

Submission to the SMALL GROUP on

REPORT OF THE SMALL GROUP “GOLDEN BAY/MOHUA LANDSCAPE PROJECT” (FEBRUARY 2015)

INTRODUCTION

1. Straterra¹ welcomes the opportunity to provide feedback to the small group’s report “Golden Bay/Mohua Landscape Project” of October 2014. A copy of this submission has been sent to the Tasman District Mayor, the Deputy Mayor, and the Council CEO.
2. In preparing this submission, Straterra consulted with MOD Resources, Strategic Elements, and Hardie Resources, all holders of rights² to Crown-owned minerals in Golden Bay.
3. Straterra submits from the point of view of achieving fair and reasonable, and fit-for-purpose regulation of minerals prospecting, exploration and mining in New Zealand, consistent with the spirit and intent of the Resource Management Act 1991, and the Government’s Business Growth Agenda.
4. In that context, the Supreme Court decision in 2014 on King Salmon’s resource consent application to farm salmon in the Marlborough Sounds has far-reaching implications³ for planning processes under the RMA. They are that directive language in any RMA policy statement or plan must be upheld by decision-makers considering resource consent applications within the areas and topics covered by those statutory instruments. That is a fundamental change to the status quo ante, in which decision-makers applied an “overall broad judgment” to the facts and evidence, and legislative and regulatory provisions placed before them.
5. In light of the foregoing, the delineation of outstanding natural landscapes and features in Golden Bay carries with it a heavy responsibility on Tasman District Council in developing RMA Plan provisions on landscapes. It is understood that the small group’s report is intended as one input of many into the planning process – to ensure appropriate consideration of economic activities occurring or likely to occur within affected areas, and to deliver on the sustainable management purpose of the RMA. A key message of this submission is that the small group, for whatever reason, failed to consider adequately the implications of its proposals for minerals rights holders in Golden Bay.
6. Straterra welcomes the opportunity to continue engaging in the process for the Golden Bay/Mohua Landscape Project.

¹ Straterra is the industry body representing NZ minerals production, exploration, research, services, and support <http://www.straterra.co.nz/about/>

² Rights to Crown-owned minerals are administered under the Crown Minerals Act 1991

³ The King Salmon decision has been analysed extensively by legal experts, e.g., in the context of the Minerals West Coast forum (Greymouth, July 2014), AusIMM NZ Branch conference (Hamilton, August 2014), and the Resource Management Law Association (RMLA) conference (Dunedin, September 2014)

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EXECUTIVE SUMMARY

7. The efforts of the small group in preparing its draft report, “Golden Bay/Mohua Landscape Project” (October 2014), are appreciated. The challenges facing the small group were significant, and this is acknowledged by Straterra. We are thankful for the invitation from Tasman District Council to provide feedback on the draft report.
8. Straterra has identified the following issues in the draft report:
 - A. Its purpose left out of scope the nature and extent of minerals interests in Golden Bay, a complex issue, and a significant omission;
 - B. The “kete of principles” provides for landscapes to be identified on their merits with no economic considerations attached; contrarily, the small group has formed a view on what is or is not an appropriate activity in an ONL, an approach with potentially serious economic consequences, and with no consideration given to those consequences;
 - C. The history of the development of Kahurangi National Park was not considered, and nor were the Department of Conservation’s reasons for recommending the exclusion of areas of minerals prospectivity from the national park, a material omission;
 - D. ONLs have been delineated on public conservation land with little or no assessment by the small group of the landscape values in that land;
 - E. Agreement within the small group was negotiated in part on the basis of “gifts and gains”, a compromise struck with no consideration of minerals interests;
 - F. The gifts-and-gains approach contravenes the kete of principles – in which landscapes were to be considered solely on their merits;
 - G. Most of the study area within Golden Bay is recommended to be an outstanding natural landscape or feature, which leads to an illogical outcome - if most of everything is outstanding, then it can no longer outstanding by definition; and
 - H. The small group has taken a position on the concept of “certainty” of process, which it interprets to mean the prevention of many activities, whereas the minerals sector has a very different view on the meaning of certainty, in the context of the RMA.
9. Straterra contends that, taken together, these errors and omissions are of such a degree that any attempt to fix them would lead to the breaking of agreements reached in good faith between other stakeholders, and unravel the report. Therefore, the only fair and reasonable thing to do is restart the process with appropriate terms of reference. The draft report would provide some useful background to that process, or other future process.

