

## 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 1: Introduction and General  
Provisions and Topic 2: Strategic  
Directions

# Supplementary Legal Submissions on behalf of **Bathurst Resources Limited** and **BT Mining Limited**

Dated: 24 November 2023

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## MAY IT PLEASE THE PANEL

1. These Supplementary Legal Submissions are filed on behalf of Bathurst Resources Limited and BT Mining Limited (together, **Bathurst**).
2. Bathurst appeared at the Topic 1 and 2 hearing on 2 November 2023. The Panel raised some particular questions at the hearing and requested that Bathurst provide a response to these questions in writing by 24 November 2023.
3. The additional information sought was:
  - (a) whether there is any authority from the Courts that strategic objectives should be drafted to have primacy over other objectives in a district plan;
  - (b) provide an overview of the higher order policy supporting:
    - (i) a consenting pathway for mineral extraction in the Te Tai o Poutini Plan (**TTPP**); and
    - (ii) Bathurst's relief seeking that the functional and operational need requirements for mineral extraction be included in the Strategic Directions chapter.
  - (c) whether some of the Mineral Extraction strategic objectives would sit more appropriately as strategic policies, with a request from the Panel that Bathurst reframe the Mineral Extraction strategic directions with this concern in mind.
4. This memorandum provides a response to the above points.

## PRIMACY OF STRATEGIC OBJECTIVES

5. At the hearing the Panel queried whether there is any Environment Court authority addressing whether strategic objectives should be drafted to have primacy over other objectives in a district plan.
6. The National Planning Standards (**NPS**) include a mandatory direction that the strategic direction chapter of a district plan must contain:<sup>1</sup>

*Objectives that address key strategic or significant matters for the district and guide decision making a strategic level.*

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<sup>1</sup> National Planning Standards at Page 32.

7. This direction appears under the heading “District-wide Matters Standard”. We submit that the NPS do not impose a requirement for a hierarchy in the strategic directions chapter of a district plan. Rather we submit that the NPS simply confirm the role of the strategic directions chapter applying on a district wide basis and provide requirements as to what must be included in that chapter.
8. In considering the Panel’s question, we have reviewed both Environment Court authorities and other relevant district plan examples, noting that these examples are not binding on the Panel.<sup>2</sup>
9. The only Environment Court authority on this point that Counsel is aware of is in relation to the Queenstown Lakes Proposed District Plan (**QLDC PDP**). This authority suggests that the standard approach to drafting does not include placing any primacy on strategic objectives.<sup>3</sup> In the context of the QLDC PDP, the Court observed that it was a relatively standard approach for strategic objectives not to be treated in isolation or with primacy but rather that they be considered according to relevant groupings.<sup>4</sup>
10. It is clear from the way that the strategic objectives are drafted that they are simply objectives that apply across the district, as compared to the more location specific objectives and policies contained in other chapters. In order to accord strategic objectives primacy over other objectives, a thorough analysis would need to be carried out under Section 32 of the Resource Management Act 1991 (**RMA**). The Section 32 testing would need to occur at all levels of the proposed plan.
11. Overall, it is our submission that there is no authority requiring that strategic objectives be given primacy or otherwise and the more appropriate approach in the context of the TTPP is to not apply a hierarchy of strategic objectives.

## **HIGHER ORDER POLICY SUPPORT FOR BATHURST TOPIC 1 AND 2 RELIEF**

12. At the hearing the Panel sought a summary of the higher order policy documents supporting:
  - (a) a consenting pathway enabling mineral extraction in the TTPP; and

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<sup>2</sup> Waimakariri Proposed District Plan, Proposed Waikato District Plan and Partially Operative Selwyn District Plan.

<sup>3</sup> *Darby Planning Limited Partnership v Queenstown Lakes District Council* [2019] NZEnvC 133 at [71], referring to an Environment Court Minute dated 22 February 2019 at [10].

<sup>4</sup> *Darby Planning Limited Partnership v Queenstown Lakes District Council* [2019] NZEnvC 133 at [71], referring to an Environment Court Minute dated 22 February 2019 at [10].

- (b) Bathurst's relief seeking that the functional and operational need requirements for mineral extraction be provided for in the Strategic Directions chapter.
13. The following higher order documents provide support for the above relief:
- (a) Resource Management Act 1991;
  - (b) West Coast Regional Policy Statement (**RPS**);
  - (c) National Policy Statement for Freshwater Management (**NPS-FM**); and
  - (d) National Policy Statement for Indigenous Biodiversity (**NPS-IB**).

