



30 April 2019

Bathurst Coal Ltd  
PO Box 250  
**WESTPORT 7866**

Attention: Campbell Robertson (via email: [campbell.robertson@bathurst.co.nz](mailto:campbell.robertson@bathurst.co.nz))

Dear Campbell,

## **RC185622 – CANTERBURY COAL MINE EXPANSION**

### **A. RFI RESPONSE / WRITTEN APPROVALS**

Thank you for the response (15 March 2019) to the SDC request for further information (“RFI”) letter of 13 December 2018, and for the written approval forms provided on 04 April 2019.

#### **1. INFORMATION GAPS**

We have worked through the RFI Response and there are some requests that are not responded to or are responded to in part. This, combined with the lack of specific referencing to RFI query numbering in places, has made working through the information rather time intensive.

A fuller and clearer understanding of the proposal would be beneficial; however, given the amount of time that has elapsed since the beginning of this process, i.e. SDC first sought that the increase in trucking movements be addressed by the applicant almost two years ago and RC185018 was lodged over a year ago, we are mindful of the need to avoid further delays.

To that end, I have requested that the other experts write their reports based on the information received to date, and, at this stage, we have only commented on process or areas of disagreement and requested further information where it is necessary in order to define the parameters of the proposal and/or come to a conclusion on adverse effects for the purposes of the notification report. However, please be aware that it may be necessary to request further information again at the substantive stage.

#### **2. TIMEFRAME FOR CULTURAL IMPACT ASSESSMENT**

As you are aware, Mahaanui Kurataiao Ltd (“MKT”) have advised that a cultural impact assessment (“CIA”) is required. As this CIA was requested as part of the original RFI, the processing clock remains formally stopped; however, the SDC experts are working on their reports in the meantime in order to avoid later delays.

Please propose a new date for the provision of the CIA pursuant to s.92A of the Resource Management Act ("RMA").

### 3. JOINT PROCESSING

The first issue raised in the RFI Response letter is: *"we confirm our view that they are separate applications and should be treated as such particularly with respect to the issue of notification."*

It is important that we recognise the background to this issue. SDC consistently advised the applicant that the new application being prepared was to be a fresh application which effectively superseded RC185018 (the mining truck movements only application); this was advised twice in writing in September 2018. This new application was to address all aspects of the expansion of the mine, including vehicle movements.

On 17 October 2018, following the 'without prejudice' meeting to discuss the consented baseline and content of the application, the SDC position on the new application was again set out very clearly in an email dealing with the process to be followed (J Burgess to D Spring), recognising that there was disagreement at that time:

*"We also disagree still on (a) the scope of the application as to whether it includes or does not include the truck movements application. To be clear with you Council's position on this is that it will be bundled together with the application for the expanded areas of the Mine in order to fully understand the activity and its associated effects; and (b) whether the application is a new application or a variation - Council's position is that this will be processed as a new application as the Mine is increasing and expanding in its size and operations..."*

In response, on 23 October 2018 (letter D Spring to J Burgess), the applicant advised that it proposed to provide a new application to sit alongside RC185018 (truck movements).

*"Although Bathurst remains of the view that a section 127 variation application is an appropriate approach we confirm that the mining activities application will be lodged as a fresh stand-alone resource consent application.*

*It is our intention that this application can then be assessed by Council alongside the trucking movements application."*

It was understood by SDC that this was proposed by the applicant in order to reduce the paperwork required to incorporate the vehicle movement component into the main application. The response from SDC, on 24 October 2018 (email J Burgess to D Spring), was:

*"Given Bathurst's advice it wishes to retain and proceed with the trucking application along with the new mining application, both applications will be processed and progressed together. The draft notification report on the trucking application will be reviewed in the light of the new mining application and **a single notification report covering both applications will be prepared and issued.***

[bold emphasis added]

*Essentially Council considers these 2 applications (Trucking and New Mining) relate to a single proposal and it will deal with them in accord with section 103 of the RMA which essentially provides that the 2 applications will be processed, heard and determined as one.*

...

*So in summary Council agrees to a lodgement date of 16 November 2018 for the new mining application on the basis that it is accepted and understood that;*

...

*4//Both the new mining application and the existing trucking application will be processed, heard and determined together;*

...

