

Before the Hearings Panel

In the Matter of the Resource Management Act 1991

And

In the Matter of the Proposed Waikato District Council Plan – Stage 1

Legal Submissions on behalf of **Bathurst Resources Limited** and **BT Mining Limited** relating to Hearings 1 and 18

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Table of Contents

INTRODUCTION	3
Bathurst and BT	3
KEY ISSUES AND SUMMARY OF RELIEF SOUGHT	4
STATUTORY AND PLANNING CONTEXT	5
Waikato Regional Policy Statement	6
COAL MINING AND USE IN THE WAIKATO.....	8
EXPANSION AND ONGOING OPERATION OF EXISTING COAL MINING ...	10
Coal Mining Area Mapping	13
Provisions Enabling Coal Mining	14
RECOGNITION OF REGIONALLY SIGNIFICANT COAL DEPOSITS	15
Identification and Mapping of Coal Resource	16
Consequential Relief	20
PROTECTION OF COAL MINING FROM REVERSE SENSITIVITY	21
ENABLEMENT OF FUTURE COAL MINING	22
Extractive Activities	23
Exploration and Prospecting	26
SECTION 32 ANALYSIS	27
CONCLUSION.....	29

INTRODUCTION

1. Bathurst Resources Limited (**Bathurst**) and BT Mining Limited (**BT**) lodged a submission on the Proposed Waikato District Plan – Stage 1 (**Plan**) on 9 October 2018 (**Submission**) and further submissions on 12 July 2019.
2. These legal submissions are presented on behalf of Bathurst and BT in relation to the submissions points which have been allocated to Hearings 1 and 18. The Hearings Commissioners granted the request by Bathurst and BT to defer the relief sought by Bathurst and BT that was allocated to Hearing 1 to Hearing 18 in order to allow Bathurst and BT to present their relief in a cohesive and holistic manner.¹

Bathurst and BT

3. Our opening submissions and the evidence of Craig John Pilcher provide the necessary background as to the relationships of Bathurst and BT, their acquisition of the Rotowaro, Maramarua and Huntly West mines and their vision for those mines. Of particular note:
 - (a) Bathurst is a New Zealand resources company listed on the ASX, and is New Zealand's leading coal producer. Bathurst is a shareholder of BT,² along with Talleys Energy Limited.³
 - (b) BT was incorporated to acquire (from Solid Energy New Zealand Limited) and run the business and assets of the Stockton, Rotowaro, Maramarua and Huntly West mines. BT is the permit holder and permit operator of the Rotowaro and Maramarua mines and the Huntly West mine (**Mines**). The Huntly West mine is a storage and handling facility rather than 'mine' in the general sense of that word.
 - (c) BT has appointed Bathurst as the mine operator of the Mines. Bathurst provides the necessary technical and managerial skills required for the operation of the Mines.

¹ Pursuant to the Minute dated 12 September 2019.

² 65% shareholder.

³ 35% shareholder.

- (d) Bathurst and BT have approximately 250 employees and various contractors across the Mines. The Mines therefore play an integral role in the Waikato District's economy, both in terms of direct employment and spending, and indirectly through their key customers in the Waikato District (Genesis, NZ Steel, Open Country Dairy and Fonterra).
- (e) Bathurst and BT are guided by a commitment to shareholders, employees, local communities and the environment. The commitment is backed by significant investment of time and money to ensure social and environmental impacts are managed from design and planning through to production and eventually rehabilitation of the Mines.

KEY ISSUES AND SUMMARY OF RELIEF SOUGHT

- 4. When considering the rural framework, the key issue with the notified Plan for Bathurst and BT is that it does not sufficiently recognise the significant role coal plays in the Waikato District's economy, and does not sufficiently enable that role over the life of the Plan.
- 5. The Waikato District is unique in that it has coal deposits that are significant on a national scale. As notified, the Plan has the potential to jeopardise the role that Bathurst, BT, and other coal miners in the industry, play in utilising those coal deposits for the benefit of the District and the adjacent regions (particularly Waikato and Auckland).
- 6. The overall purpose of the relief sought by Bathurst and BT is to identify and enable existing and future coal mining of nationally significant (and well known) coal deposits, so that they can continue to support the Waikato District's economy and continue to efficiently supply regionally significant industries.
- 7. Continuation of coal mining is reliant on the Plan giving teeth to the mechanisms proposed in the Section 42A Report for Hearing 18. In particular, the:
 - (a) recognition and enablement of existing and lawfully established coal mining operations in the introductory chapters and through the mapping of the Coal Mining Resource Area;

- (b) identification of additional nationally significant coal deposits in the District through Extractive Resource Area mapping;
 - (c) enablement of future prospecting, exploration and the enablement of coal extraction within Coal Mining Areas while ensuring appropriate controls on effects; and
 - (d) protection of coal mining from sensitive uses.
8. These submissions address the relief relating to those four issues.

STATUTORY AND PLANNING CONTEXT

9. The Panel will be familiar with the statutory functions and obligations of a territorial authority and the relevant legal tests. On that basis, this section is refined to a brief outline of those functions and obligations in this particular context, with further detail being provided at **Annexure 1**.
10. The provisions of the Resource Management Act 1991 (**RMA**) dictate the statutory functions and obligations of a territorial authority in the preparation and change of a district plan. In particular, in accordance with section 74 of the Act, the Panel's decision on the Plan must be in accordance with (relevantly):
- (a) the functions under section 31;
 - (b) the obligation to prepare and have regard to an evaluation report prepared in accordance with section 32;
 - (c) any national policy statements, New Zealand coastal policy statement and a national planning standard;
 - (d) any regulations; and
 - (e) the provisions of Part 2 of the Act.
11. In addition, a district plan must give effect to any national policy statement, New Zealand coastal policy statement, national planning standard and regional policy statement.⁴

⁴ Resource Management Act 1991, s 75(3).

Waikato Regional Policy Statement

12. Pursuant to section 75(3) of the Act, the Plan is required to give effect to the Te Tauākī Kaupapahere O Te Rohe O Waikato - The Waikato Regional Policy Statement (**WRPS**). This means that in the exercise of their functions the Waikato District Council (**Council**), and the Panel, are required to ensure that the provisions of the Plan give effect to the WRPS.
13. It is submitted that the Plan as notified does not give effect to the WRPS, particularly in the manner that it treats coal (as a mineral resource) and coal mining.
14. The WRPS requires resource use and development to be maintained and where appropriate enhanced, including:
- (a) access to natural and physical resources to provide for regionally significant industry;⁵ and
 - (b) access to the significant mineral resources of the region.⁶

Significant Mineral Resources

15. Policy 6.8 recognises the value of mineral resources, and the need to access mineral resources.⁷ Accordingly, the Waikato Regional Council (**WRC**) is required to identify significant mineral resources⁸ and to provide appropriate protections for those resources.⁹
16. The explanation to Policy 6.8 explains that recognition does not imply minerals should or will be extracted, but that their extraction should not be hampered by development of the built environment.¹⁰ The explanation to policy 6.8 also confirms that the sustainability of mineral extraction will be determined by considering the other relevant provisions of the WRPS.¹¹

⁵ Object 3.2(a), WRPS.

⁶ Objective 3.2(d), WRPS.

⁷ Policy 6.8, WRPS.

⁸ Policy 6.8.1, WRPS.

⁹ Policy 6.8.2, WRPS.

¹⁰ Explanation to Policy 6.8, page 6-14, WRPS.

¹¹ Above.

17. Bathurst and BT are not suggesting that mining should be fully enabled at all costs; rather they seek enablement in appropriate locations with appropriate controls.

Regionally Significant Industry

18. Policy 4.4 of the WRPS states that the management of natural and physical resources is to provide for the continued operation and development of regionally significant industry. The policy requires recognition of, among others, “*the benefits of enabling the co-location of regionally significant industry to support efficient use of infrastructure, and minimise transportation requirements.*”¹²
19. The explanation to Policy 4.4 also notes that “*Some regionally significant industries also provide an anchor to support other industries and communities within rural and urban settings.*”¹³ In our submission, coal mining from the Mines is a regionally significant industry that acts as an anchor supporting Genesis, NZ Steel, Fonterra, and Open Country Dairy in their operations throughout the Waikato District, as well as the Waikato and Auckland Regions.
20. Further the Rotowaro and Maramarua mines provide essential support to Huntly Power Station (owned by Genesis) through coal supply. The WRPS provisions relating to energy are therefore of some relevance. While the WRPS does focus on a shift to renewable energy moving forward, the ability to meet future demand¹⁴ and the security of supply¹⁵ are both key issues identified in the WRPS. It is submitted that continued (and future) coal mining is required to meet future power demand, particularly due to its security of supply. Security of supply was particularly pertinent in late 2018/2019 when coal was required to fill in for gas interruptions and lower hydro and wind levels.¹⁶

¹² Implementation Method 4.4.1(f), WRPS.

