



Essential Freshwater amendments

Report, recommendations and summary of submissions

Managing our wetlands: Proposed changes to the wetland regulations



Ministry for the
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Glossary of abbreviations

Abbreviation	Definition
CMA	Coastal Marine Area
DINZ	Deer Industry New Zealand
DOC	Department of Conservation
ECAN	Environment Canterbury
EDS	Environmental Defence Society
ELI	Environmental Law Institute
GDC	Gisborne District Council
GWRC	Greater Wellington Regional Council
HBRC	Hawkes Bay Regional Council
LAWA	Land, Air, Water Aotearoa
NES-F	Resource Management (National Environmental Standards for Freshwater) Regulations 2020
NES-PF	Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017
NPS-FM	National Policy Statement for Freshwater Management 2020
NPS-UD	National Policy Statement on Urban Development 2020
NRC	Northland Regional Council
NZDF	New Zealand Defence Force
NZDFA	New Zealand Deer Farmers Association
NZFSS	NZ Freshwater Sciences Society
PCE	Parliamentary Commissioner for the Environment
RMA	Resource Management Act 1991
RMLA	Resource Management Law Association
SAANZ	Ski Areas Association of New Zealand
TCC	Tauranga City Council
TDC	Tasman District Council
TEEF	Tāmaki Estuary Environmental Forum
TMotW	Te Mana o te Wai
WCC	Wellington City Council
WRC	Waikato Regional Council

Introduction

Introduction to the wetland regulations

In 2020, the Government introduced the *Essential Freshwater* regulatory package to help protect wetlands from loss and degradation. The National Policy Statement for Freshwater Management 2020 (NPS-FM) seeks to embed long-term change through regional plans with policies to restore and map wetlands. The Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F) sets out the consent pathways for certain activities in and around wetlands.

Following gazettal of the regulations,¹ issues were raised by councils and sector groups which guidance alone could not resolve. The Government agreed to consult on amendments to the regulations in August 2021, and public consultation occurred from 1 September-27 October 2021. The proposed amendments were set out in [Managing our wetlands: A discussion document on proposed changes to the wetland regulations](#) (the Discussion Document).

The proposals consulted on were:

- clarifications to the definition of a ‘natural wetland’
- consent pathways for additional sectors (quarries, cleanfills, managed fills, landfills, mining, urban development)
- refinements to the restoration polices, recognition of maintenance and biosecurity activities.

A total of 262 individual submissions, and approximately 5,860 form submissions from Forest and Bird, were received on the proposals.

Overview of Forest and Bird campaign

Forest and Bird launched a campaign entitled ‘Save our wetlands.’ The submission reads as follows:

To Environment Minister David Parker,

Since human settlement, Aotearoa has lost around 90 percent of all its wetlands – precious areas that stored carbon, were home to endangered plants, and hosted millions of migrating birds. Last year, your Government passed crucial laws to protect our remaining few wetlands. But now you’re proposing to back down and allow industry to keep destroying these precious areas.

We ask that you instead:

- **Protect fresh water:** Stop the continued destruction, and encourage the restoration, of wetlands – which provide unique habitat for threatened plants, birds, and fish, improve water quality, and reduce flood risk.
- **Maintain meaningful laws:** Reject special ‘consenting pathways’ for industry, which would strip wetlands of all meaningful protection.

¹ As in the Discussion Document, the NES-F and NPS-FM are referred to throughout this document as ‘the regulations’.

- **Prevent soil carbon loss:** Listen to the Climate Change Commission’s advice and keep carbon in the ground by stopping wetland destruction.
- **Keep our climate safe:** Do not give coal mining special access to destroy wetlands during a climate emergency.
- **Include important wetlands:** Improve the definition of a natural wetland – the current proposal would exclude many significant wetlands from protection through the flawed way in which ‘improved pasture’ is used.

The Forest and Bird submission was signed by 5,860 individuals. Of these individuals, 3,903 made additional comments to the submission. Forest and Bird submitters were generally opposed to the proposals outlined in the Discussion Document.

Those comments identified several key concerns.

- **Wellbeing of future generations:** 364 submitters made additional comments out of concern that the proposed changes may result in the destruction of wetlands, which would impact the environment for future New Zealanders. Many of these submitters noted their concern that the proposed changes would leave lasting impacts on the environment that future generations will inherit.
- **Increased scope for coal mining:** 250 submitters made additional comments concerned that the proposed changes may allow increased coal mining.
- **Importance of wetlands as an ecosystem:** 410 submitters made additional comments emphasising the importance of wetlands and the fragility of wider environmental ecosystems.
- **Irreversible damage to wetlands:** 162 submitters made additional comments relating to concerns that the proposed changes may result in the destruction of New Zealand’s wetlands. Submitters were also concerned that the proposed changes generally may impact native flora and fauna.

We note that on World Wetlands Day (2 February 2022), Forest and Bird launched a petition calling on the Government to, among other things, “ensure existing regulations preventing the destruction of wetlands by agriculture, urban development, mining, quarrying, and landfills are not watered down – and are properly enforced.”

Overview of other submissions

In general, the views were mixed. Those seeking a consent pathway were supportive of the proposals, but many others viewed the changes as a weakening of the regulations.

The National Wetland Trust stated:

it is perhaps unrealistic to expect that such major changes to our approach to wetland identification and management would not create some ‘teething problems’. It may simply be too early to make a major change in direction, and what is actually required is guidance and support.

We agree that there is inevitably a bedding-in period with any strong regulatory change. The Ministry for the Environment (the Ministry) has provided guidance and support to assist implementation of the NPS-FM and NES-F. However, issues have been identified that cannot be effectively resolved through guidance and would therefore benefit from amendment.

Detailed summaries of submission points on each proposal are set out by topic below.

Process for amending a national policy statement

The Resource Management Act 1991 (RMA) sets out the statutory process (s46A) for amending national direction.² The process must include:

- public consultation
- written submissions
- a report and recommendations to the Minister for the Environment on the written submissions and subject matter of the consultation (this Report).

The Minister for the Environment is required to consider the Report and may then make any changes as the Minister sees fit, or withdraw all, or part, of the proposed amendments.

This Report fulfils the requirement set out in section 46A and 51(1)(c) of the RMA.

The decisions made on the basis of this Report are in-principle decisions to allow drafting changes to be made. Before making final decisions on the regulations and deciding whether or not to recommend these under section 52, the Minister for the Environment will be provided with, and have particular regard to, an evaluation under section 32 of the RMA.

² Section 46A addresses both National Policy Statement and National Environmental Standards in a single process.

Part 1: Changes to part (c) of the definition of a ‘natural wetland’

Proposal

The wetland regulations use a definition of a wetland that is a subset of the RMA definition.³ The wetland regulations are concerned with the protection of ‘natural wetlands’.

The definition of a natural wetland excludes some wetlands, such as constructed wetlands (eg, ponds and stormwater treatment wetlands) that have been constructed for purposes other than:

- offsetting (part (a) of the definition)
- geothermal wetlands (part (b) of the definition)
- wetland seeps and ephemeral wetlands in pasture, that are dominated by pasture species (part (c) of the definition).

After the regulations came into effect, the Government received feedback that part (c) of the definition of natural wetland is problematic to apply and as a result captures some modified, exotic pasture-dominated wetlands even though part (c) seeks to exclude these areas. The outcome is that the regulations are having a bigger impact than intended.

Changes were proposed to part (c) of the definition to simplify and clarify the intent as set out below.

Amend part (c) of the definition of a natural wetland from:

natural wetland means a wetland (as defined in the Act [RMA]) that is not:

- (a) a wetland constructed by artificial means (unless it was constructed to offset impacts on, or restore, an existing or former ‘natural wetland’); or
- (b) a geothermal wetland; or
- (c) any area of improved pasture that, at the commencement date, is dominated by (that is more than 50% of) exotic pasture species and is subject to temporary rain-derived water pooling.

To:

- (c) any area of pasture that has more than 50 percent ground cover comprising exotic pasture species or exotic species associated with pasture.

Summary of submissions

We received 195 submissions on the proposal to amend part (c) of the definition. There is support for simplifying the definition. There are also wide-ranging views on how this should be done. Where the proposed changes are not supported, this is primarily on the basis that it is perceived as weakening the protections, particularly for ephemeral wetlands.

³ Wetland includes permanently or intermittently wet areas, shallow water and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions.

Two themes commonly raised on the general definition are discussed here. The four proposed changes to part (c) of the definition follow below.

Theme: Size/value or other threshold for wetland protection

The Templeton Group is one of several submitters that “accepts and supports the protection of prime wetlands of high value” but considers the regulations lead to perverse outcomes by protecting all wetlands, regardless of size or quality. Tauranga City Council (TCC) noted that without a minimum size, very small patches with little ecological significance may be scattered among pasture which, coupled with the 100-metre setback for water take and use, can cumulatively lead to large areas being subject to the rules. TCC seek a size, as well as a maximum slope threshold to avoid steep areas being captured (eg, ephemeral wetlands, which they consider are covered by other provisions).

Several submitters commented that due to the lack of a size criteria for defining a natural wetland, councils are defaulting to the 2 by 2 metre survey grid required by the Wetland Delineation Protocols.

Analysis and recommendation

It is the policy intent that all natural wetlands (those that meet the definition in the NPS-FM), regardless of size, value or location, are provided strong protection by the regulations; and where consented activities may impact the extent or values of these wetlands then this is offset so that there is no further loss of extent. The 2020 regulatory response was intentionally strong, to address the reasons why wetland loss continued despite previous policies requiring the protection of the significant values of wetlands (misinterpreted as ‘significant wetlands’ only).

Past perceptions that small or degraded wetlands were of lesser value, and therefore able to be developed and lost, led to a steady decline of wetland extent. The intent of the NPS-FM is to protect all wetlands regardless of condition, not only those wetlands that retain biodiversity values.

We have explored whether a size threshold would be appropriate to apply to the definition. For the following reasons it is not considered viable.

- There is no ecological basis on which to set a size threshold.
- Exceptions would be required for naturally small wetlands such as kettle hole wetlands, and those that contain rare and/or threatened species, meaning an ecological assessment of each wetland under the size threshold would still be required, creating cost considerations.
- A size threshold would be widely contested (either too big or not quite big enough).
- A size or value threshold overlooks that all wetlands can be restored and importantly, degraded wetlands (even a collection of smaller wetlands) contribute towards wetland extent.

Theme: Relying on vegetation to identify areas excluded under part (c)

Submitters, including Gisborne District Council (GDC), Manaaki Whenua Landcare Research, Resource Management Law Association (RMLA) and Wellington City Council (WCC) raised concern about relying solely on vegetation composition to assess the pasture exclusion (rather than also assessing whether the area has hydric soils or wetland hydrology).

The RMLA commented that the proposal “assigns more weight to vegetation than the RMA definition of ‘wetland’ which includes specific fauna. It does not therefore provide consideration or protection of threatened fauna” and by extension ecologically significant wetlands.

Analysis and recommendation

The intent is to exclude areas of pasture that meet the definition, regardless of whether they are technically wetlands (eg, exhibit hydric soils/hydrology). The proposed changes clarify that where a wetland is within an area of pasture and has greater than 50 percent ground cover of pasture species and pasture-associated exotic species then the wetland is excluded from the regulations, regardless of whether there are wetland soils and hydrology present. We note that the current exclusion in part (c) of the definition also relies on vegetation for the exclusion, so the change is only a clarification of the original intent.

Where wetlands that contain greater than 50 percent pasture species are also identified to contain threatened species (under the New Zealand threat classification system), it is proposed that they will not qualify for an exemption and be considered natural wetlands under part (c) of the definition (refer to [Significant biodiversity and threatened species protection](#)).

We further note that the regulations apply to a subset of RMA-defined wetlands. The RMA definition still applies to wetlands excluded under part (c) and the NPS-FM permits rules in regional plans to be more stringent than the NPS-FM, so there is the opportunity to provide additional protection.

Part 1A: Replacement of ‘improved pasture’ with ‘pasture’

Proposal

When the regulations were gazetted, the term ‘improved pasture’ raised questions from councils and practitioners alike as to what constituted ‘improved’. The NPS-FM defines improved pasture as:

an area of land where exotic pasture species have been deliberately sown or maintained for the purpose of pasture production, and species composition and growth has been modified and is being managed for livestock grazing.

The definition was being interpreted as a certain level of intensive farming being necessary (eg, a fertiliser application rate or stocking density). The proposal to remove the phrase ‘improved’ was to better capture the policy intent, which is just to capture pasture (as defined by per cent species coverage).

Summary of submissions

Support

Those that supported the change to 'pasture' considered that it will significantly assist with simplifying the tests that landowners need to undertake to determine if a wet area is natural wetland or not.⁴ Further, that it will prevent future disputes that the current assessment of improved pasture has caused between applicants, councils and interested parties.

The Parliamentary Commissioner for the Environment (PCE) considered the proposal to delete 'improved' (and 'temporary rain-derived water pooling') should remove some ambiguity and improve the definition. Similarly, Auckland Council noted that proving that pasture is improved has been a contested process that can require detailed environmental and farm management information.

Irrigation NZ agreed with the change and understood the reference to the wording of improved pasture was used in alignment with the Resource Management (Stock Exclusion) Regulations 2020. Federated Farmers of NZ, the New Zealand Deer Farmers Association Inc (NZDFA) and Deer Industry New Zealand (DINZ) supported it, but cautioned that without a functioning definition of pasture, reinterpretations similar to what happened with improved pasture are possible. They recommended adopting the Oxford English Dictionary definition of pasture⁵ in the amendment to clarify.

The Environmental Defence Society (EDS) suggested that the following definition of 'exotic pasture species' should be included in the NPS-FM: "being that they are deliberately sown and/or maintained for the purpose of pasture production" and that a national list of exotic pasture species should also be included to clarify remaining ambiguities. A list was also supported by Forest and Bird as being a more "certain and ecologically appropriate approach", but that it would need to account for regional differences.

Opposed – Protection of wetlands within pasture areas

There was desire from submitters to retain improved pasture to protect areas that retain wetland characteristics within pasture areas. For example, the National Wetland Trust, Manaaki Whenua Landcare Research and Gisborne District Council (GDC) considered that improved pasture successfully excludes areas of degraded rank pasture growth that still retain wetland character (and hence wetland values) and are usually not suitable for grazing apart from during short periods of drought.

Environment Canterbury (ECAN) acknowledged that debate over correct interpretation of improved pasture has hindered implementation of the natural wetland definition but considered that the proposal could result in ecologically significant wetlands being excluded if the list of species is broad.

⁴ Other submitters in support include Taranaki Regional Council, Chatham Islands Council, Upper Hutt City Council, Auckland Airport, Deleat Limited and Wine Marlborough Limited, Templeton Group, The Planning Collective, Calder Stewart.

⁵ Land covered with grass that is suitable for feeding animals on.

Opposed – Colonisation of pasture species into wetlands outside pasture areas

Submitters were also concerned that pasture species commonly self-establish in areas of degraded wetland outside managed pasture, and the removal of 'improved pasture' means there are fewer grounds to distinguish between the two. Greater Wellington Regional Council (GWRC) stated that the improved pasture definition assists with the distinction between areas actively managed for livestock production versus natural wetlands that have been invaded by exotic plants.

List of improved pasture species to reduce ambiguity and scope

Some submitters opposed the deletion of 'improved' as they considered it would broaden the areas captured by the exclusion.⁶ Conversely, some submitters recommended that 'pasture' be broadened out to include other land uses beyond pasture farming such as urban, semi urban and forestry land.⁷ The New Zealand Defence Force (NZDF) stated "grassed open spaces with non-rural uses including as part of the Defence estate may potentially not be captured by the 'pasture' exclusion in the definition." They requested that the term 'managed grass' be included alongside pasture.

It is clear from submissions (both supporting and opposing) that there are wide-ranging views as to what should be considered pasture. GWRC did not agree that there are issues with defining improved pasture, as they have developed and tested an improved pasture plant species list as part of their technical guidance for the determination of natural wetlands. Some submitters recommended retaining 'improved pasture' and clarifying the definition as well as incorporating a national list of intended species to reduce ambiguities.

Analysis and recommendation

On balance we recommend proceeding as proposed and deleting the term 'improved'.

Colonisation of pasture species into wetlands outside pasture areas and protection of areas with wetland characteristics within pasture areas

We acknowledge that the exclusion under part (c) is not based on an ecological assessment of the value of wetlands in pasture areas, and that many of these pasture-dominated wetlands may retain hydrological functioning and provide important ecosystem services. We also acknowledge the issue raised by submitters that there is often little or no ecological distinction between pasture-dominated wetlands in areas for grazing, and pasture-dominated degraded wetlands elsewhere. Both equally warrant protection.

The intent, however, is to enable existing pastoral land use to continue and not be compromised by the strong protection of the NES-F regulations.

Wetlands outside of pasture areas, which have been colonised by 'exotic species associated with pasture' would not meet the exclusion from the definition of natural wetland under part (c). This is because for part (c) to apply, a wetland must explicitly be within an area of pasture.

⁶ Forest and Bird, Environmental Law Institute.

⁷ Bioreserches, NZ Forestry Institute, Auckland Council.

We note the concern that as the proposed new definition does not reference *improved* pasture, this could lead to more wetlands being excluded from the regulations than might otherwise occur under some councils' interpretation of the current definition. However, this change better reflects the intent to capture pasture as such and reduces opportunity for interpretations that vary in both directions. For example, wetlands in pasture being captured by the regulations, as the pasture in question was not considered sufficiently improved, despite the wetland being dominated by pasture species. Further we consider there is likely to be a distinction between fallow and managed pasture based on the species present, and this risk can be mitigated by incorporating (by reference) a list of exotic pasture species into the NPS-FM (see below).

List of exotic pasture species to reduce ambiguity

It is not the intent to open the definition to any and all exotic species associated with pasture. We agree that a national list of exotic pasture species and exotic species associated with pasture is essential to remove any ambiguity.

We recommend incorporating by reference a list of exotic pasture and associated exotic species into the NPS-FM. This list will be based on the list of improved pasture species currently used by GWRC (note we intend to test this list to ensure it is applicable at the national level). This is discussed in [Part 1C: Clarification of 50% exotic pasture species](#) below.

The scope of 'pasture'

We disagree with the submissions that suggested 'pasture' be broadened to include other grassed areas, such as playing fields. The intent of the exclusion is only to provide for existing pastoral land use to continue. No other type of land use is covered under the exclusion.

We agree with submitter feedback that providing a definition for pasture is likely to create similar issues as did the definition for improved pasture. For this reason, we consider that the regulations should not define pasture and that the common usage of the word should be relied upon. We consider that incorporating the list of relevant species (as above) is the best approach to ensure national consistency in the way the regulations are interpreted and applied by councils.

We recommend proceeding with the deletion of improved pasture as proposed and replacing this with the term pasture. We also recommend incorporating by reference into the NPS-FM (under section 46B), a list of exotic pasture species and associated exotic species (see [recommendation 5](#)). We consider this will reduce ambiguity and variable interpretations by councils (discussed in detail in [Part 1C: Clarification of 50% exotic pasture species](#)).

Together, these changes will better achieve the original intent of part (c) which is to enable existing pastoral land use to continue and not be subject to the strong rules (and cumulative effect of the setbacks) in the NES-F. This original intent was progressed with the knowledge that it would inevitably exclude a portion of ephemeral wetlands in pasture areas.

We also note there will need to be corresponding amendments to the Stock Exclusion regulations to remove the improved pasture definition. This will have no impact on those regulations as this is employed in reference only to fencing requirements for wetlands greater than 500 square metres (see [recommendation 11](#)).

Recommendation 1

Recommendation

1. **Proceed as proposed** and delete the term 'improved pasture' from the NPS-FM definition of a 'natural wetland' and replace with 'pasture'; remove the definition of 'improved pasture' from the NPS-FM

agree/disagree

Note we do not recommend defining pasture as this will be achieved by incorporating by reference a list of pasture species into the NPS-FM (see recommendation 5)

Part 1B: Removal of 'at the commencement date'

Proposal

The proposal to delete 'at the commencement date' from part (c) is intended to remove the need for back-casting by councils, as this is likely to be increasingly contentious over time and may unnecessarily exclude areas of pasture.

Summary of submissions

Support – reduces unnecessary back-casting and reliance on old aerial imagery

Many submitters agreed that removing this criterion would reduce unnecessary back-casting, noting that due to the inclusion of the commencement date under part (c) of the definition, some ecologists are currently relying on low resolution aerial imagery to determine the extent of areas of pasture to be excluded, when better evidence may be available on site. Submitters considered that back-casting will become more problematic over time and therefore supported the removal of 'at the commencement date'.

Support removal if an alternate baseline is given

National Wetland Trust supported removal of 'at the commencement date' as long as another appropriate baseline is used. Their rationale was that it may be very difficult in future years to have an accurate baseline as at 3 September 2020, with appropriate vegetation data (and hydrology and soils) against which to measure any changes. If illegal modification of natural wetlands has occurred *after* the commencement date (eg, drainage or vegetation clearance), then the baseline should be the period immediately prior to the unauthorised modification. Photographs, aerial imagery, reports, local knowledge etc., could be used to provide information at a time before modification had occurred.

