public to continue to use the area. Should the concession be granted, we would suggest a minimum requirement that BCL cease activity on the road for two periods each day, such as between 9am-11am and 3pm-5pm. With appropriate public education and notice, this would at least allow some public visitors to arrive, carry out their biking or botanising, and leave again without undergoing excessive conflict with mining vehicles. [234. West Coast Environment Network Inc.]

It is noted that with the current proposed hours of operation in the Officer’s Report as 6am to 6pm (as requested in the application) there is very little opportunity for the public to continue to access the Plateau without sharing the road with coal trucks. This may reduce their appreciation or deter some visitors, and as asserted by some submitters the currently proposed bus will not allow for the same experience and freedom currently enjoyed to explore and recreate on the plateau. Therefore, ensuring

some reasonable daylight hours are available for people to access the plateau, without encountering the proposed volume of traffic, is considered an appropriate and necessary condition of access.

Currently, the only daylight hours available for visitors to recreate on the plateau without the proposed coal truck traffic is after 6pm in summer. West Coast Environment Network Inc. suggested 2 hours should be set aside morning and afternoon every day.

BCL responded during the hearing with:

The 12 hours a day haulage is already a compromise and this increases the volume during the haulage hours; short cessations would be difficult operationally; there are already mitigation conditions; restricting hours will increase the volume during the operating hours; it would not be able to include servicing and emergency vehicles in the restricted hours; BCL considered that much of the concern around safety was for the Denniston Road.

That said BCL did recognise the concerns and requested an opportunity to respond at a later date.

In the Further Information provided on 8 October 2013 BCL stated: *that while not considering the restriction for 2 hours morning and afternoon workable they did acknowledge the concern and were prepared to accept a restriction for trucks using the easement route, as long as they could haul the 500KT of coal per annum; that general vehicle access should not be restricted and; that there should be no restrictions in the middle of the operating day which would likely result in queuing vehicles.*

BCL also commented that there were few visitors on the plateau during weekdays, and any restrictions should be at the beginning or end of the day. They suggested from 3pm onwards on Saturdays during daylight saving and public holidays only. BCL stated that they had consulted the Buller Cycle Club who agreed this period would have the greatest benefit.

BCL's operational needs to make this viable are noted as well as their attempts to find a workable solution. This includes the work BCL have undertaken to provide alternatives for mountain-biking both on and off the Plateau. But for other visitors, while accepting that setting restrictions outside of weekdays, which have lower use is appropriate, it is not considered sufficient to have only a few hours of daylight one day a week across Whareatea Road, free of the effects of coal truck haulage. Considering BCL's requests the following two options are considered to be an appropriate mitigation measure for the effects on visitors:

Proposed Hours for Hauling Coal Option 1

Mon-Fri: 6am – 6pm

Sat and Sun: 6am to 3pm (allows for approx. 2-3 hours in winter and 4- 5 hrs in summer of recreational use during daylight each day of the weekend)

Public Holidays: no hauling

Proposed Hours for Hauling Coal Option 2

All year

Mon – Sat: 6am - 6pm

Sun: no coal haulage

Public Holidays: no hauling

It is considered that extending weekday hauling hours by one hour each night to make up for lost time i.e. the hours of operation being 6am to 7pm would have minimal increased adverse effects on conservation values if BCL consider this would be appropriate. Alternatively, it is considered that allowing for an annualised average of 120 coal truck passes per day (Mon – Fri) would allow BCL to make up for some of the lost haulage time. BCL will be able to comment on their preference between these two options in the Applicant's Comment opportunity in section 8.

This does not restrict access to the public during coal haulage time, but it does allow the public to choose to visit the plateau on a day or at a time where coal would not be hauled across Whareatea Road.

Also raised by TNL Freighting [33] and expressed by BCL is the need for some flexibility around the total number of truck passes per day. BCL have stated that the number of truck passes per day given in their application was meant to provide an average rather than an upper limit. There will be times when trucks are out of operation which would require a need for increases in truck passes on some days to meet coal shipping schedules. It is considered that this request for flexibility is a reasonable point with an annualised average per day applied to permit the haulage of 500KT per annum, approved in the Resource Consent and Access Arrangement. A maximum daily limit of 200 truck passes would still be applied to ensure that truck movements could still be managed. A condition is also included to permit days when the number of truck passes can be exceeded by the total passes permitted, after prior approval from the Partnership Manager, Northern West Coast District.

It is considered that providing opportunity for recreational visitors (either both days in the weekend, or all day Sunday) will make the increased traffic during the remaining time more acceptable. It is recognised that this will not provide for those passing through the region that are not able to be flexible in the time that they visit, but these options appear, however, to be reasonable particularly as BCL have a right, under their existing Easement to haul coal along the route (but for a shorter time frame than is proposed under this new concession).

An intercept survey, where visitors are surveyed about their experiences and preferences, is required in the Officer's Report. The frequency required for the survey is not clear, it is considered likely that an annual survey will be required. The survey may then greater inform what is the best way to provide for the activity and visitor satisfaction. It will provide feedback on the plateau information provided to visitors, the usefulness of the bus transport provision and the hours of restriction. It may be that feedback leads to provisions being adapted and or different mechanisms being trialled. To provide for this, it is recommended that there be a special condition requiring a Recreational Effects Management Plan. This plan will determine such things as survey frequency.

The Recreational Effects Management Plan must prescribe such items as (but not limited to):

- A description of the recreational values on the plateau and the identified effects on those values
- A summary of measures identified to avoid, remedy or mitigate the adverse effects
- Monitoring methodology including an annual intercept survey
- Liaison contacts and meetings
- Management of information provided (brochures, signs)
- Management of mountain-biking facilities, funding
- Management of access past barrier arm and barriers
- Management of a transport service from Westport to the Denniston Plateau
- Hours of operation
- Management of complaints
- Plan review and submission dates

It is considered that this will allow for better co-ordination and adaptive management of any adverse effects on visitors.

Recommendation

It is recommended that submissions on the safety of the road are allowed on the basis that they relate to matters of relevance to the Minister of Conservation.

It is recommended that submissions that the proposal would be unsafe and so the concession should not be granted are not accepted, on the basis that it is considered that appropriate measures have been identified in the Officer's Report and through the hearing process to manage safety. Also, there are other authorisations required by the appropriate regulatory authorities in this regard. Should these other regulatory authorities not issue permits or Resource Consents, any concession granted by the Minister could not be exercised. The haul road will be a place of work for BCL and its contractors, and BCL and its contractors are required to comply with the Health and Safety in Employment Act.

It is recommended that submissions that some people would be deterred from visiting the plateau, and therefore there should be periods in the day when the activity is restricted, be accepted. It is recommended that conditions should include restrictions of hours of coal haulage as detailed above and that there be a Recreational Effects Management Plan to manage adaptation and improvements following intercept survey feedback.

Again, it is recommended that submissions in support, on the grounds of the benefits the road widening will have on safety are not accepted as a reason to approve the application. The proposed road upgrade near the historic Whareatea Mine is a necessary consequence of the proposed coal haulage.

3.2.3.2 The Effects of Dust on Visitors

A number of submitters in opposition commented on the impacts of dust on visitors:

From Jane Orchard [92.] – *“Ghose and Majee (2007) say: It is reported (Cowherd 1979) that vehicular traffic on haul roads of mechanised opencast mines could contribute as much as 80% of the dust emitted. It has been estimated (Chadwick et al 1987) that about 50% of the total coal dust released is during journey time on an unpaved road, while 25% is released during loading and unloading of dumpers. ..”*

Jane Orchard also raised concerns that there was not enough water available to wet the roads sufficiently to dampen down the dust.

Dr Russell Tregonning [68] stated that he was a surgeon who had done lots of research on the dangers of coal dust on human health and was concerned about the dangers of coal dust to road users.

Comment

Health and Safety impacts from dust and coal dust are issues that should be considered in terms of the effects of the proposed activity and the Minister has a duty to take all reasonable steps to ensure that visitors to public conservation land would be reasonably safe. The effects of dust on people living in communities not located on the public conservation land cannot be considered in this concession process. Dust and its effects are also managed by a number of other agencies and should these other regulatory authorities not issue permits or Resource Consents, any concession granted by the Minister could not be exercised.

The Officer's Report recommended that all coal haul trucks must be covered and use reasonable and practicable methods to minimise dust levels along the easement land. These are considered to be reasonable conditions that coupled with other agencies monitoring and enforcement is considered likely to be generally sufficient.

That said it is recognised that, as noted by Jane Orchard, particular climatic conditions (such as last summer's drought) may result in a situation where dust becomes a significant issue in terms of visitors to, and the natural values of, the public conservation land.

BCL responded at the hearing that they considered the proposed Special Conditions were appropriate and that BCL is already required to prepare a Noise, Dust and Lighting Plan under the terms of the Access Arrangement for Escarpment Mine. This plan requires dust monitoring along Whareatea Road. For this application it is also considered appropriate that dust levels on the plateau be monitored. Should dust levels become significant (or where adverse effects on vegetation may be being caused by dust), conditions should require the applicant to undertake further mitigation.

BCL responded to concerns regarding the availability of water for dust suppression by stating that the water will be sourced from the Escarpment Mine water treatment plant. *“The use of water for dust suppression formed part of the Escarpment Mine proposal. A flow of 335 l/sec is predicted to flow from the water treatment plant (many times that required for dust suppression).”*

This is considered to be sufficient as well as there being other measures available to minimise dust from the use of the Whareatea Road.

If the proposed special conditions relating to dust suppression prove to be inadequate then the conditions can be varied under S.17ZC(3)(b) of the Act. It being noted that BCL considered such measures would be adequate thus such an effect was not reasonably foreseeable at the time the concession was granted.

Recommendation

It is recommended that the submissions regarding the risks to visitors from coal dust and concern about the availability of water for dust suppression are allowed.

It is recommended that the assertion that the application should be declined on the basis of unacceptable effects on health is not accepted. It is considered that the proposed special conditions and possible action under S.17ZC(3)(b) of the Act provide a mechanism for addressing such effects.

It is recommended that the submission that there is insufficient water for dust suppression is not accepted.

3.2.3.3 The Effects of the Presence of the Industrial Activity on Natural Quiet and Solitude

A number of submissions commented on the impact of the proposed volume and nature of traffic on natural quiet and a sense of solitude on the plateau.

Firstly, the industrial intrusion of significant heavy traffic and noise into a largely natural landscape will firstly degrade the character and integrity of a nationally significant conservation area. Secondly, this wild yet accessible area will consequently change from a great place to experience, to one that is sadly being industrially modified and is dangerous to visit. [234. West Coast Environment Network Inc.]

The noise from the trucks will also degrade from the peace and quiet that is currently expected on the plateau, again decreasing the ability for visitors to make use of this conservation area [90. Lillian Fougere]

Comment

The Officer's Report noted that the proposed traffic would have some adverse effects where the "relative solitude would be replaced by the sight and sound of the coal truck and trailer units moving through the landscape throughout the day and every day." Many of the submissions in opposition echoed this concern and the loss they felt at being able to visit this unique landscape, "found nowhere else in the world" [233. Forest and Bird verbal comment], without the sights and sound of industrial activity.

It is also noted that there are already other coal trucks crossing the northern end of the plateau, regular traffic visiting, as well as a consented mine at the southern end of the plateau. This will mean that there are already effects on the natural quiet and sense of solitude. It is also noted that there is also another potential mine (on Solid Energy New Zealand Ltd's (SENZ) coal mining licence) that may be operative during the 10 year term of the proposed activity.

