

Calgary

May 29, 2020

Martin Ignasiak  
Direct Dial: 403.260.7007  
MIgnasiak@osler.com  
Our Matter Number: 1127263

Toronto

Montréal

**Sent By Electronic Mail**

Ottawa

Impact Assessment Agency of Canada  
Prairie and Northern Region  
Canada Place  
Suite 1145, 9700 Jasper Avenue  
Edmonton, AB T5J 4C3

Vancouver

New York

Attention: Shelly Boss  
Project Manager

Dear Ms. Boss:

**Re: *Impact Assessment Act* (“IAA”)  
Requests for Designation of May 1, 2020**

We are counsel to Coalspur Mines (Operations) Ltd. (“**Coalspur**”) in connection with this matter. Mr. Gregg of Coalspur has provided us with your letter dated May 14, 2020, regarding two requests received by the Minister of Environment Canada and Climate Change (the “**Minister**”) on May 1, 2020, for designation of the proposed Vista Test Underground Mine Project (the “**Underground Test**”) and the proposed Vista Coal Mine Phase II Expansion Project (“**Phase II**”). This letter and its attachments constitute Coalspur’s response to the designation requests. In order to assist you with your evaluation of the designation requests, please find attached as Appendix “A” a figure showing the existing Phase I, Phase II, and the Underground Test.

For the reasons contained herein, we submit that the designation requests should be denied for the same reasons that the Minister, on December 20, 2019, denied a previous designation request regarding Phase II.<sup>1</sup> First, even if the Underground Test and Phase II are considered together as one project, which they should not be, they do not result in an increase in the area of mining operations of 50% or more compared with Phase I. Second, the requests for designation do not raise any new issues that warrant the Minister revisiting his decision of December 20, 2019, wherein he chose not to designate Phase II for assessment.

---

<sup>1</sup> [Minister's Response dated December 20, 2019.](#)

## **Information Request 1**

The first request in your letter is as follows:

Confirm if the information previously provided to the Agency regarding Vista Phase I and Phase II projects on May 30, 2019, August 9, 2019 and September 10, 2019 is still current. If there have been any changes to plans and information, please provide updated details, including whether the increase in production capacity due the Vista Test Underground Mine results in any changes to components of Phase I or Phase II.

Coalspur confirms that the information presented to the Impact Assessment Agency (and its predecessor) (the “**Agency**”) on May 30, 2019, August 9, 2019, and September 10, 2019, remains current as it pertains to Phase I and Phase II. The Underground Test will not impact Phase II in any way as it is entirely contained within the boundaries of the existing Phase I Vista Project Mine Permit C 2011-5D. The underground entries and surface support infrastructure associated with the Underground Test will be developed within the existing Pit Licence C 2014-5B. The underground entry area will be created as the surface mine advances through the approved Val d’Or surface mining pit and therefore will not create any new disturbance area. The increase in production capacity due to the Underground Test will not result in any changes to components of Phase I or Phase II. The Underground Test is not connected, or associated, or incidental with Phase II.

## **Information Request 2**

The second request in your letter is as follows:

Confirm if the information submitted to the Alberta Energy Regulator regarding the Vista Test Underground Mine (available online at [https://dds.aer.ca/iar\\_query/ApplicationAttachments.aspx?AppNumber=1927365](https://dds.aer.ca/iar_query/ApplicationAttachments.aspx?AppNumber=1927365)) is the most current and accurate information on this project, including with respect to the potential environmental effects, or provide the most current information.

The information submitted to the AER in the Underground Test Application is the most current and accurate information as it pertains to the Underground Test. The Underground Test Application states as follows:<sup>2</sup>

These planned changes are not expected to increase the environmental impacts of the Vista Project above those presented and assessed in the [Phase I] EIA. Changes to the Vista Project as a result of the [Underground Test] will not introduce any new substances of concern or alter the nature of release or magnitude of any environmental impact due

---

<sup>2</sup> Vista Test Underground Mine Application at page 109.

to the small size of the Test Underground Mine itself and the relative minor changes proposed when considering the components which were found to have no significant environmental impacts from previous iterations of the Vista Project.

Table 1-1 of the Underground Test Application submitted to the Alberta Energy Regulator (“AER”) provides a footprint comparison of Phase I without the Underground Test and with the Underground Test. According to this Table, the total additional footprint disturbance resulting from the Underground Test is 2.52 Ha. However, for the reasons provided in response to Information Request 3, below, this additional 2.52 Ha should not be included in the calculation of “area of mine operations”.

### **Information Request 3**

The third request in your letter is as follows:

Confirm if the information in Table 1-1 of the application for the Vista Test Underground Mine (linked above) is current and accurate or provide the most current information.

- a. Confirm if the additional 2.85 ha of haulroads and access roads attributed to the Vista Test Underground Mine includes only roads used to bring raw coal to the plant (or run of mine conveyor) from the pit, and truck turn around areas. Please provide an updated estimate for haulroads and access roads associated with the Vista Test Underground Mine that meets the above description if required.

