

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

Memorandum of Counsel on behalf of Bathurst Resources Limited and BT Mining Limited

Dated: 24 April 2024

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MAY IT PLEASE THE PANEL

1. This Memorandum of Counsel is filed on behalf of Bathurst Resources Limited and BT Mining Limited (together **Bathurst**) in response to Minute 22 of the Hearings Panel (**Panel**).
2. Minute 22 invited responses from submitters to the response from Reporting Officer, Ms Easton (**Reporting Officer Response**), on Minute 16. Minute 16 relevantly outlined that after receiving response from submitters on the Strategic Directions chapter of the Te Tai o Poutini (**TTPP**), the Panel considered there is merit in reviewing the approach to the Strategic Directions Chapter.
3. Bathurst appeared at the Topic 1 and 2 hearing on 2 November 2023. Following questioning at the hearing the Panel requested that Bathurst provide a response to these questions which was provided by way of supplementary legal submission filed on 24 November 2023 (**Bathurst Response**). The Bathurst Response included suggested redrafting of the Mineral Extraction Strategic Objectives and Policies.
4. This memorandum now provides a response to the following points raised in Ms Easton's 5 April 2024 response:
 - (a) whether strategic objectives should have primacy over other objectives in the TTPP; and
 - (b) the proposed redrafting of the Strategic Objectives.

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. Bathurst's Response submitted that there is no authority requiring that strategic objectives be given primacy or otherwise and in the context of the TPP, the most appropriate approach is to not apply a hierarchy of strategic objectives.¹
7. The Reporting Officer Response states:

"I concur with the supplementary legal submission of Bathurst Resources that strategic objectives should not have primacy over other objectives in

¹ Supplementary Legal Submissions on behalf of Bathurst Resources Limited and BT Mining Limited, 24 November 2023 at [11].

the Plan and that there should be a hierarchy between these provisions and other objectives and policies in the Plan.”²

8. Bathurst supports the Reporting Officer Response however considers that there is a potential typo in the response, and we assume it is intended to read:

“I concur with the supplementary legal submission of Bathurst Resources that strategic objectives should not have primacy over other objectives in the Plan and that there should not be a hierarchy between these provisions and other objectives and policies in the Plan.”

9. Bathurst supports the removal of the following statement from Strategic Objective chapters and Strategic Directions overview as proposed by the Reporting Office Response:

~~For the purposes of preparing, changing, interpreting and implementing Te Tai o Poutini all other objectives and policies in all other chapters of Te Tai o Poutini are to be read and achieved in a manner consistent with these strategic objectives.~~

PROPOSED REDRAFTING OF STRATEGIC OBJECTIVES

10. 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 Bathurst Response provided redrafting of the Mineral Extraction Strategic Objectives and Policies with this observation in mind.
11. The Panel requested that the Reporting Officer consider whether consideration should be given to an overarching enabling economic development objective for all sectors of the economy along with provisions related to incompatible activities and reverse sensitivity effects for relevant activities.³
12. The Reporting Officer Response does not support an approach of having a broad economic development objective with supporting policies in place of individual strategic directions for Mineral Extraction, Agriculture and Tourism⁴ and outlines a proposed structure of economic development objectives and policies.
13. Bathurst’s position on the economic development objectives and policies proposed in the Reporting Officer Response are:

² Section 42A Author Response to Minute 16 – Strategic Directions, 5 April 2024 at [2].

³ Minute 16 – Strategic Directions, 19 January 2024 at [3].

⁴ Section 42A Author Response to Minute 16 – Strategic Directions, 5 April 2024 at [18].

- (a) Bathurst broadly supports proposed Objective ED-01. However, in light of the important role mineral extraction has for the economic, social and cultural wellbeing of the West Coast, as recognised and supported in higher order policy documents,⁵ there is also a need for a specific strategic objective enabling mineral extraction. For this reason, as discussed in paragraph 13(c) Bathurst still seeks the inclusion of Strategic Objective MIN-O1 as supported in the Bathurst Response.
- (b) Bathurst does not consider that proposed Objective ED-02 provides appropriate enablement of mineral extraction as its focus is on reverse sensitivity effects. This focus reinforces the need for a separate minerals objective.
- (c) Bathurst continues to support the inclusion of Strategic Objective MIN-O1 as redrafted in the Bathurst Response. Strategic Objective MIN-O1 as redrafted in the Bathurst Response provides an enabling overall objective that recognises the critically important role of minerals to the West Coast.
- (d) Bathurst broadly supports proposed policies ED-P3, ED-P4 and ED-P5 in that they appear to be based off the suggested drafting in the Bathurst Response and they:
- (i) appropriately enable mineral extraction activities;
 - (ii) provide recognition that mineral resources are fixed in location;
 - (iii) address reverse sensitivity effects;
 - (iv) manage adverse effects; and
 - (v) support Poutini Ngāi Tahu to manage pounamu and aotea stone resources.

Dated this 24th day of April 2024



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⁵ Supplementary Legal Submissions on behalf of Bathurst Resources Limited and BT Mining Limited, 24 November 2023 at [12] – [40].