

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 10: Natural Features and
Landscapes

Legal Submissions for Bathurst Resources Limited and BT Mining Limited

Dated: 26 February 2024

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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 10 – Natural Features and Landscapes of the proposed Te Tai o Poutini Plan (**TTPP**).
2. We have previously filed legal submissions and appeared before the TTPP Panel.¹
3. In terms of the relief allocated to the Natural Features and Landscape (**NFL**) Chapter (**Topic 10**) Bathurst and BT have sought amendments to the provisions to ensure:
 - (a) similar to submissions made in previous hearings, that there is clarity in the NFL provisions that existing land uses, and lawfully established activities include mineral extraction activities;
 - (b) to ensure there is adequate provision for lawfully established activities in the NFL provisions;
 - (c) similar to submissions made in previous hearings, that both the functional need and operational need of mineral extraction activities are recognised and provided for; and
 - (d) ensure the accuracy of the ONL mapping.
4. The amendments sought by Bathurst are generally supported by the Section 42A Report and the further recommended amendments supported by Ms Hunter will ensure that:
 - (a) mineral extraction activities anticipated to be provided for and carried out in the Mineral Extraction Zone (**MINZ**) and the Buller Coal Field Zone (**BCZ**) are appropriately enabled;
 - (b) that intent is not unintentionally undermined by the NFL provisions;
 - (c) a consenting pathway remains available for mineral extraction activities to be considered where conflicts with NFL, MINZ and BCZ provisions may arise; and
 - (d) any unjustified overlap between ONL and the BCZ does not restrict the intended purpose of the BCZ and MINZ.

¹ Hearing Topics 1, 2, 3, 4,7 and 9.

SCOPE OF SUBMISSIONS

5. Bathurst's submission addresses matters that cover multiple chapters of the TTPP.
6. In accordance with Minute 14 of the Hearings Panel, the purpose of our Topic 10 legal submissions is to address the Natural Features and Landscape matters for your determination in this hearing. Our submissions do not address Ecosystems and Indigenous Biodiversity.
7. We note our earlier submission that in light of the overlapping nature of the rules in the TTPP no final decisions should be made until all hearings have been completed.

LEGAL FRAMEWORK

8. The legal framework for the Hearing Panel's decision making is set out in detail in the Section 32 Report and we do not propose to repeat this framework here.²

BATHURST SUBMISSION ON THE NATURAL FEATURES AND LANDSCAPE PROVISIONS

Lawfully Established

Policy NFL – P1

9. Policy NFL-P1 seeks to provide for specified activities within Outstanding Natural Landscapes (**ONL**) where they do not adversely affect the values that contribute to the ONL being outstanding.
10. Bathurst supports this Policy however seeks amendments to clarify that existing land uses and lawfully established activities provided for in Policy NFL-P1 expressly references mineral extraction activities. Linked to this relief is Bathurst's relief seeking amendments to the definition of lawfully established which is to be subject to evidence in the upcoming Mineral Extraction topic.
11. In addressing Bathurst's submission, the Section 42A Report supports the submission in part and acknowledges that the substantive issue around the definition of lawfully established in relation to mining activities is to be addressed at the Mineral Extraction hearing.³
12. As outlined in Ms Hunter's evidence Bathurst supports the recommended amendments to Policy NFL – P1(a) to expressly provide for mineral extraction.⁴

² Natural Environment Values, Ecosystems and Biodiversity, Natural Features and Landscapes. Coastal Environment and Natural Character and Water Section 32 Report at Section 1.0.

³ Section 42A Report Natural Features and Landscapes and [108] – [112].

⁴ Statement of Evidence of Claire Hunter 12 February 2024 at [16] – [18].

Recognition in Policy NFL – P1 that some activities are appropriate within ONLs provided that the activities maintain the values that contribute towards the ONL being outstanding is consistent with authorities of the Environment Court.

13. The Environment Court has held that the identification of an area does not preclude proposals from progressing it must however be demonstrated that proposals can protect the identified values that qualify the landscape as an ONL.⁵ The Court has relevantly held that activities or development within an ONL does not necessarily lead to adverse effects on the values for which an ONL is protected.⁶
14. We submit that the recognition in Policy NFL – P1 that some activities may be appropriate within ONLs appropriately recognises that the status of areas should not be so rigid that it does not properly take into account existing land uses and other activities particularly where those activities are constrained by functional and operational need considerations. It also recognises that the Resource Management Act 1991 (**RMA**) is not a no effects statute.⁷
15. We submit that the recommendation in Ms Hunter's evidence to redraft Policy NFL-P1(a) to remove double reference to the term lawfully established is appropriate and will result in the Policy being worded in a manner that is clear and concise.
16. In our submission this amendment to NFL – P1 achieves Objective 1 and ultimately section 6 of the Act.

