

Office of the Mayor



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Tēnā koutou

SUBMISSION ON THE RESOURCE MANAGEMENT (FRESHWATER AND OTHER MATTERS) AMENDMENT BILL

Introduction

- 1 The Dunedin City Council (DCC) welcomes the opportunity to submit on the Resource Management (Freshwater and Other Matters) Amendment Bill 2024 (the Bill).
- 2 The DCC acknowledges the intention of the Bill is to reduce the regulatory burden by making targeted amendments to the Resource Management Act 1991 (RMA) and national directions. The DCC has a number of concerns that it wishes to raise with respect to implications of the Bill.

Discussion

- 3 In its current form, the Bill proposes six discrete changes as follows:
 - Excluding the hierarchy of obligations contained in the National Policy Statement for Freshwater Management 2020 (NPSFM 2020) from resource consent application and decision-making processes until the NPSFM is replaced;
 - Aligning the consenting pathway for coal mining with other mineral extraction activities across the NPSFM 2020, National Policy Statement for Indigenous Biodiversity (NPSIB 2023) and Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F);
 - Modifying local authority obligations under the NPSIB 2023 to identify and include in district plans new significant natural areas (SNAs) for 3 years;
 - Amending the Resource Management (Stock Exclusion) Regulations 2020 in relation to low-slope land;
 - Repealing the permitted and restricted discretionary activity regulations amend associated conditions for intensive winter grazing from the NES-F; and
 - Making amendments to speed up the process to prepare or amend national direction under the RMA.

- 4 The proposed changes relating to stock exclusion and intensive winter grazing requirements are managed by Regional Councils, and the DCC understands that the Otago Regional Council will submit on these matters, however the DCC supports protections for freshwater and indigenous biodiversity which also add value to the products that come from our farms and promote resilience to environmental threats exacerbated by climate change. The DCC supports protections for waterways that enhance the health of freshwater ecosystems in line with Dunedin's biodiversity strategy, Te Ao Tūroa - Environment Strategy, and Zero Carbon Plan.

Removal of the hierarchy of obligations from the NPSFM

- 5 The Bill seeks to remove the Te Mana o Te Wai hierarchy of obligations and the associated objective from the National Policy Statement for Freshwater Management 2020 (NPS-FM). This means the hierarchy will not be considered in resource consent and decision-making processes. The hierarchy of obligations in Te Mana o Te Wai are:
- *First, the health and well-being of water bodies and freshwater ecosystems;*
 - *Second, the health and needs of people, and*
 - *Third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.*
- 6 The DCC notes that in the decision on the freshwater parts of the proposed Otago Regional Policy Statement 2021 (PORPS), the hierarchy of obligations have been included in Policy LF-WAI-P1 of the Land and Freshwater section of the PORPS. If Policy-LF-WAI-P1 was beyond appeal and deemed operative, then the DCC and other PORPS users could rely on the hierarchy being considered when applying for or deciding resource consent applications, however, this Policy is subject to several appeals and therefore may change through appeal resolution processes. There is therefore no certainty that the hierarchy of obligations will remain in the PORPS and therefore the DCC is submitting on this proposed change.
- 7 The DCC supports, in principle, the Te Mana o te Wai hierarchy of obligations as an overarching framework for freshwater management. The DCC does not support the wholesale exclusion of the Te Mana o te Wai hierarchy of obligations from resource consent application and resource consent-decision making processes and, as such, DCC recommends that clauses 22 and 23 of the Bill be deleted. The DCC is concerned that excluding the hierarchy of obligations from resource consent application and resource consent-decision making processes could have adverse impacts on the health of freshwater and associated environmental values, Mana Whenua values, and drinking water values. This is especially the case in regions where the hierarchy of obligations has not already been incorporated into regional policy statements and plans.
- 8 The DCC understands the Government intends to review the National Policy Statement for Freshwater Management 2020 (NPS-FM) in the near future. The DCC has previously made submissions in Otago regional policy and plan-making processes on the challenges that may arise for the DCC as water services provider due to the application of the hierarchy of obligations. The DCC would recommend that any updates to the NPS-FM retain the hierarchy of obligations but with appropriate modifications to ensure large public drinking water suppliers like the DCC are enabled to continue providing water supply for the health and wellbeing of communities, including growing communities.

