

Submission from Straterra and the Aggregate and Quarry Association

To the Ministry for the Environment

on the National Policy Statement for Freshwater Management

October 2019

Introduction

1. Straterra is the industry association representing the New Zealand minerals and mining sector. Its membership is comprised of mining companies, explorers, researchers, service providers, and support companies. The Aggregate and Quarry Association (AQA) is the industry body representing construction material companies which produce aggregate and quarried materials consumed in New Zealand. Together we represent the New Zealand extractives sector.
2. We welcome the opportunity to comment on the government's set of proposals designed to improve the current management of freshwater.
3. The package of measures comprises a [discussion document](#), *Action for Healthy Waterways*, a draft national policy statement for freshwater management ([NPSFM](#)) to replace the existing national policy statement (last amended in 2017) and proposed national environmental standards for freshwater ([NES](#)) containing rules that will apply nationally for matters such as vegetation clearance and earthworks in and adjacent to wetlands, and stream infilling and diversions.
4. This submission is on the draft NPSFM which sets overall policies and directions for freshwater management including wetlands. We have made a separate, accompanying submission on the proposed NES.
5. The proposals are significant and far-reaching and go far beyond issues associated with the increasing intensification of agricultural land and urban development which seem to be the main impetus for the initiatives. In addition to the constraints the proposals are designed to impose, there could be a number of unintended and detrimental impacts on all land and water using sectors, including mines and quarries.
6. We are concerned there has been no economic impact assessment completed in relation to the draft NPS. We are also concerned at the haste with which the initiatives have been put together and the limited time for consultation. They have been released concurrently with a number of other environmental initiatives which not only make it difficult for businesses submitting to give

them the full attention required but could, if implemented in their current form, result in a chilling effect on private investment and the New Zealand economy generally.

7. Water is essential to life and environmental sustainability. It is also a key input into numerous sectors of the New Zealand economy and is relied on for export competitiveness. It is therefore very important that this NPS strikes the right balance between the various tradeoffs.

Water and the Extractive Sector

8. The New Zealand extractive sector's interest in freshwater is significant both as a user and due to its impact.
9. Water is used in the operation of drilling equipment and machinery, and in various processes such as ore crushing and chemical processing, tailings management, dust suppression and equipment cleaning. Artificial waterbodies may be created when mines close and open pits, recontoured or otherwise, fill with water to form ponds, lakes or wetlands, and when waste impoundments or tailings dams are created.
10. The following examples relating to surplus water and waterways show how the extractives industry could be impacted by the proposals. They reinforce our argument that the scale and environmental impact of the activities should be assessed before blanket restrictions are applied:
 - Overburden landforms are often constructed in valleys which have streams in the bottom of them and tributaries entering from the sides of the valleys. The earthworks / landform "fills" these stream beds.
 - Vegetation removal in the riparian margin is also a component of this activity. In most cases, the stream is diverted around the landform.
 - Opencast pits often excavate out streams and riparian vegetation. In most cases, streams are diverted away from the pits.
 - Surface stormwater that enters working areas is collected and fed through a series of on-site constructed drains to settlement sumps for treatment.
 - Surface stormwater that does not enter working areas (i.e. clean) is collected, fed through a series of on-site constructed drains and discharged to streams.
 - Treated stormwater (via settlement sumps) and other treated discharges is discharged to streams.
11. Mining is unable to occur without these activities, particularly so in mountainous environments such as the West Coast.
12. We would be happy to elaborate further on this and to host officials to mine sites so they can see for themselves the implications.

