

**In the Environment Court of New Zealand  
Auckland Registry**

**I Mua I Te Kōti Taiao o Aotearoa  
Tāmaki Makaurau Rohe**

**In the Matter** of the Resource Management Act  
1991 **(Act)**

**And**

**In the Matter** of the Proposed Waikato District  
Plan

**And**

**In the Matter** of an appeal under Clause 14(1),  
Schedule 1 of the Act

**Between** Bathurst Resources Limited and  
BT Mining Limited

**Appellant**

**And** Waikato District Council

**Respondent**

**Notice of Appeal by Bathurst  
Resources Limited and BT Mining  
Limited against a decision on the  
Proposed Waikato District Plan**

Dated: 1 March 2022

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To: The Registrar  
Environment Court  
Auckland

### **Notice of Appeal**

1. Bathurst Resources Limited and BT Mining Limited (**Bathurst and BT**) appeals against parts of decisions of the Waikato District Council (**Respondent**) on the Proposed Waikato District Plan (**Proposed Plan**).
2. Bathurst and BT made a submission (Submission #771) and further submissions (Further Submission #1198) on the Proposed Plan.
3. Bathurst and BT are not trade competitors for the purposes of section 308D of the Resource Management Act 1991 (**Act**).
4. Bathurst and BT received notice of the Respondent's decisions on 17 January 2022.
5. The parts of the decisions that Bathurst and BT are appealing are (referred to collectively as **Decisions**):
  - (a) Introduction;
  - (b) Strategic Directions;
  - (c) Significant Natural Areas;
  - (d) Landscapes;
  - (e) Rural;
  - (f) Definitions; and
  - (g) Mapping

### **Bathurst and BT Background**

6. Bathurst is a publicly listed New Zealand resources company and is New Zealand's leading coal producer.

7. Bathurst is a shareholder of BT<sup>1</sup>, along with Talleys Energy Limited.<sup>2</sup> BT was incorporated to acquire and run the business and assets of the Stockton, Rotowaro and Maramarua mines (**Mines**).
8. In 2015 state-owned enterprise Solid Energy New Zealand Limited (**Solid Energy**) was placed into administration following financial difficulties and was subsequently put into liquidation. On 31 August 2017, BT purchased the Mines from Solid Energy. As part of the purchase, Bathurst and BT ensured that the expertise of Waikato based employees was retained by offering employment to the majority of Solid Energy's staff. BT also received access to the Crown indemnity fund covering historic crown liabilities at mines.
9. BT is the permit holder and permit operator of the Mines and has appointed Bathurst as the mine operator. Bathurst provides the necessary technical and managerial skills required for the operation of the Rotowaro and Maramarua mines in the Waikato District (**Waikato**).
10. Bathurst and BT are guided by a commitment to shareholders, employees, local communities and the environment. This commitment is backed significant investment to ensure social and environmental impacts are managed from design and planning through to production and eventually rehabilitation of the Mines.

### **Bathurst and BT Mines in the Waikato District**

11. Rotowaro and Maramarua are the mines currently operated by Bathurst and owned by BT in the Waikato. These two mines and the nationally significant coal deposits in their vicinity are the focus of Bathurst and BT's interests in the Proposed Plan.
12. BT also owns the non-operational Huntly West mine (**West Mine**). The West Mine is nearing complete rehabilitation and is utilised as a coal storage facility for coal mined at Rotowaro that is destined for the Huntly Power Station to generate electricity for the national grid.

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<sup>1</sup> 65% shareholder.

<sup>2</sup> 35% shareholder.