Policy NFL – P5

17. Policy NFL – P5 seeks to minimise adverse effects of proposals on ONL and provides matters for a decision maker's consideration when assessing proposals. Bathurst sought an addition to Policy NFL – P5 to enable the consideration of the extent to which an activity or structure is lawfully established when considering whether an activity is appropriate in a landscape context.
18. The Section 42A Report recommends that Bathurst's submission point is accepted as it assists with implementing the intent of Policy NFL – P3 which seeks to recognise the extent of existing and lawful activities established within ONLs.⁸ Bathurst supports the Section 42A Report recommendation that the consideration of lawfully established activities is appropriate in Policy NFL-P5 given the impact lawfully established activities have on the environment.

⁵ *Granger v Dunedin City Council* [2018] NZEnvC 250 at [151].

⁶ *Skyline Enterprises Limited v Queenstown Lakes District Council* [2018] NZEnvC 242 at [50] and *Wakatipu Environmental Society Incorporated v Queenstown Lakes District Council* C180/99 at [99].

⁷ *Royal Forest and Bird Protection Society of New Zealand Incorporated v Buller District Council* (No.2) [2013] NZHC 1346 at [52].

⁸ Section 42A Report Natural Features and Landscapes at [164].

19. As outlined in Ms Hunter's evidence the Section 42A Report recommendations are supported and it is considered sensible from a planning perspective that when identifying and assessing landscape values, consideration is given to existing modifications of the environment.⁹ We submit that the treatment of lawfully established activities needs to be consistently referenced throughout the TTPP. Lawfully established mineral extraction activities have resulted in modifications to the environment and these need to be considered when identifying and assessing landscape values.
20. As Ms Hunter has outlined in her evidence, it is also considered appropriate that the development of special purpose zones such as the MINZ and BCZ carefully considers the interplay and intended purpose of these zones with matters such as landscape and biodiversity values.¹⁰ We address this interplay in our submissions below.

Interplay of Special Purpose Zones and Outstanding Natural Landscapes

21. As identified in Ms Hunter's evidence and in **Appendix 1**, on the Denniston Plateau there is areas of overlap between the BCZ and ONL 41. We submit that there is no clear justification in the supporting landscape studies as to why a portion of the BCZ, a special purpose zone the intent of which is to recognise and provide for mineral extraction activities,¹¹ has been identified within an ONL.

Denniston Plateau

22. The ONLs in Te Tai o Poutini were identified through a landscape study undertaken by Mr Stephen Brown. We understand from Mr Brown's West Coast Land Study (**Brown Report**), that the intention is for ONL boundaries to avoid areas of mining operations on the Stockton and Denniston Plateaus. Following concerns being raised around overlap with boundaries of specific ONL units (49, 50 and 51) and mineral extraction activities, certain boundaries have been refined to avoid areas of mining operations on these plateaus.¹²
23. The extent of the Denniston Plateau and whether the Plateau qualifies as an ONL has been the subject of extensive landscape evidence and a decision of the Environment Court. In *West Coast Environmental Network Inc v Royal Forest and Bird Society of New Zealand Incorporated*¹³ expert evidence was provided and

⁹ Statement of Evidence of Claire Hunter 12 February 2024 at [20].

¹⁰ Statement of Evidence of Claire Hunter 12 February 2024 at [20].

¹¹ Buller Coalfield Zone and Mineral Extraction Zone Section 32 Report.

¹² West Coast Landscape Study: Review of Outstanding Natural Landscapes and Areas of High and Outstanding Natural Character, Brown NZ Limited, March 2022 at pages 15 - 16.

¹³ *West Coast Environmental Network Inc v Royal Forest and Bird Society of New Zealand Incorporated* [2013] NZEnvC 047.

accepted by the Court addressing the extent of the Denniston Plateau landform based on the geomorphology of the area.¹⁴ The extent of the Denniston Plateau confirmed by the Court is attached as **Appendix 2**.¹⁵

24. Extensive evidence from six landscape architects was considered by the Court as to whether the Denniston Plateau met the threshold of naturalness to qualify as an ONL under Section 6(b) of the RMA. The Court agreed with evidence from Buller Coal Limited and Meridian Energy Limited and concluded that there were too many human interventions present on the Plateau to meet the threshold of naturalness required for an ONL and confirmed that the Plateau does not qualify as an ONL.¹⁶ The extent of the landscape units surrounding the Denniston Plateau considered by the Court in Mr Craig's evidence is attached as **Appendix 3**.
25. We submit that in light of the above decision of the Court and the intention of Mr Brown that the Denniston Plateau in its entirety should not be recognised as an ONL in the TTPP.

