

Before the Proposed Te Tai o Poutini Plan Hearings Panel

In the Matter of

the Resource Management Act
1991 (**Act**)

And

In the Matter of

a submission (S491) and further
submission (FS89) on the Proposed
Te Tai o Poutini Plan by Bathurst
Resources Limited and BT Mining
Limited

Legal Submissions for Bathurst Resources Limited and BT Mining Limited Topic 1 and Topic 2

大成 DENTONS KENSINGTON SWAN

18 Viaduct Harbour Avenue P +64 4 472 7877
Private Bag 92101 F +64 4 472 2291
Auckland 1142 DX SP26517

Solicitor: C Sheard
E Christina.sheard@dentons.com

lane neave.

Lane Neave
Level 1, 2 Memorial Street
Queenstown 9300
Solicitor Acting: Joshua Leckie
Email: joshua.leckie@laneneave.co.nz
Phone: 03 409 0321

INTRODUCTION

1. These legal submissions are presented on behalf of Bathurst Resources Limited (**Bathurst**) and BT Mining Limited (**BT**).
2. Bathurst and BT made a submission (S491) and further submission (FS89) on the proposed Te Tai o Poutini Plan (**TTPP**).
3. In summary, Bathurst and BT support the recognition in the TTPP of the significance of mining and mineral resources on the West Coast and the Buller Plateau to the local, regional and national economies. In particular Bathurst and BT support the Mineral Extraction (**MINZ**) and Buller Coalfield Zones (**BCZ**). Bathurst and BT wish to ensure that the remainder of the TTPP:
 - (a) is consistent with the intended objectives and provisions of the MINZ and BCZ; and
 - (b) does not restrict anticipated activities from occurring within the MINZ and BCZ.
4. In our submission the amendments sought to the TTPP by Bathurst and BT will ensure inconsistency and interpretation conflicts do not arise when implementing the TTPP and ensure the activities (often already enabled by existing permissions and rights) intended by the MINZ and BCZ to be carried out can be fully exercised.

SCOPE OF SUBMISSIONS

5. The purpose of these submissions is twofold; to address the matters for your determination in this hearing and to set the scene for Bathurst and BT's involvement in subsequent hearing topics. Evidence in support of Bathurst and BT's submission points and more detailed legal submissions will be presented for those hearing topics.
6. These submissions accordingly address:
 - (a) the legal framework;
 - (b) Bathurst and BT and its interests in the West Coast;
 - (c) Bathurst and BT's overall position on the TTPP;
 - (d) relief sought by Bathurst and BT to the Introduction/General provisions and Strategic Directions chapter; and
 - (e) response to the Section 42A Report.

7. Bathurst and BT's submission points on the Introduction and General Provisions chapter have been referred to the Mineral Extraction Section 42A Report and as such are not addressed in our legal submissions for this hearing.¹ These submission points will be addressed in more detail in the legal submissions for the Mineral Extraction hearing for the Panels consideration.

LEGAL FRAMEWORK

8. The framework for the Hearing Panel's decision making is set out in detail in section 4 of the Strategic Directions Section 42A Report.
9. In particular, the framework requires that:
 - (a) under Section 32 of the Resource Management Act 1991 (**Act**), the objectives of the TTPP must be the most appropriate way to achieve the purpose of the Act and the proposed provisions must be the most appropriate way to achieve those objectives; and
 - (b) under Section 75 of the Act, the TTPP must give effect to any national policy statement (relevantly, here the National Policy Statement for Indigenous Biodiversity (**NPS-IB**)) and any regional policy statement (here, West Coast Regional Policy Statement (**WRPS**)).
10. These are key matters for the consideration of Bathurst and BT's submission on the TTPP. In our submission amendments are required to the Strategic Directions chapter as identified in the submission of Bathurst and BT to give effect to the Act, NPS-IB and the WRPS.

BATHURST AND BT BACKGROUND

11. Bathurst is a New Zealand registered ASX listed resource company and is New Zealand's leading coal producing company.² Operations throughout New Zealand provide coal for:
 - (a) local steel making;
 - (b) electricity generation;
 - (c) domestic dairy and food processing industries; and
 - (d) export to international steel makers.

¹ Introduction and General Provisions Section 42A Report at [16], [21] and [352].

² Bathurst is a 65% shareholder of BT.