*Could you please confirm that Bathurst understands and accepts the above."*

The applicant's response on 29 October 2018 (email D Spring to J Burgess) was:

*"I also note and acknowledge your comments regarding communications with Environment Canterbury, potential timing of the decision and position on the joint processing of the land use and heavy vehicle applications.*

*Lastly, with the underlying details of the application and lodgement process now agreed, Bathurst looks forward to continuing to work collaboratively and constructively with SDC in progressing the matter to a mutual resolution."*

The applicant then advised the Commissioner for RC185018 (letter 1 November 2018) that "[t]he following has been agreed:

- (a) Bathurst will file a separate resource consent application for the mining activities at the Canterbury Coal Mine;*
- (b) This application will be filed on 16 November 2018;*
- (c) On the same day Bathurst will file an amended assessment of effects for the heavy vehicle consent to ensure consistency between the two applications;*
- (d) This will enable Council to consider both applications. Bathurst understands it is Council's intention to process these together;*
- (e) The mining activities application will apply the consented baseline that Ms Dovey for the Council considers applies to the assessment of effects. This will be referred to in the application as the "SDC Consented Baseline". It is understood that Council will process the application applying this same "SDC Consented Baseline";*
- (f) The mining activities application will not be lodged and processed on a without prejudice basis. Also all references to without prejudice now included within the draft mining activities application and or its supporting documents will be removed by Bathurst; and*
- (g) Despite sub paragraphs (e) and (f), Bathurst reserves its position in relation to the SDC Consented Baseline for any proceedings outside the council processing of the current resource consent applications. SDC is comfortable with this reservation."*

Therefore, it was unexpected to read in the RFI Response letter that the applicant confirms a differing view, i.e. that these applications should be treated separately, with separate notification decisions. This takes us back to the issues debated from June 2018 and agreed in October 2018. It is important that we do not cover the same ground after understanding and agreement has been reached, that the application does not stall and that we continue to move forward.

The applicant has chosen to split the land use activity into two application documents, but this does not make two separate assessments or notification decisions appropriate. If this was the case, an applicant could simply apply for every plan non-compliance as a separate

application and expect them to be assessed individually instead of applying for the land use activity that needed to be assessed in its entirety; this would not be acceptable in many cases and it is not accepted in this case. It would be fanciful to consider that the mine would exist without the trucking movements and vice versa – these two components of this land use activity are integrally linked. I can confirm that the two application documents lodged for the expansion of the mine land use activity will be jointly processed, with one notification report going before the Commissioner.

Perhaps the provision of two RC numbers has confused the issue for the applicant. I note that the main application was formally put on hold awaiting the transport assessment. When this arrived, in the format of an application document, it was given a second RC number. This was essentially an administration choice made without background knowledge. However, in terms of the SDC filing system, it would not be appropriate for a land use consent for an activity (if granted) to have two separate 'Resource Consent' numbers. Given this, the previous understanding reached and that one notification report will be provided to the Commissioner, the second RC number has been voided, and this land use application (in two application documents) is numbered RC185622. SDC apologises for any confusion caused.

For ease of reference in this letter, I have simply referred to the two application documents making up RC185622 as the main application (the bulk of the assessment of the expansion) and the transport application document (the vehicle movements component of that expansion).

#### **4. FUNCTIONS UNDER THE RMA**

With respect to the second issue raised on page 1 of the RFI Response letter, please be assured that SDC is very aware of its functions under the RMA, including with respect to the maintenance of indigenous biological diversity. We have discussed the issues and the overlap with the relevant ECan staff and are working closely with them. Some of the information requested further below is as a result of those discussions.

#### **5. WRITTEN APPROVALS**

The written approvals provided are not considered valid for a number of reasons.

##### **A. APPROVAL TO THE LAND USE ACTIVITY REQUIRED**

A written approval is provided to an activity, not a non-compliance. As discussed above, the proposed activity is the expansion of the mine, including all components, and splitting out components/non-compliances of an activity into separate application documents does not remove the need for SDC to consider the activity proposed as a whole, and affected parties will be considered on this basis. Part approval for one component/part-non-compliance of the activity ("heavy" vehicle movements) only will not be accepted as a written approval to the proposed land use activity.

##### **B. UNCONDITIONAL APPROVAL REQUIRED**

As per the email from J Burgess to D Spring (12 March) and as per Form 8A of the RMA, conditional approvals will not be accepted. It is noted that all but one of the approvals are conditional upon a 'condition' volunteered by the applicant relating to forming a community group. The applicant may wish to consider individual agreements with the parties if they would otherwise be unwilling to provide unconditional written approval.

### C. COMPLETED FORM REQUIRED

As per my email to D Spring (12 March):

*“In order for the written approvals to be considered valid, the full application (both applications, including RFI responses) needs to be provided to the parties and sections 3 and 4 of the written approval form need to be completed in full.*

*Section 3 requires a list of Plan non-compliances (which I note we haven't agreed upon as yet) and section 4 will need to be completed listing all “document names and dates” provided to the parties (i.e. the full application and RFI responses). Any amended plans will also need to be provided.*

*You may want to wait until we've agreed the non-compliances/finalised the RFI responses before finally completing the written approvals.”*

The Council's written approval form requires a “[d]escription of the proposed development or activity, including the ways it does not comply with the District Plan.” It also requires that the application “document names and dates” that have been provided to the parties are listed; this includes RFI Response information which forms part of the application.

