SUBMISSION

Submission from Straterra

To the Environment Committee

Natural and Built Environment Bill and Spatial Planning Bill

February 2023

Introduction

1. Straterra is the industry association representing the New Zealand minerals and mining sector. Our membership is comprised of mining companies, explorers, researchers, service providers, and support companies.
2. We welcome the opportunity to submit on Natural and Built Environment (NBE) and Spatial Planning (SP) Bills.

Submission

3. Straterra opposes both the NBE and SP Bills.
4. We acknowledge the work that has gone into reviewing the resource management system and arriving at these bills, but we can't support them and believe that there are too many unresolved issues and flaws in the bills for them to be fixed.
5. We are concerned about the haste with which the bills are proceeding, the time given to make submissions and the Government's target of passing these bills before the General Election in October. There is too much work to be done to find a workable solution by that date and it is too important to rush through.
6. It is impossible to comment confidently on many parts of the NBE Bill without knowing what the National Planning Framework (NPF) looks like. A major flaw of both bills, and the process behind them, is that the NPF is to be drafted after the bills are passed (and consequently the NBE and regional spatial strategies (RSS) plans are too) so submitters are going in blind on many aspects of the proposed regime. Submitters on the bills are being asked to put too much trust in the NPF.
7. The challenge with any resource management system, is how to address the conflicts and tensions that exist between the environment and social and economic development impacts.

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8. The bills do not provide a good framework for managing these. In fact, we think the existing RMA does a better job with its adversarial assessment of the social, environmental and economic impacts of development proposals. The proposed system under these bills is too reliant on political solutions.
9. This submission:
    - Outlines the features of the Resource Management Act (RMA) that need to be retained
    - Provides a quick overview of the value of minerals and why a robust resource management system is important for the sector
    - Outlines why we oppose the bills and our main criticisms of them.

The submission takes a high-level perspective and highlights why we think the bills are not workable for our industry.

Mining and the resource management system

10. For the resource sector generally, the RMA's effects-based, case-by-case approach for development proposals works well. It is fundamental to attracting investment, to public acceptance of that investment, and to delivering good outcomes for the environment.
11. Case-by-case means the assessment of projects on their merits, their effects on competing values in the land, and proposals for managing those effects to meet the purpose of the RMA. There is a robust consenting process that is well understood by all parties.
12. The nature of mineral and aggregate deposits means that they are limited in quantity, location, and availability. They can only be sourced from where they are physically located and where the industry is able to access them cost-effectively.
13. This means access to such deposits must not be allowed to be shut off through regulatory bans and the ability for flexible case-by-case assessment as provided by the RMA must be retained. In the next section of this submission, we outline how the new bills fail in this regard. We argue the adversarial assessment of the social, environmental and economic impacts of resource proposals, which is a feature of the RMA, is superior to the more rigid, less flexible approach of the proposed bills which tends toward political decision making to settle inevitable conflicts.
14. A lot of what is wrong with the RMA lies in how it is implemented not in the act itself, for example, inadequate monitoring and compliance which has scope for improvement without major disruption. The relatively recent provision of national direction through national policy statements is an improvement which hasn't had a chance to prove itself yet.
15. We agree with the criticisms of the RMA – that its costly and takes too long, etc. – but we don't think the new bills do enough to address those defects.
16. We are concerned that the bills throw away the baby with the bathwater, including 30 years of case law and accepted terminology and principles, without making sufficient improvements.

The value of minerals

17. The products of mining are essential for modern society. Almost every aspect of our lives relies on minerals or mineral products. Aggregates for infrastructure, housing and concrete; coking coal and iron ore (including ironsands) to make steel; gold, silver, copper, rare earth elements (REEs), lithium and vanadium for electronics, electric vehicles, solar panels, batteries – the list goes on.

18. We import most minerals in the form of final products but have prospectivity for many minerals which can be developed. If we do not mine these, we simply import the resources we need from other countries and lose the opportunity to generate jobs, earn export receipts and improve the security of mineral supply chains. We can choose to allow all mining to occur overseas, but that will often be in places with lower environmental and safety standards than we have in New Zealand, and sometimes in places where labour is exploited.

19. The world's reliance on natural resources is not going to decrease. Increased demand for many minerals is predicted as the world moves to a lower carbon future. Minerals are needed in abundance to make wind turbines, solar panels and batteries, etc. and New Zealand has the potential to supply many of these critical minerals.

