



Cabinet Environment, Energy and Climate Committee

Minute of Decision

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Essential Freshwater 2022 Amendments: Wetland, Technical and Stock Exclusion Amendments

Portfolio Environment

On 23 November 2022, the Cabinet Environment, Energy and Climate Committee:

Background

- 1 **noted** that in June 2018, Cabinet approved the Essential Freshwater work programme [CAB-18-MIN-0296];
- 2 **noted** that in August 2020, the Essential Freshwater regulatory package was gazetted, comprising:
 - 2.1 the National Policy Statement for Freshwater Management 2020 (NPS-FM);
 - 2.2 the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F);
 - 2.3 the Resource Management (Stock Exclusion) Regulations 2020 (Stock Exclusion Regulations);
- 3 **noted** that feedback has been received that the NPS-FM, NES-F, and Stock Exclusion Regulations require modification to support effective implementation;
- 4 **noted** that public consultation has occurred on proposed changes to address implementation issues as follows:
 - 4.1 changes to the wetland provisions in the NPS-FM and NES-F, from 1 September to 27 October 2021 [CBC-21-MIN-0078];
 - 4.2 exposure drafts of amendments to the wetland provisions and technical changes to the NPS-FM and NES-F, from 21 May to 10 July 2022 [CAB-21-MIN-0500];
 - 4.3 whether the NES-F should continue to apply in the coastal marine area, from 10 August to 21 September 2022 [ENV-22-MIN-0028];
 - 4.4 changes to the map of low slope land in the Stock Exclusion Regulations, from 26 July 2021 to 7 October 2021 [CAB-21-MIN-0270];

- 5 **noted** that in November 2021, Cabinet authorised the Minister for the Environment and the Minister of Agriculture to take post-consultation policy decisions to enable the drafting of amendments to the Essential Freshwater regulations, and that amendments have been drafted on this basis [CAB-21-MIN-0500];

Changes to the wetland provisions in the NPS-FM and NES-F

- 6 **noted** that while there is broad support for strong protection of wetlands, the proposed changes address feedback from stakeholders, including regional councils, that currently the wetland provisions do not provide:
- 6.1 for all the purposes in respect of which activities may need to be undertaken in natural wetland areas, which leads to constraints on necessary activities;
 - 6.2 a clear enough definition of natural wetland, which leads to inconsistent application;
 - 6.3 for wetland maintenance and biosecurity activities;
 - 6.4 sufficiently for wetland restoration, which is disincentivised due to overly stringent regulations in the NES-F;
- 7 **noted** that in August 2021, the Cabinet Business Committee agreed to consult on:
- 7.1 providing a consent pathway for quarries, cleanfill, landfill and managed fill;
 - 7.2 providing a consent pathway for the mining sector, including whether any checks and balances additional to what apply to other sectors in the freshwater regulations should be in place for the mining sector;
 - 7.3 providing a consent pathway for urban development listed in a district plan;
 - 7.4 ensuring that through the definition of natural wetland only those areas intended to be captured by the regulations are captured;
 - 7.5 better provision for wetland restoration;
- [CBC-21-MIN-0075]

Providing additional consent pathways

- 8 **noted** that the wetland provisions provide consent pathways to undertake the following activities: vegetation clearance; earthworks or land disturbance; and the discharge, take, use, damming, and diversion of water, in, or near to, natural inland wetlands for certain purposes;
- 9 **noted** that without a consent pathway, these activities are either non-complying or prohibited, and that this has had a wider than anticipated effect on activities required to support the government's goals in respect of housing supply and infrastructure upgrades;
- 10 **agreed** to provide additional consent pathways for:
- 10.1 quarrying activities;
 - 10.2 landfills and cleanfill areas;
 - 10.3 the extraction of minerals and ancillary activities;

- 10.4 urban development on land identified for development in operative provisions of a regional or district plan;
- 11 **agreed** that the additional consent pathways will be subject to the gateway tests, including the offsetting requirements, in the NPS-FM;
- 12 **noted** that these gateway tests address impacts arising from activities for the purposes currently provided for, for example constructing specified infrastructure, to ensure that:
- 12.1 the activity is of significant national or regional benefit;
- 12.2 there is a functional need for the activity to occur in that location;
- 12.3 the impacts of that activity are managed, through application of the ‘effects management hierarchy’, which requires that first, the impact is avoided where practicable, then minimised, remedied, offset, or compensated, in that order;