¹³ Page 4-11, WRPS.

¹⁴ In accordance with Issue 1.3(a) and Objective 3.5(i), WRPS.

¹⁵ In accordance with Issue 1.3(f) and Objective 3.5(i), WRPS.

¹⁶ Energy in New Zealand 19/20, Ministry of Business, Innovation and Employment: Markets – Evidence and Insights Branch, October 2019/August 2020.

COAL MINING AND USE IN THE WAIKATO

21. The opening submissions and the evidence of Mr Pilcher address the history of coal mining in the Waikato District,¹⁷ the development and current coal output of the Mines¹⁸, the direct contribution that the Mines make to the Waikato economy¹⁹, and the importance of the Waikato coal resources to New Zealand's wider economy. Of particular relevance:
- (a) Coal mining has been a contributor to the Waikato District's economy since 1876.
 - (b) The coalfields within the Waikato are nationally significant and have been the subject of various governmental studies and reports of national coal deposits. This information has been in the public domain for some time and is referred to in Mr Pilcher's evidence.²⁰
 - (c) Rotowaro produces around 550,000 tonnes annually, while Maramarua produces 220,000 – 250,000 tonnes annually.
 - (d) Through the Mines Bathurst and BT contribute approximately \$67.8 million to the Waikato District annually,²¹ with an additional \$12.75 million to suppliers outside of the Waikato District and the Crown.²²
22. Our opening submissions²³ and Mr Pilcher's evidence also outline Bathurst and BT's regionally significant customers; Genesis Energy Limited for the Huntly Power Station, New Zealand Steel Limited for Glenbrook Steel Mill and Open Country Dairy and Fonterra Limited for their Waikato-based dairy factories.

¹⁷ Opening Legal Submissions for Bathurst Resources Limited and BT Mining Limited dated 25 September 2019 (**Opening Submissions**), at [13] – [25] and Brief of Evidence of Craig John Pilcher for Bathurst Resources Limited and BT Mining Limited dated 16 September 2020 (**Pilcher Evidence**), at [13] – [22].

¹⁸ Opening Submissions, at [14] – [15] and Pilcher Evidence, at [32] – [43].

¹⁹ Opening Submissions, at [20] and Pilcher Evidence, at [44] – [50].

²⁰ Pilcher Evidence, at [21] – [22], [68], [71], [73] – [74], [76] – [77].

²¹ Pilcher Evidence, at [45] – 48: \$22m on payroll, \$5.9m on contractors, \$39m on Waikato suppliers, \$0.9m on private royalties.

²² Pilcher Evidence, at [45] – 48: \$11m on non-Waikato suppliers, \$252k on Crown royalties and \$1.5m on the Energy Resource Levy.

²³ Opening Submissions, at [17].

23. The Plan itself acknowledges the contribution that mining has made to the District's Gross Domestic Product (**GDP**).²⁴ This acknowledgement is not given effect to or responded to by sufficient recognition and enablement in the Plan. The Plan therefore needs to add the necessary provisions in order to ensure that coal and coal mining can continue to contribute to the Waikato District's GDP, and to recognise that it continues to be an ongoing business which is not in decline.
24. The notified version of Chapter 1 of the Plan states that coal mining is declining;²⁵ it is submitted that this is incorrect. There has been no section 32 analysis to support the contention that coal mining is in decline, and the evidence summarised above demonstrates that it is not in decline.
25. Bathurst and BT acknowledge that there will be a transition period from coal to an as yet unknown alternative economic energy source. However, the energy demands of the regionally significant industries described above, while those industries continue to operate in New Zealand, will continue to be met by local or imported coal through that transition period. The lack of a reliable and economic alternative to coal means that the transition from coal will take place over a matter of decades not years. This is well within the life of the Plan.
26. It is noteworthy that coal mining was an essential service during the Covid-19 'lock-down', particularly due to its reliability as an energy source. This reliability also resulted in a 43% increase in the use of coal as an energy source during 2019 when low rainfall in the North Island resulted in less hydro electricity generation than usual.²⁶
27. Given that coal will continue to play a role in the steel-making, energy and dairy industries in the Waikato into the foreseeable future, in our submission the preference should be for local coal. However, these industries are already meeting demand for coal with a mix of domestic and imported coal. In addition to having a smaller CO₂ transportation footprint, coal mined in New Zealand is subject to the Emissions Trading Scheme and our strict environmental and health and safety laws.

²⁴ 1.4.2.3(viii), Proposed Waikato District Plan.

²⁵ 1.4.2.3(viii), Proposed Waikato District Plan.

²⁶ Energy in New Zealand 20, Ministry of Business, Innovation and Employment: Markets – Evidence and Insights Branch, August 2020.

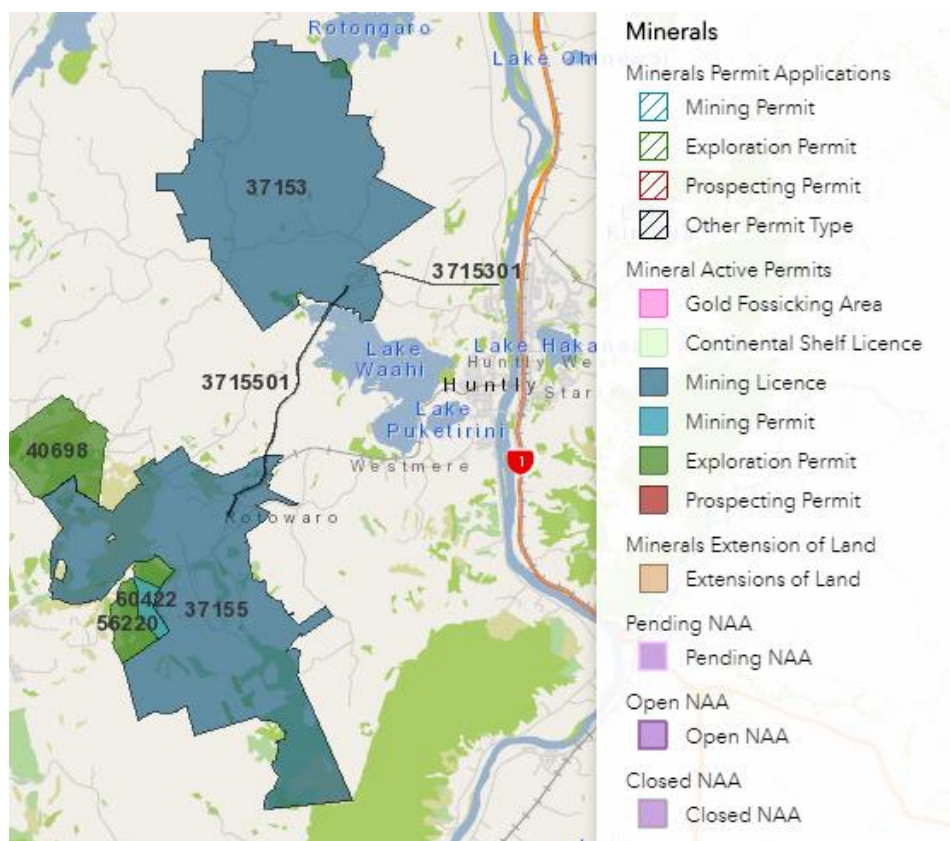
28. As Bathurst and BT will have a domestic Waikato market for decades to come, adjacent coal deposits will need to be developed in order to sustain the regionally significant businesses and to provide an uninterrupted supply to local industry. The development of adjacent coal deposits will maintain continuity of employment and procurement and maximise synergies by utilising existing infrastructure, including coal handling and load out facilities.
29. Given this need, in our submission the Plan must recognise and enable existing coal mining operations, nationally significant coal deposits and future coal mining while efficiently protecting access to and extraction of coal with respect to other land uses. This will ensure Bathurst and BT can continue to support the social and economic well-being of the Waikato District, and the regionally significant industries referred to above.
30. It is our submission that coal and coal mining will continue to play a vital role in the Waikato District for the life of the Plan (and beyond) and, when managed appropriately will, in accordance with Part 2 of the Act;
- (a) promote sustainable management;
 - (b) provide social, economic and cultural well-being;
 - (c) manage adverse effects; and
 - (d) be an efficient use and development of natural and physical resources particularly where it avoids duplication of coal handling facilities.