### Particular Reasons for the Appeal

13. There is a long history of coal mining in the Waikato. Commercial mining commenced in Huntly in 1876 with the Taupiri Coal Mining Company.
14. Rotowaro was a coal mining settlement from 1915. The current opencast mine was opened in 1958 and produces low ash and low sulphur thermal coal. Current production at Rotowaro is around 525,000 tonnes of coal per annum.
15. The Maramarua mine developed an opencast mine in 1948. The mine was modest until Solid Energy invested infrastructure and increased production during the period between 2010 and 2015. Current production is now around 245,000 tonnes of coal per annum.
16. Intrinsically linked to the history of coal mining is the Waikato's reliance on coal as a source of energy for industry and electricity generation.
17. BT's major customers, Genesis Energy Limited for the Huntly Power Station, New Zealand Steel Limited for Glenbrook Steel Mill and Fonterra Limited for its Waikato based dairy factories, significantly contribute to the District, the region and the nation. Specifically:
  - (a) Huntly Power Station was commissioned in 1983 and is New Zealand's largest thermal power station. It has four operational generating units, two of which are 250MW coal and gas fired steam turbine units. Huntly Power Station plays an important role in providing secure voltage support for Northland, Auckland and the Waikato.
  - (b) The use of coal at Glenbrook Steel Mill commenced in 1970, when New Zealand Steel Limited pioneered the direct reduction process for reducing iron oxide (heavy and dark ironsands sourced locally) into metallic iron. The coal is used to produce heat to dry the ironsands, an essential input in ironmaking and therefore steelmaking (and currently there is no economic technological alternative to the use of coal).<sup>3</sup>

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<sup>3</sup> New Zealand Steel's Submission on the Climate Change Response (Zero Carbon) Amendment Bill, (undated).

- (c) BT coal provides the heat source for Fonterra's Waikato-based dairy factories. Dairy products were exported from New Zealand as early as the 1880's and dairy exports continue to play a crucial role in the local and New Zealand economy. Statistics indicate that the dairy industry provides approximately 50,000 jobs in New Zealand.<sup>4</sup> 29% of New Zealand's dairy herds are located in the Waikato<sup>5</sup> and dairy employment contributes to 4.9% of the total regional employment in the Waikato.<sup>6</sup> The dairy sector was responsible for \$2.58 billion contribution to the regional Waikato GDP in 2019.<sup>7</sup>
18. Through the transition period (from coal to yet unknown economic energy source) the energy demands of regionally significant such as those described at 17(a)-(c) will be continue to met by local or imported coal. The preference should be for these needs to be met by local coal as it has a smaller CO<sub>2</sub> transportation footprint and is subject to the Emissions Trading Scheme.
19. The Waikato coal and coal mining industry provides significant employment to the District and contributes to the local, regional and national economy through wages, taxes and procurement. Rotowaro Mine employs approximately 145 staff and various contractors. Maramarua mine employs approximately 60 staff and various contractors. This equates to wages of over \$20 million per annum going into the District. In addition, Bathurst and BT spend approximately \$17 million on procurement, \$4 million on leasing and \$2.5 million on royalties and energy resources levies annually. The coal mining operations at Rotowaro and Maramarua therefore contribute approximately \$43.5 million into the economy annually. A number of local business within the District benefit from the flow on effects associated with Bathurst and BT's mining activities.
20. In the next 4 – 10 years the economically recoverable coal reserves within the currently active pits at Rotowaro and Maramarua will be worked out.

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<sup>4</sup> NZIER, New Zealand Dairy Statistics, Ministry for Primary Industries, Statistics New Zealand, DairyNZ Economics Group, January 2020.

<sup>5</sup> New Zealand Dairy Statistics (DairyNZ and LIC, 2021).

<sup>6</sup> Dairy's Economic Contribution – 2020 Update, Sense Partners, August 2020.

<sup>7</sup> Sense Partners Report "Dairy's Economic Contribution in 2020 Update".

Adjacent resources will need to be developed in order to sustain the business and to provide an uninterrupted supply to local industry. The development of adjacent areas and coal reserves will maintain continuity of employment and procurement and maximise synergies by utilising existing infrastructure, including coal handling and load out facilities. Development of adjacent resources will allow for coal mining to occur for the next 20-30 years which will likely meet demand during the transition period.

21. The expansion of these existing mines to adjacent areas requires resource consents from both the Waikato Regional Council, and The Waikato District Council (where a Coal Mining Permit, rather than a Coal Mining Licence, is held by Bathurst and BT).
22. Bathurst and BT acknowledge that there will be a transition from coal to other energy sources although this may take longer for steel making facilities. However, a current lack of viable economic alternatives means that the transition from coal will take place over a matter of decades not years. This has been acknowledged by Fonterra,<sup>8</sup> who have committed to reduce its reliance on coal but acknowledge that a staged approach is required. This staged approach, as reported by Fonterra, is necessary due to the lack of alternatives, or alternatives of a sufficient scale.
23. Specific to the Significant Natural Area (**SNA**) Framework, Bathurst and BT remain concerned that SNAs have been retained in the Decisions that lack ecological evidence to justify their identification in the Proposed Plan.

