

# Supplementary Analysis Report: Amending the consenting pathway for coal mining in or around wetlands and significant natural areas.

## Coversheet

Purpose of Document	
Decision sought/taken:	<i>Analysis produced to support the introduction of the first Resource Management Act Amendment Bill</i>
Advising agency:	<i>The Ministry of Business, Innovation and Employment</i>
Proposing Ministers:	<i>Minister for Resources and the Minister Responsible for Resource Management Reform</i>
Date finalised:	<i>13 May 2024</i>
Problem Definition	
<p>The National Policy Statement for Freshwater Management 2020 (NPS-FM) and the National Policy Statement for Indigenous Biodiversity (NPSIB) under the Resource Management Act 1991 (RMA) provide direction to councils to protect natural wetlands and significant natural areas (SNAs). The Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F) set requirements for carrying out certain activities that pose risks to fresh water and freshwater ecosystems (hereafter referred to collectively as <b>the relevant national direction</b>).</p> <p>Under the relevant national direction, to access the consent pathways, a proposed activity must meet 'gateway' tests.</p> <p>There are currently special provisions on seeking resource consent for coal mining activities in or around wetlands or significant natural areas (SNAs), as the exceptions that were introduced in 2022/23 for other extractive activities (e.g. aggregate and other mineral extraction) currently do not apply to new coal mines or extending existing thermal coal mines past 31 December 2030.</p> <p>As noted above, the current additional controls on coal mines in the relevant national direction mean that, where a coal mine would adversely affect a wetland or SNA:</p> <ul style="list-style-type: none"> <li>• the resource consent pathway for coal mining applies only to the operation and extension of existing mines (i.e. no consent pathway any new coal mines)</li> <li>• for thermal coal, the consent pathway for existing mines is subject to a sunset clause of 31 December 2030 (e.g. applications for additional consents to operate existing mines cannot be made after 31 December 2030).</li> <li>• For coking coal, there is no sunset clause for extensions of existing mines but it is still subject to the "no new coal mines" limitation above.</li> </ul>	

Even if a coal mining project would pass the relevant “gateway” tests for wetlands<sup>1</sup> and SNAs<sup>2</sup>, a consent application cannot be lodged for consideration under the RMA unless it relates to the extension or operation of an existing coal mine<sup>3</sup>.

Some coal is required for food production, energy security and industrial production, such as steel manufacturing. If not mined domestically, additional coal and steel would need to be imported with potential flow-on costs for construction.

### Executive Summary

Activities which affect wetlands or SNAs are regulated under the relevant national direction.

The current consent pathways for all activities (excluding new coal) in or around wetlands and SNAs are narrow to reflect the high conservation values that natural wetlands and SNAs possess. The consent pathways requires that the relevant council:

- apply the effects management hierarchy (EMH) (requiring adverse effects to be avoided, remedied or mitigated), and
- where effects cannot be avoided, remedied or mitigated, apply offsetting and compensation principles which are fairly stringent and are specific to the environments being affected (aquatic for the NPSFM/SNAs and terrestrial for the NPSIB); and
- where effects cannot be offset or compensated a consent application may be declined.

To access the consent pathways, a proposed activity must also meet ‘gateway’ tests. In addition, regional councils may also impose stricter controls through their local planning instruments.

The change with this proposal is creating an equivalent pathway for coal projects that are currently ineligible where they also meet the stringent requirements above.

The costs and benefits of creating these consenting pathways where the relevant tests have been met has already been considered by the Ministry for the Environment (MfE) during previous reforms as part of the process to introduce consenting pathways for other activities.

If any new coal mines are consented as a result of the changes considered in this report, they would be subject to the gateway tests in the relevant national direction and would be subject to the general requirements of the consent pathway.

It is not possible to quantify how many new coal mines or extensions for existing coal mines would be affected by the proposed changes. It is likely that following the change, some

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<sup>1</sup> For mineral / aggregate extraction that affect wetlands the gateway tests are that the activity is necessary for the extraction of coal and ancillary activities, extraction will provide significant national or regional benefits, there is a functional need for the activity to be done in that location, and the effects of the activity will be managed through applying the effects management hierarchy.