EXPANSION AND ONGOING OPERATION OF EXISTING COAL MINING

31. The Plan provides for the enablement of “extractive industries”, redefined as Extractive Activities under the Hearing 18 Section 42A Report, which is supported by Bathurst and BT.²⁷ We adopt the term Extractive Activity/Activities in these submissions.

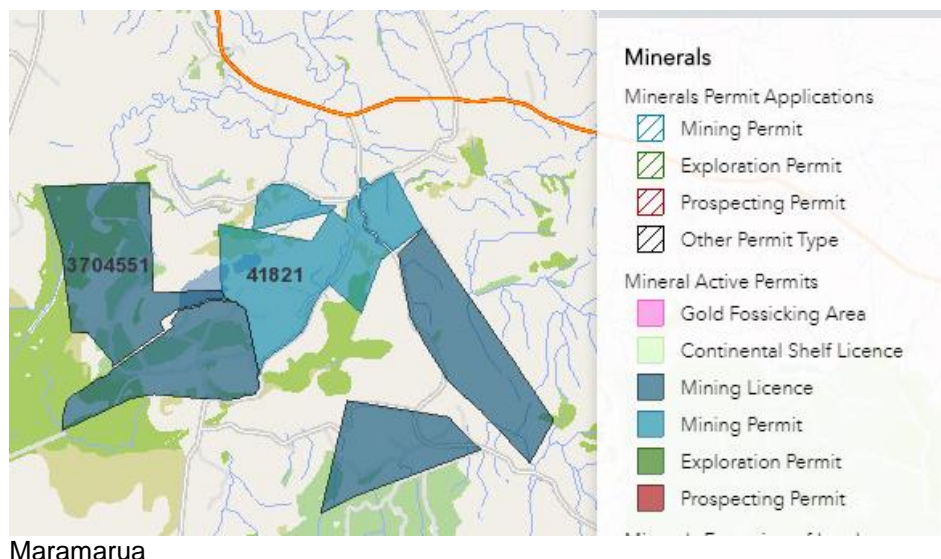
²⁷ For example, provisions 1.4.3(a), 1.4.3.1, 1.4.3.2(a)-(c), 1.5.7.7 and 5.4.2, Proposed Waikato District Plan.

32. However the enablement provisions rely, at least to some extent, on the mapping of the Coal Mining Area – which is currently incomplete.
33. Bathurst and BT therefore seek enablement of coal mining by accurate reflection of the Coal Mining Area across existing coal mining operations, including associated Coal Mining Licences, Coal Mining Permits and the Exploration Permits held by Bathurst and BT, as identified in red outline in the maps attached at Annexures C – E of Mr Pilcher's evidence.
34. The relevant Coal Mining Licences, Coal Mining Permits and Exploration Permits are mapped on the Mineral Permit Webmaps by New Zealand Minerals and Petroleum.²⁸ Extracts for the Rotowaro, Huntly West and Maramarua mining licences and permits are as follows:



Rotowaro and Huntly West

²⁸ <http://data.nzpam.govt.nz/permitwebmaps/?commodity=minerals>



35. A Coal Mining Licence is the equivalent of a Coal Mining Permit under the Crown Minerals Act and a land use consent under the RMA. This is because Coal Mining Licences were granted pursuant to the Coal Mines Act 1979. Coal mining licences provided authority to undertake land use activities relating to coal mining without having to apply for additional planning consents under the planning regime of the time, being the Town and Country Planning Act 1977.²⁹ The rights granted under a Coal Mining Licence pursuant to the Coal Mines Act 1979 are preserved under the transitional provisions of the Crown Minerals Act 1991. The rights are classified as an existing privilege and are able to be exercised as if the Crown Minerals Act 1991 and the Resource Management Act 1991 had not been enacted.³⁰ This position has not changed under subsequent amendments to these two Acts.³¹
36. Mining and Exploration Permits on the other hand are granted pursuant to the Crown Minerals Act 1991 and sit separate to planning consents under the RMA.
37. Other submitters have also identified areas of the Plan where further enablement of Extractive Activities can be made. Those submitters seek further recognition of mining in the objective and policies of the Rural Environment Chapter or amendment to the activity status for mineral extraction (Extractive Activities) in the Rural Zone Chapter. Bathurst and BT support the submissions of other parties as they relate

²⁹ *Stewart v Grey County Council* [1978] 2 NZLR 577 (CA), at p 584.

³⁰ Crown Minerals Act 1991, Schedule 1, Clause 12.

³¹ *New Zealand Steel Limited v Attorney-General* [2013] NZHC 3524 at [63].

to the enablement of coal mining and extractive activities more generally.³²

Coal Mining Area Mapping

38. Amendments are required to the mapping of the notified Coal Mining Area to include all coal mining operating or capable of operating under Coal Mining Licences or permits that are associated with existing Bathurst and BT mining operations. Bathurst and BT are also aware of other (unrelated) mining operations, for instance those at Pukemiro, which are also not covered by the notified Coal Mining Area.
39. The Plan seeks to protect access to and extraction of mineral resources by identifying “lawfully established extractive industries” in Aggregate Extraction Areas and Coal Mining Areas.³³ These provisions are supported by Bathurst and BT. As detailed later in these submissions, the Aggregate Extraction and Coal Mining Areas are also the means by which existing mineral extraction and processing activities (Extractive Activities) are protected from reverse sensitivity.³⁴
40. However, the Plan as notified does not give effect to these enabling and protective provisions because the Coal Mining Area has not been applied to all “lawfully established extractive industries”.
41. We submit the term “lawfully established extractive industries”, in the coal mining sense, should be mines that are already operational or authorised (through Coal Mining Licences, Coal Mining Permits or resource consents). For example, the Plan’s Coal Mining Area overlay does not cover the extent of the existing Maramarua or Rotowaro mines.
42. The full extent of the Maramarua and Rotowaro mines, and the notified Coal Mining Area compared to the Operative District Plan (ODP) Coal Mining Area, are delineated on the map attached at Annexures D and E of Mr Pilcher’s evidence.
43. Bathurst and BT therefore seek the extension of the “Coal Mining Area” to cover all “lawfully established extractive industries” (including coal

³² For example, submission points 827.40, 680.22, 827.41, 827.43, 827.44, 575.29, 395.3, 691.15 and 395.4.

³³ 1.4.3.1 and 1.4.3.2, 5.4.2(b) – (d) , Proposed Waikato District Plan.

³⁴ 4.7.11 and 5.3.7, Proposed Waikato District Plan.

mining licensed and resource consented areas), as required by the policy framework, particularly Policy 5.4.2(b), and in accordance with 1.4.3.1(c) and 1.4.3.2.

Provisions Enabling Coal Mining

44. Once correctly mapped, Bathurst and BT seek that the activity statuses governing coal mining should recognise the other enabling provisions of the Plan in order to provide a robust framework enabling existing coal mining. In that regard, Bathurst and BT support some of the amendments proposed by the Section 42A for Hearing 18 to enable coal mining in the Coal Mining Area.
45. The Section 42A Report for Hearing 18 has made progress with regard to the enablement of existing (and future) coal mining, which falls within the new definition of 'Extractive Activity'. Bathurst and BT therefore support the following amendments proposed in the Section 42A Report for Hearing 18:
- (a) Amendment of the definition from 'Extractive Industry' to 'Extractive Activity'.³⁵
 - (b) Inclusion of Extractive Activities in Objective 5.1.1.³⁶
 - (c) The recognition in new Policy 5.3.1 that the elements that characterise an area as rural include a predominance of, among others, mineral extraction and that rural productive activities (which include mineral extraction) can produce effects that are anticipated in a rural area.³⁷
 - (d) Inclusion of a reference to offsetting and compensation at Policy 5.4.2(a).³⁸
 - (e) A new restricted discretionary rule for an Extractive Activity within (relevantly) the Coal Mining Area.³⁹

³⁵ Section 42A Report – Hearing 18, at [312] pg 196.

³⁶ Section 42A Report – Hearing 18, at pg 32; [77].

³⁷ Above, at pg 57.

³⁸ Above, at pg 204; [325].

³⁹ Above, at pg 221.