### **General Reasons for the Appeal**

24. For the reasons detailed above there is a need for the Proposed Plan to recognise and provide for existing coal mining operations, regionally significant coal deposits and future coal mining that utilises this existing mining infrastructure 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 wider New Zealand.

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<sup>8</sup> Fonterra, *No New Coal Boilers for Fonterra*, 18 July 2019.

25. The location of coal resources in the District is well known, mapped, and can only be extracted from where it is located. Accordingly, the Proposed Plan therefore needs to ensure there are the necessary enabling objectives, policies and rules to ensure that the functional need of coal mining to locate where there are suitable coal deposits is provided for.
26. The overall purpose of the relief sought by Bathurst and BT is to enable existing and future coal mining of regionally significant (and known) coal deposits. The Waikato is unique in that it has coal deposits that are significant on a national scale. While Bathurst and BT support the amendments made in the Decisions, they need to go further as the Proposed Plan still has the potential to jeopardise the role that Bathurst, BT and other mineral extraction companies in the industry, play in utilising those coal deposits for the benefit of the District and adjacent regions (particularly Waikato and Auckland).
27. As such, the relief sought by Bathurst and BT are required to ensure that the Proposed Plan, in accordance with Part 2 of the Act will:
  - (a) promote sustainable management;
  - (b) provide social, economic and cultural well-being;
  - (c) manage adverse effects; and
  - (d) enable an efficient use and development of natural and physical resources particular which it avoids duplication of coal handling facilities.
28. The relief sought is also required to achieve the directive of the Waikato Regional Policy Statement for the Waikato District Council to identify and protect significant mineral resources.

### **Relief Sought**

29. Bathurst and BT seek relief to address the general and specific reasons for the appeal outlined above. In particular:
  - (a) That the Proposed Plan be amended in a similar or other way as may be appropriate to address the matters raised in this appeal; and

- (b) Any other similar, consequential, alternative, or other relief as is necessary to address the issues raised in this appeal or otherwise raised in the Submission and Further Submission.

30. Without derogating from that general relief Bathurst and BT seek the specific relief:

***Strategic Directions and Rural Environment Chapters – support for mineral extraction***

31. Bathurst and BT seek:

- (a) Recognition and provision for existing and future coal mining operations within the Strategic Directions and Rural Chapters of the Proposed Plan.
- (b) Explicit reference being added to the role that coal has as a transitional resource through the life of the Proposed Plan (and beyond) and the value that the resource has for the Waikato District.
- (c) Policy direction that mineral extraction is a valuable and anticipated part of the rural Waikato environment.
- (d) Policy amendments to ensure activities not anticipated in the Rural Zone and have the potential to cause reverse sensitivity impacts are not enabled in areas where mining activities have a functional need to locate including mineral extraction.
- (e) Ensure that the maps of the Proposed Plan correctly identify relevant Coal Mining Areas so that the associated planning framework achieves the intent of policy 5.4.2 regarding the management of extractive activities.
- (f) Ensure that phrases such as “Productive Rural Activities” include mineral extraction.

***Reverse Sensitivity – Chapter 4***

32. In addition to the relief sought above in relation to reverse sensitivity, Bathurst and BT seek that:



- (a) reference to “to the extent possible” be deleted from 4.7.11 to avoid the watering down of the intent of the reverse sensitivity policy; and
- (b) mineral extraction is included in 4.7.11 as an anticipated part of the rural environment.

### ***Coal Mining Areas - mapping***

- 33. Bathurst and BT seek recognition and provision for existing and future coal mining operations.
- 34. In Bathurst and BT’s original submission this included separate recognition of the location of additional regionally significant coal deposits (including areas of privately owned coal) in the District and protection of those mineral deposits from other land uses and the mapping of Coal Mining Areas to recognise lawfully established mining activities.
- 35. Bathurst and BT have refined the geographical extent of this relief and seek further mapping of Coal Mining Areas beyond the Decisions (as a single mining overlay rather than the notified version’s use of “Extractive Resource Areas” for mapping coal resources) as the planning tool to recognise and provide for both coal resources, and existing and anticipated coal mining operations. This includes particular areas covered by Coal Mining Licences, Mining Permits, Exploration Permits and privately owned coalfields.
- 36. For plan efficiency Bathurst and BT have also identified some areas where mining is not likely in the future and seek these not be identified in the Proposed Plan.
- 37. Bathurst and BT seek:
  - (a) the addition of the Proposing Coal Mining Areas mapping shown in purple attaching in the three plans attached at **Annexure 1**;
  - (b) The Proposed Plan’s Objective, Policy and Rule framework for Coal Mining Areas, as sought to be amended by this Notice of Appeal, apply to the areas shown on the three plans; and