Table 1-1 of the Underground Test Application submitted to the AER provides a comparison of Underground Test footprint compared with Phase I’s anticipated footprint at the time the North Dump Amendment was approved. In order to respond to your request, we attach as Appendix “B” to this letter “Figure 1.7” which shows the additional 2.85 Ha of access roads associated with the Underground Test (“Haulroad and Access Roads” shown with a thick purple line). This is overlaid on a photo of the site taken on April 29, 2020. It should be noted that this additional 2.85 Ha referred to in Table 1-1 of the Underground Test Application is: first, on lands already disturbed as part of Phase I; and two, will primarily serve as an access road for Coalspur’s operations group to enter the mining area for Phase 1. Therefore, this 2.85 Ha does not constitute additional “area of mining operations” because it is not intended for bringing coal to the plant from the pit and in any event, is on an already disturbed footprint.

### **Information Request 4**

The fourth request in your letter is as follows:

Provide a list of all regulatory approvals (federal, provincial, municipal, other) and any federal financial assistance that would be required for the Vista Test Underground Mine and the associated project components or activities.

The Underground Test does not require any federal or municipal approvals. In addition, the Underground Test will not receive any federal assistance. Only one new provincial mine licence and several amendments to existing provincial approvals are required. These are detailed in section 7 of the Underground Test Application filed with the AER and can be summarized as follows:

- Pursuant to the Alberta *Coal Conservation Act*, a new mine licence is required for the Underground Test construction, methodologies, and operations.
- Pursuant to the Alberta *Coal Conservation Act*, an amendment to Mine Permit C 2011-5D is required for increases to raw coal production, revised mine sequencing to reduce the overall mine life from 14 years to 13 years, and revisions to the reclamation of the site.
- Pursuant to the Alberta *Coal Conservation Act*, an amendment to Mine Permit C 2011-3D is required to allow for the additional material that will be deposited to the North Dump. The additional material will not alter the current footprint of the North Dump as there is sufficient room to accommodate the extra material while staying within the confines of the previously approved footprint.
- Pursuant to the Alberta *Coal Conservation Act*, an amendment to Mine Licence C 2014-5 is required to accommodate changes to the surface area, sequencing and regrade configuration of the already approved mine.
- Pursuant to the Alberta *Coal Conservation Act*, an amendment to Mine Permit C 2014-7C is required to allow for the additional material that will be deposited to the North Dump. The additional material will not alter the current footprint of the North Dump as there is sufficient room to accommodate the extra material while staying within the confines of the previously approved footprint.
- Pursuant to the Alberta *Environmental Protection and Enhancement Act*, EPEA Approval 301345-00 will need to be amended to allow for the Underground Test and to reflect changes in reclamation plans.
- Pursuant to the Alberta *Water Act*, Approval 00311969-00-02 and Licence 00311969-00-00 must be amended to allow for water management, groundwater diversion and surface water diversion.

Coalspur is not seeking any amendments to its Alberta *Public Lands Act* Mineral Surface Lease (MSL130948) because the Underground Test is entirely within the existing boundary and does not disturb any additional area. Due to the magnitude of safety requirements for an underground mine, an application to Occupational Health and Safety of Alberta is being made.

### **Information Request 5**

The fifth request in your letter is as follows:

Provide any relevant updated information on steps taken or planned, to engage with the public and/or Indigenous groups.

As set out in Coalspur's correspondence to the Agency dated September 10, 2019, Coalspur has been actively engaging with numerous First Nation communities. The communities Coalspur has been and continues to consult and engage with are: Erminskin Cree Nation, including their remote community of Mountain Cree, Whitefish Lake First Nation, O'Chiese First Nation and the Aseniwuche Winewak Nation. Coalspur has a pre-existing relationship with Alexis Nakota Sioux Nation, ("ANSN"). ANSN is completing a two year traditional land use ("TLU") study specific to Phase II. Since March 2018, Coalspur has hosted or attended 35 separate community specific meetings. Of these First Nation communities that Coalspur has historically consulted with, none have objected to the AER regarding the Underground Test Application.

Coalspur has not been directed to consult with the Stoney Nakoda Nation ("SNN"). However, Alberta's Aboriginal Consultation Office ("ACO") recently advised Coalspur that it will be required to consult with Louis Bull Tribe ("LBT") regarding Phase II. SNN and LBT have filed letters of objection with the AER. Neither the LBT nor the SNN have historically raised concerns with Coalspur regarding Phase I. The LBT's reserve lands are located approximately 300 kilometers from Phase I and the Underground Test. The SNN are located within Treaty 6 territory whereas the Project is located within Treaty 7 territory. In any event, Coalspur has responded to the LBT's and SNN's objections and has committed to discussing the Underground Test and Phase II with them further if they raise any issues specific to Coalspur's activities. Pursuant to ACO's direction, Coalspur will be engaging with LBT regarding Phase II.

Alberta determined no consultation with Indigenous groups was required in connection with the Underground Test.<sup>3</sup> This finding is entirely consistent with the fact that the Underground Test will not impact any Indigenous group's traditional activities because its

---

<sup>3</sup> ACO FNC202000193 pre-consultation assessment completed 2020 01 09. Assessment decision "No Consultation Required".

footprint is located entirely within the boundaries of the existing Phase I Vista Project Mine Permit (C 2011-5D).