12. Bathurst and BT employ over 620 people directly and through this direct employment make a significant contribution to the economic wellbeing of the regions of the West Coast, Canterbury, Southland and Waikato.
13. Mr Tacon's evidence outlines the distinguished history of mining in the Buller Region.³ Bathurst and BT currently own three mines in the Buller Region (Stockton, Escarpment and Cascade), with Stockton currently being the only operating mine. Two further consented mines, Mt William North and Coalbrookdale are not yet operating.
14. Bathurst and BT hold either mining permits, mining licences, ancillary mining licences, exploration or prospecting permits over significant high quality coal resources within the Buller Region. Bathurst and BT also hold authorisations for activities ancillary to mining, including transportation and load out facilities.
15. As a result of investment in acquiring permits across the Buller coalfield Bathurst and BT now own or have an interest in a continuous line of permits that allow Bathurst and BT to look at the development of the entire Denniston Plateau as one area.⁴
16. The coal extracted from Stockton is high quality coking coal that is exported primarily for use in steelmaking or for the production of carbon fibre products. West Coast coking coal is an attractive option for customers when compared to overseas coking coal as due to the high quality less coal needs to be used for the same output resulting in lower carbon dioxide emissions per unit of steel. There is no domestic coking coal market in New Zealand as New Zealand does not produce steel using blast furnace methods.
17. While there are no economic alternatives to the use of coal in steel making and in meeting the energy demands of the regionally significant industries, coal remains an essential input to these industries.
18. It is against this background that Bathurst and BT seek to ensure that the TTPP provides a pathway for the continuation of mining of the West Coast's significant and high quality mineral resources.

³ Statement of Evidence of Richard Tacon, 29 September 2023, at [41]- [43].

⁴ Statement of Evidence of Richard Tacon, 29 September 2023, at [17].

OVERALL POSITION

19. Bathurst and BT support the recognition in the TTPP of:
 - (a) the significance of mining and mineral resources on the West Coast and the Buller;
 - (b) the recognition that the mineral extraction industry is a key industry and employer in the region; and
 - (c) the significance of mineral extraction to the district, region and country.
20. Bathurst and BT strongly support the objectives, policies and rules contained in the MINZ and BCZ (subject to a minor amendment to BCZ-R2). However, it is critical that those provisions are not unintentionally undermined by the remainder the TTPP. As currently drafted, the TTPP contains interpretation issues and other rule conflicts that will severely restrict the activities that are enabled in the MINZ and BCZ and are economically essential to the Buller district.
21. It is clear from the drafting of the MINZ and BCZ themselves, that they are intended to be standalone chapters.
22. There are some fundamental inconsistencies between the objectives and provisions of the MINZ and BCZ and other chapters in the TTPP that restrict anticipated activities from occurring despite the clear objectives of the MINZ and BCZ.
23. In our submission, changes are required as identified in Bathurst and BT's submission to avoid inconsistency and interpretation conflicts in the implementation of the TTPP. We submit that the relief sought will ensure the objectives, policies and rules framework of the MINZ and BCZ can be effectively implemented.
24. One of the key issues to be clarified is the interface between the Significant Natural Areas rules and the mining zones. The relief requested in Bathurst and BT's submission seeks an appropriate balance between protecting significant natural areas, and allowing existing lawfully established mineral extraction activities to continue and new mineral extraction activities to be established where there is a functional or operational need for those activities in the particular location. This issue will be addressed in detail as part of the Ecosystems, Indigenous Biodiversity and Outstanding Natural Landscapes hearing.
25. Bathurst and BT have also lodged a submission on the definition of 'lawfully established'. The s42A report states that it is appropriate to deal with the changes

requested within the Mineral Extraction s42A Report and the hearing on that topic.⁵ Bathurst and BT support this approach and will address the definition at that hearing.

26. In the meantime, the s42A report writer for this hearing has in fact proposed changes to the definition of 'lawfully established' based on the relief sought by Forest and Bird (and some other submitters). The amendment proposed by Forest and Bird requests an exclusion where the licence has expired and has not been renewed. Bathurst and BT lodged a further submission opposing the proposed change. In recommending that the change is accepted, the reporting planner has failed to consider the relationship between the Act, Coal Mines Act 1979 and Crown Minerals Act 1991. Forest and Bird's submission cannot be considered in isolation of the Bathurst and BT submission and must also be deferred to the mineral extraction topic.

STRATEGIC DIRECTIONS CHAPTER

27. Bathurst and BT's submission sought amendments to the Mineral Extraction (**MIN**) and Natural Environment (**NENV**) strategic objectives.
28. The Strategic Directions chapter plays an important role in setting the overall strategic direction of the planning framework of the TTPP and providing guidance on the desired big picture outcomes in other chapters of the TTPP.