- (f) Amendment to the discretionary activity status to only apply to Extractive Activity outside of (relevantly) the Coal Mining Area.⁴⁰

RECOGNITION OF REGIONALLY SIGNIFICANT COAL DEPOSITS

46. Bathurst and BT seek the identification, recognition and protection of regionally significant coal deposits.
47. The Waikato Regional Policy Statement (**WRPS**) requires the identification and mapping of Significant Mineral Resources.⁴¹
48. The relief sought by Bathurst and BT is three-fold in that it requires firstly the identification of the regionally significant coal deposits, the enablement of future mining in those areas and finally the protection of those coal deposits from incompatible (sensitive) activities in order to facilitate future mining in those areas.
49. The coal deposits in the Waikato are well known and of national significance. Extensive exploration of the Waikato coal deposits was undertaken between 1975 and 1987 culminating in a resource map,⁴² a summary of geology and resources and a monograph on the Waikato Coal Measures. The resource map forms the basis of the mapping undertaken by Bathurst and BT and attached to Mr Pilcher's evidence at Annexure C – E.
50. A monograph of the Waikato coal fields was undertaken in 2019⁴³ which essentially modernises the research findings from the 1970 – 80's (**2019 Monograph**). This paper is the source of much of Mr Pilcher's evidence, which attaches some of the mapping from the 2019 Monograph. The author (Alan Sherwood) was, until his retirement in 2019, the government's Principal Coal Geologist and led the survey into coal resources in the Waikato in the 1970's.

⁴⁰ Above.

⁴¹ Policy 6.8, WRPS.

⁴² Kirk, P. A. Waikato Coal Region: Coalfields and Resources, 1:250,000, New Zealand Geological Survey Miscellaneous Series Map 17, 1988, Department of Scientific and Industrial Research, Wellington, New Zealand.

⁴³ Sherwood, Alan. The Geology and Resources of New Zealand Coalfields – Monograph 33. The Australasian Institute of Mining and Metallurgy and New Zealand Petroleum & Mineral, MBIE, 2019.

51. Essentially it establishes the significance of the Waikato coalfields, and covers a history of their use to date. In addition, the New Zealand Petroleum and Minerals 'New Zealand Coal Fields' map attached to Mr Pilcher's evidence at Annexure A demonstrates that the deposits in the Waikato are the largest known deposits in New Zealand.
52. The Section 42A Report for Hearing 18 agrees that significant coal deposits should be identified on the planning maps,⁴⁴ that expansion and development of coal mining in those areas should be 'provided for'⁴⁵ and that the mapped deposits should be protected from incompatible activities.⁴⁶
53. In our submission, this recognition of nationally significant coal deposits essentially involves the identification and mapping of the proposed 'Coal Mining Resource Area' on the planning maps, with some consequential policy recognition.

Identification and Mapping of Coal Resource

54. The Submission seeks to add a Coal Mining Resource Area overlay (**CMRA**) to the planning maps to apply to significant coal deposits in the Waikato District, at minimum the Rotowaro and Maramarua coalfields. This relief reflects the Plan regime for an 'Aggregate Resource Area', but in the coal mining context. The purpose of this CMRA is to identify significant coal deposits, which may be used for future coal mining, and protect them from reverse sensitivity effects by applying a similar regime to that applying to the Coal Mining Area.
55. Access to, and extraction of, future aggregate extraction areas is recognised in the Plan pursuant to the 'Aggregate Resource Area'. Policy 5.4.2(b) specifically protects '*a potential extractive industry within an Aggregate Resource Area*' under the Plan.
56. The Section 42A Report for Hearing 18 recognises that coal mining resources should be delineated on the planning maps, and for that reason recommends that the Aggregate Resource Area should be replaced with an Extractive Resources Area.⁴⁷ The exact terminology

⁴⁴ Section 42A Report – Hearing 18, at [336] on pg 206.

⁴⁵ Section 42A Report – Hearing 18, at [356] on pg 218.

⁴⁶ Section 42A Report – Hearing 18, at [371] on pg 224.

⁴⁷ Section 42A Report – Hearing 18, at [336].

used, whether it by the CMRA or an Extractive Resource Area, is of little consequence to Bathurst and BT. On that basis, Bathurst and BT adopt the term proposed by Mr Clease in the Section 42A Report, being 'Extractive Resource Area'.

57. Mr Clease also considers in the Section 42A Report that too much preliminary investigation is required for WDC to undertake the mapping and that this preliminary investigation should be undertaken by landowners.⁴⁸ In our submission the government studies undertaken in the 1970 – 80's and referenced in the 2019 Monograph by Mr Sherwood⁴⁹ address Mr Clease's concerns regarding preliminary investigation.
58. The Submission attached a marked up version of the Plan Map 19: Rotowaro that delineated the relevant coalfields (for the Rotowaro Mine) that Bathurst and BT sought to be included in the Plan, this map is **attached at Annexure 2**. The submission also sought additional mapping of coal deposits in the Waikato. Bathurst and BT have now undertaken an additional mapping exercise to identify Bathurst and BT's 'lawfully established activity' (including Coal Mining Licences and Coal Mining Permits as well as Exploration Permits) and the nationally significant coal deposits against the OPD Coal Mining Area and the notified Coal Mining Area in the Plan. Those maps are attached at Annexures C – E of Mr Pilcher's evidence.
59. Nationally significant coal deposits, require protection under the Plan. Protection of access to (and extraction of) currently unutilised coal deposits is required to ensure that the benefits of coal and coal mining to the District are able to be realised throughout the life of the Plan and beyond. Without plan users knowing where future coal mining will take place, reverse sensitivity effects will undoubtedly arise, possibly to the extent that future coal mining operations are stifled.
60. In our submission, WDC is required to identify coal mining resources pursuant to the WRPS – which also outlines the criteria for determining what a significant mineral resource is. In particular:

⁴⁸ Above.

⁴⁹ See Pilcher's evidence throughout.

- (a) The WRPS requires the Plan to recognise the need to access mineral resources and manage the built environment accordingly.⁵⁰ This requires the identification⁵¹ and protection⁵² of significant mineral resources. These provisions apply to coal, the Explanation specifically states: ‘*Large areas of the region can contain minerals such as sand, aggregate and coal.*’⁵³
- (b) The WRPS requires the Waikato Regional Council (**WRC**) to work with territorial authorities to identify and map significant mineral resources and that mapping will then be provided to territorial authorities (such as the Waikato District Council).⁵⁴
61. There are various studies that identify these resources which can be relied upon to assist with identification. New Zealand Petroleum and Minerals have all of the information obtained through surveying, from the 1970’s to today.
62. The identification and protection of mineral resources under the WRPS is not limited to “lawfully established extractive industries” – the focus is not on the industry but is on the resource. This necessitates the identification and protection of regionally significant coal deposits. As the Plan does not presently identify and protect coal deposits, in our submission it does not give effect to the WRPS as required by section 75(3)(c) of the Act. We agree with Mr Cleese that the significant coal deposits should be identified, and the Bathurst and BT submission (supported by the evidence of Mr Pilcher) gives the scope and information to do this through the plan formulation process.
63. The WRPS identifies the matters which regard must be had to in determining significance:⁵⁵
- (a) relative scarcity;
- (b) contribution or potential contribution to national and regional economy;

⁵⁰ Policy 6.8, Waikato Regional Policy Statement (**WRPS**).

⁵¹ 6.8.1, WRPS.

⁵² 6.8.2, WRPS.

⁵³ Explanation to Policy 6.8, WRPS – page 6-14.

⁵⁴ 6.8.1, WRPS.

⁵⁵ 6.8.1 (a) – (g), WRPS.

- (c) current and potential demand, and location with respect to demand;
 - (d) constraints on extraction including existing or planned settlement;
 - (e) quality and size of deposit;
 - (f) importance of the mineral resource to tāngata whenua; and
 - (g) importance to infrastructure development.
64. As far as we are aware, the assessment of significant mineral resources (or incorporation of the information held by New Zealand Petroleum and Minerals into the WRC maps) has not been undertaken by the WRC to date. The WRPS provides that:⁵⁶
- Until such time as significant mineral resources are identified in accordance with Method 6.8.1 the criteria set out above shall be used to determine the significance of any mineral resource at a specific location.*
65. Under the Section 32 Analysis, the WDC applied a similar set of criteria for the Aggregate Resource Area, which could apply equally to Extractive Resources Area overlay that includes coal deposits.⁵⁷
66. The map attached as annexures C and E of Mr Pilcher's evidence identifies the coal deposits that Bathurst and BT seek to be delineated as an Extractive Resource Area. The deposits identified are nationally significant coal resources, which are therefore required to be identified. In particular, in terms of the criteria outlined by 6.8.1 of the WRPS and the criteria outlined in the Section 32 Analysis for an 'Aggregate Resource Area':
- (a) Coal deposits are rare in New Zealand.⁵⁸

⁵⁶ 6.8.1, WRPS.

⁵⁷ That criteria is detailed at page 95 of the Section 32 Report for the Rural Zone and includes: there is a substantial volume of high-grade resources, particularly where the resource is in close proximity to a significant market; the transport network provides a convenient and direct route from the resource area to a major market; large land holdings predominate; current development does not unduly constrain access to or transportation of the resource; and extraction would not compromise the matters identified as being of national importance under section 6 of the Act.