Manaaki Whenua Landcare Research noted a risk that wetlands could be cleared of native vegetation that existed at 3 September 2020 and then assessed, but acknowledged it would be harder to establish an accurate baseline at a fixed date over time. They also noted that there are other methods of establishing a baseline (a fixed date is not necessary) and suggested alternative wording: "at the commencement date or before any unauthorised modification post commencement date."

Opposed – reduced ability to take compliance action against wetland loss

ECAN and the Environmental Law Institute (ELI) considered that the phrase ‘at the commencement date’ is particularly helpful where non-compliance is suspected (eg, where wetlands have been illegally modified through draining or earthworks) and where the previous existence of a wetland can no longer be observed.

Other submitters, including GWRC and GDC, opposed the change on the basis that without a cut-off date, compliance, monitoring and enforcement would become more difficult. Ngāti Whātua Ōrākei also considered that “removing ‘at the commencement date’ weakens future ability to identify naturally occurring wetland areas that may undergo damage through transformation to pastureland, thus decreasing chance for future restoration and net gain of wetlands.”

Opposed – incentivises deliberate wetland degradation

PCE agreed that while the phrase ‘at the commencement date’ in the current definition creates some issues and complexity around back-casting, especially for intermittently wet wetlands, deleting it from the definition would create perverse incentives. People might abandon wetland management to allow a wetland to be overrun by exotic species including weeds, given that there is no longer a date baseline for the wetland assessments. GWRC considered removal of the commencement date risked deliberate reintroduction of pasture species into areas not currently excluded from the natural wetland definition and would lead to incremental loss.

Opposed – Enables use of old evidence to define historic wetlands as present-day wetlands

Some submitters considered it could also enable old evidence (from any time period including prior to commencement date) to be used to define a wetland, thus capturing historic wetland extent as natural wetland.

Analysis and recommendation

Reduces unnecessary back-casting and reliance on old aerial imagery

We agree with submitters that proposed changes will decrease unnecessary back-casting and simplify processes when making wetland assessments. We recommend proceeding as proposed.

Support removal if an alternate baseline is given

We agree with the National Wetland Trust that there will always be some form of baseline data on which to make the assessment, and that this can and should be at any time prior to the activity, based on any relevant evidence (eg, photographs, evidence of recent earthworks/vegetation clearance, presence of hydric soils). We do not recommend defining this to allow councils to apply their own discretion and tools to assess previous wetland state on a case-by-case basis.

Reduced ability to take compliance action against wetland loss

We note that the absence of a commencement date does not prevent regional councils from using best available information to prove illegal activity has taken place to destroy or damage a wetland. In the absence of a commencement date, all sources of information can be used (as above). The Wetland Delineation Protocols can be used to establish the spatial extent of a wetland area when vegetation is no longer visible via the soil and/or hydrology tools.

Incentivises deliberate wetland degradation

We note that the majority of concerns raised were that without a date stamp, wetlands would be allowed to become overrun with pasture and associated exotic species, and therefore be excluded.

In our view the current regulations around vegetation clearance, as well as earthworks and water use, now make it very difficult for wetland degradation to occur. Vegetation clearance, for example, is a permitted activity for very few purposes: regulations 38 (Restoration), 40 (Scientific research), 43 (Maintenance of wetland utility structures), 46 (Maintenance of specified infrastructure), and 50 (Arable and horticultural). For any other purposes, vegetation clearance is a non-complying activity in, or within 10 metres of, a natural wetland.

There may of course still be cases of illegal natural wetland disturbance and loss, but this will occur despite what the regulations state. In these cases, we consider it will still be possible based on soil type (presence/absence of hydric soils), or evidence of recent earthworks and/or new planting, for illegal activity to be identified.

Enables use of old evidence to define historic wetlands as present-day wetlands

We note this concern but consider the likelihood of this happening to be small, as councils should use best available information (ie, considering data across all time periods necessary) to define present-day natural wetlands.

Recommendation 2

Recommendation

2. **Proceed as proposed** and delete 'at the commencement date' from part (c) of the definition of 'natural wetland' in the NPS-FM.

agree/disagree

Part 1C: Clarification of 50% exotic pasture species

Proposal

The proposal is as follows:

- (c) any area of improved pasture that, ~~at the commencement date, is dominated by (that is more than 50% of) has more than 50% ground cover comprising exotic pasture species or exotic species associated with pasture and is subject to temporary rain-derived water pooling.~~

Removing the word ‘dominated’ recognises that the term is subsequently defined by the ‘more than 50%’ qualifier and is therefore redundant. Adding the words ‘ground cover’ clarifies and directs how the assessment of species is to be made. Including the additional words ‘exotic species associated with pasture’ acknowledges that some exotic species, while not considered pasture species, commonly grow in damp grazed areas and are considered to be ‘facultative’ species of wetlands (ie, sometimes occur in wetlands). It is the policy intent to exclude these areas – even though they may have been, or still are, wetlands.

Summary of submissions

Support – Proposal better reflects reality of wetland species within modified pasture environments

Submitters⁸ expressed support for the intent and wording of the proposed amendment. The Planning Collective supported removal of ‘dominated’, and “clarifying that it also excludes species that can be associated with pasture but are not strictly pasture species themselves, is a better reflection of the reality of what grows within different environments where pooling water may be present in different seasons.”

Many of the supporting submitters expressed the need for an agreed methodology for assessment of 50 percent pasture species coverage, and an agreed list of exotic pasture species and exotic species associated with pasture. Some submitters requested that ‘exotic species associated with pasture’ should be replaced with ‘exotic species’; for example, to include exotic tree species and capture woodlots/plantation forests in the exclusion.⁹

Envivo Ltd noted the proposed use of ‘or’ is ambiguous as it implies that assessment is either exotic pasture species or exotic species associated with pasture.

Support for ‘ground cover’: questions around the 50 percent threshold

Hutt City Council supported the addition of the term ‘ground cover’ as it is helpful in situations where exotic tree species form a canopy above a wetland. Manaaki Whenua Landcare Research supported the change to ‘has more than 50% ground cover’, provided it is supported by guidance or a definition of ground cover. A need for clarification of ground cover and how this applies to multiple tiers of vegetation was raised by several submitters.

Federated Farmers, NZDFA and DINZ, regarded the 50 percent threshold as too low in some farms (eg, low stocked high country), as they may use native plants as part of their pasture. Whangairoa Harbour Care recommended raising the 50 percent cover threshold to address the potentially broader capture of the new exclusion.

⁸ Chatham Islands Council, Upper Hutt City Council, Fonterra, Fletcher Residential, Hugh Green Ltd, Nick Taylor Ltd, Federated Farmers of NZ, the New Zealand Deer Farmers Association Inc, Waka Kotahi, The Planning Collective, Irrigation NZ, the Templeton Group, some individual submitters.

⁹ Waka Kotahi, NZ Institute of Forestry, Beef and Lamb NZ.

Opposed – Assessment open to manipulation/inconsistent interpretation

PCE noted that the primary problem of defining the margins of wetlands remain, with ‘any area of pasture that has more than 50% ground cover’ providing an incentive to make this area as small or as large as possible depending on whether you want it to be a natural wetland or not. They considered the threshold of 50 percent pasture (and pasture-related species) to be a low bar, as the remaining 50 percent will be natural wetland species that could be destroyed without any consent, and this could be a large area. Tonkin and Taylor stated that the reference to 50 percent is still not clearly aligned with a scale and can be easily manipulated to exclude areas that should be considered natural wetlands.

Opposed – Capture of ecologically significant wetlands, ephemeral wetlands and degraded wetlands outside managed pasture areas

Several regional councils¹⁰ and other submitters¹¹ opposed the expansion of ‘exotic pasture species’ to include ‘exotic species associated with pasture’ as it was considered this would capture more wetlands.

A common rationale for opposition was that by referencing ‘percentage ground cover’ and including ‘exotic species associated with pasture’, many wetlands outside of pasture which have more than 50 percent coverage of ‘exotic pasture’ or ‘exotic species associated with pasture’ were liable to be captured, which broadens the intended scope of the exclusion. GWRC stated that the majority (90 percent) of the 180 wetlands they have delineated to date only contain small proportions of indigenous vegetation and many would no longer be classified as a natural wetland under the new addition to the exclusion.

Two regional councils¹² suggested that the changes would expose ecologically significant wetlands,¹³ which have been colonised by exotic pasture species / exotic species associated with pasture, to development. Concern was raised about the status of ephemeral wetlands under the new addition, as they can fluctuate in cover from being dominated by exotic species in the dry season, to shallow wetlands with native vegetation cover in winter/spring. Ephemeral wetlands support indigenous and migratory wetland fauna.

Submitters emphasised that the definition of exotic species associated with pasture was open to interpretation and may unintentionally capture a wide range of wetland weed species, for example, gorse and broom.¹⁴ TDC was also concerned that wetlands could degrade through invasion or deliberate sowing of pasture species / pasture weeds to the point where they were no longer classified as natural wetlands, particularly when combined with the removal of the commencement date backstop. Auckland Council and GWRC were concerned that the

¹⁰ Gisborne District Council, Greater Wellington Regional Council, Northland Regional Council, Environment Canterbury, Auckland Council.

¹¹ The National Wetland Trust, the New Zealand Society for Freshwater Sciences, Manaaki Whenua Landcare Research.

¹² Environment Canterbury (ECAN), Greater Wellington Regional Council.

¹³ ECAN provides extensive examples of ecologically significant wetlands that may no longer be classified as natural wetlands with the addition of exotic species associated with pasture, for example, moraine landforms containing ephemeral tarn wetland surrounded by pastoral farming uses in the Mackenzie Basin.

¹⁴ Environmental Law Institute, Gisborne District Council, Environment Southland, Auckland Council, Tasman District Council, Environment Southland.

new exclusion generates a perverse incentive for landowners to deliberately degrade their wetlands to facilitate their loss through development. EDS noted that rather than allowing (or encouraging) further degradation, these wetlands should be restored.

There was some concern around the validity of the premise that exotic species associated with pasture are found in pasture wetlands. GWRC gave the example that “In general, exotic species maintained as pasture tend not to be found in wetlands, and exotic species that are (ie, swamp buttercup) are highly indicative of a natural wetland.”

The RMLA cautioned that under the new exclusion, in highly modified areas an area may meet the definition of a wetland under the RMA but may now be excluded under part (c). They considered that the proposal will “further reduce the number of wetlands captured in the ‘natural wetland’ definition. This means the wetlands captured in the definition are more likely to be ‘worthy’ of protection (ie, have an ecological value of moderate or higher). If the policy intent is to select higher value wetlands for protection, this should be followed through.”

Finally, submitters¹⁵ also emphasised that the presence of exotic species in a wetland does not alter its hydrological function, or its ability to provide valuable habitat and ecosystem services or to support indigenous biodiversity values.

Opposed – Proposed exclusion is subjective and difficult to implement – a national list would be required

Numerous submitters¹⁶ opposed the changes on the basis that ‘exotic species associated with pasture’ is vague, subjective and could include numerous exotic species that are not an indicator of managed pasture or that are facultative species (ie, those that are associated with both pasture and wetland habitat).

Manaaki Whenua Landcare Research also stated that the majority of practitioners may not be able to reliably distinguish between native and exotic *Juncus* species, which would be required to distinguish exotic species associated with pasture.

Analysis and recommendation

Proposal better reflects reality of species within wet pasture environments

We agree with supporting submitters that the proposal will assist with successfully capturing the actual species present in wet areas in drained and modified pasture areas.

If this exclusion is not progressed, many of the same issues with the previous definition will remain, with numerous areas of wetland in modified and drained pasture areas captured as natural wetlands. The greater than 50 percent exotic pasture species requirement alone will not capture many of the areas that are intended to be excluded from the definition of natural wetland as they are often a mix of pasture and a small range of exotic species associated with wetlands.

¹⁵ GWRC, Auckland Council, Gisborne District Council, New Zealand Freshwater Sciences Society, Forest and Bird.

¹⁶ ECAN, GDC, Tasman District Council, National Wetland Trust, Manaaki Whenua Landcare Research, Wellington City Council, Northland Regional Council, Forest and Bird.

Incorporate by reference a list of pasture species to clarify the scope of the exclusion

Most submitters who opposed the proposal base did so out of concerns that it will increase the scope of the exclusion. We consider this is because ‘exotic species associated with pasture’ has been interpreted broadly by submitters as encompassing all exotic species that may establish in wetland areas, and therefore capturing all exotic-dominated wetlands.

This is not the intent of the amendment. The intent is to restrict the exotic species associated with pasture to a small subset of species that are common within pasture areas. We consider that the concerns raised by GWRC and others can be addressed by specifying both the exotic pasture species and exotic species associated with pasture within the regulations. We recommend using section 46B of the RMA to incorporate by reference into the NPS-FM the list of relevant species to remove any ambiguity as to what is included and what is not.

A list of pasture species is the pragmatic approach GWRC currently takes to identify exclusions under part (c) of the wetland definition. They use the NZ Grassland Association’s¹⁷ published list of exotic pasture species. Included with this are seven facultative species associated with pasture (ie, found equally in a wetland as pasture) which are common in the Wellington region (see table 1). The full list comprises 47 pasture species. We propose to test this list with all councils to ensure that it is appropriate for all regions, then to test this list more widely alongside the exposure draft of the amended regulations. We consider incorporating the list into the NPS-FM will resolve concerns about the broad capture of ‘exotic species’ and provide a simplified definition of pasture.

Table 1: List of facultative wetland species commonly associated with pasture in the Wellington Region

Name of spp found in plots	Common name	Rating	Pasture species	Bio status
<i>Holcus lanatus</i>	Yorkshire fog	FAC	Yes	Exotic
<i>Lolium arundinaceum subsp. Arundinaceum</i>	Tall fescue	FAC	Yes	Exotic
<i>Lotus uliginosus syn. L. pedunculatus</i>	Lotus	FAC	Yes	Exotic
<i>Phalaris aquatica</i>	Phalaris	FAC	Yes	Exotic
<i>Lolium multiflorum</i>	Italian ryegrass	FAC	Yes	Exotic
<i>Secale cereale</i>	Ryecorn	FAC	Yes	Exotic
<i>Trifolium balansae</i>	Balansa clover	FAC	Yes	Exotic

Many remaining wetlands are in poor condition with large populations of exotic species. Often these exotic species are widespread generalists that are also commonly found in pastures. They are mostly unpalatable to livestock and some even toxic. These ‘weeds’ are not promoted in pasture management as they reduce the presence of high-quality forage for livestock. As such, their presence is undesirable in both pastures and natural wetlands.

The proposal in the discussion document to include ‘exotic species associated with pasture’ bundles up the productive and non-productive exotic species, supporting neither the objectives of ongoing pasture use nor the conservation of wetlands. It is therefore important to clarify which pasture species are currently used for livestock production so that we can maintain pasture as pasture while not overlooking opportunities to restore natural wetlands.

¹⁷ NZ Grassland Association and Pasture species and cultivars used in New Zealand – a list (grassland.org.nz).

If the recommendation to incorporate by reference a list of pasture species progresses, then the use of the term 'exotic species associated with pasture' is unnecessary. This is because the proposed list includes the common facultative species associated with pasture species. We can remove any complexity/ambiguity that this term may have introduced by removing it from the definition and still achieve the outcome sought. This is reflected in the recommendations below.

We note that buttercup is not in the list employed by GWRC. Buttercup was named in the Discussion Document as an example of an exotic species associated with pasture. It is worth noting that Buttercup (*Ranunculus*), has several species, including swamp buttercup which is an obligate wetland species (OBL), and two facultative species (creeping buttercup (FAC), meadow buttercup (FAC)), none of which are considered pasture species. Buttercup is often targeted for removal (by spraying) from pasture. It is therefore not captured as a species associated with pasture.

Capture of ecologically significant wetlands, ephemeral wetlands and degraded wetlands outside managed pasture areas

Submitters who opposed the amendment expressed concerns that some ecologically significant but degraded wetlands outside of pasture areas would be captured if they contained greater than 50 percent exotic species associated with pasture. This will not be the case unless the wetlands in question are in pasture areas.

We also note that for those cases where ecologically significant wetlands exist, clause 3.23 of the NPS-FM requires these to be mapped. These can then be protected through more stringent rules in regional plans.

Several submitters raised concerns that ephemeral wetlands would now no longer be classed as natural wetlands as many of them are intermittently dominated by exotic pasture species and exotic species associated with pasture. We note that this has been a point of contention with the current wording of part (c) as well. We acknowledge that the proposed amendment to part (c) will exclude a portion of ephemeral wetland from consideration. This is unavoidable in the context of continuing use of pasture for grazing.

Concerns that the inclusion of wetland weed species in the list of exotic species associated with pasture would mean degraded wetlands outside of managed pasture areas are excluded can be addressed through consultation on the proposed list of species incorporated by reference. This will ensure the species agreed are those mostly associated with modified pasture and not those common to degraded wetlands more widely.

We acknowledge submitters' concerns that wetlands may change in condition (eg, by being colonised by exotic pasture species or allowed to degrade) but consider this is much less likely under the current regulations of the NES-F than it has been to date.

Similarly, some submitters were concerned that the addition of exotic species associated with wetlands would cause a perverse incentive to either allow wetlands to degrade, or actively sow exotic species in them to promote their recategorization as something other than natural wetlands. We consider this will be addressed through incorporating by reference the list of pasture species and through non-regulatory measures to incentivise wetland restoration. We further consider that the best approach to ensuring landowners and farmers are willing to participate in restoring degraded wetlands in pasture areas is to clarify the definition as proposed and ensure the regulatory/consent processes are clear and pragmatic.

Proposed exclusion is subjective and will be difficult to implement

We acknowledge that differentiating exotic species associated with pasture from native species may be problematic for some species but that can be addressed through incorporating by reference the list of species into the NPS-FM. We are also collaborating with Manaaki Whenua Landcare Research on a methodology to assess 50 percent exotic pasture species coverage which will be extended to assessing exotic species associated with pasture. This will address scale concerns and how to assess ground cover.

Recommendations 3–5

Recommendations

3. **Proceed as proposed** and delete 'is dominated by (that is, more than 50% of) exotic pasture species' from part (c) the definition of 'natural wetland' in the NPS-FM
agree/disagree
4. Replace with 'that has 50% or more ground cover comprising exotic pasture species, or words to that effect'
agree/disagree
5. Incorporate by reference into the NPS-FM, under section 46B of the RMA, a national list of exotic pasture species that will define what is included and meant by the phrase 'exotic pasture species'
agree/disagree

Note that we will test the list currently employed by Greater Wellington Regional Council with all other regional councils to ensure its relevance nationwide

Note you have agreed to release an exposure draft of the amendments and the list of species can be publicly consulted on at the same time [BRF-664 refers]

Part 1D: Removal of 'is subject to temporary rain-derived water pooling'

Proposal

The phrase 'is subject to temporary rain-derived water pooling' was originally included as a place holder to address the lack of a hydrology tool in the *Wetland delineation protocols* (the protocols) used for identifying wetland extent. The protocols are incorporated by reference into the NPS-FM and contain three tools: hydrology, soil and vegetation.

Summary of submissions

Support

Several submitters, including GWRC and GDC, supported the removal of the phrase, 'and is subject to temporary rain-derived water pooling' as this is difficult for consent authorities to prove and is not necessary to distinguish between wet pasture and a natural wetland.

Fish and Game and PCE also supported its removal as they considered it would provide greater certainty for implementation by removing ambiguity from the definition. Fish and Game noted that the source of wetland hydrology does not have a direct correlation to the value of that wetland and therefore this requirement appears arbitrary.

Opposed – Clarity required on the intent

Tasman District Council (TDC) and others submitted that the inclusion of temporary rain-derived water pooling excluded areas which have temporary pooling that is not frequent or persistent enough to constitute wetland hydrology and that the proposal is a fundamental change to the definition. They sought clarity on whether this change was intended and clarification on how to apply the protocols.

NZ Freshwater Sciences Society (NZFSS) submitted that any changes made to the definition of a natural wetland must be evidence-based, supported by science, and where possible use the protocols.

Manaaki Whenua Landcare Research and the Māori Trustee suggested inclusion of the hydrological tool for wetland delineation into the definition (as a replacement for reference to temporary rain-derived water pooling). Other submitters stated that some transition time may be needed before the hydrology tool is universally and effectively applied, in which case it may be useful to keep in this qualifier for the time being.

Analysis and recommendation

The submissions highlight the issue well, in that they reveal conflicting views about whether wetland hydrology (as opposed to temporary rain-derived water pooling) should be a deciding factor for the exclusion under part (c).

We note the Ministry wetland interpretation guidance flowchart directs councils to assess temporary rain-derived water pooling by applying the Wetland Delineation Hydrology Tool. If this test is failed, pooling is considered temporary. However, it has become clear that this interpretation does not meet the original policy intent to exclude pasture-dominated wetlands in pasture areas. This has contributed to more areas than intended being captured by the regulations. If all three of the delineation tools are applied prior to application of the greater than 50 percent pasture exclusion, and hydrology overrides the greater than 50 percent pasture criterion, there will continue to be many more areas captured by the regulations than intended.

The original policy intent was to capture wetlands as per the RMA definition, with exceptions such as wet pasture, to ensure the regulations do not capture places where wetlands may have been in the past but are now productive land.

