

Select Committee unveils final report on the Resource Management (Freshwater and Other Matters) Amendment Bill

The Primary Production Select Committee has published its final report on the Resource Management (Freshwater and Other Matters) Amendment Bill

Earlier this year the Resource Management (Freshwater and Other Matters) Amendment Bill (the **Bill**) was introduced as part of a three-phased approach to reforming Aotearoa New Zealand's resource management system.

The Bill intends to reduce the 'regulatory burden' on key sectors including farming, mining and other primary industries. The proposals are to exclude the hierarchy of obligations (Te Mana o Te Wai) from resource consent decisions, amend the National Policy Statement for Freshwater Management 2020 (**NPS-FM**), the National Policy Statement for Indigenous Biodiversity 2023 (**NPSIB**), and the National Environment Standards for Freshwater (**NES-F**), align coal mines with other mineral extraction activities, suspend requirements for councils to identify and include new significant natural areas (**SNAs**) for three years, remove the "low slope land" map and associated requirements from the Stock Exclusion Regulations 2020 and repeal permitted and restricted discretionary activity regulations and conditions for intensive winter grazing. This is to be achieved through targeted amendments to the Resource Management Act 1991 (**RMA**) and national direction instruments. You can read more about the Bill [here](#).

The Primary Production Select Committee (the **Select Committee**) has released its [final report](#) on the Bill. It recommends the Bill be passed but with amendments. We look at the key amendments below.

Amendments to NPSIB

The Bill suspends the NPSIB requirement on councils to identify new SNAs in plans, allowing time for the NPSIB

to be reviewed. The Select Committee support this proposal but recommends clarifying that the provisions do not alter functions or requirements of local authorities and decision makers to protect biodiversity and does not affect policy statements, proposed policy statements, plans, proposed plans, or changes under the RMA that were initiated or in train but not completed before commencement of the Bill.

The Bill also enables the Minister for the Environment (the **Minister**) to amend the NPSIB to remove inconsistency and/or clarify the relationship between the NPSIB and the Bill when enacted. However, in response to concerns that the Minister could make changes without consultation or a defined scope the Select Committee recommends amending the provisions so the Minister cannot use such powers to change the NPSIB after the Bill is enacted.

The Select Committee also recommends extending the timeframe for councils to confirm their original methodology for identifying an SNA from four years to six years to reflect the three year suspension period after commencement of the Bill.

Intensive winter grazing

The Bill repeals the intensive winter grazing and intensification regulations, only retaining stand-alone regulations which relate to pugging and ground cover. In response to feedback from some councils the Select Committee have recommended including new regulations preventing intensive winter grazing closer than five metres to the bed of any river, lake, wetland or drain and prevent intensive winter grazing within or adjacent to any critical source area. Vegetation must be maintained as a ground cover over critical source areas (excluding cultivation or harvesting of annual crops.)

Amendments to national directions

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The Bill expands the circumstances where updates to National Environmental Standards (**NESs**) are exempt from consultation and submission requirements. It also proposes cross-references to national policy statements (**NPSs**) and national planning standards so these too could be amended without restrictions. However, the Select Committee recommend requiring the Minister to consider the appropriateness of this process before proceeding, including considering the scale and significance of a proposal. It also recommended requiring the Minister's reasons for the amendment to be published on the internet for greater transparency

The Bill does not require the Minister to follow the entire process set out in the Bill to amend an NES if recommending changes to timeframes for implementation of an NES. However, there was concern that this would create uncertainty for budgeting and work programmes and risk implementation timeframes being brought forward unexpectedly. The Select Committee recommend changes to allow the Minister to "extend" timeframes for implementation rather than "change."

Currently, the Bill gives the Minister discretion over timeframes for the submission period for national direction proposals. The Select Committee recommend a specified minimum timeframe of twenty days to provide for a fair process that reflects other RMA provisions.

The Bill removes the board of inquiry process for making and amending national direction. It proposes all NESs and NPSs be made using the existing alternative process under the RMA which the Minister and Ministry for the Environment would lead. The Select Committee recommend inserting a new section in the Bill to ensure consideration of matters in Part 2 of the RMA including relating to sustainable management are considered when reporting on a national direction proposal.