Notified Planning Map Inconsistencies

26. As identified in the Section 42A Report, Ms Gilbert has undertaken a review (**Gilbert Report**) of the ONLs identified in Te Tai Poutini by Mr Brown and provides expert landscape comment in response to specific ONL related submissions on the TTPP. Ms Gilbert recommends that the ONL mapping is carefully reviewed by a landscape/GIS expert to ensure that ONL linework is clipped to obvious landform and/or continuous native vegetation cover edges in the immediate vicinity of the mapped ONL.¹⁷
27. The addendum to the Section 42A Report supports the above recommendations of Ms Gilbert and for the reasons discussed below Bathurst and BT are also in support of Ms Gilbert's recommendation. Earlier in our submissions we discussed an overlap on the Denniston Plateau between the BCZ and ONL 41 shown in **Appendix 1**.
28. Bathurst and BT have obtained the GIS shapefiles for the area of overlap between the BCZ and ONL 41 and have prepared the map in **Appendix 4**. The area of overlap in the Bathurst prepared map which is based on the GIS shapefiles provided by Council does not match the overlap shown on the notified TTPP maps (web maps and PDF maps) in **Appendix 1**.

¹⁴ *West Coast Environmental Network Inc v Royal Forest and Bird Society of New Zealand Incorporated* [2013] NZEnvC 047 at [35] – [37].

¹⁵ Statement of Evidence of Mark Charles Grace Mabin on behalf of Buller Coal Limited dated 7 June 2012 at Figure 1.

¹⁶ *West Coast Environmental Network Inc v Royal Forest and Bird Society of New Zealand Incorporated* [2013] NZEnvC 047 at [49].

¹⁷ Te Tai o Poutini Plan: Landscape Report, Bridget Gilbert Landscape Architecture at [1.2].

29. We submit that the inconsistency between the notified TTPP maps and the GIS shapefiles provided to Bathurst create uncertainty in the mapping exercise that has been undertaken.
30. For the reasons discussed above we submit that there is no justification for why a portion of the BCZ, a special purpose zone the intent of which is to recognise and provide for mineral extraction activities,¹⁸ has been identified within an ONL. In summary, as recommended by Ms Gilbert a further workstream or review of the ONL boundaries is required to ensure accuracy.

Functional and Operational Need

31. Bathurst sought amendments to Rule NFL-R10 which deals with earthworks within an ONL as a controlled activity that do not meet the permitted standards in Rule NFL-R6, to include reference to functional or operational need and activities within the MINZ and BCZ.
32. The Section 42A Report supports Bathurst's submission to reference both operational need and functional need. This is consistent with the language of National Planning Standards 2019.
33. While accepting Bathurst's submission to reference both operational and functional need the Section 42A Report recommends that a restricted discretionary activity status is more appropriate for earthworks in the BCZ and MINZ within an ONL.¹⁹
34. In our submission, as discussed in the evidence of Ms Hunter, it would be preferable to ensure consistency across the TTPP noting that earthworks associated with an existing mineral extraction activity in the MINZ and BCZ are permitted. Consistency across rules that apply to mineral extraction activities in the TTPP will ensure that the MINZ and BCZ chapters operate in an effective and efficient manner and that the activities anticipated in the MINZ and BCZ are not unintentionally undermined.
35. Ms Hunter supports a restricted discretionary activity status for new mineral extraction activities in circumstances where there are valid areas of overlap between the MINZ/BCZ and ONL based on a further fine grained landscape analysis.²⁰
36. In our submission the amendments proposed by Ms Hunter in her evidence to the matters of discretion for the new recommended restricted discretionary rule are a more appropriate and efficient drafting that will ensure Rule is worded in a manner that is clear and concise.

¹⁸ Buller Coalfield Zone and Mineral Extraction Zone Section 32 Report.

¹⁹ Section 42A Report Natural Features and Landscapes at [291] – [294].

²⁰ Statement of Evidence of Claire Hunter 12 February 2024 at [27] – [28].

FURTHER SUBMISSIONS

37. In addition to the above, Bathurst and BT's further submission points that have been allocated to Topic 10:
- (a) Oppose the amendment sought by Forest and Bird to Policy NFL-P2 to remove the word significant before adverse effects.
 - (b) Support Straterra's submission seeking review of the size and extent of ONLs and the provision of more information on the criteria used. Bathurst has supported this submission as discussed above the ONL around the Denniston Plateau is considered inconsistent with the natural features and crosses into the BCZ.
38. The Section 42A Report recommends accepting Bathurst and BT's further submission on the Forest and Bird submission. Bathurst is supportive of this recommendation.
39. Policy NFL-P2 seeks to establish a hierarchical approach to the management of significant adverse effects within ONLs. Forest and Birds' submission to remove the word significant would result in the Policy seeking the avoidance of all adverse effects as a first priority. It is not appropriate to require no effects as the RMA is not a no effects statute.²¹
40. In relation to the Straterra further submission the Section 42A Report accepts this as it is considered the Brown Report has fully reviewed the size and extent of ONLs and the work sought by Straterra has therefore already been done.
41. As addressed in our submissions above and Ms Hunter's evidence, there is accuracy issues between the notified ONL mapping and the shapefiles provided by Council. There is also an overlap between the BCZ and ONL and we submit that given the intent of the BCZ the overlay should not interact with this. As Ms Hunter has outlined in her evidence areas of overlay have not been appropriately accounted for in a Section 32 sense.
42. For this reason, we submit that a further workstream or review of the ONL boundaries is required to ensure accuracy.

