



Office of Hon Dr Nick Smith

Minister of Conservation

Minister of Housing

2 JUL 2013

Alex Harris

fyi-request-885-63f05739@requests.fyi.org.nz

Dear Alex

Information Request under the Official Information Act – Advice on Denniston Plateau access agreement

Thank you for your email of 23 May 2013 regarding the access arrangement for Bathurst Resources on the Denniston Plateau, and requesting “all advice and communications (including cabinet papers, briefing notes, aides memoire, letters and emails) on the decision”.

The documents that are relevant to your request are:

- Permissions mining report, dated 6 May 2013;
- Departmental submission, dated 20 May 2013; and
- Letter to Bathurst Resources Limited, dated 21 May 2013.

The departmental submission and letter to Bathurst Resources Limited are released as attached.

The Permissions mining report, as well as the other attachments to the departmental submission, being the access arrangement terms and conditions and the compensation deed, are available on the Department of Conservation's website:
www.doc.govt.nz/bullercoal.

Regarding the copy of the access arrangement document on the department's website, please note that specific information relating to insurance amounts and bond amounts have been withheld under section 9(2)(j) of the Official Information Act to “...enable a Minister of the Crown or any department or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)”. I do not consider that the reason for withholding the information is outweighed by other considerations that render it desirable, in the public interest, to make that information available.

The appendices to the permissions mining report are available from the department on compact disc. Please contact Jay Eden in the department's National Office:
jed@doc.govt.nz to supply your postal address.

Under section 9(2)(g)(i) of the Official Information Act, I am withholding specific information in Appendix 8 to the permissions mining report relating to actual or perceived bias of individuals involved in the technical assessment of the access arrangement application. The names and

related details of the individuals concerned have been blacked out from the document. This information is being withheld in order to "...*maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any department or organisation in the course of their duty.*" I do not see that my reason for withholding the information is outweighed by other considerations that render it desirable, in the public interest, to make that information available.

You are entitled to seek an investigation and review of my decision by writing to an Ombudsman as provided by section 28(3) of the Official Information Act.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Nick Smith', is written over the typed name.

Nick Smith
Minister of Conservation

Encl



Departmental Submission

Date:	20 May 2013	File ref:	LCV-01-2501-08	DOC DM	1205060
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Minister of Conservation

Subject:	BULLER COAL LTD APPLICATION FOR ACCESS ARRANGEMENT – ESCARPMENT MINE PROPOSAL
Action Sought:	Decide the application for an access arrangement
Deadline:	Before 24 May 2013

Paper Type: (Cabinet, Statutory or Other)	Statutory	Dept's Priority: (Very High, High, Normal or Low)	High
Risk Assessment: (e.g. possible negative reactions/consequences)	Potential judicial review	Level of Risk: (High, Medium or Low)	High

Contacts for telephone discussion (if required)				
	Name	Position	Telephone	
1	Marie Long	Manager Planning & Permissions	04 471 3209 (wk)	027 225 5521 (ah)
2	Doris Johnston	DDG PRSG	04 471 3100 (wk)	027 431 2358 (ah)
3			(wk)	(ah)

