

## Submission from Straterra on the Proposed Te Tai o Poutini Plan November 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 [Proposed Te Tai o Poutini Plan](#) (the proposed plan). Our submission focuses on those provisions of the plan related to mineral extraction and associated activities.
3. Mining is very important to the West Coast economy, contributing 8.4% of its gross domestic product (GDP). In Buller, mining's contribution is an exceptional 21.3% of GDP and it directly employs 9.7% of its workforce. The indirect contribution is much greater. Mining jobs in the region pay about double the median salary.
4. The West Coast has New Zealand's lowest population density with 0.772 square kilometres of land for each person. Mining and quarrying have a small footprint and are a temporary use of land.
5. The West Coast has potential for many of the critical minerals that the world needs for green technologies to pursue a low emissions future and to mitigate the impacts of climate change.

### General comments

6. We support the proposed plan however, there are a number of issues that have been identified in this submission where amendments are needed.
7. The proposed plan acknowledges that mineral extraction is important to the West Coast and aims to be supportive and permissive of the sector, however there are some amendments required to ensure that these intentions are followed through into application. The implications from not fixing these things will be problematic for many parts of the industry on the West Coast.
8. Preserving a consenting pathway for mining activities that allows mineral extraction to occur in all zones on the West Coast, should be a priority for the plan. This should apply regardless of which zone activities are located in, with the exception of land already protected by other statutes (Schedule 4 of the Crown Minerals Act).
9. We support the Mineral Extraction Strategic Objectives and the two special purpose zones for mineral extraction. While the zones show the intent that mining is appropriate here, the existence of overlays which take precedence over the zones contradicts this.
10. It is important that mineral extraction is also supported outside the two zones because mineral deposits are locationally constrained and discrete, and their location is not always known.

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## Mineral Extraction Strategic Objectives

11. 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.
12. 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.
13. To ensure this occurs and to ensure that the Mineral Extraction Strategic Objectives are considered in resource consent applications, they need to be better carried through to the other chapters in the proposed plan. There would be more clarity and certainty if other chapters referred back to them more often – having regard to them etc.
14. There are some places where such references are made e.g. in the Rural Zone Overview. There are other places where it occurs subtly. For example, NFL-01 aims to protect outstanding natural 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.
15. We recommend that the Mineral Extraction Strategic Objectives be added to the overview sections of all the relevant chapters.

## SNAs, ONLs and other overlays

16. The size and the extent of the significant natural areas (SNAs), outstanding natural landscapes (ONLs) and other overlays is significant throughout the West Coast and there is much overlap with the Mineral Extraction Zone and the Buller Coalfield Zone.
17. It is not clear how the SNA and ONL overlays have been determined and what criteria was used. We challenge the size and accuracy of them in some places.
18. 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.
19. 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 overlay takes precedence.
20. It is important that access to a consenting pathway within the SNA and other overlays remains including with the ability to offset and compensate.

## Sites and Areas of Significance to Māori

21. We are concerned with the non-complying status of some of the rules in the Sites and Areas of Significance to Māori, in particular SASM-R15 and SASM-R18 relating to mineral extraction other than by Poutini Ngāi Tahu in the special purpose zones (Buller Coalfield and Mineral Extraction Zones) and the Rural and Open Spaces and Recreation Zones. This has come in amended provisions subsequent to the notification of the proposed plan.

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22. A discretionary activity status would provide a consenting pathway for mineral extraction activities, thereby allowing for a case-by-case consideration of the activity and the SASM together with the mitigation and/or protection required.

## Transition period

23. A major concern with the proposed plan relates to the impact of SNAs in the transition period between the plan being notified and when it becomes fully operative.
24. Specifically, the SNA, and other overlay provisions have immediate legal effect since 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.
25. Also, under MINZ-R2, mineral extraction and processing that is lawfully established at the date the Plan becomes operative has a permitted activity status. But to avoid uncertainty in the transition period, this should be from the date the proposed plan was notified.

## Special Purpose Zones

26. 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.
27. 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.
28. It should also be recognised that many mines and quarries are not captured by either zone and the ability of those to continue to operate, be developed and gain resource consent should be protected, and a consent pathway provided.
29. The proposed 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. However, there are a number of features and conditions which mean this is not the case including the presence of overlays in these zones.
30. Also, many of the restrictions and conditions around some of the ancillary activities are too strict and need amending.

## Outside the Special Purpose Zones

31. The proposed plan intends mineral extraction outside the Special Purpose Zones to be enabled. We support this, specifically the statement in the Overview of the Mineral Extraction Zone: *"It is anticipated that there will continue to be widespread mineral extraction outside of the MINZ - Mineral Extraction Zone."*
32. Enabling mineral extraction outside the Special Purpose Zones is important because, as is acknowledged in the proposed plan, mineral deposits are locationally constrained, that is, they can only be mined where they are located. This characteristic makes zoning as a planning tool challenging. There are mining deposits that are currently unknown or yet to be accessed, many of these incorporate critical minerals that, as the name suggests, are critical to building a low emissions future. It would be shortsighted for the plan to not provide for extraction of these.

