

**BATHURST COAL LIMITED – SELWYN DISTRICT COUNCIL AND ENVIRONMENT CANTERBURY
CONSENTS**

JOINT WITNESS STATEMENT

PLANNING

1. On 20 October 2021, an expert conferencing session was held in relation to Selwyn District Council (SDC) land use matters and Environment Canterbury (ECan) regional consenting matters with respect to the resource consents being sought by Bathurst Coal Limited (BCL) for retrospective mining activities and now the closure and rehabilitation of the Canterbury Coal Mine (CCM). This Joint Witness Statement is a record of the outcomes of this session.
2. The session was attended by Mr Andrew Henderson an independent planner on behalf of SDC, Ms Adele Dawson an independent planner on behalf of ECan, and Ms Claire Hunter also an independent planner on behalf of BCL.
3. The matters that were considered at conferencing were:
 - a. Matters relating to the SDC land use consent;
 - b. SDC Conditions;
 - c. Joint matters relating to both SDC land use consent and ECan consents;
 - d. Section 104D matters – ECan consents;
 - e. ECan Conditions.

Matters Relating to the SDC Land Use Consent

SDC Conditions

Joint Matters Relating to Both SDC Land Use Consent and ECan Consents

4. Mr Henderson noted that in terms of his approach to the assessment and preparation of conditions, he has taken a pragmatic view, focussing these on what is now being proposed at the site, which relates to the closure and rehabilitation.
5. Ms Hunter confirmed that this was the approach she was also taking in terms of her assessment.
6. Mr Henderson confirmed his view that a consent under the National Environment Standard for Assessing and Managing Soil to Protect Human Health (NESCS) was not required for this closure and rehabilitation process that was now occurring on site. There was a discussion as to whether this needed to apply to retrospective activities that had occurred.
7. Ms Hunter and Mr Henderson both agreed that a consent was not required under the NESCS.
8. Mr Henderson and Ms Hunter then discussed the nature and intent of the SDC conditions. Both agreed that there was significant alignment in their positions, subject to where the wetland conferencing had landed and only minor details relating to the conditions would need to be worked through.

9. It was also agreed between the experts that where possible there should be alignment between any joint ECan and SDC conditions that were to be applied to the consents, for example conditions that require the EMP and MCMP to be prepared. It was also agreed that there should be a mechanism for a joint bond and the conditions should be consistent in this regard. The legal teams for ECan, SDC and BCL would work on the drafting detail in this regard.
10. Ms Hunter did raise some matters that needed to be factored into the bond condition when it was being drafted. This relate to ensuring it was able to be a cash bond, and there was a clear ability within the condition to allow the bond to be reduced comparative to the state of the rehabilitation that had occurred on site. All agreed these were reasonable matters to include in the condition.
11. Mr Henderson and Ms Hunter agreed it was appropriate that the SDC conditions were forward focussing and provided for the activities that were now occurring and anticipated on site.
12. Ms Hunter raised the matters that were identified in her evidence with regard to the SDC conditions. This related to the legality of being able to covenant land that Bathurst did not own for the Bush Gully wetland area, and also the potential issues with requiring a third party approval via the licence to occupy. Mr Henderson agreed that there could be enforceability issues with regard to these conditions and agreed to remove these as conditions.
13. Mr Henderson and Ms Hunter agreed to continue to work jointly on the SDC land use conditions and come to an agreed set.

