

## Before the Hearings Panel

In the Matter of                      the Resource Management Act 1991

And

In the Matter of                      the Proposed Waikato District Council Plan – Stage 1

# Opening Legal Submissions for **Bathurst Resources Limited** and **BT Mining Limited**

Dated: 25 September 2019

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## INTRODUCTION

1. Bathurst Resources Limited (**Bathurst**) and BT Mining Limited (**BT**) lodged a submission on the Waikato District Council Proposed Plan – Stage 1 (**Plan**) on 9 October 2018 (**Submission**) and further submissions on 12 July 2019.
2. These legal submissions are presented on behalf of Bathurst and BT to provide an overview of the matters raised in the Submission and further submissions, which will be addressed in detail at various hearings throughout this District Plan renewal process.

### Bathurst and BT

3. Bathurst is a publicly listed New Zealand resources company and is New Zealand's leading coal producer.
4. Bathurst is a shareholder of BT,<sup>1</sup> along with Talleys Energy Limited.<sup>2</sup>
5. BT was incorporated to acquire and run the business and assets of the Stockton, Rotowaro and Maramarua mines (**Mines**).
6. 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.
7. As part of the purchase, Bathurst and BT ensured that the expertise of 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.
8. BT is the permit holder and permit operator of the Mines. BT 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.
9. Bathurst and BT are guided by a commitment to shareholders, employees, local communities and the environment. The commitment is backed by

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

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

significant investment of time and money to ensure social and environmental impacts are managed from design and planning through to production and eventually rehabilitation of the Mines.

### **Overview of Submissions**

10. The Submission and further submissions seek to ensure recognition of the significant role coal plays in the economy of the Waikato District (**the District**), and the enablement of that role over the life of the Plan.
11. These legal submissions “set the scene” for that relief, which straddles several chapters. In summary, these legal submissions address:
  - (a) why coal mining remains a significant industry and driver of economic growth for the District and for those industries in the District that use coal;
  - (b) the need for;
    - (i) recognition and provision for existing coal mining operations;
    - (ii) recognition of the location of additional regionally significant coal deposits in the District and protection of those mineral deposits from other land uses;
    - (iii) provision for future coal extraction at these locations while ensuring appropriate controls on effects; and
    - (iv) site specific relief regarding the notification of purported Significant Natural Areas within future coal extraction areas.
12. The section 32 reports for the Plan don’t give appropriate attention to the benefits of coal and coal mining, or the cost to the District if coal and coal mining is not enabled.

### **COAL MINING AND USE IN THE WAIKATO**

13. There has been 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 600,000 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 220,000 tonnes of coal per annum which is expected to increase to around 240,000 tonnes this financial year.
16. Intrinsically linked to this long history of coal mining is the Waikato's heavy 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, particularly during dry years.
  - (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 ingredient in ironmaking and therefore steelmaking (and currently there is no economic technological alternative to the use of coal).<sup>3</sup>
  - (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 an essential role in the local and New Zealand economy. Statistics from January 2019 indicate that the dairy industry provides

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

approximately 46,000 jobs in New Zealand,<sup>4</sup> 13,400 of which are in the Waikato region.<sup>5</sup> The Waikato region contains 33% of the nation's dairy herds and produced \$3.29 billion in the 2017/2018 year.<sup>6</sup> In the year to June 2019 New Zealand dairy exports reached \$18.1 billion.<sup>7</sup>

18. Through the transition period (from coal to an as yet unknown economic energy source) the energy demands of regionally significant industries (like those above), while those industries continue to operate in New Zealand, will be met by local or imported coal. In our submission the preference, in a Part 2 sense, should be for local coal. However these industries are already having to meet demand for coal with a mix of domestic and imported coal.
19. In addition to having a smaller CO<sub>2</sub> transportation footprint, coal mined in New Zealand is subject to the Emissions Trading Scheme and our strict environmental and health and safety laws.
20. Waikato coal and coal mining provide significant employment to the District and contribute to the local, regional and national economy through wages, taxes and procurement. Rotowaro Mine employs approximately 130 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/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 businesses within the District also benefit from the economic flow-on effects associated with Bathurst/BT's mining activities.
21. In the next 4 – 10 years the economically recoverable coal reserves within the currently active mine pits at Rotowaro and Maramarua will be worked out, with Rotowaro expected to be worked out within 4 years. Adjacent