This intent was and remains a pragmatic policy choice to ensure that the very strong regulations in the NES-F, such as those around vegetation clearance, earthworks and the 100-metre buffer for water takes, can remain in the NES-F and be applied to all other situations. Because there is no size/value threshold for natural wetlands it is simply not practical to apply prohibited activity status (and other regulations with their buffers) to pasture with multiple seeps and/or ephemeral wetlands. These areas of pasture need to be able to continue to be used as such, and despite the extensive wetland loss that has occurred, these wetland types are common in farmland topography (however degraded).

We recommend proceeding with the change as proposed, to clarify the original policy intent. Officials will issue guidance on gazettal of the regulations to clarify this, and how the protocols should be applied.

Recommendations 6–7

Recommendations

6. **Proceed as proposed** and delete ‘and is subject to temporary rain-derived water pooling’ from part (c) of the definition of ‘natural wetland’ in the NPS-FM
agree/disagree
7. Do not replace with an alternative measure of wetland hydrology within the exclusion for pasture-dominated wetlands in part (c) of the definition of ‘natural wetland’
agree/disagree

Part 1E: Requests for other amendments to definitions/policy

Summary of submissions

Submitters had wide-ranging comments on further additions and/or removals to the definition of natural wetlands. Some key suggestions and our responses are listed below.

Clarify part (a) of the definition

Some submitters¹⁸ recommend defining within the regulations (rather than just guidance) what is meant by ‘a wetland constructed by artificial means’. They consider this will support clarity around part (a). Some suggested that we use the definition set out in the current guidance.

Clarify the status of induced wetlands

Submitters also requested clarification on induced wetlands. Submitters recommended inserting a direct reference to induced wetlands into part (a) to clarify their status.¹⁹

Conversely some submitters²⁰ requested that induced wetlands be explicitly excluded from the natural wetland definition. Beef and Lamb noted that “defining induced wetlands as natural wetlands may provide a disincentive to protect waterways with a culvert or built water treatment structures ie, detention bund (which will often create an induced wetland but are designed to be temporary).” The Pukekohe Vegetable Growers recommended that a restricted discretionary or discretionary pathway for induced wetlands would be a more suitable approach. Bioreserches commented that including induced wetlands as natural wetlands may be contradictory to the usual meaning of ‘natural’ and include wetlands that would not be captured under the RMA.

¹⁸ Mercury NZ, NZ Wind Energy Assn.

¹⁹ Environmental Law Institute, Auckland Council, individual submitters.

²⁰ EIANZ, Beef and Lamb NZ, NZ Steel, Hamilton City Council, Kapiti Coast District Council, Wellington City Council, Boffa Miskell, Pukekohe Vegetable Growers Assn, Hira Bhana (Hort enterprise), Oyster Capital, WasteMINZ, NZDF.

Clarify how wetlands constructed on the site of former natural wetlands should be treated

Te Arawa Lakes Trust recommended that the Ministry clarify the status of constructed wetlands built on the site of former natural wetland areas, to ensure that “wetlands artificially created to restore the overall extent of wetlands within a rohe or region” (as opposed to wetlands specifically constructed to offset the adverse effects of an activity on existing or former wetlands) are not captured as natural wetlands. They recommended altering part (a) to delete the word ‘restore’.

NIWA commented that many locations where natural wetlands currently occur, especially remnant and degraded wetlands, are locations where a constructed wetland would be best placed and there may be instances where a constructed wetland could replace a degraded natural wetland and provide a wider range of benefits to the landowner and wider community.

Dairy NZ recommended that wetlands constructed to offset impacts on, or restore an existing or former natural wetland, should be exempt under part (a). They cited the difficulty of determining the extent of former natural wetland, and that if the constructed wetland is an existing natural wetland at the time of the proposed works, the checks and balances protecting wetlands in the NES-F will apply and ensure values of that wetland are protected. Then once the wetland is constructed it should remain exempt from the definition of a ‘natural wetland’, with appropriate protection provided through consent conditions to ensure good management. Transpower agreed that wetlands constructed for biodiversity offsetting should be excluded under part (a).

Clarify wetlands within the Coastal Marine Area

Auckland Council, Otago Regional Council, Waikato Regional Council (WRC) and Northland Regional Council (NRC) requested that the definition clarify how a natural wetland applies within the Coastal Marine Area (CMA). WRC considered that the New Zealand Coastal Policy Statement already provides clear guidance on how to manage coastal biodiversity, and the application of the NES-F across this has the potential to lead to perverse outcomes, especially as the effects management hierarchy is inconsistent with applying the decision in *Environmental Defence Society v New Zealand King Salmon*.

Auckland Council noted that there have been unintended consequences of applying the NES-F to the CMA and that any activity in the CMA or within the setback distance from a natural wetland within a connected area (the area of CMA upstream of the river mouth), requires resource consent under regional plans in addition to those under the NES-F. The wetland delineation guidance that has been developed does not apply well in the CMA and there is no way of consistently determining the spatial extent of CMA wetlands that are subject to the NES-F.

Significant biodiversity and threatened species protection

Forest and Bird considered the proposed definition will exclude wetlands that contain significant flora and fauna and, more narrowly, ‘at risk’ or ‘threatened’ flora/fauna as listed in NZ’s Threat Classification System.²¹ They considered that part (c) should have an exclusion to

²¹ The New Zealand Threat Classification System (NZTCS) is used to assess the threat status of our taxa (species, subspecies, varieties and forma) and is overseen by DOC.

ensure wetlands that require protection under RMA s 6(c)²² are not excluded – even where they are dominated by pasture. They noted that there is already provision for threatened species in the NPS-FM (3.23 Mapping) but considered that threatened species are a small subset of significant biodiversity required to be protected under s 6(c) and do not support such a narrow approach.

Analysis and recommendation

Amend part (a) of the definition to clarify wetlands created by artificial means / induced wetlands

We do not agree that induced wetlands should be excluded from the regulations. Many now valuable wetlands originated as an unintended consequence of human activities. We do agree however, that the status of induced wetlands should be included and defined in the regulations (as opposed to just guidance as is currently the case). Similarly, we recommend clarifying the term ‘wetland created by artificial means’ in part (a) of the definition to reduce the need to rely on external interpretation guidance as far as possible.

We recommend defining ‘wetlands constructed by artificial means’ using the definition currently in guidance, with examples:

‘Wetlands constructed by artificial means’ includes wetlands and waterbodies that have been deliberately constructed for a specific purpose (eg, stock drinking) and that may require maintenance over time (for example, vegetation or silt removal) to continue to fulfil that purpose. This includes areas of wetland habitat that have formed in or around any deliberately constructed waterbody.

We recommend defining ‘induced wetlands’ in the NPS-FM to support interpretation of part (a), and using the definition currently in the guidance:

‘Induced wetlands’ are wetlands that have resulted from any human activity, except the deliberate construction of a wetland or waterbody by artificial means.

Clarify how wetlands constructed on the site of former natural wetlands should be treated

The key consideration when assessing a wetland constructed by artificial means is the purpose and intent of creating the wetland. If a constructed wetland was built on the site of a former natural wetland, but not to offset or restore that wetland, it is not considered a natural wetland. This would be verified by the regional council on a case-by-case basis. We recommend this be addressed through guidance.

Clarify wetlands within the Coastal Marine Area

The recent High Court judgment²³ declared that the NES-F applies to all wetlands within the CMA, although the decision also commented that the regulations cannot be intended to

²² S 6(c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.

²³ *Minister of Conservation and Royal Forest and Bird Protection Society of New Zealand Incorporated v Mangawhai Harbour Restoration Society Incorporated* [2021] NZHC 3113.

capture the entirety of the CMA. We agree that what constitutes a natural wetland in the CMA is ambiguous at present.

A clear definition of what does constitute a natural wetland in the CMA is required and a delineation protocol similar to that used for inland wetlands may be required for wetlands within the CMA. The Ministry will work with DOC to establish a working definition of 'natural coastal wetland' for the purposes of the regulations.

Activities in the CMA being inadvertently captured as non-complying will be addressed, in part, through changes proposed here to the non-complying regulations (set out in [Part 4B: Drainage – prohibited \(r53\) and non-complying activities \(r52\)](#)) and guidance. Further work is needed to scope the implications emerging for consent, compliance, operations and planning functions for DOC and local government entities.

Significant biodiversity and threatened species protection

We agree with Forest and Bird that the NPS-FM already acknowledges and has provision for threatened species. This is via both the National Objectives Framework threatened species compulsory value as well as clause 3.23(1)(b) which requires councils to map and monitor naturally small wetlands that are known to contain threatened species (see also the Stock Exclusion Regulations which require that stock be excluded from a natural wetland that supports a threatened species).

We recommend amending the definition of natural wetland so that the exclusion under part (c) will not apply to any wetland that contains threatened species (under clause 3.23 of the NPS-FM).

This will align the existing policy requirements and protect wetlands in pasture that provide for the presence of threatened species. We acknowledge that this may result in uncertainty for landholders, require assessment by qualified ecologists (council or otherwise) and therefore incur costs. However, assessment will already be required in considering a consent application, and in many cases councils and DOC already have knowledge of the presence and habitats of threatened species.

We recommend explicitly noting threatened species in the definition of a natural wetland to ensure that the obligation to protect and manage threatened species under the NPS-FM is met.

A good example of where this would provide warranted additional protection is in the kettle hole wetlands of the McKenzie Basin. As raised by ECAN in their submission, there are eight threatened species of kettle hole flora currently identified by DOC that exist in this area that warrant protection.

Replace definition of natural wetland in the Stock Exclusion Regulations

It will be necessary to make a consequential amendment to the definition of natural wetland within the Resource Management (Stock Exclusion) Regulations 2020. It should align with the amended definition of natural wetland in the NPS-FM, to ensure consistency across national policy interpretation (see [recommendation 11](#)).

Recommendations 8–11

Recommendations

8. **(New)** Amend part (a) of the definition of ‘natural wetland’ in the NPS-FM to specify that a natural wetland includes induced wetlands
agree/disagree

9. Include definitions in the NPS-FM for:
 - a. **Wetlands constructed by artificial means** – being wetlands and waterbodies that have been deliberately constructed, including areas of wetland habitat that have formed in or around any deliberately constructed waterbody, or words to that effect
agree/disagree

 - b. **Induced wetlands** – being wetlands that have resulted from any human activity except the deliberate construction of a wetland or waterbody by artificial means, or words to that effect
agree/disagree

10. **(New)** Amend the definition of ‘natural wetland’ in the NPS-FM to specify that where a wetland is identified as having threatened species, then it is a ‘natural wetland’ and the exclusion under part (c) of the definition (in relation to pasture) does not apply
agree/disagree

11. Make a consequential amendment to the Resource Management (Stock Exclusion) Regulations 2020, to align the definition of ‘natural wetland’ with the amended definition in the NPS-FM
agree/disagree

Part 2: Proposed consent pathways

The regulations provide consent pathways to undertake activities such as vegetation clearance, earthworks or water takes (etc), within or near a natural wetland. Without a consent pathway for a select purpose, such activities revert to either prohibited or non-complying under the regulations.

Following feedback on the implementation of the regulations, the Government recognised that additional activities may require a specific consent pathway due to their national and/or regional significance and the necessity for them to occur in a particular location.

The NES-F currently provides a consent pathway for the following purposes:

- wetland restoration
- construction and maintenance of wetland utility structures
- construction maintenance and operation of 'specified infrastructure'
- sphagnum moss harvesting
- arable and horticultural land use
- natural hazard works.

The NPS-FM currently contains an exemption to Policy 6 'no further loss of natural inland wetland extent', set out at 3.22(1), which enables activities for these purposes to be consented, provided that the council is satisfied that the gateway tests are met and that the effects management hierarchy has been applied. The Policy and clause 3.22 should be read together.

The proposed consent pathways would be regulated by the NES-F which also applies to wetlands occurring in the coastal marine area (CMA). Coastal wetlands, however, are not subject to the NPS-FM exemption for specific purposes at clause 3.22 which refers specifically to natural inland wetlands. With regard to coastal wetlands, the New Zealand Coastal Policy Statement would apply (eg, Policy 11 to protect indigenous biological diversity in the coastal environment, including by avoiding adverse effects on areas of predominantly indigenous vegetation in the coastal environment)

For clarity, this section on consent pathways applies in relation to natural inland wetlands.

Proposal

Consent pathways were proposed for quarrying; clean, managed, and landfills; mining; and 'plan-enabled' urban development. Submitters were asked whether a discretionary activity status²⁴ was appropriate. It was proposed that these new activities be subject to the existing gateway tests already provided for specified infrastructure in the NPS-FM, which include the following requirements:

²⁴ For discretionary activities, consent authorities may decline or grant the consent depending on their assessment of effects of the proposal on the environment. If granted, the activity must comply with the conditions set out in the NES-F and any additional conditions imposed by the council.

- (a) the activity must be of significant national or regional benefit
- (b) there must be a functional need for that activity in that location
- (c) adverse effects must be managed through the effects management hierarchy, which requires initial consideration of how to avoid adverse effects where practicable, then how to minimise, remedy, offset and compensate, in that order.

Applications for a resource consent would have to demonstrate to the council how each sequential step of the effects management hierarchy (set out in the NPS-FM) would be applied, before the consent could be granted, with requisite offsetting under the effects management hierarchy to ensure no further loss of natural inland wetland extent or values.

Summary of submissions

Proposed pathways – general

The majority of submitters in favour of the proposed consent pathways provided specific rationale for each of the sectors identified in the Discussion Document. A significant number of submissions opposed the proposed consent pathways in general, including the 5,860 form submissions from Forest and Bird which read, “maintain meaningful laws: reject special ‘consenting pathways’ for industry, which would strip wetlands of all meaningful protection.”

The majority of individual submitters (unaffiliated with a particular industry or organisation), opposed the proposed consent pathways, in general, for the following reasons:

- perceived inconsistency between the proposed consent pathways and the obligation to prioritise the health of water under Te Mana o te Wai (TMotW)
- the importance of wetlands in regulating the adverse effects of the activities for which additional consent pathways were proposed
- belief that offsetting and compensation cannot sufficiently compensate for the ecological and cultural qualities lost in natural wetlands
- a perception that the environment in general should be prioritised over commercial enterprise.

GWRC expressed concern that the proposed consent pathways constituted an inconsistent approach, where restrictions would not be tied to the severity of negative effects of an activity on a natural inland wetland. Some submitters also felt that providing consent pathways for the proposed activities would put additional pressure on councils and would make them susceptible to lobbying from industry, even where the case for those activities in a natural inland wetland area was not well founded.

Gateway test – Functional need

From the sectors for whom a consent pathway is proposed there is general concern that the functional need test is too strict and that many applications for consent would not be able to demonstrate functional need, as currently defined in the National Planning Standards 2019. This view was also fairly consistent among councils, who indicated that fill activities and urban development were highly unlikely to meet their interpretation of the National Planning Standards’ functional need definition.²⁵ This is illustrated in the following from TCC:

²⁵ Hamilton City Council, Environment Canterbury, Auckland City Council, Kapiti Coast District Council, Gisborne District Council and Greater Wellington Regional Council.

TCC's concern, supported by legal advice, is that urban development would generally not be considered to have a 'functional need' to occur in a specific wetland or river location—hence this key policy test would not be met.

Of the councils that raised concern about the interpretation of functional need, all but GWRC asked that the application of functional need to fill sites and urban development be clarified. GWRC remained of the opinion that consent should not be granted to activities for which there was not a strict functional need (as defined in the National Planning Standards).

Some industry submitters considered that functional need should be replaced with operational need or removed all together.²⁶ This was also supported by a small number of councils.²⁷

Gateway test – Regional and/or national significance

As with functional need, submitters in favour of the proposals expressed concern that the test for regional and/or national significance would be too difficult to meet. Submitters requested that this requirement be defined in the context of the proposed activities, to enable consistent application across councils. Submitters on the proposal to provide a consent pathway for plan-enabled development emphasised the necessity for this test to also consider district significance in order to provide for development listed in a district plan.

Offsetting and compensation requirements

Across all consent pathways, submissions in support and opposed highlighted that there is a need for comprehensive guidance on aquatic offsetting and aquatic compensation requirements. Many submitters considered that it was too easy for consent applicants to avoid the offsetting stage of the effects management hierarchy and jump straight to the less desirable aquatic compensation requirement.

Many submitters expressed concern that offsetting was not being undertaken on a like-for-like basis, and that offset wetlands did not constitute an ecological or values-based replacement for those natural inland wetlands that they sought to replace. Forest and Bird in particular was concerned that there is a lack of both policy direction and guidance as to what constitutes acceptable offsetting.

Conversely, some submitters in favour of a consent pathway considered that offsetting was too onerous a requirement where the wetlands concerned were of low ecological value.

Analysis and recommendation

Proposed consent pathways – general

The concern expressed by a significant number of submitters about further loss of natural inland wetland extent and value is acknowledged. However, we are aware that non-complying and prohibited activity status is hindering the activities of some sectors to the extent that the regulations are not workable in practice. 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.

²⁶ Counties Energy Ltd, NZ Steel, Boffa Miskell.

²⁷ Waipa District Council, Waikato Regional Council, Tauranga City Council, Porirua City Council.

The gateway tests, the effects management hierarchy and the ability of councils to exercise additional discretion through the conditions in consents strike a balance between protecting natural inland wetlands and enabling activities that will be of significant benefit to New Zealanders in natural inland wetland areas.

Functional need gateway test

Anecdotal evidence from councils reveals that the functional need gateway test is having the desired effect. Councils report consent applications for specified infrastructure have subsequently been modified to specifically avoid natural inland wetlands, whereas prior to this they would have been overlooked and/or in-filled.

The functional need test is a critical aspect of balancing land use activity with the protection of natural inland wetlands. Without the test, we consider that the policy may no longer be consistent with section 5 or 6 of the RMA.²⁸ Requiring an activity to be undertaken elsewhere, if it can be done so, is consistent with the RMA definition of sustainable management and ensures that natural inland wetlands are only disturbed where an activity must locate or operate in a natural inland wetland area.

The National Planning Standards definition of functional need as currently applied as a gateway test for specified infrastructure is:

Functional need means the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment.

We consider that there is a clear need for specified infrastructure, quarries and mines to locate and operate in particular environments. We therefore do not agree with submitters who proposed that the test be altered, or removed, for all consent pathways and consider that the functional need test should be retained for specified infrastructure and applied to quarrying and mining (see [recommendations 14](#) and [28](#)).

However, the test is more complicated as it applies to the proposed consent pathways for landfills, cleanfills and managed fills, and plan-enabled urban development, because these activities need not be located in particular environments in order to retain their function (ie, they will always be able to be located elsewhere). We consider that it is implicit in the provision of a consent pathway for certain activities within the regulations that, where appropriate, the definition of functional need can be met and the activity consented. However, we are aware that this interpretation is an untested application of the definition in the National Planning Standards.

The many submissions requesting clarity on the intent and application of functional need in this context, including those of local government, makes it clear that the definition to date has been applied strictly by councils. We tested several options in relation to application of the functional need test to ensure that the policy intent is achieved.

Option 1: Apply ‘functional need’ as a gateway test to all proposed consent pathways

We consider it appropriate that the definition of functional need continues to align with the National Planning Standards to ensure consistency across national direction instruments. As

²⁸ Purpose, principles and matters of national importance.

set out above, we have anecdotal evidence from councils that the application of the functional need test is having the desired effect of encouraging the design of consent applications to avoid natural inland wetlands.

However, it would not be effective to provide a consent pathway for activities which would consistently be unable to pass the gateway test. We have concerns that the definition is untested and unsuitable in respect of the proposed consent pathways for plan-enabled urban development, landfills, cleanfills and managed fills. We are aware that in practice, the interpretation of functional need requires an assessment by councils of whether the activity can only occur in that environment. Current guidance issued by councils²⁹ states that these assessments have been based on analysis of whether the location in which the specified infrastructure is proposed is necessary to its function, or whether that infrastructure could be located elsewhere and retain its function. Broader rationales for the activity to occur in the location (eg, financial considerations, private ownership), are considered to constitute operational need.

Plan-enabled urban development and landfills, cleanfills and managed fills, will always be able to be located elsewhere while retaining their function, but may be required to be located in a natural inland wetland area for reasons beyond the current scope of functional need (eg, requirements under the NPS-UD or for fills in close proximity to a development, quarry or mine). We consider that functional need in the context of these proposed consent pathways could require an extrajudicial application of the current definition, which could have broader consequences for the interpretation of functional need in other contexts. Conversely, should the definition be applied strictly, then these activities would be unable to pass the gateway test of functional need.

Option 2: Make the test ‘operational need’, for landfills, cleanfills and managed fills, and urban development

Many industry submitters proposed that the interpretation issues associated with the requirement for functional need would be solved by changing the requirement to operational need, currently defined in the National Planning Standards as:

Operational need means the need for a proposal or activity to traverse, locate or operate in a particular environment because of technical, logistical or operational characteristics or constraints.

In our view, operational need is a considerably broader test than functional need. While making the test operational need would provide a solution to the interpretation issues with functional need, it would also significantly weaken the test. We consider that technical and operational characteristics can be interpreted too broadly and may compromise the policy intent by enabling an activity due to financial considerations or convenience, rather than providing for the activity only as absolutely required.

²⁹ See Otago Regional Council [technical-advice-note-nps-for-freshwater-management-2020-what-is-a-functional-need.pdf \(orc.govt.nz\)](#) and ECAN [NPSFMFunctionalvsOperationNeedTechnicalAdviceNote May2021.PDF](#).

