

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

And

In the Matter of

Topic 4: Energy Infrastructure and
Transport

Legal Submissions for Bathurst Resources Limited and BT Mining Limited

Dated: 13 November 2023

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**) in relation to Topic 4 – Energy infrastructure and Transport of the proposed Te Tai o Poutini Plan (**TTPP**).
2. We have previously filed legal submissions and appeared before the TTPP Panel. Broadly speaking Bathurst supports 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. The evidence provided on behalf of Bathurst in the Topic 1 and Topic 2 hearing demonstrates the importance of mineral extraction to the West Coast economy and communities.
3. In terms of the relief allocated to the Energy, Infrastructure and Transport Chapter (**Topic 4**), Bathurst has sought amendments to the high traffic generator Rule TRN-R12 to:
 - (a) clarify the agreed intent of the rule that the references to vehicle movements is not intended to capture movements within a site and refers to movements to and from a site; and
 - (b) ensure consistency with the MINZ and BCZ chapters which expressly exclude heavy vehicle movements within a site.¹

LEGAL FRAMEWORK

4. The legal framework for the Hearing Panel's decision making has been addressed in our Topic 1 and 2 legal submissions² and is set out in detail in the Energy, Infrastructure and Transport Section 32 Report.³ We do not repeat this framework here.

BATHURST SUBMISSION ON TRANSPORT CHAPTER

5. Table TRN-6⁴ identifies a number of activities and a qualifier for each activity that if met means the activity meets the threshold of *High Trip Generating* and is classified as a *High Trip Generating Activity*. Mining and quarrying is identified as a *High Trip Generating Activity* if there is more than 30 heavy vehicle⁵ movements per day.

¹ BCZ-R3(4) and MINZ-R3(4).

² Bathurst Topic 1 and Topic 2 Legal Submissions, 16 October 2023 at [8] – [9].

³ Energy, Infrastructure and Transport Section 32 Report, at Section 1.0.

⁴ Located in Appendix 1.

⁵ Heavy Vehicle is defined as a motor vehicle (other than a motorcar that is not used, kept or available for the carriage of passengers for hire or reward) having a gross vehicle mass exceeding 3500kg.

6. Standard TRN-S14⁶ sets out the requirements for a *High Trip Generating Activity* transport assessment.
7. Rule TRN-R12 provides for the establishment of a new *High Trip Generating Activity*, or the expansion of an existing activity listed in table TRN6 that complies with the requirements of Standard TRN-S14 as a restricted discretionary activity. To require consent under TRN-R12 an activity must exceed the thresholds in TRN6 and qualify as a *High Trip Generating Activity*.
8. To ensure that the Transport provisions are both consistent with the intended objectives and provisions of the BCZ and MINZ, and do not unintentionally restrict anticipated activities from occurring in these zones, Bathurst seeks that Rule TRN-12 is amended to make it explicit that the reference to vehicle movements is to and from a site and does not capture movements within a site. To achieve this Bathurst seeks the following amendment to Table TRN6 (referenced in Rule TRN-12):

Mining and Quarrying

>30 heavy vehicle movements to or from the site per day.

9. In addressing Bathurst's submission, the Section 42A Report agrees that the relief sought provides clarity,⁷ however, recommends that Bathurst's submission seeking this clarification is rejected as due to amendments made to TRN-R12 in response to other parties' submissions the relief is no longer applicable.
10. We submit that the amendments recommended by the Section 42A Report do not negate the need for clarification as to what vehicle movements are intended to be captured in TRN-R12 and Table TRN6. Table TRN6 hasn't been amended and the rule still refers to the table, and there remains an interpretation issue here as to what qualifies as a heavy vehicle movement.
11. Both the BCZ⁸ and MINZ⁹ clarify that heavy vehicle movements exclude heavy vehicle movements within a site. The Section 42A Report writer agrees that is the intent. The relief sought by Bathurst to Table TRN6 to exclude vehicle movement to within the site will therefore ensure that inconsistency and interpretation conflicts do not arise when implementing the TTPP.
12. The relief sought by Bathurst would be consistent with Section 18A of the Resource Management Act 1991 which requires plans to be worded in a way that is clear and concise.

