

**Before the Independent Hearing Panel**

**In the Matter** of the Resource Management Act 1991 (**RMA**)

**And**

**In the Matter** of an application to the Central Otago District Council and Otago Regional Council for resource consent to establish and operate a gold mining activity at 1346 – 1536 Teviot Road, Millers Flat

**Reference** RC230325 (Central Otago District Council)  
RM23.819 (Otago Regional Council)

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**Reply Submissions on behalf Hawkeswood Mining Limited**

**Dated 24 July 2024**

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## May it please the Commissioners:

### Introduction

1. These reply submissions are presented on behalf of the Applicant, Hawkeswood Mining Limited (**HML**).
2. HML seek all relevant consents required to establish and operate an alluvial gold mining operation in a Rural Resource Area at 1346 – 1536 Teviot Road, Millers Flat, Roxburgh (**Site**). Consents are sought from Central Otago District Council (**CODC**) and the Otago Regional Council (**ORC**).
3. These reply submissions follow:
  - a. My opening legal submissions dated 8 May 2024.
  - b. The hearing on 14 and 15 May 2024.
  - c. The extensive package of supplementary material lodged with the Panel on 25 June 2024.
4. A reply statement of Ms Collie accompanies this reply. This brief reply evidence is limited in scope, responding to the changed position of Ms Stirling and Ms Ter Huurne, matters of clarification and (small) remaining areas of disagreement which have relevance to the final package of proposed conditions of consent advanced. It is appropriate that Ms Collie explain her position on those issues, along with presenting the final proposed conditions of consent for CODC (and ORC).<sup>1</sup>
5. Because the changed position of Ms Ter Huurne does not give rise to any new matters to address, nor are there any outstanding issues with respect to the ORC conditions, in the interests of simplicity Mr McDonnell has not provided a reply statement. His position remains unchanged from that

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<sup>1</sup> There are no changes to the version of the ORC conditions circulated with the supplementary material. They are attached for ease of reference.

held earlier (refer his supplementary statement of evidence dated 25 June 2024).

6. I record that no changes have been made to the versions of management plans or site plans lodged with the supplementary package.

## **Reply**

7. As might be expected from a proposal such as this, I took note during the hearing of a suite of matters which would be the subject of commentary in reply. However, the subsequent process put in place by the Panel, involving extensive additional consultation and assessment, followed by preparation and lodgement of an extensive package of supplementary material, means that all issues arising during the hearing have been engaged with.
8. The position has been further advanced by the subsequent shift in position by Council's planners (Ms Stirling and Ms Ter Huurne), who both now recommend that consent be granted given they accept effects have been suitably avoided, remedied or mitigated and relevant objectives and policies have been satisfied.

## ***Supplementary Material***

9. I do not propose to summarise the supplementary material lodged on 25 June. You are aware that it is comprehensive, and attempting to summarise it would add significantly to the length of this reply in circumstances where that detailed material speaks for itself. In brief I identify key matters of relevance in that package to your analysis of this proposal.
10. Fifteen supplementary statements of evidence engaged with:
  - a. Issues arising during the hearing,
  - b. Consultation and exchanges with other parties and Council officers,
  - c. Further technical work,

- d. Detailed draft management plans, and
- e. Revised proposed conditions of consent.

11. Of note:

- a. The supplementary statement from Ms Ross included a copy of the granted and approved archaeological authority.
- b. The supplementary statement from Mr Heller provided detailed additional investigation and analysis of Tima Burn.

12. Ten management plans were prepared to a high level of detail. While these plans will still need to be lodged with the Councils for certification (if consent is granted), they are now drafted to a high standard and provide clarity as to the management approach proposed. They are underpinned in some circumstances by significant additional work undertaken following the hearing on 14 and 15 May and have taken account of extensive consultation with and feedback from other parties and the Councils. The management plans represent the output of a significant volume of work, and in my submission have substantially advanced from a detail perspective how the proposed activity will operate and be managed.

13. The proposed conditions of consent were broadly consulted upon and revised taking account of feedback, further technical work, revised management plans, and matters raised during the hearing.

14. The site masterplan set has also been the subject of extensive further work to ensure clarity and consistency, responding to issues arising and queries raised, and tweaks required consequent on detailed management plan work.

15. You have a record of consultation undertaken. Of note in that context is the consultation with Mr Vial and Kā Rūnaka via Aukaha.

