

In the High Court of New Zealand
Wellington Registry

CIV 2023-

I Te Kōti Matua O Aotearoa
Te Whanganui-a-Tara Rohe

Under the Judicial Review Procedure Act
2016 and part 30 of the High Court
Rules 2016

In the matter of an application for judicial review

Between **Royal Forest and Bird Protection
Society of New Zealand Inc**, an
incorporated society having its
registered office at 205 Victoria
Street, Wellington
Applicant

And **Minister for the Environment**, a
Minister of the Crown, Parliament
Buildings, Wellington
Respondent

STATEMENT OF CLAIM

Dated: 29 May 2023

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STATEMENT OF CLAIM

The applicant by its solicitor says:

Parties

1. The Applicant is the Royal Forest and Bird Protection Society of New Zealand Incorporated. The Applicant's constitutional purpose is to take all reasonable steps within the power of the Society for the preservation and protection of the indigenous flora and fauna and the natural features of New Zealand.
2. The Applicant has no private interest in the issues at stake in this proceeding. The Applicant brings this proceeding in the public interest, having regard to the historic and continuing loss of wetlands in New Zealand.
3. The Respondent is the Minister for the Environment (the **Minister**), a Minister of the Crown with responsibility for the Department of State called the Ministry for the Environment (the **Ministry**).
4. The Minister's functions in relation to national policy statements and regulations prescribing national environmental standards prepared under the Resource Management Act 1991 (the **Act**) include:
 - a. preparing, considering recommendations on, and recommending to the Governor General the approval of national policy statements;
 - b. reviewing, changing and revoking national policy statements; and
 - c. preparing, considering recommendations on, and recommending to the Governor-General the making of regulations known as national environmental standards.

The NPSFM and NES

5. The National Policy Statement for Freshwater Management 2020 (**NPSFM**) is a national policy statement approved by the Governor-General under s 52(2) of the Act.
6. The Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (**NES-F**) are regulations made by Order in Council under s 43 of the Act.
7. The NPSFM includes an objective and policies, and the NES-F contains regulations, relating to natural inland wetlands.

8. The Applicant references particular provisions of the NPSFM and NES-F below, but relies on these instruments as if pleaded in full.
9. The NPSFM objective is:

“...to ensure that natural and physical resources are managed in a way that prioritises:

 - (a) first, the health and well-being of water bodies and freshwater ecosystems
 - (b) second, the health needs of people (such as drinking water)
 - (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.”
10. Policy 6 of the NPSFM is that:

“There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.”
11. Policy 3.22 of the NPSFM requires every regional council to include a policy in its regional plan in the specified terms (or words to the same effect). The specified terms require that the loss of extent of natural inland wetlands is avoided, their values are protected, and their restoration is promoted, except where one of the specified consent pathways is available for an activity.
12. The NES-F regulations set out minimum baseline regulations applicable to activities within the specified consent pathways. A district rule, regional rule, or resource consent relating to these matters may be more stringent than the relevant NES-F regulations, but may not be more lenient (except in relation to regulations 70 to 74, which are not relevant to this proceeding).

The December 2022 amendments to the NPSFM and NES-F

13. In December 2022, amendments were made to the NPSFM and NES-F provisions that relate to natural inland wetlands with effect from 5 January 2023 by:
 - a. the Resource Management (National Environmental Standards for Freshwater) Amendment Regulations (No 2) 2022; and
 - b. amendments made by the Minister under section 53(1) of the Act and notified in the New Zealand Gazette on 8 December 2022 as the National Policy Statement for Freshwater Management 2020 Amendment No 1.

