BATHURST RESOURCES LIMITED

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8 November 2024

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

By email: ListingsComplianceSydney@asx.com.au

Your Ref: 93796

To whom it may concern,

RESPONSE TO GENERAL COMPLIANCE QUERY DATED 29 OCTOBER 2024

Bathurst Resources Ltd (ASX code: BRL) (**BRL**) refers to the ASX's letter of 29 October 2024 (**ASX Letter**) and subsequent discussions with ASX on the extension of the response date.

Unless the context requires or expressly stated otherwise in this letter:

1. defined terms used in this letter have the same meaning given to them in the ASX Letter; and
2. unless the context provides otherwise, references in this letter to paragraph numbering and lettering will be the same as used in the ASX Letter.

BRL responds as follows to the various matters raised in the ASX Letter:

ASX Background Information

3. *Paragraphs A – C (inclusive)*. Noted.

4. *Paragraph D*. To clarify, BRL's obligations to pay Performance Payment 1 and Performance Payment 2 (collectively **Performance Payments**) and issue the Performance Shares were confirmed by virtue of the Supreme Court judgment in 2021 in respect of Performance Payment 1 and the arbitration decision of 18 February 2023 (**2023 Arbitration Judgement**) in respect of Performance Payment 2 and thus the Performance Shares, both of which ASX are aware of (see, for example, ASX announcements on 14 July 2021 and 20 February 2023).

   However, the suspensory effect of clause 3.10 of the SPA[1] means that while BRL continues to pay the royalties required to be paid under the Deed of Royalty[2] (which may include zero royalties at any given

1 Agreement for Sale and Purchase of Shares in Buller Coal Limited (formerly L&M Coal Limited) (**Buller Coal**), between LMCHB Limited (formerly L&M Coal Holdings Limited) (**L&M**) and BRL (formerly Bathurst New Zealand Limited), as amended (**SPA**).

2 Deed of Royalty, between Buller Coal Limited (formerly L&M Coal Limited), LMCHB Limited (formerly L&M Coal Holdings Limited) and BRL (formerly Bathurst New Zealand Limited), as amended (**Deed of Royalty**).

time) L&M, is not able to demand the payment of the Performance Payments or the issue of the Performance Shares and simply they are not due to L&M. Our statement in BRL's response to the First Query Letter (see ASX announcement of 22 May 2024) that these amounts would become payable "*… on final cessation of BRL's mining operations within the prescribed permit areas such that there are no longer any payment obligations under the Royalty Deed*" is correct within the context of the above.

5. ***Paragraphs E – J (inclusive)***: Noted.

ASX Request for Information

6. ***Paragraph 1***: No. BRL considers the comments made by the arbitrator in the 2023 Arbitration Judgment (**Arbitrator**) and quoted by the High Court to be obiter dicta. The substantive result of the 2023 Arbitration decision was to dismiss L&M's claim to payment of Performance Payment 2 and the issue of the Performance Shares on the basis of the suspensory effect of clause 3.10 of the SPA. While there can be speculation as to what might, or might not, cause that suspensory effect to be overridden, BRL is of the view that any such circumstances, with the sole exception of the complete cessation of mining operations by BRL within the permit areas such that there are no longer any payment obligations under the Deed of Royalty, remote and speculative.

7. ***Paragraph 2***: BRL notes that ASX asks a series of questions that go into the detail of the Permits held by BRL with the Permit Areas. BRL is not sure of the relevance of these questions as it understands that ASX's interest to be in the suspensory effect of clause 3.10 of the SPA and how that impacts on the possibility of BRL becoming obliged to pay the Performance Payments and issue the Performance Shares. As noted above, provided that the relevant royalties are paid in accordance with the requirements of the Deed of Royalty, as determined by the Supreme Court of New Zealand (see the quoted text at the bottom of page 1 and top of page 2, in Paragraph C of the ASX Letter), BRL has no obligation to pay the Performance Payments or issue any Performance Shares. The Deed of Royalty requires royalties to be paid on all coal mined within the Permit Areas (as those areas are defined in both the SPA and the Deed of Royalty).