### **West Coast Context**

14. The uncontested evidence (both in Topic 1 and 2 and to follow) is that the mining of mineral resources provides an important role in enabling the West Coast people and communities to provide for their social, economic and cultural wellbeing.
15. Mineral extraction operations on the West Coast provide benefits across every level of the community via employees, suppliers and contractors.<sup>5</sup>
16. Mining is a vital part of the West Coast economy, with mining's direct contribution to the West Coast economy being 7.7% of regional GDP in the year to March 2022.<sup>6</sup> Mining generates approximately \$50.6 million of wages for over 600 West Coast workers. The median mineral extraction wages are over 50% more than the average wage for all industries.<sup>7</sup>
17. To ensure this, Bathurst seeks the retention of Strategic Directions that properly recognise the significance of mining and mineral resources on the West Coast.

### **Resource Management Act 1991**

18. The RMA sits at the top of the planning hierarchy and all other documents in the planning hierarchy must achieve the sustainable management purpose of the RMA.
19. As a starting point, the purpose of the RMA is enabling of activities provided adverse effects are appropriately managed.

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<sup>5</sup> Statement of Evidence of Richard Tacon, 29 September 2023 at [47].

<sup>6</sup> Supplementary Statement of Evidence of John Ballingall, 2 November 2023 at [9].

<sup>7</sup> Statement of Evidence of John Ballingall, 2 October 2023 at [11].

20. As outlined in Section 5, the Purpose of the RMA is to promote sustainable management of natural and physical resources in a way which enables people and communities to provide for their social, economic and cultural wellbeing while:
- (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
  - (b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and
  - (c) avoiding, remedying or mitigating any adverse effects.
21. While minerals are specifically excluded from the requirement in Section 5(2)(a) to sustain the potential of resources to meet the reasonably foreseeable needs for future generations, the remainder of Section 5 does apply to mineral extraction. The exclusion in Section 5(2)(a) recognises that minerals are a finite resource and cannot be sustained for future generations as other natural resources can.<sup>8</sup>
22. Section 6 relevantly requires all persons exercising powers and functions under the RMA to recognise and provide for the identified matters of national importance.
23. The TTPP must be prepared in accordance with Part 2, and therefore should recognise, amongst other things, the significance of mining and mineral resources on the West Coast and Buller Plateau to the local, regional and national economies and social wellbeing.
24. To ensure the TTPP is prepared in accordance with these Part 2 requirements, Bathurst seeks the retention of the mineral extraction Strategic Directions (or an amended version of them) that properly recognise the significance of mining and mineral resources on the West Coast.

### **West Coast Regional Policy Statement**

25. The TTPP *must* give effect to the West Coast Regional Policy Statement 2020 (**RPS**).<sup>9</sup> The RPS is newly minted, was heavily contested, and ultimately settled by consent order at the Environment Court.
26. The objective and policy framework of the RPS is enabling of mineral extraction and recognises the critical importance of mining to the West Coast economy and

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<sup>8</sup> *Terrace Tower (NZ) Propriety Limited v Queenstown Lakes District Council* [2001] NZRMA 23 (EnvC) at [25].

<sup>9</sup> Resource Management Act 1991, Section 75(3).

community wellbeing.<sup>10</sup> Policy 5.2 recognises mineral extraction as a resource important for the West Coast's economy that should be protected from adverse effects of new subdivision use and development. The explanation to Policy 5.2 recognises that some activities (the important activities listed, including mineral extraction) can only occur in certain places because of the functional needs of the activity.

27. Importantly, the RPS sets out that future growth in the region is likely to continue to be based around the use and development of natural resources in the first instance with supporting industries developing alongside these.<sup>11</sup>
28. The RPS recognises that appropriate use and development can occur in the region, generating growth opportunities, while still protecting the values of natural resources and the wider environment.<sup>12</sup>
29. To give effect to RPS, the Strategic Directions need to provide for the following higher order directives from the RPS:
  - (a) recognise the strategic importance of mineral extraction to the West Coast economy and communities.
  - (b) enable mineral extraction and ancillary activities while ensuring environmental effects are appropriately managed; and
  - (c) acknowledge mineral extraction can only occur in certain areas.
30. We submit that if the TTPP departs from the objective and policy framework of the RPS that directs the recognition of the importance of mineral extraction to the West Coast, the TTPP will not give effect to the RPS. To appropriately give effect to the RPS, we have provided suggested minor modification to the as notified Minerals component of the Strategic Directions at **Annexure 1**.

