

**BEFORE THE HEARINGS PANEL
IN WEST COAST**

UNDER the Resource Management Act 1991 (RMA)

IN THE MATTER OF Hearing of submissions and further submissions on the
Proposed Te Tai o Poutini Plan (pTTPP)

**JOINT WITNESS STATEMENT OF DAVID BADHAM, CLAIRE HUNTER,
MARK LILE, MICHAEL MCENANEY AND KATE MCKENZIE FOR THE
MINERAL EXTRACTION TOPIC**

(PLANNING)

7 JUNE 2024

1. INTRODUCTION, QUALIFICATIONS, AND EXPERIENCE

1.1 This Joint Witness Statement (JWS) has been prepared by:

- (a) David Badham – Partner Barker & Associates, Councils’ independent s42A Reporting Planner for the pTTPP Mineral Extraction Topic;
- (b) Claire Hunter – Director Mitchell Daysh, on behalf of Bathurst Resources and BT Mining;
- (c) Mark Lile – Resource Management Consultant Landmark Lile Limited, on behalf of Westreef Services Limited;
- (d) Michael McEnaney – Regulatory Manager, on behalf of Grey District Council; and
- (e) Kate McKenzie – Director WePlan Ltd, on behalf of WMS Group (HQ) Limited and WMS Land Co. Limited.

1.2 Collectively referred to as “the Planners” within this JWS.

1.3 The relevant skills and experience of the Planners is outlined within their respective expert evidence briefs provided on behalf of these submitters and within the Council’s Section 42A Report for the Mineral Extraction Topic.

2. CODE OF CONDUCT

2.1 The Planners agree to the following:

- (a) The Environment Court Practice Note 2023 provides relevant guidance and protocols for the expert conferencing sessions;
- (b) They will comply with the relevant provisions of the Environment Court Practice Note 2023;
- (c) The matters addressed in this statement are within their area of expertise;
- (d) They will make themselves available to appear before the Hearings Panel;
- (e) The procedures for expert conferencing / caucusing as outlined in paragraphs 57 – 62 of Minute 2 from the Hearing Panel; and
- (f) This statement is to be filed with the Hearing Panel and published on the Council’s website.

3. PURPOSE OF JWS

3.1 During questioning of Mr Badham during week one for the Mineral Extraction Hearing, the Hearings Panel advised that it would be beneficial for the expert planning witnesses to caucus on a range of matters including:

- (a) Special Purpose MINZ and BCZ Zones;
- (b) Definition of 'Lawfully Established';
- (c) Zoning criteria MINZ-P1 and BCZ-P1;
- (d) Rezoning requests;
- (e) Mineral Extraction Management Plans;
- (f) Farm Quarries and GRUZ-R12; and
- (g) Vehicle movement rules.

3.2 An initial expert caucusing session was held virtually between the Planners on 5 June 2024. This JWS is a result of the matters discussed and confirmed by the Planners within and following that session. While progress was made through these matters, in the time available, it was not possible to address all matters. Where the Planners consider further caucusing would be beneficial, this is outlined below.

4. SPECIAL PURPOSE ZONES – MINZ AND BCZ

4.1 National Planning Standards Mandatory direction 8.3 states:

"An additional special purpose zone must only be created when the proposed land use activities or anticipated outcomes of the additional zone meet all of the following criteria:

- a. are significant to the district, region or country*
- b. are impractical to be managed through another zone*
- c. are impractical to be managed through a combination of spatial layers."*

4.2 With regard to Zone Standard 8.3, the Planners agree on a principled basis that:

- (a) The Mineral Extraction Zone (MINZ) and Buller Coalfield Zones (BCZ) meet clause a. of this Standard because mineral extraction is clearly of significance to the relevant districts, region and country more generally. This is

demonstrated by the economic evidence¹ provided within the Strategic Direction Hearing and also the evidence of Dr Mark Sargent.²

- (b) The MINZ and BCZ are impractical to be managed through another zone in accordance with clause b. Noting the notified zoning framework, the Planners consider that there is no other suitable zone within the pTTPP that would manage mineral extraction within these zones.
- (c) The MINZ and BCZ are impractical to be managed through a combination of spatial layers. Noting the notified pTTPP, the overlays already apply over top of the MINZ and BCZ, and it would be impractical at this point in the process to design a separate spatial layer to manage this.

4.3 The Planners agree that a more detailed s32AA evaluation of the alternative options available would be helpful to demonstrate that the MINZ and BCZ are the most efficient and effective options in light of the above.

5. DEFINITION OF LAWFULLY ESTABLISHED

5.1 Mr Lile, Ms McKenzie and Mr McEnaney confirmed that they did not have evidence on this definition, and therefore have not outlined a position.

5.2 Ms Hunter has addressed the definition of 'lawfully established' within her evidence³ and recommended the following amendments to the proposed definition:

"Definition of Lawfully Established

Means buildings, structures and activities provided for by one of the following:

- 1. Permitted through a rule in the plan, or*
- 2. A resource consent, or*
- 3. A national environmental standard; or*
- 4. A designation; or*
- 5. By an existing use right (as provided for by Section 10 of the RMA); or*

¹ Statement of Evidence of John Stacey Ballingall, dated 2 October 2023 – [see this link](#).

² On behalf of Bathurst Resources Limited and BT Mining Limited – [see this link](#).

