

Submission by



to the

Primary Production Select Committee

on the

**Resource Management (Freshwater and Other Matters)
Amendment Bill**

June 2024

**RESOURCE MANAGEMENT (FRESHWATER AND OTHER MATTERS)
AMENDMENT BILL
SUBMISSION BY BUSINESSNZ¹**

1.0 Introduction

1.1 BusinessNZ welcomes the opportunity to make a submission on the Resource Management (Freshwater and Other Matters) Amendment Bill (“the Bill”) and recommends that the Bill proceeds.

1.2 The Bill proposes urgent targeted changes to the resource management system with the objective of reducing the regulatory burden on key sectors including farming, mining and other primary industries.

1.3 Changes proposed in the Bill will:

- Exclude the hierarchy of obligations contained in the National Policy Statement for Freshwater Management 2020 (the NPSFM 2020) from resource consent application and decision-making processes until the NPSFM 2020 is replaced
- Align the consenting pathway for coal mining with other mineral extraction activities across the NPSFM 2020, National Policy Statement for Indigenous Biodiversity 2023 (the NPSIB 2023) and Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (the NES-F)
- Modify local authority obligations under the NPSIB 2023 to identify and include in district plans new significant natural areas (SNAs) for 3 years
- Amend the Resource Management (Stock Exclusion) Regulations 2020 in relation to sloped land
- Repeal the permitted and restricted discretionary activity regulations and associated conditions for intensive winter grazing from the NES-F
- Make amendments to speed up the process to prepare or amend national direction under the Resource Management Act (RMA).

1.4 BusinessNZ notes that the Government is committed to further reforms of the RMA later this Parliamentary term, with new resource management laws based on the guiding principle of the enjoyment of property rights. Ultimately BusinessNZ supports this approach but accepts that it is necessary to remove unnecessary roadblocks to growth in the meantime – hence our broad support for the Bill.

¹ Background information on BusinessNZ is attached as Appendix 1.

- 1.5 Given the diversity of our membership, some members and sectors will have specific issues they wish to comment on the Bill. Therefore, we have encouraged individual members and sector representatives to make their own submissions raising those issues specific to their areas of interest.

- 1.6 BusinessNZ has deliberately not commented on proposals in respect to the Stock Exclusion Regulations 2020 or issues surrounding intensive winter grazing as these issues are best dealt with through those organisations, companies, and members with day-to-day experience and expertise on the ground, such as Federated Farmers, and other agricultural-related representative organisations.

RECOMMENDATIONS

BusinessNZ **recommends** that:

The Bill proceeds.

WITHOUT PREJUDICE TO THE PRINCIPAL RECOMMENDATION ABOVE:

BusinessNZ **recommends** that:

To encourage efficient investment in natural resource and infrastructure development for the economic well-being of current and future generations of New Zealanders, the Select Committee insert clauses into the Bill:

- (a) recognising the importance of upholding property rights to encourage efficient investment; and**
- (b) introducing a compensation regime for regulatory takings to encourage better decision-making from regulators when affecting private property in the public interest.**

BusinessNZ **recommends** that:

Adequate time be provided to those parties potentially adversely (or beneficially) affected by changes to national direction to comment on any changes given that while speed to change national direction can be beneficial in some cases, changes need to also be cognisant of the potential impacts on individuals and businesses which need to be considered.

2.0 **General Discussion**

Excluding the hierarchy of obligations contained in the National Policy Statement for Freshwater Management 2020 (the NPSFM 2020) from resource consent application and decision-making processes until the NPSFM 2020 is replaced.