Defining the scope of consent pathways for quarrying and mining

- 13 **noted** that the proposal in the exposure drafts of changes was for the quarrying and mining pathways to provide only for the activity of extraction;
- 14 **noted** that additional activities are likely to be required to enable extraction to occur, for example to install machinery required for extraction or to provide access to extraction sites;
- 15 **agreed** that the quarrying and mining consent pathways will provide for the full scope of activities required to undertake or support extraction of aggregate and minerals;

Additional controls on the mining consent pathway

- 16 **noted** the desirability of freshwater policy and regulation being aligned with other government policy, including the Government’s aspirational target of 100 percent renewable electricity generation by 2030, and the intention to phase out low and medium temperature coal fired boilers by 2037;
- 17 **noted** that the Climate Change Commission recommended that the Government phase out thermal coal-powered electricity by 2030, but cautioned against acting too quickly to phase out the use of coking coal in the production of steel and cement, due to a lack of viable alternatives;
- 18 **noted** that the Minister for the Environment consulted on whether controls/restrictions should be placed on the consent pathway for extraction of minerals and ancillary activities (i.e. mining);
- 19 **agreed** that in respect of coal mining:
- 19.1 the consent pathway apply only to the operation and extension of existing mines (not to new mines);
- 19.2 for thermal coal, the consent pathway be subject to a sunset clause of 31 December 2030 for the lodging of a consent application with the relevant consent authority;
- 19.3 for coking coal, there be no sunset clause for the operation and extension of existing mines;

- 20 **noted** that this is consistent with thermal coal resources being required in the short to medium term, for example until the 2037 phase-out of low and medium temperature coal fired boilers;
- 21 **noted** that the position for coking coal could be revisited in the future should viable alternatives become available for the production of steel and cement;
- 22 **noted** that all consent applications for mining under the NES-F (including for thermal or coking coal) would have to satisfy the gateway tests outlined in paragraph 12 above, the outcome of which, for wetlands, would be to prevent net loss of their extent or values;

An alternative test to functional need for landfills, cleanfill areas and urban development

- 23 **noted** that the ‘functional need’ test is not suitable for application to the proposed consent pathways for landfill and cleanfill areas and urban development, as consent applications for these purposes would be unlikely to meet the test because their functions are not constrained by location;
- 24 **agreed** to apply a ‘no practicable alternative location’ test to the consent pathways for landfills and cleanfill areas and urban development;
- 25 **agreed** that the test will require the consent authority to be satisfied that there is either no practicable alternative location for the activity, or that every other practicable alternative location would have equal or greater adverse effects on a natural inland wetland;
- 26 **agreed** that the test apply at difference scales for each purpose as follows:
- 26.1 for landfills and cleanfill areas, assess all practicable alternative locations within the region;
- 26.2 for urban development, assess all practicable alternative locations within the area of the development;
- 27 **noted** that, for urban development, the test does not need to apply at the regional level because the proposed pathway only applies to urban development in areas identified for development in operative provisions of a regional or district plan, that are not zoned general rural, rural production or rural lifestyle;
- 28 **noted** that assessment of practicable alternatives will be dependent on the nature and circumstances of the consent application, and that the Ministry for the Environment will provide guidance to assist consent authorities in making these assessments;

Five-year window for urban development in Tauranga

- 29 **noted** that the proposed consent pathway for urban development requires that the development occurs on land identified for urban development in the relevant provisions of a regional or district plan;
- 30 **noted** that Tauranga City Council has planned key urban developments in areas where natural inland wetlands are present, through the Smart Growth Urban Form and Transport Initiative Connected Centres Programme and that these are not yet identified in the Western Bay of Plenty District Plan;

- 31 **agreed** to provide a five-year window, within which development in Tauranga that is identified in the Smart Growth Urban Form and Transport Initiative Connected Centres Programme will be eligible to apply for consent under the urban development pathway;

Including additional infrastructure types in the 'specified infrastructure' definition