MIN-06

29. Bathurst and BT strongly support the MIN strategic objectives as they set a clear direction and intention for the TTPP and support the significant contribution of the mineral sector to the district. The only change sought to these provisions is that offsetting and compensation is provided for in MIN-O6.
30. As explained by Ms Hunter, it is appropriate that mineral extraction activities have access to the full range of environmental effects management methods. The s42A report writer suggests redrafting of MIN-06 to refer to an 'effects management hierarchy'. Ms Hunter correctly notes that the effects management hierarchy has its genesis in the NPS-IB, there is no such effects management hierarchy in the Act. Caselaw on section 5(2)(c) of the Act makes it clear that there is no hierarchy for the requirement to 'avoid, remedy or mitigate' adverse effects – they all have equal importance.⁶

⁵ At [352].

⁶ *Winstone Aggregates Ltd v Papakura DC EnvC A049/02* and *Adams Landscapes Ltd v Auckland CC EnvC A108/02*,

31. Ms Hunter's recommended amendments to MIN-O6 will ensure that mineral extraction activities have access to the full spectrum of environmental effects management methods which can then be tested through the resource consenting process. Environmental compensation is particularly important for activities such as mineral extraction that have a functional need to locate in certain areas.
32. Ms Hunter's amendments will ensure that the activities anticipated by the MINZ and BCZ are enabled and are the most appropriate approach to give effect to the Act by:
- (a) giving effect to the WRPS which explicitly provides for offsetting and compensation when managing adverse effects;⁷ and
 - (b) ensuring consistency with Section 104(1)(ab) of the Act which sets out the matters a consent authority must have regard to when considering resource consent applications, including offsetting and compensation.

NENV-03

33. NENV – O3(b) recognises the need for infrastructure to sometimes be located in significant natural areas. Bathurst and BT seek that mineral extraction activities, that may also have an operational or functional need to locate in significant natural areas, are provided for in NENV-O3. This amendment will ensure that the Objective is consistent with and does not prevent the intended outcomes of the MINZ and BCZ.
34. Coal resources are in a fixed location and must be extracted where the resources are located. Given the location of the significant coal deposits on the West Coast there may be instances where mines and other activities have a functional and operational need to locate in significant natural areas. Currently the Strategic Objectives only recognise that infrastructure may have a need to locate in significant natural areas.
35. The Section 42A Report recommends rejecting Bathurst and BT's submission that mineral extraction activities that have an operational or functional need to locate in significant natural areas should be provided for in NENV-O3. The Section 42A Report disagrees that NENV-O3 should be broadened to include reference to other activities on the basis that infrastructure (which is referenced) is a requirement of functioning communities.
36. As outlined in the evidence of Ms Hunter and Mr Tacon, mineral extraction is a key requirement for well-functioning communities as the products of mineral extraction are critical for the economy of the West Coast.

⁷ West Coast Regional Policy Statement Chapter 7 Policy 3, Policy 4 and Policy 7.

37. The amendments proposed to NENV-O3 by Ms Hunter are the most appropriate way to give effect to the Act by:
- (a) giving effect to WRPS which recognises that some activities can only occur in certain places because of the functional needs of the activity;⁸
 - (b) ensuring consistency with the NPS-IB which provides a pathway by applying the effects management hierarchy for activities to locate in Significant Natural Areas if they have an operational and functional need to do so;⁹ and
 - (c) appropriately giving effect to Part 2 by allowing the efficient use and development of natural resources.

CONCLUSION

38. In many respects, this hearing topic sets the scene for the hearing topics to follow. Bathurst strongly supports the provisions in the MINZ and BCZ. Bathurst's submissions highlight the importance of ensuring that the interface between the mineral extraction zones and the other chapters of the TTPP is clearly defined and mineral extraction activities are not inadvertently caught by other provisions in the plan. The relief requested in Ms Hunter's evidence, along with other amendments that will be covered during the Ecosystems, Indigenous Biodiversity and Outstanding Natural Landscapes topic hearing, will ensure that outcome. The ability of the TTPP to operate coherently as a whole and avoid inconsistencies, hinges on all of the topics being considered together in the round decisions being issued only once all submissions have been heard.



Christina Sheard / Joshua Leckie

Counsel for Bathurst Resources Limited and BT Mining Limited

⁸ West Coast Regional Policy Statement Chapter 5, Policy 2.

⁹ National Policy Statement for Indigenous Biodiversity Policy 3.10(2).