14. On 23 February 2023, the Minister made further amendments under section 53(2)(a) of the Act to Appendix 6 and Appendix 7 of the NPS-FM.
15. Together, the amendments referred to in paragraphs 13 and 14 above are referred to as the **December amendments**.
16. Prior to the December amendments:
 - a. Under the NES-F, a permissive activity status was provided (generally, permitted activity status (subject to compliance with conditions) and restricted discretionary activity status where a condition was not met) for activities that involved earthworks or land disturbance, vegetation clearance, or taking, use, damming, or diversion of water, within or within specified setbacks from natural inland wetlands only in narrowly prescribed circumstances where the activity was for one of a specified list of purposes.
 - b. Only for those same narrowly prescribed purposes could earthworks, vegetation clearance, or taking, use, damming, or diversion of water be undertaken within a natural inland wetland where they would result in complete or partial drainage of a natural inland wetland (otherwise, those activities were prohibited).
 - c. Similarly, earthworks, or the taking, use, damming, or diversion of water outside but within a 100m setback from a natural inland wetland that would result in complete or partial drainage of a natural inland wetland that was not for one of the prescribed purposes was a non-complying activity.
 - d. NPSFM policy was complementary to the NES-F regime, in that it required that the loss of extent of natural inland wetlands was avoided, their values protected, and their restoration promoted, except where one of the same narrowly specified exceptions applied.
17. The December amendments to the NES-F:
 - a. introduced regulations 45A, 45B, 45C and 45D and amended the definition of "specified infrastructure" used within regulation 45, making earthworks, vegetation clearance, taking, use, damming, or diversion of water within, or within a specified setback of, a natural inland wetland a discretionary activity if the activity is for the purpose of quarrying activities, landfills, clean fills, managed fills, urban development, extraction of minerals, ski field

infrastructure and water storage infrastructure (the **new purposes**);

- b. resulted in regulations 53 and 54 no longer applying to activities for the new purposes, with the effect that activities for the new purposes may take place within, or within a 100m setback of, a natural inland wetland in circumstances where they would result in complete or partial drainage of natural inland wetlands; and
 - c. specified, in each case, that a resource consent must not be granted for an activity for one of the new purposes unless the consent authority has first applied the effects management hierarchy (as defined in the NPSFM).
18. The December amendments to the NPSFM:
- a. added activities for the new purposes to the list of activities with consent pathways under the mandatory policy specified in policy 3.22;
 - b. added new appendices to the NPSFM comprising:
 - i. Appendix 6: Principles for Aquatic Offsetting; and
 - ii. Appendix 7: Principles for Aquatic Compensation; and
 - c. specified in relation to resource consents for activities for the new purposes given consent pathways that, among other things:
 - i. the effects management hierarchy must be applied; and
 - ii. if aquatic offsetting or aquatic compensation is applied as part of the effects management hierarchy, applications for resource consent are not to be granted unless the applicant has complied with principles 1 to 6 in Appendices 6 and 7 and has had regard to the remaining principles in Appendices 6 and 7.
19. The overall effect of the December amendments was to provide consent pathways and policy support for activities for the new purposes within natural inland wetbacks and within setbacks from natural inland wetlands where no such consent pathway and policy support previously existed, subject among other requirements to compliance with the Effects Management Hierarchy.

The Effects Management Hierarchy

20. The NPS-FM defines “effects management hierarchy” as follows (**Effects Management Hierarchy**):

“**effects management hierarchy**, in relation to natural inland wetlands and rivers, means an approach to managing the adverse effects of an activity on the extent or values of a wetland or river (including cumulative effects and loss of potential value) that requires that:

- (a) adverse effects are avoided where practicable; then
- (b) where adverse effects cannot be avoided, they are minimised where practicable; then
- (c) where adverse effects cannot be minimised, they are remedied where practicable; then
- (d) where more than minor residual adverse effects cannot be avoided, minimised, or remedied, aquatic offsetting is provided where possible; then
- (e) if aquatic offsetting of more than minor residual adverse effects is not possible, aquatic compensation is provided; then
- (f) if aquatic compensation is not appropriate, the activity itself is avoided.”

21. The NPS-FM defines “aquatic offset”, as used in limb (e) of the Effects Management Hierarchy, as follows (**Aquatic Offset**):

“**aquatic offset** means a measurable conservation outcome resulting from actions that are intended to:

- (a) redress any more than minor residual adverse effects on a wetland or river after all appropriate avoidance, minimisation, and remediation, measures have been sequentially applied; and
- (b) achieve no net loss, and preferably a net gain, in the extent and values of the wetland or river, where:
 - (i) **no net loss** means that the measurable positive effects of actions match any loss of extent or values over space and time, taking into account the type and location of the wetland or river; and
 - (ii) **net gain** means that the measurable positive effects of actions exceed the point of no net loss.”

