

Departmental Disclosure Statement

Resource Management (Freshwater and Other Matters) Amendment Bill

The departmental disclosure statement for a Government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of the Environment, with the assistance of the Ministry of Business, Innovation, and Employment, and the Ministry for Primary Industries.

The Ministry for the Environment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

14 May 2024

Contents

Contents.....2

Part One: General Policy Statement..... 3

Part Two: Background Material and Policy Information 7

Part Three: Testing of Legislative Content..... 10

Part Four: Significant Legislative Features 14

Part One: General Policy Statement

The objective of the Resource Management (Freshwater and Other Matters) Amendment Bill (the Bill) is to reduce regulatory burden by making targeted amendments to the Resource Management Act 1991 (RMA) and national direction.

The Bill:

- excludes the hierarchy of obligations contained in the National Policy Statement for Freshwater Management 2020 (NPSFM 2020) from resource consent application and decision-making processes until the NPS-FM 2020 is replaced
- aligns the consenting pathway for coal mining with other mineral extraction activities across the NPSFM 2020, National Policy Statement for Indigenous Biodiversity 2023 (NPSIB 2023) and Resource Management (National Environmental Standards for Freshwater) Regulations (NES-F)
- modifies local authority obligations under the NPSIB 2023 to identify and include in district plans new Significant Natural Areas (SNAs) for three years
- amends the Resource Management (Stock Exclusion) Regulations in relation to sloped land
- repeals the permitted and restricted discretionary activity regulations and associated conditions for intensive winter grazing from the NES-F
- makes amendments to speed up the process to prepare or amend national direction under the Resource Management Act 1991 (RMA).

The Bill principally amends the RMA, and:

- The National Policy Statement for Freshwater Management 2020
- The National Policy Statement for Indigenous Biodiversity 2023
- The Resource Management (National Environmental Standards for Freshwater) Regulations 2020
- The Resource Management (Stock Exclusion) Regulations 2020.

The Bill includes consequential amendments to the Resource Management (Freshwater Farm Plans) Regulations 2023 and the Resource Management (Infringement Offences) Regulations 1999.

Proposals

Excluding the hierarchy of obligations within the NPSFM 2020 from resource consent application and resource consent decision-making processes

Under the RMA, the NPSFM 2020 primarily takes effect through objectives, policies and rules in regional policy statements and plans, and is also relevant to resource consenting. Resource consent applicants must assess (in applications for resource consent), and consent authorities must have regard to (when considering an application for resource consent), any relevant provisions of a national policy statement.

The NPSFM 2020 includes the concept of Te Mana o te Wai that refers to the fundamental importance of freshwater and recognises that protecting the health of freshwater protects the health and well-being of the wider environment. Te Mana o te Wai includes a 'hierarchy of obligations' that prioritises:

- First, the health and well-being of water bodies and freshwater ecosystems
- Second, the health needs of people (such as drinking water)
- Third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

Managing freshwater in a way that prioritises the hierarchy of obligations is the stated (single) objective of the NPSFM 2020.

The Bill excludes the hierarchy of obligations within the NPSFM 2020 from resource consent application and decision-making processes by precluding:

- resource consent applicants from including an assessment against clause 1.3(5) or 2.1 of the NPSFM 2020 in applications for resource consent
- consent authorities from requesting information from consent applicants or commissioning reports on clause 1.3(5) or 2.1 of the NPSFM 2020
- consent authorities from having regard to clause 1.3(5) or 2.1 of the NPSFM 2020 when considering resource consent applications.

The Bill limits the application of this proposal to resource consent applications lodged with a consent authority after commencement.

The Bill requires the Minister to make a recommendation to the Governor General to repeal this proposal by Order in Council when recommending the approval of a new national policy statement for freshwater management to replace the NPSFM 2020.

Regional councils will remain obligated to give effect to the NPSFM 2020 (including the hierarchy of obligations) through their policy statements and plans.