Option 3: Make the test ‘best practicable location’, for landfills, cleanfills and managed fills and urban development, retain ‘functional need’ for specified infrastructure, quarries and mining

TCC proposed that introducing a new test for plan-enabled urban development would enable the regulations to retain the functional need test for the current consent pathways, and the proposed pathways for quarrying and mining, while introducing a fit-for-purpose test for urban development which does not require the activity to be locationally constrained. We agree with TCC that the National Planning Standards definition of functional need is problematic in the urban development context because urban development will always be able to locate elsewhere. We consider that this also applies to the proposed consent pathway for landfill, cleanfill and managed fill activities.

A new gateway test for these activities would ensure that the proposed pathways are viable, while still providing a high threshold gateway test to retain the policy intent: to allow activities to occur only where necessary.

We propose that the council must be satisfied that the location is the ‘best practicable location’ for the plan-enabled urban development, landfill, cleanfill or managed fill to occur in. Best practicable location would be defined in the NPS-FM as:

Best practicable location means the best location for an activity to be undertaken in, having regard, among other things to—

- a) in relation to ‘plan-enabled’ development and landfill, cleanfill and managed fill activities
 - i. the scope and design of the activity so that adverse effects are avoided to the extent possible, and
 - ii. the effects on the natural inland wetland of that activity compared to the effects on the environment in other locations, and
- b) in relation to ‘plan-enabled’ urban development, the extent to which development is required to meet development capacity under the NPS-UD.

We consider that this option retains the policy intent by tying the test to the outcomes that the policy is aiming to achieve. In the case of fill sites, the best practicable location test coupled with the national/regional significance test, will ensure that these activities are only consented where they are of national and regional significance and where there are not practicable alternative sites which avoid natural wetland areas. In the case of plan-enabled urban development, development will only be able to be consented in natural wetland areas where there are not practicable alternative sites, with the additional safeguard on runaway development through the requirement for council to consider the extent to which development is required in that region or district under the NPS-UD.

We recommend Option 3. While we consider that the functional need test is fit for purpose for specified infrastructure and for the proposed consent pathways for quarrying and mining, we do not consider that either a functional need test or an operational need test are fit for purpose for landfill, cleanfill, managed fill and urban development activities. Applying an untested interpretation of functional need as the gateway test for these activities is likely to result in implementation issues ranging from inconsistent interpretation to an unviable consent pathway. Conversely, an operational need test would be too broad and would likely result in widespread loss of natural inland wetland extent. We consider that the best practicable location test will capture the policy intent to provide a consent pathway for

landfill, cleanfill, managed fill and plan-enabled urban development activities to occur in natural wetland areas where there are no other viable options for the activity's location. The three options discussed here are set out in the relevant recommendations for fills and urban development.

Regional and/or National significance requirement

We consider that the requirement for an activity to be of national and/or regional significance is an important control on land use activity in and around natural inland wetlands and reflects the definition of sustainable management in the RMA. We also consider that the requirement for regional significance will be specific to each region. Any attempt to define national and/or regional significance in the regulations will unintentionally constrain what should be an informed assessment, made by councils, of the benefits that the proposed activity will have for the region/nation. However, it is appropriate to also provide for district significance with respect to urban development to align with the requirements of the NPS-UD (see [recommendation 42](#)).

Offsetting and compensation requirements – principles included in the NPS-FM

We do not accept the view expressed by some individual submitters that offsetting and compensation should not be required. The effects management hierarchy is a core component of meeting Policy 6 of the NPS-FM and TMotW. We also note the effects management hierarchy must be applied sequentially so that compensation is not, as some have stated, acceptable in place of offsetting but is required to address any 'more than minor residual effects' remaining after offsetting.

However, we agree with Forest and Bird that there is a need for offsetting principles to be included within the NPS-FM (rather than in guidance). We recommend including, in an appendix to the NPS-FM, principles for both offsets and compensation and linking these to the effects management hierarchy.

The proposed principles are set out in [Appendix 1](#) of this report. We have consulted with DOC on developing these. They are based on those in the proposed National Policy Statement for Indigenous Biodiversity (NPSIB). This ensures alignment between the NPSIB and NPS-FM. The principles are a mandatory set of best practices specific to aquatic offsets and therefore include biodiversity but also hydrological functioning etc. The principles would apply to offsetting for both rivers and wetlands.

There is an opportunity to further test the principles with councils and practitioners as part of an exposure draft prior to making final decisions on the content. There is additional support that can be provided to ensure offsetting is effective and that values are protected (see [Part 4A: Alignment with the RMA, Te Mana o te Wai and Policy 6](#)).

Recommendation 12

Recommendation

12. Include principles for offsetting and compensation in an appendix of the NPS-FM as set out in [Appendix 1](#) of this Summary Report and link the application of these principles to the effects management hierarchy

agree/disagree

Part 2A: Quarries

Context

Resources from quarries, such as aggregates and sand, are used in the construction and maintenance of housing, roading and other infrastructure. The Government received feedback that the wetland regulations were preventing access to resources for the construction of specified infrastructure (as defined in the NPS-FM). Because the regulations already provide a consent pathway for the construction of specified infrastructure, the Government proposed that a consent pathway also be provided for the resources necessary for the construction and maintenance of that infrastructure.

Proposal

The proposal was to provide a discretionary consent pathway for the expansion of current quarrying activities, and the development of new quarries within, or within 100 metres of, a natural wetland. Submitters were asked if they agreed with the proposal, whether discretionary was the right activity status, and whether quarrying activities should be subject to any additional conditions above those set out in the gateway test.

Summary of submissions

This proposal was opposed by the majority of environmental non-government organisation (ENGO) submitters³⁰ and unanimously supported by industry. Many other submitters conveyed reluctance about the provision of a consent pathway for quarrying activities but did not oppose it outright. Only one local council was outright opposed and of the eight councils that submitted in favour of a consent pathway for quarries, there was an even split between those favouring non-complying, and those who considered that restricted discretionary would be a more appropriate activity status.

Industry submitters highlighted that the aggregate industry is a fundamental contributor to the provision of specified infrastructure and that if it remained a prohibited activity within, or within 100 metres of, a natural inland wetland, there would be substantial additional costs incurred by quarries and their customers, which would flow through to increased costs for aggregate and in turn housing and infrastructure.³¹ They also emphasised the necessity for quarries to be near infrastructure and urban development sites to reduce cost and greenhouse gas output from transportation. Industry submitters expressed a preference for restricted discretionary activity status to provide certainty for consent applications. Many of these submitters felt that the functional need test should be replaced with operational need for similar reasons.

Individual submitters and some councils expressed reservations about the provision of a consent pathway but recognised that quarrying may be necessary to support the implementation of the NPS-UD. Of these submitters, most were in favour of quarrying activities remaining non-complying, to send a clear message that the activity would not be consented if the circumstances were not exceptional and if the effects of the activity were more than minor.

³⁰ EDS supported the provision of a consent pathway for quarrying.

³¹ Winstone Aggregates, Fulton Hogan, Kaipara Limited and J Swap.

Some submitters were unconvinced of the functional need for quarrying to occur in natural inland wetland areas and felt that ample aggregate resources were available elsewhere in the country. Several submitters expressed concern that quarrying activities, by their very nature, would cause more than minor damage to natural inland wetlands and that “no amount of minimisation, remediation or offsetting will restore the mana or mauri of a natural wetland after such an activity has occurred.”³²

Definition of quarrying and scope of consent pathway

All the substantive submissions received on a consent pathway for quarrying highlighted the necessity for quarrying to be defined, as it was currently unclear which activities would be provided with a consent pathway (eg, whether ancillary activities such as car parks and office buildings would be considered quarrying activities). Many extraction industry submitters suggested that the definition already provided in the National Planning Standards should be adopted:

Quarrying activities means the extraction; processing (crushing, screening, washing and blending); transport; storage; sale and recycling of aggregates (clay, silt, rock and sand); the deposition of overburden material; rehabilitation; landscaping and cleanfilling of the quarry; use of land and accessory buildings for offices, workshops and car parking areas associated with the operation of the quarry.

Many submitters, including those from other industries, councils and individuals, agreed that a consent pathway ought to be provided for quarrying activities, but that this should be strictly limited to locationally bound activities such as the extraction of rock and should not include ancillary activities (roads, buildings etc).

Small-scale quarrying activities

Also related to the definition of quarrying activities were a small number of submissions received on whether the consent pathway would apply to small-scale, farm-based quarries. Agricultural industry submitters and land holders submitted that these operations were a common way of sourcing gravel and limestone for the construction of animal movement and standing areas. Irrigation New Zealand proposed that this could be a permitted activity controlled by freshwater farm plans.

Analysis and recommendation

Providing a consent pathway for quarries

We agree with industry submitters that quarrying activities require a consent pathway as subsidiary activities that support the construction and maintenance of specified infrastructure. The primary rationale for including a consent pathway for quarrying is the locational constraint of aggregate materials.

We consider that discretionary activity status is appropriate for quarrying activities. The application of the gateway tests of functional need and regional and/or national significance are sufficient to ensure that only appropriate activities are consented. The ability of councils to exercise discretion in deciding whether to grant a resource consent will mean that they can consider other aspects of the viability of the activity in that area (eg, significance of the natural

³² Ngāi Tahu – Ngāti Waoa Rūnanga Trust.

inland wetland, impacts on surrounding land use). This will be an additional check and balance on quarrying activities being consented in a natural inland wetland area.

Definition of quarrying and scope of consent pathway

We agree with submitters that quarrying activities should be defined in the regulations. The definition will determine the scope of activities that are provided for under the regulations. Submissions clearly illustrate the two options for defining quarrying and the scope of a consent pathway, set out below.

Option 1: Apply the National Planning Standards definition of quarrying and activities

Adopt the National Planning Standards definition of quarrying activities as follows.

- **Quarry** means a location or area used for the permanent removal and extraction of aggregates (clay, silt, rock or sand). It includes the area of aggregate resource and surrounding land associated with the operation of a quarry and which is used for quarrying activities.
- **Quarrying activities** means the extraction, processing (including crushing, screening, washing, and blending), transport, storage, sale and recycling of aggregates (clay, silt, rock, sand), the deposition of overburden material, rehabilitation, landscaping and cleanfilling of the quarry, and the use of land and accessory buildings for offices, workshops and car parking areas associated with the operation of the quarry.

This would include the resource itself and all ‘quarrying activities’ that are ancillary to the action of quarrying (eg, placement of overburden, but also roads and buildings) some of which may be able to be located elsewhere. The location of these would be addressed as part of the consent process (ie, the gateway test would ensure ancillary quarry activities avoid natural inland wetland areas).

Option 2: Define and provide for quarrying of the resource only (recommended)

Adopt a subset of the National Planning Standards definition, which would distinguish between the extraction of the resource and ancillary activities:

Quarrying applies only to the area of resource, and to the activities necessary for extraction of aggregate.

Under this option, extraction of aggregate would be a discretionary activity in order to reflect the clear functional need for this to occur within a natural inland wetland area and their centrality to providing aggregate materials for significant infrastructure and development projects. Ancillary quarrying activities would remain non-complying/prohibited in natural wetlands and would only be consented where they resulted in a no more than minor effect on the environment and/or contravened a regional plan or policy.

We note that subsequent recommendations for consent cleanfills would address the requirements for disposal of overburden and that it is common practice for councils to consider an application for consent as a whole, regardless of whether different consent pathways are applied, meaning that there would be no additional consent burden on the applicant.

We recommend Option 2. We do not consider it appropriate for the ancillary activities such as roads and buildings of quarries to be consented in natural inland wetland areas. Providing a

consent pathway for ancillary activities would significantly broaden the scope of the pathway beyond the policy intent, due to the broad range of ancillary activities captured under the term 'quarrying activities'. Option 2 provides a clear signal of the policy intent and certainty for councils and industry as to what is in scope.

Small-scale quarrying activities

Consent applications for small-scale quarrying activities will not meet the gateway test of national and/or regional significance. While it may be common practice for small-scale farms and operations to extract aggregate resources from their own properties, we consider that there are other, more appropriate ways to obtain aggregate that do not disturb a natural inland wetland (eg, purchasing, or sourcing aggregate from outside natural inland wetland areas).

Activities should be consented only where they are nationally and/or regionally significant to strike a balance between the protection of New Zealand's remaining wetlands and the importance of certain activities to the country and/or region. While small-scale extraction of aggregate may be cost-effective and convenient for small-scale operators, undertaking the activity in a natural inland wetland area is not consistent with the requirement for sustainable management under the RMA.

Recommendations 13–17

Recommendations

13. **Proceed as proposed** and include quarries in the list of activities exempt from the general policy to avoid natural inland wetland loss, protect their values and promote their restoration in 3.22(1)(a) of the NPS-FM
agree/disagree
14. Apply the same provisions to quarries as in the NPS-FM at 3.22(1)(b)(i), including the gateway tests of: significant national or regional benefit in 3.22(1)(b)(ii), and functional need in (iii); and the effects management hierarchy as per 3.22(b)(iv)
agree/disagree
15. Amend the NES-F to provide for quarrying activities as a discretionary activity and subject to the same provisions already in place for the construction of specified infrastructure
agree/disagree

Defining quarrying and scope of the consent pathway

16. **Option 1:** Include the definition for **quarry** and **quarrying activities** as set out in the National Planning Standards 2019 which also includes ancillary activities associated with quarrying
agree/disagree
- OR**
17. **Option 2:** Include a definition of **quarrying** that applies only to the extraction of aggregate at site and not to ancillary activities (**recommended**)
agree/disagree

Note the proposed consent pathway for cleanfill activities will provide for the disposal of overburden

Part 2B: Cleanfills, managed fills and landfills

Context

Feedback from waste management operators has been that most fill sites in New Zealand are situated within valleys or gullies for functional reasons and are often damp areas of pasture or gully heads where natural inland wetlands may occur. The regulations in the NES-F mean that applications for new/expanding fill sites are non-complying or prohibited. While these sorts of operations do not have to be situated where a natural resource occurs, fills are necessary for construction and maintenance of infrastructure and if they are not situated close to development sites, they can constrain the ability to appropriately dispose of waste and overburden.

Proposal

The Government proposed to provide a discretionary consent pathway for activities associated with the operation of landfills, cleanfills and managed fills within, or within 100 metres of, a natural wetland.

Submitters were asked whether they agreed with the proposal, whether discretionary was the right activity status and whether fill activities should be subject to any additional conditions above those set out in the gateway test.

Summary of submissions

This proposal was broadly supported by quarrying and development industry submitters and universally opposed by ENGOs. Of the councils that submitted on the proposal, six opposed the provision of a consent pathway for fills. Of the seven that supported the provision of a consent pathway, two considered that non-complying would be a more appropriate consent pathway and one submitted that restricted discretionary would be a more appropriate activity status. The rationale behind these submissions is provided below.

Submitters in support of the proposal emphasised that fills are essential infrastructure for the maintenance and growth of healthy communities and will remain critical aspects of the waste management system.³³ Although not constrained locationally, submitters observed that fills commonly occur in valleys, gullies and depressions, and in proximity to development to avoid substantial cost implications and higher carbon emissions from transportation.

Many submitters who supported the proposed consent pathway for fill sites noted that the lack of locational constraints (unlike quarries) would mean that consent applications would be unable to meet the functional need test, as fills would always be able to be located elsewhere and would therefore not meet the National Planning Standards definition of functional need.

The majority of submitters in support agreed that discretionary was the right activity status and would provide regulatory authorities with the ability to review and assess consent applications on a site-specific basis. However, a significant number of those in support believed that restricted discretionary status was necessary for applicants to have greater confidence in the success of their application, subject to meeting conditions.

³³ WasteMINZ Disposal to Land Sector Group.

Functional need as applied to landfill, cleanfill and managed fill activities

A substantial number of submitters who opposed this proposal noted that there was no functional need for fills to occur within, or within 100 metres of, a natural inland wetland and that they should therefore remain non-complying or prohibited. Many saw the proposal as being at odds with moves to minimise waste and submitted that the provision of a consent pathway for fill activities was contrary to TMotW and New Zealand’s broader environmental and Government goals. Unease was also conveyed about the leaching effects of fills on freshwater and about the adverse ecological effects that this may have not only on natural inland wetlands, but also on downstream freshwater environments.

Activity status tied to type or size of fill

Some submitters suggested that the activity consent status should be tied to the type of fill and that cleanfills and managed fills were more important and less ecologically harmful than landfills and should be provided with either restricted discretionary or discretionary pathways, while landfills should remain non-complying.

There was an even split among a small minority of submitters who believed that a consent pathway should be provided only to large fills, or only to small fills. The rationale for small fills being that they are often a component of development sites and/or land use activities, but being small, have less severe ecological impacts. The rationale for large sites was aptly captured by one individual submitter as the prevention of “death by a thousand cuts.”

Analysis and recommendation

Providing a consent pathway for cleanfills, landfills and managed fills

We accept that fills are commonly located within valleys, where natural inland wetlands are often situated. We also accept that there is an ongoing requirement for fill activities, both as ancillary activities to key industries and features of growing urban environments.

Defining ‘fills’ for the purposes of the regulations

Landfills and cleanfills are already defined in the National Planning Standards.

- **Landfill** means an area used for, or previously used for, the disposal of solid waste. It excludes cleanfill areas [and for the purposes of the regulations also excludes managed fill areas].
- **Cleanfill area** means an area used exclusively for the disposal of cleanfill material.³⁴

We recommend that these definitions be adopted in order to ensure continuity across Government policy. Managed fills are not currently defined within the National Planning Standards. We propose the following definition for the purposes of this policy.

- **Managed fill** means an area used for the disposal of material with low-grade contamination, such as demolition material, received from existing infrastructure.

³⁴ ‘Cleanfill material’ is also subsequently defined in the National Planning Standards.

Discussion on activity status for differing types of fill

A considerable number of submitters highlighted the need to distinguish between the ecological impacts and significance of the three proposed fill activities.

We accept the submissions from the quarrying and development industry that clean and managed fills are required ancillary services to their activities. In some circumstances it may be appropriate for clean and managed fills to be consented in natural inland wetland areas, where they support activities that are provided with a consent pathway under the regulations (ie, construction, maintenance and operation of specified infrastructure). We consider that discretionary activity status is appropriate and will enable councils to exercise discretion in granting these consents.

Many submitters opposed the provision of a consent pathway for landfills based on the perception that it would be inconsistent with New Zealand's waste minimisation ambitions. The purpose of the Waste Minimisation Act 2008, is:

to encourage waste minimisation and a decrease in waste disposal in order to:

- (a) protect the environment from harm; and
- (b) provide environmental, social, economic, and cultural benefits.³⁵

However, we accept that landfill operations continue to be an important feature of urban environments (in the near term at least). We considered two approaches for the activity status of landfill activities.

Non-complying status: This would largely retain the status quo but would remove the prohibited status in respect of any effect that would drain a natural inland wetland. Landfill activities would be unable to be consented where their impacts on natural inland wetlands were more than minor, or where they contravened a regional policy or plan. This would better align with the purpose of the Waste Minimisation Act and further encourage reduced waste to landfill.

Discretionary status (recommended): Consents for landfill activities will be subject to the gateway tests and the discretion of councils. This would provide an appropriate balance between the necessity for activities to occur and the protection of natural inland wetlands.

We recommend applying a discretionary status to landfills because while we consider it important that this policy supports the purpose of the Waste Minimisation Act, we must also consider the near-term need for landfill for urban and developing areas. We consider that a discretionary activity status is appropriate and that where viable alternatives to landfills are available, landfill activities would not pass the requirement for 'best practicable location'. Councils could also consider waste minimisation goals and alternative waste management solutions as part of the discretion applied to the consent process.

Functional need as applied to landfill, cleanfill and managed fill activities

We agree with submitters that the gateway test of functional need is not fit-for-purpose for landfills, cleanfills and managed fills as fills will always be able to locate elsewhere while retaining their function but may be required in natural wetland areas due to other

³⁵ Waste Minimisation Act 2008, Part 1, Section 3.

considerations (eg, proximity to an urban area). We therefore consider that for fill sites to be consented where appropriate, the gateway test should be best practicable location (see [recommendation 23](#)).

Activity status tied to size of fill

We consider that consents for fill activities should be determined based on their necessity to occur in that location and national and/or regional significance rather than on their size. This will ensure a balance between the necessity to provide a consent pathway for fills and the policy intent to protect natural inland wetlands. We do not recommend provision of a consent pathway on the basis of size.