- 2.1 BusinessNZ is supportive of this proposal and agrees with the proposals to replace the NPSFM 2020 over time.
- 2.2 The NPSFM 2020 includes the concept of Te Mana o te Wai, which 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.
- 2.3 Managing freshwater in a way that prioritises the hierarchy of obligations is the stated (single) objective of the NPSFM 2020.
- 2.4 The Bill proposes to exclude the hierarchy of obligations in the NPSFM from resource consenting. This will address concerns about the way it is being applied while a review and replacement of the NPSFM is undertaken. Regional Councils will still be obligated to give effect to the NPSFM, including the hierarchy, in their policy statements and plans. The change is about ensuring that the obligations are not imposed on individual resource consent applications as this was never the intent of the NPSFM. Given that there is some evidence that this may be occurring it is wise to clarify the NPSFM at this stage.
- 2.5 BusinessNZ outlined its concerns in respect to the current NPSFM in a letter to the Minister Responsible for RMA Reform dated 4 April 2024.
- 2.6 The relevant section is quoted below:

"...a number of National Policy Statements (NPSs) could potentially have unintended consequences and should be re-examined with regard to whether they can actually achieve their stated objectives. For example, it is noted that

the Government intends reviewing the National Policy Statement for freshwater management (NPS-FM).

In respect to the NPS-FM, BusinessNZ has a number of concerns, with the current structure including, but not limited to:

- The overwhelming objective of protecting the environment, with human drinking water second in the queue and economic development a distant third;*
- The inability to make trade-offs between competing environmental and economic objectives with environmental bottom lines trumping important economic development, irrespective of the cost or benefit;*
- Uncertainty surrounding freshwater allocation regimes and consenting/reconsenting paths with limited respect for upholding property right to water and lack of any compensation where consents can be altered without any form of compensation;*
- The difficulty in being freely able to transfer and trade water consents so they flow to their highest valued use is also severely constrained under current arrangements.”*

Aligning the consenting pathway for coal mining with other mineral extraction activities across the NPSFM 2020, National Policy Statement for Indigenous Biodiversity 2023 (the NPSIB 2023) and Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (the NES-F).

- 2.7 The Bill will align the provisions for coal mining with other mineral extraction activities under the National Policy Statement on Indigenous Biodiversity (NPSIB), the National Policy Statement for freshwater Management, and the National Environmental Standards for freshwater.
- 2.8 Effectively the Bill extends the consenting pathway for coal mines to new coal mines and removes the sunset clause on consent pathways for thermal coal. This will mean that coal mines have to meet the same tests and requirements to manage their environmental effects as similar activities.
- 2.9 BusinessNZ accepts that climate change is a very real challenge and New Zealand businesses are committed to taking action to reduce emissions. Businesses around New Zealand are conscious of their responsibility to reduce emissions and there is a consistent effort within various sectors to respond to their obligations and changing demand from consumers and distributors. Notwithstanding, NZ needs to be cognisant of the effects of policy changes on the ability of NZ businesses to operate.

- 2.10 There is a compelling argument that given that coal is still required for food production, energy security, and industrial production such as steel making for the foreseeable future, if it is not mined domestically then all we do is import coal and steel with potential flow on costs in terms of increasing greenhouse emissions.
- 2.11 Given the above considerations, BusinessNZ agrees with this proposal and notes that it opposed the exclusion of some mining activities in its submissions on the Proposed Changes to Wetland Regulations in 2021 and 2022.²
- 2.12 In its submission to the Ministry for the Environment on Managing our Wetlands: proposed Changes to the Wetland Regulations under the Essential Freshwater Amendments (July 2022) BusinessNZ reiterated its concern about the Government at the time, regulating as to what and was not an appropriate substance for extraction.
- 2.13 The relevant section of BusinessNZ's submission is directly quoted below:

"Third, BusinessNZ also considers that no distinction is needed between the different types of minerals found, or mines and quarries operating in the wetlands, as the extractive sector's effect on wetlands does not depend on the type of mineral extracted.

In this respect BusinessNZ disagrees with the proposal to differentiate coal, specifically thermal coal (or non-coking coal), from minerals generally. Specifically, BusinessNZ opposes excluding coal from minerals able to be mined under the proposed consent pathway and therefore supports Option 1 in Recommendation 32, not to place any controls on minerals able to be mined under the proposed consent pathway in the NES-F.