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<sup>4</sup> NZIER, New Zealand Dairy Statistics, Ministry for Primary Industries, Statistics New Zealand, DairyNZ Economics Group, January 2019

<sup>5</sup> NZIER, New Zealand Dairy Statistics, Statistics New Zealand, DairyNZ Economics Group, January 2019

<sup>6</sup> Above.

<sup>7</sup> Summary of the September 2019 Situation and Outlook for Primary Industries report; *Dairy*.

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 will maintain continuity of employment and procurement and maximise synergies by utilising existing infrastructure, including coal handling and load out facilities. Development will allow for coal mining for the next 20 – 30 years which will meet likely demand during the transition period.

22. Bathurst and BT acknowledge that there will be a transition from coal to other energy sources, though this may take longer for steel making. However, a lack of viable economic alternatives means that the transition from coal will take place over a matter of decades not years. This was recently acknowledged by Fonterra,<sup>8</sup> who has committed to reduce its reliance on coal but acknowledges 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. In our submission, there is a need for the Plan to recognise and provide for existing coal mining operations, regionally significant coal deposits and future coal mining 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 the regionally significant industries referred to above.
24. The Plan itself acknowledges the contribution that mining has to the District's Gross Domestic Product (**GDP**).<sup>9</sup> The Plan therefore needs to add the necessary enabling objectives, policies and rules in order to ensure that coal and coal mining can continue to contribute to the Waikato District's GDP, and to recognise that it continues to be an ongoing business which is not in decline.
25. It is our submission that coal and coal mining remain important to the District for the life of the Plan (and beyond) and, when managed appropriately will, in accordance with Part 2 of the Resource Management Act 1991 (**RMA**);
  - (a) promote sustainable management;
  - (b) provide social, economic and cultural well-being;

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<sup>8</sup> Fonterra, *No new coal boilers for Fonterra*, 18 July 2019.

<sup>9</sup> 1.4.2.3(viii), Proposed Waikato District Plan.

- (c) manage adverse effects; and
- (d) be an efficient use and development of natural and physical resources particularly where it avoids duplication of coal handling facilities.

## RELIEF SOUGHT

### Summary of Relief sought

26. The relief sought by Bathurst and BT is multi-faceted and intertwined, despite the fact it is split over several chapters (and therefore Hearings).
27. 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 so that it can continue to support the Waikato District's economy and continue to supply the regionally significant industries described earlier.
28. These legal submissions focus on the following key aspects of Bathurst and BT's submissions that will be expanded upon in later submissions:
  - (a) enabling existing coal mining;
  - (b) identifying regionally significant coal deposits;
  - (c) enabling future coal mining;
  - (d) protecting coal mining from other land uses; and
  - (e) site specific amendments regarding Significant Natural Areas.

### Enabling Existing Coal Mining

29. Coal plays a significant role in the social and economic well-being of the District. The Plan itself acknowledges that mining forms a considerable part of the District's GDP. As such, the Plan provides for the continuation of "extractive industries", which is supported by Bathurst and BT.<sup>10</sup>
30. However, the Plan fails to adequately protect some of the existing extractive industries. In particular, policy 5.4.2(b)(i) purports to protect access to, and extraction of, mineral resources that are "lawfully established extractive industries" in "Coal Mining Areas" but the Coal

<sup>10</sup> For example, provisions 1.4.3(a), 1.4.3.1, 1.4.3.2(a)-(c), 1.5.7.7 and 5.4.2, Proposed Waikato District Plan.



Mining Areas do not cover all existing mining operations. Specifically, part of Maramarua mine is excluded from the Coal Mining Area. Map 9 – Maramarua State Forest is **attached** at Annexure A.