RECOMMENDATIONS

10. Straterra recommends the small group to:

- Note Straterra’s concerns with the small group’s draft report, as outlined in the executive summary, and discussed in the main body of this submission;
- Note Straterra’s view that the report cannot be amended to satisfy minerals industry concerns without breaking earlier agreements among other stakeholders, or unravelling the report;
- On the basis of the above, agree to withdraw the draft report from the process, and
- Agree to suggest to the council that the draft report could be drawn on as background for a future landscape planning process.

DISCUSSION

Introduction

11. We describe below the nature of minerals prospecting, exploration and mining; note briefly the mining history in Golden Bay; and then turn to the detail of the small group’s report.

Nature of minerals prospecting, exploration and mining

12. It is a fact that mining⁴ can be done only where there are economic mineral deposits. First these must be discovered, and assessed for the economic viability of extraction, including environmental management (as core business to mining). That entails the progressive activities of prospecting, exploration, and, all going well, various assessments of mining feasibility. While no mining project can be guaranteed from the foregoing activities, they are always undertaken with the possibility of mining in mind.

13. The above has a bearing on the definition of an existing minerals activity. To elaborate, an existing exploration drilling programme encapsulates the idea of a future mine. So, if appropriate activities within outstanding natural landscapes (ONLs) are to include existing activities, then, in the case of prospecting and exploration, that would only make sense if a future mine were also defined as an appropriate activity. Obviously, that may be problematic for some stakeholders. The point is that the concept of an “appropriate activity” does not sit well with the prospecting-exploration-mining framework as set out above, and should be avoided.

14. There is a further consideration to bear in mind. Prospecting is usually carried out over large areas, say, 100,000 ha, while exploration focuses on smaller areas, say, 10,000 ha. Any mine that resulted from these activities would have a footprint in the order of 100 ha⁵, for surface mines, or a few tens of hectares for underground mines. While a significant area of Golden Bay is taken up in prospecting and exploration permits, any mines that resulted would occupy pinpricks of

⁴ Learn more on Straterra’s web pages, e.g., <http://www.straterra.co.nz/mining4nz/mining-101/>

⁵ OceanaGold’s Macraes mine in East Otago is a large mine by any standards. The resource is progressively mined, and the mined areas are concurrently rehabilitated. The “active” mine area would be measured in 100s of hectares.

land as represented on a map. Importantly, we do not know yet where these pinpricks would be located – with the possible exception of the Sam’s Creek prospect.

15. The anecdotal evidence suggests that of 1000 prospects (for a gold mine), 100 exploration targets may result. Of those, 10 would make it to the feasibility study stage, and of that, one mine might result. That is to say that in the best-case scenario from a mining perspective, Golden Bay may become host to one or two new mines, perhaps, three.
16. As a general consideration, mining earns high wealth off a small footprint, employs skilled people, to produce essential materials demanded by society, safely and responsibly. The regulatory consents required for any proposal to mine, ensure that a rigorous assessment of the environmental impacts of the proposal is carried out, independent of any consents for prospecting and exploration.

Contribution of mining to the history of Golden Bay

18. The report ignored the role of mining historically in Golden Bay. That history over more than 100 years has shaped land use, and landscapes. Over time natural processes of ecological recovery and recontouring of land have occurred. Today’s minerals interests are located chiefly where mining was done in the past. At times minerals activities made a significant contribution to the Golden Bay economy. The name, Golden Bay, recalls the rich mining heritage, as do place names, e.g., Copperstain Creek, and various sites, e.g., the former ironworks at Onekaka, the talc-magnesite quarry near the Cobb dam, Asbestos Cottage, the Aorere Goldfields Track.