⁵⁸ Pilcher Evidence, at Annexure A.

- (b) The coal deposits within the Waikato District are substantial⁵⁹ and are of a suitable quality for BT's customers.⁶⁰
 - (c) Expansion into the Ruawaro (Rotowaro North) and Maramarua deposits will utilise existing infrastructure and transport routes to BT's major customers.⁶¹
 - (d) There is presently, and will continue to be for decades (rather than years), sufficient demand from BT's regionally significant customers.⁶²
 - (e) By expanding its mining operations BT will continue to contribute to the district's economy, and the Waikato and Auckland regional economies, while supplying industry that contributes to the national economy.⁶³
 - (f) There are currently no constraints on expansion due to existing or proposed development.⁶⁴
 - (g) Importantly, the mapping of the Extractive Resource Area will not compromise matters of national importance under s6 of the Act. In particular, the majority of the section 6 matters are specifically dealt with in the Plan, and will of course be considered as part of the resource consenting process.
67. In our submission the coal deposits Bathurst and BT have identified to be mapped as Extractive Resource Areas meet the criteria under 6.8.1 of the WRPS, and the section 32 analysis for the Aggregate Resource Area which applied a similar criteria, and therefore should be delineated on the planning maps. Bathurst and BT would accept the delineation as an Extractive Resource Area as proposed by the Section 42A Report for Hearing 18.

Consequential Relief

68. In addition to the identification and mapping of the Coal Mining Resource Area, Bathurst and BT sought consequential relief in order to

⁵⁹ Pilcher Evidence, at Annexure A.

⁶⁰ Above, at [74] and [77].

⁶¹ Above, at [72] and [78].

⁶² Above, at [59] – [70].

⁶³ Opening Submissions, at [17]

⁶⁴ Pilcher Evidence, at [75] and [79].

provide policy recognition for the mapped Coal Mining Area. This relief was either effectively accepted by Mr Clease's amendments associated with the Extractive Resource Area, or was made redundant by the establishment of the Extractive Resource Area through the section 42A amendments.

PROTECTION OF COAL MINING FROM REVERSE SENSITIVITY

69. Bathurst and BT supported the framework to address reverse sensitivity with minor amendments to protect future extraction and processing activities within their proposed Coal Mining Resource Area. Specifically, Bathurst and BT sought the following addition to Policy 5.3.7(a)(iii) in the Rural Environment Chapter:

(iii) Existing mineral extraction and processing activities and future extraction and processing activities within Coal Mining Resource Areas.

70. The Section 42A Report for Hearing 18 is proposing an alternative version of Policy 5.3.7. The revised version is on the basis that the Plan has three legs relating to reverse sensitivity: establishing the anticipated environment; managing the on-site effects; and managing the proximity of new sensitive land uses.⁶⁵

71. Mr Clease considers that establishing the anticipated environment should be dealt with earlier in the provisions, and has therefore proposed Policy 5.3.1. Bathurst and BT agree that there is a benefit to establishing the anticipated rural environment outside of, and prior to, addressing reverse sensitivity in the Plan. Bathurst and BT also support the inclusion of 'mineral extraction' as one of the predominant activities in the rural area under new Policy 5.3.1, and the acknowledgement in that policy that mineral extraction creates effects that are expected in a rural area.

72. Mr Clease considers that the management of on-site effects should be dealt with both under a new Policy 5.3.7(a), and under activity specific policies like Policy 5.4.2(a). Similarly, managing the "proximity of new

⁶⁵ Section 42A Report – Hearing 81, at pg 141 – 144.

sensitive lands uses” should be dealt with by a new Policy 5.7.3(b) and Policy 5.4.2(c) – (d). Bathurst and BT consider that the new Policy 5.3.7 is appropriate, with one exception.

73. The new version of Policy 5.3.7(b) from the section 42A report applies to “lawfully-established” activities and Extractive Resource Areas. This amendment is accepted by Bathurst and BT subject to the mapping relief being accepted.
74. Alternatively, in the instance that the mapping of the Extractive Resource Area proposed by Bathurst and BT is not accepted, Bathurst and BT suggest reference to the Coal Mining Area instead of the Extractive Resource Area would go some way to achieving the intent of the policy.
75. Finally, as noted above, the Section 42A Report for Hearing 18 has extended the set back rule (22.3.7) to apply to Extractive Resource Areas. This is supported by Bathurst and BT.

ENABLEMENT OF FUTURE COAL MINING

76. We have already outlined in detail in our opening submissions, and Mr Pilcher’s evidence also outlined, that coal can be productively mined in the Waikato District for the next 20 – 30 years,⁶⁶ why coal will continue to need to be mined for at least that period,⁶⁷ and why it is therefore necessary to provide for and enable future coal mining.⁶⁸
77. It is submitted that the enablement of future coal mining is severely underrepresented in the Plan as notified. In particular:
 - (a) The introductory provisions refer to a decline in mining, perceived environmental impacts of coal mining and do not therefore set the scene to enable future coal mining on the basis that coal is a transitional resource that is a significant contributor to the District’s economic health.

⁶⁶ Opening Submissions, at [21] and [43], and Pilcher Evidence, at [63].

⁶⁷ Opening Submissions, at [22] – [23] , and Pilcher Evidence, at [59] – [66].

⁶⁸ Opening Submissions, at [43] – [53] , and Pilcher Evidence, at [67] – [70].

- (b) There is no rule relating to exploration and prospecting, bearing in mind that exploration and prospecting are excluded from the definition of Extractive Activities.
 - (c) The Plan does not recognise areas of potential coal mining, despite doing so for aggregates, thereby not acknowledging the need for future mining.
 - (d) The extractive industries policy, Policy 5.4.2, does not expressly enable expansion or development and does not protect areas of future coal mining.
78. Bathurst and BT therefore seek amendment to the Plan to enable future coal mining. Specifically, the Plan should:
- (a) Recognise the 'decline' in coal referred to in Chapter 1 is perceived;
 - (b) Recognise the contribution that coal mining makes to the Waikato District as well as the Waikato and Auckland Regions.
 - (c) Recognise that while coal may be a transitional resource, the transition period is likely to surpass the lifetime of the Plan and the existence of the coal deposits within the Coal Mining Area overlay.
 - (d) Enable exploration and prospecting through amendments to the rule framework.
79. Bathurst and BT also support various submissions from other submitters relating to the above relief.⁶⁹

Extractive Activities

80. Bathurst and BT sought amendment to the Chapter 1 introductory provisions to recognise and acknowledge that coal mining is a significant contribution to the Waikato District, and to enable a pathway for future coal mining. Bathurst and BT also sought enablement of future coal mining through the addition of the Coal Mining Resource

⁶⁹ For example, submission points 827.39, 860.4, 680.61 (in part) and 797.16.

Area overlay (discussed above), and protection for future coal mining in the reverse sensitivity provisions (discussed below).

81. In relation to chapter 1, Bathurst and BT specifically sought:

(a) The replacement of 1.4.2.3 as follows:

~~*A decline in the mining sector, with coal resources in particular becoming increasingly difficult and expensive to access, as well as public concerns about the environmental impacts of coal and mineral mining in the region, are a concern, considering its share of the district's GDP.*~~

A perceived decline in the mining sector which needs to be addressed by making provision for existing mining activities to expand into areas outside the existing Coal Mining and Aggregate Extraction Areas while addressing public concerns around environmental impacts of mining in the region, considering its share of the district's GDP.

(b) An addition to 1.5.7.7 as follows:

The district plan recognises the national and regional importance of existing.... The plan addresses the positive and adverse effects of energy infrastructure and development and makes provision for the continued supply of coal by recognising and making provision for future expansion of existing coal mines.

82. The Section 42A Report for Hearing 1 (on the introductory chapter) indicated that the author had concerns with enabling expansion and development of the mining industry – Ms Donaldson's view being that an assessment of appropriateness in an RMA sense is required prior to enabling expansion of mining. This was the reason for not amending provisions 1.4.2.3(viii)⁷⁰ and 1.5.7.7.⁷¹

83. On the other hand, the Section 42A Report author for the Hearing 18 Report considered that expansion and development are already provided for in the Plan. In Mr Clease's opinion, the Council had already assessed the appropriateness of the Coal Mining Area (albeit, as we have identified, not fully) and the Aggregate Resource Areas (with further investigation to be undertaken regarding the Coal Mining

⁷⁰ Section 42A Report – Hearing 1, at [111].

⁷¹ Above, at [283].