31. Existing mining cannot be said to be enabled where it is not appropriately protected from other land uses and reverse sensitivity. Bathurst and BT therefore seek the extension of the “Coal Mining Area” to cover all “lawfully established extractive industries” as required by the policy framework and in accordance with 1.4.3.1(c) and 1.4.3.2.
32. Bathurst and BT also consider that the activity statuses governing coal mining should give teeth to the other enabling provisions of the Plan to provide a robust framework enabling existing coal mining. In that regard, Bathurst and BT seek some amendment to activity statuses in the Rural Zone for coal mining in areas most appropriate for those activities to take place.
33. Similarly, other submitters have identified areas where further provision for existing coal mining/mineral extraction can be made. Those submitters seek further recognition of mining in the objective and policies of the Rural Environment Chapter or amendment to the activity status for mineral extraction or exploration and prospecting in the Rural Zone Chapter. Bathurst and BT support the submissions of other parties as they relate to the enablement of coal mining and extractive industries more generally.<sup>11</sup>
34. The focus of Bathurst and BT’s submissions regarding existing coal mining relate to making proper provision for the continuation of existing coal mining (by providing for expansion into adjacent land) and site specific relief regarding Significant Natural Areas. These issues are expanded on in the following paragraphs.

### **Identifying and Protecting Regionally Significant Coal Deposits**

35. The Plan seeks to protect existing mineral extraction and processing activities from reverse sensitivity,<sup>12</sup> and protect access to and extraction of mineral resources by identifying “lawfully established extractive industries”

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<sup>11</sup> For example, submission points 827.40, 680.22, 827.41, 827.43, 827.44, 575.29, 395.3, 691.15 and 395.4.

<sup>12</sup> 4.7.11 and 5.3.7, Proposed Waikato District Plan.

in Aggregate Extraction Areas and Coal Mining Areas.<sup>13</sup> These provisions are supported by Bathurst and BT.

36. Access to, and extraction of, mineral resources in a *potential extractive industry within an Aggregate Resource Area* are also protected under the Plan, specifically at policy 5.4.2(b). There is no corresponding protection for coal mining resources.
37. Bathurst and BT seek the identification of particular regionally significant coal deposits on the planning maps as “Coal Mining Resource Areas”. Bathurst and BT also seek a new policy providing for protection of access to, and extraction of, coal mining resources by identifying sites of potential coal extractive industry within the “Coal Mining Resource Area”. Bathurst and BT’s proposed policy follows a similar logic to the proposed protection of aggregate resources under the Plan.
38. As indicated above, the identification of ‘lawfully established extractive industries’ in Coal Mining Areas on planning maps is already required by the Plan. A “Coal Mining Area” is defined as *land identified as a Coal Mining Area on the planning maps*.<sup>14</sup> We submit the term “lawfully established extractive industries”, in the coal mining sense, would be mines that are already operational or consented. However, as detailed above, this is not the case with regard to the “Coal Mining Area” under the Plan: the Plan’s Coal Mining Area overlay does not cover the extent of the existing Maramarua mine.
39. While the protection of ‘lawfully established extractive industries’ is important, particularly with regard to reverse sensitivity, what is also important is the protection of access to regionally significant but as yet unmined mineral resources more generally. Regionally significant mineral resources like large coal deposits, currently unutilised and not necessarily known by a Plan user, require protection under the Plan. Protection of access to, and extraction of, currently unutilised mineral resources (such large as coal deposits) is required to ensure that the benefits of coal and coal mining to the District are able to be achieved. This is particularly so for future extraction – without Plan users knowing where future ‘lawfully established extractive industries’ will be, they cannot be protected.

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<sup>13</sup> 1.4.3.1 and 1.4.3.2, 5.4.2(b) – (d) , Proposed Waikato District Plan.

<sup>14</sup> Chapter 13: Definitions “Coal Mining Area”, Proposed Waikato District Plan.

