

Resource Management (Freshwater and Other Matters) Amendment Bill

A submission to the Primary Production Select Committee

June 2024



What is Taituarā?

Taituarā — Local Government Professionals Aotearoa thanks the Primary Production Select Committee (the Committee) for the opportunity to submit regarding the Resource Management (Freshwater and Other Matters) Amendment Bill (the Bill).

Taituarā — Local Government Professionals Aotearoa (formerly the NZ Society of Local Government Managers) is an incorporated society of approximately 1000 members drawn from local government Chief Executives, senior managers, and council staff with significant policy or operational responsibilities. We are an apolitical organisation. Our contribution lies in our wealth of knowledge of the local government sector and of the technical, practical, and managerial implications of legislation.

Some General Comments

The Bill makes a number of targeted amendments to the Resource Management Act (RMA). Overall, we support the Government's overall objective of reducing regulatory burden by making targeted amendments to the RMA but we have questions about how the methods proposed achieve that reduction.

This is one of two Bills that makes such targeted changes expected over the next few months. We observe that one of the frequently cited concerns with the RMA is that frequent small amendments, many intended to streamline and simplify, have contributed to legislation that is maze-like at best. The fragmented nature of this processes does not make for ease of understanding as to how decisions taken on these matters interface with the next phases of reform.

Fast paced changes and truncated engagement processes will not allow those affected the time to understand the implications of the changes and then make meaningful contributions that properly inform government decisions.

We are concerned that reduction in costs to applicants will ultimately shift costs on to ratepayers. The disclosure statement and regulatory impact statement are almost silent on costs to the local government sector

Te Mana o Te Wai

Resource consent applications are currently subject to the Te Mana o te Wai hierarchy of obligations contained in the National Policy Statement for Freshwater Management 2020 (the NPS-FM). The Bill will exclude the hierarchy of obligations contained in the NPS-FM 2020 from resource consent application and decision-making processes made after the Bill is enacted and until the NPS-FM is replaced. However, regional councils will still be

obliged to give effect to Te Mana o te Wai hierarchy in regional policy statements and plans.

There has been a certain amount of ‘urban myth’ around the hierarchy in the NPS-FM. In particular that it forces decision-makers to a zero-sum trade-off between the economy and the environment. But the application of Te Mana o te Wai is a weighted balance, not a rigid application.

We refer the Committee to the 2024 Freshwater Hearings Panel on the Otago Regional Policy Statement which held that “(Te Mana o te Wai) envisages that waters may be in a degraded state, and if so they should be restored and protected in a state closer to the natural setting. *However, that is not an absolute requirement*, given that later provisions of the NPS-FM recognise other community uses of natural and physical resources have occurred which can be beneficial to communities.”¹ (emphasis supplied)

This proposal is not backed by evidence. In the Regulatory Impact Statement that supports this part of the Bill, the Ministry for the Environment found no evidence that the hierarchy of obligations is causing consents to be declined due to a devaluing of economic matters. The Ministry reviewed a sample of notified resource consents in which the hierarchy of obligations featured in the decision. They found that most consents were granted. The two decisions to decline a consent that referenced the hierarchy would likely have still been declined irrespective of the hierarchy of obligations.²

Taituarā does not consider that the removal of the hierarchy makes it harder to understand Te Mana o te Wai obligations. However it does shift a considerable policy making burden onto regional councils who must give effect to the hierarchy in their plans but without the benefit of clear national direction on the resource consent application and consenting process.

The proposal is likely to affect Māori rights and interests as the removal of the hierarchy for consenting purposes means the obligations it directs may be balanced out in an overall decision that could see commercial interests valued more highly than the health of water. Iwi and hapū who were instrumental in securing the provisions in the NPS-FM will be faced with renewed uncertainty and must enter further policy discussions at the regional council level to ensure provisions they have already negotiated with the Crown at the national level are implemented through the RPS and regional plans.

¹ Otago Regional Independent Hearings Panel (2024), *Otago Regional Policy Statement: Report and Recommendations of the Independent Hearings Panel*, page 362.

² For example, see Ministry for the Environment (2023) Regulatory Impact Statement: Excluding the hierarchy of obligations within the National Policy Statement for Freshwater Management from resource consenting, page 11.

We would like clarification on the future of Farm Plans given a review of those plans has been signalled by the government and councils are relying on farm plans as the mechanism to implement regional plans and regional policy statements.

Recommendations: Te Mana o Te Wai

- 1. That the NPSFM remains unchanged until the proposed full review is carried out supported by an appropriate programme of engagement.**
- 2. Clarify the future of farm plans so we understand the implementation implications for regional plans and regional policy statements.**

Amending the process for preparing and amending National Direction

The Bill simplifies the process for making or amending national directions by:

- providing a new definition for National Direction to include national environmental standard, a national planning standard, a national policy statement, or a New Zealand coastal policy statement and
- removing the board of inquiry (BOI) process so there is a single process for preparing national direction; and exempting national direction proposals from the requirement to prepare and publish evaluation reports. Instead these proposals would be evaluated following consideration of the effectiveness of the proposal; the impact on the environment and the economy; and the reasonably practicable alternative options.

We support the intention of hastening the process for making or amending National Direction. Leaving the determination of what is 'adequate time and opportunity' for making a submission to Ministerial discretion does not provide enough certainty for the public or local authorities. Both parties need enough time to think through the implications of (what is often complex) direction on their plans and processes and to ensure their submissions genuinely assist decision makers.