A short description has been included on the form provided to the parties considered affected by the applicant: “Application for Heavy Vehicle Movements RC185640”; the overall expansion of the mine and other vehicle movements are not mentioned. The form also does not advise of any non-compliances with the Plan, or list the documents provided to those parties. The applicant, in the cover letter, advises that “the resource consent application” has been provided to the parties. This potentially means the part of the application that deals with heavy vehicle movements only. There is no evidence that the parties were provided with the full application documents (both components, now numbered RC185622) and the RFI Response(s), or that they were aware of the non-compliances associated with the mine expansion.

I note that the SDC written approval form goes beyond the requirements of Form 8A of the Resource Management (Forms, Fees, and Procedure) Regulations 2003. The RMA Form 8A does not require the listing of non-compliances but does require confirmation that the person has read “the full application for resource consent, the Assessment of Environmental Effects, and any site plans”. The Form also requires listing of these “document names and dates”.

To be considered valid by SDC, a written approval form will need to, as a minimum:

1. be unconditional (conditional approvals will not be accepted), and
2. list all ‘document names and dates’ provided to the party, including the main application and transport application documents now under RC185622, and all RFI Responses, including the response to this RFI (please note that any amended forms would need to be initialled by the relevant written approval party or parties), and
3. include a signed copy of the mine expansion plan (i.e. Attachment 8 of the first RFI Response).

### D. OWNERSHIP AND ADDRESS DISCREPANCIES TO BE RESOLVED

If written approvals are to be provided, please note that some of the written approval forms provided to date do not match the SDC rating database, and this would need to be resolved. (It is noted that the addresses listed in the cover letter do not match those on the

forms in some cases.) Again, please note that any amended forms would need to be initialised by the relevant written approval party or parties. The issues with the forms are as follows:

- J H Thwaites – the address of the property that Mr Thwaites is signing in relation to must be listed on the form.
- E J and B J D Deans – the address on the form is 359 Malvern Hills Road; however, SDC do not have rating records matching those owners or that address – please advise the legal description of the property(ies) so that it can be matched. Potentially the property(ies) are owned by a trust/company, and this would mean that approval was also required from that party.
- J E J Deans – occupier of 295 Malvern Hills Road. The owner of that property is listed as Tara Farm Ltd; therefore, an approval would also be required from Tara Farm Ltd.
- R H Deans – occupier of 395 Malvern Hills Road. SDC do not have rating records matching that address – please advise the legal description of the property so that it can be matched. Owner approval would also be required.

## **B. INFORMATION STILL REQUIRED**

### **6. WORKS WITHIN WATERBODY SETBACKS**

Having reviewed the RFI Response ecological assessment, it is still unclear what works are proposed within waterbody setbacks.

A number of waterbodies are located between the 'green' and 'blue' lines; some of these are shown on page 360 of the main application. The plan within ECan application CRC184166 shows additional waterbodies (PDF page 112, Sephira Environmental report page 11). From these plans, it is noted that the following waterbodies (or their upper reaches) are within the Mine Operations Area: Bush Gully Stream, Tara Stream, Oyster Gully Stream and Surveyor's Gully Stream.

The compliance table provided in the main application (p.57) applies the reduced setback exemption of 5m, referencing the ECan consent exemption. However, it is my understanding that the only earthworks approved by ECan under the LWRP are those existing at 2012 and those approved for the North ELF and Tara Pond 2, as reflected in the application submitted to ECan – CRC184166. Therefore, the 20m waterbody setback rule of the District Plan applies for the majority of the site.

The compliance table in the main application also indicates that only "a small amount of proposed earthworks will occur within 5m of the Tara Wetland", i.e. that these are the only works proposed within 5m of any waterbodies on the site; however, this would not appear to be correct, e.g. the retrospective works within the North ELF. To clarify the proposal/degree of non-compliance, please provide the following information.

Please show all waterbodies, as per the definition of the Plan, between the 'green' and 'blue' lines on a high-resolution aerial image (please show the 'green' and the 'blue' lines on this).

This waterbodies plan should be prepared by a specialist experienced in the identification of waterbodies under the Plan/RMA framework, using desktop and site survey methodology.

The plan is to show all waterbodies (including those on p.360 of the main application and those shown in the ECan CRC184166 application, and all wetlands and the side branches or the upper most branches in the headwater catchments of streams which may not have obvious open channels).