40. The amendments proposed by Bathurst and BT are in accordance with the Waikato Regional Policy Statement (**WRPS**). The WRPS requires the Plan recognise the need to access mineral resources and management of the built environment accordingly.<sup>15</sup> This requires the identification<sup>16</sup> and protection<sup>17</sup> of significant mineral resources. The WRPS requires the Waikato Regional Council to work with territorial authorities to identify and map significant mineral resources and that mapping will then be provided to territorial authorities (such as the Waikato District Council).<sup>18</sup> Until that is done the significant mineral resources can be identified with the criteria detailed at 6.8.1 of the WRPS, which include:
- (a) relative scarcity;
  - (b) contribution or potential contribution to national and regional economy;
  - (c) current and potential demand, and location with respect to demand;
  - (d) constraints on extraction including existing or planned settlement;
  - (e) quality and size of deposit;
  - (f) importance of the mineral resource to tāngata whenua; and
  - (g) importance to infrastructure development.
41. The identification and protection of mineral resources under the WRPS is not limited to “lawfully established extractive industries” – the focus is not on the industry but is on the resource. In our submission, the focus of the WRPS on the resource rather than the industry shows that access to resources is to be protected regardless of whether there is an intention at the present time for those resources to be utilised. This necessitates the identification and protection of regionally significant coal deposits. Currently the Plan does not do this and in our submission does not give effect to the WRPS as required by section 75(3)(c) of the RMA.
42. The coal deposits that Bathurst and BT wish to be identified are known regionally significant coal resources in identified areas. These are held subject to a mixture of Exploration Permits, Mining Permits and Mining Licences.

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<sup>15</sup> Policy 6.8, Waikato Regional Policy Statement (**WRPS**).

<sup>16</sup> 6.8.1, WRPS.

<sup>17</sup> 6.8.2, WRPS.

<sup>18</sup> 6.8.1, WRPS.

## Future Coal Mining

43. As we have submitted, coal can be productively mined in the Waikato District for the next 20 – 30 years. Whilst it is acknowledged that coal is a transitional energy source, significant industry has confirmed that the shift away cannot be instantaneous given there are limited economically or practically viable alternative energy sources or technologies for regionally significant industry in the Waikato.
44. Bathurst and BT therefore seek amendment to the Plan to provide for and enable future coal mining. This relief underpins the ability of Bathurst and BT to continue the operation of their Rotowaro and Maramarua mines, particularly in light of the 4 – 10 year exhaustion of the current pits at these mines.
45. The continued operation of Rotowaro and Manamarua are of significant importance to the Waikato District, as we have demonstrated key industries (particularly steel production, energy and dairy) are reliant on the supply of coal for continued operation. So too are the people employed by Bathurst and BT, and those employed by the industries to which Bathurst and BT supply and support.
46. The Plan places weight on the public's concerns regarding coal, particularly the public's concerns about environmental impacts, which is not appropriate. The public's perceptions are not a relevant effect and should not therefore form part of the Plan.
47. It is submitted that the future requirements for mineral extraction are severely underrepresented in the Plan as notified. This is evident firstly from the introductory paragraphs which refer to a 'decline in the mining sector'<sup>19</sup>, which is disputed by Bathurst and BT. Bathurst and BT consider that any perceived decline, as outlined by the Plan,<sup>20</sup> can be addressed by allowing for expansion of existing mines and on that basis seek:
- (a) amendment to introductory provisions 1.4.2.3(viii) and 1.5.7.7 to provide for the expansion of existing coal mines;

<sup>19</sup> 1.4.2.3(viii), Proposed Waikato District Plan.

<sup>20</sup> 1.4.2.3(viii), Proposed Waikato District Plan.

