

## Submission from Straterra on the Exposure Draft of the Te Tai o Poutini Plan March 2022

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### Introduction

1. Straterra is the industry association representing the New Zealand minerals and mining sector. Our membership is comprised of mining companies, explorers, researchers, service providers, and support companies.
2. We welcome the opportunity to make this submission on the Exposure Draft of the proposed Te Tai o Poutini Plan (the plan). Our submission focusses on those provisions of the plan relate to mineral extraction and associated activities.

### General Comments

3. The plan acknowledges that mineral extraction is important to the West Coast and aims to be supportive and enabling of the sector, but there is much in the detail of the plan which negates these good intentions. The implications from not fixing these things will be problematic for many parts of the industry on the West Coast.
4. We support the Mineral Extraction Strategic Objectives and the two special purpose zones for mineral extraction are supported.
5. There needs to be a clear consenting pathway for mining activities, that allows mineral extraction to occur in a way that has a net positive impact on environmental values. This should apply regardless of which zone activities are located in.

### Mineral Extraction Strategic Objectives

6. We strongly support the Strategic Objectives, MIN-01 to MIN-06, of the Minerals Extraction chapter. These set out the overarching direction for matters relating to mineral extraction and allow for a consenting pathway to address adverse effects including offsetting and compensation.
7. The sentence at the end of MIN 01-06 is very important. It says all other chapters are to be read and achieved in a manner consistent with these strategic objectives.
8. To achieve this, however, without a more extensive minerals chapter, and to ensure they are considered in resource consent applications, the strategic objectives need to be better carried through to the other chapters in the plan. There would be more clarity and certainty if other chapters referred back to them more often - having regard to them etc.
9. There are some places where such references are made eg in the Rural Zone Overview. There are other places where it occurs subtly. For example, NFL-01 aims to protect outstanding natural

# SUBMISSION

landscapes ‘while allowing use and development’ and ECO-P2 which allows use and development within areas of indigenous fauna and vegetation. We support the use of the phrase ‘use and development’ but there are places where it may be appropriate for more explicit support for mining, including in the overviews of chapters like ECO.

## **SNAs, ONLs and other overlays**

10. The size and the extent of the SNAs, ONLs and other overlays is significant and there is much overlap with the two mining zones as well as the other zones.
11. It is not clear how the SNA and ONL overlays have been determined and what criteria is used. We challenge the size and accuracy of them in some places. Identifying SNAs through the resource consenting process and with site-specific assessment is more robust than a broad desktop analysis. One option is for identification to be on the basis of the criteria attached as Appendix 1 to the WCRPS.
12. The widespread presence of the overlays negates the enabling provisions for mining activities. The activity status of mineral extraction activities are downgraded when they occur within the overlays and there is tension as to the relative weighting between mining and environmental protection.
13. There are some cases where different overlays overlap with each other and where the rules and activity statuses for each are not consistent. This means there would be confusion for applicants as to which overlays take precedent.
14. It is important that access to a consenting pathway within the SNA and other overlays remains including with the ability to offset and compensate.

## **Transition Period**

15. A major concern with the plan relates to the impact of SNAs in the transition period between the plan being notified and when it becomes fully operative.
16. Specifically, the SNA, and other overlay provisions will have immediate legal effect upon notification but the enabling provisions, both in the mining zones and outside, will not become operative until decisions are made much later. This will clearly cause problems for consent applications in that interim period.
17. It is also concerning given the extent and coverage of the SNAs as outlined above.

## **Special Purpose Zones**

18. We support the two special purpose zones for mineral extraction - the Buller Coalfield Zone (BCZ) and the Mineral Extraction Zone (MINZ), and the provisions contained within them.
19. While the BCZ is relatively clearly defined, the MINZ contains a mix of different types of mines and quarries spread across different areas of the West Coast. It will be important that areas are not left out for the zones to be comprehensive.
20. The plan’s intention is that mineral extraction in these two zones is enabled and the rules and objectives within the zones are, on the surface, consistent with this but there are a number of features and conditions which make this not so.
21. Also, many of the restrictions and conditions around some of the ancillary activities are too strict and need amending.

# SUBMISSION

## Outside the Special Purpose Zones

22. The plan intends mineral extraction to be enabled in the General Rural and Open Space zones (MIN-02) – which we support. However, districtwide matters, such as indigenous biodiversity and earthworks, may mean that activities are not sufficiently enabled.

## Ecosystems and Indigenous Biodiversity

23. The vegetation clearance rules in the Ecosystems and Indigenous Biodiversity Chapter are complicated and fragmented and cause some difficulty. One possible solution is to use the biodiversity management hierarchy from the West Coast Regional Policy Statement as a template for the vegetation clearance rules.
24. Given the WCRPS is a relatively recent regional policy statement, and given its status, ie it is a requirement of the district plan to give effect to it, it makes sense to use the WCRPS's biodiversity management hierarchy in this way.
25. We note and support the consenting pathway for mineral extraction in ECO-P7 and P9 including the allowance for compensation.