Management of these impacts needs to be monitored, managed and mitigated over the term of any concession approved. The Officer's Report recommended for BCL to appoint a staff member to liaise with affected groups and that an intercept survey is required. However, as many submitters noted this will not measure the visitors that choose no longer to visit the site; the displaced visitors. The different experience offered by the proposed transport service was noted by Forest & Bird [233].

Under the notified consent conditions the only daytime opportunity to experience the plateau with a sense of natural quiet and solitude (relatively speaking) would be after 6pm in summer. As detailed in section 3.2.3.1 this is not considered appropriate, other opportunities should be available especially when coupled with the other adverse effects on the visitor noted above. The West Coast Environment Network Inc's [234] recommendation to restrict coal traffic hours during certain periods to provide for visitor opportunities is considered to have some merit as also explored in section 3.2.3.1. It is considered that the restricted operational hours suggested will provide reasonable opportunity for

visitors to be able to enjoy solitude and natural quiet. It is hoped that visitors deterred by the presence of frequent coal truck haulage will take this opportunity.

Recommendation

Submitters' expression of the value of the Denniston plateau experience is duly noted. Submissions on the potential adverse effects on visitors' ability to appreciate its natural and historic features, while experiencing a sense of solitude and natural quiet, are allowed on the basis that they relate to matters of relevance to the Minister of Conservation.

It is considered that the submissions be accepted to the extent that the additional conditions to restrict hours of coal haulage are considered appropriate as detailed in section 3.2.3.1. This, along with annual intercept surveys managed within a Recreational Effects Management Plan should be included to allow for adaptable management of the effects on recreational experience as feedback is provided.

3.2.3.4 Effects on Existing Concessionaires

A neutral submission was received from Kordia, an existing concessionaire who maintains and operates a broadcast and telecommunications site at Mt Rochfort. The submission stated that BCL would need to ensure its employees and contractors are made aware that they are not the only users of the road, and operate at all times for the safety of other users. Kordia expect that the Mt Rochfort Road intersection with Whareatea be constructed to afford turning vehicles appropriate visibility.

Comment

Kordia and its contractors use the Whareatea road for access as noted in the Officer's Report para. 170. The Officer's Report states that on 14 January 2013 BCL and Kordia confirmed that they had come to an agreement that is acceptable to both parties regarding the shared costs and responsibilities for maintenance of Whareatea Road. The Officer's Report stated that *"it is considered that the measures proposed to reduce effects on other road users and the agreement BCL has with Kordia would adequately address co-siting issues with other concessionaires. However, to avoid doubt, it is recommended that a special condition be included in the BCL easement that requires the road to remain open to other concessionaires or the public's use"*.

This is included as recommended special condition 54. It is also considered that the conditions relating to the requirement of an approved Traffic Management Plan that must be in accordance with industry best practice will address Kordia's concern regarding awareness of others and ensuring adequate visibility for those entering Whareatea Road from the Mt Rochfort Road.

As an additional matter it is also noted that Special Conditions 62 and 63 of the Officer's Report required that any wish to vary the proposed contract in any way would require further consultation with SENZ due to their existing licences. Any subsequent changes from this hearing process would require further consultation by BCL with SENZ.

Recommendation

It is recommended that the submission related to effects on existing concessionaires be allowed because it is a relevant matter for the Minister to consider. This recommendation is on the basis that existing concessionaires on public conservation land have an expectation that the decision maker does not issue another concession which would result in their existing concessions being unable to be carried out.

It is recommended that the submissions be accepted but no further conditions are required.

3.2.4 Purpose for which the Land is held - Section 17U(3)

Submissions commented on the activity not being consistent with the purposes for which the land is held.

It is an extraordinary stretch to suggest that the proposed concession would be anything

other than an unwarranted industrial intrusion into a significant conservation area. It would entirely change the nature of the visitor experience and significantly detract from the historic and ecological values present. In itself this means that the proposal is inconsistent with the purpose for which the land is held. [234. West Coast Environment Network Inc]

Additionally they stated:

“Protection is defined in the Conservation Act as “its maintenance, so far as is practicable, in its current state; but includes (a) its restoration to some former state; and (b) its augmentation, enhancement, or expansion”. In the DOC report, the author decided to emphasise (by underlining) the “is practicable”, even though this is a secondary and dependent clause, and subordinate to the true meaning of the sentence. Though at first glance it may seem of no consequence, the underlining of those two words serves to promote a misinterpretation of what ‘protection’ means. Approval of this easement would mean the Department is instating the opposite of protection as defined in the Act, endorsing the inverse of ‘protection’, ‘restoration’ or ‘augmentation’.”

“Firstly, the industrial intrusion of significant heavy traffic and noise into a largely natural landscape will firstly degrade the character and integrity of a nationally significant conservation area. Secondly, this wild yet accessible area [sic] will consequently change from a great place to experience, to one that is sadly being industrially modified and is dangerous to visit.”

Comments

As noted in the Officer’s Report:

Section 17U(3) states that *“The Minister shall not grant an application for a concession if the proposed activity is contrary to the purposes for which the land concerned is held”*. The proposed easement along Whareatea Road is within Mount Rochfort Conservation Area. This area is managed as Stewardship Area under section 25 of the Conservation Act 1987, which states that; *“Every stewardship area shall so be managed that its natural and historic resources are protected.”* The Officer’s Report noted that the Denniston Road crosses Denniston Scenic Reserve however this is no longer relevant (see above under section 2.3.1 Denniston and Whareatea Roads).

The Officers Report goes on to say:

“Protection is defined in the Conservation Act as “its maintenance, so far as is practicable, in its current state; but includes (a) its restoration to some former state; and (b) its augmentation, enhancement, or expansion” (my underlining of text). Section 6 of this report identifies the effects of the proposed activity and the measures recommended to be used to avoid, remedy and mitigate the adverse effects to appropriate levels. It is assessed that all adverse effects on landform, flora, fauna, freshwater, historic and recreational values would be adequately avoided, remedied and mitigated. For most values, a monitoring plan is required to ensure that any potential effect that do occur or any new effects not considered are identified. The monitoring plans would also include some direction about how these effects could be adequately avoided, remedied and mitigated. Therefore, it is considered that the proposed activity along Whareatea Road with the recommended special conditions would not be inconsistent with the purposes for which the Mount Rochfort Conservation Area is held.

Submitters in opposition claim that the residual effects after mitigation are such that the effects, primarily on visitors, are not consistent (in this context it is considered the words in S.17U(3) “contrary to” are similar to “not inconsistent with”) with the purpose for which the land is held.

As noted previously in 3.2.3, it is considered that valid concerns were raised in the public hearing process around experiences for visitors. Specifically, the opportunity for visitors to: visit the plateau free of concerns regarding safety around the coal hauling; and to be able to appreciate natural quiet and a sense of solitude in this unique environment. These submissions were accepted and it was recommended that there be restrictions on the hours of day time coal haulage as noted in section 3.2.3.1. to provide for these opportunities.

Other effects and proposed conditions as detailed in sections 3.2.1 and 3.2.2 were considered appropriate or the conditions were further strengthened. Therefore, it is assessed that the proposed activity along Whareatea Road with the recommended special conditions would not be inconsistent with the purposes for which the Mount Rochfort Conservation Area is held.

Recommendation

It is recommended that submissions in opposition on the basis that the activity is inconsistent with the purposes for which the land is held are allowed as it relates to matters of relevance to the Minister of Conservation.

It is recommended that submissions opposed to the proposal on this basis are not accepted as requiring the application to be declined as there was considered to be further special conditions that were appropriate and which would mitigate the residual effects to an acceptable degree.

3.2.5 Consistency with Relevant Management Strategies and Plans – Section 17W

Submitters stated that they considered that the application was inconsistent with the West Coast *Te Tai o Poutini* Conservation Management Strategy.

Forest & Bird [233.] stated:

“The West Coast Te Tai o Poutini Conservation Management Strategy is a relatively new document, and is dated to last from 2010 – 2020. Therefore we submit that the issues of coal mining on the plateau, and the aspirations to achieve a balance between protection and mining, were clearly considered at that time.

As outlined in section 3.1 above, there are important reasons why the Buller coal plateaux (of which the Denniston Plateau is held, in the main, as public conservation land) has very high values that are recognised in the CMS. Furthermore, the outcomes for place for the priority site for biodiversity protection on the Denniston Plateau are specifically stated.

It is our submission that the concession is inconsistent with the CMS. The wording of the Conservation Act does not refer only to inconsistency with objectives and policies, it simply states that it should be consistent with the strategy or plan. We also note on page 6, policy 4 – (applying to all parts of the CMS):

In the event of doubt, the operative parts of the CMS will be interpreted in favour of the intrinsic values identified at specific Places ...

As well as the detailed outcome for place (which we have highlighted in section 3.1), the concession is also inconsistent with the following parts of the CMS (this includes description, objectives, policies and discussions):” Forest & Bird go on to list policies considered relevant regarding the values held including: intrinsic values; use needing to be compatible with protection of values and people’s enjoyment; the need to manage threats; providing a range of recreational opportunities; minimising conflict between uses; and adopting the precautionary approach.

Comment

It is assessed that all adverse effects on natural values identified and their relevant policies in the CMS would be adequately avoided, remedied and mitigated. There would be some residual adverse effects, such as the permanent loss of 0.10ha of relatively unmodified vegetation and landform. This was calculated to be the remaining area of vegetation disturbance that may now be required due to the upgrading that occurred under the existing concession, see section 2.3.2. It is considered that with the proposed special conditions (such as those requiring VDT) to minimise the effects and losses to vegetation values, the proposed easement would not compromise the risk of threatened species becoming extinct or current ecological integrity not being maintained.

It is assessed that all adverse effects on historic values identified and their relevant policies in the CMS would be adequately avoided, remedied and mitigated. The dewatering pad may be damaged in the long-term but overall this residual effect would not cause more than minimal effects on the integrity and overall condition of the Whareatea Mine site. A Heritage Protection Plan is recommended, which

includes monitoring and concrete and brick preservation, and through this, any damage and/or degradation would be identified and where appropriate, the condition of structures would be maintained. (Please note that given the proposed re-route of the road the dewatering pad would no longer be affected. Also the monitoring of the concrete and the brick preservation is no longer required.)

It is assessed that all adverse effects on recreational values and their relevant policies in the CMS would be adequately avoided, remedied and mitigated. There were some residual adverse effects on visitors identified from the proposed use of the road but it is considered that the proposed additional restriction on operating hours will provide opportunities for all visitors to continue to enjoy the values of the plateau. Mitigation measures and the proposed compensation (see section 7.2.2) are considered sufficient to ensure that this proposal is consistent with the desired outcome in 2020 for the plateau, and other recreational policies.

Recommendation

It is recommended that submissions are allowed on the basis that they relate to matters of relevance to the Minister of Conservation.

It is recommended that submissions opposed to the proposal on this basis are not accepted as requiring the application to be declined as there was no evidence or compelling reasoning provided on these matters which would over-ride the analysis in the Officer's Report in respect of consistency with the Management Strategies and Plans.

3.2.6 Application is Incomplete

Submissions were received opposing the grant of the concession on the basis that the application was 'incomplete'.