It would be useful if the plan also showed the catchments of the waterbodies (i.e. similar to those shown in the Sephira report in the ECan CRC184166 application).

The plan should be of suitable scale and detail to enable monitoring of all works and waterbody setbacks by SDC.

Please confirm what earthworks are proposed (retrospectively or otherwise) within 20m of these waterbodies between the 'green' and 'blue' lines. Please detail the location and specific works proposed. (These works will include the two Tara ponds, the North ELF and the NW of the mine works, and all other works within 20m of waterbodies.)

For any earthworks proposed within 20m of a waterbody, please advise what, if any, mitigation/ compensation is proposed.

If no works other than the two Tara ponds, the North ELF and NW of the mine works are proposed within 20m of all waterbodies, please explain what measures will ensure identification and avoidance of any work within 20m of these other waterbodies by staff (particularly in relation to seepages/wetlands and times when the intermittent waterbodies are not flowing).

Finally, please advise the distance from the uphill side of the 'spring' (Photo 11, Appendix 4 of Attachment 14) to the 'blue line', and to the downhill edge of the bulldozed bench that accommodates the existing fence on the NW side of the mine.

## **7. ECOLOGICAL RFI INFORMATION**

It is understood that the following points within the RFI of 13 December 2018 have not been responded to (or fully responded to). It is requested that the ecology expert provide the information requested below, i.e. new points (i) to (vii). The waterbodies plan prepared in response to 6. above will need to be taken into account.

Please note that the points below have also been reviewed by, and discussed with, Dr Adrian Meredith (Principal Water Quality Scientist, ECan). Dr Meredith has confirmed his view that the information requested by SDC is necessary and consistent with SDC's role in maintaining indigenous biodiversity. Further, he has confirmed that the requested information would also be needed by ECan when considering expansion of the mine, in order to fully understand the values of the wetlands/waterbodies and the water quality effects of that expansion. While the information requested will be needed by both authorities, please be assured that the SDC and ECan experts will be working together to ensure that unnecessary overlaps in assessment do not occur.

### ***Original RFI Point 40 stated:***

*To enable the effects of the mine expansion to be assessed, the extent of the ecological values present needs to be identified by a suitably qualified expert/s. It is requested that this includes but is not limited to the following:*

- a. *Full survey of the Mine Operations Area between the green and blue lines shown on Figure 16 of the application.*
  - b. *Survey of areas beyond the blue line that may be affected by the expanded mining operations and which may support indigenous vegetation remnants or values associated with the four National Priorities (including any relevant areas downstream of the blue line, taking into account the information from point 44 below).*
  - c. *The surveys referred to in a. and b. above are requested to include but are not limited to the following:*
    - i. *survey of vegetation, wetlands, terrestrial and aquatic invertebrates, lizards and birds (note: for the avoidance of doubt, the survey is also to be undertaken within the area/wetland that is affected/removed by proposed Tara Pond 2, except with respect to vegetation survey which has already been done),*
    - ii. *consideration of ecological linkages and buffering,*
    - iii. *consideration of the importance of riparian vegetation for ecological functioning and indigenous fauna habitat,*
    - iv. *a significance assessment of the ecological values present,*
    - v. *provision of previous reports that describe the ecological values present, including but not limited to those referred to in Footnote 6 of this letter (the Boffa Miskell and Tonkin & Taylor reports referred to in the application).*
- i. Please confirm if all seepages and wetlands in the headwaters of Bush Gully Stream, Tara Stream, Oyster Gully Stream (and potentially Surveyor's Gully Stream) were identified and surveyed during the vegetation survey, and included on the Figure 3 Vegetation Map (Attachment 14, page 55).
  - ii. Please provide any site-specific information that was collected during the vegetation survey.
  - iii. Please explain whether the significance assessments undertaken for seepages and wetlands provided in Appendix 7 of Attachment 14 were based on generalised descriptions of seepages and other wetlands or on site-specific assessments for individual seepages or wetlands.
  - iv. Surveys of lizards, terrestrial and aquatic invertebrates are required as no site-specific information has been provided about the presence of these animal groups between the 'green' and 'blue' lines; this information is required to enable the assessment of the effects of the proposal. This information was requested in December, and now the onset of winter is a sub-optimal time to be surveying lizards and terrestrial invertebrates in particular. As this will limit the usefulness of the information collected and there will be a consequent information gap in the application, please advise how this limitation will be taken into account in assessing the ecological effects of the mine expansion.
  - v. Please provide the following document which is referred to in Attachment 14 (PDF page 51): Water Ways Consulting Ltd. (2017). Bush Gully Stream Ecological Assessment. Memorandum from Richard Alibone, Water Ways Consulting Limited to Duncan Gray, Environment Canterbury and Martina Armstrong, LandPro. 3p