Consenting Pathway for Coal Mining

- 9 The Bill intends to align the consenting pathway for coal mining (other than coking coal extraction which is already provided for) under three pieces of legislation: the National Policy Statement for Freshwater Management 2020 (NPS-FM); the National Policy Statement for Indigenous Biodiversity 2023 (NPS-IB); and the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F). The amendment is aligned with the government's 'A Draft Minerals Strategy for New Zealand to 2040' (MBIE, May 2020) which is also currently being consulted on with submissions closing on 31 July 2024.
- 10 The DCC has previously submitted to the Ministry for the Environment in 2022 on the exposure drafts of proposed changes to the NPSFM and NESF and recommended the removal of a discretionary consent pathway for mining in natural inland wetlands. Coal mining is not provided for in the Dunedin City Second Generation District Plan (2GP) and is therefore a non-complying activity. Wetlands are reducing in size and number and are important for biodiversity.
- 11 Ōtepoti Dunedin and Aotearoa New Zealand have net zero emissions targets of 2030 (Zero Carbon Plan 2030) and 2050 (Zero Carbon Act) respectively. Coal mining and the resulting emissions from coal use contribute to climate change, risk overshooting emissions budgets and obligations, and produce particulate emissions harmful to human health. The DCC does not use coal and is working to support the city to decarbonise including transitioning away from coal.
- 12 The DCC does not support a consenting pathway for coal mining in the NPS-FM, NPS-IB or NES-F and recommends that clause 28 and the associated parts of Schedule 2 of the Bill relating to coal mining be deleted.

Delay in Inclusion of new Significant Natural Areas in District Plans

- 13 The objective of the NPSIB 2023 is to maintain indigenous biodiversity across Aotearoa New Zealand so that there is at least no overall loss in indigenous biodiversity after the commencement date of the NPSIB. Significant Natural Areas (SNAs), as identified within the NPSIB, serve as a nationally consistent instrument to achieve the objectives and policies within the NPSIB, align with matters of national importance under Section 6(c) of the RMA and provide for the protection of indigenous biodiversity across Aotearoa New Zealand.
- 14 The NPSIB commenced on 4 August 2023, and pursuant to Section 4.2(1) requires local authorities to publicly notify any plan changes to notify new SNAs within five years. The Bill proposes a three-year suspension period for the requirement for councils to identify and notify new SNAs to "allow time for a review of SNAs more broadly". While existing SNAs are unaffected, this suspension raises significant concerns.
- 15 Firstly, the DCC is concerned about the implications of suspending the requirement for new SNAs, as the protection of SNAs is one of the key ways in which councils are able to give effect to the objective of the NPSIB 2023 as outlined in Clause 2.1(1)(b)(iii) ("*by protecting and restoring indigenous biodiversity as necessary to achieve the overall maintenance of indigenous biodiversity*").

- 16 SNAs play a key role in achieving the objective of the NPSIB 2023 by addressing ongoing declines in biodiversity that have persisted in the absence of mandatory protections previously. Relying solely on voluntary protection has proven insufficient to halt biodiversity decline across New Zealand. Economic incentives, such as afforestation for carbon credits, often prioritise land use over biodiversity, affecting habitats and vegetation for rare and threatened species, often surviving on privately owned land.
- 17 Indigenous biodiversity within wetlands and other natural environments, whether designated as SNAs or not, hold carbon stocks that could be emitted if these environments are degraded. If protected, these areas also have the potential to sequester further carbon, contributing to net zero emissions targets (DCC Zero Carbon Plan 2030, Zero Carbon Act).
- 18 Secondly, the Bill's ambiguity surrounding the status of existing council plan provisions for SNAs may generate confusion for local authorities implementing their own plan requirements. While the Bill clarifies that existing obligations under Section 6(c) of the RMA remain unchanged, the Bill does not specify whether the suspension pertains solely to SNAs as defined by the NPS-IB or includes SNAs more broadly, including those defined by district plans. This ambiguity presents challenges for local authorities with established planning frameworks for identifying and protecting significant indigenous vegetation or habitats of indigenous fauna. For example, the DCC's 2GP contains objectives, policies and methods for identifying and protecting areas of significant indigenous vegetation and significant habitats of indigenous fauna. In the 2GP, areas meeting specific criteria can be protected in the Plan by being scheduled as Areas of Significant Biodiversity Value (ASBV). ASBVs align with the NPSIB 2023 definition of SNAs but are not formally designated as such in the district plan.
- 19 While the new proposed Section 78(5) for the RMA stipulates that an area of significant indigenous vegetation or fauna habitat included in a policy statement or plan updated after commencement of the Resource Management (Freshwater and Other Matters) Amendment Act 2024 should not be treated as an SNA, there is a lack of clarity within the Bill as to whether councils can continue to utilise existing district plan provisions to identify and protect SNAs. The DCC considers that it is important to clarify that the suspension of SNA identification applies only to requirements under the NPSIB 2023 framework, rather than the identification and protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna under existing plan provisions. This would ensure that councils can continue alignment with their own district plan provisions (as well as s6 RMA) for identification and protection of SNAs. In Dunedin's case, provisions managing biodiversity, including protection of ASBVs, have undergone rigorous public processes and involve voluntary agreements with landowners.
- 20 Therefore, the DCC requests that the Bill be amended to clarify that local authorities can still notify new areas of areas of significant indigenous vegetation and significant habitats of indigenous fauna for protection in plan updates, aligning with their own district plan objectives, and that new SNAs created this way will have immediate effect and not be suspended by the proposed section 78(5) of the RMA.
- 21 In addition, instead of the blanket suspension of new SNA identifications proposed under the amendment bill, the DCC requests that the Bill allows for the continued identification and protection of SNAs through the NPSIB process with landowner support during the three-year