Wellington Botanical Society [70] stated: *"our view is that the process to date has not generated sufficient information to enable the Minister to assess all the effects of widening the road, including the effects of any proposed methods, to avoid, remedy or mitigate the associated adverse effects."*

Comment

Section 17U(1)(c) of Conservation Act requires the Minister to have regard to *"any measures which can reasonably and practicably be undertaken to avoid, remedy or mitigate any adverse effects of the activity"*. Section 17U(2) of the Conservation Act provides that; (emphasis added)

"The Minister may decline any application if the Minister considers that—

(a) the information available is insufficient or inadequate to enable him or her to assess the effects (including the effects of any proposed methods to avoid, remedy, or mitigate the adverse effects) of any activity, structure, or facility; or

(b) there are no adequate methods or no reasonable methods for remedying, avoiding, or mitigating the adverse effects of the activity, structure, or facility".

While some details will be subject to management plans there is considered to be sufficient information to form a view on the overall effects of the proposal and appropriate conditions that should be required. In principle, granting of a concession subject to the provision of environmental management plans is sound, and would, subject to conditions, fulfil the requirements of section 17U of the Conservation Act in regards to consideration of methods to reasonably and practicably avoid, remedy or mitigate effects.

In addition, the application was publicly notified to provide an opportunity to capture further information on the effects of the application and any further measures to avoid, remedy or mitigate any adverse effects.

Recommendation

It is recommended that submissions regarding 'completeness' of application be allowed as this is a matter that is relevant to the Minister's considerations.

It is recommended that submissions that the application is incomplete not be accepted. It is considered that the effects are understood sufficiently for the Minister to form a decision.

4.0 Acknowledgement of Complete Application (s17S)

An application is deemed complete once all information required under section 17S has been received.

Comment

This application is deemed to be complete for the purposes of the Act.

5.0 Analysis of Proposal (s17T, 17U, 17V, 17W, 17X, 17Y)

The Officer's Report attached as Appendix 1 details the analysis of effects and statutory tests relevant to this application. It should also be noted that the extent of effects of road construction and upgrade is now considerably reduced from that being considered at notification, as the majority of this work has now been completed by BCL under its existing Easement concession, with the exception of that proposed for near the historic Whareatea mine site. Further discussion can be found above in Section 3 in relation to submissions received.

6.0 Relevant Information about the Applicant

The Officer's Report, attached as Appendix 1, considered information relevant to the applicant including relevant convictions, past compliance with concession conditions and any issues relating to credit. No new information was raised during the submission process that would alter those findings.

7.0 Proposed Operating Conditions

7.1 Concession Activity:

Upgrade, maintenance and use of Whareatea Road located on public conservation land for the purposes of access to and transport of coal from BCL's Escarpment Mine, Denniston Plateau.

7.2 Term:

The Officer's Report Attached as Appendix 1 details the term relevant to this application. No further information was received to change the term.

7.3 Fees:

As the proposed activity is now changed as detailed in section 2.3.2, the Activity Fees and Compensation have been adjusted accordingly. No change is required to the Insurances as are detailed in the Officer's Report, section 9. A bond would no longer be needed given the road would not be re-routed from the existing road.

7.3.1 Activity Fee

Section 17x(c) of the Conservation Act allows for a fee to be charged for the activity, and section 17Y(2) sets out that "*the fee may be fixed at the market value, having regard to:*

- (a) any circumstances relating to the nature of the activity; and*
- (b) the effects of the activity on the purposes of the area affected; and*
- (c) any contractual conditions, covenants, or other encumbrances placed upon intrinsic resources, natural resources, or historic resources by the concession".*

The current Easement held by BCL to use Whareatea Road within the existing footprint has an activity fee of xxxxxxxxxxxxxxxxxxxxxxxx.

For this application, xxxx. A fee of around \$xxx+ GST per annum during the period of road construction was considered to be a fair market value, and this was put to BCL in the Officer's Report and approved in the Decision in Principle (the information around fees and compensation was withheld from the public notification process for commercial reasons).

It was also recommended that once the road was constructed, this fee would continue to be charged until xxxxx, at which time an additional \$xxx+ GST per tonne hauled would also be charged.

xxxxxxx

7.3.2 Compensation

Section 17Xd of the Conservation Act allows for *"the payment of compensation for any adverse effects of the activity on the Crown's or public interest in the land concerned, unless such compensation has been provided for in the setting of rent."*

A number of residual adverse effects have been identified and for which it would be appropriate for the Concessionaire to provide compensation for. The applicant also proposed a number of measures to be conducted away from the easement area that can not be considered to mitigate for adverse effects, but would provide some form of compensation for the residual effects.

Permanent loss of intact vegetation

Due to the work that has been undertaken under the existing concession, as explained in 2.3.2 less construction work and clearance will now be undertaken under this concession. Xxxxx . It is also noted that BCL have stated that they may no longer wish to undertake this clearance but rather upgrade the existing section of Whareatea Road that passes to the east of the Whareatea Mine. Xxx . The vegetation communities on Denniston Plateau are considered of national significance and the section of intact vegetation is likely to contain a number of threatened species and taonga species. Xxxxxx (Please note this would now not be required as the road is no longer proposed to be re-routed through intact vegetation. This is further discussed in section 8).

Effects on mountain bikers

Improvements to two mountain bike tracks were recommended in the Officer's Report. This included construction of two wooden bridges (one 2-3m in length and the other 20m) on the Tea Pot Track and a culvert at the end of Aerial Track to improve the quality of the ride and safety along these two tracks. Although it is noted that to ride these two tracks as a circuit, use of Denniston Road and Burnetts Face Road, which are used to haul coal, are needed, the proposed works would have provided a level of compensation to the mountain biker user group.

Since that time BCL have undertaken further discussions with the Buller Cycling Club and provided a letter from the Club on 8 October 2013 with their further information. This stated that the Buller Cycling Club had formed the following conclusions (condition numbers refer to conditions in the Officer's Report):

"Condition 67 - We agree that the construction of track structures on the Teapot Track is no longer our top priority for compensation, and are happy to see this removed from the consent conditions.

Condition 68 – we would still like to see a crossing structure put in place at the end of the Aerial Track, and will continue to work with BCL to achieve an outcome at this site.

Condition 69 - We agree that funds will be contributed by BCL to the construction of structures that support the MTB / walking tracks that connect our town to our river and beaches. These structures could be part of either the Kawatiri River Trail or Kawatiri Beach Reserve. As the detail of these structures is not yet known we do not want to specify exactly where these funds will be used at this time. We accept that BCL will contribute \$xxx+ GST towards these structures, and that this will be distributed by BCL through invoices made out to them for work that is carried out. We understand that BCL will be in a position to fund this work once they have begun mining coal from the Escarpment mine..."

These compensation provisions are considered appropriate for the loss of some of the areas of mountain-biking tracks, and the residual impacts on the cycling experience after the special conditions have avoided, remedied and mitigated the effects of the activity as detailed in sections 3 and 5. Therefore, it is recommended that special conditions be included in any concession approved, requiring BCL to construct and maintain the structure on Aerial Track to the satisfaction of the Conservation Partnerships Manager, Western South Island District, prior to coal truck and trailer units using the Whareatea Road.

It is also recommended that special conditions be included to require BCL to contribute \$xxx+ GST to the Buller Cycle Club for constructing and maintaining novice mountain bike tracks on public conservation land at North Beach within one year of the commencement of any easement approved. Proof of this contribution will also be required.

7.4 Termination, Variations, Expiry

The Officer's Report Attached as Appendix 1 details these matters in its section 9. No changes are required as a result of the further information received.

7.5 Summary of Special Conditions Proposed in Response to Analysis above:

Surrender of WC-33364-OTH and Final Easement Plan

1. On the approval of this concession the Concessionaire must surrender existing concession WC-33364-OTH.
2. The Concessionaire must supply a LIDAR or other form of survey acceptable to the Grantor, of the Whareatea Road prior to the first anniversary of the granting of this concession easement. The survey must show the edge of the total road footprint, (including within the footprint: the road shoulder; lay-bys; the carpark; and culverts and other drainage structures). If approved by the Grantor this LIDAR survey or other approved map shall provide the boundaries of the site approved under this Easement, and the Concessionaire consents to it being substituted for the plan included at Schedule 4 of this Easement.

Construction

3. The Concessionaire must undertake all construction activities between 6am and 6pm Monday to Friday.
4. The Concessionaire is permitted to undertake the following construction activities:
 - a. constructing a car parking area at the junction with Mt Rochfort Road;
 - b. constructing a barrier arm across Whareatea Road at its junction with Mt Rochfort Road and the adjacent car parking area
 - c. constructing two foot tracks for public access at the Whareatea Mine site.
5. The Concessionaire must clearly mark the edge of the carpark authorised under special condition 2 of this Concession before construction commences, for the approval of the Grantor. All construction must remain within the approved boundaries. Wherever practicable, the Concessionaire must minimise ground disturbance.
6. The Concessionaire must ensure that all disturbance to earth and vegetation authorised under special condition 4 of this concession proceeds in accordance with the car parking area, foot tracks and barrier arm construction details and plans as lodged with the application (including the Whareatea Road Improvements proposal) and as described in the Notified Concession Final Report to Decision Maker. The foot tracks must meet the Department's Track Standards and be approved by the Grantor. The foot tracks must be completed within two months of the construction of the barrier arm.
7. The Concessionaire must install the car parking area at the Mt Rochfort junction location specified in the application and/or in the Notified Concession Final Report to Decision Maker prior to coal truck and trailer units using the Easement Land.

8. The Concessionaire must ensure that all machinery, tools and equipment used in undertaking construction activities on the Easement Land is steam cleaned and weed free prior to being taken onto the Easement Land.
9. The Concessionaire must ensure that all material used to construct the carpark is non-acid forming.
10. The Concessionaire must source all metal course used on the Easement Land from a weed free site approved by the Grantor.
11. The Concessionaire must ensure that at the completion of construction all disturbed earth is shaped to integrate and naturalise the land with the surrounding contours.
12. The location of all road edge structures and signs, including edge marker posts, sight rails, lay-by and car park signs and other information signs must be approved by the Grantor.
13. The Concessionaire must minimise the discharge of sediment into waterways during construction.
14. During construction, the Concessionaire must install silt traps within swales and at culvert outlets to provide localised storm water treatment. Silt traps must be maintained on a regular basis and the sediment removed from the retention pits and disposed of at an appropriate site off the Denniston Plateau. They must be removed within 1 month of the construction of the carpark.

Fauna

15. Where any vegetation clearance or disturbance is to take place, the Concessionaire must hold a current Wildlife Act Authority that covers the area of clearance or disturbance, and which includes requirements to protect *Powelliphanta patrickensis*, great spotted kiwi/roroa, lizards and any other species absolutely protected under the Wildlife Act 1953. The Concessionaire must comply with the conditions specified in the Wildlife Act Authority
16. The Concessionaire must keep a record of weka and kiwi road-kills caused by the Concessionaire along the easement and submit the record annually to the Grantor at the same time as the Activity Fee is due. The Grantor reserves the right to vary conditions or include new conditions if high numbers of road-kill are detected. In this context, a high rate of weka and kiwi road kill may be more than two birds/km annually of each species.