## **Information Request 6**

The sixth request in your letter is as follows:

Provide any other comments in relation to environmental effects or impacts to the public or Indigenous peoples and how you intend to address and manage those.

The Underground Test will not impact the public or any Indigenous group's traditional activities because its footprint is located entirely within the boundaries of the of existing Phase I Vista Project Mine Permit (C 2011-5D). The fact is that an interested observer standing at the fence-line of the existing Phase I would likely be unable to observe any changes as a result of the Underground Test unless he or she had previous experience or expertise with underground mining infrastructure.

Coalspur will be making necessary amendments to its Life of Mine Water Management Plan, Groundwater Management Plan and Source Water Supply Plan to minimize any impacts from the Underground Test. The plan will also provide for the decommissioning of the Underground Test if conditions are found to not be favorable. In addition, as set out in Coalspur's Underground Test Application filed with the AER, Coalspur will revise its reclamation plan to allow for the creation and operation of the underground mine entry area while surface mining and reclamation activities advance away from the test underground mine.

## **Information Request 7**

The seventh request in your letter is as follows:

Explain your views on whether the Project should be designated under IAA.

We submit that for the following reasons there is no credible basis on which to designate Phase II, the Underground Test or both as being subject to assessment under the IAA.

## **Combining the Projects**

As a preliminary matter, we note that your letter states the following [emphasis added]:

The Impact Assessment Agency of Canada (the Agency) is assessing the applicability of the IAA to the Test Underground Mine and Phase II Projects if considered together (hereafter referred to as the Coalspur Vista Coal Mine Expansion Phases Project).

In our view, when determining whether a designation under the IAA is warranted for the Underground Test and Phase II, there is no legal or policy justification for having them “considered together”. The Underground Test may proceed independently of Phase II. Phase II may also proceed independently of the Underground Test. Phase II is a full commercial scale development on currently undisturbed lands. The Underground Test is in a different location, entirely on an existing mine footprint, and is “an exploratory underground mine which will test various safety and production methods to determine the feasibility of developing additional underground coal mines within the areas Coalspur has leased.”<sup>4</sup> A decision by Coalspur whether to proceed with the Underground Test is completely independent of a decision whether to proceed with Phase II since the two projects are not connected. They are not connected in any way. The only similarity between the Underground Test and Phase II is that they both make use of existing infrastructure that has been developed as part of Phase I.

In addition, the Underground Test and Phase II are being carried out on completely different timelines. The history of the Underground Test is as follows:

- Original Underground Test Application submitted to the AER on April 17, 2019;
- Pre-Application meeting with AER regarding the Underground Test Application on July 3, 2019;
- Coalspur received a list of deficiencies from the AER on the Underground Test Application on August 28, 2019;
- Coalspur resubmitted the Underground Test Application on Feb 5, 2020;
- The Underground Test Application was registered by the AER on Feb 21, 2020;
- Public Notice of Application was issued by the AER on February 28, 2020.

Coalspur expects that the Underground Test, given its location entirely within an existing approved and already disturbed mine area, will be approved within months and construction will begin in 2020. In contrast, Coalspur will not be filing an application for Phase II until late 2020. The provincial regulatory requirements in connection with each are very different. Phase II requires that Coalspur file with the AER a robust environmental impact assessment report, the highest level of regulatory review in Alberta. This is not required for the Underground Test, again because it is entirely located within an existing mine footprint. A decision to designate the Underground Test, and combine it with the

---

<sup>4</sup> Underground Test Application to AER at PDF 6.

review of Phase II, would unnecessarily delay the Underground Test by several years. There is no justification for doing so.

The IAA *Guide to Preparing an Initial Project Description*<sup>5</sup> details the requirements for an initial project description and indicates that “all activities, infrastructure, permanent or temporary structures and physical works to be included in and associated with the construction, operation and decommissioning of the project” should be considered part of the project, including “existing structures or related activities that will form part of or are required to accommodate or support the designated project”. The Underground Test, if approved and sanctioned by Coalspur, will be built at a different time than Phase II. Its operation and decommissioning are totally separate from Phase II. The Underground Test and Phase II are in no way required to “accommodate or support each other”.

The Courts have held that if two projects could be considered “connected actions” they should generally be assessed together. This “connected actions” test provides that two projects are connected when (1) one project is automatically triggered by another; (2) one project cannot proceed without the other; or (3) both are part of a larger whole and have no independent utility if considered separately.<sup>6</sup> This sound legal principle has not only been applied with respect to the *Canadian Environmental Assessment Act* but also to other environmental assessment regimes.<sup>7</sup> The Underground Test and Phase II satisfy none of these requirements. It is therefore an error to assume that for the purposes of the IAA they should be considered together.

In addition, treating the Underground Test and Phase II together for the purposes of determining whether to designate these projects under the IAA creates absurd policy implications. Doing so would mean that in the future proponents would be encouraged to delay disclosing potential projects to avoid complicating federal regulatory processes, even though the two projects are not connected to each other. This could prevent a proponent from engaging in *early* and meaningful consultation with Indigenous groups. This would also unnecessarily delay the economic benefits that projects create for Indigenous communities and the public with no corresponding environmental benefit.