A. Scope of the report

17. The small group’s purpose (page 2 of the report) was to identify ONLs, and secondly, “to work out what this might mean for affected property owners”. Minerals rights holders were not included in this consideration, a material omission. While some members of the small group made late-stage contact with minerals interests, and that is appreciated, that engagement was too late to influence the report. The statement in the report – “we would hold ourselves accountable to both the needs and aspirations of the wider community” (page 3) – is inaccurate.

B. Appropriate activity

18. As discussed in paras. 12-16 of this submission, the concept of an “appropriate activity” does not sit well with the nature of minerals prospecting, exploration and mining.
19. On page 48, a judgment was made about appropriate activities in an ONL, the intent being to protect ONLs from “inappropriate ... development” (viz. Part II of the RMA). That goes beyond the small group’s purpose (page 2). The focus on appropriate activities has serious consequences for activities that do not qualify. Given that, the report’s treatment of this issue is superficial, and unhelpful to the planning process.
20. On that basis, the small group should have avoided straying into recommending what is or is not appropriate in ONLs (page 8 and other pages of the report), because it did not consider minerals interests, and because the kete of principles (page 4) is silent on this topic. To elaborate, the principle - “look at the landscape without regard to ownership” –suggests that no opinion about land ownership, or ownership of other rights, should be expressed in the report. The small group

contravened that principle, which undermines the integrity of the report. Alternatively, it should not have included that principle in the first place.

C. History of national park debate was omitted

21. The small group did not consider (page 5) the history of the development of Kahurangi National Park. In 1993 the Department of Conservation recommended⁶ to the New Zealand Conservation Authority that a number of areas of minerals prospectivity should be excluded because the conservation values are not outstanding, and in recognition of the minerals prospectivity. That was upheld when the national park was gazetted in April 1996.

D. Lack of assessment of conservation land

22. The small group conceded that it did not assess for itself the landscape values on public conservation land (page 6), which is understandable. It is a vast region, and would take a long time to explore on foot. The small group has accepted the opinions of others in this regard, including DOC. The report is upfront on the approach taken, and the tacit implication is that some ground-truthing will be necessary. That is supported.

E. Gifts-and-gains negotiated without consideration if minerals interests

23. Of great concern to Straterra is this statement on page 6: “Some features/landscapes are recognised unanimously for their significant natural and outstanding qualities; others required negotiated agreement. There have been gifts and gains on both sides.” This suggests that the small group arrived at a balanced package of recommendations, via negotiation, between the parties and interests present, in consideration of their interests, and no one else’s interests.

24. In such a case, it would be difficult for the small group to make significant amendments to its report, e.g., to include minerals industry concerns, without upsetting the compromise that they have negotiated among themselves.

25. We contend that significant amendment will be required to adequately consider the nature and extent of minerals interests in Golden Bay. That would reopen the report to such a degree that the best course would be to restart the process with redrafted terms of reference.

F. Gifts-and-gains approach undermines kete of principles

26. The gifts-and-gains approach (page 6) is not listed in the kete of principles. Given the outcome of this approach – a negotiated agreement or compromise – that omission is significant. In explanation, the statement - “it needs to be included or excluded for landscape reasons alone” – is one of the principles, and was contravened by the small group. That alone undermines the report to the point that it should remain in draft for use as background information.

G. Concept of “outstanding” is undermined

27. The small group delineated large areas of the Golden Bay study area as outstanding (page 7). This result is illogical because if almost everything is outstanding, it can no longer be outstanding, by definition.

⁶ DOC 1993. Northwest South Island National Park Investigation. Report to the NZCA.

H. Certainty of process

28. In response to the statement on page 50 - “By identifying [ONLs] and features valued by the community, we hope that this will provide greater certainty and lead to less litigious arguments about the effects on landscapes and features” - this suggests that the small group thinks that greater certainty is provided by the council being able to say “no” to development proposals. That is not the certainty that minerals interests are looking for under the RMA. We believe that mining projects should be considered individually on their merits, on their environmental effects, and proposals for their management.