<sup>2</sup> For mineral extraction that affects SNAs, the gateway tests are that the new use provides significant national public benefit that could not otherwise be achieved using resources within New Zealand, there is a functional need or operational need, and there are no practical alternative locations, and the effects of the activity will be managed through applying the effects management hierarchy.

<sup>3</sup> although this consent pathway for existing coal mines ends for thermal coal on 31 December 2030.

consent applications that were prevented by the special provisions will be made, but the outcome of those processes cannot be pre-determined. As such it is not possible to estimate how many (if any) such projects might result from the changes.

Some coal is required for food production, energy security and industrial production, such as steel manufacturing. If not mined domestically, additional coal and steel would need to be imported with potential flow-on costs for construction<sup>4</sup>.

Imported coal is currently largely sourced from Indonesia, where there are additional costs and GHG emissions associated with transporting it to New Zealand. There is a risk that imported coal will not be subject to the same levels of environmental controls.

It also noted that, like quarrying, the extraction of minerals and ancillary activities can cause significant destruction to the sites in which they occur. There is therefore a risk of irreparable damage to, and loss of, natural wetland areas if a consent pathway is to be provided. However, this risk can be managed through the gateway tests in the NPS-FM and application of the EMH. It will be important to ensure that any conditions attached to consents are adequately enforced to mitigate this risk.

### Limitations and Constraints on Analysis

**Our focus is on the details of the proposal to provide a consent pathway for coal mining in or around wetlands and significant natural areas where it would pass the gateway test in the relevant national direction**

In this Supplementary Analysis Report (SAR), we have included analysis on how the consenting pathway for coal mining can be aligned with other extractive activities under the relevant national direction on the basis it will be included in the first Bill in phase 2 of the Government's resource management reforms, as a time-critical matter.

**The time critical nature of this proposal was to avoid unnecessary costs and court time**

There is currently a judicial review proceeding against the Minister for the Environment concerning the coal mining-specific additional controls in the national direction instruments (NPS-FM, NES-F and NPSIB). The proceeding is brought by West Coast coal mining parties,<sup>5</sup> and seeks orders quashing the relevant national direction.

Cabinet agreed to include the proposal to repeal these provisions in the second phase of the Government's resource management reforms (i.e. as a time-critical change), in order that the parties to the litigation could have certainty as to the Government's legislative intent. It is anticipated that by expediting the repeals this may avoid unnecessary legal costs and use of court time.

**We did not analyse a wide range of options**

Reduced timeframes and the narrow scope of the Bill limited our ability to assess the feasibility of a broader range of options, however these would have been similar to those considered by MfE in 2021-23 (discussed below) as part of the policy work for providing

<sup>4</sup> <https://media.umbraco.io/te-waihanga-30-year-strategy/ayxfshpg/infrastructure-resources-study.pdf> notes (pg 6) that applying the estimated carbon prices from the Climate Change Commission's draft report (\$250) would result in an approximately 40% increase in the price of imported steel at the port, and 85% increase for cement.

<sup>5</sup> The coal mining parties comprise two West Coast Rūnanga, the West Coast Regional Council and six coal mining companies.

consenting pathways for a wide range of activities. Therefore, the focus of this report was to assess the additional impact of amending the consenting pathway for coal mining in or around wetlands and significant natural areas where there is a functional or operational need and significant benefits.

### **Limited consultation was undertaken**

#### *Consultation when the provisions were originally included*

In 2021, MfE consulted on changes to the NPS-FM and NES-F as part of the Managing our Wetlands Discussion Document. This included the proposal to provide consent pathways for locationally constrained activities in wetland regulations (including quarrying, landfills, cleanfills and managed fills, mineral mining and urban development).

The consultation included a question on whether there should be additional controls on particular types of minerals mined, and the exposure draft included some of the provisions the current Bill is seeking to remove.

The public were able to submit on both the proposal to allow for consenting pathways in general, and additional controls for coal mining as part of the 2021 consultation. Submitters' views are unlikely to have changed substantially since 2021.

No consultation with stakeholders was undertaken on the coal mining provisions included in the NPSIB.

#### *Consultation on the proposed repeal of the provisions*

As policy decisions were taken by Cabinet at pace, to allow for the changes to be included in the Bill, there was not time for consultation before these decisions were taken. There will be opportunities for the public to submit on the Bill, and the policy intent has been publicised in advance which has raised public awareness of the proposed change.