24 MAY 2013

13/05/2013

Executive Summary

1. Buller Coal Ltd (BCL) seeks an access arrangement to construct and operate an open cast mine over 106 hectares on the Denniston Plateau. The relevant land is deemed stewardship area under s62 Conservation Act 1987 and it is required to be managed so that its natural and historic resources are protected. The open cast mine and final engineered landform would not be visible beyond the Denniston Plateau and immediate surrounding ranges.
2. The proposal would result in a number of significant adverse effects on natural and historic resources, some of which could not be safeguarded against. The most significant effect would be the permanent loss of 106ha of unique Brunner coal measure elevated ecosystems. To put this in context, the loss would be approximately 1.6% of all elevated Brunner coal measure ecosystems on the Buller coal plateaux and approximately 5.2% of the same ecosystems on the Denniston Plateau itself.
3. There have been underground mine workings on approximately 50% of the Denniston Plateau since the nineteenth century. Of the 106ha proposed for the open cast mine, around one third has previously been underground mined. Previous disturbances of ecosystems in the past include past mining, roads, bulldozed tracks and the spread of such weeds as gorse, broom, and rushes.
4. BCL has developed a comprehensive rehabilitation plan that would represent the best techniques available with the aim of establishing a sustainable and diverse indigenous vegetation cover with a final landform that is likely to resemble the form of the pre-mining topography. Despite this there is a degree of uncertainty and disagreement between the Department and BCL surrounding the long-term outcomes of the proposed rehabilitation. The Department's experts conclude that the most likely long term outcome is the establishment of vegetative successional pathways quite different to those present today. This outcome would lead to a quite significant loss of key flora and, to a lesser extent, fauna values within the mine footprint.
5. BCL is more optimistic and considers that its approach will provide conditions that permit natural processes to reproduce as closely as possible, the ecosystems that currently exist while the final landform proposed will blend into the adjacent landscape, prevent erosion, and mitigate against the production of acid mine drainage. It therefore considers that the resulting loss of values would be somewhat less than predicted by the department, excepting sandstone pavement and certain wetland habitat.
6. There is some uncertainty around aspects of the management of acid mine drainage but should the proposed water management be wholly successful there is likely to be an improvement in the water quality of the receiving Whareatea River catchment.

7. Overall the Department considers there would be significant and in some cases irreversible losses of conservation values that could not be safeguarded against should the application be approved. BCL agrees that some of the values would be permanently lost but disagrees as to the level of residual loss after all proposed mitigation and rehabilitation are taken into account.
8. The Department considers that the proposal is inconsistent with the key intent of the West Coast CMS to maintain and improve conservation values in a priority site for biodiversity and important historic landscape.
9. To address residual loss, BCL has proposed a substantial compensation package. This would include the funding of biodiversity enhancement work over approximately 25,000ha in the Heaphy River catchment for 35 years, biodiversity enhancement work over approximately 4,500ha on and surrounding the Denniston Plateau for 50 years, as well as enhancement and improvement of 4 historic projects on Denniston Plateau. Overall the proposed compensation would have significant conservation benefits for natural and historic resources in these areas.
10. In making your decision you must have regard to the criteria set out in s 61(2) of the Crown Minerals Act 1991. What weight, if any, to give to each criterion is a matter for you to determine with the proviso that whatever decision you make must be reasonable in the circumstances.
11. Your decision would appear to depend largely on the view you take of the proposed compensation package. You could reasonably decide that the proposed package warrants the environmental cost of the mine. Equally you could reasonably decide that it does not. This is a value judgement for you. You could also reasonably conclude that the application could be granted in part and declined in part.
12. If you decide to approve the access arrangement you should:
 - (a) Sign the access arrangement and forward it to BCL for execution; and
 - (b) Sign the compensation deed and forward it to BCL for execution.

Recommended Action

It is recommended that you–

- | | Minister's
decision |
|---|--------------------------------|
| (a) <u>Note</u> that BCL seeks an access arrangement to construct and operate an open cast mine over 106ha on Denniston Plateau; | (yes / no) |
| (b) <u>Note</u> that the relevant land is deemed stewardship land under s 62 Conservation Act 1987 and must be managed so that its natural and historic resources are protected; | (yes / no) |
| (c) <u>Note</u> that the most significant effect of the proposal would be the permanent loss of 106ha of unique elevated coal measure ecosystems which represents 1.6% of those ecosystems on the Buller coal plateaux and 5.2% of the those on the Denniston Plateau itself; | (yes / no) |
| (d) <u>Note</u> that the Department considers there will be significant and in some cases irreversible loss of conservation values that could not be safeguarded against should the application be approved; | (yes / no) |
| (e) <u>Note</u> that BCL agrees that some of the conservation values would be permanently lost but that it disagrees as to the level of residual loss after all proposed mitigation and rehabilitation are taken into account; | (yes / no) |
| (f) <u>Note</u> that some of the other adverse effects are able to be partially safeguarded against through imposing rehabilitation and other relevant conditions in the Access Arrangement; | (yes / no) |
| (g) <u>Note</u> that BCL has proposed a substantial compensation package to address residual loss that would fund biodiversity enhancement work over approximately 25,000ha in the Heaphy River catchment for 35 years, and over approximately 4,500ha on and surrounding the Denniston Plateau for 50 years, as well as enhancement and improvement of 4 historic projects on Denniston Plateau; | (yes / no) |
| (h) <u>Note</u> that the proposed compensation package would have significant conservation benefits for natural and historic resources in the 3 areas; | (yes / no) |