Recommendations 18–25

Recommendations

18. **Proceed as proposed** and include cleanfills, managed fills and landfills in the list of activities exempt from the general policy to avoid natural inland wetland loss, protect their values and promote their restoration in 3.22(1)(a) of the NPS-FM

agree/disagree

19. Apply the same provisions to cleanfills, managed fills and landfills as in the NPS-FM at 3.22(1)(b)(i), including the significant national or regional benefit gateway test at 3.22(1)(b)(ii) and the effects management hierarchy as per 3.22(1)(b)(iv)

agree/disagree

20. **Option 1:** Apply the current definition of ‘functional need’ as set out in the National Planning Standards as a gateway test to landfills, cleanfills and managed fills

agree/disagree

OR

21. **Option 2:** Apply the current definition of ‘operational need’ as set out in the National Planning Standards as a gateway test to landfills, cleanfills and managed fills

agree/disagree

OR

22. **Option 3:** Make the gateway test in the NPS-FM ‘best practicable location’ for landfills, cleanfills and managed fills (**recommended**)

AND

23. Include the following definition, or words to that effect in the NPS-FM

Best practicable location: means the best location for an activity to be undertaken in, having regard, among other things to–

- a) in relation to ‘plan-enabled’ development, and landfill, cleanfill and managed fill activities
 - i. the scope and design of the activity, so that adverse effects are avoided to the extent possible, and
 - ii. the effects on the natural inland wetland of that activity compared to effects on the environment in other locations, and
- b) in relation to ‘plan-enabled’ urban development, the extent to which development is required to meet development capacity under the NPS-UD

agree/disagree

AND

24. Amend the NES-F to make landfill, cleanfill and managed fill activities a discretionary activity subject to the same provisions already in place for the construction of 'specified infrastructure'

agree/disagree

25. Provide for the following definitions in the NPS-FM and NES-F:

Landfill has the meaning given by the National Planning Standards 2019.

Cleanfill has the meaning given by the National Planning Standards 2019

Managed fill means an area used for the disposal of material with low-grade contamination, such as demolition material, received from existing infrastructure, or words to that effect

agree/disagree

Part 2C: Mining

Context

Like quarries, mines can only be situated where the resource is located. The Government received feedback that the wetland regulations were preventing access to mineral deposits. In New Zealand, minerals such as gold, platinum group metals, nickel, copper and tungsten are present, and some may contribute to clean technologies as part of the transition to a low-emissions economy.

Proposal

The Government proposed a discretionary consent pathway for the activities and operation of mines within, or within 100 metres of, a natural wetland.

Submitters were asked whether they agreed with the proposal, whether discretionary was the right activity status and whether mining activities should be subject to any additional conditions above those set out in the gateway test (eg, providing a consent pathway only for the mining of minerals that are required for projects of national significance and are not fossil fuels, or requiring additional conditions around offsetting).

Summary of submissions

Mining activities were the most contentious of the activities proposed for additional consent pathways, with a near equal number of submitters in favour and opposed. However, of the ten councils that submitted, seven were in support of a consent pathway for mining activities. Of these seven:

- one considered that restricted discretionary was a more appropriate activity status
- one submitted that non-complying was a more appropriate activity status
- two submitted that the pathway should explicitly exclude coal
- three were broadly opposed to the provision of a consent pathway for mining activities.

Those in favour noted that minerals were locationally constrained and therefore mining had a functional need to occur in natural inland wetland areas where mineral deposits also occurred.

Submitters in favour also emphasised the ongoing importance of mined minerals (especially coal) for heating, building and maintenance of essential infrastructure and future technologies of environmental benefit.

Those opposed were primarily individuals and ENGOs. As with the proposals for quarrying, submitters considered that the nature of mining activities would lead to the complete and irreparable destruction of natural inland wetlands. Concern was commonly expressed that the proposal was indicative of a value judgement that placed economic benefit above environmental protection.

A small number of submitters also expressed concerns related to the effects of the removal of minerals on wetland ecology, from both a mātauranga Māori and ecological perspective. The theme of these concerns is well captured by the following submission from the National Wetland Trust:

Minerals are as much a part of the whakapapa of a wetland as the hydrology, plant life and fauna. Take paru (muds) as an example- they provide important clues into the functionality and health of the wetland in terms of the parts we can't see. They can be made up of the minerals that these companies seek to extract and/or their geochemistry can be severely impacted due to extraction of minerals.

The same submitters were concerned about the effects of the leeching of heavy metal pollutants to natural inland wetland areas as a consequence of mining activities.

Requests for the same consent pathway for quarrying and mining

Consistent with the broader submissions on additional consent pathways, the majority of industry submitters considered that the focus of the policy should be the effects of activities on natural inland wetlands, rather than the perceived benefits of the activity. On this basis, submitters from the extractive industry (quarrying and mining) considered that there was little merit in distinguishing between mining and quarrying, both being extractive industries that would result in similar ecological effects on natural inland wetland areas.³⁶

Definition of mining and scope of consent pathway

As with the proposals for quarrying activities, submitters both in support and opposition to the proposals highlighted a need for mining activities to be defined in the NES-F for the scope of the proposals to be clear (eg, does mining activities also include prospecting?). Extractive industry submitters expressed a clear preference for the definition included in the Crown Minerals Act 1991.³⁷

Controls on minerals to be mined

Several industry submitters strongly opposed the option in the Discussion Document for controls on the type of mineral mined, particularly coal. They submitted that coal remains a resource in demand in New Zealand and that restricting the mining of coal through the NPS-FM and NES-F would be poor policy-making.³⁸

³⁶ Beca Group, Straterra.

³⁷ Bathurst Resources LTD and BT Mining LTD.

³⁸ Business Z, Bathurst Resources LTD, BT Mining LTD, Straterra.

Analysis and recommendation

Requests for the same consent pathway for quarrying and mining

We agree with extraction industry submitters that mining is similar in its effects to quarrying. We also agree that there is a clear functional need for mining to occur in particular environments. However, we also that consider analysis is required of the benefits of the output compared to its potential detrimental effects, and alignment with other Government objectives (including consideration of additional conditions on an activity to mitigate these effects or align it with national direction). For this reason, we analyse the case for a consent pathway for mining separately from quarrying. Options for a consent pathway for mining are as follows.

Providing a consent pathway for mining

Option 1: Do not provide a consent pathway for mining – status remains non-complying (or prohibited within a natural wetland)

This option recognises the considerable opposition to providing for mining in natural inland wetlands expressed by submitters. Under this option, mining and ancillary activities would remain non-complying and/or prohibited (where they resulted in drainage of a natural inland wetland).

Option 2: Provide a discretionary consent pathway for mining (recommended)

We consider that there is a functional need for mining activities to occur where the mineral is located, and in some situations, this may be within a natural inland wetland. We consider that the test for national and/or regional significance is sufficient to ensure that only necessary mining activities can occur in a natural inland wetland and that this will mitigate concern that consents for mining would be issued for purely economic reasons.

Defining mining and the scope of the consent pathway

We agree with submitters that if mining is provided with a consent pathway in the NES-F it should be defined in the regulations. To ensure alignment across legislation we agree with submitters that it would be appropriate to use the definitions currently prescribed in the Crown Minerals Act. As with quarrying there are two options for how mining could be defined, which will determine the scope of the proposed consent pathway.

The Crown Minerals Act currently differentiates between mining and mining operations as follows.

Mining—

- (a) means to take, win, or extract, by whatever means—
 - (i) a mineral existing in its natural state in land; or
 - (ii) a chemical substance from a mineral existing in its natural state in land; and
- (b) includes—
 - (i) the injection of petroleum into an underground gas storage facility; and
 - (ii) the extraction of petroleum from an underground gas storage facility; but
- (c) does not include prospecting or exploration for a mineral or chemical substance referred to in paragraph (a).

Mining operations—

- (a) means operations in connection with mining, exploring, or prospecting for any Crown owned mineral; and
- (b) includes, when carried out at or near the site where the mining, exploration, or prospecting is undertaken—
 - (i) the extraction, transport, treatment, processing, and separation of any mineral or chemical substance from the mineral; and
 - (ii) the construction, maintenance, and operation of any works, structures, and other land improvements, and of any related machinery and equipment connected with the operations; and
 - (iii) the removal of overburden by mechanical or other means, and the stacking, deposit, storage, and treatment of any substance considered to contain any mineral; and
 - (iv) the deposit or discharge of any mineral, material, debris, tailings, refuse, or wastewater produced from or consequent on the operations; and
 - (v) the doing of all lawful acts incidental or conducive to the operations; and
- (c) includes any activities relating to the injection into and extraction of petroleum from an underground gas storage facility.

Option 1: Provide for ‘mining’ (defined above) as a discretionary activity, but not ‘mining operations’ (recommended)

Under this option, the split between mining and mining operations (as defined in the Crown Minerals Act), would be retained. Only the extractive activities of mining would be defined in the NPS-FM/NES-F and provided with a discretionary consent pathway on the basis that the mineral resource itself is locationally constrained but operations are not. Mining operations would be subject to non-complying/prohibited regulations as relevant.

We recommend this option because in cases where mineral deposits are situated in a natural inland wetland there is a clear functional need for extractive mining activities to be undertaken there. We consider however, that some mining operations (as defined in the Crown Minerals Act) are beyond the scope of the activities provided for under the NES-F consent pathway (ie, vegetation clearance, earthworks and land disturbance, taking, use damming and diversion of water). As such we do not consider the definition of mining operations should be incorporated into the NPS-FM/NES-F.

As with quarrying, we consider that the related activity of disposal of overburden would be subject to the clean and managed fill consent pathway, and therefore able to be consented.

Option 2: Include both ‘mining’ and ‘mining operations’ and provide discretionary activity status for both

Under this option, both mining and mining operations (as defined in the Crown Minerals Act), would be considered mining activities in the NPS-FM/NES-F. A discretionary consent pathway would be provided not only for the extractive activities of mining, for which there is a clear functional need, but also to mining operations (eg, transport and processing), which may be able to be located elsewhere. If this option is progressed, consideration of these activities would be subject to the gateway tests and offsetting requirements.

The definition of mining operations includes “the removal of overburden by mechanical or other means, and the stacking, deposit, storage, and treatment of any substance considered to contain any mineral” (under (b)(iii)). However, we consider that this would be captured under the proposal for a clean/managed fill consent pathway.

Additional controls on minerals to be mined

One of the primary concerns of submitters was that the proposals for a consent pathway for mining activities may include the mining of fossil fuels (in particular, coal). Other submitters considered that it would be inappropriate for the policy to specifically exclude coal from the definition of mining when there are ongoing requirements for the provision of coal in New Zealand. We consider that coal requires further consideration, especially in respect of the Government's aspiration to transition to 100 per cent renewable electricity generation by 2030, and other commitments made under the Paris Agreement. The options are as follows.

Option 1: Enable all minerals, including coal, to be mined under the proposed consent pathway

Several submitters do not think that the NPS-FM and NES-F are appropriate mechanisms through which to place controls on types of minerals to be mined. We accept submissions from industry that there is an ongoing need for coal in New Zealand and these submitters are correct in the assertion that the purpose of this policy and regulations is not to manage New Zealand's transition to a zero-carbon economy, nor to regulate activities in accordance with this.

Option 2: Exclude coal from minerals able to be mined under the proposed consent pathway

This option addresses concerns raised by submitters that natural inland wetlands were being sacrificed for activities that would result in further lasting damage to the environment, contrary to the requirement for sustainable management under RMA. It is also consistent with New Zealand's ambitions expressed in the Climate Change Response (Zero Carbon) Amendment Act 2019, for net accounting emissions of greenhouse gases to be zero from 1 January 2050.³⁹ Under this option, coal would be excluded from the consent pathway for mining.

Option 3: Apply conditions to the ability to mine coal under the proposed consent pathway (recommended)

A key function of the regulations is to balance sustainable development with natural inland wetland protection and at the same time align with other Government policies and legislation where they have identified an activity is not sustainable.

We therefore recommend that coal mining should be included under the proposed consent pathway, but with two conditions placed on the ability to mine coal.

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

³⁹ Climate Change Response (Zero Carbon) Amendment Act 2019, Part 1B, Subpart1 – 2050 target, 5Q(1)(a).

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.

Condition (b) – Allow the mining of coking coal past 2030

Coking coal refers to coal with a quality that allows the production of a coke suitable to support a blast furnace charge. It is used in the production of iron and steel.⁴¹ We consider that there will be an ongoing need for coking coal beyond 2030 to support development and infrastructure projects.

We therefore propose that the mining of coking coal be allowed to continue past 2030. As for other minerals given provision under this proposed consent pathway, discretionary activity status will provide the appropriate balance between the necessity to protect natural inland wetlands and support necessary development and infrastructure. Coking coal would only be able to be mined subject to the gateway tests for functional need and national/and or regional significance, which will ensure that natural inland wetlands are not disturbed where there are viable alternative sites for its extraction.

Recommendations 26–34

Recommendations

Providing a consent pathway for mining

26. **Option 1:** Do not progress a consent pathway for mining or associated activities in the NES-F

agree/disagree

OR

27. Option 2: (recommended)

Provide a consent pathway for mining by including mining in the list of activities exempt from the general policy to avoid natural inland wetland loss, protect their values and promote their restoration in 3.22(1)(a) of the NPS-FM

AND

28. Apply the same provisions to mineral mining as in the NPS-FM at 3.22(b)(i), including the gateway test of national or regional benefit in 3.22(b)(ii) and functional need in (iii); and the effects management hierarchy as per 3.22(b)(iv)

AND

29. Provide for mineral mining as a discretionary activity in the NES-F and subject to the same provisions already in place for the construction of specified infrastructure.

agree/disagree

⁴⁰ Ministry of Business, Innovation & Employment. NZ Battery Project. Retrieved from <https://www.mbie.govt.nz/building-and-energy/energy-and-natural-resources/low-emissions-economy/nz-battery/> (accessed 19 May 2022).

⁴¹ New Zealand Steel is the country's sole producer of flat rolled steel products for the building (eg, Coloursteel), construction, manufacturing and agricultural industries.

Defining 'mining' and the scope of the consent pathway

30. **Option 1:** Apply the Crown Minerals Act 1991 definition of 'mining' in the NPS-FM and NES-F but do not include 'mining operations' (**recommended**)
- agree/disagree*

OR

31. **Option 2:** Apply the Crown Minerals Act 1991 definition for both 'mining' and 'mining operations' in the NPS-FM and NES-F
- agree/disagree*

Note the proposed consent pathway for cleanfill and managed fill activities will provide for the disposal of overburden

Additional controls on types of minerals mined

32. **Option 1:** Do not place any controls on minerals able to be mined under the proposed consent pathway in the NES-F
- agree/disagree*

OR

33. **Option 2:** Exclude coal from minerals able to be mined under the proposed consent pathway in the NES-F
- agree/disagree*

OR

34. **Option 3:** Apply the following conditions to the ability to mine coal under the proposed consent pathway in the NES-F (**recommended**)

Condition (a) – Include a sunset clause for mining that makes thermal coal mining a non-complying activity after 1 March 2030, but;

Condition (b) – Allow the mining of coking coal past 2030

agree/disagree

Part 2D: Urban development

Context

Last year the Government introduced changes through the NPS-UD to deliver “stable and enduring policy for urban development.”⁴² The wetland regulations currently provide a consent pathway for urban development where it is listed in a regional plan under the definition of specified infrastructure, but there is no equivalent for urban development listed in a district plan. As important developments occur both at the regional and district level the regulations need to reflect this, while striking a balance between the protection of natural inland wetlands.

⁴² Beehive press release. 2021. Red tape cut to boost housing supply. Retrieved from <https://www.beehive.govt.nz/release/red-tape-cut-boost-housing-supply> (accessed 19 May 2022).

Proposal

The proposal was to use the term 'plan-enabled' from the NPS-UD to provide a discretionary consent pathway for housing and business areas within, or within 100 metres of a natural wetland.

Submitters were asked whether they agreed with the proposal, whether discretionary was the right activity status, whether urban development activities should be subject to any additional conditions above those set out in the gateway test and if offsetting requirements were appropriate for all types of urban infrastructure (eg, public amenities such as schools and medical centres).

Summary of submissions

Just under two-thirds of submitters were in favour of the provision of a consent pathway for plan-enabled urban development activities. However, the mixed submissions received from councils are indicative of the complexity of this issue. Of the eleven councils that submitted, ten supported the provision of a consent pathway for plan-enabled urban development activities but provided further proposals on how this may be best accommodated. Of these ten:

- one council considered that permitted activity status was the most appropriate
- three considered that restricted discretionary status was the most appropriate
- five considered that non-complying status was the most appropriate.

Only one council was opposed in principle to the provision of a consent pathway for plan-enabled urban development. Additional material subsequently received from TCC is referred to in the cover briefing.

The majority of submitters who opposed the proposed consent pathway for plan-enabled development were individuals and ENGOs. As with the other consent pathways, this was largely due to a perception that natural inland wetlands were being deprioritised and sacrificed for land use and development. However, several other reasons specific to the proposals for urban development were also raised.

- Many submitters felt that natural inland wetland areas could be avoided by developers if more care was taken in the planning stages to avoid them.
- Some individual submitters expressed concern that the NPS-UD provisions, coupled with a consent pathway for urban development would lead to a significant further loss of natural inland wetland extent and values.
- Concern was expressed by a number of submitters that district plans did not undertake substantial environmental assessments when zoning or re-zoning for urban development.
- Several submitters felt that natural inland wetlands were important features of urban environments, providing water filtering and habitat support that would be threatened, should the proposals to be adopted.

A significant number of submitters that opposed the provision of a consent pathway for urban development emphasised the unsuitability of using natural inland wetlands for development due to their susceptibility to flooding and unstable foundations when in-filled. Several individual submitters pointed to the disproportionate impacts of the 2011 Christchurch earthquake on developments located on reclaimed or in-filled land.

More than for any other consent pathway, both those in support and opposed to the proposals emphasised the necessity for development proposals to be considered on a case-by-case basis, including assessment of the suitability of the land for development and the presence of significant natural inland wetlands.

Activity status

Several submitters in support of the proposals highlighted that discretionary activity status for plan-enabled development was inconsistent with the conditions set out in the NPS-UD for plan-enabled development in the short term, which require that the development activity be subject to restricted discretionary, controlled or permitted activity status in order to be defined as plan-enabled. For this reason, and to provide certainty to consent applicants, submitters in support of the proposal preferred restricted discretionary status to discretionary.

Gateway tests – national and/or regional significance and functional need

Several submitters considered that the national and/or regional significance gateway test for urban development should be amended to also apply to activities of district significance, to ensure that the pathway is implementable. TCC emphasised in their submission that “while strategic growth areas will meet the test of regional benefit, not all ‘plan-enabled’ growth will be at a scale that meets this.”

Nearly all submitters both in support and opposed did not consider that functional need applies to urban development. Those who opposed the proposed consent pathway frequently referred to the lack of a functional need for plan-enabled development to occur in natural inland wetlands as part of their rationale. Those in favour of the proposed consent pathway requested that the test be changed or removed to ensure that the consent pathway was implementable.

Use of the term ‘plan-enabled’

The proposal to use the term ‘plan-enabled’ received mixed feedback, particularly from council submitters. Northland Regional Council (NRC) supported the provision of a consent pathway for urban development but considered that ‘plan-enabled’ as defined in the NPS-UD was too broad. They proposed the following:

Provide for plan-enabled urban development defined as: land that is zoned for urban housing or for business use (as applicable) in an operative district plan including any existing designations within those zoned areas and associated infrastructure provision.

TCC considered that ‘plan-enabled’ as defined in the NPS-UD was too constrained, and therefore not appropriate. They proposed that:

Urban development areas should be more broadly defined to include an area identified in a future development strategy or relevant plan or strategy, including Smartgrowth and Urban Form and Transport Initiative plans supported by a Long-Term plan or 30-year Infrastructure Strategy, as well as RMA planning documents (ie, Regional Policy Statements and District Plans including those zoned as future urban).

GWRC submitted that plan-enabled development should remain a non-complying activity. Their submission expressed that the current regulations are having the desired effect within the Wellington region and are leading to practice changes in urban development to avoid natural inland wetlands. They considered that:

Pushing it all down to resource consent decisions, rather than proper oversight and consideration at the region-wide level, does not give effect to the National Policy Statement on Urban Development nor the NPS-FM.

Property developers were broadly in support of the use of the term 'plan-enabled' due to its alignment with the NPS-UD and its potential to enable of councils to consent to development in growing urban areas, including for development listed in a district plan. A small number of submitters expressed concerns that any consent requirements for urban developments around natural inland wetlands would create tension between the NPS-FM and the NPS-UD, and that plan-enabled development should be a permitted activity.

TCC highlighted in their submission that the use of 'plan-enabled' to provide a consent pathway would not help them to achieve their Tier 1 requirements under the NPS-UD. This is because their current development projects are listed in statutorily recognised documents not classified as 'plan-enabled' under the NPS-UD definition because they are not in the 'short term' (defined as being within the next 3 years). Consequently, these development projects would not be able to be consented under the proposed consent pathway.

Offsetting requirements for public amenity development

A large majority of submitters felt that offsetting requirements should continue to apply to public amenity development such as schools and medical centres. This was due to a perception that allowing some activities to bypass the offsetting conditions would be contrary to Policy 6 in the NPS-FM and the effects management hierarchy.

Analysis and recommendation

Proving a consent pathway for plan-enabled urban development

There is a need for the NES-F to accommodate requirements under the NPS-UD. The submissions received indicate that there is substantial support for this.

We consider that the concerns raised by submitters that are opposed can be mitigated through the effects management hierarchy and the gateway tests.

Use of the term 'plan-enabled'

The term 'plan-enabled' was proposed for consistency with the NPS-UD and many council submitters support the use of this term. We are aware however, that for TCC, the use of 'plan-enabled' will not help in the immediate future as it would first require a plan change. The council does not expect that this will be notified until mid-2022, then likely appealed, making an operative plan some way off.

Plan-enabled is defined in the NPS-UD as follows.