Section 104D Matters – Ecan Consents

14. Ms Dawson and Ms Hunter discussed their differences in opinion with regard to their overall section 104D analysis. This discussion was focussed on the following matters:
 - a. Wetlands
 - b. Water quality
 - c. Cultural issues
 - d. Water take from the dust pond
15. With regard to water quality and cultural issues, in response to the additional information that has been provided as part of evidence and witness conferencing, Ms Dawson was of the view that she was now likely in a position where she could assess the activities as not being contrary to the objectives and policies of the Canterbury Land and Water Plan (CLWRP).
16. With regard to wetlands, Ms Dawson considered the retrospective effects on wetlands to remain more than minor, however subject to the ecology experts agreeing that the compensation package was sufficient, she could assess that the activity (taking into account the benefits arising from the compensation package), as not directly contrary to the objectives and policies of the CLWRP.
17. Ms Dawson and Ms Hunter both agreed it was difficult to quantify the loss of the wetlands from a retrospective perspective. Ms Hunter agreed that the type of wetland that was lost

would have likely triggered the significance criteria for seepage type wetlands. However, for the purposes of her assessment Ms Hunter focussed on the actual values that would have likely been present within these wetlands that were lost, that is, taking into account that they were within a land area that was heavily modified by historic mining, farming and forestry activities. The actual values would have therefore been somewhat compromised by exotic pasture species being present and having limited protection by any other mechanisms. In this context, Ms Hunter did not consider their loss to be significant.

18. Ms Dawson disagreed and was of the view that because of their significance status, the loss of these wetlands was significant.
19. Ms Dawson remained of the view that the effects of the water take for dust suppression and irrigation purposes at the site, are more than minor and the proposal was contrary to the objectives and policies of the CLWRP. As such Ms Dawson remained of the view that the proposal as a whole was unable to pass through either section 104D gateway test. Ms Dawson explained that the rationale for this was because the take was consumptive, and the Selwyn/Te Waihora catchment is over allocated. Ms Dawson is of the view that there is a strong policy dissuasion in this regard, and the take in her view was directly contrary to the objectives and policies of the plan. Ms Dawson referred to Policy 11.4.24 which prohibits the allocation of surface or groundwater within an overallocated catchment. Ms Dawson considered the cumulative effects of a take within an overallocated catchment to be more than minor.
20. Ms Hunter disagreed with Ms Dawson's position on the water take. Referring to her evidence Ms Hunter considered that this take was a permitted activity as it is an abstraction from a water storage facility, and that the effect arising from a loss of water within the catchment occurred when the water was diverted into the pond in the first place. The take of water for dust purposes was a subsequent minor activity in her view. Ms Dawson disagreed that the effects within the catchment arose when the water was diverted to the pond on the basis that the majority of this water was returned to the Tara catchment so it was assessed as being non consumptive.
21. Ms Dawson also disagreed that the activity was a permitted activity but did agree that the definition of water storage facility is not defined in the Plan.
22. Ms Hunter also noted that if the Panel were to determine that a consent for the take was necessary, Ms Hunter was of the view that it would not have any more than minor effects and would not be directly contrary to the objectives and policies of the Plan. This was because it was being assessed as a discretionary activity – the water is from a number of sources, and therefore the rule framework which applies to surface water takes and groundwater takes from overallocated catchments does not strictly apply to this type of activity. If these rules were to apply the activity would be prohibited and this is where the directiveness of Policy applies in her view. It has no further utility beyond giving life to this rule framework in her view.
23. Ms Dawson agreed that the Plan does not really anticipate this type of activity, but it was still considered to be a consumptive take within an overallocated catchment and such provisions had to be considered in her view.

24. Ms Dawson and Ms Hunter could not reach any further agreement on this matter, but did note that with the exception of the overallocation matters, the take itself was minor and temporary and it would be useful for all parties if a pathway forward could be found. Matters around unbundling activities were discussed to avoid section 104D matters with regard to this water take activity, but both agreed these matters would need to be traversed at the hearing by the legal team and ultimately the Panel.

ECan Conditions

25. With the exception of any consent and conditions for a consumptive water take, both Ms Hunter and Ms Dawson agreed that they thought there was reasonable alignment between themselves on the conditions and subject to further detail being worked through between the experts either as a result of conferencing or at the hearing, an agreed set would be able to be reached.
26. Ms Dawson and Ms Hunter agreed to work together on progressing these.

Signed:

21 October 2021



Adele Dawson



Andrew Henderson



Claire Hunter