

Date: 1 November 2022
To: Tai Poutini One Plan Committee
From: Murray Stuart and Karen Jury

Submission on the Proposed Tai Poutini One Plan

Thank you for the opportunity to be a part of the build of a land use plan for Tai Poutini West Coast.

Our submission focuses on the "enabling approach to mining" that is in the proposed One Plan. Particularly, the unacceptable negative impact that the current approach will have on the small settlement of Kumara.

We would like to start by acknowledging that the minerals industry plays an important part in the West Coast economy, contributing jobs, infrastructure royalties, and GDP. Minerals extraction should be provided for in the One Plan, but in a manner that addresses the impact of the activity on other land use.

We are not opposed to mining as an activity. We are opposed to mining activity occurring in the 'wrong places' and not being regulated properly. We seek that sensible zoning and effects based criteria be included in the One Plan, so that mining activity can occur without harming neighbours or communities.

In this respect this submission is unapologetically about NIMBY: We do not want the proposed 78.8 hectare "Mining Extraction Zone" in Kumara's backyard.

We submit that:

1. The current approach will not deliver the purpose of the Resource Management Act.
2. The proposed Kumara Mineral Extraction Zone is ultra vires, and the One Plan Committee has inappropriately used its legal power or authority.
3. It is possible for the One Plan to provide for mining on the West Coast, in a manner that avoids adverse effects on other land use. However the framework in the proposed One Plan does not do this.

We seek that:

- The current One Plan provisions that relate to mineral extraction be revoked, and
- The provisions that relate to mineral extraction be rewritten, so that the One Plan identifies how mining activity will be managed to ensure the activity does not harm neighbours and communities.

We provide information as part of our submission (pages 2 – 7).

We wish to speak to our submission (to be heard).

Please contact us to confirm the date and time for our verbal submission: karenandmuz@xtra.co.nz

Ngā mihi,

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64 Tui Street, Kumara (Residential)
139 Tui Street, Kumara (Residential)

and

Rob Lawrence
109 Greenstone Road (Commercial / Business)
103 Greenstone Road Kumara (Residential)
129 Tui Street Kumara (Residential)
168 Greenstone Road Kumara (Residential)
Cashman Street Kumara (Residential land)

Information to support our submission:

1. The current approach will not deliver the purpose of the Resource Management Act (RMA)

1.1. New Zealand's Ministry for the Environment describes the RMA as:

*"New Zealand's principal legislation for environmental management"
"Its purpose is to ensure activities won't harm our neighbours or communities, or damage the air, water, soil and ecosystems that we and future generations need to survive."*

[Source: [About the Resource Management Act and why we need one | Ministry for the Environment](#)]

1.2. One of the key features of the RMA is the extent to which it devolves responsibility for resource management to local authorities. It is councils that set the rules and requirements to manage activities. It is councils that have the significant responsibility to provide a tool for improving local environmental management.

1.3. The Act is underpinned by the concept of sustainable management which allows for development - subject to environmental effects being appropriately managed.

1.4. **The proposed One Plan includes a Mineral Extraction Zone adjoining the Kumara Settlement -**

The rezoning of this land has not been subject to a RMA effect based assessment and the land does not contain a "legally established activity" to support the zone.

A minerals permit is not an instrument that addresses land use effects (the Crown Minerals Act 1991 only regulates the allocation of access to minerals) -

"Before land may be prospected, explored or developed for Crown-owned minerals, a number of steps need to be taken. An explorer or developer needs:

1. *a permit from New Zealand Petroleum and Minerals under the Crown Minerals Act 1991;*
2. *any necessary land access arrangement with the landowner and occupier;*
3. *any necessary resource consent(s) from the relevant Regional or District Council under the Resource Management Act 1991. "*

[Source: Petroleum and Minerals New Zealand, Fact Sheet <Plans://www.nzpam.govt.nz/assets/Uploads/our-industry/factsheets/permits-land-access-new-zealand.pdf>]

1.5. Whilst it is good sense to avoid duplication of regulation, the Regional Council will still require mining activity to obtain resource consent. It will then regulate air quality, water quality and quantity and soil conservation effects. It will not regulate land use effects such as location of infrastructure, noise, hours of operation and lighting. The physical environment will be considered in a Regional Council consent but not the effects on the social and wellbeing of nearby people. Without appropriate regulation through the One Plan, these effects will also be ignored. There is opportunity for (proper) land use regulations to be delegated to the Regional Council to administer. Then one consenting process would occur.

1.6. **The Plan proposes that mining be managed in any Rural zone as a "permitted activity", with overlay rules -**

The RMA has a clear procedure for the setting of environmental rules: Land use activity should first try to avoid adverse effects on the environment, before considering potential for mitigation and then considering remediation. The Permitted Activity starting point in the proposed One Plan for Mineral Extraction mocks the environmental effects based approach that New Zealand has adopted.

1.7. In the Permitted rule itself there is no attempt to avoid adverse effects on adjoining or nearby parties.

The criteria relate primarily to the site itself.