---

<sup>5</sup> [https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/guide-preparing-project-description-detailed-project-description.html#\\_Toc17794707](https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/guide-preparing-project-description-detailed-project-description.html#_Toc17794707)

<sup>6</sup> *Conseil des Innus de Ekuanitshit v. Canada*, 2013 FC 418 at para. 57, aff’d 2014 FCA 189, leave to appeal refused, 2015 CanLII 10578 (SCC)

<sup>7</sup> *Salmonid Association of Eastern Newfoundland v. Her Majesty the Queen in Right of Newfoundland and Labrador*, 2020 NLSC 34 at paras. 84-86; citing *Atlantic Salmon Federation (Canada) v. Newfoundland*, 2017 CanLII 46863 (NLSC), aff’d 2018 NLCA 53



In the present case, it is evident that the timing of the Underground Test and Phase II, including a decision by Coalspur on whether to sanction the projects, are proceeding on entirely different schedules. There is no policy justification to delay the Underground Test, when it clearly is not subject to the IAA, simply because Coalspur is also in the early stages of planning Phase II, engaging with Indigenous communities, and preparing an environmental impact assessment report.

Therefore, we submit that the Underground Test and Phase II should not be considered together when determining whether to designate either of the projects under the IAA. The Underground Test, considering its footprint is entirely within an existing mine footprint, is clearly not subject to the IAA. As it pertains to Phase II, the Minister has already exercised his discretion and determined that Phase II should not be a designated project.

#### The Minister Made a Designation Decision on Phase II

The Minister previously determined in December of 2019 that Phase II was a non-designated project under the IAA. The *Operational Guide: Designating a Project under the Impact Assessment Act* notes that in developing a recommendation for the Minister as to whether a project should be designated under the IAA, the Agency may take into account whether or not “a response to a prior request to designate the project has been rendered”. In this case, the Agency should take into account the previous decision by the Minister not to designate Phase II. This is particularly true in this case when one of the requests for designation is by the same parties that made the previous request for designation. As a matter of policy, great caution should be exercised before reversing a previous designation decision. Otherwise, proponents will have no regulatory certainty.

In addition, we note that the parties requesting the designation have not raised any new issues with respect to Phase II specifically. In *Syncrude Canada Ltd. v. Canada (Attorney General)*, 2014 FC 776, the Minister of the Environment decided not to convene a board of review to inquire into the danger posed by the substance in question, as requested by the applicant under the *Canadian Environmental Protection Act, 1999*. The Court found that this decision was reasonable for the following reasons:

There is evidence in the record that shows that the issues raised by Syncrude had already been considered at earlier stages in the regulation making process. The onus was on Syncrude to raise new issues that had never before been considered. The Minister has no obligation to reconsider issues that have already been addressed.

Physical Activities Regulations

The Underground Test and Phase II should not be considered together for the purposes of determining whether they are designated projects pursuant to the *Physical Activities Regulations* (the “**Regulations**”). However, even if they are considered together as one project (the “**Combined Project**”), the Combined Project does not meet the thresholds in the Regulations.

As it pertains to Phase II, the information submitted by Coalspur to the Agency in 2019 stated that the increase in mining area because of Phase II was 44.1%. There can be some debate on precisely how to calculate the “area of mining operations” pursuant to the Regulations. The Agency acknowledged this when it presented a range in its Analysis Report of December 2019.<sup>8</sup>

Using proponent information, the Agency calculated that the Project would result in an increase in the area of mining operations between 42.7 to 49.4 percent, depending on how future anticipated changes to the Phase I footprint are considered in calculations, and a total clean coal production capacity of 36 723 tonnes per day after the expansion; therefore, the Project does not meet the thresholds in the Regulations.

Coalspur has now been able to review your email dated March 30, 2020, to Mr. Thomson. In that email you clarify that this range was calculated “based on a Phase I area ranging from 1319.6 ha to 1381.5 ha and Phase II ranging from 590.3 to 652.2 ha.” We note however, that the same definition of “area of mine operations” must apply to both phases when determining the size of expansion. Therefore, it is improper to use the smallest possible size of Phase I (1319.6) and the largest possible size of Phase II (652.2) when determining the size of the expansion. Doing so means that different criteria are being applied when calculating the respective sizes and this would constitute an error of law. Use of the higher end of the range (49.4%) is therefore improper.

In addition, we note that if Phase II is approved, the South Dump area that was planned for Phase I will be reduced in size by 61.9 Ha. Therefore, use of the 652.2 Ha for Phase II is inappropriate. If Phase II is approved and constructed there will be a decrease in disturbance of 61.9 Ha that must be taken into account. To the extent that the Agency may have treated the South Dump reduction in size as the *original* area of Phase I and not as an effect of Phase II, this result in an incorrect calculation. The result is an increased numerator (because total disturbance from Phase II no longer takes into account the South Dump reduction) and a decreased denominator (because total disturbance from Phase I no longer takes into account the original South Dump size) which results in an artificially

---

<sup>8</sup> [Analysis Report, Whether to Designate the Coalspur Mine Ltd. Vista Coal Mine Phase II Project in Alberta, December 2019](#)

higher percentage of disturbance being attributed to Phase II. This is incorrect because the size of Phase I is only decreased if Phase II proceeds.<sup>9</sup>

Considering the above, we submit that the Agency's range as presented in the Analysis Report makes several unreasonable calculations when determining the high end of the range presented. In our view the correct calculation results in a determination that Phase II will result in a maximum increase of area of mining operations of 44.1% as compared to Phase I.