Development capacity is plan-enabled for housing or for business land if:

- (a) in relation to the short term, it is on land that is zoned for housing or for business use (as applicable) in an operative district plan

- (b) in relation to the medium term, either paragraph (a) applies, or it is on land that is zoned for housing or for business use (as applicable) in a proposed district plan
- (c) in relation to the long term, either paragraph (b) applies, or it is on land identified by the local authority for future urban use or urban intensification in an FDS or, if the local authority is not required to have an FDS, any other relevant plan or strategy.

TCC has highlighted that the use of the term ‘plan-enabled’ in the context of the NES-F will not enable key developments to acquire resource consents in the immediate term, due to first requiring a plan change. This is primarily due to the narrow definition of ‘plan-enabled’ in the short term.

Several submitters in support of a consent pathway for urban development expressed concern that tying the consent pathway to the policy intent of the NPS-UD may create further tensions between the two pieces of national direction. However, we consider that there are viable ways to address the issues raised and that national direction should remain aligned as much as possible.

Opening up the consent pathway to all urban development (without the requirement for it to be listed in a plan) may create additional issues. It would be more difficult to meet the gateway tests where land is not zoned in planning documents at the district, regional or national level, and would likely place a large resourcing burden on councils, who would have to consider every application on its merits. Additionally, it would remove important constraints on development that are in place at the planning stages to ensure that appropriate testing has been undertaken before development can occur.

Option 1: Use the NPS-UD definition of plan-enabled development

We remain of the opinion that the use of the term ‘plan-enabled’ is an appropriate way of providing a consent pathway for urban development and is consistent with the national direction set out in the NPS-UD. The use of the term was highlighted as problematic only by a small number of councils.

Once TCC go through a plan change process, current and future development listed in their plan would be consistent with the definition of plan-enabled set out in the NPS-UD. However, we are aware that the plan change process can be long and that this may result in key timeframes not being met. In Tauranga, at least two major developments relied upon to meet the requirements of the NPS-UD will be unable to go ahead in the immediate term if the NPS-UD definition of plan-enabled is adopted.

Option 2: Add a condition to the NPS-UD definition of plan-enabled for the purposes of the NES-F

Under the NPS-UD definition of plan-enabled development, urban development is only plan-enabled in the short term, on land that is zoned for housing or business use (as applicable) in an operative district plan. The NPS-UD defines ‘short term’ as in the next 3 years. We consider that in the context of the NES-F it may be appropriate that plan-enabled in the short term applies to a broader range of proposed development than currently set out in the NPS-UD. We therefore recommend the following definition.

Plan-enabled has the meaning given by the NPS-UD except, that for the purposes of these regulations, plan-enabled in the short term means land zoned for housing or business use (as applicable) in an operative district plan and/or land identified for development in any relevant statutorily recognised document (eg, Smartgrowth plan).

We recommend Option 2. We acknowledge that the NPS-UD definition of plan-enabled urban development requires some minor additions for it to be workable for TCC, in the context of the NES-F. However, we consider that removing the requirement for development to be listed in planning documents altogether would not only further complicate the consent process, but that it would remove important constraints on development and may result in unnecessary negative impacts on natural inland wetlands.

Activity Status

We agree with submitters that for the regulations to align with the definition of plan-enabled in the NPS-UD, plan-enabled urban development must be a restricted discretionary activity.

There is already a list of matters to which discretion is restricted set out at Part 3, Subpart 1, regulation 56 of the NES-F. We consider this is fit for purpose with one additional matter. In addition, this should require the consideration and identification of who will be responsible for the ongoing maintenance of the aquatic offsets once development is completed. This will ensure that natural inland wetlands constructed as aquatic offsets continue to be maintained and managed. We expect in many cases this will fall to the relevant council.

Gateway tests – national and/or regional significance and functional need

The policy intent of providing a consent pathway for plan-enabled development is to also provide for urban development listed in a district plan. However, as submitters have identified, urban development at the district level may not meet the gateway test of national and/or regional significance. To ensure that the consent pathway works as intended, we recommend that the gateway test for plan-enabled urban development should be district, regional and/or national significance.

We agree with submitters that the functional need test is not fit for purpose for plan-enabled urban development. To ensure that the proposed consent pathway for plan-enabled urban development is implementable we recommend that the gateway test be best practicable location (see [recommendation 40](#)).

Offsetting requirements for public amenities

We agree with the majority of submissions, who emphasised that in order to achieve the policy intent of no further loss of natural inland wetland extent or values, the offsetting requirements must apply to all consented activities that have a more than minor effect on a natural inland wetland. Therefore, the question set out in the Discussion Document as to whether there are some types of urban development (eg, medical centres, schools) which need not be subject to offsetting it is not viable under the NPS-FM.

Recommendations 35–46

Recommendations

35. Provide a consent pathway for 'plan-enabled' urban development in the NES-F and include 'plan-enabled' urban development in the list of activities exempt from the general policy to avoid natural inland wetland loss, protect their values and promote their restoration in 3.22(1)(a) of the NPS-FM

agree/disagree

AND

36. Apply the same provision to ‘plan-enabled’ urban development as in the NPS-FM at 3.22(1)(b)(i), and the effects management hierarchy as per 3.22(1)(b)(iv)
agree/disagree

AND

37. Include a gateway test similar to that at 3.22(1)(b)(ii) which requires the plan-enabled urban development to provide significant national, regional or district benefits
agree/disagree

AND

38. Option 1: Apply the current definition of ‘functional need’ as set out in the National Planning Standards as a gateway test to ‘plan-enabled’ urban development
agree/disagree

OR

39. Option 2: Apply the current definition of ‘operational need’ as set out in the National Planning Standards as a gateway test to ‘plan-enabled’ urban development
agree/disagree

OR

40. Option 3: Make the gateway test in the NPS-FM ‘best practicable location’ for ‘plan-enabled’ urban development (**recommended**)
agree/disagree

AND

41. Include the following definition, or words to that effect in the NPS-FM
Best practicable location: means the best location for an activity to be undertaken in, having regard, among other things to–
- a) in relation to ‘plan-enabled’ development, and landfill, cleanfill and managed fill activities
 - i. the scope and design of the activity, so that adverse effects are avoided to the extent possible, and
 - ii. the effects on the natural inland wetland of that activity compared to effects on the environment in other locations, and
 - b) in relation to ‘plan-enabled’ urban development, the extent to which development is required to meet development capacity under the NPS-UD
- agree/disagree*

42. Include a gateway test similar to that at 3.22(1)(b)(ii) which requires the plan-enabled urban development to provide significant national, regional or **district** benefits
agree/disagree

AND

43. Provide for ‘plan-enabled’ development as a restricted discretionary activity in the NES-F subject to with the matters to which discretion is restricted, being those set out in existing regulation 56 of the NES-F
agree/disagree

Defining ‘plan-enabled’ urban development

44. **Option 1:** Utilise the definition of ‘plan-enabled’ urban development for the proposed urban development consent pathway in the NPS-FM and NES-F as set out in the NPS-UD
agree/disagree

OR

45. **Option 2: (recommended)** Add a qualifier to the definition of 'plan-enabled' for the purposes of the NES-F which clarifies that: 'plan-enabled' has the meaning given by the NPS-UD, except that for the purposes of the NPS-FM and NES-F:
- (a) plan-enabled in the short term means land zoned for housing or business use (as applicable) in an operative district plan;
 - (b) or land identified for development in any relevant statutorily recognised document (eg, Smartgrowth plan)
- agree/disagree*
46. Require the consent authority to be satisfied for a 'plan-enabled' development that there is clear provision, including who is responsible, for the ongoing maintenance and management of aquatic offsets, once the development phase is completed
- agree/disagree*

Part 2E: Additional consent pathways proposed by submitters

Context

In addition to submissions on the proposed consent pathways, we received submissions requesting additional consent pathways.

The activities that have a consent pathway listed in the NPS-FM are intentionally narrow to meet Policy 6 – no further loss of natural inland wetland extent and values of said wetlands are protected. The NES-F rule structure to support Policy 6 is very strong. Earthworks, or the take, use, damming, diversion, or discharge of water within a natural wetland is a prohibited activity where this would result in drainage of the natural wetland (unless that particular purpose has another status under the regulations). The same activities outside of, but within 100 metres of, a natural wetland are non-complying if this would drain the natural wetland. All other activities (ie, for any purpose not listed in the NPS-FM) are non-complying for vegetation clearance and earthworks (both with a 10-metre setback).

These regulations were established to protect wetlands, however, because the NES-F applies to all natural wetland types irrespective of size or value, the cumulative effect off the setbacks when applied to areas that commonly exhibit natural wetlands (eg, seeps in gullies) creates a sizable zone where undertaking earthworks and other activities is difficult. This has had significant impacts on some sectors.

Summary of submissions

Water storage

Six submitters requested that an additional consent pathway be provided for water storage. Councils and landowners consider that water storage facilities will be a growing requirement due to climate change and water allocation issues. Like fills, submitters identified that water storage facilities are often located in valleys, where natural inland wetlands commonly occur. It was further submitted that water storage facilities were required to support specified infrastructure, similar to the other activities for which new consent pathways were proposed in the Discussion Document.

Ski industry

The Ski Areas Association of New Zealand (SAANZ) and Real Journeys Ltd requested that a consent pathway be provided for activities associated with the construction and maintenance of ski area infrastructure. These submitters consider that ski areas are key for the social and economic wellbeing of communities and important for domestic and international tourism. Due to the presence of streams, tarns and wetlands in the alpine area, industry submitters emphasised that a consent pathway was necessary for construction and maintenance activities.

Real Journeys commented that they were mainly concerned about their ability to install and maintain linear or longitudinal infrastructure including water pipes and power/IT cables for the likes of wastewater management, snow-making and the running of other services at a distance from the base buildings.

The industry submitted that in most cases disturbance to natural inland wetlands would be minor and that the activities for which consent pathways are already in place have far greater potential for adverse effects on natural inland wetlands. Real Journeys proposed that ski fields and amenities could be deemed infrastructure of significant national or regional benefit.

Papakāinga and marae development activities

One council submitted that it seemed unlikely that papakāinga or marae development would meet the definition of plan-enabled development or specified infrastructure, despite not posing a materially different risk of potential adverse effects on natural inland wetlands than development, for which consent pathways are currently provided or proposed.

Horticulture activities

Two submitters requested an additional consent pathway for new or expanding horticultural activity. These submitters considered that commercial vegetable production is an activity of national and regional significance that can only occur on highly productive land. They acknowledged that arable and horticultural land use is permitted under regulation 50 of the NES-F in areas used for this purpose between 1 January 2010 and 2 September 2020. They considered however, that there needs to be a pathway for vegetation clearance and earthworks to occur in relation to newly developed horticultural land in and around a natural inland wetland, without reverting to the non-complying consent activity in regulation 54.

Analysis and recommendation

The proposed amendments will address some of the impacts that the strong rule structure and setbacks have created but, in our view, there could also be provision for additional activities.

Water storage

We consider that it would be appropriate for the NPS-FM and NES-F to explicitly provide for water storage facilities.

We recommend expanding the current definition of specified infrastructure to include water storage. This will be subject to the gateway tests of functional need and national or regional significance as well as the requirement to apply the effects management hierarchy. This will ensure that the construction for water storage only occurs in a natural inland wetland when it cannot be avoided and there will be no further loss of wetland extent.

Recommendation 47

Recommendation

47. Provide for the construction and maintenance of water storage within the current definition of 'specified infrastructure' in the NPS-FM (**recommended**)

agree/disagree

Ski areas

We acknowledge the multiple values the ski industry provides, in particular to the regions of Otago, Canterbury and Manawatū-Whanganui, where they are situated, but also to New Zealand generally.

In considering a consent pathway for this sector, there are several matters which need to be taken into account. First, we note that there is an existing consent pathway available for this sector under the provision for regionally significant infrastructure listed in a regional plan. A recent ski field expansion has been granted consent on the basis that it was regionally significant. That this sector meets the test of regional significance for one of the three relevant councils is a persuasive factor for a council when considering applications from this sector. We also note that Real Journeys proposed implementing something very similar within the regulations.

Second, we have some concern about the ability of this sector to adequately offset in accordance with the effects management hierarchy. The offsetting requirement is for no net loss. In the majority of cases, we consider this would likely require restoration/creation of natural inland wetlands away from the site of disturbance – anything else is remediation and not offsetting. Ski areas are often situated in relatively undisturbed alpine areas. The opportunities for offsetting so that there is no net loss and preferably a net gain (as required under NPS-FM 3.21), in our view, would likely be outside the ski area at lower elevations. In further discussions with SAANZ regarding offsetting they stated “measures to offset the loss would always be undertaken within the ski area boundary or basin. Offsetting outside the ski area where the works are being undertaken is extremely unlikely and would be an absolute last resort”.

On balance, we consider that the ski industry will be able to manage effects on natural inland wetlands by modifying locations of infrastructure to avoid natural inland wetlands where possible, and then mitigating residual effects through application of the effects management hierarchy. We are encouraged by the steps taken by the industry in recent works to avoid natural inland wetlands in the first instance, followed by mitigation of minor effects (eg, trenches for linear infrastructure with vegetation transfer). Our remaining concern is that larger scale activities (eg, earthworks to create flat learner zones) would create effects that would be far more difficult to mitigate. However, we consider that the application of the gateway tests and the requirement to apply the effects management hierarchy will ensure that these activities are only consented where appropriate and where their effects on natural inland wetlands are able to be effectively mitigated, offset or compensated.

There are several viable options for providing the ski industry with a consent pathway. Under all options, the gateway tests of regional/national significance and functional need with the effects management hierarchy would apply.

Option 1: Rely on the existing pathway under 'specified infrastructure' (recommended)

The definition of 'specified infrastructure' provides for regionally significant infrastructure identified as such in a regional policy statement or plan. Ski areas can seek to be listed as regionally significant infrastructure within the regional planning documents of the three regions in which ski fields are located. We recommend this option as it uses current provisions in the regulations intended for that purpose.

We also note that maintenance and operation of existing ski area infrastructure in place at the time the regulations were gazetted is permitted under the NPS-FM at 3.22 (vi) (as it would meet the definition of other infrastructure). Where maintenance and operation might not meet the permitted conditions set out in the NES-F regulation 46, then regulation 47 provides a restricted discretionary consent pathway for maintenance and operational purposes of any future ski field infrastructure.

Option 2: Rely on the existing pathway under 'specified infrastructure' but remove the requirement to be listed in a plan

If the requirement to have prior listing in a plan is viewed as too burdensome, this option proposes to remove that requirement and instead allow the council to make the decision on application of consent (ie, that the proposal is of regional significance). In order to reduce complexity within the regulations, we suggest this should apply to all proposals seeking a consent pathway on this basis, not just ski areas. We have reservations about removing the check and balance that prior listing in a regional plan would provide, but consider this is still preferable to option 3 below.

Option 3: Include infrastructure associated with ski areas within the definition of specified infrastructure

This option would add to the list of infrastructure defined as 'specified infrastructure' for the purposes of the wetland regulations. The proposal is to employ relevant aspects of the RMA definition of infrastructure and use the current pathway for construction of specified infrastructure (regulation 45 as a discretionary activity). This would include but not be limited to: transport mechanisms such as lifts, roads, and tracks (for any purpose within a ski area); associated facilities for the loading or unloading of passengers; sewerage system; water; and electricity supply as it relates to providing necessary ski area infrastructure.

We have significant concerns about increasing the scope of specified infrastructure in this way, as this term was intended to be a discrete subset of infrastructure as defined in the RMA, to ensure wetland loss did not continue. We consider, however, that this is preferable to providing ski areas with a unique and specific rule structure within the NES-F. Such an approach is not considered viable as there is no reasonable policy rationale on which to do so given the existing pathways.

Recommendations 48–50

Recommendations

48. **Option 1:** Do not provide a specific consent pathway for the construction and maintenance of infrastructure associated with ski areas on the basis that the existing consent pathway for ‘regionally significant infrastructure identified as such in a regional policy statement or regional plan’ is appropriate and would be available for this activity **(recommended)**

Note that the recommendation to provide for water storage will also address ski area needs for snowmaking and water treatment/supply

agree/disagree

49. **Option 2:** Amend the consent pathway for ‘regionally significant infrastructure identified as such in a regional policy statement or regional plan’ to remove the requirement for the infrastructure to have prior listing in a regional policy statement or regional plan

Note that this would apply generally, not just to ski areas and would allow the consent authority to make the determination of regional significance as part of their decision-making on a consent application

agree/disagree

50. **Option 3:** Include infrastructure associated with, and for ski areas within the definition of ‘specified infrastructure’ including but not limited to, transport mechanisms such as lifts, roads, and tracks (for any purpose), associated facilities for the loading or unloading of passengers, sewerage system, water and electricity supply

agree/disagree

Papakāinga and marae development activities

We consider the proposed changes to the definition of plan-enabled urban development (see [recommendation 45](#)), as well as the wider range of specified infrastructure (in relation to water storage), will address many of these concerns.

Horticulture activities

We note that in the 2020 NPS-FM, an exception to national bottom lines was provided for horticulture activities to accommodate the impact of current land use practice in Pukekohe and Horowhenua. Officials are now working with councils, iwi and horticulturalists to find a way to mitigate the impact of this activity, and significant investment has been made by the Crown to offset existing effects in Lake Horowhenua.

Under the current NES-F, new areas of horticulture expansion are subject to the regulations that restrict earthworks or vegetation clearance within 10 metres of a natural wetland, and water take use and similar activities within 100 metres. We consider that the case of Lake Horowhenua (as discussed above) is a clear indication that the regulations restricting earthworks and vegetation clearance for horticultural expansion should remain as they are. In respect of water take use, we consider that the proposed amendments to regulation 54, to clarify the impact that this is seeking to address (discharges of water where this will result in a negative impact to the natural wetland), will address the concerns raised (see [Part 4C: Discharges and the 100m setback \(r 54\)](#)).

Part 3: Amendments to the restoration provisions

Context

The NES-F regulates restoration (either permitted or restricted discretionary) in natural wetland areas. As is the case for consent pathways, an exemption to policy 6 is provided at s 3.2.2(1) of the NPS-FM to enable restoration activities to be consented where they may result in negative effects on natural inland wetlands, subject to meeting the gateway tests and applying the effects management hierarchy. Where coastal wetlands occur in the CMA, these activities are subject to Policy 11 of the New Zealand Coastal Policy Statement but unlike the proposals for consent pathways, Policy 11 does not block the ability to undertake restoration activities in the CMA. Therefore, for clarity, this section refers to natural wetlands throughout, except where it is referring to specific provisions in the NPS-FM.

The wetland regulations sought to permit low impact activities to remove barriers to restoration, but control activities that can have short-term negative effects on natural wetlands. For example, weed clearance may result in bare land that erodes, sending sediment into the water. Feedback received from councils, DOC and restoration groups, indicated that the current restoration regulations in the NES-F are onerous and consequently, some desirable restoration work is not being carried out. Some activities that used to be permitted in plans now need consents. That is not the intent or outcome sought, which was to encourage restoration of natural wetland areas and to ensure that restoration activities did not inadvertently have negative impacts on these areas.

Additionally, the NPS-FM does not address maintenance and biosecurity within the definition of restoration, and there are no associated regulatory provisions for these activities. The NES-F needs to specifically provide for biosecurity work (eg, the eradication of a weed that is not yet widespread), or maintenance of current state, so that these do not default to being non-complying activities.

Proposal

The proposals in the Discussion Document were intentionally broad, to provide wide scope for policy options following feedback. The proposals were:

- include maintenance within the regulations relating to restoration
- amend the regulations relating to restoration and maintenance activities, so removal of exotic species is permitted, regardless of the size of the area treated, provided the general conditions listed in regulation 55 of the NES-F are met.⁴³ The intent is to ensure that weed control does not result in effects such as discharge of sediment from extensive newly bare ground, rather than to restrict the size of a weed control programme

⁴³ Regulation 55 sets out the general conditions that all permitted activities must meet to comply with the regulations, including conditions for prior notice of activity, water quality and movement, earth stability and drainage, vegetation and bird and fish habitats, historic heritage, machinery, vehicle equipment and construction materials.

- allow activities that are necessary to implement a regional or national pest management plan, or are undertaken by a biosecurity agency (which includes DOC, the Ministry for Primary Industries and regional councils) for biosecurity purposes, but with restrictions similar to those that apply to restoration activities, for example regulation 55
- make the restoration and maintenance of a natural wetland a permitted activity if it is undertaken in accordance with a council-approved wetland management strategy⁴⁴
- make weed clearance using handheld tools a permitted activity.

Summary of submissions

All submissions supported the intent to make restoration and maintenance of natural wetlands easier.

However, there were a wide range of views on whether the proposed changes would achieve the policy intent. Some submitters questioned whether limits on activities and oversight by councils was necessary for restoration and biosecurity activities. For example, Better Living Landscapes submitted that “wetland restoration does not require the costly interference of councils.”

In contrast, several submissions discussed the need for a balance between providing for maintenance and restoration work while ensuring that natural wetland values are not inadvertently lost. Submitters, including ECAN, provided examples of the damage that can be caused by activities undertaken for restoration. Other submitters were concerned that the proposals would restrict activities such as changes to hydrology that are an essential part of restoration and maintenance.

