



Cabinet Environment, Energy and Climate Committee

Minute of Decision

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National Environmental Standards for Freshwater to Not Apply in Coastal Marine Area: Consultation

Portfolio Environment

On 28 July 2022, the Cabinet Environment, Energy and Climate Committee:

Background

- 1 **noted** that the National Policy Statement for Freshwater Management 2020 (NPS-FM) and the National Environmental Standards for Freshwater 2020 (NES-F) comprise national direction made under the Resource Management Act 1991 (RMA);
- 2 **noted** that the government is reforming the resource management system, including replacing RMA with a Natural and Built Environments Act (NBA);
- 3 **noted** that under the NBA, and along with other national direction, the NPS-FM and NES-F will be transitioned into the proposed National Planning Framework and Natural and Built Environments Plans;
- 4 **noted** that the coastal marine area (CMA) is covered by the New Zealand Coastal Policy Statement (NZCPS), for which the Minister of Conservation is responsible;
- 5 **noted** that the NZCPS is also national direction under the RMA, which regional councils are required to implement in their regional plans;
- 6 **noted** that the physical extent to which the NES-F applies in the CMA is currently unclear;
- 7 **noted** that in August 2020, the Essential Freshwater regulatory package was gazetted, and included:
 - 7.1 the NES-F, which imposes conditions on, or requires consents for, certain activities in and around wetlands;
 - 7.2 the NPS-FM, which is directed at embedding long-term change through regional plans and includes policies to restore wetlands;
- 8 **noted** that in 2020 the Cabinet Economic Development Committee agreed that the policy intent of the NES-F wetland provisions is to restrict activities most likely to cause loss and degradation of natural inland and coastal wetlands [DEV-20-MIN-0077];

- 9 **noted** that the recent High Court Mangawhai decision held that the NES-F wetland provisions apply to all natural wetlands in the coastal marine area (CMA), but noted it was unlikely that the provisions were intended to encompass the entirety of the CMA;
- 10 **noted** that regional councils and others have raised concerns about the implications for planning, consenting, and compliance if the NES-F is applied on top of regional coastal plans in the CMA;

The physical extent to which the NES-F applies in the CMA is unclear

- 11 **noted** that the NES-F wetland provisions could be interpreted to apply to all shallow coastal margins of New Zealand, and that this goes beyond the intended scope of the NES-F wetland provisions;

Overlap between the NES-F and regional coastal plans creates uncertainty

- 12 **noted** that activities managed by regional coastal plans are also subject to the NES-F when they take place in wetlands or in specified setbacks (10m for vegetation clearance or earthworks, or 100m for takes/discharges of water);
- 13 **noted** that coastal activities such as reclamation, dredging, or mangrove management are unlikely to meet the conditions under existing or proposed consent pathways in the NES-F and will therefore be captured as prohibited or non-complying;

The RMA requires councils to amend coastal plans to remove any duplication or conflict with the NES-F

- 14 **noted** that unless the NES-F is amended, councils will be required to amend their coastal plans to accommodate its wetland provisions;

Amend the NES-F wetland provisions so they no longer apply to the coastal marine area

- 15 **noted** that the Minister of the Environment and the Minister of Conservation agree that it is appropriate to consult on a proposal to amend the NES-F so that its wetland provisions no longer apply to the CMA;
- 16 **noted** that this would be achieved by the NES-F applying only to natural inland wetlands rather than natural wetlands;
- 17 **noted** that '*natural inland wetland*' would be defined by reference to its existing definition in clause 3.21(1) of the NPS-FM, ie '*means a natural wetland that is not in the coastal marine area*';
- 18 **noted** that this approach will better achieve the intent of the Essential Freshwater package (to restrict activities most likely to lead to the degradation or loss of coastal wetlands), and prevent ambiguity;
- 19 **agreed** to publicly consult on the NES-F not applying in the CMA;
- 20 **noted** that public consultation can begin immediately following Cabinet decisions and would occur over a six-week period;

- 21 **noted** that the proposed changes to the NES-F are set out in the discussion document *Managing our wetlands in the coastal marine area* in Appendix 1 to the paper under ENV-22-SUB-0028;
- 22 **approved** release of the discussion document by the Ministry for the Environment to inform public consultation on changes to the NES-F;
- 23 **authorised** the Minister for Environment to make appropriate textual, editorial, design, and technical changes to the discussion document before public consultation commences;

This consultation will align with other wetland amendments

- 24 **noted** that the Minister for the Environment plans to align the consultation with a separate set of amendments the Minister is currently progressing (to provide additional consent pathways);
- 25 **authorised** the Minister for the Environment to instruct PCO to draft the proposed amendments to the NES-F following the close of public consultation;
- 26 **noted** that the Minister for the Environment intends to seek Cabinet approval to gazette both sets of wetland amendments in October 2022;

Regional coastal plans provide protection for wetlands in the CMA, but more can be done

- 27 **noted** that while regional coastal plans provide protection for wetlands in the CMA, more can be done to improve environmental outcomes in these areas;
- 28 **noted** that the Minister for the Environment therefore intends to progress work to better protect wetlands in the CMA through estuaries policy development;
- 29 **noted** that this work will also clarify the relationship between the NPS-FM and the NZCPS, and provide for better integration across freshwater and coastal management.

Vivien Meek
Committee Secretary

Present:

Hon Kelvin Davis
Hon David Parker (Chair)
Hon Nanaia Mahuta
Hon Damien O'Connor
Hon Michael Wood
Rino Tirikatene, MP

Officials present from:

Office of the Prime Minister
Officials Committee for ENV