### **Treaty of Waitangi considerations**

#### *Engagement on policy proposals*

Due to the limited time available, it has not been possible to engage with iwi/Māori on these proposals nor fully assess the Treaty impacts, including on the Crown's Treaty settlement commitments.

As well as broad obligations under the Treaty of Waitangi to engage with Māori on matters that affect them, the Crown has specific commitments through Treaty settlements to engage with post-settlement governance entities on relevant policy matters under relationship agreements and accords, including when preparing national direction. Where national direction is amended through primary legislation, there remain relationship risks if the Crown has not complied specific procedural or substantive obligations in settlements related to preparing national directions. We have not undertaken further analysis of those risks.

#### *Impact of policy proposals*

The specific impacts arising from new and extended coal mining consent applications will depend on the circumstances of each application. This includes the aspirations of local iwi and Māori, impacts on wetlands, land and species as a taonga and relevant Treaty settlement commitments.

Extending the consent pathway for coal mining in or around wetlands and SNAs across National Direction does not diminish or alter the significance given to a number of environmental values under the RMA, and the significance given to:

- relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga (section 6(e))
- kaitiakitanga (section 7(a)).

Māori (like all New Zealanders) can benefit from the economic impacts of a coal mine (jobs, regional GDP, affordable resources), and decision makers will have the ability to impose conditions that seek to reconcile conflicts between matters of national significance including the protections in sections 6(e).

Section 8 will continue to require decision-makers take into account the principles of the Treaty of Waitangi.

**Limited evidence available to assess policy proposal and its impact**

Limited information was able to be gathered to assess the policy proposal and its impact(s).

It is challenging to assess the impacts of this proposal when it is unknown how many consent applications for new coal mines or consent extensions for existing coal mines will be lodged following this change.

A critical assumption throughout this analysis is that if a wider range of coal mining activities were allowed in or around natural wetlands, the impacts of these activities can be managed effectively through consistent application of the gateway tests and the EMH.

This assumption is subject to material uncertainty. MfE reported that a significant minority of submissions on the proposed changes to the NPS-FM considered that the effectiveness of these instruments is unproven and relying on them more widely poses an unacceptable risk of further wetlands losses. This uncertainty applies to all of the consent pathways for activities in or around wetlands and SNAs and is not specific to coal mining.

We acknowledge this argument, but consider that on balance, the risks are acceptable.

**Responsible Manager(s) (completed by relevant manager)**

*Conor Paul*  
*Acting Manager*  
*Resources Policy*  
*Ministry of Business, Innovation and Employment*



13 May 2024

**Quality Assurance (completed by QA panel)**

Reviewing Agency:	Ministry of Business, Innovation and Employment
Panel Assessment & Comment:	The Supplementary Analysis Report partially meets the requirements. There are limitations to: the consideration of options, the extent of consultation and the assessment of impacts.

## Section 1: Diagnosing the policy problem

### What is the context behind the policy problem and how is the status quo expected to develop?

1. The National Policy Statement for Freshwater Management 2020 (NPS-FM) and the National Policy Statement for Indigenous Biodiversity (NPSIB) under the Resource Management Act 1991 (RMA) provide direction to councils to protect natural wetlands and significant natural areas (SNAs). The Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F) set requirements for carrying out certain activities that pose risks to fresh water and freshwater ecosystems (hereafter referred to collectively as **the relevant national direction**).
2. Under the relevant national direction, to access the consent pathways, a proposed activity must meet 'gateway' tests.
3. There are currently special provisions<sup>6</sup> on seeking resource consent for coal mining in or around wetlands or SNAs, as the exceptions that were introduced in 2022/23 for other extractive activities (e.g. aggregate and other mineral extraction) currently do not apply to new coal mines or extending existing thermal coal mines past 31 December 2030.
4. The rationale for excluding coal from the consent pathways was to align coal supply with the previous Government's climate change objectives to phase out the use of low- and medium-temperature coal-fired boilers and to provide coking coal for steel and cement production.
5. New Zealand, alongside other nations, needs to reduce its emissions over time to meet our climate goals, and part of this is reducing our reliance on coal while developing viable alternatives.
6. However, there is still a need for coal for both domestic and global use. In New Zealand coal is used for food production, energy security and industrial production, such as steel manufacturing. If not sourced domestically, coal will be imported to meet these needs until a viable alternative is available.
7. Coking coal<sup>7</sup> is also a key component for steel production internationally. It is a significant component of our exports and provides high paying jobs in areas where there are currently few alternatives.