- (b) inclusion of appropriate provision for exploration and prospecting in the Rural Zone either as permitted or restricted discretionary activities; and
  - (c) consequential amendments including amendment to the reverse sensitivity provisions and protection of access provisions.
48. Bathurst and BT also support various submissions from other submitters relating to the expansion of extractive industries.<sup>21</sup>
49. Having the benefit of receiving the section 42A report for Hearing 1 (on the introductory chapter) prior to drafting these submissions, Counsel is aware of the report writers issues with enabling expansion and development of the mining industry – their view being that an assessment of appropriateness in an RMA sense is required prior to enabling expansion of mining.
50. It is submitted that provisions enabling expansion or development of coal mining do not negate the need for an assessment of appropriateness at the time of consenting. Bathurst and BT are not seeking a permitted activity status for expansion of coalmines. Rather, they are seeking policy level recognition of the need to expand and develop coal mining where the known regionally significant coal resource is located, and therefore where coal mining needs to take place.
51. Further, the WRPS specifically states that district plans may identify areas where new mineral extraction may be appropriate.<sup>22</sup>
52. Submissions and evidence in subsequent hearings on this issue will demonstrate why (in a section 32 sense) providing for coal and coal mining is more appropriate than not at a district level. The section 32 reports for the Plan have failed to assess the benefits that coal and coal mining bring to the Waikato District, instead focusing on negative perceptions.
53. The Plan cannot, as a matter of law, rule on the appropriateness of the perception of mining as in this context that is not a relevant effect. On that basis, it is submitted that there is little merit in the position that an assessment of appropriateness is required before enabling policies can be included. An assessment as to the appropriate management of unwanted

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<sup>21</sup> For example, submission points 827.39, 860.4, 680.61 (in part) and 797.16.

<sup>22</sup> 6.8.2(b), WRPS.

effects can be conducted during the consenting process by applying rules in the Plan, as is required by the RMA.

### **Significant Natural Areas**

54. Bathurst and BT seek site specific relief relating to several identified Significant Natural Area overlays, as well as provision for offsetting where adverse effects cannot be avoided.
55. Specifically, Bathurst and BT seek:
  - (a) deletion of the proposed Significant Natural Areas in Rotowaro Coal Mining Licence 37 155 and Ancillary Coal Mining Licence 37 155/01, Mining Permit 60 422; Exploration Permits 40 698 and 56 220 and the extended Rotowaro/Ruawaro coalfield generally; and
  - (b) where an activity is regionally significant and cannot be located other than where proposed, make provision for offsets to be considered as mitigation for adverse effects on areas of Significant Natural Areas that cannot be avoided.
56. Bathurst intends to call evidence supporting the deletion of those Significant Natural Areas on the basis that there is insufficient ecological evidence to justify them being identified in the Plan.
57. Evidence and legal submissions will be presented at a later date on why the Plan needs to recognise the functional need for coal mining to locate in these areas, and why offsetting and compensation should be available where adverse effects cannot be avoided, remedied or mitigated.

### **CONCLUSION**

58. Coal is a critical part of the social and economic well-being of the District. Bathurst and BT are local employers, procurers and taxpayers. The coal that Bathurst and BT produce is also a critical energy source for the electricity, steel manufacturing and dairy industries. If not mined locally, it is more likely than not that those industries will have to import coal.
59. Bathurst and BT seek the continuation of their critical role in the Waikato District's social and economic well-being. This requires recognition and protection of both existing and future coal mining, the identification of

regionally significant coal deposits, appropriate management of effects in areas where, by its functional need, coal mining needs to take place.

60. The relief sought by Bathurst and BT is multi-faceted and intermingled. In the hearings that follow, Bathurst and BT will provide expert evidence in support of their proposed relief.
61. In the meantime, it is our submission that coal and coal mining play an integral role in the social and economic well-being of the Waikato District, and the Plan should provide sufficient recognition for coal mining to continue to support the District's economy. It is with this background, not a perceived decline in coalmining or provision for society's perceptions regarding environmental impacts of coal, that the Panel should consider the evidence and submissions on behalf of Bathurst and BT.
62. Bathurst and BT will call evidence from the following expert witnesses in support of their submissions:
  - (a) Mike Copeland – economics;
  - (b) AECOM Ecologist – ecology; and
  - (c) Murray KivellKivell – planning.