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

The NPSFM 2020, NES-F and NPSIB 2023 contain strong protections for wetlands and SNAs, but also provide specific consent pathways for mineral extraction activities that have adverse effects on wetlands or SNAs. The current pathway for coal mining has additional controls compared to other mineral extraction activities. The consent pathway is limited to the operation and expansion of existing coal mines and for thermal coal extraction this consent pathway ceases on 31 December 2030.

The Bill therefore provides for measures to align the resource consent pathway for coal mining with other mineral extraction activities under the NPSIB 2023, NPSFM 2020 and NES-F. The Bill extends the consenting pathway for coal mines to new coal mines and removes the sunset clause on consent pathways for thermal coal.

Modifying local authority obligations under the NPSIB 2023 to identify new SNAs and include them in district plans for three years

The NPSIB 2023 directs local authorities on how to discharge RMA requirements regarding indigenous biodiversity. It provides a consistent framework and assessment criteria for councils to identify and include SNAs within their policy statements and plans, and to manage the effects of development on SNAs. It also specifies timeframes for those actions.

The Bill suspends NPSIB 2023 requirements for councils to identify and notify new SNAs using the NPSIB 2023 assessment criteria and principles for three years. This suspension does not affect NPSIB 2023 obligations on councils for SNAs already

existing in policy statements, proposed policy statements, plans, proposed plans or plan changes before the commencement of this Bill. The three-year suspension period for the implementation of new SNAs will allow time for a review of the operation of SNAs more broadly.

The Bill also amends timing provisions within the NPSIB 2023 for when local authorities must publicly notify any policy statement or plan or changes necessary to give effect to NPSIB 2023 provisions about SNAs (subpart 2 of Part 3 of the NPSIB), except indigenous biodiversity outside an SNA (clause 3.16 of the NPSIB 2023). The date is extended to 31 December 2030.

The Bill clarifies that it does not affect councils' existing obligations under the RMA for indigenous biodiversity which includes the obligation to recognise and provide for areas of significant indigenous vegetation and significant habitats of indigenous fauna.

The changes in the Bill do not affect or prevent identification or notification of new SNAs in policy statements or plans during the three-year suspension period if required by a court order or other outcome as a result of existing proceedings or processes, which are preserved by sections 32-33 of the Legislation Act 2019.

Amending the stock exclusion regulations in relation to sloped land

The Resource Management (Stock Exclusion) Regulations regulate the access of cattle, pigs, and deer to water bodies.

A map of low slope land is currently incorporated by reference in the regulations and acts as a land-based trigger for requirements to exclude non-intensively grazed beef cattle and deer from waterbodies (and all stock in relation to wetlands greater than 500 square metres).

The Bill repeals the map of low slope land and associated requirements, meaning that exclusion of affected stock types will instead be managed by freshwater farm plans and/or regional plan rules.

Repealing the intensive winter grazing regulations in the NES-F

The NES-F includes regulations that allow intensive winter grazing to occur as a permitted activity, provided certain conditions are met or where a farm has a certified freshwater farm plan. Otherwise, a restricted discretionary resource consent is required to undertake intensive winter grazing.

The NES-F also includes standalone regulations to minimise adverse effects on freshwater from any pugging and to ensure a vegetated ground cover is established after livestock have finished grazing.

The Bill repeals the permitted and restricted discretionary activity regulations and associated conditions from the NES-F. However, the standalone regulations will be retained.

Amendments to speed up the process to prepare or amend national direction

The process for preparing or amending national direction is set out in Part 5 of the RMA.

The Bill:

- removes the Board of Inquiry process to provide one clear default process for preparing national direction
- makes it easier to make simple updates to national direction
- removes unnecessary prescription from the process to make or amend national direction
- amends evaluation report requirements as they relate to national direction to make them more flexible and less onerous.