- (i) Note that you could conclude that these benefits coupled with partial safeguards are consistent with the objectives of the Conservation Act 1987 as they promote the conservation of natural and historic resources; (yes / ~~no~~)
- (j) Note that in making your decision whether to approve or decline the request for an access arrangement you must have regard to the criteria set out in s 61(2) of the Crown Minerals Act and that, in so doing you must give genuine thought and attention to them; (yes / ~~no~~)
- (k) Decide if:
- (a) The application is consistent with the objectives of the Conservation Act; (yes / ~~no~~)
- (b) The application is consistent with the purpose for which the land is held; (~~yes~~ / no)
- (c) The application is consistent with the management planning documents in relation to the land the subject of the application; (~~yes~~ / no)
- (d) The safeguards against any potential adverse effects of carrying out the proposed programme of work are:
- (i) Adequate in whole; or (~~yes~~ / no)
- (ii) Adequate in part; or (yes / ~~no~~)
- (l) The compensation package is substantial and would have significant conservation benefits for natural and historic resources in the 3 areas proposed for enhancement work; (yes / ~~no~~)
- (m) Note that you must give these matters such weight as you consider the case warrants and decide whether to:
- (a) Approve the application for an access arrangement subject to the conditions in the access arrangement and compensation deed; or (yes / ~~no~~)
- (b) Decline the application; (~~yes~~ / no)

- (n) Note that that BCL had expressed some concerns about the bonds and bond quanta included in the access arrangement but that the access arrangement contains a review mechanism whereby these matters can be reviewed through an independent risk assessment analysis process; (yes / no)
- (o) Note that if you approve the application you should:
- (a) Sign the attached access arrangement and forward it to BCL for execution; and (yes / no)
- (b) Sign the compensation deed and forward it to BCL for signing. (yes / no)

D Johnston

.....
Doris Johnston
DDG Policy & Regulatory Services
for Director-General

[Signature]
.....
Nick Smith
Minister of Conservation

21 / 5 / 13

RELEASED UNDER THE OFFICIAL INFORMATION ACT

Purpose

1. The purpose of this submission is to seek a decision from you on whether to grant or decline an application for an access arrangement lodged by BCL over 106ha of deemed stewardship area on Denniston Plateau.