## National Policy Statements

31. The purpose of National Policy Statements is to state objectives and policies for matters of national significance that are relevant to achieving the purpose of the RMA.<sup>13</sup> In making decisions on submissions on National Policy Statements, Boards of Inquiry must consider the matters in Part 2 of the RMA. They must also recognise

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<sup>10</sup> West Coast Regional Policy Statement Objective 4.1, Objective 4.2, Policy 4.1, Objective 5.1. Policy 5.1 and Policy 5.2.

<sup>11</sup> West Coast Regional Policy Statement Chapter 5, background to the issues.

<sup>12</sup> West Coast Regional Policy Statement Chapter 5, background to the issues.

<sup>13</sup> Resource Management Act 1991 Section 45.

and provide for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.<sup>14</sup>

32. District plans must give effect to National Policy Statements. The pathways for infrastructure and mineral extraction in the NPS-FM and NPS-IB provide a consenting pathway for these activities in certain circumstances. In our submission the NPS-IB and NPS-FM provide higher order policy examples of recognising the functional need requirements of these activities and enabling activities while achieving Section 6 matters of importance.

### ***National Policy Statement for Freshwater Management***

33. The NPS-FM seeks to avoid the loss of extent of natural inland wetlands however provides a consenting pathway for specified infrastructure and the extraction of minerals if the following is demonstrated:<sup>15</sup>

- (a) there is a functional need for the activity in that location;
- (b) the activity will provide significant national or regional benefits; and
- (c) the effects of the activity will be managed by applying the effects management hierarchy.

34. A consenting pathway is also provided for coal mines.

### ***National Policy Statement for Indigenous Biodiversity***

35. The NPS-IB seeks to avoid certain adverse effects of any new subdivision, use or development in Significant Natural Areas (**SNA**) unless the activity is specifically exempt. The NPS-IB provides exemptions and consenting pathways for specified infrastructure and mineral extraction that provides significant national or regional public benefit if:<sup>16</sup>

- (a) there is a functional need or operational need for the activity to be in that particular location; and
- (b) there are no practicable alternative locations of the activity; and
- (c) the effects of the activity will be managed by applying the effects management hierarchy.

36. A consenting pathway is also provided for coal mines.

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<sup>14</sup> Section 6(c)

<sup>15</sup> National Policy Statement for Freshwater Management Clause 3.22.

<sup>16</sup> National Policy Statement for Indigenous Biodiversity Clause 3.11.

37. As with the NPS-FM, the TTPP must give effect to the NPS-IB. The NPS-IB provides consenting pathways for specified activities, including mineral extraction and coal mines, in SNAs provided the threshold tests are met. We submit that for the TTPP to provide a more restrictive consenting pathway outside of a SNA, when the NPS-IB provides a pathway within an SNA, is without justification and not appropriate in a Section 32 sense.
38. The Bathurst relief seeks that the TTPP recognises and provides for the functional and operational need requirements of mineral extraction activities to locate where the resources are found. The relief also seeks recognition that often mineral extraction activities have to occur in places where they will conflict with biodiversity. Within SNAs, the NPS-IB directs that a consenting pathway must be provided. Outside the SNAs the same consenting pathway should be applied along with the effects management hierarchy.
39. The Bathurst relief also seeks clarification that the full effects management hierarchy is available to manage the potential adverse effects of mining on biodiversity (consistent with the approach applied in the NPS-IB). The relief seeks that mineral extraction activities have the ability to access the full effects management hierarchy (in particular offsetting and compensation) and the policy framework provided in the TTPP recognises a mix of avoidance, remediation, mitigation, offsetting and compensation will achieve the protection of biodiversity.
40. We submit that the NPS-IB consenting pathway for mineral extraction has important regional context given both the significance of mining to the coast, and the need to address the ongoing implications of historic mining which is also constrained by functional and operational need.