Resource Area or 'Extractive Resource Area' as it applied to coal mining).⁷²

84. Mr Clease considers that the approach to extractive industry in the Plan is three fold, with lawfully-established extractive industry being delineated in the (relevantly) Coal Mining Resource Area, potential future areas of coal mining to be delineated in the Extractive Resource Area and there being a fully discretionary regime, outside of those areas.⁷³ On that basis, Mr Clease made a number of amendments which are supported by Bathurst and BT, including:
- (a) Amendment of the definition from 'Extractive Industry' to 'Extractive Activity'.⁷⁴
 - (b) Inclusion of a reference to offsetting and compensation at Policy 5.4.2(a).⁷⁵
 - (c) As detailed above, amendment of the term 'Aggregate Resource Area' to 'Extractive Resource Area' in order to account for coal (and other mineral) resources in addition to aggregates.⁷⁶
 - (d) Policy reference to the mapping of an Extractive Resource Area at policy 5.4.2(b)(ii).⁷⁷
 - (e) Inclusion of a policy reference to setback from Extractive Resource Areas at Policy 5.4.2(d), and a consequential amendment to Rule 22.3.7.2(v).⁷⁸
 - (f) A new restricted discretionary rule for an Extractive Activity within (relevantly) the Coal Mining Area or the Extractive Resource Area.⁷⁹
 - (g) Amendment to the discretionary activity status to only apply to Extractive Activity outside of (relevantly) the Coal Mining Area or the Extractive Resource Area.⁸⁰

⁷² Above, pg 204 – 205; [328].

⁷³ Section 42A Report – Hearing 18, at pg 204; paragraph [327].

⁷⁴ Above, at [312] pg 196.

⁷⁵ Above, at pg 204; [325].

⁷⁶ Above, at pg 206; [336].

⁷⁷ Above.

⁷⁸ Above, at pg 205; [329].

⁷⁹ Above, at pg 221.

⁸⁰ Above.

85. Bathurst and BT agree with Mr Clease that that provisions enabling expansion or development of coal mining are appropriate, and in our submission do not negate the need for an assessment of effects at the time of consenting. Bathurst and BT are not seeking a permitted activity status for future coal mining in the Extractive Resource Area, and amendments to the introduction would not result in any such implication in any case. Rather they are seeking enablement of future coal mining, with an appropriate effects assessment at the time of consenting, where known nationally significant coal resources are located – which is where coal mining needs to take place.
86. On that basis, it is submitted that the amendments to provisions 1.4.2.3(viii) and 1.5.7.7 of the introduction are appropriate and are consistent with recognition and enablement of future coal mining in Chapter 5 and 22.

Exploration and Prospecting

87. Bathurst and BT sought that exploration and prospecting in the Rural Zone would be permitted where the effects of that exploration and prospecting are minor, and would be restricted discretionary otherwise. Bathurst and BT also supported the submissions of New Zealand Petroleum and Minerals⁸¹ and McPherson Resources Ltd⁸² that prospecting and exploration be given a more permissive activity status.
88. The Section 42A Report for Hearing 18 rejects this relief on the basis that a permitted activity status for any element of ‘extractive activity’ beyond farm quarrying was viewed as not appropriate.⁸³
89. Bathurst and BT submit that there is accordingly a gap in the rules as exploration and prospecting is not provided for. It is further submitted that that gap should be filled by a bespoke rule rather than adjustment to either the definition of Extractive Activities or the earthworks rules; it is appropriate for exploration and prospecting, as individually defined activities with lesser effects than Extractive Activities to have their own rule.

⁸¹ Submission Point 395.4.

⁸² Submission Point 691.5.

⁸³ Section 42A Report – Hearing 18, at [353] pg 217.

90. It is acknowledged that there would be practical complications if the original relief sought by Bathurst and BT were to be granted; given permitted activities do not require an effects assessment, whether the effects were minor (and therefore a permitted activity) would be completely at the assessment of the applicant to determine.
91. Bathurst and BT therefore seek the following new rules:
- (a) a new permitted activity at rule 22.1.2 to provide for exploration and prospecting where certain activity specific conditions are met; and
 - (b) a new restricted discretionary activity at rule 22.1.3 to for exploration and prospecting which does not meet the permitted activity specific conditions.
92. Details of the new proposed rules and their respective activity specific conditions and matters of discretion can be found at **Annexure 3**.

SECTION 32 ANALYSIS

93. Providing for coal and coal mining is more appropriate than not at a district level. The Section 32 Analysis for the Plan failed to assess the benefits that coal and coal mining bring to the Waikato District, instead focusing on negative perceptions. This has lead to gaps in enablement across the Introduction, Rural Environment and Rural Zone Chapters that could stifle the economic contribution that coal mining makes to the Waikato District and the Auckland and Waikato Regions.
94. The Hearing 18 Section 42A Report has made considerable steps toward addressing the inadequacies of the Section 32 Analysis by specifically acknowledging coal mining as a rural activity, ensuring that the objectives and policies enable both existing and future mining, amending the Aggregate Resource Area to an Extractive Resource Area and creating a more enabling rule framework for extractive activities within the Coal Mining and Extractive Resource Areas. Bathurst and BT support and adopt these amendments.
95. However, some aspects of Bathurst and BT's relief remains unaddressed, these include

- (a) accurate mapping of the Coal Mining Area;
 - (b) mapping of the Extractive Resource Area;
 - (c) minor amendments to new Policy 5.3.7(b) and the reverse sensitivity definition to account for Extractive Resource Areas;
 - (d) amendments to Chapter 1 to recognise coal mining is not in decline, and should therefore be enabled in the future; and
 - (e) enablement of prospecting and exploration through amendment to the rule framework.
96. It is submitted that, in terms of section 32 of the Act, the above relief sought by Bathurst and BT is the most appropriate means of achieving the purpose of the RMA because:
- (a) It is evident from Mr Pilcher's evidence that coal mining is not in decline, it makes a significant contribution to the Waikato District's social and economic wellbeing and that it will need to continue to do so throughout the 20-30 year transition to an alternative energy source.
 - (b) As the transition period is likely to outlast the life of the plan, enablement of future coal mining is necessary, and that includes prospecting and exploration.
 - (c) The purpose of a Coal Mining Area and an Extractive Resource Area is entirely negated if the areas are not accurately mapped, or not mapped at all.
 - (d) The mapping of significant mineral resources is required by the WRPS.
 - (e) A vast amount of research has been undertaken on the Waikato District's nationally significant coal deposits over decades and this can be drawn on for the mapping of any Extractive Resource Area.
 - (f) In addition, Bathurst and BT have delineated the area that they submit should be mapped as an Extractive Resource Area, and

provided considerable analysis and support for that mapping in these submissions.

- (g) The protection of significant mineral resources from reverse sensitivity effects is required by the WRPS. This includes protection of access.
- (h) Significant mineral resources are not effectively protected if the reverse sensitivity provisions, and the definition of reverse sensitivity, related solely to 'lawfully-established activities'.
- (i) Enablement of prospecting and exploration is required separate to Extractive Activities as the effects are of a lesser scale and can be easily rehabilitated, if rehabilitation is even required.

97. Bathurst and BT therefore submit that the provisions detailed at **Annexure 3**, which include the provisions proposed by Mr Clease with any necessary amendment, are the most appropriate way of achieving the purpose of the Act.

CONCLUSION

- 98. Bathurst and BT support the amendments made by Mr Clease to appropriately enable existing and future mining.
- 99. Bathurst and BT consider that the narrowed relief that they seek is both appropriate and required in order to recognise the contribution that coal mining of nationally significant coal deposits makes to the social and economic wellbeing of the Waikato District, and to enable that contribution until such time as an alternative economic fuel source is fully implemented.

Dated: 25 September 2020



Joshua Leckie / Kelsey Barry

Counsel for Bathurst Resources Limited and BT Mining Limited

Annexure 1 – Statutory Functions, obligations and associated legal tests for territorial authorities in plan preparation or change

1. In this Annexure we provide a more in-depth summary of the Council's functions and obligations and the Act, and the legal tests that apply to those functions and obligations.

Part 2 of the Act

2. Ultimately, the purpose of the preparation, implementation and administration of a district plan is to assist a territorial authority to carry out its functions in order to achieve the purpose of the Act.¹
3. The purpose of the Act is stipulated in Part 2 of the Act, specifically section 5, which provides that the purpose of the Act is to promote the sustainable management of natural and physical resources.² *Sustainable management* means the management of the use, development and protection of natural physical resources so that people and communities are able to provide for their social economic and cultural well-being, while:
 - (a) sustaining natural and physical resources (except minerals);
 - (b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and
 - (c) avoiding, remedying or mitigating any adverse effects of activities on the environment.
4. It is noteworthy that 'minerals' are excluded from the resources that are to be sustained, demonstrating an intention that minerals are to be utilised and any effects of that utilisation on the environment are to be managed. In our submission, 'minerals' in this context includes coal.
5. Under section 6 identified matters of national importance must be recognised and provided for. Under section 7 particular regard is to be had to the "other matters" listed, which relevantly includes the efficient use and development of natural and physical resources.