Dated: 25 September 2019



Joshua Leckie / Kelsey Barry

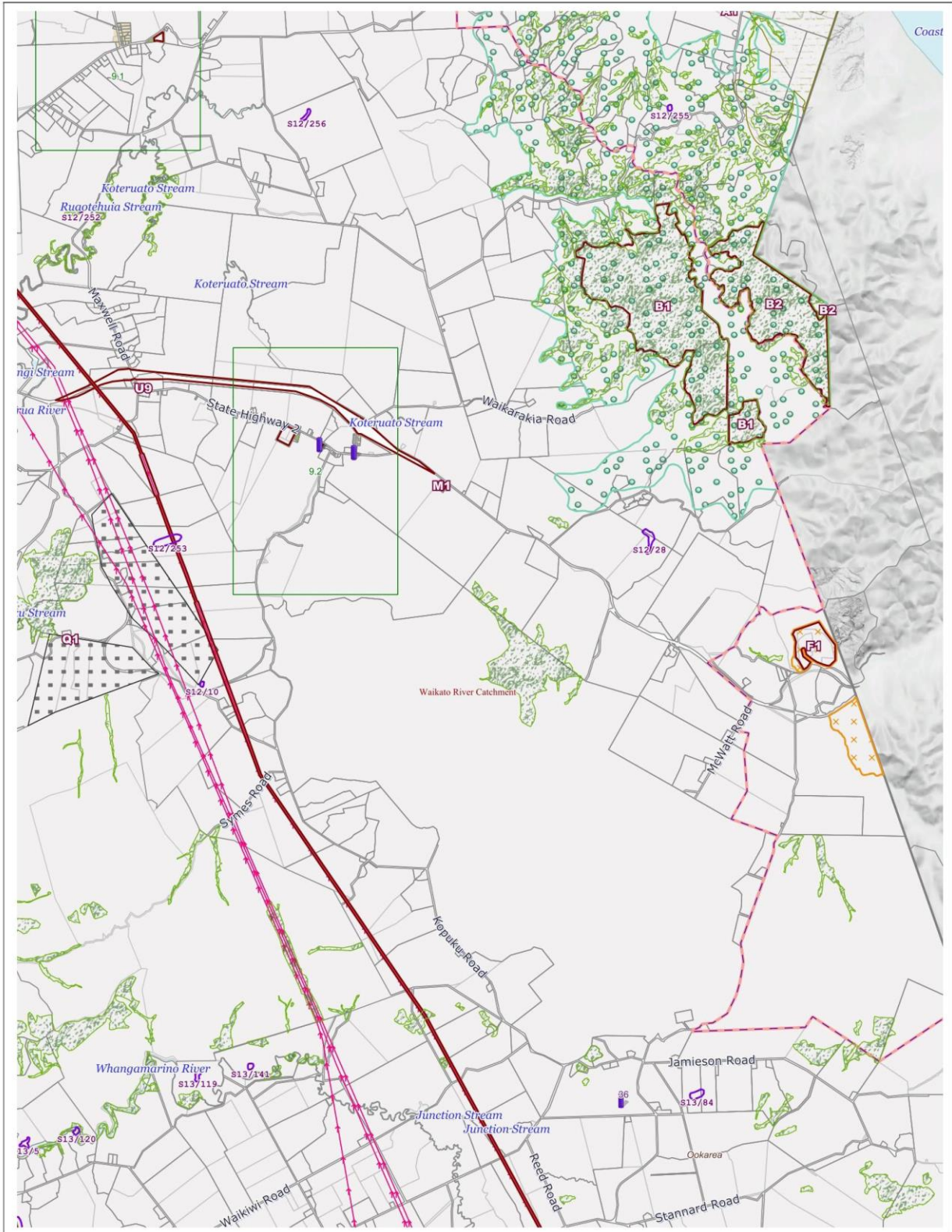
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# ANNEXURE A: MAP 9 – MARAMARUA STATE FOREST



Proposed Waikato District Plan (Stage 1)

Maramarua State Forest 9



Scale 1:50000 Cadastre sourced from Land Information New Zealand under CC-BY. Copyright @ Waikato District Council Disclaimer Projection: New Zealand Transverse Mercator Datum: New Zealand Geodetic Datum 2000 Print Date: 18/07/2018 A3