   Turning then to your detailed questions BRL responds as follows:

   Paragraph 2.1: The "prescribed permit areas" under the SPA are the "*coal exploration permits EP 40628 and EP 51078 (including the Applications), each issued or, in the case of an Application, to be considered, under the Crown Minerals Act 1991, copies of each of which are set out in Appendix 1 of the SPA, and includes any substitute, replacement or amended permit and also any mining permit issued wholly or partly from either of the coal exploration permits*"[3] [Emphasis added by the author].

   Paragraph 2.2: Since the SPA was entered into there have been a number of changes to the original permits including part or full surrenders, applications for subsequent "*substitute or replacement*" permits, extensions of land and replacement permits sought and granted. Permit information is publicly available online at New Zealand Petroleum and Minerals - Home.

   As ASX will be aware, a mining company will undertake exploration, and if successful, will typically refine the area of any prospective mine, based on the results of those exploration activities, and will apply for a mining permit over the more prospective areas whilst relinquishing the balance of the land under the original exploration permit(s). Under the Crown Minerals Act 1991 (NZ) (**NZ Act**) there is an expectation that at least 50% of the land the subject of an exploration permit will be relinquished on application for a

3 Clause 1.1, of the SPA - "Permits" and "Permit Areas".

subsequent mining permit. If exploration is unsuccessful, then an exploration permit is likely to be surrendered. New exploration permits will be sought as considered viable.

BRL has since acquisition of the permits, been undertaking a process of drilling and assessing the results of that drilling to identify areas where BRL considers economic extraction of coal might take place. To date, the only mining permit issued in respect of the permit areas is MP 51279 (known as the **Escarpment Mine**). The current expiry date of MP 51279 is 23 June 2047.

BRL is entitled to deal with the permits in the ordinary course of business which includes surrender of permits and applications for replacement or new permits within the permit areas. There is no requirement on BRL under the terms of the SPA to have to mine uneconomic areas.

While the terms of the Deed of Royalty are complied with, BRL's dealing with the permits within the permit areas are all in the ordinary course of business of BRL and accordingly does not constitute any breach of the provisions of the Royalty Deed or otherwise affect the obligations of BRL to pay the Performance Payments and/or issue any Performance Shares.

In summary, the ability for royalty payments to fall due, and thus the ongoing suspensory effect of clause 3.10 of the SPA to remain, extends beyond just the maintenance of the two exploration permits that were specifically mentioned in the SPA and a total and final cessation of any/all mining activity in the permit areas is in the BRL directors' view, a very remote prospect.

Paragraph 2.3: The grounds on which any permit may revoked are set out in the NZ Act, which is publicly available online at: Crown Minerals Act 1991 No 70 (as at 01 April 2024), Public Act Contents – New Zealand Legislation. By way of summary, the responsible Minister may revoke a permit as a result of a failure to comply with the terms of the permit or for a purported transfer of the permit without the Minister's consent. There is a process to be followed which gives a permit holder the opportunity to remedy the breach. The ASX is also asked to note that the permit holder has the rights of judicial review/appeal in such circumstances.

A permit holder may also surrender a permit upon application to New Zealand Petroleum and Minerals.

Paragraph 2.4: BRL notes that MP 51279 was recently extended and expires 23 June 2047. In addition, ASX's attention is drawn to the above response to Paragraph 2.2 of the ASX Letter as to how the permits may be dealt with. The permit terms are available at New Zealand Petroleum and Minerals - Home.

Clause 2.5:. The ASX is referred to BRL's response in paragraph 6 above, as well as the last paragraph under the sub-heading of *Paragraph 2.2* above. If the ASX is asking BRL to speculate on the legal effect of the simultaneous "cancellation, revocation or expiry" of all permits it holds within the permit areas, then the BRL directors decline to engage in such speculation, as they consider that such a hypothetical proposition is so unlikely and remote to be sensibly and publicly speculated upon.