The Bill also removes the requirement for evaluation reports for national direction proposals and replace it with a streamlined evaluation reporting requirement. This is supported by the Select Committee who considers there to be considerable duplication and inefficiency between

evaluation of national direction proposals and regulatory impact statements.

Consenting discharges

Section 107 of the RMA prevents a discharge permit being granted if council is satisfied the discharge is likely to result in significant adverse effects on aquatic life. Recent court decisions held that adverse effects must be mitigated immediately for a discharge permit to be granted. You can read about these decisions [here](#).

While this matter was not included in the Bill as notified, submitters requested the Bill include new changes to section 107 as a matter of urgency as the above decisions impact significantly on their ability to obtain necessary discharge permits for farming activities.

The Select Committee noted the NPS-FM enables councils to achieve environmental outcomes over time and supported amending section 107 to align with the NPS-FM. It proposed amending section 107 to grant a discharge or coastal permit if a consent authority is satisfied the receiving waters were already subject to significant adverse effects and imposes conditions on the consent. However, the consent authority must be satisfied the conditions will contribute to a reduction in the adverse effects on aquatic life over the duration of the consent.

Amendments to the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019

The Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 details provisions related to effects an environmental covenant has on other documents and decisions. The proposed removal of the board of inquiry process saw Ngā Hapū o Ngāti Porou submit on concerns around how this would impact their rights under the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act. They requested an alternative process to exercise their existing rights if the board of inquiry process is removed.

The Select Committee was advised an alternative process was not necessary because Ngā Hapū o Ngāti

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Porou's can influence the preparation of a national direction under other sections of that Act. Instead the Select Committee recommended clauses to ensure any person who under a section 46A of the RMA, prepares a report and recommendations for a proposed national policy statement which directly affects ngā rohe moana, must consider the environmental covenant.

Other matters

The Select Committee also outlined other matters which it considered but did not propose amendments on.

Hierarchy of obligations under the NPS-FM 2020

The Select Committee noted the opposition to the removal the NPS-FM hierarchy of obligations due to potential poorer water quality outcomes. However, the Select Committee found these effects to be uncertain. They noted the remainder of the NPS-FM and provisions under the RMA continue to be relevant considerations in resource consent decisions. The Select Committee did note the NPS-FM provisions only apply to applications lodged after the Bill takes effect. The Select Committee acknowledged that applicants could bypass this by withdrawing and relodging consent applications which would be inefficient, costly and run counter to reducing regulatory burden. It recommended amending this provision to apply to all resource consent applications, including those already lodged with consent authorities, noting previously declined resource consents could be reapplied for.

Coal mining that affects wetlands or SNAs

The Bill also amends the NPS-FM, NPSIB, and the NES-F to provide consenting pathways for coal mines in and near wetlands and SNAs. Currently, coal mines that affect wetlands and SNAs are limited to the operation and expansion of existing mines with a sunset clause for thermal coal extraction ceasing on 31 December 2030. The Select Committee acknowledged submissions on climate change, adverse effects on wetlands/biodiversity and inconsistency with local and central government climate change plans but considered the extent of the

adverse effects to be uncertain. This was because new coal mines still require a resource consent and local authorities could establish additional protections or prohibitions for specific wetlands or SNAs throughout their regions. The Select Committee acknowledged the Bill may increase the volume of coal mined in New Zealand but held it was unlikely to affect net domestic emissions under the Emissions Trading Scheme. The Select Committee also noted these provisions only applied to applications lodged after the Bill commences and recommended it apply to all resource consent applications, including those already lodged with consent authorities with applications previously declined able to be reapplied for.

Stock exclusion regulations

Schedule 2 removes the requirement for stock to be excluded from waterways on low sloped land and instead provides the exclusion of affected stock to be managed on a case by case basis by freshwater farm plans and regional plan rules. However, councils were concerned there would be a period where the activity would be unregulated. They wanted a transitional arrangement so the maps remained until councils implemented freshwater farm plans or regional stock exclusion rules. The Select Committee declined this recommendation because it would have the same effect as retaining the low slope requirements with farmers still required to invest in actions to exclude stock.

Next steps

The Bill is due for its Second Reading in the House of Representatives. The Bill is intended to be passed by the end of 2024 so it is expected to make its way through the rest of the parliamentary process and into law quickly.

Want to know more?

If you have any questions about the RM Reform, please contact our specialist [Resource Management team](#).