- (c) Removal of the Proposed Plan's mapped Coal Mining Areas shown in yellow horizontal hatching (shown as "Remove Proposed Coal Mining Area") in the plans attached at **Annexure 1** on the basis these are no longer considered likely by Bathurst and BT as areas where coal mining activities will occur.

### ***Natural Environment***

#### *Biodiversity Offsetting and Environmental Compensation*

38. Bathurst and BT support the changes made to the definition of Biodiversity Offsetting in the Decisions but seek the following relief:
- (a) The removal of the reference to "no net loss" within this chapter including 3.2.4 and Appendix 6.
  - (b) Ensuring that the effects management hierarchy both in and outside SNA includes offsetting and environmental compensation options including within Policy 3.1.2A.

#### *Functional Need*

39. Bathurst and BT support the intent of new policy 3.2.9 but seek that:
- (a) Policy 3.2.9 reference mineral extraction activities; and
  - (b) the broader policy framework reference that activities that have a functional need to locate in a particular area, including mineral extraction are identified and enabled through the National Environment policy framework including 3.2.2, the effects management hierarchy at 3.2.3 and the policy for vegetation clearance at 3.2.6.

#### *Significant Natural Areas - mapping*

40. Bathurst and BT seek site specific relief regarding Significant Natural Areas (**SNA**). Specifically, Bathurst and BT seek the removal from the Proposed Plan maps of several SNAs at the Rotowaro Mine shown on the plans attached at **Annexure 1** in yellow hatching as "SNA to be Ground Truthed".

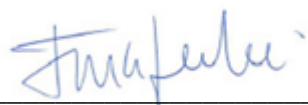
### **Landscapes**

41. Bathurst and BT seek the removal of the reference to avoiding *all* adverse effects on Outstanding Natural Landscapes and Features in 3.3.3 as this is not the test in Part 2 and sets the threshold for environmental effects too high.
42. The management of effects on Outstanding Natural Landscapes and Features requires resource consent specific assessment including the ability of any particular feature or landscape to absorb change.
43. Bathurst and BT seek that rule 22.1.5 triggering non-complying activity status for any extractive industry in an ONF, ONL, High Natural Character Area and Outstanding Natural Character Area be deleted.

### **Attached Documents**

44. The following documents are **attached** to this notice:
  - (a) mapping of relief sought as **Annexure 1**;
  - (b) a copy of Bathurst and BT's submission on the PDP as **Annexure 2**;
  - (c) a copy of Bathurst and BT's further submission on the PDP as **Annexure 3**;
  - (d) a copy of the relevant parts of the Decisions as **Annexure 4**;
  - (e) a list of the names and addresses of persons to be served with a copy of this notice as **Annexure 5**.

Dated this 1<sup>st</sup> day of March 2022



Joshua Leckie / Katharine Hockly  
Counsel for the Appellant

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## **Advice to Recipient of Copy of Notice of Appeal**

### **How to become a Party to Proceedings**

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to this appeal you must:

- (a) within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- (b) within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

### **How to obtain copies of documents relating to appeal**

The copy of this notice served on you does not have attached a copy of the appellant's submissions or the decisions appealed. These documents may be obtained, on request, from the appellant.

### **Advice**

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington or Christchurch.