- 32 **noted** that the NPS-FM and NES-F provide consent pathways for the construction, maintenance, and operation of specified infrastructure;
- 33 **noted** that additional types of infrastructure may be of significant national or regional benefit and may have a functional need to occur in a natural inland wetland area;
- 34 **agreed** to include the following types of infrastructure within the specified infrastructure definition:
- 34.1 ski area infrastructure;
 - 34.2 water storage infrastructure;
 - 34.3 New Zealand Defence Force facilities;
- 35 **noted** that the requirement for specified infrastructure to meet the gateway tests in the NPS-FM (referred to in paragraph 12 above) and to apply offsetting requirements should ensure that providing for these additional types of infrastructure does not lead to a net loss of wetland extent;

Amendments to the natural wetland definition

- 36 **agreed** to amend the natural wetland definition to:
- 36.1 make it clearer and simplify the pasture exclusion in part (c) of the definition so that an area is not a natural wetland if it is in an area of pasture used for grazing and has vegetation cover of more than 50 percent exotic pasture species;
 - 36.2 clarify how the term exotic pasture species applies by incorporating by reference into the NPS-FM a national list of exotic pasture species, along with a nationally consistent methodology for making the assessment;
 - 36.3 provide better protection for threatened species by ensuring that wetlands that contain them are captured by the natural wetland definition, even where they would otherwise qualify for the pasture exclusion in part (c);

Amendments to the wetland restoration provisions

- 37 **noted** that wetland maintenance and biosecurity activities are often ongoing and concerned with the preservation of present state and protection from further degradation, rather than restoration;
- 38 **agreed** to:
- 38.1 define wetland maintenance and biosecurity activities and provide for these in the wetland restoration provisions;
 - 38.2 amend the wetland restoration provisions in the NES-F so that they better incentivise wetland restoration activities;

Amendment to the NES-F so that it no longer applies to natural wetlands in the coastal marine area

- 39 **noted** that in July 2022, the Cabinet Environment, Energy and Climate Committee agreed to consult on amending the NES-F so that its wetland provisions no longer apply in the coastal marine area (CMA) [ENV-22-MIN-0028], to address the following issues:
- 39.1 the physical extent to which the NES-F applies in the CMA is currently unclear, as the natural wetland definition can be interpreted as capturing a far greater area of the CMA than was the intent;
- 39.2 the NES-F wetland provisions currently prevent or constrain some activities in the CMA, even where they are unlikely to cause material loss or degradation of natural wetlands or are currently regulated more appropriately by regional coastal plan rules made under the New Zealand Coastal Policy Statement (NZCPS);
- 40 **agreed** to amend the NES-F wetland provisions so that they no longer apply to wetlands in the CMA;
- 41 **noted** that wetlands in the CMA will continue to be protected by regional coastal plans under the NZCPS and as receiving environments under the NPS-FM;
- 42 **noted** that wetlands in the coastal environment, but inland from the CMA, will remain subject to the NES-F;
- 43 **noted** that the Minister for the Environment intends to develop other policies to better protect estuaries and wetlands in the CMA, and has directed officials to begin considering the specific issues raised during public consultation that impact coastal wetlands;

Technical changes to the NPS-FM and NES-F

- 44 **noted** that the Ministry for the Environment has maintained a record of technical issues and provisions in the NPS-FM and NES-F that would benefit from clarification;
- 45 **noted** that technical changes to the NPS-FM and NES-F have been tested through exposure drafts, alongside amendments to the wetland provisions [CAB-21-MIN-0500];
- 46 **noted** that these changes are intended to make provisions clearer and more straightforward to implement, and are consistent with previous policy decisions made by Cabinet;
- 47 **noted** that other consequential changes and corrections will be made where necessary, for example, where amended definitions are used in the Stock Exclusion Regulations;

Reconsidering the possibility of a dissolved inorganic nitrogen bottom line

- 48 **noted** that in May 2020, the Cabinet Economic Development Committee (DEV) previously agreed to reconsider the possibility of a dissolved inorganic nitrogen (DIN) bottom line of 1 mg/litre [DEV-20-MIN-0077];
- 49 **noted** that officials have advised the Minister for the Environment that:
- 49.1 the science has not materially changed since May 2020 in relation to the need for a DIN national bottom line of 1 mg/litre;