### Drivers for change

8. The incoming Government has agreed, as part of the National and New Zealand First coalition agreement, to make it easier to consent new infrastructure including renewable energy, allow farmers to farm, get more houses built, and enhance primary sector including fish and aquaculture, forestry, pastoral, horticulture and mining.<sup>8</sup>

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<sup>6</sup> Under the status quo you can apply for a consent if it is for the purpose of coal extraction or ancillary activities as part of operating or extending a mine lawfully established before 5 January 2023 for mines in or around wetlands and 4 August 2023 for coal mines in or around SNAs.

<sup>7</sup> The usage of the terms coking coal describe the end usage of the coal rather than the type of coal. In New Zealand, thermal coal is used for heating and energy production, but also specifically by NZ Steel in their steel making process. Coking coal is primarily exported for use in the internationally steel making process.

<sup>8</sup> [https://assets.nationbuilder.com/nationalparty/pages/18466/attachments/original/1700778597/NZFirst\\_Agreement\\_2.pdf?1700778597](https://assets.nationbuilder.com/nationalparty/pages/18466/attachments/original/1700778597/NZFirst_Agreement_2.pdf?1700778597)



9. The Government is taking a three-phased approach to reform the resource management system. This wider review will consider, among other objectives, ways to make it easier to consent new mining projects. The proposal we are assessing is a first step, and is not intended to fully address the government's objectives.

### Regulatory context

10. In 2021, MfE consulted on changes to RMA national direction as part of the *Managing our Wetlands* discussion document. This included a proposal to provide consent pathways for locationally constrained activities in wetland regulations (including quarrying, landfills, cleanfills and managed fills, mineral mining and urban development).
11. MfE received feedback that the categorisation of certain activities (including mineral extraction), as prohibited and/or non-complying activities, was leading to significant difficulties for some activities that occur in and around natural wetlands. Submitters suggested some of the proposed activities classified as prohibited or non-complying would have minimal effects, or could have net positive effects where (through application of the EMH) net gains in the extent and value of wetlands could be delivered as a condition of a consent. This was considered by MfE to be a more appropriate way to manage the effects on wetlands while allowing some activities to be consented.
12. As a result, consenting pathways were created for prohibited and/or non-complying activities, which included mineral extraction but excluded new coal mines or extending existing thermal coal mines beyond 31 December 2030.
13. These additional controls in the NPS-FM and NES-F on coal mining were then replicated in the NPSIB in July 2023 to create a largely consistent approach.

### How the status quo is expected to develop if no action is taken

14. As noted above, the current additional controls on coal mines in the relevant national direction mean that, where a coal mine would adversely affect<sup>9</sup> a wetland or SNA:
  - the resource consent pathway for coal mining applies only to the operation and extension of existing mines (i.e. no consent pathway any new coal mines)
  - for thermal coal, the consent pathway for existing mines is subject to a sunset clause of 31 December 2030 (e.g. applications for additional consents to operate existing mines cannot be made after 31 December 2030).
  - For coking coal, there is no sunset clause for extensions of existing mines but it is still subject to the "no new mines" limitation.
15. The integration of these additional controls on coal mines into councils' regional plans or operational plans are not yet widespread given they were only recently introduced in 2022/23. While the rules/requirements in the NES-F apply immediately, councils need to implement the policy changes in the NPS-FM and NPSIB via changes to their plans. We understand to date only the Greater Wellington Region and Otago Regional

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<sup>9</sup> "Affect" is used as a shorthand here. The particular circumstances which result in prohibited or non-complying activity status are set out in respect of wetlands in the NES-F; the NPSIB specifies particular adverse effects that must be avoided.

Councils have incorporated these additional controls into their plans but that others will do so as time progresses.

16. Although there has been a limited implementation of these controls into councils' plans, the national direction must be taken into consideration for consent applications.