Hours of operation have increased from current plan provisions. Blasting and vibration is permitted to occur from 7am to 10 pm.

With a Permitted Activity classification, there is no opportunity for an on-site assessment to be made, so that steps to avoid, remedy or mitigate noise, light, visual and other effects can be put in place.

1.8 Small settlements, like Kumara, are a significant feature within the rural areas of Te Tai Poutini. Across the rest of New Zealand, mining operations that are close to an existing residence and/or adjoining an existing settlement require a land use permit for the activity.

A resource consent application must be accompanied by an assessment of effects on the environment in such detail as corresponds with the scale and significance of the effects that the activity may have on the environment.

1.9 Appropriate land use rules &/or separation buffers are adopted in New Zealand District Plan because mineral extraction is a noisy and messy industrial activity.

Gold mining involves heavy machinery, security and lighting infrastructure, disturbance of large areas of land, the creation of large pits (possibly > than 30m deep), stockpiles, settling ponds, storage of hazardous substances, use of local water and long hours of operation. These elements require management and often require monitoring in order to ensure compliance.

A Permitted Activity will not be monitored. The effects of the activity, and the risk of non-compliance with standards, means that Permitted Activity of this scale is not compatible near to sensitive uses such as residential settlements.

1.10 We submit that the proposed One Plan does not -

- Fulfil councils responsibility to provide a tool for improving local environmental management of the effect of mining activity on existing residences and settlements, or
- Ensure mining activities won't harm neighbours or communities, or
- Demonstrate integrated management of resources, or the concept of sustainable management which allows for development *subject to* environmental effects being appropriately managed, or
- Demonstrate a clear and rigorous procedure for the setting of environmental rules, in that land use plans should first try to avoid adverse effects on the environment, before considering potential for mitigation and then considering remediation.

2. The proposed Kumara Mineral Extraction Zone is ultra vires, and the One Plan Committee has inappropriately used its legal power or authority

2.1. A quote from New Zealand's Ministry for the Environment:

"The RMA encourages us to get involved in deciding what's best for the environment by telling our local councils what we value about it.

This is because you – as locals – are best placed to know your own surroundings, and you should be involved in deciding what we need to protect and how."

[Source: [About the Resource Management Act and why we need one | Ministry for the Environment](#)]

2.2 Section 32 of the Act requires objectives in district plan proposals to be examined for their appropriateness. The following quotes are taken from the One Plan Section 32 Evaluation and Report about "Mineral Extraction Provisions" -

[Evaluation Report 14]

- i. Policy 5.2 of the proposed One Plan, is a reverse sensitivity type of policy, that identifies the strategic need to protect natural resources from the impacts of new subdivision and land use:

"[this policy] aims to create a framework for getting the right development in the right place at the right time....[it] seeks to ensure that there is a planned and coordinated approach to developing the built environment. Well-designed development also provides for the wellbeing of people and communities now and into the future. It also recognises that some types of development are incompatible when in close proximity to each other..."

The Kumara Settlement is not "new" land use. It is there already, and it is expanding. This is very relevant as this Policy, rather than supporting the introduction of the new Kumara "Mining Extraction Zone", instead reinforces that the mining activity should not occur in this location because there is a sensitive activity beside it.

- ii. The One Plan Committee have been presented with evidence that regulation of the industry, as well as separation of the industry from residential activity is what the people of the West Coast want. One example of this evidence is in the Evaluation Report:

"The general feedback from consultation with the Councils and the minerals sector is that the [current] provisions in each of the district plans are working well... consultation with the community has identified that there are significant concerns around amenity impacts of mineral extraction on adjacent neighbours in particular....essentially this is an issue of reverse sensitivity."

- iii. The Evaluation Report identifies the "Scale and Significance" of the implementation of the proposed Mining Extraction provisions:

"Scale and effects on people (how many will be affected – single landowners, multiple landowners, neighbourhoods, the public generally, future generations" = High.

[Recommendation Report to the One Plan Committee]

- iv. The Recommendation Report was compiled after submissions were received on the draft Plan. In this report the Planners comment on the submissions received and make a series of recommendations to the One Plan Committee.

The proposed Kumara Mineral Extraction Zone is listed as an “Authorised Gold Area” in the proposed One Plan. In the Introduction of the Recommendation Report it is again explained that new “Mineral Extraction Zones” were included in the draft One Plan on the proviso that they met the criterion:

“Resource Consents have been issued under the RMA 1991”

This is clearly an inaccurate assumption for the Kumara Mineral Extraction Zone, as there is no Resource Consent allowing mining on this land. This means that Mineral Extraction is not a lawfully established activity on this land. It should not have been re-zoned.

The Report goes on to explain that the One Plan Committee are aware of this:

“Until close finalisation of the draft Plan there were no alluvial gold mining areas included within the zone.

The Committee were very clear however that the Ross goldfield and other alluvial areas should be included. After further meetings with the minerals industry, shape files for alluvial mining areas, on the basis that they could be considered “Lawfully established” were provided to the TPP team by consultants to the industry...”