Some submissions were concerned that natural recovery of a natural wetland to a stream due to reforestation of the catchment would be restricted by the restoration provisions in the NES-F (ie, controls on vegetation). Other submitters were concerned that the provisions would be used to undertake work that sought to maintain a particular characteristic of a natural wetland (eg, ponds suitable for ducks) rather than to restore natural state.

Defining ‘restoration’, ‘maintenance’ and ‘biosecurity’ and application to the CMA

Many submissions commented on how restoration and maintenance should be defined. The RMLA noted that the definition of restoration currently provided in the NPS-FM only applies to natural inland wetlands (ie, it excludes natural wetlands in the CMA). They suggested including a definition of restoration in the NES-F because at present, the definition does not apply to natural wetlands in the CMA.

Council-approved restoration plans

The proposal to allow activities included in council-approved wetland management strategies (from now on referred to as restoration plans) attracted a range of views. Some interpreted the proposal as meaning that the council would develop and approve a wetland management strategy (that would then be provided to the wetland manager). They were concerned that

⁴⁴ Under the NPS-FM councils must make, or change, their regional plan(s) to include objectives, policies and methods that promote the restoration of natural inland wetlands within their region.

councils would not be able to provide strategies and therefore work would not proceed. Others considered that plans approved by other bodies, such as DOC, should also be accepted. One submitter suggested that instead of council approval there be oversight by an organisation dedicated to the preservation of wetlands.

A range of plan types that should be accepted were mentioned in submissions, including farm management plans, management plans for covenants, conservation management strategies, and plans under the Conservation Act 1987 and subdivision plans. Some submissions questioned whether council approval simply replaced the consent process with an equally onerous process. RMLA suggested that the sort of consent pathway provided for in the GWRC Proposed Natural Resources Plan⁴⁵ was an alternative approach. Some raised concerns about the costs of getting clarity on what activities are permitted, particularly if consultants needed to be used. Fish and Game considered that a restoration activity such as blocking a drain should be able to proceed if a qualified person recommended it as a restoration activity, without needing a full restoration plan for the natural wetland.

Biosecurity and weed control (maintenance)

The proposal to allow biosecurity and weed control activities also generated a range of views. While there was support for weed control, many submissions identified issues that could arise from weed control work (eg, the loss of ecosystem services provided by exotic plants and the risk of damage to natural wetland values from weed control work). Some, such as GDC, suggested that this be limited to species listed in regional pest management plans. Others considered that would be too limiting. The National Wetlands Trust opposed allowing any removal of exotic plants as a permitted activity because of the potential negative effects. Many commented on use of chemicals. Te Rūnanga o Ngāi Tahu asked that existing council rules around chemical use continue to apply. NRC considered that spraying should not be a permitted activity.

Some submissions sought additional conditions for biosecurity work to protect natural wetland values. Others considered that any biosecurity work should be a permitted activity because the long-term effects were likely to be positive. Most considered that handheld methods of weed control should be permitted, but there were differing views on what should be considered handheld methods and whether this was a practical method for some important weed control work. Fish and Game also considered that the requirement in regulation 55(2) to notify the council in advance of doing work should not apply to removal of exotic vegetation.

Some submissions sought to make biosecurity work for other purposes permitted activities, for example, WRC in relation to land drainage, and Hort NZ in relation to agriculture. ECAN and Hawke's Bay Regional Council (HBRC) wished to see the provisions broadened to allow for works in natural wetlands that contribute to freshwater outcomes at the catchment scale (eg, works to create a constructed wetland in a natural wetland for the purpose of treating contaminants).

⁴⁵ Greater Wellington Regional Council. 2019. Proposed Natural Resources Plan (Appeals version), R106, 5.5.3.

Barrytown JV Ltd sought inclusion of 'rehabilitation' as part of mining operations. Brookby Quarries argued that:

The creation of artificial wetlands to manage water run-off and biodiversity offsetting and compensation are common requirements for modern quarrying. While such activities may have short-term negative effects on natural wetlands, the net result of the activities is positive in the longer term.

Other submissions opposed these types of activities being provided for as restoration.

Size constraints set out in regulation 38 (permitted activities for restoration purposes)

Some submitters considered that the current limit on the extent of clearance (500 square metres or 10 per cent of the natural wetland extent) in regulation 38(4)(b) meant that people weren't undertaking necessary restoration or maintenance activity due to the costly resource consent required. EDS recommended that the restrictions on the size of area to be treated should not apply to biosecurity work, and that this could be achieved by amending regulation 38(5) by adding reference to weed control.

Controls on removing or planting exotic species

Two councils submitted on the necessity to control exotic species. One council submitted that a bespoke consent pathway should be included for the removal of exotic species from natural wetlands, so that the activity would not remain subject to the vegetation clearance regulations for natural wetland restoration. Another council submitted that planting exotic species within a natural wetland area should be a prohibited activity, to prevent the spread of exotic plants and the creation of loopholes in the definition of natural wetland (specifically the 50 percent exotic species associated with pasture exclusion).

Customary harvest and management

Te Rūnanga o Ngāi Tahu and others, sought specific inclusion of "management, maintenance and restoration of natural wetlands for mahinga kai or other cultural purposes." The submission from Te Rūnanga emphasised that although customary harvest is exempted from the regulations, the broader management of a natural wetland to enable this activity to occur, or to enable use of the natural wetland for other cultural purposes, is not. They submitted that this should be a permitted activity.

Waikato Tainui sought inclusion of provisions to ensure that any natural wetland restoration and biosecurity work were consistent with the arrangements in place for the river, and suggested reference to Te Ture Whaimana in regulation 55.

Commentary on the general conditions in regulation 55

Some submitters (eg, Tonkin and Taylor, Beef and Lamb, Auckland Council) considered that few weed control and restoration activities would be able to comply with the conditions set out in regulation 55. Other submissions supported the general conditions, to ensure that restoration and weed control work did not result in poor outcomes. There was uncertainty as to whether some of the areas in the regulation applied to the entire area over which weed control was being undertaken, or just to the area in which control was applied (eg, the area affected by cutting and stump treating trees).

Te Rūnanga o Ngāi Tahu raised concern that regulation 55 is currently contradictory, as it applies to sediment management. Clause 3(a) of regulation 55 allows the discharge of contaminants to water, provided that after mixing it does not cause one or more of the five negative impacts listed. The RMA definition of contaminant includes sediment, however clause 3(e) of the regulation states that debris and sediment must not be placed within a setback of 10 metres of a natural wetland, nor be enabled to enter a natural wetland. Te Rūnanga submitted that in practice, this contradiction would make any maintenance or weed control in a natural wetland area nearly impossible due to the inevitable entering of sediment into a natural wetland because of these activities. They suggested that regulation 55(3)(e) be reworded for clarity to:

Debris and sediment must not be placed—

- (i) within a setback of 10 m from any natural wetland; or
- (ii) in a position where it may enter any natural wetland.

Charging for prior notice of activity required by regulation 55

The RMLA submission noted that some councils are charging fees for receipt of notices of activity under regulation 55(2) and that there is a potential issue with monitoring fees. Some of their members considered that there should be no fees charged for natural wetland restoration processes. Fish and Game sought an amendment to regulation 55 to prevent councils charging for monitoring of restoration work.

Utility structures

The Māori Trustee (Te Tumu Paeroa), requested that “the construction of utility structures (boardwalks, signs and jetties) for restoration and education purposes should also be classed as a permitted activity under the NES-F.” Fish and Game sought addition of a new permitted activity status for utility structures associated with duck hunting (eg, mai mai) but also signage of access ways.

Analysis and recommendation

General submissions on the proposed changes

The intent behind the proposed changes is to make it easier for a broader range of restoration activities (including maintenance and biosecurity) to occur in a natural wetland area, while continuing to ensure that there are checks and balances on activities that may lead to a more than minor adverse effect on a natural wetland.

We accept that the requirement to seek a resource consent for some restoration and maintenance activities may continue to be onerous for groups who are seeking to carry out beneficial work in a natural wetland area. However, we consider that this is necessary to ensure that natural wetlands do not suffer negative effects due to these activities – inadvertently or otherwise.

Defining restoration, maintenance and biosecurity and application to the CMA

The Discussion Document sought feedback on whether the definition of restoration in the NPS-FM and NES-F should be amended to include maintenance, as it is currently missing from the definition. It is clear from submissions received that there is broad support for this

proposal. We therefore recommend the following definition of 'maintenance' in the NPS-FM and NES-F to better enable activities that include the maintenance of current state:

Maintenance means managing threats such as weeds to prevent deterioration of wetland condition.

Likewise, we consider that it is necessary to provide a definition of 'biosecurity' in the NES-F and that this will help address the concerns raised by submitters regarding the scope of biosecurity activities. We recommend the following definition:

Biosecurity means activities to eliminate or manage a pest or an unwanted organism.

We consider that the issue raised by RMLA about the application of the NES-F to coastal wetlands also needs to be addressed, especially considering the High Court's recent ruling that the NES-F also applies to natural coastal wetlands. We consider that this can be achieved by including the NPS-FM definition of restoration in the NES-F but removing 'in relation to a natural inland wetland'. This would capture the policy intent that the NES-F also applies to coastal wetlands, while retaining the separate jurisdictions of the NPS-FM over natural inland wetlands and the New Zealand Coastal Policy Statement over coastal wetlands existing in the CMA (see [recommendation 52](#)).

Weed control for maintenance purposes and biosecurity

We agree with submitters that weed control for maintenance purposes and biosecurity should be enabled over a greater area than the lesser of 500 square metres or 10 percent of the size of the natural wetland. We also agree it is important to have controls on those activities. However, we do not consider that the same exemption from the area thresholds should apply to other activities, such as earthworks, because when these activities are undertaken on a broad scale they are more likely to have adverse effects on a natural wetland.

We recommend that permitted activity status for weed control for maintenance purposes beyond the area threshold be confined to the removal of weeds using handheld machinery. If the proposal was to undertake vegetation clearance for weed control for maintenance purposes with non-handheld machinery over an area greater than 500 square metres or 10 percent of the natural wetland, then a restoration plan would be required (see [Restoration plans – scope and approval](#)). Otherwise, the activity would default to restricted discretionary status under regulation 39. We consider that this is an appropriate protection against any inadvertent effects of large scale weed control activities where large machinery is used, including land disturbance from vehicle use.

We consider that biosecurity should be a permitted activity beyond the 500 square metres or 10 per cent area threshold regardless of what machinery is used. This is because the proposed definition of biosecurity limits the scope of biosecurity activities to plants listed in a pest management plan, or unwanted organisms listed in the Biosecurity Act. This will mitigate concerns raised by submitters about the scope of these activities because the activities are tied to defined biosecurity objectives. We consider that biosecurity applies to exotic vegetation clearance and any indigenous vegetation clearance demonstrably necessary to carry out the biosecurity operation.

Both maintenance (weed control) and biosecurity activities would still need to comply with the general conditions in regulation 55 (which includes requirement to notify the relevant regional council(s)). The general conditions will be an important check and balance on any unintended consequences of vegetation removal for both activities. Council notification will also ensure

that the activities do not conflict with any other consented activities within the natural wetland (eg, the planting of exotic species to strengthen or re-enforce a bank to reduce sedimentation).

Biosecurity and weed control activities that do not meet the requirements in regulation 55 could still be a permitted activity under the proposal for a restoration plan set out below. Otherwise, they will default to restricted discretionary status under regulation 39.

Restoration plans – scope and approval

The wide range of views in the submissions demonstrate the difficulty of defining in regulations which activities will benefit a wetland in the long term and which will have unacceptable negative effects. Submitters also had a broad range of views on the restoration plan process – both what was meant by the proposals and what settings they would like to see.

We consider that the ability to undertake weed control for maintenance and biosecurity purposes over an area greater than 500 square metres or 10 percent of a natural wetland area as a permitted activity (as discussed in the section above) should apply to restoration as well as weed control for maintenance purposes and biosecurity. We propose that an effective way to enable this, while ensuring that controls remain where appropriate, is to use restoration plans. We propose that vegetation clearance over an area greater than 500 square metres or 10 percent of the natural wetland be a permitted activity where a restoration plan, addressing the relevant matters in the existing schedule 2 to the NES-F, is in place, and provided that the activity is assessed against the relevant parts of the existing general conditions in regulation 55.

Some submitters requested that the scope of restoration plans should also enable activities intended for other purposes such as land drainage, catchment management, horticulture or recreational use. Inclusion of those types of activities was not consulted on, and the content of some submissions suggested that they would have opposed it if it had been consulted on. We do not recommend extending restoration plans to cover these things. For similar reasons, we do not consider that it would be appropriate to remove the area constraints currently set out in the NES-F for earthworks or the damming, diversion or discharge of water for restoration purposes. The effects of these activities on a broad area of natural wetland are far more likely to result in a negative effect than vegetation clearance; it is therefore appropriate that they remain restricted discretionary.

Size constraints set out in regulation 38 (permitted activities for restoration purposes)

We anticipate that permitting restoration, maintenance and biosecurity activities with the checks and balances discussed above will, in part, address issues raised by submitters on the size constraints on permitted restoration activities (set out in regulation 38 of the NES-F). However, we remain of the opinion that where activities do not meet the requirements set out above, the size constraints set out in regulation 38 should continue to apply. This will ensure that there are no adverse effects to natural wetland areas through permitted activities that are undertaken without a degree of scrutiny from a relevant authority. For example, sediment plumes caused by the removal of exotic species from more than 500 square metres or 10 percent of a natural wetland area.

It is important, however, that drafting ensures that it is only the area that is altered by the proposed activity that is counted, not the entire area over which the activity would occur. For example, a weed control programme may cover a large area, but remove only a few scattered

trees. It would be only the area occupied by those trees that would be considered under regulation 38, not the entire area. This will resolve some of the concerns raised in submissions over the size constraints on restoration activities.

Controls on removing/planting exotic species

We consider that the above proposals address the issues around removing exotic species. In relation to planting exotic species in a wetland, we consider that an amendment to require that any planting be for restoration purposes would be appropriate. We consider that the same amendment should be made to the permitted activities in regulation 40 (scientific research), regulation 43 (maintaining wetland utility structures) and regulation 46 (maintaining specified and other infrastructure). See [recommendation 58](#).

A note on agricultural usage for vegetation clearance

Agrichemicals are often used to manage pest plants. The Environmental Protection Authority controls use of agrichemicals, including specific controls for the use of some agrichemicals into and over water, based on an assessment of the associated risks. These controls may prohibit the use of some agrichemicals where they may affect aquatic organisms. Where agrichemicals intentionally enter water or might enter water due to runoff, they are regulated in regional plans as a discharge of contaminants. The restoration provisions in the NES-F do not regulate these discharges in any detail, but instead regulate the vegetation clearance that results. A general condition in regulation 55(3) relating to water quality does not specify certain water quality effects that must not occur after reasonable mixing.

This is because some regional plans have carefully considered permitted activity rules for discharge of agrichemicals for the purpose of controlling pest plants. Others take a uniformly stringent approach to discharge of contaminants to water. Many of these rules factor in technical requirements relating to qualifications of agrichemical applicators and compliance with the New Zealand Standard for the Management of Agrichemicals (NZS 8409: 2021) which was developed by government, regional council and industry groups.

In some situations, mechanical or aerial application of agrichemicals in a wetland may have less impact on a natural wetland than handheld applicators.

We consider the various rules in regional plans relating to agrichemicals are adequate and should remain (ie, not be overtaken by rules in the NES-F). As such, the recommendations here and existing rules on vegetation clearance do not distinguish between chemical and non-chemical methods.

Customary harvest and management

We consider that the ability to harvest mahinga kai and other resources from natural wetlands is already provided for in the NES-F at Part 3, Subpart 1, regulation 37, which reads:

This subpart does not apply to the customary harvest of food or resources undertaken in accordance with tikanga Māori.

We accept the submission of Te Rūnanga o Ngāi Tahu that this exemption does not extend to the management, maintenance and restoration of a natural wetland to support these cultural practices. However, the intent of the NPS-FM in general and more specifically, of the restoration and maintenance provisions in the NES-F, is to ensure that activities in natural wetlands (including restoration and maintenance activities) are undertaken in a way that preserves the natural wetland and its resources for future generations to enjoy.

We consider that the permitted activity provisions already included in the NES-F and the proposed addition of weed removal using handheld tools strikes the correct balance between enabling these activities to occur in a natural wetland and ensuring that no harm unintentionally occurs to them as a result of more intensive operations. Furthermore, as set out in the above section on restoration plans, more intensive restoration activities could be undertaken in a natural wetland (including for activities undertaken in accordance with tikanga) if they are set out in a restoration plan.

The amendments sought by Waikato Tainui through their submission are already provided for in the Ngāti Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010. Part 2, section 13(1)(a) of that Act sets out that where the vision and strategy is inconsistent with a national policy statement made under section 52 of the RMA, the vision and strategy will prevail. Likewise, a rule made in a regional or district plan to give effect to the vision and strategy of the Authority prevails over a national environmental standard made under section 43 of the RMA, if it is more stringent than the standard.

Waikato Tainui also expressed concern that restoration and maintenance works needed to be conducted and planned for in a manner that best meets Te Ture Whaimana o te Awa Waikato. We consider that the proposed restoration plan process (as set out above) enables this, because the management objectives of a plan can give expression to cultural values and Te Ture Whaimana o Te Awa Waikato.

Recommended amendment to regulation 55(3)(e)

We agree with the submission from Te Rūnanga o Ngāi Tahu that regulation 55(3) is currently contradictory, as it applies to the discharge of sediment. We agree with the recommended wording change proposed by Te Rūnanga and suggest that regulation 55(3)(e)(ii) be amended as follows:

debris and sediment must not be placed:

- (ii) within a setback of 10 m from any natural wetland; or
- (iii) in a position where it may enter any natural wetland.

This amendment is sensible and allows minor discharges of sediment consequent of permitted activities, provided the effects on the natural wetland are no more than minor, but prevents more than minor discharges which would occur from placement of debris and sediment in a place where it might enter a natural wetland (see [recommendation 59](#)).

Recommended amendment to regulation 55 to charging for prior notice of activity

It was not the intent that providing advance notice of permitted restoration works to the council should result in a charge to the operators. To encourage restoration, we consider that councils should be precluded from charging to receive advance notice of restoration, maintenance and biosecurity works, and from charging to review restoration plans (see [recommendation 60](#)).

Utility structures

Submissions requested that the construction of wetland utility structures (boardwalks, signs and jetties) for restoration and education purposes should be classed as a permitted activity under the NES-F. Construction of wetland utility structures (defined in the NES-F) is currently a restricted discretionary activity (regulation 42), maintenance of these is permitted

(regulation 43). We consider that the activity of constructing and maintaining structures gives rise to different effects than restoration, maintenance and biosecurity. As this matter was not consulted on, we do not currently propose any change.

Recommendations 51–60

Recommendations

51. **(New)** Include definitions for ‘maintenance’ and ‘biosecurity’ in the NPS-FM and NES-F. The definitions would be, or words to similar effect:

Maintenance means managing threats such as weeds to prevent deterioration of wetland condition

Biosecurity means activities to eliminate or manage a pest, invasive or an unwanted organism

agree/disagree

52. Amend the existing definition of ‘**restoration**’ in the NPS-FM to remove the phrase ‘natural inland wetlands’ and include the amended definition in the NES-F

agree/disagree

Maintenance (weed control) and biosecurity

53. Wherever ‘is for the purpose of natural wetland restoration’ appears in regulations 38 and 39, change to ‘is for the purpose of natural wetland restoration, maintenance or biosecurity’ or words to that effect

agree/disagree

54. Amend regulation 38(4)(b) to read that if an activity is vegetation clearance, earthworks or land disturbance, the activity must not affect more than 500m² or 10% of the area of the natural wetland, whichever is smaller

agree/disagree

55. Amend 38(5) by adding exceptions to the area limit in subclause 4(b) for the following activities:

- i. non-indigenous vegetation clearance for biosecurity purposes and indigenous vegetation clearance demonstrably necessary for the biosecurity activity
- ii. non-indigenous vegetation clearance using handheld tools for restoration and maintenance

agree/disagree

Restoration Plans

56. Amend 38(5) by adding exceptions to the area limit in subclause 4(b) for non-indigenous vegetation clearance for restoration or maintenance in accordance with a restoration plan, provided to the council at least 10 working days prior to the activity commencing. A restoration plan must:

- i. assess the restoration and/or maintenance activities against relevant general conditions in regulation 55; and
- ii. address the matters in Schedule 2 of the NES-F relevant to the activity proposed- restoration plans for natural wetlands

agree/disagree

Controls on removing/planting exotic species

57. In relation to planting exotic species, amend regulation 38(5) to clarify that it only applies to planting for restoration purposes

agree/disagree

58. Make a consequential amendment to the permitted activities in regulation 40(5) (scientific research), regulation 43(5) (maintaining wetland utility structures) and regulation 46(5) (maintaining specified and other infrastructure) so that the exception relates to planting for restoration purposes

agree/disagree

Amendments to regulation 55

59. Amend regulation 55(3)(e) in the NES-F to provide that debris and sediment (excluding the consented disposal of overburden) must not be placed –
- i. within a setback of 10 m from any natural wetland; or
 - ii. in a position where it may enter any natural wetland

agree/disagree

Charges for notification of activity

60. Amend regulation 75 so that councils cannot charge to receive and review notifications of intended permitted activity work (including restoration plans where required) for wetland restoration, maintenance and biosecurity

agree/disagree

Part 4: Additional matters

Many submitters commented on matters that were not proposed in the Discussion Document. The more significant of these are set out below by topic, beginning with matters which we consider could be resolved through this amendment process, followed by matters that can be addressed through guidance and/or are not supported for amendment.