Background

2. BCL has requested that you exercise your discretion under s 61(2) Crown Minerals Act 1991 and grant to it an access arrangement to construct and operate an opencast coal mine in the vicinity of the historic Escarpment underground coal mine on the Denniston Plateau. BCL holds a mining permit (MP 51 279) over 199.2ha in respect of the land it wishes to mine. The open cast mine (pit) would cover an area of 106ha within the mining permit.
3. BCL proposes to mine coal using the open pit strip mining technique. Roughly a third of the area has previously been underground-mined. BCL proposes to extract up to one million run of mine (ROM; pre washed coal) tonnes of coal per year and, according to projections, the life of the proposed mine is estimated to be approximately five years. The final engineered land form (ELF) would be a raised topography with slope angles predominantly between 11 and 22 degrees creating a low geotechnical risk and stable environment for rehabilitation. The open cast mine and final ELF would not be visible beyond the Denniston Plateau and immediate surrounding ranges.
4. The proposed mining activities would result in a number of adverse effects on natural and historic resources, some of which could not be safeguarded against. The most significant of these effects would be the permanent loss of 106ha of unique elevated Brunner coal measure ecosystems which form the Buller coal plateaux (approximately 6,500ha in total area). These ecosystems consist of a range of habitats and assemblages of species found nowhere else in New Zealand. The Denniston Plateau (2026ha in area) on which the proposal is located contains the best remaining examples of Brunner coal measures ecosystems. The loss of 106ha of coal measure ecosystems represents 1.6% of those ecosystems on the Buller coal plateaux and 5.2% of those on the Denniston Plateau itself.
5. The area of the proposed mine footprint contains a range of conservation values typical of the Denniston Plateau and also values specific to the area itself. These values include, among other things, original rare sandstone pavement, nationally significant wetland habitat, a range of rare and threatened plant species including some at risk of extinction and historic values that are an integral part of the wider historic landscape that is nationally significant.
6. Visitors travel up to the Denniston Plateau to explore the wild and remote environment and to see the historic mining remnants. It is one of the key places identified for people to visit to interact with coal mining heritage. Recreational use mainly includes biking, walking and 4wd. While these activities will be adversely affected to varying degrees, post-mining impacts will lessen with appropriate

restoration. BCL proposes to contribute to restoration of other historic sites in compensation for adverse effects of the mine development on historic values, and also to reinstate recreation tracks post-mining.

7. There is some uncertainty about the management of acid mine drainage, in particular the availability of adequate material to cap potentially acid forming rock. Should the proposed water management be wholly successful there is likely to be an improvement in the water quality of the receiving Whareatea River catchment as the open cast mine would take out several existing sources of acid mine drainage.
8. Relevant policy statements and management plans in relation to the application area are the Conservation General Policy and the West Coast Te Tai Poutini Conservation Management Strategy. The former does not provide any specific guidance with respect to mining applications. The latter does not specifically exclude mining from the Buller coal plateaux and the proposal would not prevent the achievement of many of the management objectives and policies for Denniston plateau. It would, however, make it harder to achieve some of them while it would be contrary to others. On balance, the Department considers that the proposal is inconsistent with the key intent of the CMS to maintain and improve conservation values in a priority site for biodiversity and important historic landscape.
9. BCL has developed a comprehensive rehabilitation plan that would represent the best techniques available. Despite this, the full recovery of many of the ecological values lost would not be achieved even in the long-term. The current natural landforms would be destroyed, the soils and underlying substrate would be permanently altered and areas of sandstone erosion pavement would be permanently lost together with certain wetland habitat and plants.
10. BCL considers that the Department has taken an overly pessimistic, or 'worst case scenario' view of the mine proposal and in particular, the likely rehabilitation outcomes. BCL considers that the Department's report and supporting analysis assume that all biodiversity will be lost from the site, with no value attributed to the rehabilitation works, and that this analysis has been provided by persons whom BCL considers may not be suitably qualified to provide such advice. While BCL admits that it will not be able to restore and replicate existing ecosystems exactly, it considers that it can replicate something very close to them over parts of the site and promote the establishment of other less similar ecosystems over the remainder.
11. Furthermore, BCL points to the recent interim decision of the Environment Court and suggests that, while the findings of the Court are not binding on the Department, to the extent that the Court reached different conclusions based on a proper testing of the same evidence being considered by the Department, this should put the Department on notice that the views of its reviewers may be overly conservative.