²¹ *Royal Forest and Bird Protection Society of New Zealand Incorporated v Buller District Council* (No.2) [2013] NZHC 1346 at [52].

CONCLUSION

43. 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.
44. Bathurst supports the recommendations of the Section 42A Report to clarify that existing land uses and lawfully established activities include mineral extraction activities and to include reference to functional and operational need.
45. We submit that inaccuracies remain in the ONL mapping and that when the intent of the BCZ and MINZ is considered there should not be interplay between the special purposes- zones and ONL overlay. Bathurst agrees with the recommendations of Ms Gilbert that a further review of the ONL boundaries is required to ensure accuracy and that the activities anticipated in the MINZ and BCZ aren't restricted without justification.

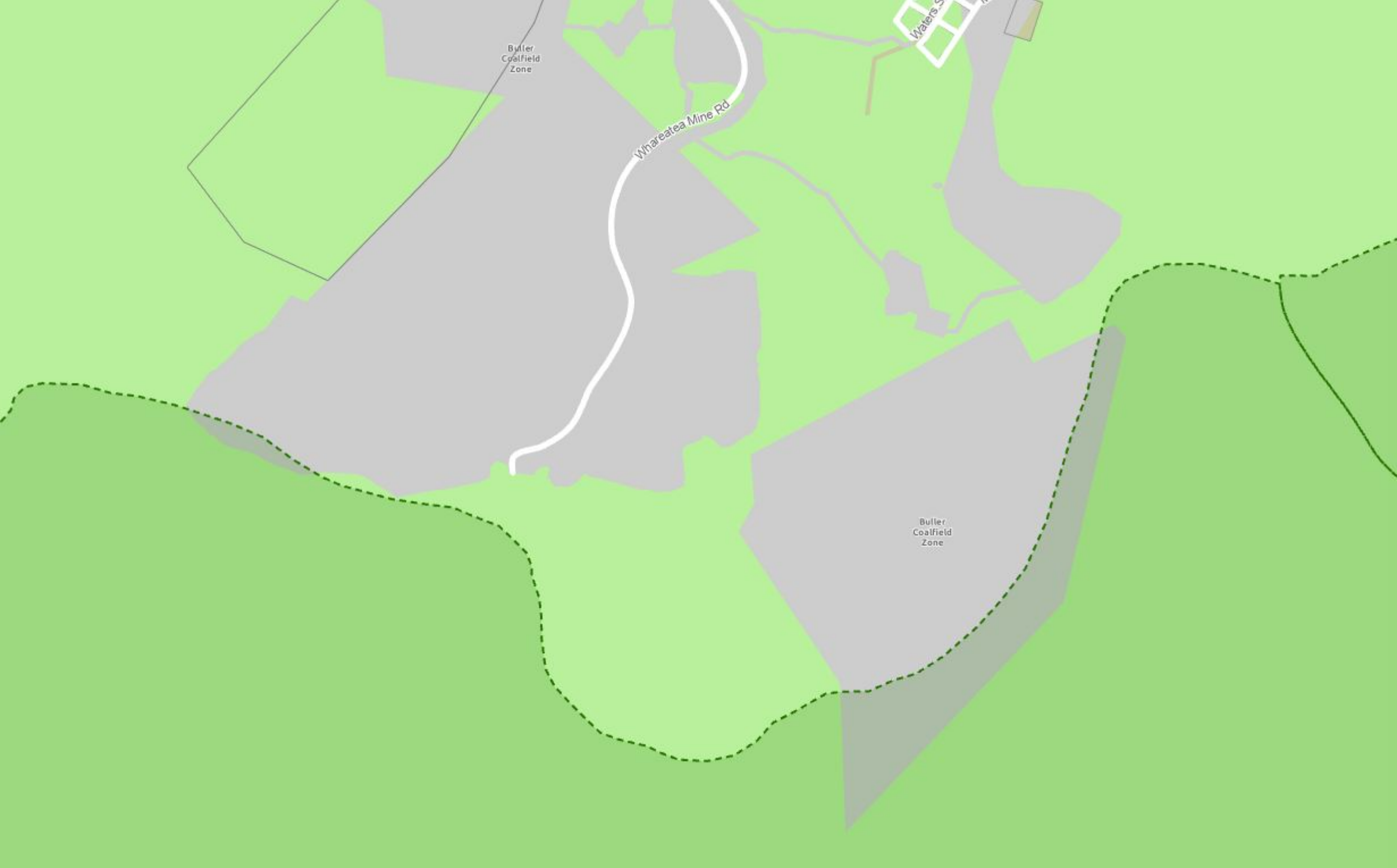


Joshua Leckie / Christina Sheard

Counsel for Bathurst Resources Limited and BT Mining Limited

Appendix 1

Webmap



Buller
Coalfield
Zone

Whareatea Mine Rd

Waters S

Buller
Coalfield
Zone

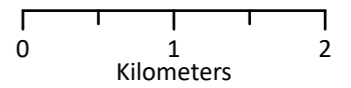
Appendix 1

Map 23 – Buller PDF Maps



23

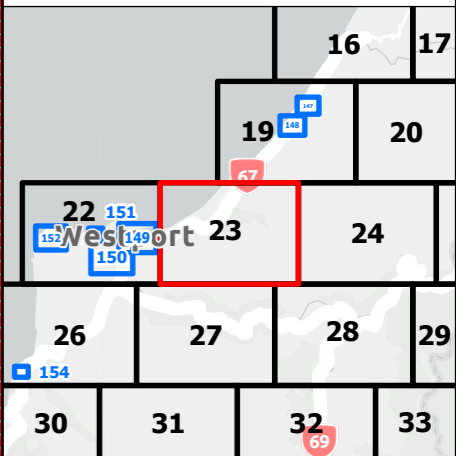
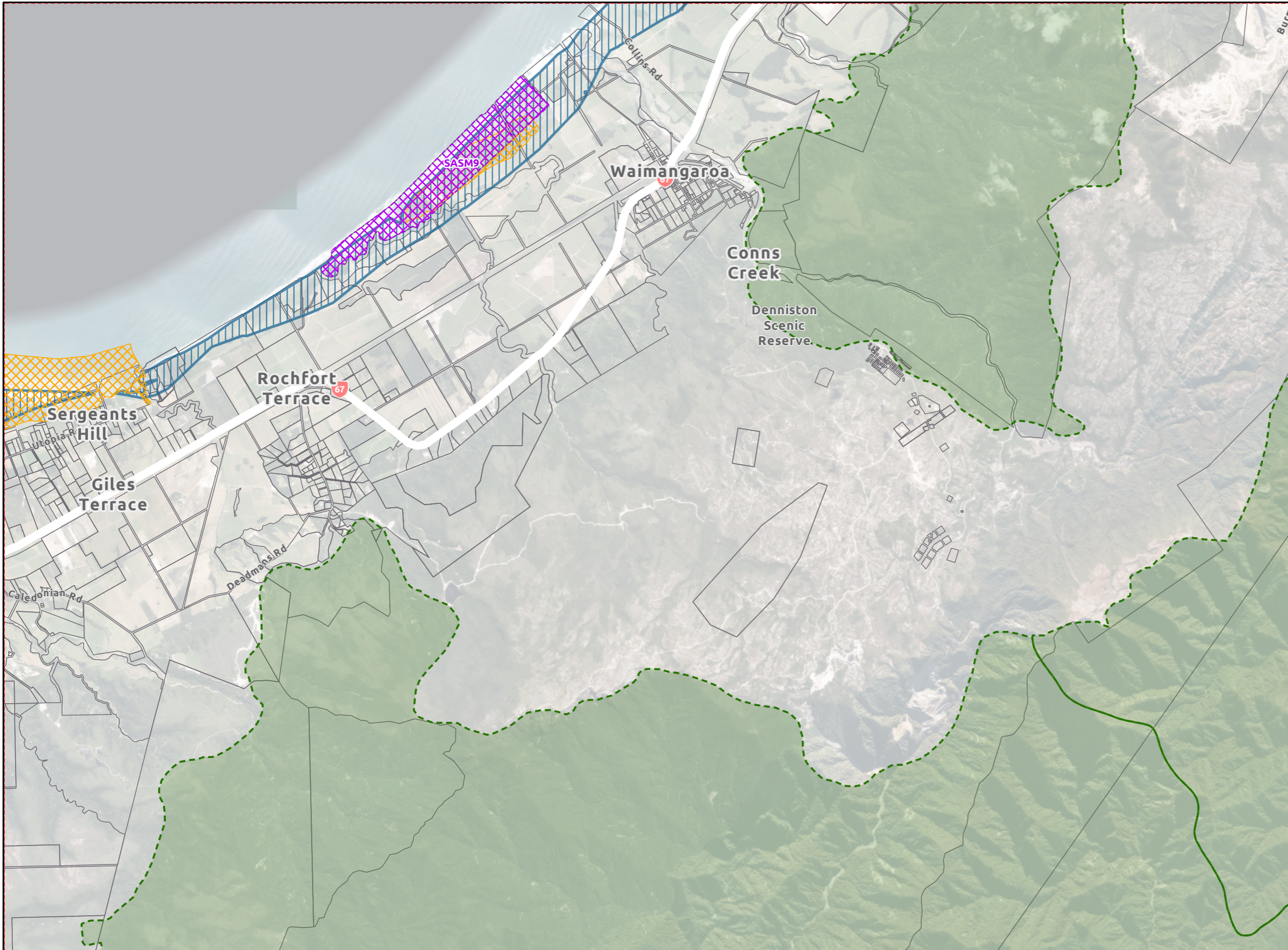
Buller District

