

**BEFORE HEARING COMMISSIONERS APPOINTED BY THE CANTERBURY  
REGIONAL COUNCIL**

**UNDER** the Resource Management Act 1991 (**Act**)  
**IN THE MATTER** of applications under section 88 of the Act by Bathurst  
Coal Limited in relation to mining activities at the  
Canterbury Coal Mine

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**MEMORANDUM ON BEHALF CANTERBURY REGIONAL COUNCIL IN  
RELATION TO A PRELIMINARY JURISDICTIONAL MATTER  
26 November 2020**

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Canterbury Regional Council's Solicitor  
PO Box 4341 CHRISTCHURCH 8140  
DX WX11179  
Tel +64 3 379 7622  
Fax +64 379 2467

Solicitor: L F de Latour  
([lucy.delatour@wynnwilliams.co.nz](mailto:lucy.delatour@wynnwilliams.co.nz))

**WYNNWILLIAMS**

**MAY IT PLEASE THE COMMISSIONERS:****Background**

- 1 This memorandum is filed on behalf of the Canterbury Regional Council (**Council**).
- 2 Bathurst Coal Limited (**Bathurst**) has lodged various applications with the Council and Selwyn District Council (**SDC**) to authorise retrospective and future mining and associated activities at its Canterbury Coal Mine in the Malvern Hills. These applications have been publicly notified and a hearing of the application and submissions is anticipated to occur in early to mid 2021.
- 3 The purpose of this memorandum is to raise a preliminary jurisdictional matter with the Commissioners relating to the regional existing environment/consented baseline that applies to Bathurst's regional consent applications.
- 4 The Council and Bathurst have agreed that it would be appropriate to raise and address this matter as a preliminary step in the hearing process in order to ensure that the hearing proceeds in an efficient manner.

**Consenting Background**

- 5 Bathurst holds a number of existing district and regional consents that authorise mining and associated activities at the Canterbury Coal Mine and that will continue to authorise activities occurring at the Canterbury Coal Mine. There are also activities occurring at the Canterbury Coal Mine that require retrospective resource consent. Some of these retrospective activities are the subject of the applications before the Commissioners.
- 6 In particular, Bathurst have lodged the following applications with the Council (**Regional Consent Applications**):
  - (a) CRC184166, lodged on 6 March 2018, for earthworks;
  - (b) CRC200500, lodged on 16 July 2019, for air discharge;
  - (c) CRC201366, lodged on 25 September 2019, for a surface water take, use and diversion of water;

- (d) CRC201367, lodged on 20 September 2019, for a groundwater take and discharge of treated mine water;
  - (e) CRC201368, lodged on 20 September 2019, for discharge of sediment and mine influenced water, drainage water and residual contaminants from the treatment of water to water; and
  - (f) CRC203016, lodged on 20 December 2020, for discharge of Coal Combustion Residuals to land.
- 7 There are also two applications lodged with the SDC (RC195018 and RC185640) (**District Consent Applications**).
- 8 On 10 October 2019, the Council and SDC advised Bathurst that the District and Regional Consent Applications would be bundled and considered together for the purposes of their notification and substantive decisions. The District and Regional Consent Applications are now before you for decision-making.

#### **Regional Consented Baseline**

- 9 The Council and Bathurst disagree on the extent of the existing environment/consented baseline already authorised by existing resource consents held by Bathurst for the purpose of assessment of the Regional Consent Applications.
- 10 Specifically, the parties do not agree on the geographic area that discharges are authorised to occur from under the existing discharge permit, CRC170541. This was outlined in part in the Council's notification report. However, following further discussions, the Council and Bathurst have not been able to reach an agreement on the extent of the existing environment/consented baseline and Bathurst have not provided an additional application as requested by the Council.
- 11 Depending on whether the Council or Bathurst is correct in the interpretation of CRC170541, an additional resource consent application may need to be made to authorise these discharges. This may necessitate an adjournment during the hearing so that this application can be made and then considered alongside the Regional and District Consent Applications currently being processed.
- 12 Disagreement about the extent of the existing environment/consented baseline also has the potential to create significant inefficiencies in terms

of evidence/section 42A report preparation and confusion for submitters. Ultimately, the extent of the existing environment is a matter that the Commissioners will need to make factual findings in relation to.

### **Directions Sought**

- 13 Given the implications for the hearing process, the Council, in consultation with Bathurst, respectfully wishes to raise this preliminary matter with the Commissioners to make directions on.
- 14 A possible approach to address the matter may be for the Commissioners to set down a preliminary jurisdictional hearing to determine the existing environment/consented baseline that applies to the Regional Consent Applications. Another option may be for the Commissioners to require written submissions from the parties on the existing environment/consented baseline and then to deal with the matter on the papers in advance of the substantive hearing (including in advance of the finalisation of the s42A report).
- 15 The Council considers that the powers afforded by sections 39 and 41C of the Resource Management Act 1991 enable the Commissioners to manage the hearing process in an appropriate manner in order to address this matter.<sup>1</sup>
- 16 The Council is conscious of the significant number of submissions on the District and Regional Consent Applications and the need for a transparent and participatory hearing process for submitters. In this regard it is respectfully suggested that all parties will need to be provided the opportunity to participate in any process to determine this issue (whether the Commissioners direct a preliminary hearing in person, or a determination on the papers).
- 17 However, Counsel anticipates that the determination of the regional existing environment/consented baseline will necessarily be focussed with it being a preliminary, legal and factual matter.

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<sup>1</sup> For completeness, counsel record their view that this matter is unlikely to be able to dealt with by way of a pre-hearing meeting under section 99 of the Act, as the purpose of a pre-hearing meeting is only to clarify or facilitate resolution of a matter or issue. Discussions between the Council and Bathurst have not resulted in resolution of this matter and counsel do not consider that section 99 would enable the Commissioners to make a preliminary finding on the regional existing environment/consented baseline.

- 18 Counsel for the Council has consulted Bathurst regarding this memorandum and understand that Bathurst will file its own memorandum shortly.
- 19 Counsel for the Council has also consulted SDC regarding this memorandum. SDC's position is that it does not support a separate preliminary jurisdictional hearing held either in person or on the papers. SDC consider the Council's concern, that Bathurst may require an additional consent, can be both heard and determined as part of that single hearing. SDC also wishes to have these applications which are long standing and are intended to regularise some existing Bathurst activities, heard sooner rather than later.
- 20 Counsel for both the Council and SDC are available at short notice for a teleconference with the Commissioners if that would be of assistance.

Dated this 26th day of November 2020



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**L F de Latour**

Counsel for Canterbury Regional Council