Submission

Key Issues

13. This section of the submission addresses our main concerns with the draft NPS.

Fundamental concept – Te Mana o te Wai (Clause 1.5, page 3)

14. While the concept of Te Mana o te Wai as a set of values has been embraced by many, including the network of advisory groups that the government used in creating the document, we have some concerns around what the concept means in practice especially as a framework for *managing* the resource. We are particularly concerned about the uncertainty that the concept could generate as it is interpreted by practitioners, iwi, councils and the courts.
15. A list of factors to give effect to Te Mana o te Wai is set out in 1.5(a) to (e). We have two concerns here. Firstly, due to the aforementioned risks around how the term is interpreted, we suggest the language be more akin to ‘having regard for’ as opposed to ‘giving effect to’ Te Mana o te Wai.
16. Secondly, we consider the list of factors to be biased against economic development and the broad concepts of societal wellbeing.
17. We suggest the list can be improved by adding two more factors to it:
 - (f) providing for the economic wellbeing of communities through the use of water and waterbodies, and
 - (g) using objective science-based analysis in assessing the health of waterbodies and likely effects on them from proposed activities.

Objective of the NPS-FM (Clause 2.1, page 6)

18. The objective of this National Policy Statement is to ensure that resources are managed in a way that prioritises:
 - a) first, the health and wellbeing of waterbodies and freshwater ecosystems; and
 - b) second, the essential health needs of people; and
 - c) third, the ability of people and communities to provide for their social, economic, and cultural wellbeing, now and in the future.
19. We do not support the hierarchical nature of these priorities which implies water health is more important than human health which, in turn, is more important than the wellbeing of people. All should be equally important, and there should be a recognition that trade-offs between each of them will need to occur.
20. The third priority c) encompasses a range of sustainable values - economic, social and cultural - and achieving it does not have to be at the expense of the first two priorities. If business activity

is curtailed as a result of this hierarchy, social, economic and cultural wellbeing priorities could be compromised.

21. The hierarchy may also depend on previous case law about making reasonable judgements and balancing values as per Part 2 of the Resource Management Act (RMA).

Te Mana o te Wai (Clause 3.2)

22. We have major concerns with the statement that every regional council must include in their regional policy statement, as would be directed by Clause 3.2(1):

“The management of freshwater in our region must be carried out in a manner that gives effect to Te Mana o te Wai, as it is described in the National Policy Statement for Freshwater Management 2019 and understood locally.”

23. As with Clause 1.5, discussed above, there is risk around how the concept of Te Mana o te Wai will be interpreted and the costs that are likely to be involved through the court processes.
24. The term “understood locally” brings new uncertainty risks. What happens when community members do not agree what this means?
25. With a hierarchy that gives primacy to water itself, the term “give effect to” is a concern. It will act to limit developments that impact on water, regardless of what that impact is and also whether some adverse effects are balanced by economic and welfare benefits etc.

Setting Target Attribute States (Clause 3.9, page 10 and Appendix 2)

26. It is not clear how the environmental bottom lines were arrived at and we are concerned about their attainability in some cases.
27. The turbidity limits and bottom lines proposed in Table 10, Suspended Fine Sediment (page 39), are too onerous and would discourage development. If close to the mine discharge, then they would not be achievable. Also, there is significant natural variation and natural flushes – these would exceed the limits.

Inland Wetland (Clause 3.15, page 15)

28. In this clause, **Natural Wetlands** means a wetland as defined in the Resource Management Act (regardless of whether it is dominated by indigenous or exotic vegetation, and including coastal wetlands), except that it does not include:
 - a) wet pasture or paddocks where water temporarily ponds after rain in places dominated by pasture, or that contain patches of exotic sedge or rush species; or
 - b) constructed wetlands; or
 - c) geothermal wetlands

29. **Inland wetland** means any wetland that is not a coastal wetland but does not include geothermal wetlands.
30. These definitions encompass wetlands of all sizes and ecological values. They are then protected against nearly all activities.
31. Under clause 3.15(2), regional councils must include a statement in their Regional Policy Statements that “The loss or degradation of all or any part of a natural inland wetland is avoided.”
32. We are greatly concerned by this. It has major implications given that the definition of wetland is so broad - encompassing all sizes and ecological values - and due to the interpretation of the word ‘avoided’. The quantity of land involved, including both private and public, is large and the implications for land-based businesses across the country as a whole are significant.
33. We note that the requirement in clause 3.15(2) seems contradictory to clause 3.15(4) in relation to the effects management hierarchy, as set out in in 3.15(1), which provides for a range of requirements for dealing with adverse effects on any natural inland wetland.
34. We are also unsure how the rules contained in the NES impact on the effects management hierarchy where there is scope for remedy, mitigation, offsetting and compensation.