Scale: 1:50,000



Legend

-  Sites and Areas of Significance to Māori
-  High Natural Character
-  Outstanding Natural Landscape
-  Coastal Environment



NOTE
Roads carry the same zoning as the adjoining land. If a boundary between zones follows a road, the zone boundary is located on the centreline of the formed road, or where unformed, the centreline of the legal road.

DISCLAIMER
Considerable care has been taken to avoid errors and omissions, and the latest information has been included in these District Plan maps. However, even with the greatest care inaccuracies may occur and therefore the West Coast Regional Council cannot accept any responsibility for such errors and omissions.

Appendix 2

**Extent of Denniston Plateau - *West Coast Environmental Network Inc v Royal Forest and Bird Society of New Zealand Incorporated* [2013]
NZEnvC 047**

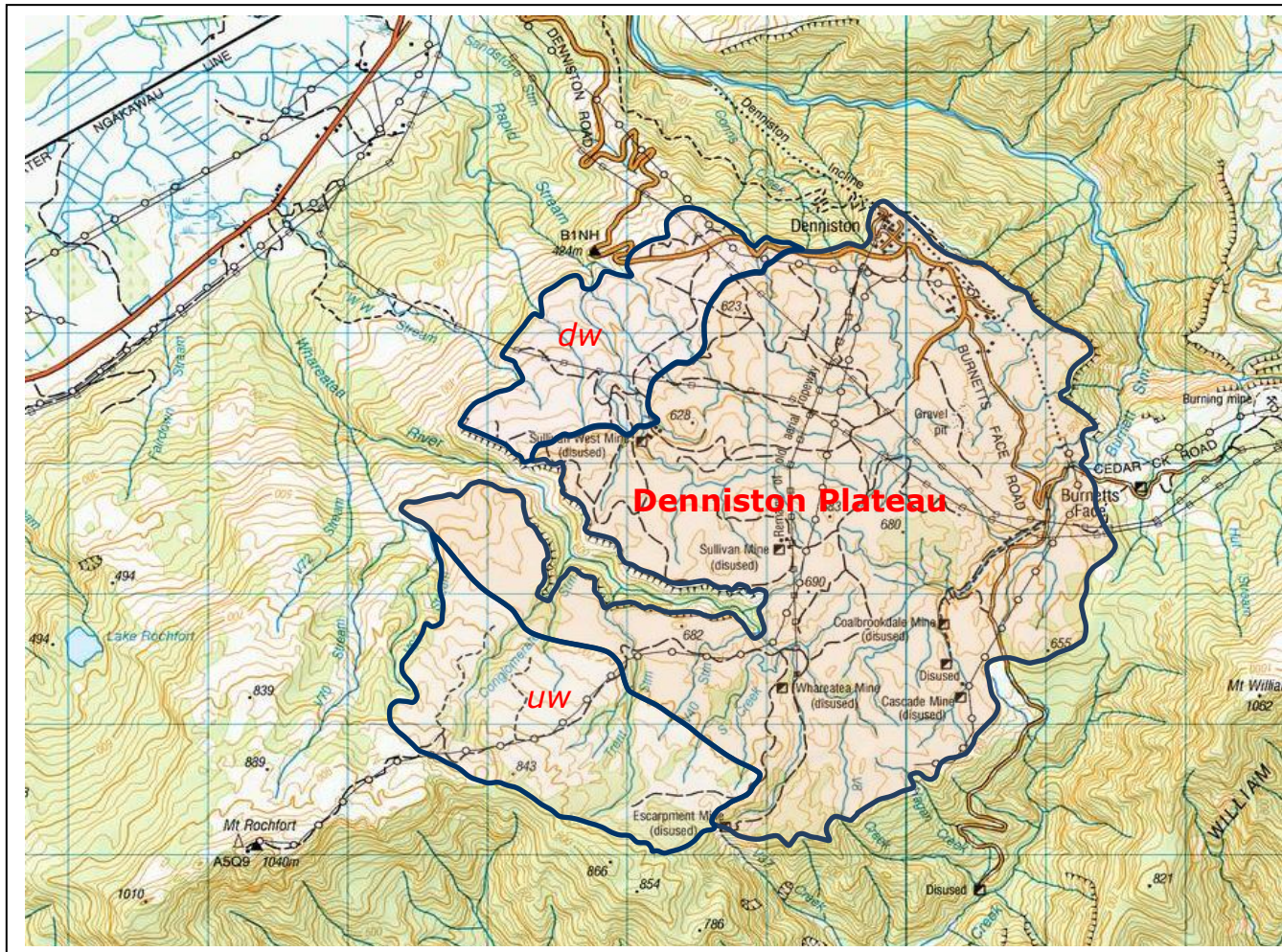
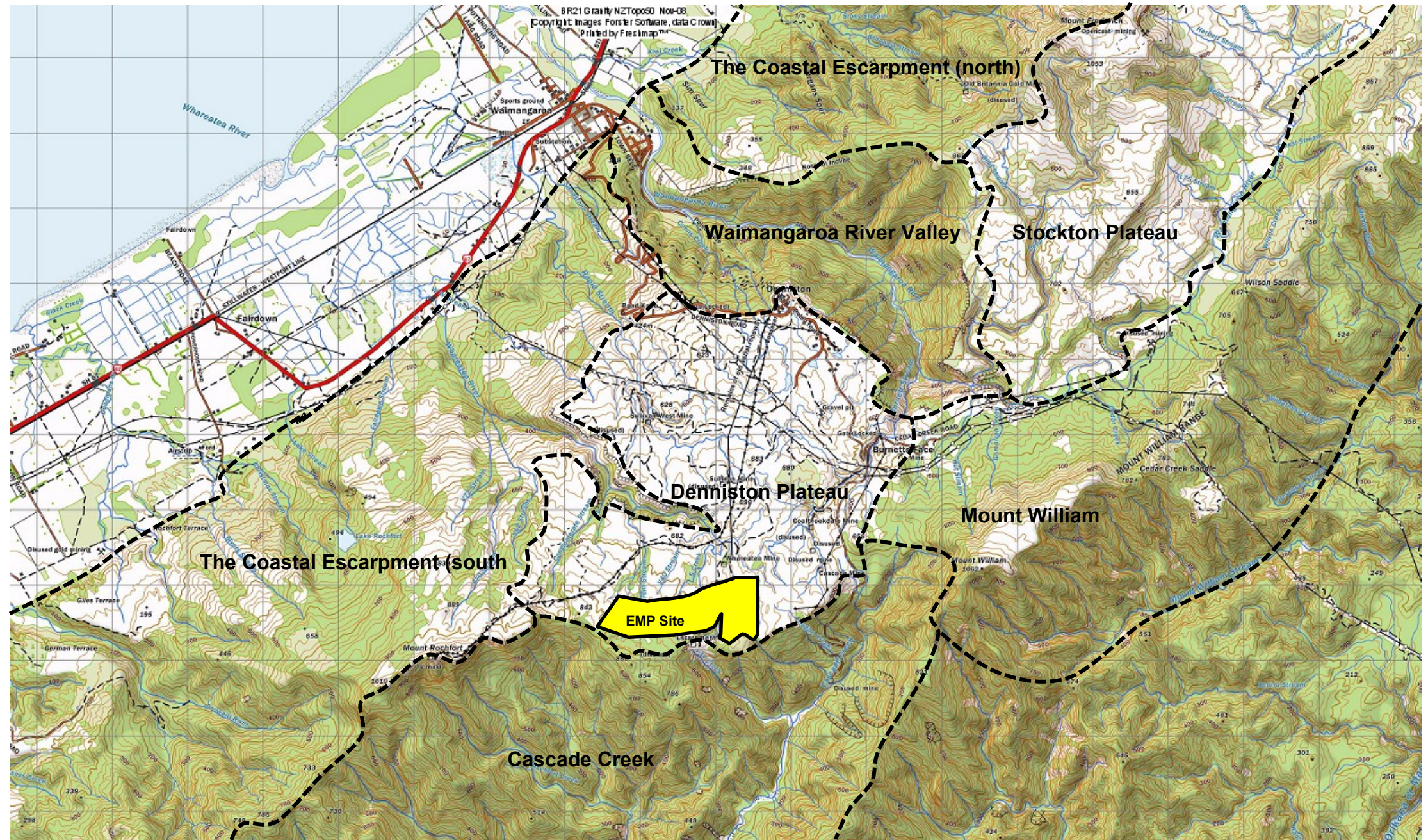


FIGURE 1: Denniston Plateau (dw = down-warped section; uw = up-warped section). Grid spacing 1000 m. Base map from 1:50,000 scale topographic mapping in the MapToaster software package.