12. The Department considers that it is appropriate for it to take a reasonably conservative approach, when dealing with matters concerning such a unique and significant environment as that located at the site of the proposed mine. It considers that many of the adverse effects of the proposal could not be safeguarded against if the application were to be approved and that some of the adverse effects are significant. BCL itself accepts and acknowledges, on a general basis, the Department's findings that there will be unavoidable and permanent adverse effects from mining activities on biodiversity. BCL expressly acknowledges that features such as seepages and flushes, sandstone pavement ecosystems and underlying geological features that give the site its ecological character will be removed as a result of the project. For other ecological values, BCL acknowledges the project will result in some residual impacts on some fauna and most flora, including rare and threatened plant species. BCL also accepts that there is some uncertainty over the degree to which the best practice rehabilitation proposed will guarantee specific outcomes for biodiversity within the application area.
13. It is considered that these acknowledgments by BCL are consistent with the findings of the Department's own advisors, and also the findings of the Environment Court. The Environment Court found, for example, that the proposal would have adverse effects on some proportion of areas of significant indigenous vegetation, including locally and nationally endangered plant species and ecosystems, and that these adverse effects would not be avoided, remedied or mitigated. In addition, the Court also found that the biodiversity that the rehabilitated ecosystems support on the mine site will be less fit, rich and diverse than those presently existing. Further discussion on the Environment Court's findings is contained in the Department's report.
14. Other matters you might consider relevant are set out more particularly in the Department's report. They include the Environment Court decision referred to above, the New Zealand Biodiversity Strategy, the proposal for a permanent area of protection on Denniston Plateau (which it is proposed would enhance biodiversity values within the area) and compensation.
15. The proposed compensation package is significant and is made up as follows:
- (a) Funding a pest and predator programme for 35 years over approximately 25,000ha in the Heaphy River catchment within Kahurangi National Park;
 - (b) Funding a pest and predator control programme for 50 years over 4,000ha of the Denniston Plateau and surrounding forest; and
 - (c) Funding 3 historic projects on the Denniston Plateau.

16. The proposed compensation package is substantial and would result in significant benefits for biodiversity and conservation values and, in so doing, would achieve the objectives of the Conservation Act (by promoting the conservation of natural and historic resources).

Comment

17. In making your decision you must have regard to the criteria set out in s 61(2) of the Crown Minerals Act 1991. These are:

- (a) The objectives of the Conservation Act;
- (b) The purposes for which the land is held;
- (c) Relevant Crown policy statements or management plans in relation to the land;
- (d) The safeguards against any potential adverse effects of carrying out the proposed programme of work; and
- (e) Such other matters as you consider relevant.

18. The requirement to "have regard" to these matters requires genuine attention and thought to be given to them, although they must not necessarily be accepted.¹ What weight, if any, to give to each criterion is a matter for you to determine with the proviso that whatever decision you come to must be reasonable in the circumstances.

19. Based on the information that has been sent to you:

- (a) It is open to you to conclude that the proposal is consistent with the objectives of the Conservation Act (which are to promote the conservation of New Zealand's natural and historic resources). While the proposal will cause some permanent and irreversible loss to natural and historic resources at the site of the proposed mine, you could reach the view that the partial safeguards and, in particular, the compensation package will result in significant conservation benefits;
- (b) The proposal would appear to be inconsistent with the purposes for which the land is held. The affected land is deemed stewardship area and under s 25 of the Conservation Act every stewardship area must be so managed that its natural and historic resources are protected. Many of the resources will be destroyed in their entirety; others will be significantly adversely affected;

¹ *Foodstuffs (South Island) Ltd v Christchurch City Council* (1998) 5 ELRNZ 308, 314.

- (c) The proposal would appear, on balance, to be inconsistent with the key intent of the CMS to maintain and improve conservation values in a priority site for biodiversity and important historic landscape;
- (d) While some adverse effects could not be safeguarded e/g sandstone erosion pavements, if the application were to be approved other adverse effects could be partially safeguarded against through a combination of rehabilitation conditions, environmental quality limits, bonds and insurances;
- (e) The proposed compensation package is substantial both in terms of dollar value, and length of time that funding would occur. It would be a significant benefits for the biodiversity of the Heaphy River catchment and biodiversity on and around Denniston Plateau; it would also be used to fund 4 historic projects on Denniston Plateau. These matters will promote the objectives of the Conservation Act.
20. Your decision would appear to depend largely on the view you take of the proposed compensation package. You could reasonably decide that the proposed package warrants the environmental cost of the mine. Equally you could reasonably decide that it does not. This is a value judgement for you. You could also reasonably conclude that the application could be granted in part and declined in part.
21. A copy of the draft access arrangement has been forwarded to BCL and it has provided its comment on various conditions back to the Department. Some of its comments have been accepted, some not. The key comments from BCL's perspective which have not been accepted relate to those clauses dealing with bonds. In particular, the Department considers that the access arrangement should provide for a cash operating bond of \$500,000 and a cash operating grant of \$2 million (on top of a separate bond of approx. \$9m) at the outset rather than BCL's preferred approach of no cash operating bond and a cash operating grant limited to \$500,000. Any differences between the Department and BCL on these matters may be resolved subsequently as there is a mechanism in the access arrangement whereby these bonds can be reviewed and, depending on the advice from a risk assessment analysis, increased, decreased or abandoned.