Identifying Wetlands

35. Under 3.15(5) there is a requirement for regional councils to identify natural inland wetlands greater than 0.05 hectares and establish an inventory. We consider this and the full set of requirements under clause 3.15(5) would create major costs for councils without providing the benefits that may be envisaged. Due to the work required to carry this out, we question whether some councils would have the resources and be able to meet these requirements.
36. The 0.05 hectare wetland area threshold is not large and there will be a substantial number of such areas to deal with. It will be difficult to undertake the exercise with any degree of accuracy.
37. Wetlands are to be defined in accordance with a Landcare report. This is intended to provide certainty and avoid disputes but we are not convinced this approach will work as judgement will still be required.
38. In this clause, **constructed wetland** means “a wetland constructed by artificial means that ... is constructed for a specific purpose in a place where a natural wetland does not already exist.” Constructed wetlands are excluded from the definition of natural wetlands.
39. We support the permissive treatment of constructed wetlands (clause 3.15(8)), and the fact that identification and inventory requirements do not compulsorily apply (clause 3.15(5)).
40. Constructed wetlands are a key part of the extractive sector. They include, for example, tailings dams and settling ponds, which are critical to the treatment of water prior to reuse or discharge. We recommend that these be included in the examples of constructed wetlands listed after clause 3.15(9) at the bottom of page 17.

Additional points

1.6 Definitions	
Outstanding Waterbody	How outstanding value is defined is vague and could be open to interpretation. There is no guarantee as to what will meet this standard.
Primary Contact Site	This definition should not apply to privately owned sites. Should be qualified by “and legally open to the public.”
2.2 Policies	
Policy 3	The costs of monitoring all waterbodies would be very high especially for small councils.
Policy 6	It is not clear how these targets were arrived at or whether they are achievable and the cost of achieving them.
Policy 8	It’s not clear what “further loss or degradation” means in reality? Also, we continue to ask are <i>all</i> natural inland wetlands really of value and why can’t there be offsetting?
Policy 12	Monitoring and reporting on the state of <i>all</i> water bodies is expensive and unnecessary.
3.3 Tangata Whenua roles and interests	There will need to be a mechanism to address conflicts of interest between Tangata Whenua as users and guardians as well as between Tangata Whenua as users and other potential users.
3.4 Integrated Management	
3.4(1)(a) Integrated Management	There is some uncertainty about the meaning of the term <i>ki uta ki tai</i> here. We assume it means integrated management as per the definitions.
3.6 Identifying FMUs	
3.6(3) c), d) and e)	Identifying all of these would both be impossible for regional councils to achieve.
3.8 Identifying current attribute sites	
3.8(1)	Identifying the state of each attribute would be impossible for regional councils to achieve.
3.8(3)	This would also be difficult for regional councils to achieve. At the very least it is high risk and error would occur. No action should be allowed until sufficient robust data has been acquired. The problems are long term (where they exist) so taking time to quantify the issues is sensible.

3.10 Identifying Limits on Resource Use	
3.10(3)	Councils identifying “limits on resource use” to achieve target attribute states will lead to restrictions being imposed on those who already have rights to use or discharge into FMUs and may mean no new consents can be granted for any further use/discharges to an FMU.
3.12 Identifying take limits	
3.12(c)	It is important that existing permits are not reviewed and reduced. Existing property rights must be retained when business decisions have been made under them.
3.12(3)	There is no provision for economic wellbeing in this list. It would appear that any ecosystem (of whatever value and however widespread) will trump the needs of a modern society.
3.16 Streams	
3.16(1)	This policy appears ambiguously drafted. ‘Associated freshwater ecosystems’ and ‘ecosystem health’ are linked.
3.16(5)	There is no good case for a blanket ban on infilling of <i>all</i> stream and riverbeds. Scale and ecological value need to be taken account of.