

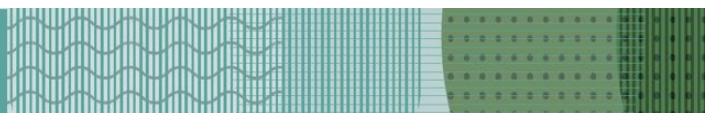
Submission from Straterra to the Primary Production Committee Resource Management (Freshwater and Other Matters) Amendment Bill June 2024

Introduction

1. Straterra is the industry association representing the New Zealand minerals and mining sector (including coal). 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 Resource Management \(Freshwater and Other Matters\) Amendment Bill](#) (the bill).
3. This submission focuses on those parts of the bill which:
 - exclude the hierarchy of obligations contained in the National Policy Statement for Freshwater Management 2020 (the NPSFM 2020);
 - align the consenting pathway for coal mining with other mineral extraction activities; and
 - modify local authority obligations under the National Policy Statement for Indigenous Biodiversity 2023 (NPSIB 2023) to identify and include new significant natural areas (SNAs).
4. We also make recommendations for additional amendments which would remove discrimination against mining in the gateway tests for some of the national direction instruments.
5. We would be happy to appear before the select committee to speak to our submission.

The hierarchy of obligations

6. The bill proposes that assessments required for resource consent applications must not include an assessment of the activity against the hierarchy of obligations contained in the National Policy Statement for Freshwater Management 2020 (NPSFM 2020) with the intention that this be the status quo until the Government has the time to replace the NPSFM 2020 in its entirety.
7. We support this proposed exclusion as well as the proposal to review and replace the NPSFM 2020 to produce a grounded and workable piece of legislation.
8. The NPSFM 2020 included the concept of Te Mana o te Wai, which prioritises the health of water over and above the needs of people and communities to access that water for everyday human needs whether that be for drinking or for economic and other purposes.
9. This approach rejects any ability to assess and balance competing demands on freshwater. We support a rebalancing of this to better reflect the interests of all water users.



10. However, we note that further legislative changes are needed as the hierarchy will continue to apply to all other resource management functions of relevant councils. This is particularly so regarding other planning documents such as regional policy statements, regional water plans, and the like. This may lead to perverse outcomes that do not achieve the result being sought by these changes.
11. In supporting this proposed amendment, we would also seek that it apply to all resource consent applications that have yet to be finally decided, not just to applications made after the amendment bill is enacted.

The consenting pathway for coal mining

12. The bill aligns the consenting pathway for coal mining with other mineral extraction activities across the NPSFM 2020, NPSIB 2023 and Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (the NES-F 2020).
13. We fully support this alignment as the effects of mineral extraction, whether it be for coal or any other mineral, are no different in nature. It rectifies a significant flaw in the existing regulations.
14. As the bill's explanatory note outlines, the NPSFM 2020, NES-F 2020, and NPSIB 2023 already contain strong protections in respect of adverse effects of activities on wetlands and SNAs, while also, sensibly, providing consent pathways for locally constrained mineral extraction activities that have the potential to impact on wetlands or SNAs.
15. For political reasons, additional restrictions were placed on the consenting pathway for coal mining in comparison to other mineral extraction activities. The consent pathway is currently limited to the operation and expansion of existing coal mines only (thus prohibiting the possibility of any new coal mines in New Zealand) and in respect of mines extracting thermal coal, this limited consent pathway ceases on 31 December 2030. This was a clumsy attempt to sunset coal mining in New Zealand while there is still demand for coal, both for domestic supply and for export.
16. There are no grounds for these additional controls. The wetland and biodiversity regulations should be about addressing the effects of activities, which depend on the mining method, not the type of mineral being extracted.

Background

17. The history of the NPSFM and NES-F is chequered.
18. The original enactment of the NPSFM 2020 and NES-F 2020 contained an unrealistically narrow definition of a natural wetland and prohibited mining and quarrying activities from disturbing a wetland at all, regardless of the quality of that wetland.
19. Upon being made aware of these flaws by the minerals sector, the Environment Minister at the time admitted the error and assured the sector they would implement a solution by way of amending the regulations to provide a consenting pathway for all locally constrained industries.
20. During the consultation process, a 2030 sunset clause for thermal coal was promoted – an arbitrary and ill-conceived end date which had no rationale on environmental grounds – and on which the mining sector provided substantive feedback.
21. Further tightening for coal came in the form of last-minute changes not consulted on and not made known to the industry – namely distinguishing between existing and new coal mines and coking and thermal coal mines (as described above). These changes were later replicated in the NPSIB, again without consultation or prior notification.