8. ***Paragraph 3***: BRL first received the Arbitrator's decision (which included a determination that a "*change of control*" had occurred, as referred to in this Paragraph 3 of the ASX Letter), on Saturday, 18 February 2023, and disclosed the substance of that determination on Monday, 20 February 2023. Prior to receiving the Arbitrator's decision, the directors of BRL considered that there had been no change in control. The Arbitrator nevertheless deemed a change in control retrospectively. As soon as BRL did become aware of such determination, it disclosed the details of that determination to the public, irrespective of whether or not it was of the view that the occurrence of such a "*change of control*" was information that a reasonable person would expect to have a material effect on the price or value of BRL securities.

9. *Paragraph 4*: BRL directors considered, at the time of receiving the Arbitral Costs Decision, that decision did not to constitute information that a reasonable person would expect to have a material effect on the price or value of BRL securities because:

   (a) there was no change to the respective positions of the parties to the case – the status quo prevailed;

   (b) there was no material change to BRL's financial position - the financial effect was to leave BRL with the various costs, expenses and fees that it had already incurred and paid as expenses in the course of the L&M Dispute; and

   (c) in addition to having already been paid and accounted for in published financial accounts of BRL over the course of the L&M Dispute, the total of these costs was less than 2% of BRL's net asset value (being approximately NZD$319m in May 2024).

10. *Paragraph 5*: The May 2024 Judgment concerned an appeal by BRL against the Arbitrator's costs award on public policy grounds. The appeal was declined and, as such, the parties' costs remained where they fell. This was the sole question that the New Zealand High Court determined in the May 2024 Judgment. Further, BRL advises that no specific disclosure of the May 2024 Judgment was made because:

   (a) for the reasons stated in Paragraph 4, the Arbitral Costs Decision was considered not to be information that a reasonable person would expect to have a material effect on the price or value of BRL securities;

   (b) the incidental, obiter dicta, statements of his honour in the May 2024 Judgment concerning the change of control had already been sufficiently disclosed by BRL in its announcement of 20 February 2023; and

   (c) all New Zealand High Court judgments are available online and BRL has previously encouraged ASX and any other interested person to read such judgements - for example, see the ASX announcement of 17 May 2024.

11. *Paragraph 6*: The directors of BRL consider that the decision of the New Zealand High Court in the Guarantee Proceedings was plainly correct and that it is inappropriate to speculate on the hypothetical implications of the outcome of the appeal of that decision, that is still before the New Zealand Court of Appeal (NZCA). The directors of BRL note that the implications of the outcome of that appeal (whether it is determined in favour of BRL or L&M) will depend on precise terms of any judgment and if in favour of L&M, what remedy is granted by the Court.

12. *Paragraph 7*: BRL confirms that it is in compliance with the Listing Rules, and in particular, Listing Rule 3.1.

13. *Paragraph 8*: BRL confirms that BRL's responses to the questions posed in Paragraphs 1 – 6 (inclusive) of the ASX Letter have been authorised and approved in accordance with BRL's published continuous disclosure policy or otherwise by the Board of Directors of BRL or an officer of BRL with delegated authority from the Board to respond to ASX on disclosure matters.

On behalf of the Board
Yours sincerely

Larissa Brown
Company Secretary

29 October 2024

Reference: 93796

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

By email

Dear Ms Brown

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

ASX refers to the following:

A. ASX's query letter dated 14 May 2024 ('Initial Query Letter') and BRL's response to the Initial Query Letter dated 17 May 2024, published together in the announcement titled "Response to ASX Letter" released on the ASX Market Announcements Platform ('MAP') on 22 May 2024.

B. Various BRL announcements and disclosures in financial reports regarding long running legal proceedings involving BRL and LMCHB Limited, formerly L&M Coal Holdings Limited ('L&M'), referred to in this letter and the Initial Query Letter as the "L&M Dispute".

C. BRL's financial report for the year ended 30 June 2024 released on MAP on 26 August 2024 ('FY 24 Financial Report'), which included (relevantly) the following statements:

- In Note 15(c) Financial liabilities:

  *"**Buller Coal project***

  Bathurst acquired Buller Coal Limited (formerly L&M Coal Limited ("Buller Coal" from L&M Coal Holdings Limited ("L&M") in November 2010. The agreement for sale and purchase ("ASP"), which primarily concerned the purchase of the Escarpment mine through the acquisition of Buller Coal, contained an element of deferred consideration. The deferred consideration comprised royalties on coal sold, two contingent "performance payments" of USD $40m each, and the contingent issue of performance shares. The first performance payment is prima facie payable upon 25,000 tonnes of coal being shipped from the Buller Coal project area or where a change in control of Bathurst is deemed to have occurred both payments are triggered.