- 49.2 the existing approach set out in the NPS-FM remains preferable to imposing a DIN national bottom line, which means regional councils will locally-determine the concentrations of nitrogen needed to achieve ecosystem health, rather than a 'one size for all' being imposed;
- 49.3 technical changes to the NPS-FM, referred to in the paper under ENV-22-SUB-0051, will clarify existing requirements and support implementation;
- 50 **noted** that based on the advice referred to in paragraph 49, the Minister for the Environment does not recommend that Cabinet reconsider a DIN national bottom line of 1 mg/litre at this time;
- 51 **noted** that in May 2020, DEV also agreed that there will be a review by 2023 of nitrogen management settings; and that if by then there is not a material reduction in the use of synthetic nitrogen fertiliser across New Zealand, the review will include an assessment of whether further input controls on agriculture are needed [DEV-20-MIN-0077];
- 52 **noted** that provisional data from the Fertiliser Association indicates nitrogen sold as fertiliser has reduced for the last two consecutive years, consistent with the objectives of the Essential Freshwater package;
- 53 **noted** that the latest environmental report *Our Marine Environment 2022*, shows recent trends for nutrient-related coastal and estuarine water-quality measures have been improving at more sites than worsening;

Changes to Stock Exclusion Regulations

Changes to the map of low slope land, incorporated by reference into the Stock Exclusion regulations

- 54 **noted** that the Stock Exclusion Regulations apply to deer, pigs, and cattle, and took immediate effect for new pastoral systems while existing farms have until either 1 July 2023 or 1 July 2025 to comply, depending on stock type and practices;
- 55 **noted** that a map of low slope land is incorporated by reference into the Stock Exclusion Regulations, identifies areas where beef cattle and deer must be excluded from access to water bodies from 1 July 2025, and currently shows land with an average slope less than, or equal to, 10 degrees across a land parcel;
- 56 **noted** that in July 2021, Cabinet agreed to consult on changes to the map of low slope land, aimed at addressing concerns that it:
- 56.1 includes some land with an average slope greater than 10 degrees while failing to capture some low slope land;
- 56.2 captures extensive farming systems, contrary to Cabinet's intention when introducing the regulations;

[CAB-21-MIN-0270];

- 57 **agreed** to progress the following changes to the map of low slope land with the following changes by:
- 57.1 using a more advanced mapping methodology to identify low slope land without averaging across land parcels;
 - 57.2 focusing the map and associated requirements to exclude stock on slopes between 0 to 5 degrees, and relying on freshwater farm plans to address stock exclusion on higher slopes;
 - 57.3 applying an altitude threshold of 500 meters above sea level to the map, with any land above this threshold not being included in the map, but other requirements in the Stock Exclusion Regulations still applying – for example, the requirement to exclude beef cattle and deer that are intensively grazed, i.e. break feeding and grazing forage crops or irrigated pasture;
- 58 **noted** the expectation that stock will be excluded on slopes between 5 and 10 degrees (subject to farm planning processes and individual circumstances), and that experience with this will inform the development of any future practice standards;

Developing an exception from the map of low slope land for extensive farming

- 59 **noted** that even with the above changes, the map of low slope land may still capture areas of extensive farming, contrary to Cabinet's original intent [CAB-21-MIN-0270];
- 60 **noted** that as high slope land and extensive farming systems tend to be stocked at lower rates, the marginal environmental benefit of excluding stock from accessing waterways in these areas is lower, for significantly higher costs;
- 61 **agreed** to develop an exception from the requirement to exclude beef cattle and stock from water bodies for farms that meet a threshold or definition for extensive farming, even where these are captured by the map of low slope land;
- 62 **noted** that this would not affect any other requirement to exclude stock, including where beef cattle and deer are intensively grazed, or where farm planning processes determine it is appropriate in the circumstances;
- 63 **noted** that an exception may be inappropriate in some circumstances, for example where particularly sensitive water bodies are present;
- 64 **agreed** to undertake further consultation to determine the correct thresholds and measures to underpin the exception;
- 65 **authorised** the Minister of Environment and Minister of Agriculture to have power to act to enable them to take post-consultation decisions and instruct the Parliamentary Counsel Office to draft further amendments to the Stock Exclusion Regulations;
- 66 **noted** that the Minister of Environment and Minister of Agriculture intend to seek final Cabinet agreement on this matter in early 2023, before putting any exception in place;