***Original Points 44(b)-(d), (f) and (g) stated:***

*The assessment is also to include consideration of the potential adverse effects of acid mine drainage resulting from the mine expansion on the ecological value of wetlands in the area, and particularly Tara Wetland. This assessment is to take into account any effects resulting from the mine expansion, i.e. an increase from a maximum of 33 hectares of total land disturbance at any one time up to 'a maximum of 42*



hectares area of land disturbance plus land or stockpiles under vegetative cover or land being rehabilitated at any one time', and the increased level of production proposed, i.e. from 20,000 tonnes of coal extracted per annum up to a maximum of 185,000 (+10%) tonnes per annum. The assessment is to include but is not limited to the following:

...

- b. In relation to contaminants, it is requested that additional water and sediment sampling below proposed Pond 2 and below the blue line be provided to complement the other locations sampled by Water Ways Consulting Ltd. If already undertaken, please provide the results,
  - c. Taking into account the results of b. above and the application report provided by Water Ways Consulting Ltd, please explain whether the low diversity of aquatic invertebrates also occurs in wetland habitats, and provide a plain English explanation of the water quality parameters used and why they have been chosen. This is to include comment on what the background levels were prior to this mine re-opening (as per historic information pre- or around 2000), what the levels are now, what impacts the expanded mine is expected to have and the implications of any elevated levels of contaminants for wetland biota,
  - d. Please consider the use of the acid mine drainage index for invertebrates (AMDI) described by Gray & Harding (2012) and referenced in the Water Ways Consulting Ltd report in the application. If it is decided not to apply the index, please explain why,
  - f. In relation to proposed Tara Pond 2, please provide a simple explanation of when/how often Tara Pond 2 might be expected to overflow, so that the probability of that occurring can be fully understood. If it does occur, what contaminants are likely to move downstream and what are the implications for ecological values in the Wetland, and
  - g. The Water Ways Consulting Ltd report in the application notes that previous surveys reported Canterbury mudfish at Site 3 and upstream in farm ponds. Please provide assessment of the implications that the specific contaminants resulting from the expanded mine (including to the level consented by ECan or resulting from any compliance issues in response to e. and f. above) may have for the Canterbury mudfish (Threatened – Nationally Critical), locally and in the wider Waianiwaniwa River system.
- vi. Please provide a response to all of the above Point 44 queries from a suitably qualified expert(s).

**Original Point 45(b) stated:**

*In addition, it is requested that the ecological expert assessment addresses the following points within it.*

...

- b. The application states:

*Following the de-commissioning of the sediment retention pond (anticipated to occur in 3 - 4 years' time (i.e. 2020 – 2021), the stormwater retention ponds are remediated and planted in appropriate wetland vegetation similar to that being removed (e.g. lowland flax, raupō reedland, purei and toetoe – refer to Appendix 1 for a list of the indigenous species recorded within the wetland). (p. 630)*

*At end of mine life, both Tara ponds will be remediated and returned as a wetland habitat. (p. 399)*

*Please include full details of this remediation proposed, clarification of how and when that is intended to occur and consideration of the ecological values/functioning/effects relating to that remediation proposal.*

...

- vii. With respect to 45(b), it is noted that the RFI Response letter states that the applicant wishes to “reserve our options” on the decommissioning of Tara Pond 2. It would not be appropriate for the application to propose the Pond and its decommissioning, but not provide the information required to assess the effects of that Pond and its decommissioning. Therefore, please provide the information requested.

In addition, the remediation of Tara Pond 1 and 2 are both subject to this request – both are partly within or wholly within the area between the ‘green’ and ‘blue’ lines. Tara Pond 1 is proposed retrospectively and Tara Pond 2 is proposed; therefore, please respond to 45(b) with respect to both ponds.

#### **8. ECOLOGICAL MITIGATION/COMPENSATION**

It noted that the RFI Response states that Tara Gully Pond 2 may not go ahead; however, it is still proposed within this application and, as such, must be assessed by SDC. It is noted that the compensation proposed is that accepted by ECan previously, i.e. restoration within the Bush Gully wetland, as mentioned above.

Other retrospective and proposed works included in this application are as follows:

- a. Tara Gully Pond 1 is located in part between the ‘green’ and ‘blue’ lines – retrospective.
- b. The North ELF proposal involves removal of wetland – retrospective.
- c. The headwaters of the seepages to the northwest of the mine will very likely be affected by works within the blue line (including, as I understand it, the previously bulldozed fenceline) – retrospective and proposed.
- d. The application proposes works within 20m (and within 5m) of all waterbodies – retrospective and proposed.

