

CANTERBURY REGIONAL COUNCIL AND SELWYN DISTRICT COUNCIL

RESOURCE MANAGEMENT ACT

JOINT HEARING OF RESOURCE CONSENT APPLICATIONS

BY BATHURST COAL LIMITED

MINUTE #1 OF THE HEARING COMMISSIONERS

1. We, Dr Jane Kitson, Mr Graham Taylor and Ms Sharon McGarry (Chair) have been delegated powers and functions by the Canterbury Regional Council (**CRC**) and Selwyn District Council (**SRC**) as Independent Commissioners to jointly hear and decide applications lodged by Bathurst Coal Limited (**'the Applicant'**) for resource consents for mining activities at the Canterbury Coal Mine, Malvern Hills. The CRC applications are referenced as resource consent numbers CRC184166, CRC200500, CRC201366, CRC201367, CRC201368 and CRC203016. The SDC application is referenced as RC185622.
2. We have received two Memorandums (dated 26 November 2020) on behalf of the CRC and the Applicant seeking directions on a 'preliminary matter' relating to disagreement on the extent of the existing environment/consented baseline authorised by existing resource consents held by Bathurst Coal Limited. Copies of the Memorandums are appended to this Minute and are also on the CRC website.
3. The Council and the Applicant seek directions from us to determine the existing environment/consented baseline that applies to the CRC applications as a preliminary matter by way of a 'preliminary jurisdictional hearing' or by written submission from the hearing parties.
4. We consider it is outside the scope of our delegated authority in hearing and determining the above resource consent applications to define the scope and extent of existing CRC resource consents held by Bathurst Coal Limited. We consider it is within the CRC's general authority and powers to determine whether a resource consent is required for an activity and to interpret the scope and extent of any existing resource consents. If the Applicant disagrees with the CRC, we consider the Applicant should seek appropriate recourse by declaration to the Environment Court.
5. We are advised that the applications are currently on hold, but that a hearing date will be set down in 2021. All communications in relation to the hearing of the above applications will be via the CRC and will be made available on the CRC website. Notice of the joint hearing date will be given in due course. All hearing enquires should be made to Ms Alison Cooper, CRC Hearings Consents Hearings Officer, email: hearings@ecan.govt.nz or phone 0800 765588.

DATED 30 November 2020



Sharon McGarry (Chair)

On behalf of the Hearing Commissioners

**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

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

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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.¹
- 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.

¹ 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



L F de Latour

Counsel for Canterbury Regional Council

**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', is positioned above a horizontal line.

JMG Leckie/ARC Hawkins
Counsel for Bathurst Coal Limited