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33. MIN-02 specifies the General Rural and Open Space Zones as zones in which mineral extraction is enabled, but other zones should not be ruled out and, in fact, a consenting pathway is available in other zones which is appropriate.
34. In spite of the permissive wording, matters such as indigenous biodiversity and earthworks mean that activities are not sufficiently enabled as intended.
35. Amending the definition of earthworks to exclude minerals extraction, prospecting and exploration would go some way to addressing this because of the additional provisions which unnecessarily capture these activities.

## Location constrained

36. The point made above about the special nature of mineral resources and the fact that they can only be mined where they are located is recognised throughout the proposed plan, but the wording is not always clear or consistent.
37. For example, RURZ-P18, OSRZ-P9 and NFL-P5 all endeavour to make the point but say it differently.
38. We recommend that wording used is consistent, otherwise, the different provisions could be interpreted to mean different things. We prefer the use of the term 'functional, technical, operational or locational need of any activity to be sited in the particular location', for example as used in NFL-P5, which is the most comprehensive.

## Ecosystems and Indigenous Biodiversity

39. We note that the terminology for much of this chapter is very directive. Words such as 'avoid', 'protect' and 'prevent' are used. Not only do these remove scope for, but they contradict the intent of many of the policies and rules which allow for net gain e.g. for offsetting and compensation.
40. 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 (WCRPS) as a template for the vegetation clearance rules.
41. Given the WCRPS is a relatively recent regional policy statement, and its status, i.e. 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.
42. We note and support the consenting pathway for mineral extraction in ECO-P7 and P9 including the allowance for compensation.

## Mineral Extraction Management Plan

43. 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 plan's requirements, as set out in Appendix Seven, duplicate the requirements of many of the other regulatory plans that are required (work and safety, transport, wildlife authorities etc.). For simplicity and to reduce compliance costs this duplication should be reduced and the requirements should only need to be provided once.

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## Use of the word 'avoid'

44. Throughout the proposed plan there are numerous mentions of the word 'avoid'.
45. Because of case law<sup>1</sup> 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.
46. 'Avoid' is, of course, an important part of the effects management hierarchy and so we support it being used in this context, i.e. if you can't avoid it then you have to remedy, mitigate, offset and compensate in that order.
47. 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.

## Contradictions and inconsistencies

48. 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.
49. For example, the workability of the numerous overlays and rules, and the interplay these have with the provisions specific to mineral extraction. The proposed plan is not clear how each rule breach in other chapters will be interpreted overall.
50. Some apparent drafting errors have been identified including:
  - NFL-R15 where the logic seems wrong,
  - there are some definitions that seem incorrectly cross referenced to the Resource Management Act (RMA), for example Buildings, Earthworks, Dust, and Commercial Activity.
51. There also seems to be incorrect overlay map boundaries in places. For example, the Birchfield Coal Mines Ltd Rapahoe Coal Yard has been determined to be within the Outstanding Coastal Natural Character and High Coastal Natural Character overlay.
52. Consistent wording is important so that different provisions are not interpreted to mean different things where this is not intended.

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

53. It is not explicit but Schedule Nine essentially defines the Buller Coalfield and Mineral Extraction Zones by listing the lawfully established mineral extraction and processing areas within them.
54. The list is not comprehensive. We understand some areas have been proposed but declined by the plan writers. It is unclear what criteria was used and so this should be made transparent.
55. There are significant risks that anything left off the list could be excluded from the zone and be unintentionally (or intentionally) disadvantaged.
56. We recommend the Schedule be left open for additions to be made.

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<sup>1</sup> Environmental Defence Society Inc v New Zealand King Salmon Company Limited

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## Schedule Ten - Previously Mined Areas

57. Schedule Ten 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.
58. 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 stipulates areas included will be controlled activities for mineral extraction.
59. 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?
60. We recommend the Schedule be left open for additions to be made.
61. We support mineral extraction on sites in previously mined areas as being a controlled activity.

## Table of recommended changes

CHAPTER	PROVISION	SUGGESTED CHANGE	EXPLANATION FOR CHANGE
Definitions	Earthworks	Add, <i>“This excludes earthworks associated with mineral prospecting, exploration and extraction activities.”</i>	Earthworks that are part of mineral prospecting, exploring and extraction activities would be addressed by associated rules.
	Mineral Extraction	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, is necessary. 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.
	Mineral Extraction, Prospecting and Exploration	Include ancillary activities – access, overburden storage, disposal. Water management and support infrastructure.	
NENV	NENV-O3	At item b. insert, <i>“and activities”</i> after the word <i>“infrastructure”</i> .	Activities other than infrastructure are located, or may need to be located, in these areas.
SASM	SAMS-R15 (amended provisions)	Change the activity status of this rule from Non-Complying to Discretionary.	The MINZ and its activities would get captured by the SPZ zone inclusion as well as mineral prospecting, exploration and extraction activities in the zones included within RURZ and OSRZ. We would welcome a consenting pathway and access to the effects management hierarchy, which the discretionary status would provide, thereby allowing for a case-by-case consideration of the activity and the SAMS together with the mitigation and/or protection required.
ECO	ECO-02	Insert at end, <i>“or if not where adverse effects can be mitigated”</i> .	Provide for mitigation where this is possible.