## **Annexure 1**

### **Mapping of Relief Sought**



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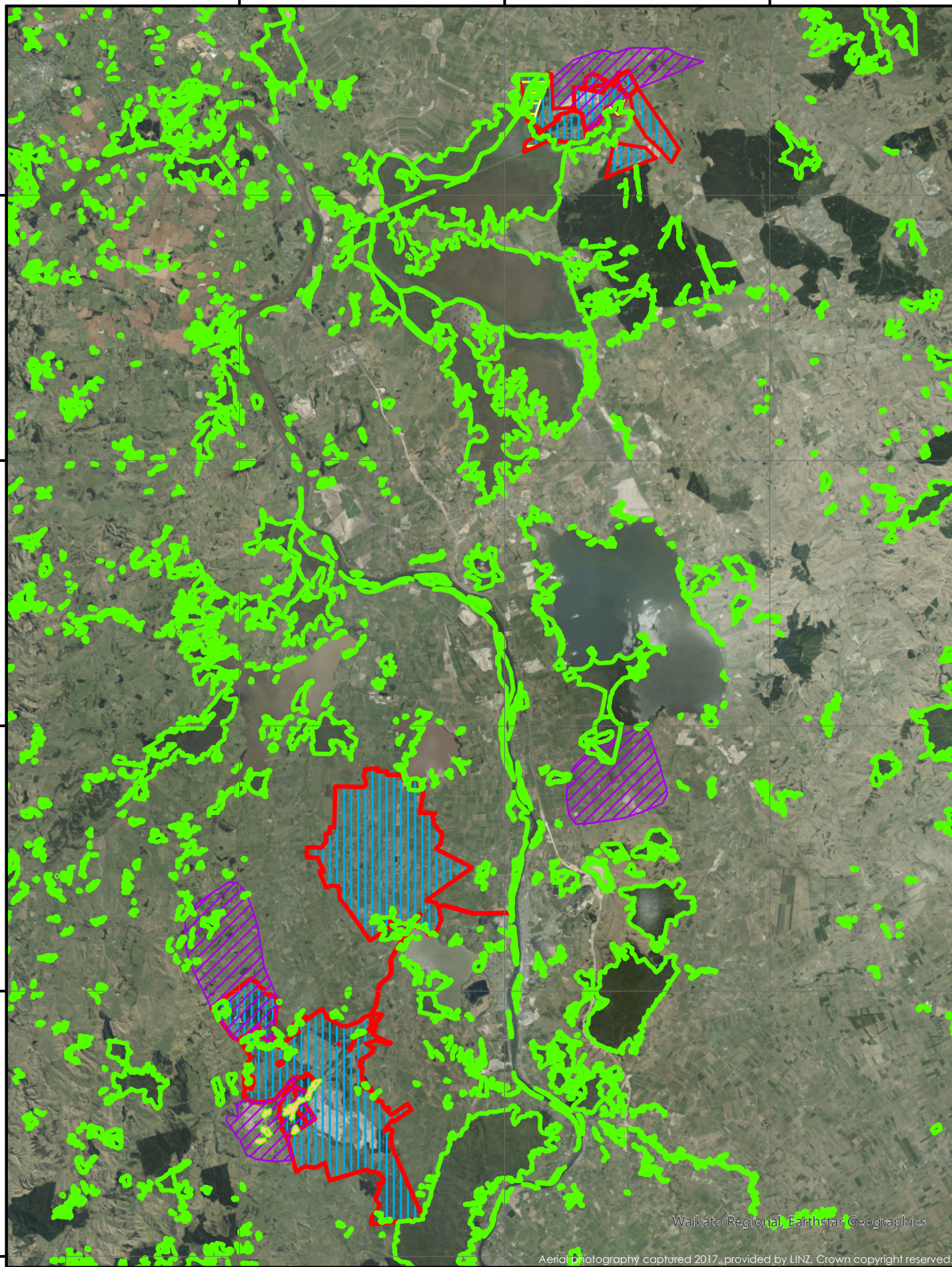
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Waikato Regional Earthstar Geographics

Aerial photography captured 2017, provided by LINZ, Crown copyright reserved.




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**BATHURST**  
RESOURCES LIMITED

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Legend

- |   |                                       |   |                                      |
|---|---------------------------------------|---|--------------------------------------|
|  | PDP Significant Natural Area Decision |  | Additional Proposed Coal Mining Area |
|  | Coal Mining Licence/Permit            |  | SNA to be Ground Truthed             |
|  | PDP Decision Version Coal Mining Area |  | Remove Proposed Coal Mining Area     |

**Waikato District**  
Mining, Extractive Resources  
and Policy Areas

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DATE: 28 February 2022  
DRAWN BY: CanardR  
DRAWING NUMBER: 01057-10





