

Te Tai o Poutini Plan
Opening Statement
David Eric Badham

Mining and Minerals

27 May 2024



Introduction

1. Tēnā koutou katoa. Ko David Eric Badham toku ingoa. My name is David Eric Badham. I am an independent planning consultant from Barker & Associates. This hearing stream covers the mining and minerals topic of the proposed Te Tai o Poutini Plan (pTTPP/the plan). This includes:
 - (a) Definitions of relevant terms;
 - (b) Mineral Extraction Zone (MINZ) and Buller Coalfield Zone (BCZ) provisions and spatial location;
 - (c) Provisions for mineral extraction activities in Rural Zones, Open Spaces Zones; and
 - (d) Appendix Seven and Schedules Nine and Ten.
2. I authored the s42A report for this hearing stream. I was engaged post notification and submissions to be the Reporting Planner for this topic. I had no prior involvement with this topic, including the drafting of the provisions as notified, or the s32 evaluation report.
3. I provide a brief overview of the key recommended amendments in response to submissions covered in the s42A report. I have also read all written evidence that has been filed, and based on that evidence will provide more fulsome responses in the right of reply, although I do highlight some preliminary responses below.

Definitions

4. The pTTPP includes definitions which apply to the interpretation of relevant provisions which apply across the entire plan. Submissions have sought various amendments to the definitions proposed.
5. The legal submissions and evidence from Bathurst have raised concern that the proposed definition of “lawfully established” will create confusion and interpretation issues with respect to existing Coal Mining and Ancillary Coal Mining Licences issued under the Coal Mines Act 1979. I had understood that this issue was addressed in hearing topic 1, however upon reviewing the legal submissions and planning evidence from Bathurst, I accept that this was not actually the case, and that this does need to be more specifically addressed within this hearing.
6. In my opinion, I consider there are legal issues that need to be addressed in response to the requested changes to this definition. This primarily relates to the status of existing licences, and whether or not the rights provided under those licences extend beyond their expiry. I have sought advice on that matter from the Councils’ legal counsel at Wynn Williams. Advice can be provided in right of reply at the completion of the hearing, or if it would assist the Hearings Panel, this could be circulated before the scheduled second week of the hearing, due to commence from 11 – 14 June 2024. I understand that Bathurst are scheduled to present during the second week of the hearing, and having a response from Wynn Williams prior to that would allow Bathurst to more efficiently respond to that when they appear before the Hearings Panel.

Objectives and Policies

7. In response to submissions, I have made a number of recommended amendments to the objectives and policies for the relevant provisions. There are two recommendations that I wish to highlight.
8. “Zoning criteria” policies (BCZ-P1 and MINZ-P1). In my opinion, these policies are a key consideration for the Hearings Panel. The wording and approach to these policies, will have an impact on the ultimate determination that is made with regard to the various requests for rezoning from submitters. While there is some opposition to my recommendations, I still consider that they are necessary to provide for the consistent application of these zones. I have proceeded with my assessment of rezoning requests based on my recommended wording, but acknowledge that if the Hearings Panel come to a different determination as to the appropriate wording of these policies, then these recommendations will need to be revisited.

9. Indigenous biodiversity policies (MINZ-P4, MINZ-P5, BCZ-P4, BCZ-P5 & RURZ-P25) – these policies relate to indigenous biodiversity and I have recommended that they be deleted or amended, and are more suitably addressed in the Ecosystems and Biodiversity Chapters. While changes to the NPS-IB have been signalled by the current government, they have not yet been made. As such, I understand that the wording of the NPS-IB must be considered as it is currently worded, not as it may be amended by central government, possibly in the near future. In my opinion, it is therefore pertinent that this is considered holistically in the Ecosystems and Biodiversity hearing which I understand has already been delayed to a later date.