¹ Resource Management Act 1991, s 72.

² Resource Management Act 1991, s 5(1).

National Direction

6. National direction under the Act is by way of national policy statements, national environmental standards (regulations), the New Zealand Coastal Policy Statement 2010, and national planning standards. A district plan must be in accordance with,³ and give effect to those documents.⁴

Functions of the Council

7. Section 31 of the Act provides that a territorial authority's function is to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district through the establishment and implementation of objectives, policies and methods.⁵ Methods include rules.
8. Relevantly, a territorial authority is also responsible for the control of any actual or potential effects of the use, development or protections of land⁶ and the control of noise.⁷

Section 32

9. Section 32 of the Act sets out the legal framework within which a council (and therefore the Panel) must consider the submissions, evidence and reports before it in relation to a proposed plan, in conjunction with the matters specified in section 74.
10. Under section 32, an evaluation report on a proposed plan must examine whether proposed objectives are the most appropriate way to achieve the purpose of the Act, and whether the provisions are the most appropriate way of achieving the objectives. To do that, a council must identify other reasonably practicable options and assess the efficiency and effectiveness of the proposed provisions through identifying the benefits and costs of the environmental, economic, social and cultural effects including opportunities for economic growth and employment.
11. Section 32AA requires a further evaluation to be undertaken for any changes made or proposed to the Proposed Plan since the section 32 evaluation was completed. This further evaluation can be published as a separate report, or referred to in the decision making record in sufficient detail to demonstrate it was carried out in

³ Resource Management Act 1991, s 74(1).

⁴ Resource Management Act 1991, s 75(3).

⁵ Resource Management Act 1991, s 31(1)(a).

⁶ Resource Management Act 1991, s 31(1)(b).

⁷ Resource Management Act 1991, s 31(1)(d).

accordance with section 32AA. An exception to the requirement for a further evaluation report is where the evaluation of the change has been recorded in the decision-making record in sufficient detail to demonstrate that the further evaluation was undertaken in accordance with that section.⁸

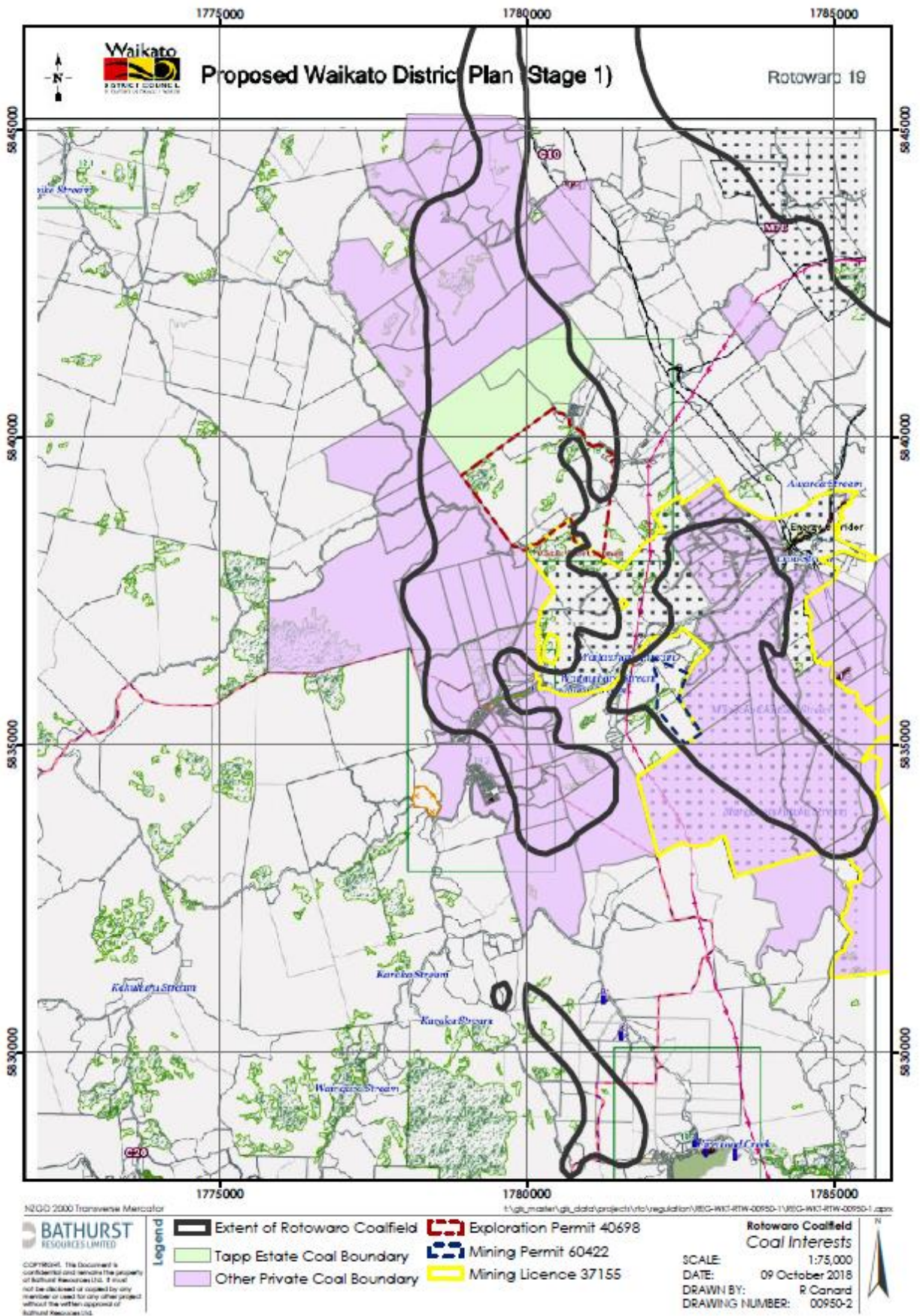
Legal Test for Plan Preparation

12. In our submission, the correct approach for determining which plan provisions are appropriate is the Environment Court's revised formulation of the Long Bay test in *Colonial Vineyard Ltd v Marlborough District Council*,⁹ with appropriate modification to account for the 2013 (and subsequent) amendments acts, and any other statutory documents that are relevant to the District Plan aspects of this particular process.

⁸ Resource Management Act 1991, s 32AA(2) and (1)(d)(ii).

⁹ *Colonial Vineyard Ltd v Marlborough District Council*

Annexure 2 – Submission Map



Annexure 3 - Relief Sought

1. In this Annexure we detail the relief sought by Bathurst and BT.
2. The relief sought is either from the submission made by Bathurst and BT (**Submission**), or the amendments proposed by the Section 42A Report for Hearing 18. We have identified whether the relief sought is from the Submission of the Section 42A for Hearing 18.
3. Proposed additions are identified by underline, while proposed deletions are identified by strike-through. Where retention as notified is sought, we have not detailed the provision in full, and where a provision is completely replaced (such as Policy 5.3.7) we have not included a strike-through of the notified version.

Chapter 1 – Introduction

4. Bathurst and BT continue to seek the relief sought in their Submission in relation to Chapter 1 – Introduction, being:
 - (a) Amend clause (a)(viii) to 1.4.2.3 as follows:

A perceived decline in the mining sector which needs to be addressed by making provision for existing mining activities to expand while addressing, with coal resources in particular becoming increasingly difficult and expensive to access, as well as public concerns about the around environmental impacts of ~~coal and mineral~~ mining in the region, ~~are a concern~~, considering its share of the district's GDP.
 - (b) Retain clause 1.4.3 (a) as notified.
 - (c) Retain clause 1.4.3.1 as notified.
 - (d) Retain clause 1.4.3.2 (a) – (c) as notified.
 - (e) Amend clause 1.5.7.7 as follows:

The district plan recognises the national and regional importance of existing ... The plan addresses the positive and adverse effects of energy infrastructure and development and makes provision for the continued supply of coal by recognising and making provision for future expansion of existing coal mines.