It is understood that the applicant is currently going through an alternative environmental justice (“AEJ”) process with ECan in relation to discharges to Bush Gully Stream and only after that process is completed will the compensation proposed for the removal of the North ELF wetland be finally discussed and decided. Paul Murney of ECan has confirmed that he will bring SDC into that compensation process at that time so that we can consider it jointly. However, for that to happen, please confirm that the applicant proposes the same compensation for this SDC application for the North ELF works as that proposed for ECan for the North ELF works, so that SDC has the authority to assess it.

In addition, please confirm the compensation proposed re lizards at the North ELF – if the same as that proposed to ECan, please provide a copy of the latest version of the proposed lizard management plan and we will liaise with ECan to provide joint comments.

Please confirm any mitigation and/or compensation proposed for the works that are associated with a. and c. above – Tara Pond 1 and the seepages to the northwest.

#### **9. “MSR PLANNED”**

Page 5 of the RFI Response letter refers to a small area shown as “MSR planned” being on Attachment 8; however, it does not appear to be shown. Please clarify/amend Attachment 8 as necessary.

#### **10. VOLUME OF COAL EXTRACTION PROPOSED**

Point 17 of the original RFI requested explanation of the maximum tonnage of coal proposed per annum. The RFI Response letter advises: *“In relation to question 17 the*

*maximum production will be 185,000 tonnes per annum.” However, the same wording relating to rolling averages is proposed by the RFI Response – Attachment 2.*

Please confirm either that a maximum of 185,000 tonnes per annum is proposed, or explain the condition proposed as requested in Point 17 of the original RFI.

## **11. DUST MANAGEMENT**

The transport application document states:

*“In addition to the use of dust suppressants, a water cart is used on the entire unsealed section of the public roads to mitigate dust on an “as required’ basis (on average 10 times per day when it is dusty)...” p.19*

*“Additionally, the tested and effective mitigation of the use of a water cart operated as required on the gravel section of the Preferred Route during dusty conditions is proving very effective.*

*Dust mitigation measures will continue to be used while the road remains unsealed, and these measures will ensure that effects of the activity are appropriately avoided, remedied and mitigated to the extent that they are no more than minor.” p.34*

The RFI Response letter states:

*“The water cart primarily wets the areas either side of the residences for 100 to 200m with lesser passes outside of these areas. Dust suppressants have been used in the past and may be used again in the future.” p.3*

As such, the application appears to be indicating that, potentially in addition to the use of dust suppressants, the water cart will be used on the entire unsealed section of Malvern Hills and Bush Gully Roads on the Preferred Route.

Proposed condition 8 relating to the Traffic Dust Suppression Management Plan (“TDSMP”) states that the TMP (presumably the TDSMP) must specifically provide for and/or directly address certain requirements as a minimum, one of which is as follows: *“operate a water cart along Bush Gully Road to reduce dust effects and undertake any other practicable dust suppression measures to mitigate dust effects at the sites of existing dwellings which are located within 50 metres of the Preferred Route and for a distance of at least 100 metres on either side of those dwellings.”*

We read this as meaning that the applicant proposes that a water cart will be operated to mitigate dust effects at the sites of dwellings within 50m of the Preferred Route and for 100m either side of those dwellings, and that dust suppressant may also be applied at the sites of dwellings, depending on the later advice of SDC experts. (It is noted that the condition only refers to Bush Gully Road, but it is assumed that is an error.)

Given that the applicant has not provided the management plan, and there is a degree of discrepancy between the application text (entire unsealed section) and the proposed condition (purpose is to address dust effects within 50 and for 100m either side), please finally clarify what is proposed by this application with respect to dust suppression (or interim dust suppression if the road is sealed).

## 12. ECM CALCULATION

The Transport Assessment is based on Coal Truck movements (defined as Heavy Vehicles in the AEE), Service Vehicle movements and Light Vehicle movements. The RFI queried whether the water cart was a Heavy Vehicle. The Bathurst Resources Ltd response stated this is considered a Service Vehicle.

The Transport Assessment identifies only eleven Service Vehicle Movements per week. This appears to underestimate the potential use of the water cart. The RFI Response suggests that, when used, across a ten-hour day the water cart currently treats 36km of road and each tank is able to wet approximately 4km of road. There would be two movements to wet the road (i.e. one to head out to wet the road and a second to head back and refill). This suggests there are currently times when there are at least 18 service vehicle movements per day.

Factoring the above to cover a twelve-hour day to be consistent with the application suggests that there could be approximately 22 water cart trips per day during dry weather.

Please confirm that the above is correct and provide an updated estimate of Equivalent Car Movements for the proposed activity.