22. The NPS-FM defines “aquatic compensation”, as used in limb (f) of the Effects Management Hierarchy, as follows (**Aquatic Compensation**):

“**aquatic compensation** means a conservation outcome resulting from actions that are intended to compensate for any more than minor residual adverse effects on a wetland or river after all appropriate avoidance, minimisation, remediation, and aquatic offset measures have been sequentially applied.”

The decision-making process in relation to the December amendments

23. In making the December amendments the Minister established and followed the statutory consultation and decision-making process set out in s 46A(4) of the Act, which requires:
- a. the Minister to give notice to the public and iwi authorities of the proposed national direction and why the Minister considers that the proposed national direction is consistent with the purpose of the Act;
 - b. the Minister to allow adequate time and opportunity for submissions;
 - c. a report and recommendations to be made to the Minister on the submissions and the subject matter of the proposed national direction, which report must consider the matters set out in s 51(1) of the Act; and
 - d. the Minister to consider such report and recommendations in making his decision.
24. The Minister set out why he considered the proposed December amendments were consistent with the purpose of the Act in the May 2022 paper *Managing our wetlands: Policy rationale for exposure draft amendments 2022* (the **Policy Rationale**).
25. The Policy Rationale described the overall effect of the consent pathways under the NPS-FM, including those to be made available to activities for the new purposes, in the following terms (page 6, emphasis in original):
- “Policy 6 of the NPS-FM states, ‘There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted’. The NPS-FM *also* lists certain purposes which have a resource consent pathway (to undertake activities in natural inland wetland areas) set out in the NES-F. Consent may be granted for these select purposes for activities in wetlands – as long as offsetting ensures a **no net loss and preferably a net gain in the extent and values of the wetland.**”
26. The s 46A(4) report and recommendations comprised the following documents produced by the Ministry and brought together in the Ministry’s November 2022 report *Amendments to the NES-F and NPS-FM: Report and Recommendations* (**Report and Recommendations**):

- a. The briefing *Essential Freshwater 2020 amendments – seeking drafting decisions for wetlands* provided to the Minister on 10 February 2022.
 - b. The report *Managing our wetlands: Report, recommendations and summary of submissions*, May 2022 (**May 2022 report**).
 - c. The briefing *Managing our wetlands in the coastal marine area* provided to the Minister on 14 October 2022.
27. In relation to the decision to provide consent pathways for activities for the new purposes, the reasoning set out in the Report and Recommendations included that (May 2022 report, page 32):
- “We consider that the provision of consent pathways for the proposed activities and the protection of natural inland wetlands from further loss need not be mutually exclusive.”
28. Additionally, in making the December amendments, the Minister was required to prepare an evaluation report in accordance with s 32 of the Act and have particular regard to it when making his decision.
29. A report pursuant to s 32 of the Act was produced in relation to the December amendments entitled *Amendments to NES-F and NPS-FM: Section 32 report* and dated 8 December 2022 (**Section 32 Report**).
30. In relation to the decision to provide consent pathways for activities for the new purposes, the reasoning set out in the Section 32 Report included:
- a. at pages 9 and 26 that:

“The proposed amendments clarify aspects of the definitions or provide for additional consent pathways for specific purposes, to undertake activities in natural inland wetlands. These pathways require equivalent tests and adherence to the effects management hierarchy (including offsetting) in the same way as the existing pathways (eg, specified infrastructure). Although the number of ‘purposes’ provided with a consent pathway has increased (eg, inclusion of urban development), the framework to ensure the overall objective and policies of the NPS-FM are met remains unchanged (ie, that there is no net loss of wetland extent or values).

As the overarching objective and policies of the NPS-FM remain unchanged these are not assessed again here against Part 2 of the RMA.”
 - b. at page 24 that:

"The effects management hierarchy begins with a requirement to avoid adverse effects, then minimise and remedy, followed by offsetting/compensation to ensure a no net loss (and preferably a net gain) in wetland extent and values (in accordance with Policy 6). Where offsets/compensation are not appropriate the activity itself must be avoided.