Final agreement to policy changes

- 67 **noted** that the *National Policy Statement for Freshwater Management 2020 Amendment No 1* (attached as Appendix 1 to the paper under ENV-22-SUB-0051), Resource Management (National Environmental Standards for Freshwater) Amendment Regulations (No 2) 2022, and Resource Management (Stock Exclusion) Amendment Regulations 2022, give effect to the policy decisions outlined in the paper under ENV-22-SUB-0051;
- 68 **authorised** the Minister for the Environment to recommend the *National Policy Statement for Freshwater 2020 Amendment No 1* to the Governor-General in Council for approval;
- 69 **authorised** the submission to the Executive Council of the:
- 69.1 Resource Management (National Environmental Standards for Freshwater) Amendment Regulations (No 2) 2022 [PCO 24615/20.0];
- 69.2 Resource Management (Stock Exclusion) Amendment Regulations 2022 [PCO 25136/4.0];
- 70 **noted** that as the map of low slope land is incorporated by reference into the Stock Exclusion Regulations under section 360(4), amendments require only Cabinet approval (under the process set out at Schedule 1AA) and do not require recommendation to the Governor-General in Council;
- 71 **authorised** the Minister for the Environment to make any final drafting changes to the instruments specified in paragraphs 68 and 69 above, if required to give full effect to the recommendations in the paper under ENV-22-SUB-0051;

Timing and the 28 day rule

- 72 **noted** that the Minister for the Environment does not propose to waive the 28 day rule for the instruments specified in paragraphs 68 and 69, and that these amendments will take effect once the 28 day period has elapsed;
- 73 **noted** that the Minister for the Environment will publish a notice stating that the amendments referred to in paragraph 70 above have been made and specify the date at which these amendments take effect, in accordance with Schedule 1AA;

Compliance with the Resource Management Act 1991 (RMA)

Statutory requirements

- 74 **noted** that the statutory requirements that apply to amending a national policy statement (NPS) are described in section 53 of the RMA, and that the Minister for the Environment is satisfied that these requirements have been met
- 75 **noted** that the statutory requirements that apply to amending a national environmental standard (NES) are described in section 44 of the RMA, and that the Minister for the Environment is satisfied that these requirements have been met;
- 76 **noted** that section 46A of the RMA prescribes a choice of processes before amending a NPS or NES, and that the Minister for the Environment chose the 'alternative process' to a Board of Inquiry, described in section 46A(3)(b);

Consultation under section 46A of the RMA

77 **noted** that the public and iwi authorities were given notice of proposed changes and the reasons for those, and had adequate time and opportunity to make a submission (in accordance with section 46A(4)(a) and (b));

Considerations under section 46A of the RMA

78 **noted** that following public consultation, officials prepared a report and recommendations (attached as appendix 4 to the paper under ENV-22-SUB-0051) in accordance with section 46A(4)(c), for:

78.1 amendments to the wetland provisions in the NPS-FM and NES-F;

78.2 exposure drafts of technical changes and amendments to the wetland provisions in the NPS-FM and NES-F;

78.3 options to retain or amend the application of the NES-F to the CMA;

79 **noted** that following public consultation, officials prepared an evaluation report in accordance with section 32 for amendments to the NPS-FM and NES-F (Appendix 5 to the paper under ENV-22-SUB-0051);

80 **noted** that the Minister for the Environment has considered the evaluation report and has had particular regard to it;

81 **noted** that in accordance with section 44(1)(d), the Minister for the Environment has publicly notified the report and recommendations made under section 46A(4)(c);

Regulations Review Committee

82 **noted** that the Regulations Review Committee (the Committee) has previously investigated a complaint under Standing Order 327(2)(i), in relation to regulation 54(c) of the NES-F (non-complying activity status), and that Ministry for the Environment officials provided the Committee with a response to this complaint in November 2021;

83 **noted** that the Minister for the Environment is confident that there are no further grounds for the Committee to draw the NES-F, NPS-FM, or Stock Exclusion Regulations to the attention of the House of Representatives under Standing Order 319.

Rebecca Davies
Committee Secretary

Present:

Hon Grant Robertson
Hon Kelvin Davis
Hon David Parker (Chair)
Hon Damien O'Connor
Hon Michael Wood
Hon Dr Ayesha Verrall
Hon Phil Twyford
Rino Tirikatene, MP

Officials present from:

Office of the Prime Minister
Officials Committee for ENV