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Australian Securities Exchange
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L&M LODGES APPEAL FROM HIGH COURT DISMISSAL OF ITS CLAIM UNDER DEED OF GUARANTEE

Bathurst advises that L&M Coal Holdings Limited (now called LMCHB Limited) (L&M) has late yesterday lodged a notice of appeal from the New Zealand High Court's recent judgment in respect of a Deed of Guarantee and Security (DGS) given by Buller Coal.

To summarise the High Court's judgment (a copy of which may be viewed here – [LMCHB Ltd v Buller Coal Ltd \[2023\] NZHC 633 — Courts of New Zealand \(courtsfnz.govt.nz\)](#)):

"In 2021 the Supreme Court held that Bathurst was not yet required to make a \$40m performance payment to L&M under an agreement for the sale of mining rights due to an amendment (cl 3.10) permitting Bathurst to defer payment. In this proceeding, L&M sought a declaration that Buller Coal, Bathurst's subsidiary, is liable for the same payment under a separate contract of guarantee. The Court dismissed the claim, holding that the money under the guarantee is not yet "due" given the terms of the contracts, the Supreme Court's judgment and the secondary nature of guarantees. While it refused to find that Buller Coal could enforce cl 3.10 under s 12 of the CCLA, it would have found an implied term to that effect. Finally, the Court held that L&M should have brought the argument under the guarantee in the first proceeding and that raising it in a subsequent proceeding was an abuse of process."

Bathurst's CEO, Richard Tacon commented on the appeal, stating "Although based on its past behaviour we somewhat expected L&M to try some still further form of litigation, we are surprised that they have chosen to appeal on the DGS issue. This is because of the resounding basis of the High Court's judgment, which finds against L&M on a number of grounds (including abuse of process). I think it is plain that we are dealing with yet another vexatious legal action by L&M, who simply refuses to accept the decisions of the New Zealand Courts (including the Supreme Court) rejecting its claims."

The appeal process does not allow new evidence to be submitted without leave. If the appeal proceeds to hearing, it will be decided by a panel of three judges.

Bathurst intends to vigorously defend the appeal.

On behalf of Bathurst Resources Limited.

Richard Tacon
CEO