This hierarchy applies an approach that enables necessary activities in wetlands only where appropriate and ensures there is no further loss of wetland extent and values, in accordance with Policy 6, through the offsetting provisions and requirement for the offset to achieve a no net loss conservation outcome (see definition of aquatic offset in NPS-FM clause 3.21)."

c. at page 28 that:

"The amendments will continue to provide strong protection of natural wetlands. At the same time they will enable consent to be sought for certain purposes as long as the gateway tests are met and effects management hierarchy applies so that there is no net loss, and preferably a net gain, in wetland extent and values."

d. at pages 28-29 that:

"The proposed new purposes (eg, urban development) provided with a consent pathway will be subject to the same framework and requirements as the current pathways under the regulations (eg, for specified infrastructure). This involves a series of gateway tests that must be met before consent can be accepted for consideration by the consent authority. The consideration of the consent is then undertaken through the lens of the effects management hierarchy, including the offsetting and compensation requirements, to ensure that there is no net loss (and preferably a net gain) of wetland extent and values."

e. at page 30 that:

"Where an activity is granted consent under a specific pathway, the regulations require that no further loss of wetland extent or values occurs. This is required through a process provided by the effects management hierarchy, which requires this sequence: avoid, then remedy, mitigate, offset and compensate or cycle back to avoid where this is not appropriate."

f. at page 34 that:

"Policy 6 of the NPS-FM requires that there is no further loss of extent of natural inland wetlands, their values are protected and their restoration is promoted.

[...] Policy 6 is upheld through the consent pathways by applying the effects management hierarchy (NPS-FM clause 3.21(1)). The effects management hierarchy is an approach to managing the adverse effects of an activity. The hierarchy must be applied sequentially and the offsetting/compensation provisions ensure that there will be no net loss and 'preferably a net gain' in extent and values of a wetland (and river)."

- g. at pages 38, 43, 48 and 53 in relation to each of the consent pathways for the new purposes that:

"The combination of the NPS-FM policies (including the unchanged Policy 6) and offsetting and compensation actions of the effects management hierarchy (that apply where there are 'more than minor' residual adverse environmental effects) means that the cumulative environmental costs of the proposed amendments are also no more than minor."

31. The December amendments were also the subject of a *Regulatory Impact Statement: Changes to wetland regulations (inland wetlands)* dated 17 November 2022 (the **RIS**).

32. In relation to the decision to provide consent pathways for activities for the new purposes, the reasoning set out in the RIS included:

- a. at page 4 that:

"A critical assumption throughout this analysis is that if a wider range of 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 effects management hierarchy (EMH) in the NPS-FM."

- b. at page 18 that the objectives of the December amendments were to:

"ensure the inland natural wetland provisions in the NPS-FM and NES-F support the effective implementation of the Essential Freshwater programme, the obligations of Te Mana o te Wai and Policy 6 of the NPS-FM (that '*there is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted*')"

- c. at page 26 that:

"The analysis also assumed that there would be limited adverse impacts on wetlands, assuming that the gateway tests in the NPS-FM and the EMH are enforced. Given this assumption of minimal impacts and costs compared to positive outcomes above, they concluded that there would be net benefits for each activity and New Zealand as a whole."

d. at page 34 that:

“Our conclusions above, that most options have net positive effects, are based on the assumption that current requirements set out in the gateway tests in the NPS-FM and application of the EMH are sufficient to protect the extent and value of natural wetlands. While providing additional consent pathways is likely to result in new or extended operations being proposed in and around natural wetlands, we assume that the wetlands will be prioritised until it is established that proposed activities are necessary in the specific area, will provide significant benefits and will be undertaken in a way that minimises loss of natural wetland extent and values.”

33. The Minister made a public statement upon the release of the NPSFM and NES-F as amended by the December amendments (the **Public Statement**).

34. The Public Statement included the following statement of the Minister’s understanding and intention of the December amendments:

“A consenting pathway is now available for quarrying activities, landfills and clean-fill areas, mineral mining (with some additional controls on coal mining) and some urban development.

The consenting pathway has high threshold tests that relate to the significance of the activity, and if it needs to occur in that location or there is no practicable alternative location. The impacts of the activity must be managed through the ‘effects management hierarchy’.

The effects management hierarchy requires that an impact is avoided where practicable, or offset.

This will ensure there is no net loss of wetlands.”