This proposal applies to preparing or amending a national environmental standard, national planning standard, national policy statement, or the New Zealand Coastal Policy Statement.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO
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Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>Regulatory Impact Statements were provided for the following proposals:</p> <ul style="list-style-type: none">• excluding the hierarchy of obligations within the National Policy Statement for Freshwater Management from resource consenting (finalised 3 April 2024)• amending the Stock Exclusion Regulations and Intensive Winter Grazing Regulations through the Resource Management Act Amendment Bill 2024 (finalised 26 March 2024) <p>For the proposal modifying local authority obligations under the NPSIB 2023 to identify new SNAs and include them in district plans for three years, Treasury has determined that it is not subject to Cabinet's impact analysis requirements.</p> <p>Supplementary Analysis Reports were prepared in place of Regulatory Impact Statements for these proposals:</p> <ul style="list-style-type: none">• aligning the consenting pathway for coal mining with other extractive activities across national direction• amendments to speed up the process to prepare or amend national direction. <p>Further information is provided in response 2.3.4 below.</p> <p>The Regulatory Impact Statements and Supplementary Analysis Reports will be published on the website of the Ministry for the Environment and the Treasury, and available via the following links:</p> <p>Regulatory Impact Statement: Excluding the Hierarchy of Obligations within the National Policy Statement for Freshwater Management from Resource Consenting: https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/excluding-hierarchy-of-obligations-within-the-npsfm</p> <p>Regulatory Impact Statement: Amending the Stock Exclusion Regulations and Intensive Winter Grazing Regulations through the Resource Management Act Amendment Bill 2024 https://www.mpi.govt.nz/dmsdocument/61960</p> <p>Supplementary Analysis Report: amending the consenting pathway for coal mining in or around wetlands and significant natural areas https://www.mbie.govt.nz/dmsdocument/28364-supplementary-analysis-report-amending-the-consenting-pathway-for-coal-mining-in-or-around-wetlands-and-significant-natural-areas</p> <p>Supplementary Analysis Report: Streamlining National Direction Processes https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/streamlining-national-direction-processes</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
<p>The RIA Team in the Treasury advised that its analysis role could be completed by the Regulatory Impact Analysis Panel of each Ministry.</p> <p>For the proposal to exclude the hierarchy of obligations within the NPS-FM from resource consenting, a quality assurance panel with members from the Ministry for the Environment and the Ministry for Primary Industries reviewed the Regulatory Impact Statement. The panel considered that it partially meets the Quality Assurance criteria, and provided the below quality assurance statement:</p> <p><i>'The Regulatory Impact Statement, within the context it is written in, has provided a near complete impact analysis which is clear and concise. While the analysis is balanced, due to the limited time, it could not provide robust evidence to provide a complete analysis of likely impacts. Consultation was limited and stakeholders were not given sufficient time, or a full range of options to consider. The monitoring section is insufficient. We are unconvinced that the proposal for post-implementation monitoring of likely impacts is feasible.'</i></p> <p>For the proposal to amend the stock exclusion regulations in relation to sloped land, and to repeal the intensive winter grazing regulations in the NES-F, a quality assurance panel from the Ministry for Primary Industries reviewed the Regulatory Impact Statement. The panel considered that it partially meets the Quality Assurance criteria, and provided the below quality assurance statement:</p> <p><i>'The document sets out thorough explanations of the existing regulations, and the trade-offs in the proposed changes. The panel acknowledges the limitations and constraints on the problem definitions, options analysis, and consultation due to the available timeframes and ministerial direction. Due to these limitations and constraints, the RIA panel considers that the Amending the Stock Exclusion Regulations and Intensive Water Grazing Regulations RIS only partially meets the RIA criteria.'</i></p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	YES
<p>Supplementary Analysis Reports were prepared for the following policies:</p> <p>1. Supplementary Analysis Report – Amending the consenting pathway for coal mining in or around wetlands and significant natural areas (finalised 14 May 2024)</p> <p>The report was assessed by a panel from the Ministry of Business, Innovation and Employment. The panel considered that it partially meets the requirements, stating that "there are limitations to: the consideration of options, the extent of consultation and the assessment of impacts."</p> <p>2. Supplementary Analysis Report: Streamlining National Direction Processes (finalised 14 May 2024)</p> <p>A quality assurance panel with members from the Ministry for the Environment's Regulatory Impact Analysis Team has reviewed the Supplementary Analysis Report. The panel considers that it partially meets the Quality Assurance criteria.</p> <p>The QA panel notes that the Streamlining National Direction Processes Supplementary Analysis Report is convincing, well-written and in response to a defined need, with risks and constraints defined and discussed.</p> <p>There is, however, a very constrained analysis of options to address the problem, a lack of data and uncertainty with the analysis, particularly with monetised costs and benefits. There is also a lack of adequate consultation, however, there will be opportunity for public participation during the Select Committee process.</p> <p>It will be important to develop the performance indicators and use these to tangibly review the performance of the proposed changes discussed in the document.</p>	

