BATHURST RESOURCES LIMITED

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17 May 2024

Mr. Justin Nelson
Listings Compliance (Sydney)
ASX Compliance Pty Ltd
Level 6, 20 Bridge Street
Sydney NSW 2000

By email: ListingsComplianceSydney@asx.com.au

Your Ref: 93798

Dear Sir,

RESPONSE TO GENERAL COMPLIANCE QUERY

Bathurst Resources Ltd (ASX code: BRL) (**BRL**) refers to the ASX's letter of 14 May 2024 (**ASX Letter**).

Unless the context requires otherwise, defined terms have the meaning given to them in the ASX Letter.

The ASX Letter refers to the L&M Dispute at some length.

As you know, the L&M Dispute has been a long running set of legal proceedings between BRL and L&M, with L&M having advanced a number of allegations against BRL (and BRL's related body corporate, Buller Coal Ltd) during the course of those proceedings. BRL notes that the L&M Dispute continues to remain before the New Zealand courts with the last material hearing being in May 2024 before the New Zealand Court of Appeal (**NZCA**). That hearing was an appeal brought by L&M following New Zealand High Court's refusal to grant a Declaratory Judgment against Buller Coal Ltd and BRL, an action that in BRL's view seeks to reverse or subvert the New Zealand Supreme Court's (**NZSC**) prior determination in favour of BRL. BRL will update the market as soon as the judgment in regard to those appeal proceedings is received.

Background information

The ASX's understanding of the L&M Dispute set out in your letter is correct subject to the comments below.

Paragraph D of the ASX Letter addressed the circumstances where BRL is entitled to defer payment of the Performance Payments. BRL notes that the NZSC determined that BRL has a right to defer making payment of the Performance Payments under clause 3.10 of the sale and purchase agreement dated 10 June 2010 (**SPA**). In the judgment of the NZSC, the effect of clause 3.10 is that Performance Payments under the SPA are not due to be paid while the suspensory effect of clause 3.10 continues. Further, the NZSC determined that:

- the continuation of such suspensory effect is not dependent on BRL opting to pay a higher royalty rate on coal sold from the relevant permit areas;

- that suspensory effect continues even if no royalties are paid in circumstances where no coal is sold; and
- the royalty payments need only be made under the royalty deed dated 6 Aug 2010 (**Royalty Deed**) as and when the Royalty Deed requires them – an interruption to the payments (possibly prolonged or even indefinite) does not have the effect of terminating the suspension of any obligation to pay either or both of the Performance Payments under clause 3.10.

Accordingly, for so long as BRL complies with its obligations under the SPA and Royalty Deed it will not be obliged to make payment of any Performance Payment.

New Zealand court judgments are available online and BRL encourages ASX and any other interested person to read the NZSC's judgment in *Bathurst Resources Ltd and Buller Coal Ltd v L & M Coal Holdings Limited*, [2021] NZSC 85.

ASX's Questions

BRL further advises as follows, with reference to the questions raised in the ASX Letter (using the same paragraph numbering):

Question One

Please provide details of any event(s) or circumstances that would trigger BRL's respective obligations:

1.1 to make Performance Payment 1

1.2 to make Performance Payment 2; and/or

1.3 to issue the Performance Shares,

and, if known, when such event or circumstance could potentially occur. If it is not known when the trigger events or circumstances could potentially occur, please explain why this is not known.

A final cessation of all of BRL's mining operations within the prescribed permit areas such that there are no longer any payment obligations under the Royalty Deed would mean that the suspensory effect of clause 3.10 of the SPA would come to an end.

Mining operations at the Escarpment mine commenced some time ago in the permit areas and were then suspended as the mine was determined to be uneconomic and consequently was put onto care and maintenance. This continues to this date. BRL continues to reassess the viability of the mine both as standalone and as part of the wider Buller Plateau project. The current Escarpment mining permit has an expiry date in 2047, but it and other prescribed permitted areas have the ability to be renewed and extended over time.

Question Two

Please provide details of the factors considered by the Directors in determining that the Performance Payment Claims would be classified as a contingent liability in BRL's FY 23 Half Year Financial Report rather than being recognised as a provision in BRL's statement of financial position as at 31 December 2023.

BRL approached the issue of the claimed Performance Payments by reference to the accounting standard NZ IAS 37 Provisions, Contingent Liabilities and Contingent Assets. That standard addresses liabilities that are uncertain either in respect of their timing or amount. It distinguishes between:

1. a provision, which must be provided for in a company's financial results. An obligation will be classified as a provision where it is ***probable*** that an outflow of resources will occur, and that outflow can be reliably estimated; and

2. a contingent liability, which is not provided for in the financial results, but only disclosed. A contingent liability may exist where there is ***no present obligation*** which will result in an outflow of resources or else the present obligation does not meet the other criteria for a provision.