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ECO	ECO-P2	At item e. insert at end, <i>“or where adverse effects can be mitigated”</i> .  Add, <i>“or operational need”</i> .	Provide for mitigation where this is possible.  “Functional and operational need”, not just “operational need”, is consistent with National Policy Statements e.g. NPS Highly Productive Land, and likely to be in NPS Indigenous Biodiversity.
ECO	ECO-P6	Delete the word “avoid”.	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 b insert the word <i>“/or”</i> after the word “and”.	In practice management alone can also lead to the desired outcome. This ties into ECO-P8.
EW	EW-R1		The reference to earthworks and the 2020 NES Freshwater will need to be updated for the pending changes which create a consenting pathway for mineral extraction on natural wetlands.
EW	EW-R2	Add, j “mineral extraction and associated activities”.	For avoidance of doubt mineral extraction should be included in this list as earthworks are a large part of mineral extraction.
NFL	NFL-P3	Insert, <i>“land uses”</i> after the word “farms”.	Need to expand to recognise that there are other uses and activities.
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	OSRZ-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-P14	Delete b.	Mineral extraction may not be provided for in the management plan referenced at b.
OSRZ	New OSRZ-P21	Insert wording of OSRZ-P14 BUT change OSZ- Open Space Zone to NOSZ – Natural Open Space Zone AND delete b.	Mineral extraction activities also occur in the NOSZ – Natural Open Space Zone. Mineral extraction may not be provided for in the management plan referenced at b.
RURZ	RURZ-O5 RURZ-P19	Replace “minimised” with, “avoided, remedied, or mitigated”.	The word “minimised” does not have the same meaning as “avoided, remedied, or mitigated” which is clear and consistent with the RMA and recognises and provides or responsible minerals activities.



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NOSZ	NOSZ-R16	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.
NOSZ	NOSZ-R16	Insert Mineral Prospecting and Exploration into the heading of the rule.	
OSZ	OSZ-R11	100m wetland setback reference should be removed given proposed changes to NES-F / NPS-FM.	
OSZ	OSZ-R11	Under 3. increase the timeframe to one year.	Some drill programmes go for longer than three months so may not be practical to rehabilitate in this timeframe.
OSZ	OSZ-R22	Insert, Mineral Prospecting and Exploration, into the heading of the rule.	
GRUZ	GRUZ-R11	Under 3. increase the timeframe to one year.	Some drill programmes go for longer than three months so may not be practical to rehabilitate in this timeframe.
CE	CE-O1	Replace “preserve” with “protect”.	The word “preserve” is too restrictive as it means no change is acceptable.
HS	HS-P3	Add, “at mining operations”.	Recognition of hazardous substances needed at mining operations.
HS	HS-P4	Delete “avoided” and replace with “remedied”, “mitigated” or “offset”.	“Avoid” means avoid in a prohibitive sense. This may prohibit any such activity in every case.
TRN	Table TRN 6		30 heavy vehicle movements per day for mining and quarrying is unworkable and too low.
MINZ	Overview	In the third paragraph, second sentence, replace “is from three different mechanisms and includes” with “includes the mechanisms of”.	There are a number of other authorisations not listed which are applicable so a broader refence would be more appropriate.
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-P3	Replace “best practice” with “best practicable option”.	Best practice not always fit for purpose.

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MINZ	MINZ-R1	Under 2. increase the timeframe to one year.	Some drill programmes go for longer than three months so may not be practical to rehabilitate in this timeframe.
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- R2	At Item 6. Insert, “ <i>or evidence that the bond is in place with another regulatory authority or land administrator</i> ”.	There are instances where the land administrator or another regulator is the primary holder of the bond, e.g. Department of Conservation or Regional Council.
MINZ	MINZ- R3	At Item 6. Insert, “ <i>or evidence that the bond is in place with another regulatory authority or land administrator</i> ”.	There are instances where the land administrator or another regulator is the primary holder of the bond, e.g. Department of Conservation or Regional Council.
MINZ	MINZ-R3	At Item 4. increase the heavy vehicle movement to 100.	
NC			The Natural Character and Margins of Waterbodies chapter will need to be updated around wetland definitions and rules when the amendments to the NPS / NES FM are made.