As noted in our response to your Information Request 3, the Underground Test does not result in any additional surface disturbance. As a result, there is no basis on which to conclude that the area of mining operations associated with the Combined Projects will be any greater than what was determined by the Agency in its December 2019 Analysis Report regarding Phase II.

*Specific Responses to the Designation Requests*

We have reviewed the designation requests submitted by Ecojustice on behalf of its clients (the "**Ecojustice Request**") and by Ms. Conroy on behalf of the LBT (the "**LBT Request**"), both dated May 1, 2020.

Ecojustice makes novel and ultimately unsupportable arguments regarding how the Agency and the Minister should interpret "at ground level" when assessing the area of mine operations. As indicated above, Table 1-1 of the Underground Test Application submitted to the AER provides a footprint comparison of Phase I without the Underground Test and with the Underground Test. This comparison does not include the area of the underground workings and is consistent with the definition of "area of mine operations" in the Regulations [emphasis added]:

area of mining operations means the area at ground level occupied by any open-pit or underground workings, mill complex or storage area for overburden, waste rock, tailings or ore.

Ecojustice asserts the following:

---

<sup>9</sup> For instance, if we assume Phase I disturbs 100 on its own and Phase II will disturb 75 but result in a 25 reduction to Phase I for a total disturbance of 50, the proper calculation is 50/100 or 50%. However, if Phase I being treated as 75 and Phase II as 75 which results in a calculation of 75/75 or 100%. The latter is incorrect because if Phase II's total disturbance was 75 and there was no reduction to Phase I, the calculation would be 75/100 or 75%.

The intent of the federal government is clear that any proposed area of mining operations, be they underground or at ground level, is to be calculated at the area they would occupy at ground level.

This interpretation is clearly wrong. Had it been intended to count every level of underground operations as the area of mining operations, the definition would have said:

area of mining operations means the surface area at or below ground level occupied by any open-pit or underground workings, mill complex or storage area for overburden, waste rock, tailings or ore.

However, there is a good reason why this definition was not included in the Regulations. It would lead to absurd and confusing results. For instance, if two waste rock piles occupy the same surface area at ground level but one is deeper than the other, does this change the calculation? If so, is it based on the surface area of the rocks in the pile, the number of rocks in the pile, or some other consideration? What if an open-pit mine contains two seams, one underneath the other separated by overburden, which is mined in two separate passes? Should the “area at ground level” be doubled? Contrary to Ecojustice’s assertions, there is no ambiguity in how to apply the present definition of “area of mining operations” as commonly understood. However, accepting Ecojustice’s argument would result in significant ambiguity when attempting to apply the definition.

The definition in the Regulations is clear that it is the disturbance at ground level, as this term is commonly understood, that is applicable. Any other interpretation requires that one ignore the express inclusion of “at ground level” that was incorporated in the definition. The meaning of “ground level” as contained in the regulations is made crystal clear when one considers the following criteria in the Regulations [emphasis added]:

**12** The low-level flying of military fixed-wing jet aircraft, for more than 150 days in a calendar year, as part of a training program, at an altitude below 330 m above ground level on a route or in an area that was not established before October 7, 1994 by or under the authority of the Minister of National Defence or the Chief of the Defence Staff as a route or area set aside for low-level flying training.

In our view, it would offend all principles of statutory interpretation and clearly constitute an error of law to adopt the definition of “area of mining operations” proposed by Ecojustice. Therefore, as it pertains to the Underground Test, the analysis of its contribution to the “area of mining operations” must be restricted to the disturbance at ground level only. As clearly demonstrated above, the Underground Test does not result in any additional disturbance at ground level.

Ecojustice also asserts that based on its tortured interpretation of “area of mining operations”, Coalspur’s highwall mining activities should be considered. This is incorrect. First, the highwall mining to be conducted as part of Phase II does not result in any

additional disturbance at ground level. Second, Ecojustice's position is inconsistent with the fact that at no time did the Agency include highwall mining that is part of Phase I when determining the area of Phase I. Attached as Appendix "C" to this letter is an overview map showing that Phase I consisted of 280.6 Ha of highwall mining.

The Ecojustice Request also refers to Coalspur's explosives facility. Ecojustice states that any disturbance associated with the explosives facility should be treated as part of an expansion. This is incorrect. First, the explosives facility is a component of Phase I. It is required regardless of whether the Underground Test or Phase II proceed. Therefore, if the explosives facility is considered, it is a part of Phase I. Second, and in any event, an explosives facility is not relevant to the calculation of "area of mining operations" because it does not constitute an "open-pit or underground workings, mill complex or storage area for overburden, waste rock, tailings or ore."

The LBT Request refers to the fact that ACO has determined that consultation is not required with the LBT as it pertains to the Underground Test. However, the disturbance associated with the Underground Test will take place within an existing approved surface mine area and therefore will not have any additional impacts on LBT. Alberta's determination regarding the consultation owed to LBT in connection with the Underground Test is a reasonable determination. To the extent that Alberta may have erred in its assessment, this is not a matter for the Minister to address when the Underground Test does not require any federal approvals.