BRL management concluded that it was not probable (i.e. based on the above standard there was a likelihood of below 50%) that an outflow of resources, capable of reliable estimation, would occur in the foreseeable future with respect to the Performance Payments. As such, the prospect of that outflow occurring did not satisfy the criteria for a provision and only needed to be disclosed as a note in BRL's financial statements.

BRL's half year financial report therefore included, under the heading "Contingent liabilities", a note regarding the Performance Payment Claims by L&M. That note sets out that, in relation to the claim made in the NZSC litigation in respect of the First Performance Payment: "*the Supreme Court held that, under the terms of the Agreement for Sale and Purchase of the Shares (SPA), while the performance payment had been triggered Bathurst can defer payment of that sum (relying on clause 3.10 of the SPA) for so long as the relevant royalty payments under the associated Deed of Royalty continue to be paid even if that royalty sum is zero.*"

It also sets out that the arbitrator had declared in respect of the Second Performance Payment that a change of control had occurred but had dismissed L&M's claim on the basis that, as interpreted by the NZSC, clause 3.10 of the SPA provided a defence to the claim.

This is consistent with the approach BRL has taken to the content of its financial statements since FY21 when the previous provision in respect of the Performance Payments was removed.

Question Three

Please provide an outline of any evidence that BRL provided to its auditor in support of the classification of the Performance Payment Claims as a contingent liability in the FY 23 Half Year Financial Report rather than being recognised as a provision in BRL's statement of financial position as at 31 December 2023.

BRL's auditor was provided the court rulings which outlined that BRL could effectively defer any obligation to pay any Performance Payments (relying on clause 3.10 of the SPA) for so long as the relevant royalty payments under the associated Deed of Royalty continue to be paid, even if that royalty sum is zero.

Question Four

Does BRL consider that any agreement to pay and/or the payment of the Litigation Success Payment to BRL directors required disclosure under Listing Rule 3.16.4? If the answer to this question is "yes", please identify the announcement disclosing the Litigation Success Payment. If the answer to this question is "no", please explain the basis for this view.

BRL's response to the initial question stated above as part of "Question Four", is no.

BRL's board approved the Litigation Success Payment on 12 May 2023. At the time of such approval, BRL's directors did not consider the Litigation Success Payment to constitute a "*material variation*" to "*…the material terms of any employment, service or consultancy agreement …*" with any of its CEO or Directors and accordingly fell outside the scope of ASX Listing Rule 3.16.4. Rather, the Board viewed such payment as a one off, discretionary, payment that did not vary any of the terms of the relevant employment, service or consultancy agreements and consequently BRL was not required to disclose the making of the Litigation Success Payment under the Listing Rules. The Board maintains that view. Further given the amount and justification for the Litigation Success Payment, the Directors regard the Litigation Success Payment as information that a reasonable investor in BRL would not reasonably expect to have a material effect on the price of BRL's shares.

Accordingly, the Litigation Success Payment was disclosed in BRL's Annual Report, clearly and fully in the Remuneration Report, for the year ended 30 June 2023, released on the ASX on 30 October 2023 (please see page 55 under "Directors' Remuneration" of the Company's Annual Report, as well as Note 23 to the Financial Statements, all as disclosed on 30 October, 2023). Further, BRL considers that the Litigation Success Payment was disclosed as part of BRL's periodic disclosure obligations rather than a continuous disclosure matter and that it has complied with its disclosure obligations under the Listing Rules and the Corporations Act.

Question Five

Please confirm BRL is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.

The Company and its Directors confirm that the Company is complying with the Listing Rules, and in particular, Listing Rule 3.1.

Question Six

Please confirm that BRL's responses to the above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of BRL with delegated authority from the board to respond to ASX on disclosure matters.

This release, and the responses to the questions above have been authorised and approved by the Board of Directors.

On behalf of the Board
Yours sincerely

Larissa Brown
Company Secretary

14 May 2024

Reference: 93798

Ms Larissa Brown
Company secretary
Bathurst Resources Limited
Level 12, 1 Willeston Street
Wellington 6011

By email: larissa.brown@bathurst.co.nz

Dear Ms Brown

Bathurst Resources Limited ('BRL'): General compliance - Query

ASX refers to various BRL announcements and disclosures in financial reports regarding legal proceedings involving it and LMCHB Limited, formerly L&M Coal Holdings Limited ("L&M"), referred to in this letter as the "L&M Dispute".