MINZ & BCZ Rules

10. In response to submissions, I have made number of recommend amendments to the notified rules for the MINZ and BCZ that I consider will improve the clarity of the provisions and their efficiency and effectiveness in terms of achieving the relevant objectives and policies.
11. This has included amendments across both zones to the permitted activity rules for mineral prospecting and exploration (MINZ-R1 and BCZ-R1), mineral extraction and processing (MINZ-R2 and BCZ-R2) and activities ancillary to lawfully established mineral extraction and mineral processing (MINZ-R3 and BCZ-R3). These changes are designed to improve the clarity, consistency and application of these provisions, but also to address concerns that I have regarding the “vires” of components of these provisions as permitted activities. I have also recommended changes to additional rules that change the activity status framework if the permitted activity criteria are not met. These default to restricted discretionary, and discretionary if the restricted discretionary criteria are not met.
12. I have recommended the deletion of rules for conservation, recreation and research activities (MINZ-R4 and BCZ-R4). I have concerns that the notified permitted activity status for these activities would not give effect to policies within the MINZ and BCZ relating to reverse sensitivity and the management of incompatible activities.

Provisions in the Rural and Open Space and Recreation Zones

13. The pTTPP also includes mineral provisions in the Rural and Open Space and Recreation Zones. The extent of these proposed zones within the Region is extensive, and relevant provisions include, objectives, policies and rules relating to mineral prospecting, exploration and extraction in the zones.
14. In response to submissions, I recommend a number of amendments to the provisions that I consider will improve the clarity of the provisions and their efficiency and effectiveness in terms of achieving the relevant objectives and policies. The most significant changes I have recommended are to the rules relating to mineral prospecting, exploration, extraction and processing across these Zones. In my opinion, these changes create a clearer and more logical activity status framework for these activities within these Zones.

Appendix Seven and Schedules Nine and Ten

15. Appendix Seven relates to mineral extraction management plan requirements which are cross referenced throughout the provisions. I have recommended the retention of this Appendix, subject to amendments which I consider clarify its application and assessment of relevant matters.
16. Schedule Nine provides a list of purportedly lawfully established mineral extraction and processing areas within the MINZ and BCZ. I have recommended the deletion of this Schedule as there are no specific references to this currently, the information listed appears incomplete, and I am unable to validate the information currently referenced within it.
17. Schedule Ten is designed to list the locations of previously mined areas subject to specific rules within Rural and Open Space and Recreational Zones provisions. None were included in the notified version of the pTTPP, noting that to be included within the schedule sites would need to have been previously

mined during the period since 2002. The purpose and value of Schedule Ten is unclear, therefore I have recommended it be deleted.

Rezoning Requests

18. Numerous submissions have been received seeking amendments to zones as notified, additional locations and opposition to the zones. My overall observation is that there appears to be a significant disconnect between the notified spatial extent of the MINZ and BCZ, and the proposed criteria used to identify the zone. More specifically, there appears to be large areas of land that have been included within the proposed BCZ and MINZ, with no evidence or link to current authorisations (e.g., Coal Mining Licence / Ancillary Coal Mining Licence and resource consents). As such, there appear to be a number of areas proposed and notified as MINZ and BCZ that do not currently have a defensible basis to be included.
19. Accordingly, I have included preliminary recommendations that the MINZ or BCZ be retained, deleted or amended. Where changes are recommended, I have not however provided a recommendation on what these areas should be rezoned as because:
 - a. My recommendations are preliminary recommendations, and I accept that information and evidence could be presented during the hearing by submitters and further submitters to justify the inclusion of these areas within the MINZ or BCZ; and
 - b. For other zones within the pTTPP (e.g., Rural Zones and Open Space Zones), I understand that there are similar issues relating to unclear zoning criteria that need to be addressed within the respective hearings for those topics (which I understand are scheduled to occur at a later date). Without clear and consistent zoning criteria, I am unable to recommend what would be the most appropriate zoning to apply.

Scope

20. There are a number of issues and challenges¹ made with regard to the scope of changes that I have recommended in my s42A Report. In my opinion, scope is primarily a legal matter, and I refer the Panel back to the opening legal submissions on this matter from Wynn Williams.² I understand that there is broad scope in submissions relevant to the various provisions to justify the amendments I have recommended. If it is determined that there are issues as to scope, I can revisit amendments I have suggested on that basis.

¹ See Bathurst Legal submissions paragraphs 21-24 with regard to BCZ-P1 and MINZ-P1 and Ms McKenzie's evidence paragraph 46 and Mr Lile's evidence paragraph 40 with regard to GRUZ-R12.

² Paragraph 25 – 34 of the Wynn Williams Opening legal submissions dated 13 October 2023.