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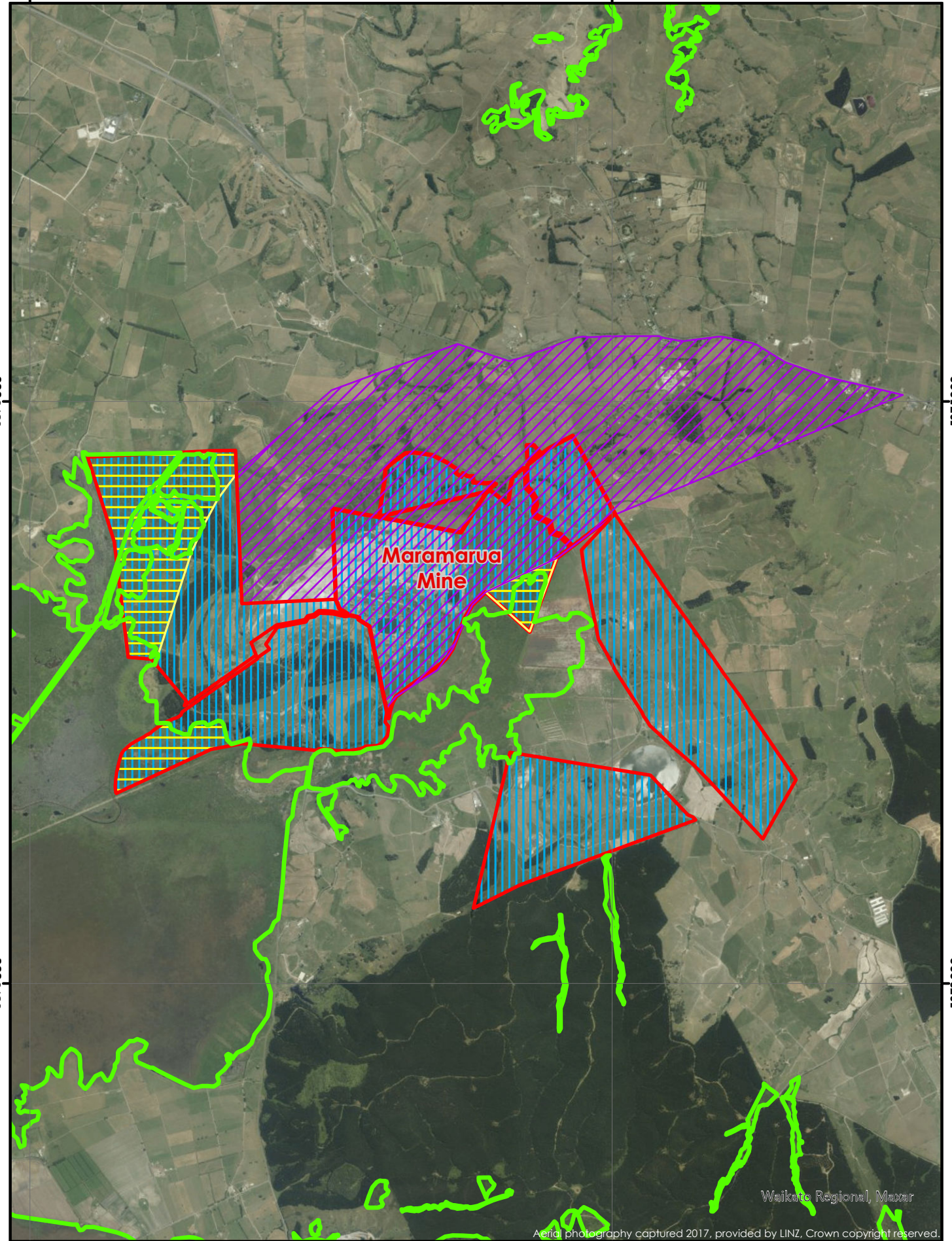
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Maramarua Mine

Waikato Regional, Maxar

Aerial photography captured 2017, provided by LINZ, Crown copyright reserved.