## 13. SEALING OF THE ROADS, SIGNAGE AND SIGHTLINE/VISIBILITY WORKS

Nick Fuller and I have discussed the conditions proposed by the applicant with SDC Assets, in order to ascertain if they would be acceptable to them as landowner/manager.

Firstly, from an RMA perspective, it is not clear to us if sealing is proposed as a part of this application or not. I understand that the transport assessment is based on unsealed roads, with signage proposed for unsealed roads only. In the cover letter and Lane Neave letter within the RFI Response, it is stated that the applicant is *“committed to funding the road sealing”* and *“committed to the sealing of the preferred route”*, that *“effects have been appropriately mitigated, whether through sealing or dust suppression”* and *“[w]e therefore do propose that the unsealed sections of the preferred route be sealed and we will fund the reasonable costs of that sealing but that the sealing will depend on road controlling authority i.e. SDC legally authorising it.”*

Given that the wording of the proposed condition is also not complete, it is not clear if the applicant is actually proposing sealing as part of this application as a mitigation measure or as a voluntary ‘Augiers’ condition that would essentially be ‘nice to have if the terms suited’. The wording appears to indicate that the roads will only be sealed if agreement on a monetary contribution can be reached with SDC; however, SDC Assets have agreed in principle that the roads can be sealed and this was advised to the applicant in May 2018 – it is only the terms which need to be finalised, e.g. costs, standards, etc.; therefore, there is no impediment to the applicant proposing sealing of the roads as part of this application.

We require a clear, transparent statement of the application proposal so that it can be fully assessed.

If sealing is not definitely proposed in this application, but it may happen if the terms are right, then this needs to be explicitly stated, particularly in documentation provided to affected parties.

If sealing is proposed as part of this application, please provide a plan showing clearly what lengths of Malvern Hills and in particular Bush Gully Roads are proposed to be sealed (including the extent of any sealing proposed on Malvern Hills Road north of the intersection with Bush Gully Road).

Please also respond to the following RFI query that related to sealed roads - 13 December 2018, point 2:

*“Please also clarify the speed limits proposed and the “post-intervention road safety audit process” referred to on p. 15 of the Abley report...”*

As previously indicated, if the applicant is seeking certainty as to costs and terms, we would suggest that they work on developing a separate legal agreement with SDC Assets as soon as possible.

Whether proposed as mitigation or as a voluntary condition by the applicant, we are advised that SDC Assets as landowner/manager will not accept conditions that specify capped amounts as contributions and they would also want to be responsible for erecting any signage proposed on the roads (with the costs being met by the applicant). This is a private proposal and all costs (and any unexpected variation in costs over time) would need to be funded by the applicant. Therefore, a separate legal agreement with SDC Assets is required by them, with respect to sealing of the roads, signage within roads and sightline/visibility works. To be clear, SDC Assets will not support proposed conditions 9, 10 and 11.

If approval was to be recommended in due course, it is also unlikely that a ‘cost cap’ condition would be recommended meaning that all risk with respect to costs lay with the landowner/manager, SDC Assets, particularly given that the condition is opposed by them. Any condition that might be recommended around sealing, if approval were to be recommended, would likely only require the road be sealed (to the satisfaction of SDC or in accordance with the separate agreement), within a specific timeframe. If the road was not sealed, the applicant would be in breach. Again, for the applicant’s benefit, it is recommended that the development of a separate agreement be followed up with SDC Assets.

#### **14. MANAGEMENT PLANS REQUESTED**

The RFI requested the management plans discussed in the application to enable SDC as consenting authority, any affected parties and the Commissioner to consider the mitigation proposed. The plans were a ‘dust management plan’, a separate ‘traffic management plan’ and an ‘archaeological management plan’. The RFI also requested a specialist lighting design, which the applicant proposes to address by way of a ‘lighting management plan’.

It is now common practice, and we consider best practice, to provide (at least) draft management plans at the time of application so that effects can be fully considered by all parties. Given that the activity is currently operating and that such measures should already be in place, it was expected that these management plans would be active and available for consideration; however, it is acknowledged that the applicant has refused to provide draft or proposed management plans and instead proposes certification conditions requiring later assessment by SDC experts.

Please note that, with respect to all plans/management plans proposed to be supplied later through conditions (including the archaeological management plan), and if this later preparation of management plans is accepted by the Commissioner, consultation with SDC at an early stage during the preparation process is recommended, in order for the applicant to take the SDC expert views into account and avoid certification delays or the inability to give effect to any consent granted.

It is noted that the conditions proposed by the applicant only require that management plans are submitted to SDC; please note that any certification condition that may be recommended at the substantive stage would follow standard/best practice and include a process whereby SDC could accept or refuse a plan/management plan and/or require amendments following full expert assessment.