**What is the policy problem or opportunity?**

17. There are currently special provisions<sup>10</sup> on seeking resource consent for coal mining activities in or around wetlands or SNAs, as the exceptions that were introduced in 2022/23 for other extractive activities (e.g. aggregate and other mineral extraction) currently do not apply to new coal mines or extending existing thermal coal mines past 31 December 2030. Even if a coal mining project would pass the relevant "gateway" tests for wetlands<sup>11</sup> and SNAs<sup>12</sup>, a consent application cannot be lodged for consideration under the Resource Management Act 1991 unless it relates to the extension or operation of an existing coal mine<sup>13</sup>.

18. There are number of industrial processes in New Zealand that still require coal, which may have to rely on imported coal if they are unable to source domestic coal. An example is New Zealand Steel, which has developed a unique steel-making process around the chemical properties of the Waikato thermal coal (compared to coking coal used internationally) and rely on this source for their steel production.

**Who is affected by these problems, how and how much?**

19. Key stakeholders are:

- a. councils, in their roles as regulators and as providers of infrastructure and amenities, along with their responsibilities for development.
- b. communities who benefit from ecosystem services and amenity associated with wetlands and SNAs.
- c. companies who operate a coal mine or are proposing a new coal mine in or around wetlands and SNAs, their employees and their customers.
- d. community organisations, environmental NGOs and relevant government agencies (e.g. the Department of Conservation) in advocating for the protection of wetlands and indigenous biodiversity during consent processes.
- e. iwi, in the exercise of tikanga, mātauranga Māori and kaitiakitanga, and economic interests in activities in coal mining in around wetlands and SNAs.
- f. the Crown, as the owner of significant coal deposits throughout New Zealand.

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<sup>10</sup> Under the status quo you can apply for a consent if it is for the purpose of coal extraction or ancillary activities as part of operating or extending a mine lawfully established before 5 January 2023 for mines in or around wetlands and 4 August 2023 for coal mines in or around SNAs.

<sup>11</sup> For mineral / aggregate extraction that affect wetlands the gateway tests are that the activity is necessary for the extraction of coal and ancillary activities, extraction will provide significant national or regional benefits, there is a functional need for the activity to be done in that location, and the effects of the activity will be managed through applying the effects management hierarchy.

<sup>12</sup> For mineral extraction that affects SNAs, the gateway tests are that the new use provides significant national public benefit that could not otherwise be achieved using resources within New Zealand, there is a functional need or operational need, and there are no practical alternative locations, and the effects of the activity will be managed through applying the effects management hierarchy.

<sup>13</sup> although this consent pathway for existing coal mines ends for thermal coal on 31 December 2030.



20. It is not possible to quantify how many new coal mines or extensions for existing coal mines would be affected by the proposed changes. It is likely that following the change, some consent applications may be made, but the outcome of those processes cannot be pre-determined. There will be costs associated with these processes, but there are also mechanisms to recover those costs where appropriate.
21. In order for any new coal mine application to be approved they would need to pass the relevant “gateway” tests and apply the EMH to ensure the proposal can be approved under the RMA. This could include environmental offsets and/or compensation where appropriate.
22. Some uncertainty will remain about the extent of the costs and benefits that might result and where they might fall. As in practice, it will depend on the facts of the individual consent applications including any mitigations or compensation etc agreed by parties. Overall, the weighing up of these factors is the role of the regional council (and Environment Court) in applying the RMA process to achieve the purpose of that Act.
23. Excluding consideration of coal mining projects where they would pass the relevant gateway test, and where the effects can be managed under the RMA, could contribute to a reduction in New Zealand’s domestic coal supply. If this were to occur, this would lead to a greater reliance on imported coal until viable alternatives exist.
24. Some coal is required for food production, energy security and industrial production, such as steel manufacturing. If not mined domestically, additional coal and steel would need to be imported with potential flow-on costs for construction<sup>14</sup>.
25. Imported coal is currently largely sourced from Indonesia, where there are additional costs and emissions associated with transporting it to New Zealand. There is a risk that imported coal will not be subject to the same levels of environmental controls.

### What objectives are sought in relation to the policy problem?

26. To address the problem identified above, our objective is to remove the additional restrictions from the consenting pathway for coal mining activities across the relevant national direction where gateway tests can be met.