35. In reviewing and recommending the approval of the December amendments to the NPSFM, and in recommending the making of regulations pursuant to the December amendments in the NES-F, the Minister:

a. considered, had regard to, relied upon and adopted the Policy Rationale, the Report and Recommendations, the Section 32 Report and the RIS;

b. understood that the Act, the NPSFM and the NES-F required that activities within, or within the specified setbacks of, natural inland wetlands:

i. result in no net loss of wetland extent and values; and

ii. have no more than minor adverse effects; and

- c. had the purpose, understood and intended that the December amendments would permit activities for the new purposes within, or within the specified setbacks of, natural inland wetlands only where such activities would:
 - i. result in no net loss of wetland extent and values; and
 - ii. have no more than minor adverse effects,

due to the requirement that activities for the new purposes comply with the Effects Management Hierarchy.

The effect of the December amendments

- 36. The NES-F and NPSFM, as amended by the December amendments, do not require that activities for the new purposes within, or within the specified setbacks of, natural inland wetlands: (i) result in no net loss of natural inland wetland extent and values; and (ii) have no more than minor adverse effects.
 - a. Activities for the new purposes within, or within the specified setbacks of, natural inland wetlands must comply with the Effects Management Hierarchy;
 - b. The Effects Management Hierarchy does not require that activities result in no net loss of natural inland wetland extent and values and have no more than minor adverse effects:
 - i. “No net loss and preferably a net gain” is Principle 3 of Appendix 6 – Principles for Aquatic Offsetting of the NPS-FM. Principle 3 specifies that:

“This is demonstrated by a like-for-like quantitative loss/gain calculation, and is achieved when the extent or values gained at the offset site (measured by type, amount and condition) are equivalent to or exceed those being lost at the impact site.”
 - ii. The Effects Management Hierarchy however enables aquatic compensation to be provided if aquatic offsetting of more than minor residual adverse effects is not possible.
 - iii. “No net loss” is not a requirement of aquatic compensation.
 - iv. The Effects Management Hierarchy enables activities for the new purposes to have more than minor and potentially significant adverse effects on natural inland wetland extent

and values, provided those effects are the subject of aquatic compensation.

The coal mining amendments

37. The December amendments included new regulation 45D which relates to vegetation clearance, earthworks, land disturbance, taking, use, damming, or diversion of water within, or within specified setbacks of, natural inland wetlands for the purpose of the extraction of minerals and ancillary activities.
38. Under new regulation 45D, in relation to the extraction of coal and ancillary activities:
- a. no person may apply for a consent unless the activity is part of operating or extending a coal mine that was lawfully established before 5 January 2023; and
 - b. at the close of 31 December 2030, the extraction of coal (other than coking coal) is excluded from the purposes for which consent may be obtained,
- (the **coal mining amendments**).
39. The Policy Rationale and the May 2022 Report proposed that in order to be consistent with Government's goals for renewable electricity generation, the Climate Change Commission's advice and New Zealand's targets under the Climate Change Response Act the coal mining amendments should provide a sunset date of 31 December 2030 for the mining of coal within, or within specified setbacks of, natural inland wetlands:
- a. at page 21 of the Policy Rationale:

"Commitment to sustainable energy

A consent pathway for coal mining should align with the Government's commitment to move to 100 per cent sustainable energy by 2030.

On 31 May 2021 the Climate Change Commission released the report 'Ināia tonu nei: a low emissions future for Aotearoa; Advice to the New Zealand Government on its first three emissions budgets and direction for its emissions reduction plan 2022-2025'. This noted that there are alternatives to coal for generating energy. The Commission recommended that New Zealand phase out its coal-powered electricity to meet its commitments, as part of the 'Powering Past Coal' Alliance. This states that to meet the requirements of the Paris Agreement,

there should be no more coal used in energy generation, and that OECD countries should achieve this by no later than 2030.

On the other hand, the Commission found that solutions for decarbonising the cement and steel industry are further off. It cautioned against acting too quickly to end the use of coal in the production of these materials, which are important in the construction of 'specified infrastructure'.

Consent pathways for coal mining

We have considered the above, and the proposal is to provide a consent pathway for thermal coal mining only until 2030."

- b. at page 49 of the May 2022 Report:

"Condition (a): Thermal coal mining provided for only until 2030

We accept the many submissions received on the need to cease thermal coal mining operations in order for New Zealand to lower its carbon emissions and meet its commitments under the Paris Agreement. However, New Zealand is currently reliant on thermal coal for electricity generation during winter and in dry years. The Government is seeking to address this through the New Zealand Battery Project,⁴⁰ but in the interim thermal coal is still an essential resource in ensuring reliable electricity provision.