Waterways

17. The Concessionaire must keep any work within a waterway to a minimum.
18. The Concessionaire must monitor culverts on a regular basis and conduct all required maintenance and repairs of the culverts.
19. The Concessionaire must monitor water quality on the largest dam along Whareatea Road on a monthly basis throughout the term of this easement. The results must be collated and provided to the Department every 6 months. The parameters to be measured are:
 - g. Total suspended sediment (TSS)
 - h. Turbidity (NTU)
 - i. Presence of hydrocarbons on the water surface (oils, or grease films)
20. The Concessionaire must ensure that the monitoring results in condition 19 do not show;
 - a. A conspicuous presence of hydrocarbons at the monitoring location
 - b. An increase in TSS or NTU above the 80th percentile of the mean for the previous 12 month period.

If these levels are exceeded, the Concessionaire must within 10 working days present to the Grantor a report from a suitably qualified and experienced person identifying the causes of the exceedence, and if likely to be caused by the concession activity, the steps to be taken by the Concessionaire so as to remedy the exceedence, and ensure that it does not occur again. The Concessionaire must comply with any notice or requirement of the Grantor in this respect.

Fuel

21. The Concessionaire must not refuel any machine or vehicle within 10 metres of a waterway.
22. The Concessionaire must undertake any refuelling, lubrication and mechanical repairs in such a manner as to ensure that no spillages of hazardous substances occur onto the Easement Land or any waterway.
23. The Concessionaire must ensure that all machinery and vehicles used on the Easement Land are in good working condition with no fuel or oil leaks.

Revegetation and Weed Control

24. The Concessionaire must integrate matters associated with revegetation, weed control and monitoring as specified in special condition 25 within a management plan framework and identify to the Grantor how each matter is addressed within the plans that make up this framework.
 - a. The plans must be prepared by a suitably qualified person(s) and be approved by the Grantor, in writing, prior to the activities being undertaken.
 - b. The Concessionaire must review the management plans, including performance standards, annually and submit the plans to the Grantor for approval. The Grantor must consider the plans and may require them to be amended accordingly. The Concessionaire must comply with the approved Revegetation, Weed Control and Monitoring Plans, or any required amendments.

For the avoidance of doubt, the Concessionaire may incorporate the management plan requirements within the management plan framework for the Escarpment Mine pursuant to the conditions of the related Access Arrangement dated 21 May 2013 and the resource consents dated 24 October 2013. Any such management plans must be specifically approved, in writing, by the Grantor, for the purposes of this concession.

25. Revegetation, monitoring and weed control matters to be addressed within the management plan framework must include:

General

- a. plan review and submission dates;
- b. timeframes and timelines for review and implementation of actions;

Revegetation

- c. current best practices for establishing plants;
- d. suitable species for revegetation on the Denniston Plateau;
- e. revegetation performance standards;

Weed Management

- f. identification of known weeds (i.e. species and locations) within and adjacent to the road corridor;
- g. a prioritised weed control programme;
- h. a programme of weed monitoring;
- i. performance standards for weed control;

Monitoring

- j. methods to identify and quantify indirect effects on vegetation/flora, including the use of photo-points and transects from road edge to 30m perpendicular from the centre of the road and on both sides to track vegetation change over all key indigenous ecosystems, sensitive roadside areas and areas of modified vegetation;
 - k. methods, frequency and location for monitoring of dust;
 - l. triggers and response actions if adverse effects are detected
26. Eco-sourced species indigenous to the Denniston Plateau must be used preferentially.
 27. No exotic species are permitted to be sown or planted on the Easement Land.
 28. Straw bales must not be used for any purpose within the Easement Land.

29. The Concessionaire must complete baseline monitoring as specified in the Management Plan Framework's Rehabilitation and Closure Management Plan prior to the commencement of coal haulage.
30. The Concessionaire must comply with the MAF Biosecurity New Zealand, Check, Clean, Dry cleaning methods to prevent the spread of Didymo (*Didymosphenia geminata*) and other freshwater pests between waterways. MAF Biosecurity New Zealand, Check, Clean, Dry cleaning methods can be found at - <http://www.biosecurity.govt.nz/didymo>. The Concessionaire must regularly check this website and update their precautions accordingly.

Operation

31. The Concessionaire is permitted to undertake the following operational activities:
 - a. operate and maintain a barrier arm just south of the Mt Rochfort junction to restrict vehicle access to the Escarpment Mine site;
 - b. use and maintain a car park near the junction of the Whareatea Road and Mt Rochfort Road
 - c. operate light motor vehicles (vehicles with a gross laden weight of less than 3500kg) along the Whareatea Road at any time;
 - d. subject to special condition 33 operate road licensed heavy motor vehicles (vehicles with a gross laden weight of or greater than 3500kg) for the purposes of hauling coal from the Escarpment Mine (including empty vehicles) every day from 6am to 7 pm for six years, with up to 36,500 truck passes per year (that is, 18,250 trucks passing in each direction) with an annualised average of 120 truck passes per day but not to exceed 200 truck passes on any day;
 - e. operate road licensed heavy motor vehicles (vehicles with a gross laden weight of or greater than 3500kg) for mine servicing purposes with an annualised average of 30 passes per day- (with the exception of the water truck which shall have unrestricted access);
 - f. maintenance of the (3,295m gravel road) footprint to the satisfaction of the Grantor, including lay-bys.
32. Notwithstanding special condition 31(d) the hours of operation of road licensed heavy vehicles for the purposes of hauling coal (including empty vehicles) will be managed - to minimise the impact of the Concession Activity on amenity values on the Denniston Plateau. The hours of operation are to be determined by the Grantor but may exclude hauling coal on public holidays and either exclude hauling coal on Sundays or exclude hauling coal after 3pm on Saturday and after 3pm on Sunday of every weekend. The hours of operation must be advertised by the Concessionaire in the local newspaper prior to coal hauling commencing.
33. Approval for any additional vehicle use required due to circumstances of limited duration extenuating beyond standard operating conditions must be sought from the Grantor.
34. The Concessionaire must use reasonable and practicable methods to minimise dust levels along the Easement Land, including the use of a water truck.
35. The Concessionaire must ensure that all loaded coal truck and trailers are effectively covered to avoid depositing coal and dust along the easement area.
36. Special conditions 34 and 35 are intended to address, amongst other things, possible dust effects on visitors to the public conservation land. If despite those measures dust causes a quantifiable significant adverse effect on such visitors then this may be considered to be a significant adverse effect that was not reasonably foreseeable at the time the concession was granted and the concession may be varied pursuant to S.17ZC(3)(b) of the Conservation Act 1987.
37. The Concessionaire's heavy commercial vehicles must not use the lay-bys/car parking areas except in case of mechanical or other emergency, and the Concessionaire's light commercial vehicles must not monopolise use of the lay-bys/car parking areas to the exclusion of the public or other concessionaires.
38. The Concessionaire must ensure that all of the vehicles of the Concessionaire and its contractors do not exceed 40 kilometres per hour on the Easement Land.

39. The Concessionaire must ensure that all machinery, tools and equipment used in undertaking the maintenance of the Easement Land is steam cleaned and weed free prior to being taken onto the Easement Land.
40. The Concessionaire must source all metal course used on the Easement Land from a weed free site approved by the Grantor.

Heritage

41. The Concessionaire must integrate matters associated with Historic Heritage management as specified in special condition 42 into a relevant management plan within a management plan framework and identify to the Grantor how each matter is addressed within the plans that make up this framework.
 - a. The plans must follow current best practice historic conservation standards using the ICOMOS charter.
 - b. The plans must be prepared with the assistance of a suitably qualified archaeologist or conservation architect.
 - c. The plans must be approved by the Grantor prior to any works occurring within the historic Whareatea Mine area.
 - d. The Concessionaire must review the management plans, including performance standards, annually and submit them to the Grantor for approval. The Grantor must consider the plans and may require them to be amended accordingly.
 - e. The Concessionaire must comply with all of the approved management plans, or any required amendments.

For the avoidance of doubt, the Concessionaire may incorporate the management plan requirements within the management plan framework for the Escarpment Mine pursuant to the conditions of the related Access Arrangement dated 21 May 2013 and the resource consents dated 24 October 2013. Any such management plans must be specifically approved, in writing, by the Grantor, for the purposes of this concession.

42. The historic matters to be addressed within the management plan framework must include:
 - a. plan review and submission dates;
 - b. timeframes and timelines for review and implementation of actions;
 - c. matters to be included in any historic induction for workers operating within the historic Whareatea area ;
 - d. a map showing the location of historically sensitive areas within 10m of the Easement;
 - e. methods of vegetation management adjacent to the road in the historic area;
 - f. a description of work (up to the value of \$xxxincl. GST) for weed control and interpretation signs within the historic Whareatea Mine area;
 - g. monitoring methods and trigger levels to determine actions to mitigate adverse effects arising from the concessionaires activities in relation to the historically sensitive areas;
 - h. responses to be implemented if adverse effects are identified

Recreation and Traffic Management

43. The Concessionaire must integrate matters associated with managing the adverse effects of the concession activities on recreation and amenity values as specified in special condition 45, into a relevant management plan within a management plan framework and identify to the Grantor how each matter is addressed within the plans that make up this framework.
 - a. any plan must be in accordance with the Code of Practice for Temporary Traffic Management (COPTTM) (to the extent applicable) and industry best practice, and be prepared in consultation with a suitably qualified person(s).
 - b. any plans must be approved by the Grantor prior to the commencement of the activity.
 - c. the Concessionaire must review the Plans annually and submit them to the Grantor for approval. The Grantor must consider the plans and may require them to be amended accordingly.
 - d. the Concessionaire must comply with the approved management plans, or any required amendments.

For the avoidance of doubt, the Concessionaire may incorporate the management plan requirements within the management plan framework for the Escarpment Mine pursuant to the conditions of the related Access Arrangement dated 21 May 2013 and the resource consents dated 24 October 2013. Any such

management plans must be specifically approved, in writing, by the Grantor, for the purposes of this concession.

44. The traffic management, recreation and amenity matters to be included in any Management Plan framework must include:

Traffic Management

- a. plan review and submission dates;
- b. timeframes and timelines for review and implementation of actions;
- c. a description of the Whareatea haul road;
- d. a description of the likely interactions with other users and methods for managing any issues associated with conflicts;
- e. vehicle speed restrictions and mechanisms for informing staff and contractors;
- f. a plan showing sign locations and content. All traffic management signs shall be compliant with MOTSAM, however, general information signs need not be, provided their form and content has been approved by the Grantor;
- g. methods of communicating road use activities with affected individuals and organisations;
- h. a description of the monitoring and maintenance regime for the Whareatea Road

Recreation and Amenity

- a. a description of the recreational values associated with the Whareatea Road and how any adverse effects on those values are to be managed;
 - b. a description of an annual intercept survey along the Whareatea Road;
 - c. action responses for issues identified in the intercept survey that exceed identified trigger levels;
 - d. reference to the community liaison role, including a complaints procedure;
 - e. production and dissemination of information relating to recreational opportunities that may be affected by the Concession activities;
 - f. interaction and management of impacts on mountain biking opportunities;
 - g. management of public access beyond the barrier arm
45. The Concessionaire must ensure that unless closed by the Department for conservation purposes, or for reasons of public safety or emergency, the Easement land remains open to other Concessionaires and the public.
46. The Concessionaire must appoint a staff member as a point of contact for and to liaise with affected recreational clubs, organisations, concessionaires and operators, as well as visitors.
47. The Concessionaire must prepare, print and distribute an information brochure to regional information centres. The brochure must describe mining activities, the presence of coal truck and trailer units on the Denniston Plateau roads, relevant safety information, advice on viewing mining activities and advice on how to access recreational opportunities. The brochure must be produced to the satisfaction of the Grantor prior to coal truck and trailer units using the Easement Land.
48. The Concessionaire must pay up to \$xxx+ GST towards the Department's actual costs of updating DOC's Denniston Four Wheel Drive brochure and web pages relating to 4WD opportunities on Denniston Plateau. This must be paid on invoice on completion of the updates.
49. The Concessionaire must pay up to \$xxx+ GST towards the Department's actual costs of updating DOC's Denniston Plateau mountain bike brochure and web pages relating to mountain biking opportunities on Denniston Plateau. This must be paid on invoice on completion of the updates.
50. The Concessionaire must install an information sign at the beginning of the Whareatea Road advising of the presence of heavy vehicles using the road and how the public can safely use the road. The design and wording of the information sign must be to the satisfaction of the Grantor prior to coal truck and trailer units using the Easement Land.
51. The Concessionaire must ensure that the hazards and risks associated with visitor interactions are included in the management plan framework.