## Section 2: Deciding upon an option to address the policy problem

### Focus of this regulatory impact assessment

27. This SAR assesses the proposed approach to create a consenting pathway for coal mining in or around wetlands and SNAs where the gateway tests can be met, and the effects can be managed under the RMA. The aim of this assessment is to consider the high-level costs and benefits, but it does not monetise the costs or benefits due to considerable challenges in quantifying the outcomes that may result from these changes in isolation.

### What scope will options be considered within?

28. Reduced timeframes and the narrow scope of the Bill limited our ability to assess the feasibility of a broader range of options, however these would have been similar to the options set out below which MfE considered in 2021-22 as part of the policy work for

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<sup>14</sup> <https://media.umbraco.io/te-waihanga-30-year-strategy/ayxfshpg/infrastructure-resources-study.pdf> notes (pg 6) that applying the estimated carbon prices from the Climate Change Commission’s draft report (\$250) would result in an approximately 40% increase in the price of imported steel at the port, and 85% increase for cement.

providing consenting pathways for a wide range of activities under the NPS-FM and NES-F:

- a. Option 1 involves the removal of prohibited activity status. This would enable consent applications for activities that are currently prohibited, to be considered under the default non-complying consent pathway on the merits of the application.
  - b. Option 2 involves amendments to the 'natural inland wetland' definition to clarify the proposed exclusions and direct councils as to how assessments should be made. It also includes further protection for the habitats of threatened species.
  - c. Option 3 involves the provision of consent pathways for additional activities and amendments to the restoration provisions in the NES-F.
29. Given option 3 was preferred at that time, and this approach was extended to the NPSIB, aligning the proposed approach for coal mining with this approach was preferred over considering an alternative approach for coal mining.
30. More information on the previous reforms is available on MfE's website<sup>15</sup> including the regulatory impact analysis of these options.<sup>16</sup>

### What options were considered by Cabinet?

31. One option was considered by Cabinet: to remove the additional restrictions from the consent pathway for coal mining activities across the relevant national direction where the gateway tests can be met and where the effects can be managed under the RMA. Specifically, the proposal would:
- a. extend the consenting pathway for existing coal mines to new coal mines, and
  - b. remove the sunset clause on consent applications for the operation and extension of existing thermal coal mines.
32. The Government has already announced its intent to legislate to align the consenting pathway for coal mining in or around wetlands and SNAs with other extractive activities under the relevant national direction alongside other amendments to the RMA.<sup>17</sup>

### What are the marginal costs and benefits of the option?

#### Additional costs and benefits of the preferred option compared to taking no action

33. The additional costs of the proposed approach, relative to taking no action, are likely to be around the processing and participation of additional consent applications that could arise. Some of these costs can be recovered under the RMA and court rules.
34. As set out in paragraphs 20-22, It is not possible to quantify how many new coal mines or extensions for existing coal mines would be affected by the proposed changes.
35. There are GHG emissions implications for new coal mining projects and extensions to existing projects. The GHG emissions associated with the operation of a coal mine

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<sup>15</sup> <https://environment.govt.nz/acts-and-regulations/national-policy-statements/national-policy-statement-freshwater-management/>

<sup>16</sup> <https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/regulatory-impact-statement-changes-to-wetland-regulations-inland-wetlands/>

<sup>17</sup> <https://www.beehive.govt.nz/release/rma-changes-cut-coal-mining-consent-red-tape>

itself, and major domestic users using either imported or domestically sourced coal, are covered by the New Zealand emissions trading scheme.