We submit that this is evidence of ultra vires process.

We submit that the One Plan Committee has inappropriately used its legal power or authority to influence the inclusion of the Kumara Mining Extraction Zone in the proposed One Plan.

- v. Further evidence of the One Plan Committee tampering with the public and legal process is outlined in the Recommendation Report:

“The draft Rules for mineral extraction in the General Rural Zone have been considered by the committee at multiple meetings. These were largely finalised for the draft Plan in October 2021.

However at the meeting of 16 December 2021, when the draft Plan was adopted for feedback, a late change was made to the Permitted Activity provisions – specifically doubling the area of Permitted Mineral Extraction from 2ha to 4ha.

The original 2ha area had been arrived upon as a result of detailed technical discussion with district council staff familiar with mining operations. It was intended that the proposed 2ha rule would provide for small scale alluvial mining operation...with sufficient land for settling ponds and stockpiles...it was not intended to enable most mineral extraction activity on the West Coast to be permitted.”

- vi. This statement in the Report is also enlightening -

“When considering what mineral extraction provisions are appropriate in Te Tai Poutini Plan, it is worth considering how these issues are managed in other parts of the country.

As has been discussed in previous reports, the draft One Plan has the most enabling provisions for mineral extraction in the country.

These are matters that are highly contentious everywhere ... For comparison [a list of New Zealand districts] are all locations where specific zones are used to manage mineral extraction ... Resource consents are however still generally required for mineral extraction in these special zones. Discretionary Activity consent requirements for mineral extraction in Rural Zones are also a common requirement."

- vii. The Report summarises the type of submissions that were received about the Mining Extraction provisions in the draft One Plan. It is not surprising to read that all, and more, of the points in our submission have already been raised by the people that submitted.
- viii. The Planners provide the following advice to the One Plan Committee about the Mineral Extraction provisions –

"...staff understand the Committee has set a strong direction around supporting Mineral Extraction. However in order for the provisions to be defensible, it is important that they are robust and withstand reasonable tests of the RMA. Key considerations in relation to this are:

- a. *Careful assessment of what sites are included with the Special Purpose Mineral Extraction Zones...*
- b. *Careful consideration of rules – particularly Permitted and Controlled Activities (that they will still enable the One Plan to meet the Purpose of the RMA and...*
- c. *...*

...Staff have specific concerns around the inclusion of some specific sites within the Mineral Extraction Zone and their defensibility in meeting the criteria of being areas where ...extraction activity is currently authorised.

...Staff have now reviewed all the shape files provided on the alluvial gold proposed mineral extraction zone areas. It is considered that insufficient information (in terms of basis that they are considered lawfully established) has been provided for the alluvial gold areas inclusion in the zone.

- ix. Page 10 of the Report to the One Plan Committee includes this recommendation from the Planners; which was obviously not taken:

"Remove the alluvial gold mining areas identified in the draft Plan at (a range of places specified, including Kumara) ...from the Plan."

2.3 We submit that the following processes have not been adequately demonstrated during the creation of the proposed One Plan –

- Inclusion of effects-based assessments and principle-and policy-based environmental management, and
- Demonstration of the value of public participation

- 3 It is possible for the One Plan to enable mining to occur on the West Coast, in a manner that avoids adverse effects on other land use. However the framework in the proposed One Plan does not do this.**
- 3.1 The points in our submission identify some of the deficiencies of the current mineral extraction provisions, both the Zoning and the Permitted Rule approach. A new approach is required.
- 3.2 During the creation of the Te Tai Poutini One Plan, the Planners and the community have informed the One Plan Committee about the deficiencies of the proposed approach, including the high environmental consequences of this approach being implemented. The One Plan Committee has been provided with examples of the type of provisions that would enable mining without exposing communities to a high level of negative effects.
- 3.3 Significantly, the Planners have gone as far as to warn the One Plan Committee that the provisions they have demanded are unlikely to pass the RMA tests.
- 3.4 It is unacceptable to us that the One Plan Committee have not adequately considered the negative impact that the current mineral extraction framework will have on small settlements. The proposed framework for mineral extraction activity will result in unacceptable environmental impacts, that will harm Kumara.
- 3.5 It is clear that there is an imbalance in the proposed One Plan for mining to be enabled at the detriment of existing land use and residential settlements.
- 3.6 The economic growth, and cultural and social cohesion in Kumara is visible and measurable. We have active community groups and hold social and cultural community functions. This community is not a sleeper settlement to support nearby industrial business. Kumara is not a town that needs or depends on industrial activity to sustain its economic viability. We are proud of our past mining history, but it is no longer appropriate for mining to occur on our town boundary.
- 3.7 Kumara has strong commercial businesses in place and others are being developed. New homes are being built, the School role is full, the West Coast Wilderness Trail is booming. We have become a commuter town for people who work in Greymouth and Hokitika. Most of this success is based on the amenity of Kumara as an attractive small town to live in and visit.

END