A viable option to accommodate the current need for thermal coal, but to meet the aims of the Climate Change Response (Zero Carbon) Amendment Act to reduce net emissions of all greenhouse gases by 2050, is to allow the proposed consent pathway to apply to the mining of thermal coal for a set period. We consider that a deadline or sunset clause of 2030 would be consistent with the Government aspiration of 100 percent renewable electricity generation by 2030."

40. The Report and Recommendations, the Section 32 Report and the RIS departed from the Policy Rationale and the May 2022 Report and instead recommended that the sunset date of 31 December 2030 should apply not to the mining of coal within, or within specified setbacks of, natural inland wetlands, but to the ability to apply for consent to do so.
41. The Report and Recommendations, the Section 32 Report and the RIS expressly or implicitly advised that allowing the ability to apply for consent for the purpose of new coal mining until the sunset date of 31 December 2030, and to carry out coal mining under such consents for the term of such consents (potentially a 35 year term from when the consent is granted and commences), was consistent with Government's goals for renewable electricity generation, the Climate Change Commission's advice and New Zealand's targets under the Climate Change Response Act:

- a. at page 11 of the Report and Recommendations:

“The effect of the sunset clause will be that a consent application to operate or expand an existing mine for extracting thermal coal can only be lodged for consideration by the relevant consent authority until 31 December 2030.

This will provide for thermal coal resources required in the short-to-medium term eg, up to the 2037 date for the phasing out of low and medium temperature coal fired boilers.”
 - b. at page 45 of the Section 32 Report:

“[...] the ability to apply for consent to expand a thermal coal mine is available only until 2030, in line with the Government’s goal for 100 per cent renewable electricity generation by 2030.”
 - c. at page 47 of the Section Report:

“Providing a consent pathway for existing coal mining to operate and expand aligns with the Government’s commitment to move to 100% renewable electricity generation by 2030 and reducing carbon emissions. In its advice to the Government the Climate Change Commission noted that there are alternatives to coal for electricity generation.”
 - d. at page 28 of the RIS:

“The sunset clause of 2030 for consent applications relating to thermal coal mining is intended to align with the Government’s commitment to the phasing out of coal-powered energy generation by 2030 and New Zealand’s commitments as a signatory to the *Powering Past Coal Alliance*.”
42. In reviewing and recommending the approval of the coal mining amendments the Minister:
- a. considered, had regard to, relied upon and adopted the Report and Recommendations, the Section 32 Report and the RIS; and
 - b. had the purpose, understood and intended that:
 - i. the coal mining amendments were consistent with the Government’s goals for renewable electricity generation, the Climate Change Commission’s advice and New Zealand’s targets under the Climate Change Response Act;

- ii. the coal mining amendments provided for the thermal coal resources required in the short to medium term pending a full transition away from coal, ie into the late 2030s.

Effect of the coal mining amendments

43. The coal mining amendments are not consistent with the Government's goals for renewable electricity generation, the Climate Change Commission's advice and New Zealand's targets under the Climate Change Response Act:
- a. the coal mining amendments enable resource consent to be applied for to carry out the specified activities within, or within a setback from, a natural inland wetland for the purpose of the operation or extension of a thermal coal mine, on any date prior to the close of 31 December 2030, for a term of up to a further 35 years from the later date on which the consent is granted and commences;
 - b. the carbon emissions generated by combusting thermal coal for a term of 35 years or longer from a commencement date potentially beyond 2030 are not consistent with the Government's goals for renewable electricity generation, the Climate Change Commission's advice and New Zealand's targets under the Climate Change Response Act; and
 - c. the coal mining amendments did not provide only for the continued mining of thermal coal in the short to medium term, but in the long term potentially until 2065 or beyond (depending on when consent is granted and commences, and the terms of other consents and licences governing the mining operation).