### ***Kā Rūnaka***

16. Following the hearing and consultation process, Kā Rūnaka have lodged a memorandum dated 10 July 2024 which acknowledges a constructive consultation and feedback process and a narrowing of issues of concern for Kā Rūnaka. When lodging the supplementary package, HML specifically recorded its appreciation for Kā Rūnaka's engagement.
17. Kā Rūnaka advise, having considered the supplementary information and management plans, that they neither support nor oppose the proposed gold mining operation. In my submission that change in position is of import and reflects the significant progress made.
18. Kā Rūnaka say that remaining matters can be addressed through conditions of consent. I comment below on those identified matters set out in the 10 July memorandum.
19. *Effects on Wāhi Tūpuna Values* – There is agreement this has been addressed through conditions of consent, the conditions imposed in the archaeological authority, and the proposed test trenching and archaeological monitoring.
20. *Restoration Planting of the Tima Burn* - The commentary in the memorandum refers to this planting as an "offset". For reasons addressed in the accompanying reply statement of Ms Collie, it is not a planting as an "offset" but rather for the purposes of ecological enhancement. However leaving that characterisation to one side, Kā Rūnaka are supportive of the planting (which they were consulted upon) and seek certainty through conditions that the Tima Burn planting will occur and that the planting will subsequently be covenanted to protect it.
21. The reply statement of Ms Collie identifies why the proposed conditions of consent with respect to planting allow for the prospect of an alternative location. In short, this has been provided for simply to acknowledge that the Tima Burn location proposed is on third-party land. There is an agreement in place for it to occur, and therefore HML have no reason to believe it will not occur as planned. However I have advised from a legal

perspective it is appropriate for provision to be made for an alternative as a fallback position.

22. Ms Collie's evidence identifies a subsequent amendment made to CODC condition 36 (e) to clarify the alternative locations are only options if the consent holder is unable to obtain landowner permission for planting adjoining the Tima Burn. Therefore the amendment made responds to the Kā Rūnaka issue raised in part, and I say does so in a manner which addresses the core substance of the concern.
23. The conditions have also been amended to require the covenanting of the planting (condition 38).
24. Thus I say the concern about certainty has been appropriately responded to through the amendment to the proposed condition regarding location, and the request that covenanting be secured in a condition has been met.
25. *Effects on Wai Māori and Te Mana o te Wai – Augmentation* – HML disagrees that it should respond to any groundwater decline however caused with augmentation. HML is required to respond to the effects of its activities, not the actions of others or natural fluctuations. HML's conditions do require HML to augment where its actions have created low flow exceeding a nominated trigger point.
26. In addition I refer you to:
  - a. Mr Heller's supplementary statement<sup>2</sup> at paragraphs [22] – [36] and Appendices B – E of that evidence with respect to Tima Burn, potential stream depletion and augmentation.
  - b. The draft Water Management Plan.
27. Mr Heller's professional opinion supports the draft conditions advanced by HML.

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<sup>2</sup> Dated 25 June 2024.

28. HML does not agree with the amendments sought by Kā Rūnaka on the basis the proposed conditions of consent it has advanced are fit for purpose and appropriate.
29. *Effects on Wai Māori and Te Mana o te Wai – Flow Monitoring* – HML relies on the professional opinion of Mr Heller, who supports the draft conditions advanced by HML for reasons he has addressed in evidence. Detailed methods for monitoring flow are addressed in the draft Water Management Plan.
30. HML does not agree with the amendments sought by Kā Rūnaka on the basis the proposed conditions of consent it has advanced are fit for purpose and appropriate.
31. *Effects on Wai Māori and Te Mana o te Wai – Water Quality Monitoring* – HML relies on the professional opinion of Mr Heller, who supports the draft conditions advanced by HML for reasons he has addressed in evidence. Detailed methods for monitoring water quality are addressed in the draft Water Management Plan.
32. RM23.819.03 proposed conditions 12 – 15 appropriately address water quality monitoring and required actions in the case of trigger levels being breached.
33. HML does not agree with the amendments sought by Kā Rūnaka on the basis the proposed conditions of consent it has advanced are fit for purpose and appropriate.
34. *Effects on Wai Māori and Te Mana o te Wai – Template Conditions* – The ‘template’ conditions are not required – the conditions proposed by HML are fit for purpose and the most appropriate.

***Other Parties***

35. Consultation with other parties is detailed in section 4 of the package of supplementary information – refer document 4.1 for a summary. In my submission, issues raised have been appropriately responded to. Feedback has been taken account of and in most instances incorporated into

changed plans or conditions. Where revisions have not been accepted, reasoning has been provided in reliance on the expert opinion of experienced consultants.