Criticisms of the bills / Why we oppose them

20. The NBE Bill is long and complicated, and its 861 clauses often don't sit comfortably together, with a number of clauses contradicting each other. Instead of streamlining, the bill introduces further layers of bureaucracy (e.g. regional planning committees). As well as time and difficulties sorting this out, these contradictions and ambiguities mean it is often not clear what the policy intent is. There are also contradictions between the two bills and terms that are undefined or defined differently in both.

Purpose statement

21. As documented by many commentators there are a number of conflicts in the NBE Bill that look impossible to resolve. Starting with the Purpose of this Act statement.

22. In particular, Cl 3(a): "*to enable the use, development, and protection of the environment*." There will often be conflict between enabling use and development *and* enabling protection.

Environmental limits and the Effects Management Framework

23. A major flaw of the NBE Bill is the inflexibility associated with environmental limits and targets and the uncertainty as to how they will be arrived at.

24. Given the Purpose only allows use and development to occur if it complies with or is not contrary to environmental limits (Clause 3(a)(iii)), the as yet unknown environmental limits and targets have a very real potential to prevent development or use of resources without there being any opportunity to weigh up the overall costs and benefits of proposed activities.

25. Other controls that have been promulgated in this area, for example the freshwater regulations and the National Policy Statement – Indigenous Biodiversity (NPS-IB), indicate that environmental controls are likely to be very restrictive to the point of being impractical and unworkable, assuming that development of resources outside urban areas is intended to be permitted. We support addressing "real", significant harm but there is room for an enormous amount of subjectivity in amount of harm or stress occurring to the natural environment.

26. While there is ambiguity in the NBE Bill regarding environmental limits and the Effects Management Framework with clauses seemingly contradicting each other (e.g. Clauses 14, 61-67, 154(4)(a) and 223(2)(c)) there is very little scope for environmental limits to be breached using the Effects Management Framework, even locally and temporarily, and this is a major flaw of the bill. It negates the entire purpose of an Effects Management Framework.

27. The Effects Management Hierarchy as applied under the RMA, is a positive feature of the existing regime which looks to be under threat or at least significantly watered down in this bill. The hierarchy enables projects to proceed and environmental impacts to be managed in an acceptable way and provides a sensible way of balancing competing interests.

28. If the bill proceeds, it is imperative that the Effects Management Framework is easily accessible and that environmental limits are not applied in such a way that there is no flexibility to negotiate and no pathway to apply for a consent.

29. Without these things the bill will unacceptably curtail economic development, with negative social and environmental outcomes as a result.

System outcomes

30. The 18 outcomes in the NBE Bill, Clause 5 System outcomes, are intended to guide the National Planning Framework (NPF). They are a mix of development and environmental outcomes and are all expected to be provided for but because they are not prioritised, they are essentially in competition with each other.

31. We believe it is important that development outcomes are not overly trumped by environmental ones, but we acknowledge some will say the opposite and will want more weight given to environmental outcomes. This again highlights the problem with the NBE Bill and the inherent conflict between development and environmental protection that the bill is trying to resolve.

32. Such conflicting outcomes will need to be traded off against each other and this will be done with a high degree of political discretion through the Regional Planning Committees, or through the Minister who will be able to adjust the status of each outcome without going through Parliament, through the NPF.

33. We strongly disagree with this high degree of political discretion to resolve conflicts. We do not believe it is any better than the reliance of the courts under the current system. Our preference is to go through the more neutral courts.

34. We are unsure of the significance of the word “system” in this context and what value it adds. To avoid confusion, it should be deleted.

Decision-making principles

35. Clause 6 includes a new set of principles to guide decision-making. We are unsure of the value, and believe they will be problematic to apply given their often unclear and conflicting wording.

Existing use rights

36. Clauses 26-30 of the NBE Bill empowers Natural Build Environment (NBE) plans to make rules that could alter, extinguish, or otherwise affect existing permits and land use consents when there is perceived harm to the natural environment.

37. Under Clauses 75-76, the NPF can direct consent authorities to review any existing consent and also to impose limits on duration of any consents granted. Clause 277(3) and (4) states consents can be reviewed if it is necessary to ensure compliance with limits and achieve targets.

38. We have major concerns about the potential loss of existing use rights this would create for consent holders. Essentially, existing consents could be revoked or revised if newly created environmental limits are breached.

39. Having the potential for existing use rights to be removed without adequate compensation is contrary to the principles of natural justice, creates huge uncertainty for businesses, and would be a major impediment for future investment in New Zealand.

40. If the bill proceeds, existing use rights must be protected and grounds more substantial than perceived harm to the natural environment must be considered.

National Planning Framework (NPF)

41. The NBE Bill provides for all the functions of existing RMA national direction instruments, as well as some new functions, to be consolidated into the NPF. The extent of the requirements of the NPF, and the work that will flow on from it, are substantial.