The LBT Request also states that "ACO rejected the Tribe's request to be included in consultations related to Phase II". However, as indicated above, the ACO has evaluated the information LBT provided regarding the location of its traditional territory.<sup>10</sup> As a result, ACO has determined that LBT is entitled to consultation regarding Phase II. Coalspur will continue to engage with LBT.

Finally, the Ecojustice Request and the LBT Request both refer to the Supreme Court of Canada's decision in *MiningWatch Canada v. Canada (Fisheries and Oceans)*, 2010 SCC 2, [2010] 1 S.C.R. 6, in support of their arguments that the Underground Test and Phase II must be considered together when determining whether the Regulations apply. This is incorrect. *MiningWatch* was with respect to a responsible authority's decision regarding the scope of project under the original *Canadian Environmental Assessment Act*. The issue in that case was whether the federal assessment could be restricted to the specific area of federal jurisdiction that triggered the federal assessment. The Department of Fisheries and Oceans limited its assessment to the tailings impoundment area and some other small components thereby excluding assessment of the rest of the copper and gold mine, including the mine and mill. The legislative framework and facts in this case are entirely

---

<sup>10</sup> LBT Request at footnote 20.

different and *Mining Watch* is therefore irrelevant. The issue here is not the scope of project to be assessed but whether two projects, the Underground Test and Phase II, that do not meet the “connected actions” test, should be considered together. As explained above, they should not be.

### Minister’s Discretion

Under subsection 9(1) of the IAA the Minister may, by order, designate a physical activity that is not prescribed in the Regulations. The Minister may do this, where, in the Minister’s opinion, the physical activity may cause adverse effects within federal jurisdiction or adverse direct or incidental effects, or public concerns related to those effects warrant the designation. We submit there is no reason for the Minister to do so in this case.

The circumstances have not changed since the Agency issued its Analysis Report and the Minister issued his response on December 20, 2019. The Underground Test will not result in any additional adverse effects to areas of federal jurisdiction or the rights of Indigenous people of Canada because it is wholly located within the existing Phase I footprint. The Underground Test does not alter any of the Minister’s reasons for determining that Phase II should not be designated under the IAA. Nothing has changed in connection with Phase II.

Coalspur is continuing to meaningfully engage with those Indigenous groups that are potentially affected by Phase II, including the Erminskin Cree Nation, including their remote community of Mountain Cree, Whitefish Lake First Nation, O’Chiese First Nation, the Aseniwuche Winewak Nation and ANSN.

Therefore, the reasons the Minister provided in his December 20, 2019 response remain valid today.

### Conclusion

We have endeavoured to respond to each of your information requests with as much information as possible. As set out above, the addition of the Underground Test does not result in any additional area of mining operations at ground level. Therefore, even if Phase II and the Underground Test are considered together, which we submit they should not be, they do not meet the threshold for coal mine expansions as set out in the Regulations. As it pertains to the Minister’s discretion, our view is there is no justification to alter the positions taken in the Agency’s December 2019 Analysis Response or Minister’s Response.

