

4 May 2020

L&M initiates action for second Performance Payment

Bathurst Resources Limited (“Bathurst”) advises that it has been given notice by L&M Coal Holdings Limited (“L&M”) that L&M intends to pursue further legal action under the terms of the parties’ Agreement for Sale and Purchase of Shares dated 10 June 2010.

In line with Bathurst’s market announcement of 11 March 2016, the Escarpment Mine was placed in care and maintenance in May 2016. No further coal has been mined and sold from the mine since then. L&M’s notice does not assert that further mining has occurred, such as to trigger the second “Performance Payment” on the grounds of tonnages of coal shipped. Rather, L&M asserts that its entitlement to the second performance payment arises because there has been a “Change in Control” in Bathurst, arising from an aggregation of current and historical major shareholders acting together as undisclosed associates, which is the equivalent to a third party acquiring more than 50 percent of Bathurst’s shares. It is alleged that these associates have controlled the composition of the Board, appointment of management, and direction of the company. The Board and its legal advisors have reviewed the current and historical ownership levels of shareholders, considered the allegations of association, and is confident that the alleged ties between these parties is baseless.

Bathurst is disappointed by this notice from L&M. It is common ground that no third party has actually acquired more than 50 percent of Bathurst’s shares. Nonetheless L&M is maintaining its claim on the alleged basis that an ‘effective change in control’ has occurred. Bathurst also notes that L&M’s arguments over alleged ‘effective change in control’ were raised during earlier litigation concerning the first “Performance Payment” and were rejected by the Courts in that context.

Bathurst firmly believes that there is no proper basis to assert that a Change in Control has occurred, and that the proposed proceedings by L&M are groundless and vexatious. Accordingly, it has rejected L&M’s opportunistic claim for the second performance payment of US\$40 million and to be issued with “Performance Shares” (being 5 percent of the current share capital in Bathurst).

Bathurst has taken detailed legal advice on the issue and is preparing to litigate to defend its position.

Authorised for release on behalf of the board of directors of Bathurst.



Richard Tacon, CEO