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>The proposals have been developed to reduce regulatory burden and address concerns about costs associated with the status quo.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

The Ministry of Foreign Affairs and Trade has undertaken an assessment of the Bill's consistency with New Zealand's international obligations.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Excluding the hierarchy of obligations within the NPSFM 2020 from resource consent application and decision-making processes

In light of the limited engagement and uncertain impact of the proposal on freshwater, it was difficult to assess (for both the proposal and policy development process):

- whether or not the Treaty principles of partnership and active protection have been met
- whether or not general engagement obligations contained in some Treaty settlements have been met
- whether or not processes provided for in certain settlements, such as for the Waikato and Whanganui rivers, have been met
- implications for the Crown's commitments on Māori freshwater rights and interests.

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

Due to the limited time available, it has not been possible to engage with iwi/Māori on these proposals nor fully assess the Treaty impacts, including on the Crown's Treaty settlement commitments.

Modifying local authority obligations under the NPSIB 2023 to identify new SNAs and include them in district plans for three years

Officials carried out an assessment of the impacts on Māori and on the consistency of the NPSIB with Te Tiriti o Waitangi prior to the NPSIB being made in 2023. The final NPSIB sought to address the concerns about SNA identification raised by tangata whenua through the development of the national direction.

Due to the limited timeframes, there was limited engagement with iwi/Māori representative groups on the proposals in the Bill. Iwi/Māori that provided feedback did not express strong opinions but noted:

- the need to respect Te Tiriti obligations and Māori private property rights
- Māori have a significant interest in maintaining indigenous biodiversity on their land and also seek to ensure they have a continued ability to use and develop their land
- concern that councils may delay applying the more development oriented NPSIB provisions to existing SNAs on Māori land while the suspension of new SNAs is in force
- concern that the consultation was too limited in time and scope and did not allow for a full analysis of the implications, nor time for a considered response.

It has not been possible to fully assess the Treaty impacts, including on the Crown's Treaty settlement commitments.

Amending the stock exclusion regulations in relation to sloped land

Due to time limitations and constraints on the analysis for this proposal, it is difficult to assess:

- whether or not the Treaty principles of partnership and active protection have been met
- whether or not general engagement obligations contained in some Treaty settlements have been met
- whether or not processes provided for in certain settlements, such as for the Waikato and Whanganui rivers, have been met, and
- implications for the Crown's commitments on Māori freshwater rights and interests

No engagement was conducted with Treaty partners on the proposals, due to time constraints. However, previous engagement was conducted in 2023. That engagement indicated Māori may have concerns about the implications of changes contained in the current proposals regarding the health of freshwater bodies.

Repealing the intensive winter grazing regulations in the NES-F

Due to time limitations and constraints on the analysis for this proposal, it is difficult to assess:

- whether or not the Treaty principles of partnership and active protection have been met
- whether or not general engagement obligations contained in some Treaty settlements have been met
- whether or not processes provided for in certain settlements, such as for the Waikato and Whanganui rivers, have been met, and
- implications for the Crown's commitments on Māori freshwater rights and interests.

No engagement was conducted with Treaty partners. There is some indication of the views of Treaty partners through 2019 consultation on the *Essential Freshwater Package*, which included policies around winter grazing. The majority of iwi/Māori partner submissions during consultation supported the package as a whole and regulations on farming practices, including winter grazing, to halt freshwater degradation.