36. This means that while the changes may marginally increase the volume of coal that is mined in New Zealand, it is unlikely to materially impact the volume of coal consumed in New Zealand and should not materially affect net domestic emissions.
37. Increased supply might change the relative costs of coal compared to other energy sources, which might in turn increase consumption. However, as coal is covered in the Emissions Trading Scheme (ETS), increased consumption would require a reduction in emissions elsewhere (or an increase in removals).
38. In addition, the legislative arrangement for emissions reductions (under the Climate Change Response Act 2002) requires governments to set and meet emissions budgets, which act as stepping stones toward net zero emissions by 2050. This means at an economy-wide level, governments need to ensure that net emissions stay within budgets. Policy changes that might increase emissions in one sector would need to be offset by measures to reduce emissions further in other parts of the economy.
39. One thing that might complicate that, at the margin, is that wetlands are known to sequester carbon, and hence are a source of emissions removals. These removals are not currently counted toward our emissions inventory and aren't included in the ETS.
40. However, if the consenting of coal mines in or around wetlands were to lead to a change to the physical environment that reduced the capacity of a wetland to sequester carbon (and this was not offset as part of the consent requirements), then the overall effect would be to increase net emissions. This would be difficult to quantify and would not count toward our recorded emissions inventory given that emissions removals from wetlands are not currently counted.
41. From a global emissions perspective, if you assume that at the margin this might increase the global supply and consumption of coal, then because some other countries do not have caps on their emissions, global emissions could (at the margin) increase.
42. The Climate Implications of Policy Assessment (CIPA) team at MfE has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met (on the basis that the emissions associated with the changes will substitute imported coal so there is no net increase in coal use). Any emissions impacts will be disclosed to Cabinet and the CIPA team, as appropriate.

## Section 3: Delivering an option

### How will the new arrangements be implemented?

43. The Resource Management Bill will amend the relevant national direction to give effect to the proposed option.
44. Amendments to the NES-F will apply immediately and the change in national policy statement (NPS-FM and NPSIB) must be taken into consideration for consent applications received after commencement of the Bill. Regional and district councils will be responsible for implementing the policy changes contained in the NPS-FM and NPSIB. These will be achieved through changes to district and regional plans. Any subsequent coal mining consent applications will need to be considered under the revised consent pathway while this is implemented.

### **Transitional arrangements**

45. We are not aware of any pending consent applications that will require transitional arrangements.

### **Engagement on the proposal to create consent pathways with a sunset clause for coal**

46. As previously stated, MfE consulted on changes to national direction as part of the Managing our Wetlands discussion document and subsequent reforms in 2021-22.
47. MfE has provided a summary of the feedback received on the sunset clause following consultation:

*The sunset clause for thermal coal mining received many submissions, both from those in favour of a pathway for coal mining and those opposed.*

*Many submitters in favour of a consent pathway for coal mining emphasised that the distinction between thermal coal and coking coal is not as black and white as the rationale supporting the regulation suggests. Mining operators submitted that thermal coal and coking coal are not mined in isolation of one another and that one is usually mined as a by-product of the other. They argued that in some instances thermal coal is used in the production of steel, as coking coal is, and therefore the policy rationale to continue provision for the mining of coking coal, but not thermal coal was not accurate.*

*Many of the submitters opposed to the inclusion of a sunset clause argued that it was inappropriate – and at the extreme end of the scale illegal, to use freshwater regulations to regulate coal mining.*

48. MfE noted in its regulatory impact analysis for the NPS-FM changes that there were some risks associated with the inclusion of the sunset clause for thermal coal mining both in relation to access to necessary resources and further loss of natural inland wetlands.
49. It also noted that, like quarrying, the extraction of minerals and ancillary activities can cause significant destruction to the sites in which they occur. There is therefore a risk of irreparable damage to, and loss of, natural wetland areas if a consent pathway is to be provided. However, this risk can be managed through the gateway tests in the NPS-FM and application of the EMH. It will be important to ensure that any conditions attached to consents are adequately enforced to mitigate this risk.

### **Communicating the implementation**

50. The Government has already announced its intent to legislate to align the consenting pathway for coal mining in or around wetlands and SNAs with other extractive activities under the relevant national direction alongside other amendments to the RMA.

### **The risks associated with implementing the proposal to align the consenting pathway for coal mining with other extractive activities**

51. Cabinet was informed of the implementation risks at the time policy decisions were made. Any additional risks will be highlighted in the Cabinet Legislation Committee paper.

### **How will the new arrangements be monitored, evaluated, and reviewed?**

52. The changes are intended to be an amendment to provisions in the relevant national direction while a wider review of the RMA is undertaken. As they are implemented directly via legislation, there is no need to monitor their implementation.
53. Where consents are issued as a result of the changes, the RMA requires monitoring of those consents by councils. For example, under the NPS-FM there is a mandatory condition for consents for activities in or around wetlands that requires monitoring (cl 3.22(3)(b)(ii)).