⁶ Located in Appendix 1.

⁷ Energy, Infrastructure and Transport Section 42A Report at [633].

⁸ BCZ-R3(4) provides for a maximum of 50 heavy vehicle movements per day.

⁹ MINZ-R3(4) provides for a maximum of 30 heavy vehicle movements per day.

TRANSPORT OVERVIEW CROSS REFERENCING

13. More broadly, Bathurst is concerned to ensure that there is clarity in the TTPP as to how the Special Purpose Zone chapters interrelate with other chapters to ensure there is no conflicts or inconsistencies when implementing the TTPP. We submit the rule above is an example of a lack of clarity as to what chapter takes precedence between the BCZ, MINZ and Transport Chapters and without amendment, interpretative conflicts are likely to arise.
14. The following examples highlight instances where we submit there is ambiguity between the chapters of the TTPP and the potential for interpretative conflicts to arise:
 - (a) Table TRN6 referenced in Rule TRN-12 provides that 30 heavy vehicle movements per day is a trigger to qualify as a high trip generating activity, while BCZ-R3 from the Buller Coal Zone provides for a maximum of 50 heavy vehicle movements per day and MINZ-R3 provides for a maximum of 30 heavy vehicle movements per day. It is currently unclear which rule takes precedence. Bathurst supports 50 heavy vehicle movements per day.
 - (b) Neither the MINZ, BCZ or Transport Chapters clarifies whether it is the TTPP's intention that one *vehicle movement* equates to a trip to and from a site. That is Bathurst's interpretation. We submit that this clarification should be included in the TTPP to avoid a double counting of movements.
15. To respond to this, Ms Hunter's Topic 1 and Topic 2 evidence proposed amendments to the introductory text of the TTPP to make it clear which rules need to be considered when an activity falls within a Special Purpose Zone and is anticipated or provided for by the Special Purpose Zone.¹⁰ In the case of the high traffic generator rule, in our submission the specific Special Purpose Zone rule should apply where relevant, above the more general transport provisions.

FUNCTIONAL AND OPERATIONAL NEED

16. While not directly relevant to Bathurst's relief sought in Topic 4, as coal resources are in a fixed location and must be extracted where the resources are located, the relief sought in Bathurst's submission seeks provision in the TTPP for activities that have an operational or functional need to locate in certain environments.
17. Bathurst supports the following discussion in the Energy Infrastructure and Transport Section 42A Report in relation to functional and operational need and consistency of language:

¹⁰ Statement of Evidence of Claire Hunter, Topic 1 and 2, 29 September 2023 at Annexure B page 2.

- (a) that functional need and operational need as defined in the National Planning Standards encompass technical and locational needs;¹¹ and
- (b) that the terms functional need and operational needs should be used in place of the terms constraints or requirements as this is consistent with the language of the National Planning Standards.¹²

CONCLUSION

- 18. Bathurst supports the recognition in the TTPP of the significance of mining and mineral resources and wishes to ensure that the remainder of the TTPP is consistent with the intended objectives and provisions of the MINZ and BCZ and does not restrict anticipated activities from occurring in these zones.
- 19. The amendments sought to the transport high traffic generator rule sought by Bathurst will ensure inconsistency and interpretation conflicts do not arise when implementing the TTPP. The relief sought will also ensure that the transport activities intended by the MINZ and BCZ are not unintentionally undermined and will provide certainty in the consenting process for applicants.



Joshua Leckie / Christina Sheard

Counsel for Bathurst Resources Limited and BT Mining Limited

¹¹ Energy, Infrastructure and Transport Section 42A Report at [175].

¹² Above at [217].