

**Before Hearings Commissioners
appointed by Selwyn District Council
and Canterbury Regional Council**

Under the Resource Management Act
1991

And

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 in the
Malvern Hills

**Memorandum on behalf of
Bathurst Coal Limited in relation to a
preliminary jurisdictional matter**

Dated: 26 November 2020

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MAY IT PLEASE THE COMMISSIONERS:

Introduction and Summary

1. This memorandum is filed on behalf of the applicant, Bathurst Coal Limited (**Bathurst**).
2. This memorandum is filed in response to, and in support of, the memorandum filed on behalf of the Canterbury Regional Council (**Environment Canterbury**) dated 26 November 2020.
3. Environment Canterbury's memorandum raises a preliminary jurisdictional matter with the Commissioners relating to the regional existing environment/consented baseline that applies to Bathurst's regional consent applications.
4. Environment Canterbury suggested this course of action and Bathurst agrees that it would be appropriate to raise this matter and have it addressed as a preliminary step in the hearing process.

Applications

5. Bathurst agrees with and adopts the description of the consenting background at paragraph 5 of Environment Canterbury's memorandum.
6. As the various existing district and regional consents that authorise mining and associated activities at the Canterbury Coal Mine will continue to authorise activities at the Canterbury Coal Mine, the existing environment/consented baseline is highly relevant to the determination of the current regional and district consent applications before the Commissioners.
7. Bathurst agrees with and adopts the description of the current applications set out at paragraphs 6 and 7 of Environment Canterbury's memorandum.

District Consented Baseline

8. Bathurst and Selwyn District Council (**SDC**) disagree on the extent of the existing environment/consented baseline for the purposes of the district consent applications.

9. However, Bathurst and SDC reached agreement, on a without prejudice basis, on an existing environment/consented baseline that has been applied for the purposes of assessment (by Bathurst and SDC) of the district consent applications.
10. A copy of the “SDC Consented Baseline” that has been used for the purposes of assessment by both parties was attached as Appendix 7 to SDC’s Section 95 Report, dated 6 March 2020.

Regional Consented Baseline

11. As outlined at paragraphs 9 and 10 of Environment Canterbury’s memorandum, Bathurst and Environment Canterbury disagree on the extent of the existing environment/consented baseline for the purpose of assessment of the current regional consent applications. Their disagreement relates to the extent of discharges authorised by the existing discharge consent, CRC170541.
12. Bathurst and Environment Canterbury have had various discussions and Bathurst has obtained legal (both from counsel and a Queens Counsel) and planning advice on this matter, which has been provided to Environment Canterbury, however agreement has not been able to be reached.

Directions Sought

13. Bathurst agrees with and adopts Environment Canterbury’s position at paragraphs 11 and 12 of the memorandum as to the potential implications for the hearing process.
14. Bathurst accordingly supports Environment Canterbury’s request and the suggestions made as to potential approaches to deal with this matter in paragraphs 13 to 17 of the memorandum. Environment Canterbury has consulted with Bathurst and Bathurst agrees that raising this matter with the Commissioners is likely to be the most efficient and effective way forward.
15. Bathurst has also sought to consult with SDC and has received the same response as set out in paragraph 19 of Environment Canterbury’s memorandum.

16. Counsel for Bathurst are similarly available at short notice for a teleconference with the Commissioners if that would assist.

Dated this 26th day of November 2020

A handwritten signature in blue ink, appearing to read "JMG Leckie".

JMG Leckie/ARC Hawkins
Counsel for Bathurst Coal Limited