suspension period. This approach would respect existing planning frameworks and minimise disruption while ensuring continued progress is made in protecting New Zealand's biodiversity, aligning with the NPSIB 2023's objective and giving effect to 6(c) of the RMA.

Speeding up the Process to Prepare or Amend National Direction under the RMA

- 22 The Bill proposes a more streamlined process for the preparation or amendment of 'national direction' (National environmental standard, national planning standard, national policy statement, or a New Zealand coastal policy statement).
- 23 The proposal intends to remove the board of inquiry approach in the RMA which is no longer used and rely on the other RMA process which requires public notification, time for submissions, and recommendations prepared for the Minister of Environment. The DCC supports the removal of redundant provisions from the RMA and the retention of a process that enables public and Council participation in the preparation or amendment of national directions.
- 24 The proposal also proposes a change to enable the Minister to recommend a change to a national direction without going through the full process, where the change is for:
 - a) Alignment with a New Zealand Standard
 - b) Implementation of New Zealand's obligations under any international convention, protocol, or agreement to which New Zealand is a party
 - c) Giving effect to provisions in an emissions reduction plan or national adaptation plan
 - d) Changing the timeframe for implementation of any part of a national environmental standard
 - e) Removing provisions in a national environment standard that are no longer required as a consequence of changes to legislation.
- 25 The DCC is concerned that some instances, Council may have to implement changes which may be unfeasible, but that Council has not been consulted on. To ensure that this does not happen, Council suggests that the proposed changes b, c and d above be subject to a requirement to consult territorial authorities through a submissions process.
- 26 The DCC seeks clarity around the relationship between the amendments proposed to making and amending national directions, and the proposed Fast-track Approvals legislation. The DCC also wants to reiterate its request for the Minister of the Environment to be added to the Fast-track Approvals decision-making group, as the role of the Minister for the Environment is to protect the environment.
- 27 The DCC supports changes being made to national direction that align with a New Zealand Standard, and removal of provisions that are no longer required as a consequence of changes of legislation, without the need to go through the s46(4) RMA process.
- 28 The final change proposed to speed up the process of preparation or amendment of a national direction, is to amend the evaluation report requirements. The DCC supports the proposed inclusion of s32AB into the RMA to enable a more flexible and less onerous evaluation of national directions.

Summary

- 29 Table 1 below summarises the DCC's position with regard to the proposed amendments to the Bill, reflecting the commentary above.
- 30 The DCC wishes to speak to this submission at any hearings.

Nāku noa, nā



Cherry Lucas
DEPUTY MAYOR
DUNEDIN CITY COUNCIL

Table 1 DCC Position on Proposed Changes

Section	Subsection	Position
RMA		
2	'national direction' new definition	Support
2	'NPSFM 2020' new definition	Support
2	'NPSIB 2023' new definition	Support
32	Requirements for preparing and publishing evaluation reports	Support
32AA	Requirements for undertaking and publishing further evaluations	Support
32AB	Evaluation of nation direction (new provision)	Support
42	Protection of sensitive information	Support
44	Restriction on power to make national environmental standards	Support, except 44(3)(b-d) should be subject to a requirement to consult with local authorities.
46A	Single process for preparing national directions	Support, except should be subject to a requirement to consult with local authorities for 44(3)(b-d).
46B	Incorporation of material by reference in national direction	Support
47-51	Repealed	Support
51A	Withdrawal of proposed national policy statement	Support
52	Consideration of recommendations and approval of withdrawal of statement	Support
53	Changes to or review of revocation of national policy statements	Support
57, 58D, 58E, 58H		Support
78	Time-limited modifications to NPSIB 2023 (new)	Oppose
92	Further information or agreement may be requested	Oppose
104	Consideration of applications	Oppose
360B	Conditions to be satisfied before regulations made under section 360A	Support
Schedule 1	Clause 47	Oppose
4	Clauses 2A and 2B (new)	Oppose
12	Part 7 (new)	Oppose