  Bathurst has the option to defer cash payment of the performance payments and elect to submit a higher royalty on coal sold from the respective permit areas until such time as the performance payments are made. The option to pay a higher royalty rate has been assumed in the valuation in the valuation and recognition of deferred consideration.

  Bathurst has and will continue to remit royalty payments to L&M on all Escarpment coal sold as required by the Royalty Deed and this includes ongoing sales from stockpiles. Further information is included in note 23."

- In Note 23 Contingent liabilities:

  Performance Payment Claims by LMCHB Limited

  …"*The Supreme Court* [of New Zealand] *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…

…On 18 February 2023, Bathurst successfully defended a claim by L&M in an arbitration proceeding that a change of control had occurred and that the second performance payment of USD $40 million and performance shares (being 5% of Bathurst's post issue share capital) due under the SPA plus interests and costs, were payable. While the arbitrator declared that a change in control had occurred under the terms of the SPA, he dismissed the claim on the basis that, as interpreted by the Supreme Court, clause 3.10 of the SPA provides a defence to the claim. Neither party has appealed against this award."

D. ASX's understanding, based on BRL's response to question 1 of the Initial Query Letter, that BRL's obligations to make the following contingent payments to L&M (collectively, the 'Performance Payment Claims'):

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

1.2 a second contingent performance payment of USD$40 million ('Performance Payment 2'); and

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

would be triggered by 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*…" (as stated in BRL's response to the First Query Letter).

E. The below statement included in BRL's response to question 1 of the Initial Query Letter:

"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."

F. The announcement titled "Arbitrator dismisses LMCH claim for payment under Buller Agreement for Sale and Purchase" released on MAP on 20 February 2023, which stated (among other things):

"*…that, on Saturday 18 February, 2023 the Appointed Arbitrator released his decision, finding that Bathurst is not required to make performance payments and issue Bathurst shares to L&M under the SPA*"; and

"*…While the Arbitrator declared that a Change in Control had occurred under the SPA, he also found that LMCH's claim to performance payments and shares under the SPA, is dismissed on the ground that, as interpreted by the Supreme Court, clause 3.10 of SPA provides a defence to that claim*."

G. The judgment of the New Zealand High Court in the case of *Bathurst Resources Limited v LMCHB Limited* [2024] NZHC 1058 handed down on 3 May 2024[1] (the 'May 2024 Judgment'), in which the Court (relevantly, among other things):

1.1 referred to an arbitration decision dated 16 June 2023 ('Arbitral Costs Decision') where the "*arbitrator determined that the parties had broadly similar success in the arbitration and therefore the parties' costs, totalling approximately $9 million, should lie where they fall*"[2] (the 'Costs Award'); and

1.2 dismissed an application by BRL to set aside the Costs Award.

H. The below extract from the Arbitral Costs Decision included in the May 2024 Judgment[3]:

[1] http://www.nzlii.org/nz/cases/NZHC/2024/1058.html
[2] *Bathurst Resources Limited v LMCHB Limited* [2024] NZHC 1058 at [1]
[3] Ibid at [12].

"*Whether LMCH has an equally powerful claim turns out whether the declaration that there has been a change in the control of BRL is of practical value. I concluded that it does have practical value for two reasons:*

(a) The relevant permits may come to an end before the second volume threshold is reached. LMCH has a strong case that if this occurs (i) it would abrogate cl 3.10 of the Agreement and (ii) the declaration would elevate the required payment from US$40 million to US$80 million.

(b) Royalty arrears sufficient to abrogate cl 3.1 could also occur with the same result although this is less likely."

I. The information provided in BRL's response to the Initial Query Letter that the L&M Dispute continues to remain before the New Zealand Courts, with the last material hearing having occurred in May 2024 before the New Zealand Court of Appeal ('Guarantee Proceedings') and judgment in those proceedings expected by the end of 2024.

J. ASX's understanding that the Guarantee Proceedings are ongoing proceedings in relation to L&M's asserted entitlement to enforce a guarantee given by Buller Coal Ltd (a subsidiary of BRL) under a Deed of Guarantee and Security for payment of Performance Payment 1 ('Deed of Guarantee').

Capitalised terms used but not defined in this letter have the same meaning given to those terms in the Initial Query Letter.

Request for information

Having considered the information provided in BRL's response to the First Query Letter, ASX asks BRL to respond separately to each of the following questions and requests for information:

1. Having regard to the comments made by the arbitrator, Hon Robert Fisher KC (the 'Arbitrator'), in the Arbitral Costs Decision (as extracted in the May 2024 Judgment) (paragraph H above), does BRL consider that there are any circumstances other than those referred to in BRL's response to question 1 of the Initial Query Letter (paragraph D above) that would be likely to trigger BRL's obligations to make Performance Payment 1, make Performance Payment 2 and or/ issue the Performance Shares to L&M? If so, please provide details of these circumstances.

2. Please provide details of each of the following:

   2.1 the "prescribed permit areas" referred to in BRL's response to question 1 of the Initial Query Letter (paragraph D above);

   2.2 the current expiry or renewal date for the permits for each of the prescribed permit areas;

   2.3 any event or circumstance (for example, non-compliance with a permit condition) which may give rise to the cancellation or revocation of an existing permit for a prescribed permit area held by BRL;

   2.4 the actions required to be taken by BRL to renew or extend, as the case may be, the mining permits for the prescribed permit areas; and

   2.5 the effect, if any, that the cancellation, revocation or expiry of one or more permits would have on BRL's obligations to make Performance Payment 1, to make Performance Payment 2 and/or to issue the Performance Shares to L&M?

3. Noting that the Arbitrator accepted L&M's claim that a change in control had occurred (paragraph F) and granted a declaration that "*for the purposes of the proviso to cl 3.4 of the ASP, a change in control of the*

nominated subsidiary, BNZ, occurred on 24 November 2015"[4], does BRL consider that information concerning changes in the control or ownership of BRL and/or its subsidiary Bathurst New Zealand Limited ('BNZL') on or around 24 November 2015 constituted information that a reasonable person would expect to have a material effect on the price or value of its securities? If the answer is "no", please advise the basis for that view. If the answer is "yes":

3.1 Did BRL make any announcement upon first becoming aware of the relevant change in control or ownership of BRL or BNZL (as the case may be) which disclosed the information?

3.2 If the answer to item 3.1 is no, please explain why the information was not released to the market, commenting specifically on when you believe BRL was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps BRL took to ensure that the information was released promptly and without delay.

4. Does BRL consider the decision in the Arbitral Costs Decision (paragraph G), or any part thereof, to be information that a reasonable person would expect to have a material effect on the price or value of its securities? If the answer is "no", please advise the basis for that view. If the answer is "yes":

4.1 Did BRL make any announcement upon first becoming aware of the Arbitral Costs Decision which disclosed the information?

4.2 If the answer to item 4.1 is no, please explain why the information was not released to the market, commenting specifically on when you believe BRL was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps BRL took to ensure that the information was released promptly and without delay.

5. Does BRL consider the decision in the May 2024 Judgment, or any part thereof, to be information that a reasonable person would expect to have a material effect on the price or value of its securities? If the answer is "no", please advise the basis for that view. If the answer is "yes":

5.1 Did BRL make any announcement upon first becoming aware of the May 2024 Judgment which disclosed the information?

5.2 If the answer to item 5.1 is no, please explain why the information was not released to the market, commenting specifically on when you believe BRL was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps BRL took to ensure that the information was released promptly and without delay.

6. If the appeal in the Guarantee Proceedings (paragraph I) is decided in favour of L&M, please provide details of the potential implications for BRL (whether directly or via its subsidiary Buller Coal Ltd)?

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

8. Please confirm that BRL's responses to the questions 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 **12:00 PMAEDT Monday, 4 November 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

[4] Ibid at [9]

deadline set out above 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

We reserve 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. The usual course is for the correspondence to be released to the market.

Yours sincerely

ASX Compliance