Appendix 3

Landscape Evidence of Andrew Craig (2012) Graphic Attachment Map 2 – Landscape Units

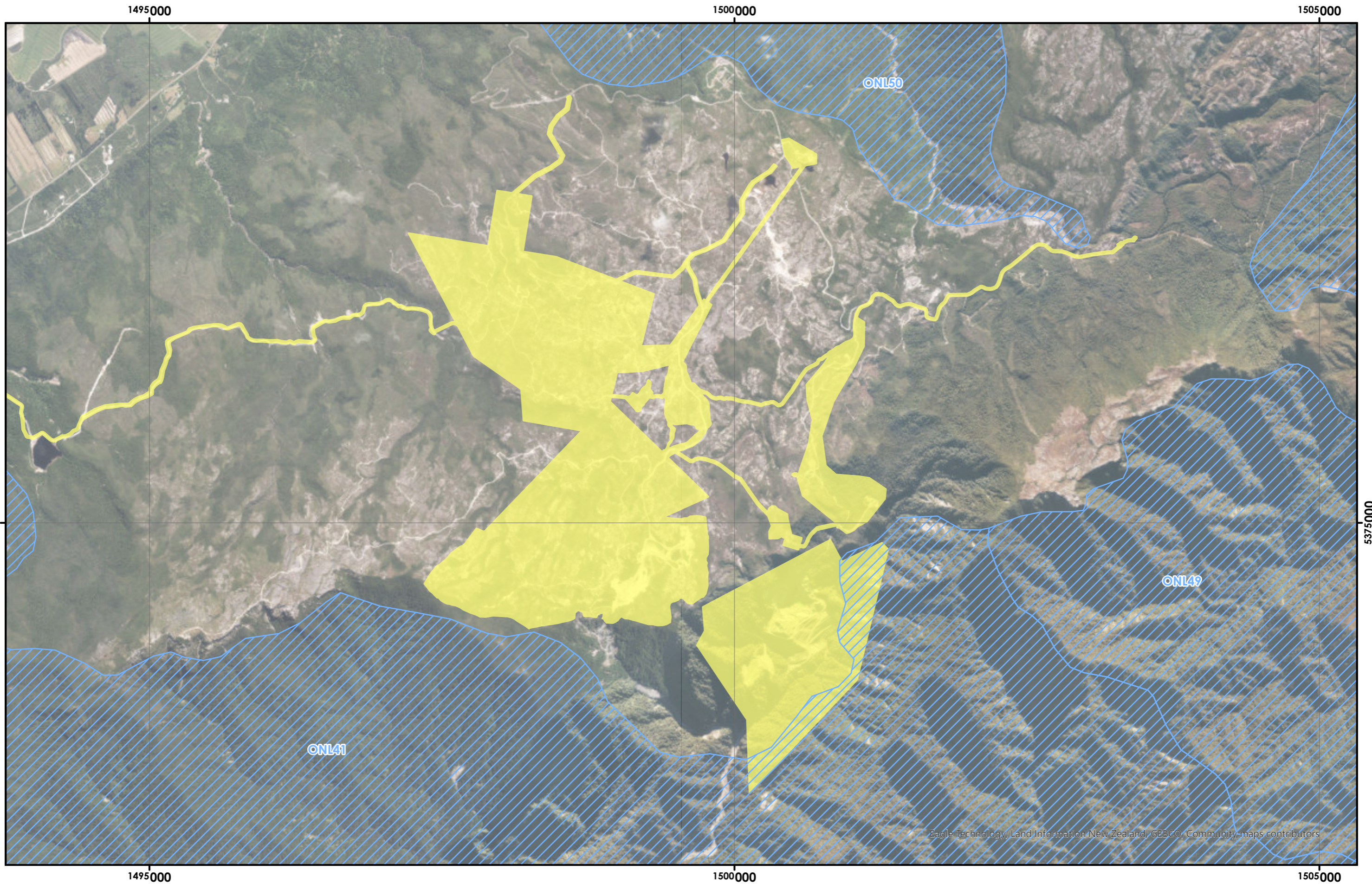


Map 2: Showing the landscape units within the seaward mountains landscape character area. The extent and location of the EMP site is approximate.

Map 2: Landscape Units

Appendix 4

Denniston Plateau BCZ and ONL Overlap



Eagle Technology, Land Information New Zealand, GBCO, Community maps contributors

NZGD 2000 Transverse Mercator

W:\GIS_Master\GIS_Data\Projects\BLR\Legal\Project Files\BLR-LGL-PLN-01563\BLR-LGL-PLN-01563.aprx



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- Legend**
- Proposed Buller Coalfields Zone Extent
 - Outstanding Natural Features (GIS data from WCRC as of 9/2/2024)

DRAFT

Denniston Plateau
*Proposed Buller Coalfields Zone
 With Outstanding Natural Landscapes*

SCALE: 1:30,000 A3
 DATE: 12 February 2024
 DRAWN BY: CanardR
 DRAWING NUMBER: 01563-1