BusinessNZ considers that the regulations should be about addressing activities' effects, not about the activities themselves. This means it is not appropriate to use the natural wetland regulations to try and achieve a reduction in fossil fuel (e.g. coal) consumption. Other policies already in place, including the Emissions Trading Scheme (ETS), focus on greenhouse gas emissions and, as

² <https://businessnz.org.nz/wp-content/uploads/2022/09/211027-Managing-our-wetlands.pdf>

<https://businessnz.org.nz/wp-content/uploads/2022/09/220701-Managing-our-wetlands.pdf>

BusinessNZ has commented in recent submissions, it is the ETS that should be the primary means of encouraging emissions' reductions, at least cost.³

It should also be noted that coal's contribution to emissions occurs when it is consumed, not mined, and if the coal destined for combustion is not produced locally, then it will be imported and still burned here."

Modifying local authority obligations under the NPSIB 2023 to identify and include in district plans new significant natural areas (SNAs) for 3 years.

- 2.14 The Bill gives effects to the previously announced changes to suspend the identification of new SNAs through the NPSIB for a period of three years which will provide adequate opportunity for the Government to implement its wider reform to resource management based on the principle of the enjoyment of property rights.
- 2.15 It is noted that the criteria of identifying new significant natural areas within the NPSIB were an attempt to provide a standard approach to identifying the most important areas of biodiversity. However, there are concerns less significant areas are being captured and this can place too much restriction on how land is used. Moreover, there no compensation paid for restrictions on private property rights in the public interest.
- 2.16 It is a fundamental pillar of a market economy that property rights should be relatively clear, unambiguous, and able to be upheld in a court of law. Where property rights are removed or reduced by way of regulatory takings, compensation should generally be paid.
- 2.17 Without reasonable security from confiscation by the state or others, the incentive on individuals and businesses to invest and build up productive assets is severely weakened.

³ See for example, BusinessNZ Submission to the Environment Select Committee on the Natural and Built Environments Bill (August 2021):

"Provided emissions are adequately covered by the ETS, authorities should be agnostic as to which specific projects should be supported. Therefore, when it comes to meeting domestic and international obligations to reach net zero carbon emissions by 2050, we consider the focus should be on:

- 1. Net emissions and not gross emissions*
- 2. The ETS as the sole tool except where it can be clearly demonstrated that further interventions will have net benefits*
- 3. Any supporting policies as outcome-focused and technology agnostic*
- 4. Avoiding bans and interventions as typically these increase cost for no gain, given the ETS cap*
- 5. The importance of lowest cost abatement as cost matters to the wellbeing and livelihood of New Zealand families and businesses."*

- 2.18 BusinessNZ considers that to encourage greater accountability, there is a strong case for including in the Bill a cost/benefit test (something much better than the RMA's original Section 32), ensuring a strong understanding of the impacts associated with plan changes in respect to economic development and employment, along with any significant environmental effects.
- 2.19 As a general principle, individuals and companies should bear the full cost of their behaviour (i.e. costs should be internalised). Over-consumption of resources is always likely if costs can be shifted on to third parties. Management of land use - and risk - is no different. If individuals and companies are to make rational decisions about land use, they should ideally bear the cost (and gain the benefits) associated with specific options/outcomes. In the other hand, if individuals and companies are forced to pay a greater amount than any cost they impose, the outcome will either be a more expensive product and/or reduced commercial activity, with associated flow-on implications for employment etc.
- 2.20 There is no allowance in the RMA (or the current Bill), other than in some specific instances, for the payment of compensation in recompense for regulatory takings (or for a reduction in private property rights in the public interest). This is a substantial flaw in both the Act and the Bill and serves (and will continue to serve) to depress necessary economic activity.⁴
- 2.21 Regulatory takings should not be legislatively condoned. Instead, as noted above, BusinessNZ believes that core to the issue of property rights, where regulatory takings are contemplated, is the acknowledgement of the right to compensation. As a general principle, property rights should not be diminished without compensation. This is a long-held view. BusinessNZ considers the presumption of compensation to be a vital economic system check and balance.
- 2.22 The need to compensate for regulatory takings is hardly a new or novel conclusion in public policy terms. Over recent years the Crown, in the process of regulating private property rights in the perceived public interest, has at least accompanied regulation with compensation. This has occurred most notably in the areas of carbon emissions and fisheries management.