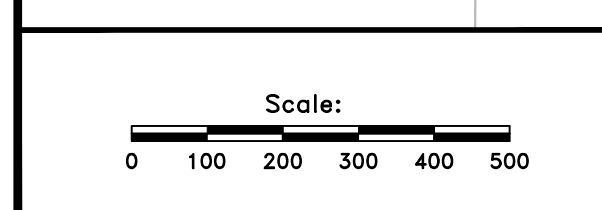
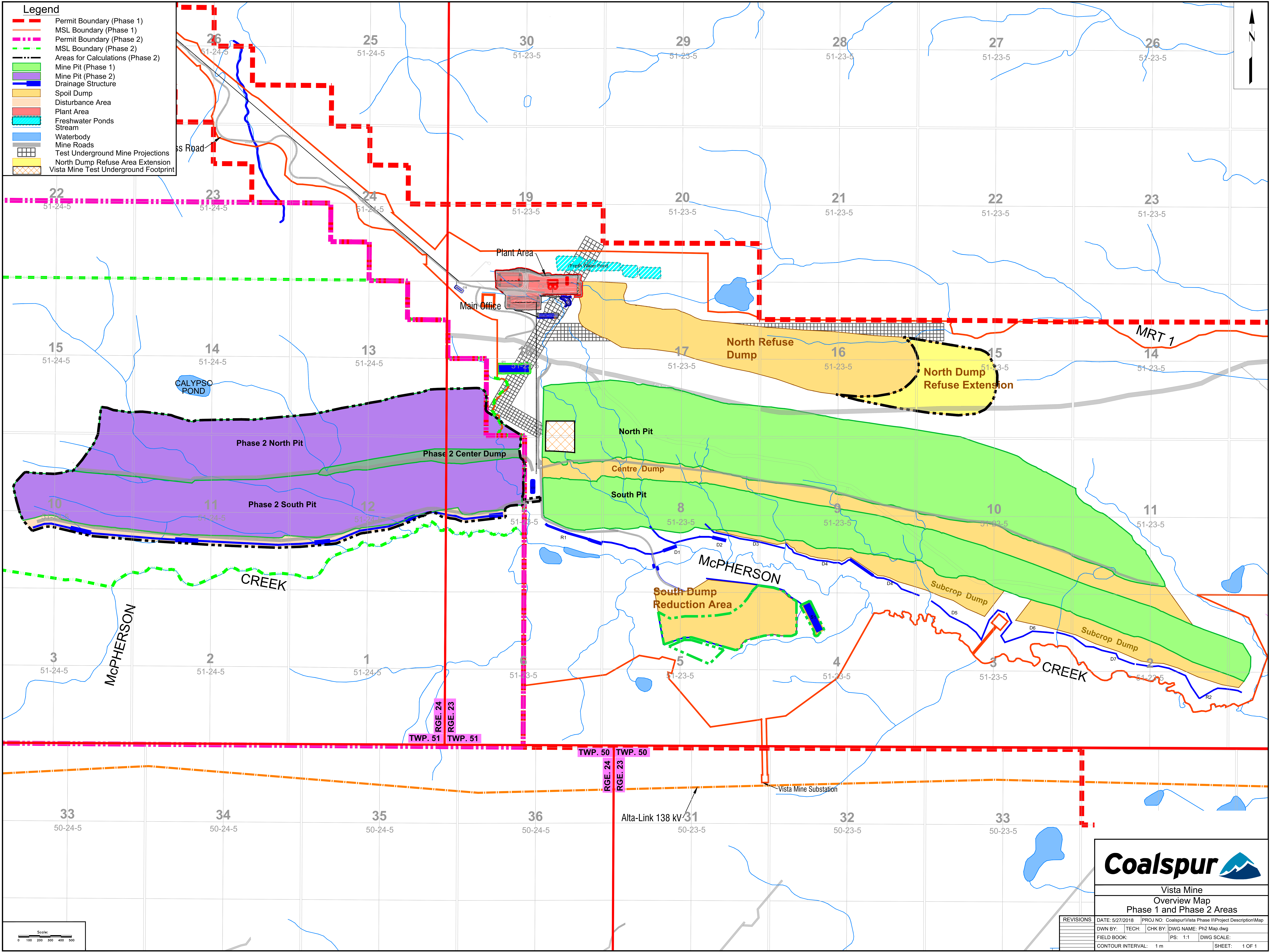
If you require any further information to assist you with your evaluation, please do not hesitate to contact Mr. Brian Gregg of Coalspur at 780.817.0912.

Yours truly,  
<Original signed by>

Martin Ignasiak

cc: Brian Gregg, Coalspur

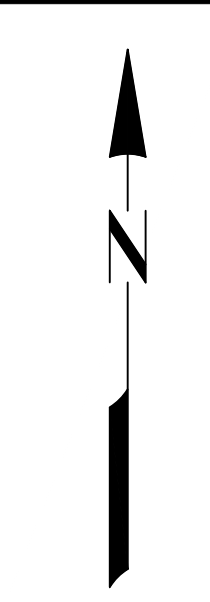
- Legend**
- - - Permit Boundary (Phase 1)
  - - - MSL Boundary (Phase 1)
  - - - Permit Boundary (Phase 2)
  - - - MSL Boundary (Phase 2)
  - - - Areas for Calculations (Phase 2)
  - Mine Pit (Phase 1)
  - Mine Pit (Phase 2)
  - Drainage Structure
  - Spoil Dump
  - Disturbance Area
  - Plant Area
  - Freshwater Ponds
  - Stream
  - Waterbody
  - Mine Roads
  - Test Underground Mine Projections
  - North Dump Refuse Area Extension
  - Vista Mine Test Underground Footprint



Vista Mine  
Overview Map  
Phase 1 and Phase 2 Areas

REVISIONS	DATE: 5/27/2018	PROJ NO: Coalspur/Vista Phase II/Project Description/Map
DWN BY:	TECH:	CHK BY: DWG NAME: Ph2 Map.dwg
FIELD BOOK:	PS: 1:1	DWG SCALE:
CONTOUR INTERVAL: 1 m	SHEET: 1 OF 1	





Legend	
	Permit Boundary
	Haulroad and Access Roads
	Phase 1 Mining Footprint
	Water Management
	Vista Test Underground Mine Footprint