³ See paragraphs 17 – 30 of Ms Hunter's evidence in chief

6. In the case of mineral extraction, it also includes an activity covered by the permits listed in Schedule Nine and/or any activity permitted at the date this Plan was notified through a Coal Mining Licence or an Ancillary Coal Mining Licence issued under the Coal Mines Act (1979) including after its expiry; ~~and does not include where the resource consent or licence has expired and not been renewed~~

5.3 Mr Badham and Ms Hunter agree that:

- (a) A reference to Schedule Nine within the definition could work, however there would need to be a clear and consistent process to ensure the validation of information provided within this Schedule to demonstrate that mineral extraction was lawfully established in accordance with the definition; and
- (b) "Ancillary coal mining licences" should be included in the definition as outlined in Ms Hunter's recommended wording above.

5.4 There is a disagreement between the Mr Badham and Ms Hunter for "including after its expiry". Ms Hunter's position is outlined in her evidence, noting that there are also practical issues and significant costs that would be associated with requiring new consents for established land use activities. Noting the legal submissions from Wynn Williams, Mr Badham considers that when the permits granted under the Coal Mining Mines Act 1979 expire, it should be required to either:

- (a) Demonstrate that the activities have existing use rights under section 10 of the RMA;
- (b) Ensure that all activities fall within the permitted activity rules of the pTTPP; or
- (c) Obtain resource consent for the activities under the RMA as required.

6. ZONING CRITERIA – MINZ-P1 AND BCZ-P1

MINZ

6.1 Mr Lile, Mr Badham, Ms McKenzie and Mr McEnaney agree that:

- (a) There should be consistent zoning criteria for the spatial application of the MINZ; and
- (b) This zoning criteria for the MINZ is best placed within a policy, namely MINZ-P1.

- 6.2 Ms Hunter does not necessarily think that the policy needs to set out the “zoning criteria”. The special purpose zones have been derived as a result of mineral resources and extraction activities being identified as being a significant resource management issue for the region and this is reflected in the Strategic Objectives for the TTPP, the policies of this zone seek to give effect to both the Strategic and Zone specific objectives.
- 6.3 The Planners did not have time to specifically address the wording of MINZ-P1, but consider that further caucusing on the wording after the second week of the Mineral Extraction hearing could be beneficial if the Hearings Panel agreed.

BCZ-P1

- 6.4 Mr Lile, Ms McKenzie and Mr McEnaney confirmed that they did not have evidence on this matter, and therefore have not outlined a position.
- 6.5 Ms Hunter confirms her position in her evidence that she supports the notified wording of the BCZ-P1.
- 6.6 Mr Badham considers that:
- (a) There should be consistent zoning criteria for the spatial application of the BCZ;
 - (b) This zoning criteria for the BCZ is best placed within a policy, namely BCZ-P1; and
 - (c) He prefers the wording of BCZ-P1 as outlined within the s42A Report, but accepts that further refinements may be necessary, and can address this within his written right of reply.

7. REZONING REQUESTS

- 7.1 The Planners agree that it would be more efficient to revisit this topic at the completion of week two of the mineral extraction hearing to allow everyone to present to the Panel on their submissions and evidence.

8. MINERAL EXTRACTION MANAGEMENT PLANS

- 8.1 On a principled basis, Ms McKenzie, Ms Hunter, Mr Lile and Mr Badham consider that permitted activity rules with a Mineral Extraction Management Plan requirement are inappropriate.

- 8.2 Mr McEnaney does not agree, and as outlined in his evidence there is an avenue for a Mineral Extraction Management Plan requirement in permitted activity rules.
- 8.3 Mr Badham considers that where a Mineral Extraction Management Plan is required, it should have a restricted discretionary activity status for the reasons already outlined in the s42A.⁴ However Mr Badham, considers that there could be merit in the consideration of a non-notification clause in the applicable rules. Mr Badham will address this more fully in his written right of reply.
- 8.4 Ms McKenzie, Ms Hunter and Mr Lile do not consider that a rule including a Mineral Extraction Management Plan necessitates a restricted discretionary status, and consider in the MINZ and BCZ, a controlled activity status is appropriate.

9. FARM QUARRIES AND GRUZ-R12

- 9.1 Mr Badham acknowledges that there is a scope issue with his inclusion of a new provision "X" relating to "the mineral extraction is associated with a farm quarry" in his recommended amendments to GRUZ-R12 in Attachment 1 of the s42A. He will specifically address this in his written right of reply.
- 9.2 On this basis, the Planners agree that GRUZ-R12 should not specifically reference farm quarries.
- 9.3 Unfortunately, the Planners did not have time to specifically address the wording of GRUZ-R12, but consider that further caucusing on the wording after the second week of the Mineral Extraction hearing could be beneficial, if the Hearings Panel agreed.

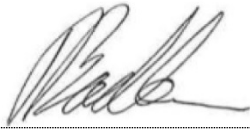
10. VEHICLE MOVEMENT RULES

- 10.1 Unfortunately, the Planners did not have time to specifically address the relevant provisions with vehicle movement restrictions, but consider that further caucusing on the wording after the second week of the Mineral Extraction hearing could be beneficial, if the Hearings Panel agreed.

⁴ See for instance paragraph 269 – 270 of the s42A.

JOINT WITNESS STATEMENT SIGNATORIES

Dated 7 June 2024



David Badham



Claire Hunter



Michael McEnaney



Mark Lile



Katherine McKenzie