52. The Concessionaire must consult with the Buller Cycling Group regarding minimising any adverse effect of the concession activity on the Buller Cycling Club's Chain Grinder event.
53. The Grantor may, if he/she considers it necessary to do so, suspend the Concession Activity during, and up to one hour either side of, the Buller Cycling Club's Chain Grinder cycling event so as to avoid any significant adverse effect of the Concession Activity on the Chain Grinder event.
54. The Concessionaire must conduct intercept surveys to assess effects of the Concession Activity on visitors to Denniston Plateau and provide the results to the Grantor. The details of the survey and its timing must be approved by the Grantor.
55. Should the intercept surveys indicate that further mitigation is required or some conditions are no longer necessary then the Concessionaire may be required to modify their activity to the satisfaction of the Grantor.

Third Party Contracts

56. Further to Schedule 2, Condition 1.1, in contracting a third party to undertake for the Concessionaire the upgrade or maintenance of the Easement Land, the haulage of coal, or any other part of the Concession Activity, or perform any other obligation of the Concessionaire, the Concessionaire must ensure that the third party holds the required skills/qualifications to carry out the Concession Activity or any part thereof, and is informed of the relevant conditions of this concession, and requirements of any approved management plan.

Easement Facility Obligations

57. The cost of construction and maintenance on the Easement Land must be met by the Concessionaire. Where a concession has been granted to another user of the Easement Land, the Concessionaires should liaise over and may agree to share the cost of maintenance.
58. Nothing contained or implied in this Easement requires the Grantor or the Concessionaire to supply services on or under the Easement Land or entitles the Concessionaire to interfere with the services of any other user of the Easement Land.

Consultation with Solid Energy New Zealand Ltd

59. Should the Concessionaire wish to vary this Document in any way, the Concessionaire is to be required to undertake further consultation with Solid Energy New Zealand Ltd (or its successor) ('Solid Energy') regarding CML 37-161 and ACML 37-161-02. For the avoidance of doubt any variation application by the Concessionaire in relation to this Concession will be considered in accordance with section 17ZC of the Conservation Act 1987.
60. Prior to entering onto the Easement Land that is subject of CML 37-161 and ACML 37-161-02 ('the Licences') held by Solid Energy, the Concessionaire must notify and or liaise with Solid Energy to arrange access over that part of the Easement Land that is subject of the Licences. The Concessionaire must ensure that when carrying out the Concession Activity on the Easement Land subject of the Licences it does so without interruption to Solid Energy's right to carry out activities directly connected with its coal mining operations.

Where consent is required

61. Further to Schedule 2, Condition 16.1, the Concessionaire must pay all costs incurred by the Department or Grantor in giving notice and approval, including costs associated with considering, auditing and approving all plans required pursuant to this Concession. The Grantor may require a plan to be audited by a suitably qualified person not employed by the Department of Conservation. Standard Department rates for staff time, time of contractors and any other costs are payable by the Concessionaire.

Monitoring

62. The Concessionaire is to be responsible for the reasonable cost of and incidental to the Grantor's on-site visits or monitoring prior to and during construction and during operation as required to confirm the Concessionaire's compliance with the conditions contained herein. Such costs may include the costs of a liaison officer engaged by the Department to monitor and confirm compliance with the requirements of this concession.

Compensation

63. The Concessionaire must place a culvert at the end of the Aerial Track. The culvert must be installed at the expense of the Concessionaire to a design and standard approved by the Grantor prior to coal truck and trailer units using the Easement Land. The culvert must be inspected, managed and maintained in accordance with the Department of Conservation service standards at the expense of the Concessionaire for the duration of the Easement.
64. The Concessionaire must fund the actual costs, to a total of \$xxx+ GST of the construction, inspection and maintenance of novice mountain bike tracks at North Beach or the Kawatiri River Trail. The track is to be constructed to the satisfaction of the Grantor. A plan depicting the bike tracks to be constructed must be approved by the Grantor prior to construction commencing. Proof of compliance with this condition must be provided to the Grantor within one year of the commencement of hauling coal. The contribution of the Concessionaire is to be acknowledged at the site and on any published material about the tracks produced by the Department.

Rectifying breaches

65. Further to Schedule 2, clause 14.1, if in the Grantor's sole opinion the breach is able to be rectified, then prior to any notice of termination; the Grantor must notify the Concessionaire of the breach and require rectification within a time period that is in the Grantor's sole opinion reasonable.

Coal Tonnage Hauled Return Form

66. The Concessionaire must accurately complete and supply to the Grantor the Coal Tonnage Hauled Return Form (including witnessed declaration and number of truck loads hauled per day) and the Fee Return Form provided by the Grantor on 30 June of each and every year the concession is in effect.

General

67. A breach by the Concessionaire, or its employees, contractors, agents, clients or invitees of a management plan approved by the Grantor for the purposes of this Concession is to be deemed to be a breach of this Concession by the Concessionaire.
68. The Grantor may at any time undertake a review of the Concession conditions and impose new conditions on the Concession if the Grantor deems this necessary due to adverse effects arising from the Concession Activity.

8.0 Applicant's Comments on Draft Report

The Department sent BCL the draft Final Report and the draft Easement for comment on 26 November 2013 (see Appendix 6). On 11 March 2014 BCL provided the Department with: comments on the draft Easement; a Management Plan Analysis; a letter regarding compensation from Buller Cycling Club; and further information on the proposed Whareatea Road improvements between the turnoff to Mt Rochfort and the Mining Permit boundary (please see Appendix 7).

BCL included two key points in their response. Firstly, BCL requested that conditions be modified to fit in with the Management Plan Framework for the Escarpment Mine Access Arrangement. In principle this appears to be a reasonable request provided that the intent of the draft condition is captured in that Framework. The Department has assessed the cross referencing for each proposed management plan into the Management Plan Framework, along with the appropriateness of BCL's proposed wording of each condition. These assessments are discussed in detail below under each of BCL's proposed management plan related conditions. It was noted that there were some requirements not currently covered in the Management Plan Framework and the proposed method of addressing this is discussed at the end of section 8.

The second key point related to BCL wishing to amend the application where they no longer propose to realign the road around Whareatea Mine, but rather to use and maintain the existing road where it passes through the Whareatea Mine site. BCL provided the following statement:

"Originally BCL applied for the road alignment described in the draft concession document. This involved reinstatement of an old road and development of a new section of road from the Mt Rochfort turn-off to the mining permit boundary. Since the application was lodged, designs have been reviewed and further work completed and BCL now does not need to construct this new section of road. The existing road from the Mt Rochfort turnoff to the boundary of the Escarpment Mine covered under Easement (WC-33364-OTH), is sufficient to meet the reasonably foreseeable needs of vehicles accessing the mine.

The consequence of this variation is a reduction in disturbance area, and a reduction in impacts on historic values within the general Whareatea Mine area as no further earthworks are required. This means that the area of intact indigenous vegetation identified as having higher conservation values will remain. The boom gate and car park area are still required and these are shown on the attached plan. A proposal for the boom gate and signage is attached for information. This plan has been approved by the Northern West Coast Regional office Partnerships Manager."

Further detail was provided by BCL in an email on the 29/4/14 (Appendix 8) where they clarified that they did not wish to make changes to the (new length of) existing road but wished only to be able to maintain and use that section.

It is considered that this proposed change to the original application reduces the effects of what was applied for, and in terms of location and activity are close enough to warrant the change. In addition it is considered that section 17U(4)(b) of the Conservation Act 1987 supports this approach. This section states:

"The Minister shall not grant any application for a concession to build a structure or facility, or to extend or add to an existing structure or facility, where he or she is satisfied that the activity—

...

(b) could reasonably use an existing structure or facility or the existing structure or facility without the addition."

If the existing road is regarded as a 'facility', then BCL has now acknowledged that following the change in designs they could use the existing road ('facility') to carry out the concession activity. It follows that the alignment should follow the existing road, and therefore this proposed change can be accepted.

It is also noted that BCL has been able to make changes to the Whareatea Road under the existing 2012 concession. These changes have been within the existing road footprint. The only construction they now propose is the carpark at the junction with the Mt Rochfort Road, along with two short sections of foot track to provide for safe public access from the carpark to the historic Whareatea Mine site. Therefore, other than the carpark and tracks this concession is now only requesting an easement for use and maintenance.

More detailed responses to each BCL request to change the proposed conditions follows:

Due to the changes to the Final Report and Easement that were required from the above change in realignment the finalised documents were sent to BCL for their information (without prejudice) prior to being sent to the decision-maker. BCL verbally raised a number of concerns and these are also noted below.

Schedule 3 – SPECIAL CONDITIONS
– BCL comments (*in italics*) and the Department's Response

(Please note that the numbering refers to the original special condition number of the draft sent to BCL along with the Final Report on 26 November 2013. There are some incorrect number references and these have been corrected where relevant. Please also note that the numbering is also different to the numbering in the finalised recommended Easement.)

Condition 5

The vegetation referred to in this condition contains various weed species and there is a risk to the wider Denniston Plateau if BCL is required to transfer this vegetation to another site. Consequently, BCL seeks the deletion of this condition.

Department's Response

Agreed to delete condition as given there is to be no greater than minor construction works for the carpark and foot tracks the requirement to transplant intact vegetation is no longer warranted.

Condition 7

Rewording is suggested to reflect the changed footprint around the historic Whareatea Mine.

Department's Response

This condition is now covered by special conditions 3 and 4 for the carpark construction and the originally proposed vehicle barrier to prevent access along the existing road is no longer relevant. Delete condition.

Condition 10

This condition is unreasonable. The Minister has granted an Access Arrangement over 105ha of land adjacent to this site with no restrictions over the timing of vegetation clearance. Most of the areas to be cleared are exotic or weed infested areas, and the area of works is generally very small. There is a low likelihood of rare or threatened birds nesting in these areas. BCL requests that this condition is removed as it will unnecessarily add to operational costs and restrict efficient scheduling of operations.

Department's Response

Given that only a small area may now be cleared for the carpark it is considered reasonable that this condition remain unchanged. Carpark construction should be able to be efficiently scheduled within the required dates. On further discussion with BCL who are not certain that they will be ready to build the carpark before September, and given the potential impact will now be minimal, it is considered acceptable that this condition be deleted.