Impact

22. It is important to realise that coal mining is not the same as coal combustion. Demand-inhibiting policies are already in place as the country seeks to transition out of the use of coal for industrial heat processes and generation of electricity. However, such a transition will take decades and cannot happen overnight without abrupt adverse economic impacts. Coal will only be mined in New Zealand if there is a market for it.
23. Contrary to some commentary, the proposed changes to the NPSIB, NPSFM and NES-F will not result in large disturbances of wetlands and SNAs, nor significant growth in coal mining. They will simply allow coal producers the same opportunities as other locally constrained industries to present a case to consenting authorities where unavoidable disturbance needs to be mitigated.

SNA obligations

24. The bill suspends NPSIB 2023 requirements for councils to identify and notify new significant natural areas (SNAs) for three years. The three-year suspension period allows time for a review of the operation of SNAs and the full Resource Management Act (RMA).
25. We support these amendments.
26. SNAs identified on private property limit new activities and development that can take place on that property. Councils including them in district plans equates to a confiscation of property rights and risks undermining conservation efforts.
27. Furthermore, the assessment criteria and principles for identifying areas that qualify as SNAs in the NPSIB are not workable. Almost everywhere in New Zealand outside of urban boundaries could eventually be mapped as an SNA under the criteria and principles.
28. It is important to note, the suspension does not affect NPSIB 2023 obligations on councils for SNAs already in place before the commencement of this bill.
29. The evidence across the country is that too many of these natural areas do not meet an acceptable definition of significant. Where the SNAs are not ground truthed, they need to be lifted. We believe this should be addressed in this amendment bill.

Additional amendments to gateway tests for minerals

30. While the bill provides for measures to align the resource consent pathway for coal mining with other mineral extraction activities, it does not address additional discriminatory treatment across national direction instruments relating to the consenting pathways gateway tests for mineral extraction in general.
31. We note that the forthcoming second resource management reform bill is expected to deal with amendments of the national direction instruments and we will have more to say on these at that time¹. In the meantime, while the NPSIB 2023 and NPSFM 2020 are being amended as part of this bill, there are some important, simple changes that can be made to further reduce this anti-mining discrimination.

¹ With regard to rationing access to a consenting pathway, we will argue that applications should be considered on their merits and that there is no place for gateway tests within national direction instruments to provide access to the environmental hierarchy.

National vs regional significance

32. Clause 3.11(1)(a)(ii) of the NPSIB (and also, 3.9(2)(j)(iii) of the National Policy Statement Highly Productive Land (NPSHPL)) requires a project to provide significant national public benefit before it can be provided with a consenting pathway. This is a very high test, and it differs from aggregate extraction which requires projects to provide a significant national *or regional* public benefit (a lower threshold).
33. We note that the gateway test for the extractive sector in the NPSFM 2020 does not discriminate in this way. It requires projects to provide 'significant national or regional benefits' for both mining and quarrying. Furthermore, it excludes the vaguely defined term 'public benefit'.
34. We recommend that as part of the changes being made by the bill, this wording from the NPSFM, 'significant national or regional benefits' also be used for the NPSIB (and note that it should also be used in NPSHPL).

Ambiguous phrases

35. Clause 3.11(1)(a)(ii) of the NPSIB (and also, 3.9(2)(j)(iii) of the NPSHPL) only allows mineral extraction "that could not otherwise be achieved using resources within New Zealand". 3.11(1)(a)(iii) of the NPSIB (and 3.9(2) (j)(iv) of the NPS HPL) applies the same restriction on aggregate extraction.
36. Clause 3.11(1)(c) of the NPSIB only allows mineral extraction "where there are no practicable alternative locations for the new subdivision, use or development".
37. Both these phrases are ambiguous and unnecessary. Taken literally, extraction activities can't be approved if there are resources elsewhere in New Zealand and the term "practicable alternative locations" is too subjective to be helpful.
38. The phrases do not appear in the NPSFM. We recommend they be excluded from the NPSIB (and note that the former should also be excluded from the NPS HPL).

Recommendation

39. In light of this comment, we recommend the following changes to the NPSIB 2023 in addition to those already in the bill to address the coal exclusion, as discussed earlier:
 - Amend clause 3.11(1)(a)(ii) as follows: "mineral extraction that provides significant national **public-or regional** benefit ~~that could not otherwise be achieved using resources within New Zealand ...~~"
 - Delete clause 3.11(1)(c) of the NPSIB "~~there is no practicable alternative locations for the new subdivision, use or development~~".
40. These changes should apply to existing resource consent applications that have yet to be finally decided, not just to applications made after the amendment bill is enacted.