2.85ha Haulroad/  
Access Roads

Phase 1 Mining  
Footprint

Vista Test  
Underground  
Mine Footprint



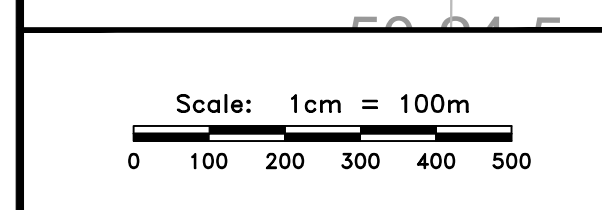
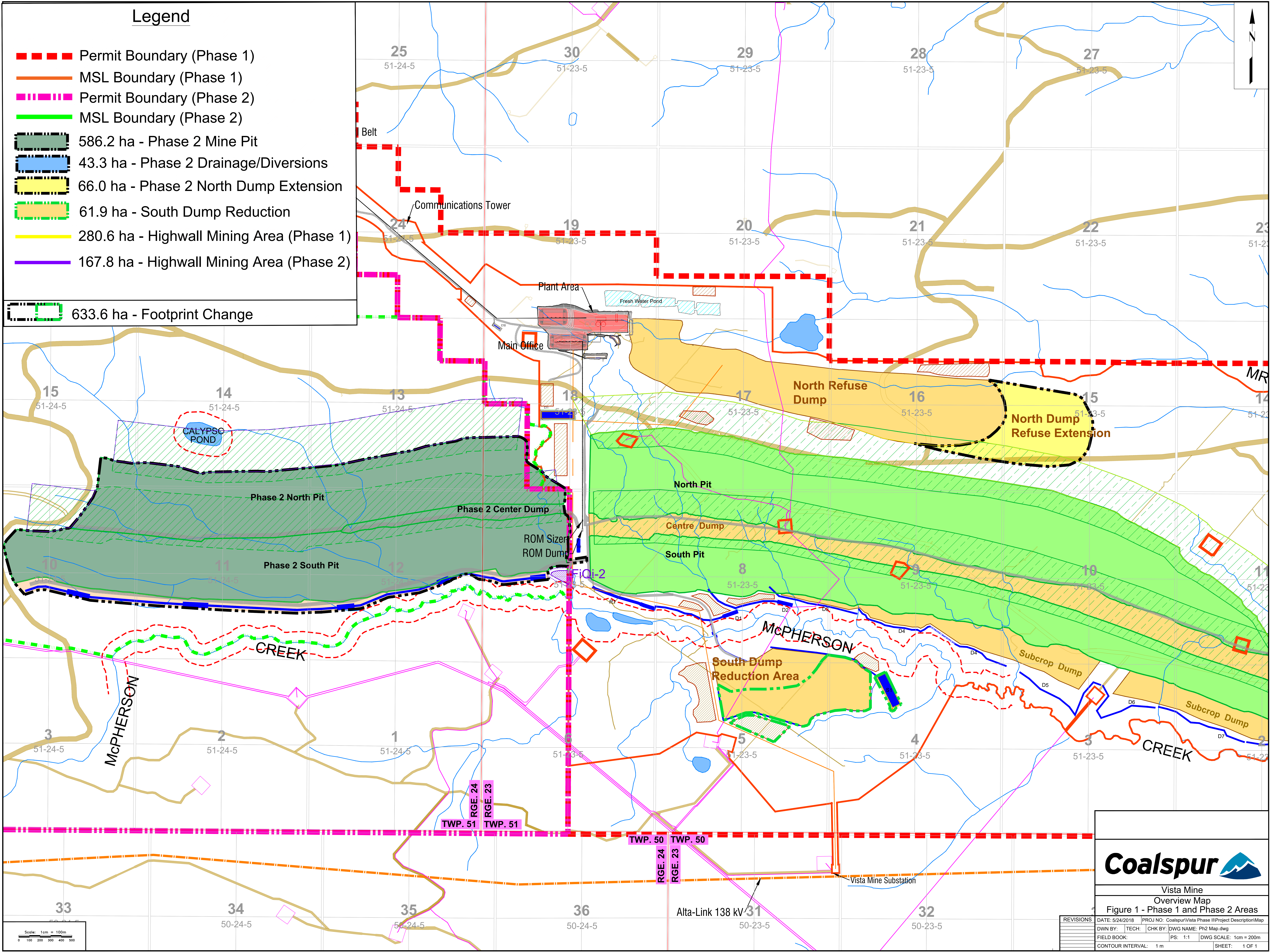
Vista Mine  
Figure 1.7

Mine Plan Comparison Map

REVISIONS	DATE: 3/6/2019	PROJ NO:	MAPS for Application/Section 1 Maps
DWN BY:	TECH:	CHK BY:	DWG NAME: Figure 1.6 Footprint Comparison.dwg
FIELD BOOK:	PS: 1:1	DWG SCALE:	1cm = 200m
CONTOUR INTERVAL: 1m		SHEET:	1 OF 1

# Legend

- - - - - Permit Boundary (Phase 1)
- - - - - MSL Boundary (Phase 1)
- - - - - Permit Boundary (Phase 2)
- - - - - MSL Boundary (Phase 2)
- 586.2 ha - Phase 2 Mine Pit
- 43.3 ha - Phase 2 Drainage/Diversions
- 66.0 ha - Phase 2 North Dump Extension
- 61.9 ha - South Dump Reduction
- - - - - 280.6 ha - Highwall Mining Area (Phase 1)
- - - - - 167.8 ha - Highwall Mining Area (Phase 2)
- 633.6 ha - Footprint Change



Vista Mine  
Overview Map  
Figure 1 - Phase 1 and Phase 2 Areas

REVISIONS	DATE: 5/24/2018	PROJ NO: Coalspur/Vista Phase III/Project Description/Map
DWN BY:	TECH:	CHK BY:
FIELD BOOK:	PS: 1:1	DWG SCALE: 1cm = 200m
CONTOUR INTERVAL: 1 m		SHEET: 1 OF 1