## Mineral Extraction Management Plan

26. A Mineral Extraction Management Plan is required for many of the permitted and controlled activities rather than a resource consent (if certain thresholds are met). We think this approach has merit, but the Mineral Extraction Management Plan, which includes the information set out in Appendix Seven, should not duplicate the requirements of many of the other regulatory plans that are required (work and safety, transport, wildlife authorities etc.).

## Use of the Word 'Avoid'

27. Throughout the plan there are numerous mentions of the word 'avoid'.
28. Because of case law which deems 'avoid' to mean avoid in a prohibitive sense, we request that care be taken in using the word and it be avoided wherever possible.
29. 'Avoid' is, of course, an important part of the effects management hierarchy and so we support it being used in this context, ie if you can't avoid it then you have to remedy, mitigate, offset and compensate in that order.
30. Where the word is used by itself without the rest of the hierarchy there is a risk it is interpreted as prohibited and so it should be avoided. For example, its use in ECO-P6 may be problematic.

## Drafting Errors

31. In many places the plan is written in a way that is unworkable with contradictions across different rules and inconsistency across districts. Some of this may be drafting error.
32. For example, the workability of the numerous overlays and rules, and the interplay these have with the provisions specific to mineral extraction. The plan is not clear how each rule breach in other chapters will be interpreted overall.
33. Some apparent drafting errors have been identified in the table below including ECO-R7 where the links to R1 and R5 mean there is no consenting pathway within an SNA; NFL-R15 where the logic

# SUBMISSION

seems wrong; there are some definitions that seem incorrectly cross referenced to the RMA, for example Buildings, Earthworks, Dust, and Commercial Activity. There also seems to be incorrect overlay map boundaries in places.

## Schedule Nine - Lawfully Established Mineral Extraction and Processing Areas

34. Schedule Nine lists lawfully established mineral extraction and processing areas within the Buller Coalfield and Mineral Extraction Zones. It is not clear how this schedule will be used or how it is linked to the plan. It's acknowledged that the list is incomplete, and submitters are invited to add to it.
35. We are not opposed to having the schedule and, if there is to be such a schedule, we agree it should be left open for additions to be made. However, there are significant risks that it may be seen as a comprehensive list which means anything left off the list could be disadvantaged.
36. There are no links or references to the schedule currently but as the draft plan is amended this could change. This means that care needs to be taken with any links or references to the schedule as the plan evolves.
37. Given the potential risk from being excluded from the list, we recommend that the plan writers are open to receiving additions after the submission due date in the period leading up to notification of the plan, and beyond as part of the formal submission process.
38. We understand some areas have been proposed but declined by the plan writers. It is unclear what the criteria was used and so this should be made transparent.

## Schedule Ten - Previously Mined Areas

39. Schedule 10 is to include a list of the locations of previously mined areas in the Rural and Open Space and Recreation Zones. It is currently empty.
40. It is important because GRUZ-R18 (and according to the schedule, OSZ-R19, but this isn't mentioned in the rule) refers to the schedule and stipulate areas included will be controlled activities for mineral extraction.
41. As with Schedule 10, submitters are invited to identify and provide details so areas can be added to the list. There is a strong incentive for industry to do so given the controlled activity status.
42. There is a question as to how 'previously mined areas' is defined given the history of the West Coast. For example, how far back should we go?
43. These areas would need to be identified as part of the submission process. We recommend that the plan writers are open to receiving suggestions after the submission due date in the period leading up to notification of the plan, and beyond as part of the formal submission process.
44. We support mineral extraction on sites in previously mined areas as being a controlled activity.

## Table of Suggested Changes

CHAPTER	PROVISION	SUGGESTED CHANGE	EXPLANATION FOR CHANGE
Definitions	Mineral Extraction and Processing	Insert <i>“to, from and between”</i> after the words <i>“access within”</i> .	Access to, from and between sites, be they exploration, mine or ancillary. For example, there may be an off (mine) site water treatment or mineral handling facility that is linked via an access road. In numerous cases mine sites are land locked and have access roads to them. These all form part of the mineral extraction activity.
ECO	ECO-02	Insert at end <i>“or if not where adverse effects can be mitigated”</i> .	Provide for mitigation where this is possible.
ECO	ECO-P2	At item d. insert at end <i>“or where adverse effects can be mitigated”</i> .	Provide for mitigation where this is possible.
ECO	ECO-P6	Delete the word <i>“avoid”</i> .	Using the word avoid may prevent the use of the management or mitigation hierarchy, given the case law definition of this, and/or be inconsistent with the Regional Policy Statement.
ECO	ECO-P7	At item a. insert the word <i>“/or”</i> after the word <i>“and”</i> .	In practice management alone can also lead to the desired outcome. This ties into ECO-P8.
ECO	ECO-R1	Add another permitted Item of <i>“where lawfully established activity; or”</i> .	Provide for lawfully established activities and also the MINZ (zone). This ties into ECO-P2.
ECO	ECO-R1	After Item 6 insert the word <i>“or”</i> .	<i>“or”</i> is required so that Item 7 doesn’t inadvertently ‘trip up’ the other Items or lawfully established activities.
ECO	ECO-R2	Add another permitted Item of <i>“where lawfully established activity; or”</i> .	Provide for lawfully established activities and also the MINZ (zone). This ties into ECO-P2.
ECO	ECO-R7	Insert <i>“ECO-R5”</i> and perhaps also ECO-R1 in the heading of ECO-R7.	There doesn’t appear to be provision for vegetation clearance within an SNA or ONL as intended.  It is unclear but there may be a drafting error in the vegetation clearance rules which seem to work in the following way:

			<ul style="list-style-type: none"> <li>- if you don't meet ECO-R1 or ECO-R2 (permitted) you move to ECO-R5 (restricted discretionary).</li> <li>- if you don't meet ECO-R5 it states that you are discretionary therefore you SHOULD move to ECO-R7 (discretionary).</li> <li>- ECO-R7 only applies if you don't meet ECO-R2 or ECO-R4 and <b><u>NOT</u></b> if you don't meet ECO-R5.</li> </ul> <p>Our reading is that ECO-R7 does not provide the flow on required from ECO-R5. ECO-R5 may require inserting into the heading of ECO-R7.</p> <p>Also, it is not clear if ECO-R1 requires inserting into the heading of ECO-R7.</p>
NFL	NFL-P4	Insert " <i>land uses</i> " after the word "farms".	Need to expand to recognised that there are other uses and activities.
NFL	NFL-R6	Insert " <i>3. Where the activity is lawfully established.</i> "	Consistent with NFL-P1 and recognises existing activities in these areas.
NFL	NFL-R15	In the heading insert " <i>Controlled</i> " after the word "Permitted".	Appears to be a drafting error with no lead provided in the rules for not meeting NFL-R10. Seems to be a similar situation to that described for ECO-R7 detailed above.
OSRZ	QSRZ-01	Insert " <i>where possible</i> " after the word "should".	Not all activities in these zones will "complement" and provision is required where this doesn't occur.
OSRZ	OSRZ-P11	Delete b. Insert " <i>NOSZ – Natural Open Space Zone</i> " after the words "OSZ – Open Space Zone" as needs to apply to both zones.	Mineral extraction may not be provided for in the management plan referenced at b. Mineral extraction activities also occur in the NOSZ – Natural Open Space Zone.
NOSZ	NOSZ-R16 and NOSZ-R17	Change rule status from Non-Complying to Discretionary.	Some land within the NOSZ is currently used for mineral extraction activities and as such Discretionary status may be more appropriate. We also note the other robust regulatory mechanisms in place for some land held in this zone, for example an access arrangement with the Department of Conservation.

# SUBMISSION

OSZ	OSZ-R11	Under 3. increase the timeframe to 1 year.	Some drill programmes go for longer than 3 months so may not be practical to rehabilitate in this timeframe.
OSZ	OSZ – R19	Insert “and Activities” before the word “not”.	OSZ-R11 refers to prospecting and exploration, OSZ-R19 only relates to OSZ-R11 and therefore OSZ-R22 only relates to mineral prospecting and exploration rather than Mineral Extraction Activities more broadly.
GRUZ	GRUZ-R11	Under 3. increase the timeframe to 1 year.	Some drill programmes go for longer than 3 months so may not be practical to rehabilitate in this timeframe.
MINZ	Overview	In the third paragraph, add a fourth point, “ <i>Minerals permits under the Crown Minerals Act (1991)</i> ”.	This is an important authorisation that should be included.
MINZ	MINZ-P1	Add “district and” before regionally.	
MINZ	MINZ-R1	Under 2. increase the timeframe to 1 year.	Some drill programmes go for longer than 3 months so may not be practical to rehabilitate in this timeframe.
MINZ	MINZ-R2	In Condition 1 (lawfully established) do not provide a link to Schedule 9.	There is likely to be errors or omission in Schedule 9 as the plan is developed and any linkage in Condition 1 may signal that this list is correct and complete. If a link is required, it may be more appropriate under the Advice Note.
MINZ	MINZ- R2	At Item 2. a. delete “coal mining licence or resource consent” and insert “ <i>existing authorisations</i> ”.	Matters contained in Appendix 7 may also be covered by a number of other authorisations, not just those currently identified, so this provision requires broadening.
MINZ	MINZ- R2	At Item 2. a. with respect to the Mineral Extraction Management Plan (Appendix 7) insert an Advice Note to say something along the lines of ... ‘this process of certification is not to relitigate matters rather to check that what is required is there’.	Potential issues of overlap, conflicts and re-litigation of matters already settled.
MINZ	MINZ-R3	Item 4 - Truck movement restricted to 30 per day.	This should be removed as is an unnecessary duplication of requirements in MINZ-R2, is extremely restrictive, and is covered under the Noise rules.