

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 7: Historic Heritage

Legal Submissions for Bathurst Resources Limited and BT Mining Limited

Dated: 23 November 2023

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INTRODUCTION

1. These legal submissions are presented on behalf of Bathurst Resources Limited (**Bathurst**) and BT Mining Limited (**BT**) in relation to Topic 7 – Historic Heritage of the proposed Te Tai o Poutini Plan (**TTPP**).
2. We have previously filed legal submissions and appeared before the TTPP Panel.
3. In terms of the relief allocated to the Historic Heritage Chapter (**Topic 7**), Bathurst has sought amendments to the Historic Heritage Policy HH-P7. Policy HH-P7 sets out that prior to the demolition and destruction of historic heritage items an investigation must be carried out by a suitably qualified heritage professional.
4. Bathurst seeks amendments to Policy HH-P7 to clarify that an investigation and assessment from a suitably qualified professional should not need to be undertaken in all cases, only when deemed necessary and appropriate by the consent authority.

LEGAL FRAMEWORK

5. The legal framework for the Hearing Panel's decision making has been addressed in our Topic 1 and 2 legal submissions¹ and is set out in detail in the Historic Heritage Section 32 Report.² We do not repeat this framework here.

BATHURST HISTORIC HERITAGE INTERESTS

6. As discussed in the evidence of Mr Robertson, Bathurst's specific concern relates to a building³ within the Denniston Historic Area which has been identified as a historic heritage area in Schedule 1 of the TTPP.⁴ As such the demolition and destruction of the building requires resource consent under the TTPP.⁵ The site that the building is located on is identified by Heritage New Zealand as a Category 1 Historic Place on the Heritage List.⁶
7. Identification on the Heritage List does not automatically protect the building as the HNZPTA does not provide any regulation or mechanism for the protection of Heritage List items. Protection and regulation of Heritage List items is achieved through the objectives, policies, and rules of District Plans.⁷

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

² Historic Heritage Section 32 Report, at Section 1.0.

³ Situated on Record of Title NLA10A/582.

⁴ Schedule One, HH5.

⁵ Historic Heritage Chapter HH-R9.

⁶ Record of Title NLA10A/582 is identified within the Denniston Historic Area which is a Category 1 Historic Place on the Heritage List.

⁷ Resource Management Act 1991, Section 74(2)(b)(iia).

8. The HNZPTA protects archaeological sites through making it unlawful to modify or destroy an archaeological site without an authority.⁸ Archaeological sites are sites which pre-date 1900 or which have been declared as an archaeological site.⁹
9. As outlined in Mr Robertson's evidence there is a possibility that the building was constructed pre 1900 and if that is the case there will be a requirement under the Heritage New Zealand Pouhere Taonga Act 2014 (**HNZPTA**) for an authority to modify or destroy the building.¹⁰
10. Bathurst purchased the building in 2014 and it has not been occupied since this time. As demonstrated by the images appended to Mr Robertson's evidence the building is in a state of disrepair and is no longer safe to enter. This is largely the result of uninvited visitors vandalising and damaging the building.¹¹ As outlined in Mr Robertson's evidence, extreme weather events may have also contributed to the damage.

BATHURST SUBMISSION ON HISTORIC HERITAGE CHAPTER

11. Bathurst seeks an amendment to HH-P7 to enable Council's discretion as to whether an assessment from a suitably qualified heritage professional is required to accompany any resource consent application to demolish or destroy an identified historic heritage item.
12. Policy HH-P7 provides that the demolition and destruction of historic heritage items identified in Schedule 1 is not allowed unless an assessment is carried out by a suitably qualified heritage professional that demonstrates certain requirements:
 - (a) the extent of the work required to retain the heritage items is of such a scale that the heritage values and integrity of the item would be significantly compromised;
 - (b) the costs to retain or repair the heritage item would be unreasonable; and
 - (c) all other viable alternatives, including relocation and repositioning have been considered.
13. As outlined in Mr Robertson's evidence Bathurst supports the recommended addition HH-P7 by the Section 42A Report to address the risk to public safety as an assessment matter.¹²

⁸ Heritage New Zealand Pouhere Taonga Act 2014, Section 42.

⁹ Heritage New Zealand Pouhere Taonga Act 2014, Section 6 and Section 43.

¹⁰ Heritage New Zealand Pouhere Taonga Act 2014, Section 42.

¹¹ Statement of Evidence of Campbell Robertson, 9 November 2023 at [15].

¹² Historic Heritage Section 42 Report, at [82].

14. Bathurst acknowledges the importance of protecting New Zealand's historic heritage and is not seeking to reduce the level of protection or remove the requirement for resource consents. Bathurst's concern relates to the inefficiency and additional cost of requiring an assessment in all cases irrespective of the circumstances or condition of the item.
15. In our submission a discretionary requirement for a heritage assessment in Policy HH-P7 in conjunction with the requirement for resource consent under Rule HH-R9 will give effect to Section 6(f) of the Resource Management Act 1991 and ensure the protection of historic heritage from inappropriate subdivision, use and development. This is because the heritage item will not be able to be demolished or destroyed without a resource consent and the consenting process will require consideration of whether an assessment by a heritage professional is required. We submit that in certain situations such as Bathurst's it is unlikely that a heritage assessment would be required as the condition of the building alone demonstrates the requirements outlined at paragraph 9 (a) – (c) above.
16. While it is acknowledged that not all scenarios will involve an archaeological site and require an authority, we submit that a discretionary requirement for a heritage assessment in Policy HH-P7 will ensure the protection of historic heritage as required by Section 6 of the RMA, and result in a more efficient and effective resource consenting process for both the Council and applicants. In instances where it is clear that a heritage structure is not safe or reasonably able to be repaired, the Council planner could determine that a heritage assessment is not required.

CONCLUSION

17. Bathurst acknowledges the importance of protecting New Zealand's historic heritage and is not seeking to reduce the level of protection for identified heritage items. Bathurst's concern relates to the inefficiency and additional cost of requiring an assessment in all cases irrespective of the circumstances or condition of the item.
18. The amendments sought to Policy HH-P7 will give effect to Section 6(f) of the Resource Management Act 1991 by ensuring the protection of historic heritage and improve the efficiency of the resource consenting process for both Council and applicants.



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