42. As stated in the introductory comment the fact the NPF is to be drafted after the NBE Bill is passed makes submitting on the substance of the bill next to impossible.

43. There is also the question of how it will be arrived at and who will be on the technical panel advising about its creation. Until the content of such an instrumental part of the new regime is known, it is impossible to sensibly comment and so impossible for us to support the bills.

Regional planning committees

44. Regional planning committees comprising members from local government, Māori and central government will produce NBE plans and regional spatial strategies (RSS).

45. These will be committees of regional councils and paid for by ratepayers. Councils' role appears to be now limited to monitoring and enforcement.

46. These committees will need to be extremely well led to avoid dysfunctionality and disagreements between different councils and interest groups. It is unfortunate that this part of the NBE Bill seems to have been written without regard to the Review into the Future for Local Government, which is currently occurring in parallel.

47. It is also questionable that ratepayers should be asked to fund a body that is not answerable to them at the ballot box. The burden on ratepayers is already high and there seems to be little control over the costs of the regional planning committees.

Natural and built environment plans

48. The NBE plans will be essentially a consolidation of regional and district plans. While a reduced number of plans across the country would be positive at face value, in practice combining them and having them administered by three bodies – the regional planning committee; regional and district councils – will cause tensions between the bodies which may not be resolved easily. It is also doubted that plans will get simplified or become more streamlined, rather an omnibus plan is likely (much like the proposed NBE Bill) of great length and even harder for the public to understand.

Duration of consent

49. Clause 266 to 276 deals with the duration of certain resource consent activities.

50. Clause 275 limits the duration of resource consent for many activities to 10 years. This truncated limit is a backward step as it would create uncertainty for businesses. Under the RMA most land use consents are of unlimited duration which is more realistic.

51. The combination of short-term consents coupled with the threat of review will hamper the ability for applicants to get funding and affect business certainty.

Contaminated land

52. The requirements in Clause 419 which covers landowner obligations when land is contaminated, will add considerably to compliance costs for mine sites and is not necessary given existing regulations deal with contaminated sites and uses of those sites (e.g. National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health). We suggest this clause be removed or amended to acknowledge this is dealt with elsewhere.

Inadequately defined terms

53. There are many undefined, or inadequately defined terms in the bills which could lead to uncertainty and litigation subsequent to enactment to interpret their meaning. Many, but not all, are Te Reo Māori words.

54. It is inevitable these will have to be defined in a court if they are not defined in legislation.

55. There is also inconsistency in terms that have different meanings across both bills which could cause confusion.

56. Meanwhile, we note, there is no definition of mining as there is in the Resource Management Act, where it is given the same meaning as in the Crown Minerals Act 1991.

Transitional provisions

57. We understand that the government has a plan for transitional arrangements, but these are not contained within the bill.

58. Transitional provisions are very important. Among other things they are needed to set out the process for resource consents and plan changes which were lodged and accepted before the NBE comes into effect to continue to be processed and decided under the RMA (continuation provisions). Continuation provisions are crucial to ensuring an appropriate transition from the RMA to the new regime.

59. If the bill proceeds, we recommend it provide transitional provisions for resource consents and plan changes which have been applied for before the NBE receives Royal assent.

Existing privileges in the Crown Minerals Act

60. In the mining sector, the issue of existing privileges is governed by clause 12 of Schedule 1 of the Crown Minerals Act. This itself is being amended under the Crown Minerals Amendment Bill.

61. In order to maintain the rights of existing privileges, we recommend amending clause 12(1)(b) of Schedule 1 the Crown Minerals Amendment Bill as follows:

(b) the holder of the privilege continues to have the same statutory rights as the holder would have had if the principal Act and the Resource Management Act 1991 and/or the Natural and Built Environment Act 2022 had not been enacted (except that if any consent in respect of the privilege would, but for this subclause, be required and need to be sought under ~~the Resource Management Act 1991, then the Resource Management Act 1991 does apply~~ the Natural and Built Environment Act 2022, then the Natural and Built Environment Act 2022 does apply);

Conclusion

62. In conclusion, the bills do not provide a good framework for managing the conflicts between the environment and economic development – there being too much political discretion to resolve these.

63. The application of environmental limits under the bills means there would often be no pathway to apply for a consent or access the Effects Management Framework. Existing consent rights would be jeopardised and consent durations would often be too short which would create business uncertainty and deter investment.

64. We believe the RMA's case-by-case approach works well for resource proposals and needs to be retained.

65. For these reasons, among others, we oppose the bills.