***Revised s42A Reports***

*CODC*

36. The supplementary section 42A report for CODC was accompanied by supplementary statements with respect to landscape (Jess McKenzie) and acoustics (Jamie Exeter).
37. The landscape supplementary from Ms McKenzie is in short supportive. There is no need for me to repeat the conclusions in that statement which align with the expert assessment of Mr Moore.
38. The acoustic supplementary from Mr Exeter is also supportive but identifies two outstanding disagreements.
39. The first disagreement relates to ambient noise levels. This has been addressed in evidence by Mr Hegley, in verbal commentary by me, and by Ms Collie in her statement in reply. Fundamentally, I say you should rely upon the evidence of Mr Hegley. He has undertaken fulsome ambient noise level monitoring as detailed in his evidence. Mr Exeter has done nothing of the sort, and instead seeks to rely upon results he obtained from an exceedingly brief measurement during his site visit. He also seeks to cast doubt on the accuracy of Mr Hegley's on the ground real-world recordings by reference to what Mr Exeter believes one would 'typically experience' in a rural environment. The weight of evidence is clearly in favour of the work undertaken by Mr Hegley.
40. The other relates to noise from dewatering pumps. There is no suggestion that the noise generated would breach noise limits. There is agreement the noise of the pumps would not cause sleep disturbance or disrupt residential activities inside dwellings. However Mr Exeter believes a condition to impose "a limit of 25 dBA L<sub>10</sub> because this will achieve the objective even when there are low ambient noise levels". Effectively then,



the disagreement is limited to whether the operating pumps would generate noise which was unreasonable for residents in outdoor living areas in the evenings.

41. I accept that, in the context of section 16 RMA, the duty to take the best practicable option is not necessarily avoided by compliance with a district rule on noise control, nor is it necessarily avoided by an assessment that a particular noise emission is not deemed to be a danger to health, or by reference to New Zealand standards.<sup>3</sup> Resolving the issue ultimately depends on what you define as reasonable noise, taking into account a balanced consideration of all the relevant facts (a question of fact and degree).
42. Mr Exeter's conclusions are informed in part by his views as to the likely ambient noise levels. In that regard, I refer back to my submission above and the comprehensive ambient noise work undertaken by Mr Hegley which reflects the factual position as to ambient noise. Mr Hegley has responded to this proposition in his evidence in chief at paragraphs [60] – [65], and paragraphs [2] – [6] of his supplementary statement. His evidence establishes for "Stage 1 the highest noise level at any notional boundary will be 29dBA L<sub>10</sub> and up to 14dBA L<sub>10</sub> in any bedroom with the windows open for ventilation". That is a very low level of noise and in my submission cannot properly be described as unreasonable.
43. Turning to the supplementary section 42A report for CODC, Ms Stirling has changed her recommendation to one of support for the grant of consent, and in the context of that change of position has updated her assessment with respect to various effects and objectives and policies. In my submission she is right to change her position – she now stands where she should have been all along.
44. Given that HML's experts have been consistent in their assessment, and noting the key alignment which now is in place as between Ms Collie and Ms Stirling, I say for the purposes of reply that Ms Collie's approach in her

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<sup>3</sup> *Ngataranga Bay 2000 Inc v Attorney General* A016/94 (PT).

supplementary statement at paragraph [5] is a sensible one. Specifically, that any remaining areas of partial disagreement about assessment of objectives and policies are very limited, and these differences of opinion such as they are, are not material to the overall conclusion that consent should be granted. Thus, I do not propose to engage in this reply in matters of detail where Ms Stirling slightly differs in her analysis of objectives and policies from Ms Collie. For the record, to the extent you must make a finding as to whose analysis is correct in those circumstances, in my submission you should rely upon the comprehensive assessment of Ms Collie.

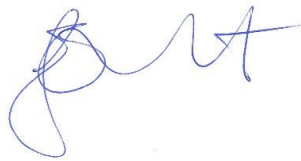
45. The supplementary statement of Ms Collie identifies a limited number of amendments proposed to draft CODC conditions. She also includes a response in table format at paragraph [20] of her supplementary statement to several edits proposed by Ms Stirling. The position identified by Ms Collie and her supplementary statement is reflected in the updated draft conditions of consent proposed by HML attached to her evidence. With the exception of those identified areas of disagreement (which are very limited in number and scale) there is agreement as between CODC and HML on the wording of conditions.

*ORC*

46. The section 42 A updated staff recommending report from Ms Ter Huurne also identifies a change in position from the reporting planner, with a recommendation now advanced that the grant of consent is appropriate.
47. I say my submission above at paragraph [43] applies equally with respect to the position now adopted by Ms Ter Huurne. The supplementary statement of Ms Collie does not identify any remaining areas of disagreement relating to proposed conditions of consent, and therefore there is agreement as between ORC and HML on the wording of conditions.

## Conclusion

48. I have reviewed my notes from the hearing itself. All queries and issues raised have been addressed through the supplementary process directed by the Commissioners. In addition to significant work undertaken by HML's experts responding to and resolving those matters, the positive and constructive feedback from those consulted is acknowledged, and in most instances that feedback was incorporated into the draft management plans, and the revisions made (within scope) to the proposal.
49. I submit for reasons addressed in the application, supporting reports, in evidence on behalf of HML, in my opening submission, in the supplementary material lodged with the panel, and in this reply and accompanying statement from Ms Collie, that consent should be granted subject to conditions for consent as proposed by HML.



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**Jeremy Brabant**

Dated 24 July 2024