In our experience there are risks associated with moving too quickly including missing out on the ideas generated through the engagement process and a higher probability of being left with generic solutions. We think this absence of nuance is demonstrated in the processes that resulted in the NPS-HPL, the NPS-IB and the NPS-UD.

As drafted it is not clear whether the Minister could make several discreet decisions about what is 'adequate time and opportunity' with different outcomes for different submitters.

We are concerned that removing the BOI process will reduce the range of perspectives that influence policy and direction and shift the process too far into the political sphere. As it stands the board is made up of experts who operate at arms-length from the government.

A BOI is appointed to reflect the expertise required to understand the technical, scientific, economic and social implications of decisions without political bias. Currently a board is appointed and makes decisions within nine months. The board runs its own process, considers all submissions, holds a hearing and makes final decisions independently from the EPA and the Minister.

As with all policy making we think a robust justification via an evaluation report is necessary and any amendments to the evaluation criteria or process should be thoroughly justified.

Recommendations: National Direction

- 3. That the Bill be amended to retain an independent Board of Inquiry process.**
- 4. That the Bill be amended to specify timeframes for making submissions on changes to national direction.**
- 5. That the Bill be amended to provide staggered timeframes for simple, moderately complex, and complex, national direction.**
- 6. That the Select Committee seek further advice justifying the replacement of assessment criteria for RMA s32 evaluation reports including no longer having to assess the status quo 'do nothing' approach**
- 7. That the Bill be amended to clarify the extent of the Ministers ability to make decisions on what is 'adequate time and opportunity'.**

Suspending the requirement for new Significant Natural Areas

Local authorities currently have an obligation under the NPS-IB to identify and include new Significant Natural Areas (SNAs) in district plans by 4 August 2028. The Bill suspends this obligation for 3 years and amends the timing for when local authorities must publicly notify any policy statement, proposed plan or plan changes that give effect to the National Policy Statement Indigenous Biodiversity (NPS-IB). Councils are still obliged to recognise and provide for indigenous biodiversity and the Bill will not prevent or affect

the ability to voluntarily identify or notify new SNA in policy statements, plans or proposed plans within this 3-year period.

We appreciate that this is an attempt to give some relief to councils by extending mandatory timeframes but think the drafting should make it clear that while the duty to identify and include new SNAs in district plans is suspended the ability for a willing council to do so is not. The Bill must also clarify the status of SNAs already identified and included in proposed plans yet to become operative.

Recommendations: Significant Natural Areas

- 8. That the Select Committee redraft the provisions relating to the suspensions for SNAs under the NPS-IB to clearly demonstrate the provision is to assist councils in their planning**
- 9. That the Bill be amended to clarify there is an ongoing obligation to recognise and provide for indigenous biodiversity**
- 10. That the Bill be amended to state there is no restriction on councils voluntarily identifying and notifying SNAs within the extended 3 year period.**
- 11. That the Bill be amended to clarify the provisions as they relate to SNAs in proposed plans yet to become operative.**

Aligning the consenting pathway for coal mining with other extractive activities across national direction

Compared to other mining activities, coal mining is subject to a stricter consent pathway under the NPS-FM, NPS-IB and Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (the NES-F). Currently, the consent pathway for coal mining is limited to the operation and expansion of existing coal mines and thermal extraction until 31 December 2023. The Bill removes additional constraints by extending the consenting pathway for coal mines to new coal mines and removing the sunset clause of 31 December 2023 on consent pathways for thermal coal.

While the consenting pathway for mineral extraction under the NPSFM is not made more lenient, it enables new coal mining activities to be considered. The test regarding significant national or regional benefits, the functional need for the activity to take place in that location, and the effects management hierarchy still apply. Taituarā considers that when including an activity that was previously prohibited,

assessment criteria should be included that specifically address the matters that led to the former prohibited activity status including climate change, emissions reduction and human health criteria.

Recommendations: Coal Mining

- 12. That the Select Committee amend the assessment criteria for consideration of new coals mines to specifically address the matters that led to prohibited activity status including climate change , emissions reduction and human health impacts**
- 13. That the Select Committee seek further advice regarding the impact of this proposal on wetlands and significant natural areas in the context of New Zealand’s international obligations, specifically biodiversity and greenhouse gas emissions.**
- 14. That the Select Committee seek further advice regarding the interaction of this coal mining status with the downgrade in the status of wetlands, and biodiverse areas that might in other circumstances qualify as SNAs.**

Reducing regulation and cost for farmers

The Bill amends the use of low slope maps under the Resource Management (Stock Exclusion) Regulations 2020 that restrict grazing of beef, cattle and deer near water bodies. Low slope maps are to be replaced with freshwater farm plans and/or regional plan rules.

The Bill repeals the permitted and restricted discretionary activity regulations and associated conditions for intensive winter grazing contained in the National Environmental Standard for Freshwater (NES-F). The stand-alone regulations intended to minimise adverse effects on freshwater from pugging and ensure vegetated ground cover is re-established after grazing, are retained.

The NES-F has effectively improved farm management practices and water quality and are concerned some farmers will revert to what works for them if the regulations are removed. Water quality issues are appropriately dealt with at the national level and national standards should provide a backstop for regional policy and plan making and implementation through farm plans. Some controls should remain.

Recommendation: Winter Grazing

- 15. That the Select Committee create a controlled activity status for intensive winter grazing.**