Amendments to speed up the process to prepare or amend national direction

Officials have undertaken an analysis of Treaty settlement and other legislative arrangements to assess the impacts of these proposals including Board of Inquiry provisions. The analysis indicates the proposed changes to national direction to remove the Board of Inquiry process will not have a significant impact on Treaty settlements and other legislative arrangements. The mechanisms that do apply to national direction will continue to apply to the processes conducted by the Minister (even if the Board of Inquiry does not exist), and/or they can be amended to apply.

It will be important that Post Settlement Governance Entities (PSGEs) are invited to make a submission on any draft national direction to compensate for the fact that they would no longer be able to submit to a Board on Inquiry (which was part of the context within which the settlements were negotiated). The ability to submit is provided for iwi authorities currently (s46A(4)(a) of the RMA), and ideally should be extended to PSGEs. However, the Crown has not undertaken engagement with affected groups who may consider the proposal to be significant. Officials have identified a small number of settlements and other arrangements that will be directly affected. This will require the Crown to discuss the changes with affected groups and seek agreement to any necessary amendments to their legislation following enactment of the amendment Bill.

A high-level Treaty impact analysis for this proposal with further detail is contained in the Supplementary Analysis Paper (refer to response 2.3 and 2.3.4 above for information on the Supplementary Analysis Paper).

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO

3.4.1. Was the Ministry of Justice consulted about these provisions?	NO
The revocation of regulations 14, 15 and 18 of the Resource Management (Stock Exclusion) Regulations 2020 in relation to low slope land has consequential implications by removing those activities as infringement offences under the Resource Management (Infringement Offences) Regulations 1999.	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO

3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>A summary of engagement undertaken on the policy proposals is provided below.</p> <p>Excluding the hierarchy of obligations within the NPSFM 2020 from resource consent application and resource consent decision making processes</p> <p>Letters were sent by the Minister Responsible for RMA Reform in late December 2023 and late January 2024 outlining the Government's policy intent. These letters went to iwi (including Post Settlement Governance Entities, and groups yet to settle their historical Treaty of Waitangi claims iwi), as well as local government. The January 2024 letter was also sent to primary sector stakeholders, non-government environmental organisations, and practitioners. Discussions with some of these groups commenced on 25 January 2024. Not all groups were available to discuss these matters with officials within the timeframes available and/or under the given circumstances (e.g., some groups indicated they understood that the policy decisions had already been taken, referencing the letters from the Minister Responsible for RMA Reform to support this view).</p>	

Modifying local authority obligations under the NPSIB 2023 to identify new SNAs and include them district plans for three years

Targeted engagement was undertaken on the proposed amendments to the NPSIB in March 2024. Officials from the Ministry for the Environment met with representatives from the Biodiversity Collaborative Group, Iwi Leaders Group and Te Tai Kaha and local government representatives. Written feedback was received from the Federated Farmers, Forestry Owners Association and New Zealand Farm Forestry Association, Environmental Defence Society, Royal Forest and Bird protection Society, councils and council representative groups.

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

The proposals in the Bill that expands the consent pathways to include pathways for new coal mines and thermal coal mines after December 2030, have not specifically been consulted on either before or after Cabinet decisions were made on the policy.

Amending the stock exclusions regulations in relation to sloped land and repealing the intensive winter grazing regulations in the NES-F

Due to the short timeframes associated with the Bill, there was no public or stakeholder consultation on the proposed changes to the stock exclusion and intensive winter grazing regulations.

Amendments to speed up the process to prepare or amend national direction

There has been insufficient time to consult on these proposals due to the short timeframes associated with the Bill. However, similar amendments to the evaluation report requirements were previously consulted on during the development of the Natural and Built Environment Act 2023 (NBA). These amendments were largely supported by stakeholders, although some expressed concern that proposals would not be as robustly evaluated as a result.

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO