

Submission from Straterra

To Parliament's Environment Committee

on the Natural and Built Environments Bill

August 2021

Executive Summary

- The imposition of environmental limits in relation to indigenous biodiversity, including rivers, wetlands, lakes, estuaries and their margins, and Outstanding Natural Landscapes would present major difficulties for locationally constrained activities such as minerals and aggregate extraction where there is no option but to extract at a determined place.
- The biodiversity-related environmental limits would pose particular problems as evidenced by the recent debate on the NPS-IB, and on the wetland aspects of the 2020 freshwater package. Access to the effects management hierarchy, including offsetting and compensation, offers a way through the problem of safeguarding biodiversity while also providing for economic development and land use.
- In terms of the setting of environmental limits, it will be essential that these are set properly, and we look forward to engaging in this process, at the appropriate stage of the resource management reforms.
- We support the focus on environmental outcomes. An outcomes-based approach is preferable to a more prescriptive approach and works for both protecting resources and enabling activities.
- We note that minerals and aggregate extraction contributes to many of the outcomes in Clause 8, including: reducing greenhouse gas emissions; urban areas, including affordable housing; infrastructure services, including renewable electricity, and in relation to natural hazards and climate change.
- Most of New Zealand's natural features and landscapes can be described as outstanding. Outstanding Natural Landscapes is a very subjective concept, and we suggest deleting reference in the Bill to them.
- We support more active central government direction in setting priorities and suggest this be applied in an integrated way to resolve the inevitable trade-offs between preventing effects on biodiversity, as against providing for economic development, including enabling locationally constrained activities such as minerals and aggregate extraction.
- We support the proposal to consolidate RMA policy statements and regional and district plans into 14 sets of planning documents, simplifying and improving integration of the system.

- We support the introduction of Regional Spatial Strategies. Providing spatial overlays of mineral and aggregate resources and areas of minerals prospectivity, would be a positive development in terms of understanding and representing the unique nature of minerals activities.
- The prevention of land-use within SNAs would stymie most economic activity in New Zealand outside of urban areas. We recommend the effects management hierarchy be used as a way of achieving both economic development and environmental objectives.
- Having more activities classified as either ‘permitted’, or ‘prohibited’ and fewer as ‘non-complying’ and ‘discretionary’ may provide more certainty but it would reduce the scope for proposals to be assessed on their merits. While reducing conflicts is seen as a positive in the Parliamentary paper, we see merit in the ability for an inquisitorial assessment of proposals to address the balance between achieving social, economic and environmental objectives.
- Inadequately defined terms in the Bill, including many in te reo Māori, need to be defined in the legislation, to avoid the inevitability of a court having to define them at considerable expense.

Natural and Built Environments Bill

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 comment on the [Natural and Built Environments Bill](#), and the accompanying Parliamentary Paper.
3. The Bill is very open with much of the important detail still to come. Investment and development in the resource sector will be totally dependent on this reform and we look forward to engaging in the process from here.

General Comments

4. We are concerned the Bill moves too far in the direction of environmental “protection” interpreted as “preservation”, which basically means “do not touch under any circumstances”.
5. The unique characteristics of the minerals and aggregate extractive sector are not adequately recognised or provided for under the Bill, which presents serious risks to the sector that will need to be addressed.
6. Extraction will need to be enabled under the NBEA (and the proposed Strategic Planning Act) and access to the effects management hierarchy will be required, including in relation to indigenous biodiversity.

Background - Mining and the RMA

Characteristics of mineral and aggregate extraction relevant to the Bill

7. Aggregates, industrial minerals, gold, thermal coal, steel making coal and other minerals are mined in New Zealand, all making a significant contribution to our economy. These minerals, and others that may become valuable in the future, are the focus of this submission. At issue is whether, or to what extent, the new resource management system will provide for minerals activities to continue.
8. Mineral extraction is a temporary use of land and it has a relatively small footprint, compared with primary production. Sites are rehabilitated, during mining and post-closure.
9. Mining generates high value compared to other land uses and is a significant contributor to economic activity in regional New Zealand.
10. The nature of mineral and aggregate deposits means that they are limited in quantity, location and availability. They are locationally constrained – they can only be sourced from where they are physically located, and where the industry is able to access them. Mineral deposits are sparsely distributed.
11. It is a fact that the location of future mineral deposits is generally not known. A mineral deposit needs to be discovered, and, therefore, a regime that provides for exploration is important. Clearly,

any development proposal that might arise from that exploration should be subject to a rigorous resource consent process, as currently occurs under the RMA.

Features of the RMA worth retaining

12. A key strength of the RMA is its effects-based, case-by-case approach to development proposals. It provides for a robust, inquisitorial assessment of proposals to address the balance between achieving social, economic and environmental objectives.
13. In the minerals sector, as with other land-use activities generally, there is a high bar for mining companies to establish rationale and justification to mine. Consents are required for any activity that impacts the environment and are subject to conditions to ensure that the impacts of the proposed activity are acceptable to society. Proposals can be considered by independent experts and the Environment Court.
14. This approach enables some of the profits / wealth created, to be directed to improve environmental outcomes, eg via animal pest and weed control that the public purse cannot afford to resource.
15. While the RMA is not perfect, these features of the current system work well and should be retained in the new system.

Environmental Limits

16. A problem with environmental limits and bottom lines is that by definition there is no ability to make exceptions. The ability for case-by-case assessment of development proposals, as discussed on para 12 above, and the ability for society to consider trade-offs and how they might be managed to societal advantage, which are strengths of the RMA, are removed.
17. There is a material distinction between environmental biophysical limits for water, air and soil quality, and in relation to noise, vibration and traffic, on one hand; and in relation to indigenous biodiversity (or ecological integrity), and outstanding natural landscapes (ONLs) on the other. We support environmental biophysical limits in relation to values to do with life-supporting capacity, eg air, water and soil quality. These are amenable to national and regional standards being set to prevent activities that breach respective limits. That is not the case for biodiversity for which limits are inappropriate, or for ONLs which can be defined over very large areas, undermining the concept of “outstanding”.
18. In terms of setting of environmental limits, generally, it will be essential that these are set properly. We look forward to engaging in this process, at the appropriate stage of the resource management reforms.
19. Putting aside the merits or otherwise of using environmental limits, some of the categories of limits as set out in Clause 4 cannot be made to work. “Biodiversity, habitats and ecosystems” for example refers to a complex system that requires careful attention as to management, as recent experience with the draft NPS for Indigenous Biodiversity, and the 2020 freshwater package have shown. Both policy agendas have been shown to be unworkable for many land-use activities.
20. In respect of indigenous biodiversity, it will be difficult or impossible as a matter of principle to arrive at sensible limits and even harder to avoid breaching a limit.

21. The imposition of environmental limits in respect of biodiversity would present major difficulties for locationally constrained activities such as minerals and aggregate extraction where there is no option but to extract at a determined place.
22. Access for projects to the effects management hierarchy, including offsetting and compensation, offers a way through the problem of safeguarding biodiversity for locationally constrained industry while also providing for economic development and land use. We support the reference to offsetting and compensation found in the definition of Mitigate in Clause 3.
23. The discussion provided in the Parliamentary paper fails to provide an accurate problem definition for the biodiversity crisis that New Zealand is facing. The problem is this: by far the greatest threat to indigenous biodiversity is not land use and development but exotic animal pests and weeds as argued in a report by the immediate past Parliamentary Commissioner for the Environment amongst others, for which there is inadequate public funding nationwide for management and control. Policy for the allocation of resources, and resource management as regards effects on biodiversity should address the pest/weed threat, as a top priority.
24. Having understood the real problem facing biodiversity, it would make sense to harness the financial resources of project proponents appropriately (under consent conditions) to build a national programme to assist the Department of Conservation and local government to address the weed and pest threat. Public resources are limited and there is the opportunity for assistance from development proposals either indirectly through government funds resulting from these and/or directly through partnerships and mitigation measures such as conservation management or compensation funds.
25. For limits to work, generally, there will need to be good science and data and the ability to measure them precisely. It will be a mammoth task to assemble the necessary detail to determine workable and scientifically supported limits. The volume of work around the country in measuring biodiversity alone would be prohibitive.
26. We appreciate the intent to provide some flexibility with the acknowledgement that limits will need to provide “different levels of environmental protection to different circumstances and locations” (para 142). Local and catchment variations will need to be taken account of when establishing these in relation to freshwater quality, as one example, as one size does not fit all.

Environmental Outcomes

27. We support the focus on environmental outcomes. We agree that an outcomes-based approach works for both protecting resources and enabling activities.
28. We generally support the environmental outcomes listed in clause 8 and we note that minerals and aggregate extraction contributes to many of these, including: reducing greenhouse gas emissions; urban areas, including affordable housing; infrastructure services, including renewable electricity, and in relation to natural hazards and climate change. We note the language in clause 8 refers to ‘protect, restored and improved’. The word protect is not defined and we think it is important to provide a distinction between “preserve”, ie don’t touch under any circumstances, and “protect”.
29. With regard to “outstanding natural features and landscapes”, most of New Zealand can be described this way and it is a very subjective concept. Protecting all outstanding natural landscapes risks preventing most land-uses, including minerals and aggregate extraction and infrastructure.

30. There is a rationale to protect truly outstanding natural features. These are by their nature constrained in areal extent. There is a debate to be had in this space, and we would welcome being part of it. We suggest deleting reference in the Bill to outstanding natural landscapes.

National Planning Framework

31. We agree with the Parliamentary Paper (para 152) that in an outcomes-focused system, central government direction must be more active in setting priorities and helping to manage conflicts across outcomes.
32. We suggest central government direction be applied in a holistic and integrated way to resolving the inevitable trade-offs between preventing effects on biodiversity and enabling locationally constrained activities such as minerals and aggregate extraction. We consider that more thought is needed in this area. We have already suggested wider use of the effects management hierarchy, appropriately configured.

Transitional arrangement

33. We note that the public consultation and technical expertise required for creating the National Planning Framework will take a considerable period of time (para 170). This view extends to the development and review of RSSs and NBEA plans generally.
34. This leads to a general comment about transitional arrangements, and that careful attention is needed to ensuring that resource allocation and management can continue while the new system is built and put into operation.

Natural and Built Environment Plans

35. We support the proposal to consolidate more than 100 RMA policy statements and regional and district plans into 14 plans, simplifying and improving integration of the system.

Regional Spatial Strategies and the Strategic Planning Act

36. The Parliamentary paper foreshadows what is proposed with the new Strategic Planning Act and subsidiary Regional Spatial Strategies. We support this proposal and agree RSSs should be high-level and strategic, focusing on the “major issues and opportunities for a region” (para 53).
37. In terms of minerals and aggregate extraction, we see the RSSs as providing spatial overlays of mineral and aggregate resources and areas of minerals prospectivity, which would be a positive development in terms of understanding and representing the unique nature of minerals activities.
38. We note the comment in para 54 that among the objectives for RSSs is to “help identify areas to be protected from inappropriate development or change, such as areas where there are highly productive soils, or significant natural areas”. This relates to soils in reference to agriculture and horticulture production but note that land containing minerals and aggregates is even more productive and is equally deserving of protection.
39. Minerals and aggregate extraction is a temporary land-use. During and after mining and quarrying the land is rehabilitated or repurposed into a former use, or an enhanced or new use. Operators can, and do, put highly-productive agricultural land back after extraction ceases.

40. We note the possibility arising from the RSSs of vast areas of New Zealand being designated as Significant Natural Areas. The prevention of land-use and economic development within SNAs would stymie most economic activity in New Zealand outside of urban areas. Such a scenario would clearly be undesirable and unworkable in practice. We oppose the designation of SNAs.
41. Once more, we appeal to the effects management hierarchy as a way of achieving both economic development and environmental protection/management objectives, in a holistic way, in particular, as regards biodiversity.

Resolving conflicts all about activity status

42. We note the intention to have more activities classified as either 'permitted', or 'prohibited' in NBA plans or national direction and fewer as 'non-complying' and 'discretionary' etc (para 122 and elsewhere). This is described as a way to reduce conflicts and provide more certainty. While this may be true, we see this as removing another of the strengths of the RMA, ie the ability for a robust assessment of proposals to address the balance between achieving social, economic and environmental objectives – providing for the four wellbeings.
43. We are pleased that the ability to have proposals assessed on their merits is being retained. However, narrowing the scope for such assessments, which the Bill does, carries significant risks.
44. In our view, prohibited activities should be only very scarcely used - limited to activities such as dumping radioactive waste.
45. Minerals and aggregate extraction is already effectively prohibited on land listed on Schedule 4 of the Crown Minerals Act 1991. Classifying a wide range of activities as prohibited in certain areas is a blunt instrument fraught with unintended consequences, as we saw with the wetlands debate.
46. The hearing commissioner for OceanaGold's resource consent application to reopen the Deepdell case at its Macraes gold mine in East Otago is one recent example promoting the view that there is no place in the resource management system for prohibited activities. Retaining the ability for a case-by-case assessment is far superior to closing down all options through an outright ban.

Māori roles, responsibilities, participation

47. We fully support the intent of enhanced rights, roles and responsibilities for Māori under the new resource management system. This is consistent with giving effect to te Tiriti o Waitangi, and with the principles of te Tiriti.
48. That said, undefined, or inadequately defined terms in te reo Māori could lead to uncertainty and litigation subsequent to enactment to interpret their meaning. We refer, in particular, to te Oranga o te Taiao, te ao Māori, mana, mauri, and mātauranga Māori.
49. We recommend defining these concepts in the legislation, to avoid the inevitability of a court having to define them.

Clause by clause comment

Text of Bill	Issue/comment	Straterra's proposals
<p>5 Purpose of this Act (1) The purpose of this Act is to enable— (a) Te Oranga o te Taiao to be upheld, including by protecting and enhancing the natural environment; and (b) people and communities to use the environment in a way that supports the well-being of present generations without compromising the wellbeing of future generations.</p>	<p>There may be uncertainty or disagreement of the meaning of Te Oranga o te Taiao including amongst Maori.</p>	<p>A clear definition of te Oranga o te Taiao needs to be inserted into clause 3 of the Bill to reduce the risk of litigation to determine its meaning</p>
<p>5 Purpose of this Act (2) To achieve the purpose of the Act,— (a) use of the environment must comply with environmental limits; and (b) outcomes for the benefit of the environment must be promoted; and (c) any adverse effects on the environment of its use must be avoided, remedied, or mitigated.</p>	<p>For locationally constrained activities such as minerals and aggregate extraction, it will not always be possible to comply with environmental limits, in particular for biodiversity (ecological integrity), depending on how these are defined in any setting</p> <p>Minerals and aggregate extraction will need to have access to the mitigation hierarchy, as defined in clause 3 of the Bill, in relation to “mitigate”</p> <p>Note that “outcomes for the benefit of the environment” includes the minerals and aggregate extraction required for achieving a net zero carbon New Zealand by 2050 and a lower-emissions world</p>	<p>5 Purpose of this Act (2) To achieve the purpose of the Act,— (a) use of the environment must comply with environmental limits, <u>subject to sub-section (d)</u>; and (b) outcomes for the benefit of the environment must be promoted; and (c) any adverse effects on the environment of its use must be avoided, remedied, or mitigated, <u>and (d) in the case of locationally constrained activities, sub-section (c) applies</u></p>
<p>5 Purpose of the Act (3) In this section, Te Oranga o te Taiao incorporates— (a) the health of the natural environment; and (b) the intrinsic relationship between iwi and hapū and te taiao; and (c) the interconnectedness of all parts of the natural environment; and (d) the essential relationship between the health of the natural environment and its capacity to sustain all life.</p>	<p>While not a definition of te Oranga o te Taiao, strictly speaking, this is an illustration of its meaning. While helpful, the risk of litigation to determine the meaning of te Oranga o te Taiao remains</p>	<p>Insert a clear definition of te Oranga o te Taiao into clause 3 of the Bill</p>
<p>7 Environmental limits (1) The purpose of environmental limits is to protect either or both of the following: (a) the ecological integrity of the natural environment:</p>	<p>Note the risk of this being unworkable in some areas, including for locally constrained activities unless an appropriate definition of “protection” is developed to be applicable to locationally constrained activities.</p>	<p>Define “protect” in clause 3 of the Bill to include the application of the mitigation hierarchy in the case of locationally constrained activities. This would require no net loss or a net gain in indigenous biodiversity as a result of locationally constrained development. Definitions of offsets and compensation are also required to be inserted into clause 3 of the Bill</p>

<p>7 Environmental limits (6) All persons using, protecting, or enhancing the environment must comply with environmental limits.</p>	<p>As discussed above, this is unworkable in the case of indigenous biodiversity, and in respect of locationally constrained activities</p>	<p>7 Environmental limits (6) All persons using, protecting, or enhancing the environment must comply with environmental limits, <u>subject to section 6A;</u></p> <p><u>(6A) in the case of minerals and aggregate extraction, the mitigation hierarchy applies.</u></p>
<p>8 Environmental outcomes To assist in achieving the purpose of the Act, the national planning framework and all plans must promote the following environmental outcomes: (a) the quality of air, freshwater, coastal waters, estuaries, and soils is protected, restored, or improved:</p>	<p>Supported</p>	
<p>8 Environmental outcomes (b) ecological integrity is protected, restored, or improved:</p>	<p>As discussed above, locationally constrained activities, eg minerals and aggregate extraction, must have access to the mitigation hierarchy for the new Act to be workable.</p>	<p>Define “protect” in clause 3 of the Bill to include the application of the mitigation hierarchy in the case of locationally constrained activities.</p>
<p>8 Environmental outcomes (c) outstanding natural features and landscapes are protected, restored, or improved:</p>	<p>Arguably, almost all of New Zealand is outstanding, which undermines the concept.</p> <p>Certainly, there are special places in New Zealand that should be protected or preserved in the form of “outstanding natural features”</p>	<p>8 Environmental outcomes (c) outstanding natural features and landscapes are protected, restored, or improved:</p> <p>Define “outstanding natural features” in clause 3 of the Bill (currently not defined) to avoid its application on a landscape scale</p>
<p>8 Environmental outcomes (d) areas of significant indigenous vegetation and significant habitats of indigenous fauna are protected, restored, or improved:</p>	<p>Access to a mitigation hierarchy for developers and land users would assist in achieving this, particularly in locationally constrained activities, eg minerals and aggregate extraction.</p>	<p>As discussed above, an appropriate definition of “protection” and the introduction of access to a mitigation hierarchy would achieve our proposal.</p>
<p>8 Environmental outcomes (e) in respect of the coast, lakes, rivers, wetlands, and their margins,— (i) public access to and along them is protected or enhanced; and (ii) their natural character is preserved:</p>	<p>“Preserved” means “do not touch”. In the case of wetlands and rivers this is unworkable for several reasons</p> <p>Lowland wetlands are greatly reduced in overall areal extent, however, are pervasive in the landscape from the mountains to the sea.</p> <p>On occasion, locationally constrained activities may need to modify, divert or otherwise impact on a “river”, eg farm drains, or the upper part of catchments</p> <p>Shifting aggregate extraction from rivers onto land will require an</p>	<p>Locationally constrained activities, eg minerals and aggregate extraction, and certain infrastructure, need to have access to the mitigation hierarchy in respect of wetlands, rivers, coasts etc</p> <p>A clear definition in clause 3 of the Bill of wetlands is required</p>

	<p>accompanying fast-tracking process for new quarries to be established on land to meet demand for infrastructure to meet government resource management reform objectives</p> <p>It may be necessary to modify riparian and littoral margins to provide flood protection or other resilience infrastructure, eg seawalls</p>	
<p>8 Environmental outcomes (f) the relationship of iwi and hapū, and their tikanga and traditions, with their ancestral lands, water, sites, wāhi tapu, and other taonga is restored and protected: (g) the mana and mauri of the natural environment are protected and restored: (h) cultural heritage, including cultural landscapes, is identified, protected, and sustained through active management that is proportionate to its cultural values: (i) protected customary rights are recognised:</p>	<p>Ancestral lands cover all of New Zealand.</p> <p>We are concerned there may be uncertainty or disagreement around the meaning of mana and mauri.</p>	
<p>8 Environmental outcomes (j) greenhouse gas emissions are reduced and there is an increase in the removal of those gases from the atmosphere:</p>	<p>Minerals and aggregate extraction have a role in achieving this aim – certain minerals are vital to the net zero carbon transition</p>	<p>This is the rationale for the fit-for-purpose policy proposals for minerals and aggregate extraction we have made above</p>
<p>8 Environmental outcomes (k) urban areas that are well-functioning and responsive to growth and other changes, including by— (i) enabling a range of economic, social, and cultural activities; and (ii) ensuring a resilient urban form with good transport links within and beyond the urban area: (l) a housing supply is developed to— (i) provide choice to consumers; and (ii) contribute to the affordability of housing; and (iii) meet the diverse and changing needs of people and communities; and (iv) support Māori housing aims:</p>	<p>To achieve these aims will require mining and quarrying of aggregates, limestone (for cement manufacture), and coal and ironsands for steelmaking</p>	<p>As above</p>
<p>8 Environmental outcomes (m) in relation to rural areas, development is pursued that— (i) enables a range of economic, social, and cultural activities; and (ii) contributes to the development of adaptable and economically resilient communities; and (iii) promotes the protection of highly productive land from inappropriate subdivision, use, and development: (n) the protection and sustainable use of the marine environment:</p>	<p>Minerals and aggregate extraction is a temporary use of land over time. After mine or quarry closure, highly productive farmland can be returned</p> <p>In terms of the marine environment, the new Act should enable responsible seabed mining, including of minerals supporting the transition, eg vanadium, titanium, ironsands, copper.</p>	<p>As above</p>
<p>8 Environmental outcomes (o) the ongoing provision of infrastructure services to support</p>	<p>As above</p>	<p>As above</p>

<p>the well-being of people and communities, including by supporting— (i) the use of land for economic, social, and cultural activities: (ii) an increase in the generation, storage, transmission, and use of renewable energy:</p> <p>(p) in relation to natural hazards and climate change,— (i) the significant risks of both are reduced; and (ii) the resilience of the environment to natural hazards and the effects of climate change is improved.</p>		
<p>10 Purpose of national planning framework The purpose of the national planning framework is to further the purpose of this Act by providing integrated direction on— (a) matters of national significance; or (b) matters for which national consistency is desirable; or (c) matters for which consistency is desirable in some, but not all, parts of New Zealand.</p>	<p>Strongly supported. National consistency of approach is desirable for locationally constrained activities, eg minerals and aggregates extraction, a sector which is also part of the upstream supply chain for infrastructure, and in enabling the net zero carbon economy</p>	
<p>13 Topics that national planning framework must include (3) In addition, the national planning framework must include provisions to help resolve conflicts relating to the environment, including conflicts between or among any of the environmental outcomes described in section 8</p>	<p>Conflicts between achieving the government’s objectives for resource management reform are inevitable.</p>	<p>We would support a holistic or integrated approach – rather than a hierarchical approach - to resolving conflicts between land uses, to optimise the four wellbeings within the national planning framework</p>
<p>14 Strategic directions to be included The provisions required by sections 10, 12, and 13 must include strategic goals such as— (a) the vision, direction, and priorities for the integrated management of the environment within the environmental limits; and (b) how the well-being of present and future generations is to be provided for within the relevant environmental limits.</p>	<p>Integrated management is strongly supported</p> <p>As discussed above, the provisions requiring compliance with environmental limits is unworkable, in the case of indigenous biodiversity</p>	<p>14 Strategic directions to be included The provisions required by sections 10, 12, and 13 must include strategic goals such as— (a) the vision, direction, and priorities for the integrated management of the environment within the environmental limits; and (b) how the well-being of present and future generations is to be provided for within the relevant environmental limits, <u>subject to section 7</u>.</p>
<p>18 Implementation principles (d) promote appropriate mechanisms for effective participation by iwi and hapū in processes undertaken under this Act: (e) recognise and provide for the authority and responsibility of each iwi and hapū to protect and sustain the health and well-being of [te taiao]:</p>	<p>We support the development of appropriate mechanisms for effective participation by iwi and hapū</p>	<p>We propose transitional arrangements to provide time for Māori to develop sufficient capability and capacity to take on the new and enhanced roles that the new Act envisages.</p> <p>This will be no light undertaking. There are more than 100 iwi, and several hundred hapū.</p>