Cost Implications

22. The Department's costs on processing the access arrangement application are cost recoverable. If the application is granted any work carried out by the Department in association with the access arrangement will also be cost recoverable.

Consultation

23. BCL was provided with a draft of the Permissions Mining Report. It has provided comment on it and those comments have been incorporated into the document where relevant

Section 4 Conservation Act

24. A copy of the revised application was supplied to Te Runanga o Ngati Waewae. It commented that it was happy to support the access arrangement; that it has been working closely with BCL; and that the consultation process has been comprehensive and informative.

Risk Assessment

25. There is a high risk of judicial review irrespective of what decision you make. If you decline the application it is likely that BCL will challenge your decision. If you grant the application it is likely that an NGO such as the Royal Forest & Bird Society will challenge your decision.
26. As your decision would seem to turn largely on the issue of compensation you could reasonably grant or decline approval depending on what weight you give the matter. Because this is a value judgement for you, any judicial review based on unreasonableness is unlikely to succeed.

Legislation

27. The application for the access arrangement needs to be determined under the Crown Minerals Act 1991. Section 61(2) sets out the criteria you must have regard to. The weight you give each of them is a matter for you, the only rider being that you must

Attachments

- Permissions Mining Report;
- Access arrangement terms and conditions
- Compensation Deed

ENDS



Office of Hon Dr Nick Smith

Minister of Housing
Minister of Conservation
Member of Parliament for Nelson

21 May 2013

Hamish Bohannan
Managing Director and Chief Executive
Bathurst Resources Limited
Operations Office
c/- Level 12, 1 Willeston Street
Wellington 6011

By email: hbohannan@bathurstresources.co.nz

Dear Mr Bohannan

Buller Coal Limited - Application for Access Arrangement for Escarpment Mine Project, Denniston Plateau

1. I have been asked by Buller Coal Limited (BCL) to agree to an access arrangement in respect of public conservation land on Denniston Plateau, West Coast. BCL holds a mining permit over 199.2ha of that land and the access arrangement is to enable BCL to construct and operate an opencast mine over 106 ha of it (the project).
2. In making my decision section 61(2) of the Crown Minerals Act requires me to have regard to:
 - (a) The objectives of the Conservation Act;
 - (b) The purpose for which the land is held under that Act;
 - (c) The relevant Crown policies or plans in relation to that land;
 - (d) The safeguards against any potential adverse effects of carrying out the proposed programme of work; and
 - (e) Such other matters as I consider relevant.
3. To assist me in making my decision I have considered BCL's application, the Department of Conservation's Permissions Mining report provided to me on 6 May 2013 (copy enclosed) which contained a large number of attachments, a proposed access arrangement and compensation deed.

