

Submission from Straterra

To MFE

Transforming the Resource Management System

February 2020

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 make this submission on the review of the Resource Management Act 1991 and comment on the Issues and Options Paper, "[Opportunities for Change](#)", the Discussion Document.
3. This is the beginning of a major piece of reform and an important issue for the mining sector whose activities are dependent on the RMA. Many of the issues are complex and one size will not fit all – good process is more important than arbitrary time deadlines.
4. For the resource sector generally the RMA's effects-based, case by case approach for development proposals is fundamental to attracting investment and to public acceptance of that investment. That's not to argue for no change, but the merit of proposals that will affect the resource sector can be measured against the status quo.
5. Clearly industry is seeking an appropriate and understandable balance between social, environmental and economic priorities.
6. In this submission, we first of all outline the role of mining in New Zealand, and how the RMA regulates mining activities. We then make some general comments about the review and finally, we respond to the 14 issues set out in the Issues and Options Paper.

Mining in New Zealand

7. The extractive sector, which includes mining and quarrying, makes an important contribution to the standard of living we enjoy in New Zealand, to our economy and to society in general.
8. Most products of mining used in New Zealand are imported in finished products. But aggregates, industrial minerals, gold, coal and other minerals are mined in New Zealand and

these make a significant contribution to our economy. These minerals, and other minerals that may become valuable in the future, are the focus of this submission.

9. Companies prospect and explore over large areas using techniques with extremely low environmental footprints. Once they find an ore deposit that can be economically mined, the mining itself takes place.
10. Mining generates high value compared to other land uses. Mining salaries and wages are substantially higher than New Zealand averages and mining productivity ranks number one of 19 industry sectors according to Statistics New Zealand figures. Mining is also a significant contributor to economic development and activity in regional New Zealand.
11. The government's recently released Minerals and Petroleum Resource Strategy provides many examples of the contribution minerals make to our standard of living. Minerals underpin and build our economy and are used for everything from roads to electronics. Demand for many minerals will increase as the transition to lower emission technologies progresses, according to a recent report by the World Bank, [The Growing Role of Minerals and Metals for a Low Carbon Future](#).
12. As the Strategy says, "to meet the needs of New Zealand's growing population we will require more housing, more energy, and expanded infrastructure. The minerals sector has a critical role to play in building this future." As a developer of a significant natural resource it is essential that the RMA provides an appropriate framework, process and standards that allow mining to continue to make this contribution.

Mining and the RMA

13. The RMA and the Crown Minerals Act (CMA), together regulate most aspects of minerals sector activity. The CMA's role is to provide for the efficient allocation of rights to develop mineral Crown-owned mineral resources, while the RMA regulates the environmental effects of the extraction of these resources, is the focus of the RMA.
14. The RMA is an effects-based regime. It provides for an adversarial assessment of the social, environmental and economic impacts of resource proposals both on public and private land. In the minerals sector, as with others generally, the Act allows a case-by-case assessment of proposals with a high bar for mining companies to establish rationale and justification to mine. This robust and independent process / regime has many strong and valuable features.
15. Consents are required, broadly, for any activity that disturbs or impacts the environment. Applications are considered by independent experts and any consents are subject to conditions that the authority considers are required to ensure that the impacts of the proposed activity are acceptable to society. The Environment Court is the ultimate arbiter.
16. While the legislative regime is not perfect, and the Discussion Document identifies many of the Act's shortcomings, we think the thrust of the current system works well for the minerals sector.
17. A key feature of the sector when it comes to council planning, is that 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. This means, it is important that the nature and location of mineral deposits of value to a district, are identified as best as possible and access to such deposits must not be inadvertently shut off through land development and council planning, including land protection. Given the location of mineral deposits is not usually known, a regime which provides for exploration is important, while noting that any development proposal that might arise from that exploration, is subject to a rigorous resource consent process under the RMA.

18. Mining is sometimes criticised for its environmental impact but in fact, modern mining in New Zealand is conducted responsibly, our recent track record is excellent, and it is disappointing to see such criticism made without evidence. Our environmental standards, as well as labour and human rights, are among the best in the world. Mining companies know that as part of their social licence to operate, implementation of the highest standards is needed. In many cases, mining projects not only avoid, remedy and mitigate the transitory effects of mining, as is required under the legislation, but also achieve a net positive gain for the environment. The Resource Management Act is largely responsible for New Zealand mining's high environmental standards.

General Comments

19. As a general comment, the focus of the Discussion Document is on problems around urban growth including housing affordability and land supply etc. The solutions to the challenges being faced here are not necessarily appropriate for the rest of New Zealand. These matters can be dealt with through the existing provisions of the Act or other mechanisms.
20. Also, the RMA review is coming at a time when there are a number of other related reforms occurring as well as a number of National Policy Statements which are being consulted on. Admittedly the RMA review is long term due to its complexity and the others are shorter term but there seems to be little linkage between changes being mooted in the Discussion Document and these other government initiatives. This is especially relevant in our sector with the review of the Crown Minerals Act, which is essentially a twin Act of the RMA having been created out of it at the time the RMA was developed and passed into law. We argue that the review of the CMA is premature in the sense that the two Acts are designed to work together and it is counterproductive and risks unintended consequences to second guess the outcomes of the RMA review and replicate the functions of that Act in the CMA, at this time.

The Issues and Options Paper

21. The remainder of this submission addresses each of the issues in the Issues and Options Paper.

Issue 1 – Legislative Architecture

Should there be separate legislation dealing with environmental management and land use planning, or is the current integrated approach preferable?

22. We are not convinced about the benefits of separating statutory provision for land use planning and environmental management. There will always be conflict between these two things and so trade-offs are required.
23. A single piece of legislation recognises this and allows all aspects relating to development to be assessed and weighed up against each other which better enables the balancing of planning and environmental management.
24. We agree with the Productivity Commission and others who reviewed this and concluded that separating the RMA into two statutes would be a backward step and would increase confusion, duplication and potential for conflicting requirements.

Issue 2 – Purpose and Principles of the RMA

What changes should be made to Part 2 of the RMA?

25. The Purpose Statement of the RMA (s5) sets up a hierarchy where social, economic and cultural well-being and health and safety are subsidiary to sustainable management. This has led to legitimate development activities facing barriers in achieving consents and is an issue which needs to be addressed. Certainly, we would oppose the environment being further elevated beyond the other considerations.
26. With regard to **environmental limits** and **bottom lines**, regional variations need to be taken account of when establishing these as one size does not fit all. For example, water quality might be deteriorating across the country but in some areas e.g. the West Coast, it is improving.
27. For limits to work well, there needs to be good science and data and the ability to measure them precisely. It will be a mammoth task to get the necessary detail to determine sensible limits. The volume of work around the country in measuring, would be prohibitive.
28. We agree there is much to be gained from recognising **te ao Māori** in wider law and society. However, there would be significant challenges in bringing the concept of te ao Maori into the Act. Not only is there no clear definition not clear what it is, not all Maori hold the same view of te ao Maori.

Issue 3 – Recognising Te Tiriti o Waitangi / the Treaty of Waitangi and tea o Maori

Are other changes needed to address Māori interests and engagement when decisions are made under the RMA?

29. We fully support the aims of the RMA in recognising and protecting Maori interests.

30. It needs to be remembered that Maori have interests on both the environmental and development side. Maori have significant interests in the resource sector and in developing minerals for historical, cultural and economic reasons.
31. We are concerned about the uncertainty that could emerge when some traditional Maori terms and concepts are brought into the Act. Many of these terms have no set meaning and are open to interpretation e.g. the concept of Mauri of nature is undefined and because it is inevitably affected by any development, protection is likely to mean no development.
32. There would also be significant challenges in bringing the concept of te ao Maori into the Act for these reasons. Not only is it not clear what it is, not all Maori hold the same view of te ao Maori.

Issue 4 – Strategic integration across the resource management system

What role should spatial planning have in achieving better integrated planning at a national and regional level?

33. Care needs to be taken with spatial planning as circumstances can change. Very rarely does government (central or local) pick the correct winners.
34. As an example from our sector, for some minerals it does not make sense to restrict access to mineral development to particular areas in case a deposit is found outside that area at a later date but can no longer be accessed due to subsequent development or land protection.

Issue 5 – Addressing Climate Change and natural hazards

Should the RMA be used as a tool to address climate change mitigation, and if so, how?

35. We are very supportive of government objectives of reducing carbon emissions but additional measures, above and beyond these measures, including proposals to amend the RMA to mitigate climate change only serve to complicate the issue.
36. While the Resource Management Act is an important piece of environmental legislation, its purposes, promoting the sustainable management of natural and physical resources, is and should remain quite separate from the focus to reduce carbon emissions.
37. Climate change is being addressed comprehensively at a central government level through the zero carbon reforms, with the creation of the Climate Change Commission and the ETS. There are significant risks in incorporating climate change objectives into the RMA. Councils would be woefully equipped to arbitrate on the climate change effects of activities. What expertise will councils have in considering potential effects of emissions? Will every consent application have to negotiate climate change effects? How would a council consider the effects of limiting the production of food or coking coal with respect to CO₂ emissions and the benefits to be derived from these products (though those may occur outside NZ).

38. Local government does have a role in adaptation to climate change i.e. preparing for the impacts of things such as sea level rise, drought and increased frequency of storms. However, these functions are already allowed for in existing legislation. (Incidentally, the extractive sector will play an important role in such adaptation for example aggregate will be needed to strengthen sea walls to protect against sea level rise and for flood protection).

Issue 6 – National Direction

39. We think there is merit in providing greater national direction through national policy statements etc. but unfortunately the track record of these has not been good.
40. National direction was not introduced until many years after the enactment of the RMA. Now it is making up for lost time but getting the balance and working out the detail is difficult, which partly explains why they haven't been produced in numbers, and recent examples e.g. NPS Indigenous Biodiversity and Freshwater Management have not got this right.
41. With regard to the NPS Indigenous Biodiversity, this has been worked on for around 10 years now. The product that has emerged is still not workable, but worryingly, we think it has an even more anti-development tone and effect than previous versions.
42. Unfortunately, National Policy Statements etc. are often not well aligned with each other. Which NPS trumps which? How are they supposed to interact? Many are being rushed through without being costed or the economic implications thought through. Many are just responsive to the hot topic of the day rather than a strategic approach to achieve outcomes wanted.
43. We think it is an implementation issue more so than one that reforming the Act can fix. The framework is there but it is not being implemented very well.

Issue 7 – Policy and Planning framework

How could the content of plans be improved?

44. We agree that there are too many council plans under the RMA and their quality is variable. We see merit in reducing the number of plans or, for example, the replacement of a Regional Policy Statement with an existing plan.

How could planning processes at the regional and district level be improved to deliver more efficient and effective outcomes while preserving adequate opportunity for public participation?

45. Consideration should be given to creating unitary authorities for regions with a population or rating base below a certain number or income, and for those therefore to have a unitary plan. This would help smaller councils to get staff. Unitary plans would also be easier for applicants to deal with.

46. It is currently too easy for the plan process to be manipulated or frustrated by use of appeals and delays etc and also government departments are taking local authorities through the environment court (against the wishes of the locals).
47. Secondment from MfE to regions to help with planning would improve the quality of plans. It could also be a good way to address the shortage of staff for councils that are having trouble attracting qualified planners.

Issue 8 – Consents/Approvals

How could consent processes at the national, regional and district levels be improved to deliver more efficient and effective outcomes while preserving appropriate opportunities for public participation?

48. Consultation in council plans is not working well. National-based organisations with set views are dominating the submission process and securing suboptimal provisions. This allows (often ideological) groups to oppose so that significant court costs are imposed upon applicants. Common ground can sometimes be found but not too often. Impacts on a particular species can be addressed but opposition to mining generally cannot easily be addressed.
49. While we see some scope for central government direction, if it leads to politicisation of plans and wholesale reversals consistent with the electoral cycle, this will not be a good outcome.
50. We value participation but also want a more efficient process. If a plan has been through a robust public consultation process and the application isn't contrary to it, then should public notification or even consent not be required? We see merit in this.

Issue 9 – Economic Instruments

What role should economic instruments and other incentives have in achieving the identified outcomes of the resource management system?

51. Economic instruments were originally meant to be a larger part of the RMA than has eventuated. We would like to see more use of economic instruments and negotiation rather than regulation.
52. We welcome investigation into new economic instruments, but we see many potential problems. For example, charging for the use of resources will raise new questions about ownership and could open a can of worms as to who owns air, water, space etc.
53. It is also important not to turn economic instruments into a revenue raiser as some councils would inevitably aim to do, which would stifle development.
54. Incentives, as opposed to charges, must also be made more use of, for example performance bonds.

55. There must be more room for mitigation, including offsets and compensation and other forms of negotiation which was also envisaged at the time of enacting the RMA but hasn't eventuated to the extent envisaged.

Issue 10 – Allocation

Should the RMA provide principles to guide local decision making about allocation of resources?

56. The RMA is fit for purpose for allocation of resources. This section of the document takes no account of the freshwater initiatives which are moving ahead of this and will supersede this work. Allocation is already allowed for but is often not well applied in practice.

Issue 11 – System monitoring and oversight

What changes are needed to improve monitoring of the resource management system, including data collection, management and use?

57. Additional monitoring and reporting will bring new costs and it is not clear who will pay for these. Consent holders already face significant charges and ratepayer bases are in some cases overburdened and too small to bear further costs. We agree there is a better need for national environmental data as highlighted by the Parliamentary Commissioner for the Environment recently which is an issue for central government taxpayer funds.

Issue 12 – Compliance Monitoring and Enforcement

What changes are needed to compliance, monitoring and enforcement functions under the RMA to improve efficiency and effectiveness?

58. We support local enforcement and the exercise of local discretion which is appropriate. Too much unnecessary enforcement will lead to the cessation of economically productive activities with all the knock-on effects on local communities from that. The user pays component is also very relevant here. There may be a case for increasing penalties but also discretion should be given to authorities.

Issue 13 – Institutional roles and responsibilities

Are changes needed to the functions and roles or responsibilities of institutions and bodies exercising authority under the system and, if so, what changes?

59. We support institutions and bodies being given more independence from politics. The Climate Change Commission is a good model here.

Issue 14 – Reducing complexity across the system

What other changes should be made to the RMA to reduce undue complexity, improve accessibility and increase efficiency and effectiveness?

60. It might be appropriate to hold back on substantive changes to the RMA until the current proposed National Policy Statements (Freshwater and Indigenous Biodiversity) have been finalised and promulgated and we can see how they work in practice. Both, as currently drafted, will place additional burdens on councils with respect to information gathering and amending current plans to be consistent with their requirements. There is too much happening at one time at present and this risks confusion, duplication, and conflict in requirements.