#### 15. STATUS OF THE ACTIVITY

With reference to Rule 9.21.1.4 (indigenous vegetation) and the status of non-compliance with this rule, SDC have provided me with a copy of the hearings panel recommendation/ SDC decision made on the provisions through the District Plan process in 2004.

In the text of the decision, it was stated that clearance of indigenous vegetation within a naturally occurring wetland would be treated as a non-complying activity. However, in the final provisions at the end of the decision, non-compliance with the subject rule was listed as both discretionary and non-complying – and this was continued into the current Plan.

SDC planning policy staff have advised that, if the Schedule 1 (s.20A) process was to be undertaken, the outcome would be that the status was confirmed as non-complying. I have suggested to SDC that they consider amending the operative Plan; however, given they are in the midst of the District Plan Review and drafting a proposed district plan, any work on this Schedule 1 process may be dependant to a degree on what resources would be necessary to complete the process, in terms of internal documentation and administration.

Whether the Schedule 1 process is actively invoked or not, the status of this land use activity is non-complying.

### C. ADDITIONAL REQUESTS

#### 16. NATIONAL ENVIRONMENTAL STANDARD FOR ASSESSING AND MANAGING CONTAMINANTS IN SOIL TO PROTECT HUMAN HEALTH (“THE NES”)

An NES assessment was requested from the applicant during our pre-application discussions. The main application provides this assessment as follows:

*“6.4.2 NES for Assessing and Managing Contaminants in Soil to Protect Human Health  
The NES does not apply as there is no permanent change of use proposed on this site (the land will be returned to production land after mining), nor any subdivision. It is also noted that the 60,000L fuel tank is already consented.”*

This effectively means that the applicant considers that s.8(d) of the NES does not apply, i.e. that the applicant considers that the activity does not change the use of the piece of land

in a way that causes the piece of land to stop being production land. I have discussed this assessment with ECan staff (who provide formal NES advice to SDC).

It is confirmed that the change of use from production land to mining activity land does constitute a 'change of use', regardless of whether or not the land will revert back to production land following rehabilitation. The issues around managing the disturbance of any contaminants in the soil for the purpose of protecting human health remain relevant and must be addressed as part of the earthworks proposed; any health impacts of disturbance would not be negated by later rehabilitation works and a return to production land. As such, a change to mining does constitute a change of use and s.8(d) of the NES applies.

Further, it is considered that at least one activity listed on the Hazardous Activities and Industries List ("HAIL") has been undertaken on the site, i.e. past mining/dumping activity on areas to be mined (retrospectively or proposed) as part of this application.

It is also noted that the legally described sites are listed on ECan's Listed Land Use Register ("LLUR") and pesticide storage/use and livestock dip/spray race operations are listed (in addition to mining related uses). The locations of these are not known.

Please provide an NES assessment from a suitably qualified environmental specialist experienced in NES assessment.

#### **17. SERVICING**

I was unaware that building consents had not been obtained for the existing buildings on-site. John Cameron of SDC has now updated me with respect to the separate Certificate of Acceptance processes being undertaken for the workshop (approved), coal shed (Notice to Fix issued and to be re-constructed) and office/amenities block (application to be made).

Please confirm that the location/parameters of the new coal shed building will remain the same for this application.

Please briefly confirm how the workshop and office/amenities buildings are serviced in terms of water supply and wastewater disposal. (It is understood there is a soakpit proposed for the workshop.)

It is understood that stormwater is discharged to ground and will be dealt with by ECan where necessary.

It is understood that the water cart uses around 100,000 litres per day when it is in use. The RFI Response (p.3) refers to "travel to the water pump". Please briefly explain how water is sourced for the water cart when it is used, e.g. is it proposed that this volume will be sourced from on-site ponds in summer or trucked in?

#### **D. TIMEFRAME**

Pursuant to s.92A, please respond in writing to this letter before **21 May 2019** and do one of the following:

- (a) Provide the information; or
- (b) Advise that the applicant agrees to provide the information but proposes an alternative date\*; or

(c) Advise that the applicant refuses to provide the information.

\* Please note that, as previously advised, SDC would wish to avoid further extensions of time.

Pursuant to ss. 95A and 95C, if the applicant does not provide the further information requested before the deadline concerned or refuses to provide the information, the application must be publicly notified.

The processing clock will continue to be formally stopped until all information is provided. Please note that if additional information is required as a result of the applicant's response, further requests from SDC will be considered a continuation of the original request.

I look forward to hearing from you. If you have any queries at all, please do not hesitate to get in contact.

Yours faithfully



Janette Dovey  
Director