

**Submission to Local Government and Environment Select Committee on
“RESOURCE MANAGEMENT (RESTRICTED DURATION OF CERTAIN
DISCHARGE AND COASTAL PERMITS) AMENDMENT BILL”
(NOVEMBER 2012)**

INTRODUCTION

1. Straterra¹ Inc. represents 90% by value of New Zealand minerals production; exploration; scientific research; geo-technical, engineering and other services; and support. Our 53 members include Bathurst Resources, L & M Group, NZ Coal & Carbon, NZ Steel, Newmont Waihi Gold, OceanaGold, Solid Energy NZ, and Todd Corporation.
2. The Resource Management Act 1991 is a key statute for our sector, providing for the sustainable management of the environmental effects, and the economic and other benefits of prospecting, exploration and mining activities.
3. Straterra welcomes the opportunity to submit on the Resource Management (Restricted Duration of Certain Discharge and Coastal Permits) Amendment Bill.

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¹ <http://www.straterra.co.nz/About+Straterra>

EXECUTIVE SUMMARY

4. Straterra opposes this Private Member's Bill, which, if enacted, would effectively prohibit some activities that are amenable to sustainable management, and would upset a balance provided for in the Resource Management Act 1991, e.g., between section 70 and 107, in relation to discharge to water. We recommend that the Bill not proceed into law.
5. Restricting the duration of a permit to discharge to water under exceptional circumstances to five years, as this Bill proposes, would place a barrier to investment in relevant projects. In many cases, that would be too short a timeframe for the development and implementation of measures to address such discharges.
6. Affected activities include more than the Kawerau pulp and paper mill (the Tasman Mill), the cause célèbre of the Bill's proponent, Green list MP Catherine Delahunty². It is conceivable that some mines or quarries where sediment discharge into waterbodies, managed to have net effects that are no more than minor, could occur at times, affecting water clarity. A specific example may be coal mining on the West Coast of the South Island.
7. Section 107, as written, is an enabling provision for specific types of activity that could not be consented except for this provision, because of section 70 of the RMA.
8. Section 70 (1) (d) and 70 (2) require plans to include a "rule ... [as] the most efficient and effective means of preventing or minimising" a number of categories of effect, including "any conspicuous change in the colour or visual clarity" in discharges to waterbodies.
9. Via sections 70 and 107 (2) (a), a delicate and appropriate balance in the RMA has been achieved. This Bill would upset that balance, and would be contrary to the purpose of the RMA.

RECOMMENDATION

10. Straterra recommends the Local Government and Environment Select Committee to agree to recommend to Parliament that the Bill not proceed, because the Bill places an inappropriate regulatory hurdle to environmentally-responsible development, and is inconsistent with the purpose of the RMA. The costs on society of the Bill would outweigh the benefits.

² Hansard record of the first reading of the Resource Management (Restricted Duration of Discharge and Coastal Permits) Amendment Bill 29 August 2012 http://www.parliament.nz/en-NZ/PB/Debates/Debates/e/9/d/50HansD_20120829_00000028-Resource-Management-Restricted-Duration.htm

DISCUSSION

11. This Private Member's Bill has the sole purpose of restricting the duration of permits to discharge to water, covering matters listed in section 107 (1) – in particular, “(d) any conspicuous change in the colour or visual clarity”- granted under “exceptional circumstances”³ (section 107 (2) (a)), that would otherwise:
- not be granted under section 15, i.e., the proposed discharge is not provided for in an existing or proposed regional plan, national environmental standard or other regulation, or an existing resource consent; or
 - would be prohibited under section 70.
12. The proponent of the Bill, Green list MP Catherine Delahunty, was clear as to her purpose during the first reading of the Bill, namely, the closure of the Tasman Mill, after having failed previously to do that, most recently in 2010 in an appeal to the Environment Court. (The Explanatory Note to the Bill says that section 107 (2) has been used “to justify the pollution of the Tarawera River since 1955”⁴.)
13. On that occasion, Hon Dr Nick Smith told Parliament: “I am quite uncomfortable with bills in the area of resource management that specifically focus on a single resource issue ... Parliament should be cautious of passing a law that is specifically designed to do just a particular job on a particular river”.
14. We agree with Dr Smith because other activities, potentially, could get caught by an amended section 107, and upset the delicate balance created between sections 70 and 107 of the RMA.
15. To press our point, section 107 (2) provides for activities to occur, that otherwise could not occur under section 70, provided the associated discharge to water is “consistent with the purpose of this Act”, i.e., “sustainable management” under section 5. In effect that would require the effects to be no more than minor, or managed in such a way that they are no more than minor. That is all appropriate.

³ It is noted the term “exceptional circumstances” is not defined in the RMA

⁴ The submission by Carter Holt Harvey and Norkse Skog refutes the characterisation of the discharge as “pollution”, and provides a rebuttal of other allegations made in the Bill.

16. There is case law of commissioners' rulings and court decisions, as spelled out in the Carter Holt Harvey-Norske Skog submission, noting that section 107 (2) has been applied rarely since the inception of the RMA.
17. In any event, section 107 (2) is not intended to be applied forever but for a limited period. The point is that five years is too short a time for investment in and development of measures to adequately address exceptional circumstances, and provide for that activity to be consented in due course under section 15.
18. The Environment Court and other courts have determined against the appeals by Ms Delahunty and others to consents to renew the Tasman Mill's exceptional circumstances discharge permit. That should be end of the matter. It would be the wrong course to amend a provision of the RMA, in isolation, to achieve the single aim of overturning court decisions.