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Legend

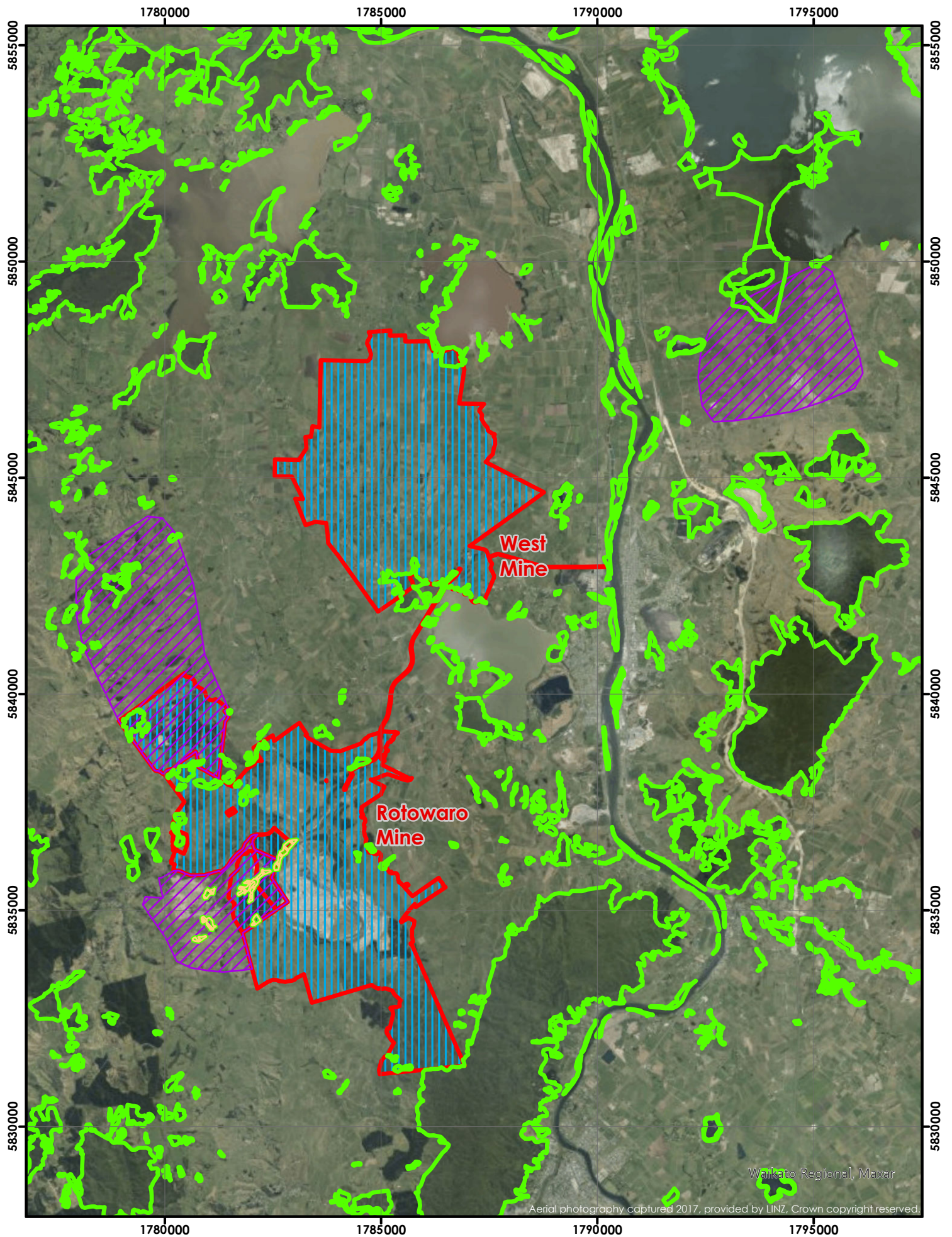
- PDP Significant Natural Area Decision
- Coal Mining Licence/Permit
- PDP Decision Version Coal Mining Area
- Additional Proposed Coal Mining Area
- Remove Proposed Coal Mining Area

Waikato District  
Mining, Extractive Resources  
and Policy Areas

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**Legend**

- |  |                                       |  |                                      |
|--|---------------------------------------|--|--------------------------------------|
|  | PDP Significant Natural Area Decision |  | Additional Proposed Coal Mining Area |
|  | Coal Mining Licence/Permit            |  | SNA to be Ground Truthed             |
|  | PDP Decision Version Coal Mining Area |  |                                      |

**Waikato District**  
Mining, Extractive Resources  
and Policy Areas

SCALE: 1:110,000 A4  
DATE: 28 February 2022  
DRAWN BY: CanardR  
DRAWING NUMBER: 01057-12