Condition 15

BCL would prefer that this condition is amended to the following;

- 15. The Concessionaire must supply a LIDAR or other form of survey acceptable to the Grantor, of the Whareatea Road ~~on completion of road construction and prior to any hauling of coal along the Easement.~~ prior to the first anniversary of the granting of this concession easement. The survey must show the edge of the total road footprint, (including within the footprint: the road shoulder; lay-bys; and culverts and other drainage structures). If approved by the Grantor this LIDAR survey or other approved map shall provide the boundaries of the site approved under this Easement.*

This will enable the LIDAR survey to be undertaken as part of the annual budgeted surveys. The

LIDAR costs are substantial and an out of turn survey will impose unnecessary costs on BCL.

Department's Response

As construction of the road (not the carpark) is complete, and it is clear that there would be no further modifications to the road then this proposed change regarding the timing (as specified) is considered acceptable. The condition has also been clarified further to explain that the Concessionaire also consents that the new survey will be substituted for the plan at Schedule 4 of this Easement.

Condition 16

BCL suggests that this condition should be amended so that BCL only keep and provide a record of weka and kiwi road kill rather than all vertebrates. As the condition is currently drafted BCL would be required to maintain records for possums, rats, mice, stoats etc.

Department's Response

The Department agrees that it is appropriate to change the condition so that not all vertebrates are captured but rather all "native birds" killed along the Easement would be captured by the condition. BCL have since confirmed that the notification report (para 131) references concern in relation to weka and that they consider that this is still too onerous and that only weka and kiwi should be recorded. It is considered that the condition can be amended to note weka and kiwi as this is consistent with the AA conditions.

Condition 21

Silt traps are installed during the construction period, however once construction is complete silt traps are removed and active maintenance ceases. It is not usual practice to be required to maintain silt traps along a gravel road on an on-going basis. Previously, the road had no water tables or run-off control. The road design manages and directs run-off to water courses to minimise the impacts on the receiving environment. After the initial "settling down" phase following construction, sediment run-off will reduce significantly. BCL requests that this condition is amended to refer to the construction period only.

Department's Response

Agreed to amend the special condition to clarify that it refers to construction periods and the traps will be removed within one month of construction. It is accepted that the material would be disposed of off the Denniston Plateau.

Conditions 23 (24 is a proposed new condition)

BCL notes and accepts the intent of this consent condition, but also submits that the reference point and parameters are inappropriate for the nature of the activity and the likely effects from construction and use of this road.

BCL suggests that the condition be amended to the following.

23. *The Concessionaire must monitor water quality on the largest dam along the Whareatea Road at its outlet on a monthly basis. The results must be collated and provided to the Department annually. The parameters to be measured are;*
 - a. *Total suspended sediment (TSS)*
 - b. *Turbidity (NTU)*
 - c. *Presence of hydrocarbons on the water surface (oils, or grease films).*
24. *The Concessionaire must ensure that the monitoring results in 23 do not show;*
 - a. *A conspicuous presence of hydrocarbons at the monitoring location; or*
 - b. *An increase in TSS or NTU above the 80th percentile of the mean for the previous 12 month period.*

The monitoring reference point at the lake outlet is a more appropriate monitoring site as this enables accumulation of all runoff sources around the lake catchment and ensures that run-off from

any point along the road is captured, not just the point closest to the road.

There is no evidence to suggest a source of objectionable odours which are normally the result of sewage or biological contaminants. These parameters do not need to be monitored.

The adverse effects on aquatic life from the Concession activity will be picked up by the proposed monitoring regime. The parameters originally suggested would require an extensive and expensive suite of baseline monitoring to determine any changes, and it would also be difficult to determine if the change was a result of the concession activity.

The 15NTU and 15TSS limits do not appear to be based on any information from this catchment, and there is no evidence to suggest that these parameters are in this case correlated. The proposed amended condition enables some baseline data to be gathered to determine the appropriate compliance limits with a non-compliance limit based on the recorded baseline data.

Department's Response

The Department considers that it is more appropriate to measure the water quality at the point closest to the road as the purpose is to monitor the quality of the dam (to ensure it is suitable to maintain aquatic life) rather than only its discharge. The Department also considers that the reporting should remain monthly in order to be able to work with BCL to address any problems should they arise. BCL have verbally commented that as they are required to notify the Grantor of any exceedence annual returns should not be necessary, and this is accepted.

It is however accepted that BCL's proposed triggers for hydrocarbons, suspended sediment and turbidity are acceptable. In addition, the Department has clarified the process for addressing any exceedence, should it occur.

Revegetation and Weed Control

Conditions 28 (should refer to 27)-34 (should refer to 33)

This current condition addresses a number of matters within the same condition and requires the development of a separate management plan. BCL submits that the matters required to be addressed are not inappropriate but they can and have been covered within the existing suite of management plans required by the Access Arrangement and Resource Consent conditions that cover the mine site, Whareatea Road and other areas. While this concession is a separate authorisation to the Access Arrangement, the two activities are inherently linked. BCL seeks that condition 28 is amended and split into two conditions as set out below;

28. (should read 27)

The Concessionaire must integrate the matters associated with Revegetation and Weed Control as specified in condition 29 into relevant management plans within a management plan framework and identify to the grantor how each matter is addressed within this framework.

- a. The plans must be prepared by a suitably qualified person(s) and be approved by the Grantor within two months of the commencement of this Concession.*
- b. The Concessionaire must review and revise the management plans, including performance targets, annually and submit the plans to the Grantor for approval. The Grantor will review the plans and may require the plans to be revised accordingly. The Concessionaire must comply with the all of the approved management plans, or any required revisions.*

For the avoidance of doubt, the Concessionaire may incorporate the management plan requirements within the management plan framework for the Escarpment Mine pursuant to the conditions of the related Access Arrangement dated 21 May 2013 and the resource consents dated 24 October 2013. Approval by the Conservator under the Access Arrangement of any such management plan requirements so incorporated shall be deemed to be approval by the Grantor under this condition.

Department's Response

The Department agrees that the special conditions regarding the revegetation and weed control could be amended to incorporate the requirement for management plans for this proposed Easement within the Escarpment Access Arrangement Management Plan Framework, as proposed. The special condition suggested by BCL has been amended to also refer to the monitoring provided for in the draft Easement as well as clarify that any such management plans must be specifically approved in writing by the Department for the purposes of this concession. The condition has also been further amended to refer to standards that must be met, rather than targets.

No exotic planting or sowing is now considered necessary therefore this would be prohibited in a new condition of the Easement.

Condition 32

BCL's existing management plan framework includes a Monitoring plan, and all monitoring activities are included within the relevant management plan. BCL submits that these conditions could be simplified and amended as follows;

29. *(should read 32)*

Revegetation, Monitoring and Weed Control matters to be addressed with the management plan framework must include:

General

- a. *plan review and submission dates*
- b. *timeframes and timelines for review and implementation of actions*

Revegetation

- c. *current best practices for re-establishing plants;*
- d. *suitable species for revegetation;*
- e. *any intended use and management of browntop;*
- f. *revegetation performance targets;*

Weed Management

- g. *identification of current known weeds (i.e. species and locations) within the road corridor;*
- h. *a prioritised weed control programme*
- i. *a programme of weed monitoring*
- j. *performance targets for weed control*

Monitoring

- k. *methods to identify and quantify indirect effects on vegetation/flora, including the use of photo-points and transects from road edge to 30m perpendicular from the centre of the road and on both sides to track vegetation change over all key indigenous ecosystems, sensitive roadside areas (as shown in Schedule 5) and areas of modified vegetation;*
- l. *methods and location for monitoring of dust; timeframes and monitoring frequencies;*
- m. *triggers and response actions if adverse effects are detected*

Department's Response

The Department accepts this proposed special condition although it has also been amended to refer to standards that must be met, rather than targets. The reference to the management of browntop was also removed because, as noted above, it would be a condition that no exotic planting or sowing is permitted.

The following matters are not considered to be currently covered by the Management Plan Framework and this must be addressed.

- revegetation performance targets
- identification of known weeds (i.e. species and locations) within and adjacent to the road corridor
- triggers and response actions if adverse effects are detected (for dust)

It was also noted that the Management Plan Framework weed conditions are, or would be, part of the Denniston Biodiversity Enhancement plan funded by compensation for the Access Arrangement.

These conditions are mitigation measures for this proposed Easement so would therefore need to be funded in addition to that paid for compensation for the Access Arrangement. This would be a special condition of the Easement. BCL have since argued verbally that this was not the original agreement in principle and should not be a requirement here. This is accepted as not necessary.

Operation

Condition 35 (should read 36)

BCL is concerned that some of the restrictions placed in condition 35 cannot be measured, are unworkable and are not necessary to manage the effects of the concession activity.

BCL submits that this condition should be amended to the following and that condition 37 be deleted;

35. (should read 36)

The Concessionaire is permitted to undertake the following operational activities:

- a. Construct and operate a barrier arm just south of the Mt Rochfort junction to restrict vehicle access to the Escarpment Mine site;*
- b. Construct and use a car park near the junction of the Whareatea Road and Mt Rochfort Road;*
- c. Operate light vehicles along the Whareatea Road at any time;*
- d. Operate road licensed vehicles for the purpose of hauling coal, for a period of eight years, to enable an average of 500 000 tonnes of coal to be hauled from the Escarpment Mine each year;*
- e. Operate road licensed heavy vehicles for mine servicing purposes;*
- f. Where any oversize vehicle is required to use the Whareatea Road, the Concessionaire shall notify the Grantor;*
- g. Road licensed heavy vehicles will be restricted in their hours of operation to minimise the impact on amenity values on the Denniston Plateau. The hours of operation will be as agreed by the Grantor, subject to (d) above, and advertised by the Concessionaire in the local newspaper prior to coal hauling commencing;*
- h. Maintenance of the new haul road footprint (3,265m gravel road), including lay-bys;*

The proposed conditions recognise that light vehicles must access the mine site at any time for safety and operational reasons. The mine will be a 24 hour, 7 day a week operation and site access cannot be restricted. Additionally, there are no reasonable means of a vehicle operator knowing how many vehicles have passed along the road in any hour. Obtaining an approval to increase light vehicle movements on an hourly basis is therefore unmanageable and unreasonable.

Only road licensed heavy vehicles are allowed to use the public road network to access the site with the exception of an oversize load delivering heavy plant or machinery. In this case these vehicles require specific authorisation from the road authorities. Creating some flexibility with vehicle size enables BCL and its contractors to optimise the truck configurations to reduce vehicle movements while still hauling 500 000T per annum. The Whareatea Road has been designed to the same dimensions as a public road and a 40km/hr speed limit has been offered and imposed so the adverse effects on users are likely to be less than on other public roads.

Other road legal heavy commercial vehicles that require access to the site include, fuel trucks, service vehicles, delivery vehicles, sewage trucks, and the water cart (as required by the Concession Conditions) and this vehicle may operate continuously in dry conditions.

The optimum hours of operation have not yet been determined by BCL. BCL understands and accepts that the community and the Department are seeking a "no haul" time at some stage over the weekend to enable people to enjoy aspects of the Plateau without the intrusion of heavy vehicles. BCL's preference is that this occur during the period of the year when we have daylight saving and when people are more likely to visit the Plateau.

A trucking contract is still out for tender, and the final destination for coal trucked from the Plateau is still being considered. BCL also intends to consult with any affected residents, and users of the Denniston Plateau, prior to agreeing on a preferred operational and "non-haul" period. Until these matters have been considered, it is unreasonable to place a restriction that may not deliver the best

outcome for all parties. Ensuring that the operating hours are approved by the Grantor and publicly notified allows for transparency in the final decision process.

