SUBMISSION

STRATERRA™
NATURAL RESOURCES OF NEW ZEALAND

Submission to Local Government and Environment Select Committee on

"RESOURCE MANAGEMENT REFORM BILL (DECEMBER 2012)"

INTRODUCTION

1. Straterra[1] welcomes the opportunity to submit on the Resource Management Reform Bill[2], read a first time in Parliament on 11 December 2012.

2. The Resource Management Act 1991 is a key statute for the New Zealand minerals sector, governing the sustainable management of the environmental effects and economic and other benefits of prospecting, exploration and development activities. The implications of RMA reform for the minerals sector are considerable. Measures that shorten the time frames of RMA processes, provide better alignment with other legislation, and lead to reduced costs to applicants, while maintaining high standards of regulation, would be to the good of our industry, and New Zealand.

3. In preparing this submission, Straterra has consulted within its membership, notably Russell McVeagh, Solid Energy NZ, and Atkins Holm Majurey. We have also consulted on economic aspects with Business NZ.

CONTENTS

[1] Straterra represents by 90 % by value of NZ minerals production, exploration, research, services, and support http://www.straterra.co.nz/About+Straterra

[2] Resource Management Reform Bill http://www.parliament.nz/en-NZ/PB/Legislation/Bills/3/7/a/00DBHOH_BILL11932_1-Resource-Management-Reform-Bill.htm

EXECUTIVE SUMMARY

4. Two aspects of the Bill have attracted our particular interest as a sector: the improved provisions for direct referral to the Environment Court; and clearer requirements for measuring the economic impacts of e.g., plan changes, policy statements. We generally support both sets of proposals.

5. The proposed Auckland unitary plan provisions are of interest to the minerals sector in the context of the Government's plans to develop a new planning regime under the RMA[3]. We have no particular recommendations here other than to suggest that the "special tribunal" referred to in various clauses should be presided over by a judge or former judge, to ensure a robust process.

RECOMMENDATIONS

6. Straterra recommends the Local Government and Environment Select Committee to:

   a) Note Straterra's general support of the Resource Management Reform Bill;

   b) Note Straterra's support of clause 13 (amending section 87E), clause 33 (amending section 165ZFE), and clause 38 (amending section 198C), which better enable direct referral of appropriate applications to the Environment Court;

   c) Notwithstanding Rec. (b), agree to delete all wording in the above clauses relating to "exceptional circumstances" because: that undermines the intent of the amended provisions, i.e., exceptional circumstances can always be found to exist; and there is already a caveat in place, which is that the planned investment must exceed a threshold to be specified in regulations;

   d) Note Straterra's support for the proposed replacement of section 32, via clause 69, to improve the evaluation of proposed policies, rules and plans, or changes to the foregoing;

   e) In relation to Rec. (d), agree that the new section 32 would benefit from an edit for clarity, with suggestions for improvements provided in Recs. (f) – (k);

   f) Agree to amend new section 32 (1) (a) to say: "(1) An evaluation report required under this Act must — (a) examine the extent to which the objectives of the proposal being evaluated *will improve or achieve consistency* with the purpose of this Act", for clarity;

[3] The planning design content in the Ministry for the Environment discussion document entitled "Improving our resource management system", released for public consultation on 28 February, is noted.

g) Agree to amend new section 32 (1) (b) (i) to say: "(b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by— "(i) identifying other reasonably practicable options *for provisions including the status quo* for achieving the objectives;" for completeness;

h) Agree to amend new section 32 (1) (b) (ii) to say: "(ii) assessing the efficiency and effectiveness of the *proposed and alternative* provisions in achieving the objectives;" for completeness;

i) Agree to consider editing new section 32 (1) (c) to do with matching the scale of the evaluation report to the scale or significance of the effects of the proposals in relation to policies, plans, or rules, for clarity;

j) Agree to amend new section 32 (2) (a) to say: "(2) An assessment under subsection (1) (b) (ii) must — (a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the *proposed and alternative* provisions, *including effects on economic growth opportunities, and employment opportunities, and taking account any opportunity costs*;" for completeness and clarity;