4. At the outset I note that the loss of 106ha of elevated Brunner coal measure ecosystems is small. It would be approximately 1.6% of all elevated Brunner coal measure ecosystems on the Buller plateaux and approximately 5.2% of the same ecosystems on the Denniston Plateau itself. I also note that there has been some disturbance of the area in part including (in varying degrees) mining, roads, bulldozed tracks and the spread of weeds; and that Lake Brazil is an artificial reservoir created for the hydro-mining period at the Whareatea Mine in the 1980s.
5. It is inevitable with an open cast mine that there will be some unavoidable and permanent adverse effects. I note in particular that such features as seepages and flushes, around 20 ha of sandstone pavement ecosystems, and underlying geological features that give the site its ecological character will disappear as a result of the project; and that the project will result in residual impacts on some fauna and most flora. These are all findings of the Department with which BCL has, on a general basis, accepted.
6. It is evident that the Department and BCL have divergent views on the effect of rehabilitation, in particular. BCL does not seek to restore the current physical indigenous environment; rather it will provide conditions that permit natural processes to reproduce as closely as possible the ecosystems that currently exist. The Department's view is that even if the proposed rehabilitation strategies and techniques were implemented to the proposed high standard and proved successful, residual impacts would remain.
7. After careful consideration of all the information before me I have decided to approve the application and enter into an access arrangement in respect of the land with BCL. I set out my views with respect to the § 61(2) matters as follows:
 - (a) I accept that there will be some permanent and irreversible effects on the area's natural and historic resources but I consider some potential adverse effects will be partially safeguarded against through a combination of rehabilitation conditions, environmental quality limits, bonds and insurances. In addition the proposed compensation will enable considerable work to be undertaken in a number of places on public conservation land. I consider that the partial safeguards and, in particular, the proposed compensation package will promote the objectives of the Conservation Act;
 - (b) Section 25 of the Conservation Act requires stewardship areas to be managed so that their natural and historic resources are protected. While BCL has proposed various safeguards they will not prevent the loss of such irreplaceable features as the sandstone erosion pavements on-site. I consider therefore that the project will be inconsistent with the purposes for which the land is held;

- (c) The project does not appear to frustrate or prevent the achievement of many of the relevant objectives and policies of the West Coast Conservation Management Strategy (CMS). Nonetheless I accept that the project will make some of them harder to achieve and will also be contrary to a small number. While the matter is, in my view, finely balanced I consider the project to be largely inconsistent with the primary intent of the CMS to maintain and improve conservation values in what is a recognised priority site for biodiversity and an important historic landscape;
- (d) I accept that where adverse effects are irreversible and permanent they are not able to be safeguarded against (e.g. the sandstone erosion pavements). But I consider that some potential adverse effects can be partially safeguarded and that a combination of rehabilitation conditions, environmental quality limits, bonds and insurances will enable this outcome to be achieved;
- (e) The proposed compensation package is substantial and would achieve significant conservation benefits. It will enable a large amount of predator and pest control work to be carried out in other areas managed by the Department. This work will promote in a significant way the objectives of the Conservation Act and will be beneficial to the health of affected flora, fauna and ecosystem habitats in the areas where work is to be undertaken. It will fund not only biodiversity enhancement work over approximately 25,000ha in the Heaphy River catchment for 35 years, and similar work over approximately 4,500ha on and surrounding the Denniston Plateau for 50 years, but also four historic projects on Denniston Plateau itself.

8. In summary, I am satisfied that some of the adverse effects of the project can be safeguarded against; that the proposed compensation package is substantial and warrants the environmental cost of the mine; and that the combination of partial safeguards and compensation promotes the objectives of the Conservation Act. I therefore consider that these factors outweigh the other matters in s 61(2).

9. My approval is subject to BCL executing an access arrangement. I am aware that BCL has provided comment on the access arrangement conditions. I have not accepted all of the proposed changes. In particular, I have retained insurance and bond clauses in much the form they were drafted on the basis that there is a review mechanism in the agreement providing for an independent risk assessment analysis of these matters. I have signed the agreement and enclose it for execution by BCL. Please sign and return the original to my Department.

10. My approval is also subject to BCL signing a compensation deed that deals with the matters specified in paragraph 7(e) above in greater detail, including when and in what proportions the monies are to be paid. I have signed the agreement and enclose it for execution by BCL. Please sign and return a signed counterpart to my Department.

Yours sincerely



Nick Smith
Minister of Conservation

Encl.

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