Department's Response

The application was for vehicles 2.5m wide and 20m long which can carry up to 30 tonnes of coal. While the specific details provided in the application allowed for the effects to be more clearly understood it is accepted that as long as the vehicle is within the New Zealand Standards for a road of a minimum 6m in width, then permitting "road licensed heavy vehicles" is considered appropriate. This would allow the applicant more flexibility including using coal trucks without trailers.

It is not accepted that BCL should not be restricted to the level of use (truck passes) that it described in the concession application. The effects of this level of truck passes were considered in the assessment of effects and have formed a significant aspect of this concession process. It is noted that the special condition BCL are now proposing is to provide for an average of 500 000 tonnes of coal to be transported per annum. This could result in a sizably different impact from year to year if tonnages of coal hauled varied significantly. It is considered that the special condition can allow for some flexibility however should still limit the traffic volume (passes in each direction) permitted. BCL have verbally confirmed that they consider this acceptable as it allows for them to remove the 500,000 tonnes per annum that they have consistently referred to. Whilst it is accepted that BCL incorrectly described in their application, the number of truck passes required to haul this volume, it is acknowledged the intent was to allow for 500,000 tonnes of coal to be hauled per annum.

In weighing up the effects on users of this area it was considered 100 truck passes per day would provide for sufficient capacity to move this amount of coal per annum. This was based on 30 tonnes of coal being carried with each load. It appears that 28 tonnes is more realistic, so on that basis 120 passes per day is within the same ballpark of effects. It is noted that adverse weather, shut downs and other factors may impact on the ability to move coal so having this as an annualised figure does give some certainty of being able to move this volume of coal. However, an annualised figure may result in much higher traffic movements than anticipated when assessing the effects. Accordingly it is considered a daily maximum is still required. Should there be a wish to exceed that daily maximum then consent can be sought under special condition 37. It is suggested a daily maximum should not exceed 200 passes per day. If issues arise over the 120 being exceeded regularly impacts are likely to be picked up during the intercept survey and affects addressed via the ability to vary the easement in special condition 68.

The application stated that there may be up to 73 light commercial vehicle movements in a peak hour, but that 35 vehicles per hour is considered to be more likely. A maximum of 80 per hour would allow for the max number estimated along with some lee way. While counting is not considered necessary every day it could be required if there was a significant increase in light commercial vehicle use. The effects could then be addressed accordingly if necessary. BCL have provided a further verbal request that this limit be removed. It is further considered that light vehicles may be unlimited at this time however a special condition will allow for this to be reviewed should adverse effects arise.

It is considered that the special condition should provide for the operation of road licensed heavy vehicles for mine servicing and vehicle delivery purposes, and that this number be based on an annualised average. It is considered that this special condition should allow for the exception of the water truck which may have unlimited passes per day in order to address dust suppression where required.

It is considered that the proposed special condition 37 should remain in the Easement to allow for some controlled and monitored flexibility for the road licensed heavy vehicles, and light commercial vehicles. This condition acknowledges that the applicant has provided their best approximation of road use for considering and managing any adverse effects, while there may be some extenuating circumstances that lead to the operational need for additional road use. It is also considered that this condition should apply to the coal hauling trucks to again allow for some controlled and monitored flexibility.

In addition BCL have verbally confirmed that their preference for the restriction on road use for

amenity purposes is that there be no hauling on either Sunday or alternatively after 3pm on Saturday and Sunday of each weekend. This has been included within the special conditions.

Condition 37 (should read 38)

Coal dust is usually generated from loaded rather than unloaded coal trucks, so the change is requested to address this.

Department's Response

Empty coal trucks may still generate problems with coal dust being dispersed along the way. It is considered that the condition should be amended to require coal trucks and trailers be covered unless they have first been washed down off site. This has been reconsidered at BCL's further request. BCL consider that dust will have already blown out of the unloaded vehicles before making it back to the plateau. The requirement to cover or wash vehicles has been removed.

Condition 38 (should read 39)

Concerns have been raised by submitters about dust generation and the effects of dust. However no quantifiable information for the Denniston Plateau was provided to support these claims. BCL requests that prior to any revisiting of the conditions of the concession there is objective evidence of significant adverse effects.

Department's Response

The Department accepts the addition of the word "quantifiable" to "significant adverse effects" in this special condition.

Condition 40 (should read 42)

Changes have been requested to simplify the condition and restrict the obligations to matters that BCL has control over. While BCL will have contracts in place with its contractors and agents which will provide for the requested controls, we cannot impose this requirement on invitees with whom we have no contractual arrangement, though we will of course make sure they are aware of the speed limit.

Department's Response

The Department accepts BCL's request to restrict their obligations regarding enforcing the speed limits to those road users where contracts with BCL are in place. Road signs would inform other visitors of the speed limit.

Heritage

Conditions 41-42 (Should read 43-45)

Consistent with all comments provided on management plans. BCL suggests that these conditions are amended so that these matters are addressed through the existing management plan framework established for the Escarpment mine. In addition, amending the application to follow the existing road alignment removes some of the potential adverse effects that may have occurred under the original proposal.

Heritage

41. (should read 43)

The Concessionaire must integrate the matters associated with Historic Heritage management as specified in conditions 42 into a relevant management plan within a management plan framework.

- a. *The plan must follow current best practice historic conservation standards using the ICOMOS charter.*
- b. *The plan must be prepared with the assistance of a suitably qualified archaeologist or conservation architect.*

- c. *The plan must be approved by the Grantor prior to any works occurring within the Whareatea Mine historic area.*
- d. *The Concessionaire must review and revise the management plans, including performance targets, annually and submit them to the Grantor for approval. The Grantor will review the Plans and may require the Plan to be revised accordingly.*
- e. *The Concessionaire must comply with the all of the approved management plans, or any required revisions.*

For the avoidance of doubt, the Concessionaire may incorporate the management plan requirements within the management plan framework for the Escarpment Mine pursuant to the conditions of the related Access Arrangement dated 21 May 2013 and the resource consents dated 24 October 2013. Approval by the Conservator under the Access Arrangement of any such management plan requirements so incorporated shall be deemed to be approval by the Grantor under this condition.

42. *(should read 44)*

The historic matters to be included in any Management Plan framework must include:

- a. *matters to be included in any historic induction for workers operating within the historic Whareatea Mine area;*
- b. *a map showing the location of historically sensitive areas;*
- c. *methods of vegetation management adjacent to the road within the historic area;*
- d. *a description of work (up to the value of \$xxx incl. GST) for weed control and interpretation signs within the historic Whareatea Mine area;*
- e. *monitoring methods and trigger levels to determine any adverse effects arising from the concessionaires activities in relation to the historic site;*
- f. *responses to be implemented if adverse effects are detected*

Clarification was sought from the Department on what was intended by the proposal for concrete and brick preservation needs. This was further clarified and condition e. has been amended to reflect a better outcome for the area that reflects the likely extent of effects.

Department's Response

The Department agrees that the special conditions regarding Heritage could be amended to incorporate the requirement for management plans for this proposed Easement within the Escarpment Access Arrangement Management Plan Framework, as proposed. This condition has been amended to clarify that any such management plans must be specifically approved in writing by the Department for the purposes of this concession. The condition has also been further amended to refer to standards that must be met, rather than targets.

The proposed changes to the special conditions due to BCL's request to use the existing road, rather than realign the road, are accepted. This includes the proposal to contribute \$xxx towards weed control and interpretation signs. This is mitigation for effects on the historic mine site and the concrete and brick preservation would no longer be required.

The following matters are not considered to be currently covered by the Management Plan Framework and this must be addressed.

- methods of vegetation management adjacent to the road in the historic area.
- a description of work (up to the value of \$xxx incl. GST) for weed control and interpretation signs within the Historic Whareatea Mine area.

Additionally, the conditions (46, 47) regarding the protection of the dewatering pad are no longer required.

Recreation and Traffic Management

Conditions 48-52

BCL considers that some of the requirements in this section are unnecessary and outside the scope of matters that should properly be considered in this concession. BCL considers that the proposed activity is not inconsistent with any other public road and BCL is seeking to establish a consistent transition between the Whareatea Road and the public roads in the area. Therefore signs should be consistent with all public road sign requirements, and the management of effects limited to actual effects. Further it was agreed through the hearing process that the Department cannot consider matters associated with the Denniston Track or other areas not associated with the concession area itself.

Similar to comments on the other management plan matters, the conditions can be better structured to manage the adverse effects of the activity. The following amendments to conditions are requested;

43. (should read 48)

The Concessionaire must integrate matters associated with managing the adverse effects of the concession activities on recreation and amenity values as specified in conditions 44, into a relevant management plan within a management plan framework.

- a. *Any plans must be in accordance with the Code of Practice for Temporary Traffic Management (COPTTM) and industry best practice, and be prepared by a suitably qualified person(s)*
- b. *Any plans must be approved by the Grantor prior to the commencement of the road construction.*
- c. *The Concessionaire must review and revise the management plans, including performance targets, annually, and submit them to the Grantor for approval. The Grantor will review the Plans and may require the Plan to be revised accordingly.*
- d. *The Concessionaire must comply with the all of the approved management plans, or any required revisions.*

For the avoidance of doubt, the Concessionaire may incorporate the management plan requirements within the management plan framework for the Escarpment Mine pursuant to the conditions of the related Access Arrangement dated 21 May 2013 and the resource consents dated 24 October 2013. Approval by the Conservator under the Access Arrangement of any such management plan requirements so incorporated shall be deemed to be approval by the Grantor under this condition.

44. (should read new condition 49)

The recreation and amenity matters to be included in any Management Plan framework must include:

Traffic Management

- a. *A description of the haul road;*
- b. *A description of the likely interactions with other users and methods for managing any issues associated with the conflicts;*
- c. *Vehicle speed restrictions and mechanisms for informing staff, and contractors ;*
- d. *A plan showing sign locations and content. All signs should be compliant with MOTSAM;*
- e. *Methods of communicating road use activities with affected individuals and organisations;*

The Whareatea Road

- f. *A description of the intended use of the road*
- g. *A description of the construction activity including measures for minimising the effects on amenity values and managing public safety;*
- h. *A description of monitoring and maintenance regime for the Whareatea road;*

Recreation and Amenity

- i. *A description of the recreational values associated with the Whareatea Road and how any adverse effects on those values will be managed;*
- j. *A description of an annual intercept survey along the Whareatea Road;*
- k. *Action responses for issues identified in the intercept survey that exceed identified trigger levels;*

- l. Reference to the community liaison role, including a complaints procedure;*
- m. Production and dissemination of information relating to recreational opportunities that may be affected by the Concession activities;*
- n. Interaction and management of impacts on mountain – biking facilities;*
- o. Management of public access past the barrier arm;*

Department's Response

The Department agrees that the special conditions regarding recreation and traffic management could be amended to incorporate the requirement for management plans for this proposed Easement within the Escarpment Access Arrangement Management Plan Framework, as proposed. The special condition has been amended to clarify that any such management plans must be specifically approved in writing by the Department for the purposes of this concession. The condition has also been further amended to refer to standards that must be met, rather than targets.

The following matters are not considered to be currently covered by the Management Plan Framework and this must be addressed.

-A description of the recreational values associated with the Whareatea Road and how any adverse effects on those values will be managed.