Based on information disclosed by BRL regarding the L&M Dispute, ASX understands that:

A. BRL acquired Buller Coal Limited (formerly L&M Coal Limited) from L&M in November 2010.

B. The sale and purchase agreement involved a component of deferred consideration, comprising:

   1.1 a royalty on coal sold;

   1.2 a contingent performance payment of USD$40 million, payable upon 25,000 tonnes of coal being shipped from the project area ('Performance Payment 1');

   1.3 a second contingent performance payment of USD$40 million, payable upon 1 million tonnes of coal being shipped from the project area ('Performance Payment 2'); and

   1.4 a contingent issue of performance shares (representing 5% of BRL's share capital) ('Performance Shares'),

   (collectively, the 'Performance Payment Claims').

C. Where a change of control of BRL is deemed to have occurred, both USD$40 million payments are triggered.

D. BRL has the option to defer Performance Payment 1 and Performance Payment 2 by electing to submit a higher royalty on coal sold from the project areas until such time as the Performance Payments are made, and BRL has exercised this option.

ASX also refers to the following:

E. Note 7 of BRL's half year financial report for the six months ended 31 December 2023 ('FY 23 Half Year Financial Report'), which states (among other things):

   "The Supreme Court held that, under the terms of the Agreement for sale and purchase of Shares (SPA), while the performance payment had been triggered Bathurst can defer payment of that sum (relying on clause 3.10 of the SPA) for so long as the relevant royalty payments under the associated Deed of Royalty continue to be paid even if that royalty sum is zero."

F. BRL's 2023 Annual Report which, in the Remuneration Report (on page 55) discloses that BRL directors were paid, in connection with the L&M Dispute, a litigation success payment of $1,073,219 (the 'Litigation Success Payment').

G. Listing Rule 3.16.4 which states:

> "*An entity must immediately tell ASX the following information*
>
> *…..the material terms of any employment, service or consultancy agreement it or a child entity enters into with*
>
> - *Its CEO*
> - *Any of its directors; or*
> - *Any other person or entity who is a related party of its CEO or any of its directors*
>
> *and any material variation to such an agreement."*

Request for information

Having regard to the above, ASX asks BRL to respond separately to each of the following questions and requests for information:

1. Please provide details of any event(s) or circumstances that would trigger BRL's respective obligations:

   1.1 to make Performance Payment 1

   1.2 to make Performance Payment 2; and/or

   1.3 to issue the Performance Shares,

   and, if known, when such event or circumstance could potentially occur. If it is not known when the trigger events or circumstances could potentially occur, please explain why this is not known.

2. Please provide details of the factors considered by the Directors in determining that the Performance Payment Claims would be classified as a contingent liability in BRL's FY 23 Half Year Financial Report rather than being recognised as a provision in BRL's statement of financial position as at 31 December 2023.

3. Please provide an outline of any evidence that BRL provided to its auditor in support of the classification of the Performance Payment Claims as a contingent liability in the FY 23 Half Year Financial Report rather than being recognised as a provision in BRL's statement of financial position as at 31 December 2023.

4. Does BRL consider that any agreement to pay and/or the payment of the Litigation Success Payment to BRL directors required disclosure under Listing Rule 3.16.4? If the answer to this question is "yes", please identify the announcement disclosing the Litigation Success Payment. If the answer to this question is "no", please explain the basis for this view.

5. Please confirm BRL is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.

6. Please confirm that BRL's responses to the above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of BRL with delegated authority from the board to respond to ASX on disclosure matters.

When and where to send your response

This request is made under Listing Rule 18.7. Your response is required as soon as reasonably possible and, in any event, by no later than **3:00 PM AEST Friday, 17 May 2024**. You should note that if the information requested by this letter is information required to be given to ASX under Listing Rule 3.1 and it does not fall

within the exceptions mentioned in Listing Rule 3.1A, BRL's obligation is to disclose the information 'immediately'. This may require the information to be disclosed before the deadline set out in this paragraph and may require BRL to request a trading halt immediately if trading in BRL's securities is not already halted or suspended.

Your response should be sent by e-mail to **ListingsComplianceSydney@asx.com.au**. It should not be sent directly to the ASX Market Announcements Office. This is to allow us to review your response to confirm that it is in a form appropriate for release to the market, before it is published on the ASX Market Announcements Platform.

Suspension

If you are unable to respond to this letter by the time specified above, ASX will likely suspend trading in BRL's securities under Listing Rule 17.3.

Listing Rules 3.1 and 3.1A

In responding to this letter, you should have regard to BRL's obligations under Listing Rules 3.1 and 3.1A and also to Guidance Note 8 *Continuous Disclosure*: Listing Rules 3.1 – 3.1B. It should be noted that BRL's obligation to disclose information under Listing Rule 3.1 is not confined to, nor is it necessarily satisfied by, answering the questions set out in this letter.

Release of correspondence between ASX and entity

ASX reserves the right to release all or any part of this letter, your reply and any other related correspondence between us to the market under Listing Rule 18.7A.

Yours sincerely

ASX Compliance