k) Agree to amend new section 32 (2) (b) to say: "if practicable, quantify the benefits and costs referred to in paragraph (a), *and if not, undertake a qualitative analysis, while quantifying those components of the benefits and costs where that is practicable*;" for clarity; and

l) Agree to specify in provisions of the Bill that the "special tribunal" referred to in clauses 119, 125, 127 and 128, and schedule 3 of the Bill is presided over by a judge or former judge, to ensure robustness of processes carried out by the tribunal.

DISCUSSION

Direct referral to the Environment Court

7. Some types of project lend themselves naturally to proceeding directly to the Environment Court or a board of inquiry, e.g., those where any decision by council hearings commissioners would be appealed by either side. That path was envisaged in the Resource Management (Simplifying and Streamlining) Amendment Act 2009, in the context of "streamlining decision-making on

resource consents", with new **sections 87A - 87G**. Regionally or nationally-significant proposals are examples, and many mining projects would qualify.

8. In light of experience with **section 87D**, on "Request for application to go directly to Environment Court", the requirement on the applicant to "request" the consent authority to approve direct referral has created an additional, unnecessary step. The question is raised – under what conditions would such a request be approved by the consent authority?

9. The proposal for automatic approval of an applicant's request is supported, noting the caveat, that the consenting authority's discretion is only removed if the proposed investment exceeds a minimum threshold (to be determined in regulation).

10. That said, we believe all references to "exceptional circumstances" should be removed from the relevant clauses of the Bill because such can always be found, undermining the intent of the Bill.

Quantification of economic impacts

11. The Bill proposes the replacement of **section 32** on "Considerations of alternatives, benefits and costs" with one entitled "Requirements for preparing and publishing evaluation reports". Certainly, the existing section 32 is inadequate to its purpose. While the new section 32 has gone some way to clarify matters, we believe further improvements are necessary. As a general comment, the wording of the new section 32 would benefit from a thorough edit. We detail our suggestions below.

12. New section 32 (1) (a) confuses the "objectives" of the proposed policy or plan or rule, or changes to the foregoing, with the "way", or methods to be used, to achieve the purpose of the Act. At issue is whether or not the proposed objectives (when implemented) will improve or achieve consistency with the purpose of the Act. We suggest this is all that this sub-section needs to say.

13. Moving to how objectives are to be achieved, in new section 32 (1) (b) (i), the identification of "other reasonable practicable options" should explicitly include the status quo (or "do nothing"), as an option. That is a stock-standard approach to this type of analysis.

14. New section 32 (1) (b) (ii) is clumsily worded in requiring the "assessing [of] the efficiency and effectiveness of the provisions in achieving the objectives", because this will need to be done for each option identified under new section 32 (1) (b) (i), including the "do nothing" option. That needs to be spelled out.

15. It is understood that new section 32 (1) (c) is intended to ensure that the scale of the section 32 evaluation report is not out of kilter with the scale or significance of the effects of the proposal under examination. Arguably, there is no point undertaking an expensive cost-benefit analysis for a proposed minor rule change if there is a much cheaper and simpler method in that case. We wonder if the wording "level of detail that corresponds to the scale and significance [of the effects of the proposal]" adequately expresses that idea. We suggest that an edit of this sentence might be attempted.

16. We suggest amendment of new section 32 (2) (a) to broaden its scope, as per the above discussion, and to include all economic opportunities, and opportunity costs, while retaining explicit wording in relation to economic growth and employment.

17. New section 32 (2) (b) says: "if practicable, quantify the benefits and costs referred to in paragraph (a)". That is all very well, however, there is no guidance on what to do if it is NOT practicable, or not completely practicable, to quantify benefits and costs. That circumstance is commonplace. A range of methods, or a combination of methods, are available in such cases, e.g., ranking of options for objectives and provisions based on stakeholder preferences.