GROUNDINGS ON WHICH RELIEF IS SOUGHT, AND RELIEF SOUGHT

First cause of action – the new purposes

44. In reviewing and changing the NPSFM by making the December amendments providing for the new purposes, and in recommending the making of regulations pursuant to the December amendments in the NES-F providing for the new purposes, the Minister erred in law:
- a. the December amendments do not give effect to the Minister's purpose, understanding and intention that the December amendments would permit activities within, or within the specified setbacks of, natural inland wetlands for the new purposes only where such activities would:

- i. result in no net loss of wetland extent and values; and
 - ii. have no more than minor adverse effects;
- b. the Section 32 Report in relation to the December amendments wrongly assessed the proposed amendments on the basis that they would:
 - i. result in no net loss of wetland extent and values; and
 - ii. have no more than minor adverse effects,with the result that the Minister failed to comply with the mandatory statutory process;
- c. there was no reasonable basis for the Minister's conclusion that the December amendments would permit activities within, or within the specified setbacks of, natural inland wetlands for the new purposes only where such activities would:
 - i. result in no net loss of wetland extent and values; and
 - ii. have no more than minor adverse effects;
- d. the December amendments do not implement the objectives and policies of the NPSFM, in particular the NPSFM Objective and the fundamental concept of Te Mana o Te Wai and NPSFM Policy 6 that *"There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted"*;
- e. the Minister did not assess the December amendments against part 2 of the Act, including failing to recognise and provide for matters of national importance as required by s 6 of the Act and/or failing to consider matters in part 2 of the Act as required by s 51 of the Act;
- f. the December amendments do not recognise and provide for the preservation of the natural character of natural inland wetlands and their protection from inappropriate use and development in terms of s 6(a) of the Act; and
- g. the December amendments do not recognise and provide for the protection of natural inland wetlands' significant indigenous vegetation and significant habitat of indigenous fauna in terms of 6(c) of the Act.

Relief sought

45. The applicant seeks the following relief in respect of the first cause of action:
- a. An order quashing:
 - i. the following amendments to the NPSFM:
 - insertion of clauses (c), (d), (e) and (f) into the policy contained in Clause 3.22(1); and
 - amendment of the definition of specified infrastructure in Clause 3.21 to add: (c) any water storage infrastructure; and (f) ski area infrastructure.
 - ii. regulation 20 of the Resource Management (National Environmental Standards for Freshwater) Amendment Regulations (No 2) 2022 introducing regulations 45A, 45B, 45C and 45D to the NES-F.
 - b. Any such other orders the Court thinks fit.
 - c. Costs.

Second cause of action – thermal coal mining

The applicant repeats paragraphs 1 – 43 and says:

46. In reviewing and changing the NPSFM by making the coal mining amendments, and in recommending the making of the coal mining amendments to the NES-F, the Minister erred in law:
- a. the coal mining amendments do not give effect to the Minister's purpose, understanding and intention that the coal mining amendments:
 - i. were consistent with the Government's goals for renewable electricity generation, the Climate Change Commission's advice and New Zealand's targets under the Climate Change Response Act; and
 - ii. provided for the thermal coal resources required in the short to medium term pending a full transition away from coal, ie into the late 2030s.

- b. there was no evidence before the Minister, or reasonable basis on which the Minister could have concluded, that the coal mining amendments:
 - i. were consistent with the Government's goals for renewable electricity generation, the Climate Change Commission's advice and New Zealand's targets under the Climate Change Response Act; or
 - ii. provided for the thermal coal resources required in the short to medium term pending a full transition away from coal, ie into the late 2030s.
- c. there was no logical connection between the Minister's opinion that it was necessary to provide for the thermal coal resources required in the short to medium term pending a full transition away from coal, and the Minister's decision in relation to the coal mining amendments to potentially allow new coal mining through until 2065 or beyond.

Relief sought

- 47. The applicant seeks the following relief in respect of the second cause of action:
 - a. An order quashing regulation 45D of the NES-F.
 - b. Any such other orders the Court thinks fit.
 - c. Costs.

This document is filed by Martin Smith, solicitor for the applicant, of the firm Gilbert Walker. The address for service of the applicant is at the offices of Gilbert Walker, Level 35, 48 Shortland Street, Auckland.

Documents for service on the applicant may be delivered to that address or may be:

- (a) posted to the solicitor at PO Box 1595, Shortland Street, Auckland 1140;
or
- (b) emailed to the solicitor at martin.smith@gilbertwalker.com.