With regard to the proposed requirements of the Plan the Department considers that BCL's assertion that Whareatea Road should be consistent with all other public road requirements is a valid point and therefore road signs including speeding restrictions and other normal road directions should be MOTSAM compliant. However the road is on public conservation land and therefore there are additional requirements or interpretation requirements that may arise. This is similar to there being other signage for information purposes approved on other roads. The condition has been amended to clarify that all traffic signs shall be MOTSAM compliant but other general information signs need not be provided that their form and content is approved by the Grantor. Special condition 59 requiring the Concessionaire to install an information sign at the start of the Whareatea Road was one such example.

BCL's proposed Recreation and Amenity matters to be included in any management plan are accepted. This includes the removal of the requirement for BCL to provide a bus service from Westport to Denniston. The Department considers that as the concession is now not required to cover the section for the Denniston Road this requirement is no longer appropriate. It is noted however that alternative measures to avoid, remedy, or mitigate may be found to be required as a result of the intercept survey, and this may include such things as providing transport across the plateau.

As explained earlier BCL now propose to use the existing road between Mt Rochfort and the Mining Permit and to construct/maintain two short foot tracks to allow for safe public access from the carpark at the Mt Rochfort turnoff. One of these tracks is the development of an existing track and the other involves minimal clearance and surfacing adjacent to a clear area. The Department considers that the proposed additional tracks are a minor change with minimal adverse effects and should be managed through conditions that require the Concessionaire to adhere to BCL's submitted Whareatea Road Improvements proposal and with the prior approval from the Department. Specifically the tracks and associated signage and interpretation must also meet the Department's track and signage standards. The tracks must be completed within two months of the construction of the barrier arm.

Condition 47 (should read 54)

BCL has applied to the Department under s13(1)(c) to close part of the area referred to in this condition. The reason for the closure is to ensure the safety of staff, contractors and the general public. The closed area is shown on the attached map. BCL submits that this condition be redrafted to reflect the public closure.

BCL has already submitted a plan to the Department outlining how public access beyond the boom gate will be managed to minimise conflict, maintain public safety and provide the opportunity for the public to explore and view parts of the historic Whareatea Mine area. This plan is attached for information.

Department's Response

This condition was to ensure access to Mt Rochfort is maintained for Concessionaires for whom the Department has a contractual obligation and for the public for whom the land is held. Any closure of the public conservation land is provided for under Section 13(1)(c) of the Conservation Act 1987. The closure process is considered under a separate process to the concessions process of Part 3B of the Act.

It is noted that BCL has maintained throughout the concession process (including the hearing) that public access to the mining permit boundary (by foot, or cycle) would be provided for. Any closure would need to consider the measures to ensure that the concessionaires are able to carry out their activity sufficiently, and sufficient opportunities are made for the public to access the site particularly around the historic Whareatea mine site. It is noted that BCL proposes to ensure tracks and signs provide for and facilitate public access.

Condition 52 (should read 59)

As noted above, BCL requests that all signs installed and used on the Whareatea Road are MOTSAM compliant. This requires an amendment to this condition as some of the information required cannot be shown on signs, and BCL considers is also unnecessary.

Department's Response

The Department considers that providing information to the public about the road is an important mitigation measure for ensuring the public are best able to manage their experience on the plateau. The only change considered necessary for this condition was to remove the requirement for truck frequency to be provided on the sign.

Condition 53 (should read 60)

BCL requests an amendment to this condition to be compliant with all of the other management plan conditions and to simplify and clarify the condition without changing its intent.

Department's Response

The Department accepts the proposed change to include Health and Safety management within the Management Plan Framework, has amended the condition to ensure that interactions with all visitors should be considered rather than just vehicles as suggested by BCL.

Old Conditions 59-61 (should read 63-65)

BCL maintains that the matters associated with the Denniston Track are outside the scope of the Concession application. This was agreed to at the hearing and consequently these conditions are no longer relevant.

Department's Response

As explained above (under the response to conditions 48-52) the Department accepts that it is not appropriate that the concession covers the Denniston Road and therefore the Concessionaire is not required to provide alternative bus service for the Westport to Denniston section of road. The conditions regarding the Concessionaire conducting intercept surveys are considered appropriate to monitor the impacts of the proposed activity on visitors to the plateau as explained in section 3 of this report.

Condition 75

The agreement between the Buller Cycle Club and BCL in relation to the contribution to the Kawatiri Beach Reserve was that the \$xxx (plus GST) would be paid by BCL through invoices made out to them for work carried out. This would occur once BCL had begun to mine coal from the Escarpment mine. This work may be within the Kawatiri Beach Reserve or the Kawatiri River Trail. A copy of the letter of agreement is attached again for reference. BCL submits that condition 75 be amended as follows;

64. (Should read 75)

The Concessionaire must fund the actual costs to a total of \$xxx+ GST of the construction, inspection and maintenance of novice mountain bike tracks on public conservation land at North Beach or the Kawatiri River Trail, to the satisfaction of the Grantor. Proof of compliance with this condition must be provided to the Grantor within one year of the commencement of steady state mining at the Escarpment Mine. The contribution of the Concessionaire will be acknowledged at the site and on any published material about the tracks at North Beach produced by the Department.

Department's Response

The Department accepts the clarification proposed by BCL. It is considered acceptable that the tracks may not be located on public conservation land. This condition was then amended to clarify the requirement that the track plans be approved by the Grantor and must be constructed to the satisfaction of the Grantor, to ensure that the compensation is appropriate.

Department's comment regarding additional conditions amended or deleted

Additional special conditions to be amended or deleted due to the changed application include the removal of construction conditions for the road and barrier. Other changes are also needed to clarify that those special conditions included under "construction" in the draft Easement would also be necessary for the operational period. This includes the requirements that machinery is steam cleaned free of weeds and the metal course is obtained from a weed free site.

Department's comment regarding proposed special conditions that are not currently addressed in BCL's Management Plan Framework.

- The Department has cross referenced the recommended Management Plan special conditions with BCL's Management Plan Framework and has identified that some conditions are not currently addressed in the Framework. They include the following: Straw bales must not be used for any purpose within the Easement Land.
- Revegetation, weed control and monitoring matters to be included
 - revegetation performance targets
 - identification of known weeds (i.e. species and locations) within and adjacent to the road corridor
- -triggers and response actions if adverse effects are detected (for dust). Historic matters to be included
 - methods of vegetation management adjacent to the road in the historic area.
 - a description of work (up to the value of \$xxx incl. GST) for weed control and interpretation signs within the Historic Whareatea Mine area.
- Recreation and Amenity matters to be included
 - A description of the recreational values associated with the Whareatea Road and how any adverse effects on those values will be managed.

The Management Plan Framework has been finalised and is ready for approval/decline by the delegated authority. Rather than amend the Framework at this stage it is considered that the best way to address these proposed conditions not yet being included in the Framework would be to attach them as conditional to any Management Plan approval for this Easement.

Department's comment regarding subsequent Activity Fee adjustment

The new proposal to use all of the existing Whareatea Road has resulted in a different road area to be calculated in the Activity Fee which was discussed in section 7. The new road footprint is 3 ha in area and therefore the new base fee is calculated xxx.

Department's comment regarding subsequent Compensation adjustment

The new proposal to use the existing road rather than construct the 100m length of road through intact vegetation has resulted in the compensation discussed in section 7 no longer being required.

9 Summary and Conclusions

1. With the applicant's proposed measures and the recommended special conditions (see section 7.4), it is assessed that all reasonable and practicable measures and methods would be undertaken to avoid, remedy and mitigate adverse effects on landform, flora, fauna, freshwater, historic and recreational values to an acceptable level.
2. The residual adverse effects may be the permanent loss of a small area of native vegetation. There may also still be some residual adverse effects on recreationalists and visitors, however, the proposed restriction of coal haulage hours during daylight time in the weekend is considered to mitigate this residual adverse effect sufficiently. Visitor experience monitoring may further inform any additional measures that may be required. Compensation would be provided for the clearance of indigenous vegetation and for residual adverse effects of the proposal on mountain-biking opportunities.
3. It is considered that the measures proposed to reduce effects on other road users and the agreement BCL has with Kordia and SENZ would adequately address issues with other concessionaires and holders of Management Agreements and CMLs and ACMLs that are permitted to undertake activities on the land applied for.
4. It is considered that if the recommended special conditions were to be accepted that the activity would be undertaken in a manner that would be consistent with the relevant objectives and policies in the Conservation Act, the Conservation General Policy and the West Coast *Tai Poutini* Conservation Management Strategy.
5. Te Runanga o Ngati Waewae was in favour of the application being approved and the West Coast *Tai Poutini* Conservation Board requested that the application be declined because it considers coal mining on Denniston Plateau to be inconsistent with the CMS.
6. Public notification resulted in 246 submissions in support and in opposition. The Director General's delegate has approved the Section 3 recommended matters that may be allowed and accepted and additional and recommended special conditions that would ensure that the proposal is consistent with the Conservation Act. It is recommended that there was no evidence or compelling reasoning provided which would over-ride the analysis in the Officer's Report in respect of the overall recommendation.
7. The Department's assessment of the application in relation to the relevant sections of the Conservation Act is summarised below:

17U(2)(a)	The information available is sufficient or adequate to enable the Minister to assess the effects (including the effects of any proposed methods to avoid, remedy, or mitigate the adverse effects) of any activity, structure, or facility; and	Yes
17U(2)(b)	There are adequate methods or reasonable methods for remedying, avoiding, or mitigating the adverse effects of the activity, structure, or facility.	Yes

17U(3) The proposed activity is not contrary to the provisions of this Act or the purposes for which the land concerned is held. Yes

17U(4)	The Minister can be satisfied that the activity:	
(a)	could not reasonably be undertaken in another location that	
	(i) is outside the conservation area to which the application relates; or	Yes
	(ii) is in another conservation area or in another part of the conservation area to which the application relates, where the potential adverse	Yes

	effects would be significantly less; or	
(b)	could not reasonably use an existing structure or facility or the existing structure or facility without the addition. This is apart from the section of road from Mt Rochfort to the Mining Permit boundary which will now be used and maintained (instead of the realignment).	Yes

17W(1) The concession and its granting is consistent with strategies and plans Yes

10.0 Recommendations to Decision Maker

Pursuant to the delegations dated 29 August 2013 / 2 September 2013 it is recommended that the Director, Conservation Partnerships, North & Western South Island Region approve the granting of a Notified Easement concession to Buller Coal Limited subject to the standard concession contract; and the special conditions identified in this report.

Signed: -----

Geoff Hulbert (Hearing Chair)
 Delegate of Director General of Conservation S49(2)(d) Conservation Act 1987

Date:

Recommendation: Approved/Declined

Signed: -----

Jan Hania
 Director, Conservation Partnerships, North & Western South Island Region

Date:

Appendices

- Appendix 1 BCL Application to up-grade and use the Whareatea Road as a haul road
- Appendix 2 Notified Concession Officer's Report to the Decision Maker
- Appendix 3 Submission Summary

- Appendix 4 Record of Comments made at the Hearing
- Appendix 5 BCL: Letter of Further Information regarding matters raised at the Hearing - provided 8 October 2013
- Appendix 6 Draft Final Report and draft Easement sent to BCL for comment on 26 November 2013
- Appendix 7 BCL's comments provided on 11 March 2014, including: a Management Plan Analysis; a letter regarding compensation from Buller Cycling Club; and further information on the proposed Whareatea Road improvements between the turnoff to Mt Rochfort and the Mining Permit boundary
- Appendix 8 Further detail provided by BCL in an email on the 29/4/14 regarding changes to the proposed road alignment