## MINERAL EXTRACTION OBJECTIVES

41. The Panel raised questions at the hearing as to whether some of the Mineral Extraction strategic objectives would be more appropriate as strategic policies. Counsel agreed with that observation. The Panel requested that Bathurst reframe the Mineral Extraction strategic objectives with this concern in mind.
42. Counsel and the Bathurst witnesses' redrafting of the Mineral Extraction strategic objectives is attached as **Appendix 1**. The redraft provides an overall Objective which recognises the important role mineral extraction has for the economic, social and cultural wellbeing of the West Coast, and refocuses the notified version of the remaining Objectives as policies, being the actions that are necessary to achieve and implement the Objective.



43. As discussed above the RPS is enabling of mineral extraction and recognises the critical importance of mining to the West Coast economy and community wellbeing. Given this we submit that these Strategic Directions need to sit in this chapter to provide the overarching direction for the TTPP and addresses key strategic and significant matters for the region.

## CONCLUSION

44. In response to the Panel's questions at the Topic 1 and 2 hearing we submit that:
- (a) There is no Environment Court authority that strategic objectives should have primacy over other objectives. The strategic objectives in the TTPP appropriately focus on district wide matters. The chapters contain the more specific objectives and policies that apply to certain activities or areas. Any elevation of some objectives and policies above others is likely to cause interpretation issues and must be informed by a Section 32 analysis carried out against the context of the plan. In our submission, while strategic objectives and policies apply over the whole plan, they should not have primacy over objectives and policies in other parts of the plan.
  - (b) The higher order policy documents identified in these supplementary submission support:
    - (i) An enablement for mineral extraction on the West Coast recognising the economic, social and cultural wellbeing that mineral extraction provides to the West Coast; and
    - (ii) Bathurst's relief seeking that the functional and operational need requirements for mineral extraction be provided for in the Strategic Directions chapter.
  - (c) At **Annexure 1** we attach our suggested redraft of the minerals Strategic Objective and Policies following the exchange with the Commissioners at the hearing.

**Dated** this 24<sup>th</sup> day of November 2023



Joshua Leckie / Christina Sheard  
Counsel for Bathurst Resources Limited and BT Mining Limited

**Annexure One**  
**Proposed Mineral Extraction Objectives and Policies**

# Mineral Extraction - Te Tango Kohuke

## Strategic Objective

**MIN-O1:** To ensure provision for the use and development of the West Coast/Te Tai o Poutini's mineral resources ~~while also avoiding duplication of regulation across agencies.~~ by recognising the important role that mineral extraction and ancillary activities on the West Coast have in contributing to the economic, social and cultural wellbeing of the West Coast/Te Tai o Poutini's people and communities.

## Strategic Policies

**MIN-P102:** ~~To e~~ Enable and provide for mineral extraction and ancillary activities which support it, including specifically within the Buller Coalfield Zone, Mineral Extraction Zone, Rural Zones and Open Space Zone.

**MIN-P203:** ~~To recognise~~ Recognise that mineral resources are widespread ~~and but~~ fixed in location throughout the West Coast/Te Tai o Poutini and that provided adverse effects are managed, mineral extraction activities can be appropriate in a range of locations outside specified zones and precincts.

**MON- P304:** ~~To ensure~~ Ensure that new subdivision, use and development does not compromise existing mineral extraction activities, including through reverse sensitivity to effects such as dust, noise and traffic generation.

**MIN-P4 05:** ~~To support~~ Support Poutini Ngāi Tahu to manage their pounamu and aotea stone resources through the use of Pounamu and Aotea Management Area Overlays.

**MIN-P506:** Manage ~~To: Avoid, remedy or mitigate~~ the adverse effects of mineral extraction activities on the West Coast/Te Tai o Poutini's environment by enabling

~~access to the full effects management hierarchy including significant natural and cultural features, sites and heritage, and amenity values, including: Poutini Ngāi Tahu cultural resources and taonga including sites and areas of significant to Māori identified in Schedule Three;~~

~~Areas of significant indigenous vegetation, significant indigenous fauna habitat and protected native fauna;~~

~~Outstanding natural landscapes and features;~~

~~a) Waterways and waterbodies;~~

~~b) The coastal environment;~~

~~c) The wellbeing of people and communities; and~~

~~2. Allow adverse effects to be addressed by alternative mitigation measures such as biodiversity offsetting and environmental compensation.~~