Chapter 5 – Rural Environment

5. Bathurst and BT support the following amendments proposed by the Section 42A Report for Hearing 18:

(a) New Policy 5.3.2:

Policy 5.3.2 – Contributing elements to rural character and amenity values

(a) Recognise that rural character and amenity values vary across the Waikato District resulting from the combination of the natural and physical resources present, including the location and extent of established and permitted activities. In particular, the District's rural environment is characterised by:

(i) Market gardens and intensive horticulture, especially around Tuakau;

(ii) Dairy farming and equine activities in an open pastoral landscape on flat to gently rolling land;

(iii) Extensive sheep and beef farming, exotic forestry, and native bush areas on steeper hillslopes;

(b) Recognise that elements that characterise an area as rural, from which desired amenity is derived, include the predominance of:

(i) A landscape dominated by openness and vegetation;

(ii) Significant visual separation of dwellings and rural-related farm buildings between neighbouring properties;

(iii) Occasional community facilities, agricultural produce processing facilities, intensive farming, rural-related commercial and industrial activities, network infrastructure, and mineral extraction, with such activities integrated into a predominantly open space landscaped setting; and

(iv) Natural character elements of waterways, wetlands, water bodies, indigenous vegetation, and natural landforms, including the coastal environment along the District's western edge.

(c) Recognise that rural productive activities in rural areas including farming, horticulture, intensive farming, plantation forestry, and rural industry, network infrastructure, and mineral extraction activities, can produce noise, odour, dust, visual and traffic effects consistent with an anticipated rural working environment, and that may be noticeable to residents and visitors in rural areas.

(b) Amended Policy 5.3.7:

5.3.7 Policy – Separation of incompatible activities

(a) Contain adverse effects as far as practicable within the site where the effect is generated, including through the provision of adequate separation distances between the activity and site boundaries.

(b) Ensure that the design and location of new sensitive land uses achieves adequate separation distances to mitigate potential reverse sensitivity effects on lawfully-established productive rural activities, intensive farming, rural industry, strategic infrastructure, extractive activities, or Extraction Resource Areas.

(c) Amended Policy 5.4.2:

~~Policy 5.4.2— Access to minerals and extractive industries~~

Policy 5.4.2 – Management of extractive activities

(a) Provide for extractive activity only where ~~Enable extractive industries provided that~~ adverse effects are appropriately avoided, remedied or mitigated; and where this is not possible off-set or compensated.

(b) Protect access to, and extraction of, mineral, aggregate and coal resources by:

(i) Identifying lawfully established extractive activity industries in Aggregate Extraction Areas and Coal Mining Areas on planning maps;

(ii) Identifying the site of a potential extractive activity industry within an ~~Aggregate~~ Extractive Resource Area on planning maps;

(c) Ensure that lawfully established extractive activity industries are not compromised by new subdivision, use or development;

- (d) *Avoid the location of any sensitive land use within specified building setbacks ~~buffer areas~~ which ~~otherwise~~ risks the effective operation of a site within an Aggregate Extraction Area, Coal Mining Area, or Extractive Resource Area ~~lawfully established extractive industry~~.*

Chapter 13 – Definitions

6. Bathurst and BT support the definitions of Extractive Activity, Mineral and Reverse Sensitivity proposed in the Section 42A Report for Hearing 18. In particular:

(a) Extractive Activity:

Means taking, winning or extracting by whatever means, the naturally occurring minerals (including but not limited to coal, rock, sand, and gravel) and peat from under or on the land surface. This may include one or more of the following:

- a) *excavation, blasting, processing (crushing, screening, washing, chemical separation and blending);*
- b) *the storage, distribution and wholesale sale of minerals, coal or aggregates to industry;*
- d) *the removal, stockpiling and deposition of overburden;*
- e) *treatment of stormwater and wastewater;*
- f) *ancillary earthworks;*
- f) *landscaping and rehabilitation work, including clean filling;*
- g) *ancillary buildings and structures (such as weighbridges, laboratories, site offices and residential accommodation necessary for security and custodial purposes;*
- h) *internal roads and access tracks; and*
- i) *quarrying activities.*

~~The term includes the processing by such means as screening, crushing, or chemical separation of minerals at or near the site, where the minerals have been taken, won or excavated.~~

~~The term also includes the removal, stockpiling and filling of overburden sourced from the same site.~~

It includes all activities and structures associated with underground coal gasification, including pilot and commercial plants and the distribution of gas. It excludes prospecting and exploration activities.

It does not include a farm quarry or ancillary rural earthworks.

(b) Mineral:

Has the same meaning as in section 2 of the Crown Minerals Act 1991.

Means a naturally-occurring inorganic substance beneath or at the surface of the earth, whether or not under water; and includes all metallic minerals, non-metallic minerals, fuel minerals—including coal, precious stones, industrial rocks and building stones, and a prescribed substance within the meaning of the Atomic Energy Act 1945.

For clarity, mineral for the purpose of the Plan includes coal and aggregate.

(c) Reverse Sensitivity:

Means the effect on existing lawful activities from the introduction of new sensitive land uses that may lead to restrictions on existing lawful activities as a consequence of complaints.

Chapter 22 – Rural Zone

7. Bathurst and BT continue to seek the relief sought in their Submission in relation to exploration and prospecting. In particular, Bathurst and BT seek:

(a) A new permitted activity as follows:

Activity		Activity Specific Condition
<u>Px</u>	<u>Exploration and Prospecting</u>	<p><u>(a) All drilling is limited to 150mm in diameter and a density of one drill site per hectare.</u></p> <p><u>(b) Scout trenching or sampling by hand methods, or by mechanical means where there is existing access to the area to be trenched or sampled, or by the use of explosives where the aggregate length of the samples taken using</u></p>

		<p><u>explosives does not exceed [50] linear metres of sample per hectare.</u></p> <p><u>(c) Geophysical surveys not using explosives.</u></p> <p><u>(d) Where areas are disturbed, topsoil shall be stockpiled and replaced over such areas, and the site shall be rehabilitated and restored generally to its original condition.</u></p>
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(b) A new restricted discretionary activity as follows:

Activity		Matters of Discretion
<u>RDx</u>	<u>Exploration and Prospecting that does not comply with rule 22.1.2 P13</u>	<p><u>(a) Distance to boundaries.</u></p> <p><u>(b) Effects on waterbodies, riparian margins and wetlands.</u></p> <p><u>(c) Total area of disturbance.</u></p> <p><u>(d) Effects of bulk and location of stockpiling.</u></p> <p><u>(e) Hours of operation.</u></p> <p><u>(f) Protection of Significant Natural Areas.</u></p> <p><u>(g) Effects on the life supporting capacity and functioning of indigenous ecosystems.</u></p> <p><u>(h) Site restoration.</u></p> <p><u>(i) Noise control.</u></p> <p><u>(j) Financial contributions relating to landscaping, land restoration and roading.</u></p>

(c) Deletion of Rule 22.1.5 NC2.

8. Bathurst and BT support the following amendments proposed by the Section 42A Report for Hearing 18:

(a) New Rule 22.1.3 RD7:

Activity		Matters of Discretion
<u>RD7</u>	<u>An extractive activity or waste management activity located within an Aggregate Extraction Area, Coal Mining Area or Extractive Resource Area.</u>	<p><u>(a) Council's discretion is restricted to the following matters:</u></p> <p><u>(i) effects on rural character and amenity;</u></p> <p><u>(ii) location, type and scale of development;</u></p> <p><u>(iii) nuisance effects including: dust, noise, vibration, odour and light spill;</u></p> <p><u>(iv) industry best practice and use of management plans;</u></p> <p><u>(v) traffic effects;</u></p> <p><u>(vi) erosion and sediment control; and</u></p> <p><u>(vii) rehabilitation and end use including back filling.</u></p>

(b) Amended Rule 22.1.4 D7:

<u>D87</u>	<u>An extractive industry activity located outside an Aggregate Extraction Area, Coal Mining Area or Extractive Resource Area.</u>
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(c) Amended Rule 22.3.7.2 P1:

P1	<p><u>(a) Any building for a sensitive land use must be set back a minimum of:</u></p> <p>...</p> <p><u>(iv) 200m from an Aggregate Extraction Area <u>or Extractive Resource Area</u> containing a sand resource;</u></p>
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	<p><i>(v) 500m from an Aggregate Extraction Area <u>or Extractive Resource Area</u> containing a rock resource, <u>or a Coal Mining Area</u>;</i></p> <p>...</p>
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Mapping

9. Bathurst and BT seek accurate mapping of the Coal Mining Area over 'lawfully established' coal mining activities, including activities authorised by Coal Mining Licences, Coal Mining Permits and Exploration Permits, as demonstrated in the annexures to the evidence of Mr Pilcher.
10. Bathurst and BT also support the amendment of the Aggregate Resource Area to the an Extractive Resource Area as proposed in the Section 42A Report for Hearing 18 and, in accordance with their Submission, seeking the mapping of the Extractive Resource Area over the District's nationally significant coal deposits – which are identified in the annexure to the evidence of Mr Pilcher.