⁴ If considering this statement in demand and supply terms, a zero price on regulation is always going to mean that the demand for regulations will be high while the voluntary supply of property rights in return will be very low.

- 2.23 BusinessNZ's view is that the principle itself is fairly straight-forward, that is, if the public want something new to be in the public interest and regulated by an Act because they will benefit from it, then the public should pay for it.
- 2.24 This principle recognises that local democracy and the ability for local communities to make choices relevant to their community are important. But such choices are not without cost.
- 2.25 Ideally, those who seek to benefit from stopping a development should in principle fund the compensation, since they are unlikely to represent the public at large. If that is not practical, ultimately, funding should come from the taxpayer.
- 2.26 For these reasons, BusinessNZ considers the current provisions regarding compensation where property is taken or its use or value are restricted, require strengthening. S85 of the RMA gives a pointer although it does not provide for payment of compensation, an essential requirement if arbitrary takings are not to prevent reasonable development activity. Apart from the Public Works Act, there is currently no allowance, other than in one or two specific instances, for the payment of compensation for regulatory takings (that is, a reduction in private property rights in the public interest).

BusinessNZ **recommends** that:

To encourage efficient investment in natural resource and infrastructure development for the economic well-being of current and future generations of New Zealanders, the Select Committee insert clauses into the Bill:

- (a) recognising the importance of upholding property rights to encourage efficient investment; and**
- (b) introducing a compensation regime for regulatory takings to encourage better decision-making from regulators when affecting private property in the public interest.**

Making amendments to speed up the process to prepare or amend national direction under the RMA.

- 2.27 BusinessNZ supports the amendments contained in the Bill in respect to speeding up the process for development or amending national direction. The current process take too long and process requirements are quite cumbersome.
- 2.28 The idea of a single and efficient process for preparing national direction has merit, as does the ability to make minor changes efficiently.
- 2.29 Notwithstanding, BusinessNZ's broad support to speed the process up, it is important that those directly affected by changes to any national direction have adequate time to make submissions, and that concerns, where applicable, are built into decision-making processes. This is particularly so if changes to national direction have the potential to impinge on private property rights in the public interest, where ideally, compensation, should be provided to affected parties.

BusinessNZ **recommends** that:

Adequate time be provided to those parties potentially adversely (or beneficially) affected by changes to national direction to comment on any changes given that while speed to change national direction can be beneficial in some cases, changes need to also be cognisant of the potential impacts on individuals and businesses which need to be considered.

Appendix One - Background information on BusinessNZ



The BusinessNZ Network is New Zealand’s largest business organisation, representing:
Business groups EMA, Business Central, Business Canterbury, and Business South
BusinessNZ policy and advocacy services

Major Companies Group of New Zealand’s largest businesses

Gold Group of medium-sized businesses

Affiliated Industries Group of national industry associations

ExportNZ representing New Zealand exporting enterprises

ManufacturingNZ representing New Zealand manufacturing enterprises

Sustainable Business Council of enterprises leading sustainable business practice

BusinessNZ Energy Council of enterprises leading sustainable energy production and use

Buy NZ Made - country of origin licensing organisation for NZ-made products, NZ-grown ingredients, and NZ-coded software services

The BusinessNZ Network is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

The BusinessNZ Network contributes to Government, tripartite working parties and international bodies including the International Labour Organisation ([ILO](#)), the International Organisation of Employers ([IOE](#)) and Business at OECD ([BIAC](#)).