Part 4A: Alignment with the RMA, Te Mana o te Wai and Policy 6

Several submitters raised concerns that the proposals are inconsistent with Part 2 and the effects management approach of the RMA. They consider that by providing consent pathways for certain industries, the controls are not tied to the severity of impacts that an activity may have on a natural inland wetland. We remain of the opinion that the proposed consent pathways are not contrary to the RMA, provided that the gateway test and effects management hierarchy are applied effectively. Subject to these, the provision of the consent pathways remains consistent with the requirements of Part 2, as the preservation of the character of natural inland wetlands is consistently emphasised and inappropriate subdivision, use and development is regulated against. The obligation to apply the effects management hierarchy to any more than minor negative effects is consistent with the RMA's direction to avoid, remedy or mitigate any adverse effects of activities on the environment.

Submitters also commented on the apparent inconsistency and conflict between the policy drivers of the wetland regulations (TMotW and Policy 6) with the proposed (and current) consent pathways. TMotW requires that resources are managed in a way that prioritises first, the health and well-being of water bodies, second the health needs of people and third, the ability to provide for social, economic and cultural wellbeing. Policy 6 states "there is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted."

NZFSS noted that:

enabling additional consenting pathways for activities is not well-aligned with the first priority for freshwater management under TMotW for the health and wellbeing of waterbodies and freshwater ecosystems. Nor does it align with Policy 6 requiring no further loss of wetlands and protection of their values. There is no evidence that these proposed changes will not, over time, result in the further loss of wetland extent or values nationally.

RMLA stated:

The proposed amendments significantly broaden the category of activities that have a consenting pathway to result in complete or partial drainage of wetlands and consequently, the loss of values and extent of natural wetlands. Some loss of values and extent may be addressed on a 'net' basis but even this outcome is not secured. In summary, the changes proposed will increase the inconsistency between the NPSFM 2020 policy direction for no loss of wetland values and extent, and the outcomes that the Regulations allow to occur.

TCC noted that in order for a consent pathway to be created for activities within or adjacent to natural inland wetlands, Policy 6 would need to be amended to 'no net loss' instead of 'no further loss'.

Others, such as Tāmaki Estuary Environmental Forum (TEEF) want to retain protection consistent with TMotW and did not support consent pathways at all.

Analysis and recommendation

We acknowledge RMLA’s point that a net outcome from offsetting cannot be guaranteed. There has been little research on the efficacy of biodiversity offsetting in general – including for restored and constructed wetlands in New Zealand. Further, we know from the *National Wetland Trust Report of 2020* that not all offsetting required by consents has been undertaken in the past. This can however be improved with support. We consider compliance with offsetting will be improved in the future by the following requirements in the NPS-FM.

- Councils must require monitoring of wetland offsets by the consent holder, as a condition of any consent issued to undertake activities in and around wetlands [3.22(3)(b)].
- Map wetlands that are the subject of a consent application (eg, offsetting wetlands), or greater than 500 square metres, naturally smaller types, and any identified in a farm environment plan [3.23].

Offsetting requirements will be aided by the recommendation to include a set of principles for offsets and compensation in the NPS-FM appendices which align with those in the proposed National Policy Statement for Indigenous Biodiversity, as recommended by Forest and Bird (see [Appendix 1](#)).

We are also considering combining map layers with the monitoring data collected within a national wetland portal in a similar way that Land, Air, Water Aotearoa (LAWA) operates. This would create a dataset to report on changes to wetland extent at a national level over time and assist with compliance monitoring for offsetting purposes. This would be a longer term project but one that would support the policy, assist with compliance, provide data on the success or not of offsets and assist with national level reporting over time.

We note that TMotW has three priorities and while the first priority is to put the needs of the waterbody first, we note that offsetting, if done well, can produce a net gain and an improvement in the ecology of a wetland. We therefore consider that because the proposals for additional pathways are still relatively constrained, and that the effects management hierarchy can address loss of extent and values, the first priority can still be said to be upheld, while providing for the third priority.

We agree with the submission from TCC and others, that currently the requirement for ‘no further loss’ of natural inland wetland extent at Policy 6 appears to contradict the provision of consent pathways. However, we consider that ‘no net loss’ is too broad and has potential implications for other activities (not provided with a consent pathway) which may lead to unintended loss of wetland extent. We consider that the appropriate means of addressing the issue raised by TCC is to acknowledge the provision for activities with a consent pathway (currently set out at 3.22(1)(a) and the NES-F), in the wording of Policy 6 (see [recommendation 62](#)).

Recommendations 61–62

Recommendations

61. Include a requirement at 3.22(3) of the NPS-FM that council must be satisfied that where aquatic offsetting or aquatic compensation is being pursued, the applicant has given regard to the aquatic offsetting and compensation principles which will be appended to the NPS-FM
62. Amend Policy 6 in the NPS-FM so that it clarifies that there is to be no further loss of natural inland wetland extent, their values are protected, and their restoration is promoted, except where loss is a consequence of consented activities, to which the effects management hierarchy has been applied

agree/disagree

agree/disagree

Part 4B: Drainage – prohibited (r 53) and non-complying activities (r 52)

Prohibited (regulation 53) and non-complying (regulation 52) status address activities that could result in the drainage of natural wetlands (earthworks and water take and use, damming, diversion, or discharges). Non-complying activity status (regulation 54) is the catch-all, dealing with all other activities and includes vegetation clearance, earthworks and water take and use (etc).

Summary of submissions

A number of submitters considered that prohibited activity status is “too blunt an instrument”⁴⁶ and that this is the main reason “carve-outs” are needed.⁴⁷ NZ Steel noted:

an application cannot be made for a prohibited activity, nor can a plan change application be made. This precludes proposals being assessed on their merits and ignores the complex and varied nature of wetlands - creating a perverse outcome where wetlands of very little value are protected at the expense of projects that have net social, economic and/or environmental benefit.

NRC noted that it is unclear how a “discharge of water” could drain a natural wetland and that if prohibited activity status (regulation 53) is retained, the Ministry should clarify what “drainage” of a natural wetland is supposed to capture. For example, is it also intended to capture flooding a natural wetland for the creation of a dam?

Analysis and recommendation

We remain of the view that the prohibited activity status, with specific consent pathways, is the best way to provide the level of protection to wetlands that the *Essential Freshwater* package seeks to achieve. If it were possible for a full range of activities to occur within and around natural wetlands, with attendant offsetting requirements, the outcome would

⁴⁶ NZ Steel, Oyster Capital Ltd, NZDF.

⁴⁷ Northland Regional Council.

ultimately be a lack of suitable areas and wetlands in which to locate offsets. Development would inevitably be proposed to occur in natural wetlands that previously had been constructed as offsets and overall wetland extent would be reduced. In addition, many submitters noted that it is not guaranteed that offsets will be effective (managed over the longer term) or even undertaken, despite being part of a consent condition.⁴⁸ It is our view that the opportunities for activities within natural wetlands that will result in degradation or loss (despite being balanced with offsets) should continue to be constrained.

The criticism that the prohibited activity status applies irrespective of natural wetland value overlooks the potential of all natural wetlands to be restored, their values improved, and ecosystem services such as nutrient attenuation to be used. Without also protecting degraded natural wetlands there will be few left to use for offsetting purposes.

We acknowledge however, that the current drafting of regulation 52 (non-complying activities) and regulation 53 (prohibited activities), could be clarified. These two regulations address drainage arising from earthworks, as well as the take, use, damming, diversion or discharge of water. They apply generally to all activities, unless the activity has another status under the regulations. NRC's point that a discharge of water is unlikely to drain a natural wetland is valid. We recommend deleting this term from regulations 52 and 53.

Discharges would still be adequately covered in regulation 54 (non-complying activities), covering vegetation clearance, earthworks and water takes, including discharges, for all other activities (unless they have a specific status eg, specified infrastructure).

Recommendation 63

Recommendation

63. In the NES-F remove the words 'or discharge' from the chapeau in regulation 52(2) and regulation 53(2)

agree/disagree

Part 4C: Discharges and the 100-metre setback (r 54)

The NES-F was developed to protect wetlands from the three main activities that contribute to their loss and degradation, these being: vegetation clearance, earthworks and changes to water levels that result in their loss and/or impact biodiversity and habitat (see Action for Healthy Waterways Section 32 Analysis, section 8.3.1).⁴⁹ For example, regulation 54 states it is non-complying to take, use, dam, divert or discharge water within, or within a 100-metre setback from, a natural wetland.

⁴⁸ National Wetlands Trust, Forest and Bird.

⁴⁹ Ministry for the Environment. 2020. *Action for healthy waterways: Section 32 Evaluation*. Prepared for the Ministry for the Environment by Harrison Grierson. Wellington: Ministry for the Environment. Retrieved from <https://environment.govt.nz/assets/Publications/Files/action-for-healthy-waterways-section-32-evaluation-report.pdf> (accessed 19 May 2022).

Summary of submissions

Many submitters provided examples where this regulation was being applied to the discharge of contaminants. This included stormwater discharges, septic tank overflows for rural-residential dwelling developments with tertiary treated wastewater systems, or overflows from drinking water tanks.⁵⁰ In another case a non-complying activity consent is now required for the creation of any impervious surface on a residentially zoned site located within 100 metres of a natural wetland.⁵¹

A third example of the application of regulation 54 by a council requires a consent for the discharge of sediment and water from any earthworks (which have a 10-metre setback) within 100 metres of a natural wetland, where sediment controls and/or storm water diversion are being employed (regardless of the presence of controls). In these cases, all earthworks within 100 metres of a natural wetland require a non-complying consent (unless otherwise provided for in the NES-F), because permitted earthworks rules (and resource consents for earthworks) require diversion and the discharge of water to control sediment runoff and erosion (eg, for sediment ponds, bunds and discharge structures). In effect, the earthworks setback is extended out to 100 metres due to the interpretation that the phrase ‘discharge of water’ in regulation 54 relates to the discharge of contaminants.

In addition, because the regulation is silent on the effect it is seeking to address, the 100 metres is being applied irrespective of whether there is a hydrological connection between the discharge and the natural wetland.⁵²

The National Wetland Trust noted that regulation 54 is causing the majority of complaints they hear. The Trust states, “this is creating lots of additional and unnecessary applications for consent where there is often little or no chance of damage to the wetland eg, for a wastewater field that is 80 m away and in an adjacent catchment (over a hill)”. The Trust provided draft wording to clarify the intent, and the effects to be managed.

Analysis and recommendation

We are aware that there is a wide range of interpretations of this regulation by councils. In June 2021, regulation 54 was the subject of a complaint to the Regulations Review Committee, which the Committee investigated under Standing Order 327(2)(i). A response was sought from the Ministry, and evidence presented to the committee on 1 September 2021.

The Ministry’s response to the Committee stated that the regulation was unintentionally capturing discharges of contaminants and that these issues would be considered as part of the current consultation on amendments to the wetland provisions in the NES-F.

It was not the intention that the NES-F should apply another layer of regulation to the discharge of contaminants to natural wetlands from stormwater or wastewater. Our review of planning provisions in regional plans showed these are adequately addressed by existing rules and permitted activity requirements. As set out above, the phrase ‘discharge of water’ is intended to control fluctuations or changes in water level that would impact biodiversity, habitat and/or the ecological function of the natural wetland – contaminants discharges are addressed via other regulatory requirements.

⁵⁰ Federated Farmers, NZ Deer Farmers Association, Deer industry NZ.

⁵¹ Planning Central.

⁵² Boffa Miskell.

We have issued guidance on this matter, but we also agree with the National Wetland Trust that the regulation could be clarified by including the effect that it is seeking to address and ensuring that the 100-metre setback only applies where there is a hydrological connection between the activity and the natural wetland. We recommend progressing an amendment to that effect.

Recommendation 64

Recommendation

64. Amend every reference to 'discharges of water' in Part 3 – Subpart 1 of the NES-F to specify that they are only regulated if the activity has, or is likely to have, adverse effects on the hydrological regime or biodiversity values of a natural wetland

agree/disagree

Part 4D: Fish passage

One submitter, Bioresearches, noted there is a disconnect in the regulations between fish passage and effects on wetlands. Culverts throughout NZ have been identified as complete or partial barriers to native fish passage. Bioresearches' view is that these will not be able to be addressed under the current wetland regulations because replacing small undersized culverts that have induced boggy ground upstream or downstream of a culvert is prohibited.

Analysis and recommendation

We agree that the wetland regulations should not create an impediment to addressing barriers to fish passage. Maintenance of a culvert would be permitted under regulation 46 (being existing infrastructure or for the purposes of flood control etc). However, we note the existing condition that the maintenance must not increase the size of the infrastructure and agree this could impede replacing too-small culverts in order to remove a barrier for fish. We recommend the following amendment to specifically provide for this.

Recommendation 65

Recommendation

65. In the NES-F provide an exception to regulation 46(4)(b) (Maintenance of infrastructure) so that the activity may increase the size of a structure if it is for the purpose of providing for fish passage and complies with the regulations set out in NES-F Part 3, Subpart 3 – Passage of fish affected by structures.

agree/disagree

Part 4E: Alignment and clarification for specified infrastructure

Some submitters note that under the permitted activity regulation for the maintenance of specified infrastructure (regulation 46), hydroelectric infrastructure is exempt from some general conditions in regulation 55 (exempt from 55(2), (3)(b)–(d) and (5)). They seek the same for flood and drainage management infrastructure.

Auckland Airport considers the regulation providing for the construction of specified infrastructure does not make it clear whether works which may result in the complete or partial drainage of natural wetlands are enabled under the NES-F.

Analysis and recommendation

We agree that there are some general conditions in regulation 55 which are not suitable to be applied to the maintenance and operation of flood control infrastructure and recommend the amendments set out below. Similarly, we agree that regulation 45 controlling the construction of specified infrastructure could be clarified as to the effect it is seeking to address and recommend regulation 45(4), which regulates the take, use, damming, diversion or discharge be clarified in the same way as it is proposed for regulation 54.

Recommendations 66–67

Recommendations

66. In regulation 46 of the NES-F (Maintenance and operation of infrastructure – permitted activities) disapply the following general conditions in regulation 55 (General Conditions):
- regulation 55(2) (the requirement to notify the regional council 10 working days before commencing the activity)
 - regulation 55(3)(b) (c) and (d)
 - regulation 55 (5)

agree/disagree

67. Amend regulation 47 (Maintenance and operation of infrastructure – restricted discretionary activities) to provide an exception to the general mandatory condition in regulation 47(5)(c) (that the bed and hydrological condition of a wetland must be restored within 30 days of the start of the activity) if the maintenance and operation of the infrastructure necessitates the ongoing taking, use, damming, diversion, or discharge of water

agree/disagree

Part 4F: Additional matters not recommended

The following table covers additional matters that we do not agree should be progressed and the rationale for this.

Table 2: Additional matters and rationale for not progressing

Issue	Rationale
<p>The Forest Owners Association seek certainty that if the National Environmental Standards for Plantation Forestry (NES-PF) is reviewed (for example through the bringing together of national direction to the National Planning Framework), then additional exemptions, currently set out in the NES-PF around earthworks and harvesting close to a natural wetland should be retained in the NES-F now.</p>	<p>We do not recommend proceeding with this request. We note that consultation on the National Planning Framework would provide the opportunity to make this change, should it be needed, but it would be redundant at the present time as the NES-F is subject to the NES-PF as set out in regulation 7 of the NES-F.</p>
<p>The Pukekohe Vegetable Growers Association seek a change to the requirements that apply to them in regulation 55 (general conditions), that after vegetation clearance the earth must not remain bare for longer than 3 months. They note that erosion and sediment controls are an integral part of all vegetable growing and land often sits fallow during wetter winter months.</p>	<p>We do not recommend making an exception for vegetable growing adjacent to a natural wetland on this basis. We note that a time-bound exception to the National Objectives Framework in 2020 was necessary for vegetable growers due to high levels of sediment/nutrient run-off. This policy will incentivise use of 'cover crops' to both fix nitrogen and reduce sediment/nutrient runoff adjacent to wetlands.</p>
<p>One council identified that there was no provision for managing coastal erosion (which is likely to be an increasing problem as sea levels rise) and that it would be logical for this to be included in the definition of 'specified infrastructure' in the NPS-FM under the subheading of natural hazard works in the NES-F.</p>	<p>We note that public flood control and flood protection is provided for under the definition of 'specified infrastructure', albeit not specifically for managing erosion in the CMA. We consider the wetland provisions in the NES-F are not the correct mechanism although we agree there would be value in providing additional direction on this.</p>
<p>NZDF submitted that defence facilities and activities, which are locationally confined, may need to be undertaken in proximity to a natural wetland and should be included within the definition of 'specified infrastructure'.</p>	<p>We consider that defence facilities should be located outside of natural wetlands, and further that the offsetting requirements of a consent pathway, which are necessary, would be problematic. It would not be appropriate to include defence activities as specified infrastructure.</p>
<p>Other industries sought amendments to regulate the activity status (eg, restricted discretionary) of those activities currently identified in the definition of 'specified infrastructure'. One industry provider emphasised that for the ongoing provision of electricity to be provided to New Zealanders, consents should only be required for new national grid infrastructure and not for the maintenance of current infrastructure, to reduce consenting burden.</p>	<p>We do not agree. A global consent may be sought that would provide for on-going maintenance of existing infrastructure as necessary.</p>

Appendix 1: Principles for offsetting and compensation

Principles for aquatic offsetting

The following sets out a framework of principles for the use of aquatic offsets. These principles represent a standard for aquatic offsetting and must be complied with for an action to qualify as an aquatic offset under the effects management hierarchy as set out in the NPS-FM.

1. **Adherence to effects management hierarchy:** An aquatic offset is a commitment to redress any more than minor residual adverse effects and should be contemplated only after steps to avoid, minimise and remedy adverse effects are demonstrated to have been sequentially exhausted.
2. **Aquatic offsets are not appropriate** in situations where the loss of value or extent cannot be offset to achieve a 'no net loss' outcome. This principle reflects a standard of acceptability for demonstrating, and then achieving, offsetting of aquatic values. Examples of where an offset would be inappropriate include where:
 - (a) residual adverse effects cannot be offset because of the irreplaceability or vulnerability of the river or wetland (including the species) affected
 - (b) effects on value and extent are uncertain, unknown or little understood, but potential effects are significantly adverse
 - (c) there are no proven technical or feasible options by which to demonstrate a 'no net loss' outcome within an acceptable timeframe.
3. Aquatic offsetting results in a measurable 'no net loss': The values to be lost through the activity to which the offset applies are counterbalanced and exceeded by the proposed offsetting activity, so that the result is a net gain in extent and value. Net gain is achieved when the values at the offset site exceed those being lost at the impact site. It is demonstrated by a like-for-like quantitative loss/gain calculation of the following:
 - (a) indigenous biodiversity, including the condition of habitat for that biodiversity
 - (b) spatial extent
 - (c) hydrological and ecological function.
4. **Additionality:** The aquatic offset achieves conservation outcomes beyond what would have occurred in the absence of the offset. This means gains that are additional to any minimisation and remediation undertaken in relation to the adverse effects of the activity.
5. **Leakage:** Offset design and implementation avoids displacing harm to other locations (eg, harm to existing biodiversity at the offset site).
6. **Landscape context:** Offset actions are undertaken where this will result in the best ecological outcome, preferably close to the impact site or within the same ecological district and consider the landscape context of both the impact site and the offset site, taking into account interactions between species; habitats and ecosystems; spatial and hydrological connections; and ecosystem function.

7. **Long-term outcomes:** Offsets are managed over the long term to secure outcomes of the activity that last at least as long as the impacts, and preferably in perpetuity, including funding, location, management and monitoring. The consent period reflects the time required to manage the offset and who will be responsible for managing the offset.
8. **Time lags:** The delay between loss of extent or value at the impact site and net gain at the offset site is minimised so that the calculated gains are achieved within the consent period.
9. **Science and mātauranga Māori:** The design and implementation of an aquatic offset is a documented process informed by best practice, science and mātauranga Māori where available.
10. **Stakeholder participation:** Opportunity for the effective and early participation of stakeholders is demonstrated when planning offsets, including their evaluation, selection, design, implementation and monitoring.
11. **Transparency:** The design and implementation of an offset and communication of its results to the public, is undertaken in a transparent and timely manner.

Principles for aquatic compensation

The following sets out a framework of principles for the use of aquatic compensation for wetlands and rivers. These principles represent a standard for aquatic compensation and must be complied with for an action to qualify as aquatic compensation under the effects management hierarchy in the NPS-FM.

12. **Adherence to effects management hierarchy:** aquatic compensation is a commitment to redress more than minor residual adverse impacts, and should be contemplated only after steps to avoid, minimise, remedy and offset adverse effects are demonstrated to have been sequentially exhausted.
13. **Aquatic compensation is not appropriate where:**
 - (a) the aquatic system affected is irreplaceable, or vulnerable
 - (b) effects on the wetland/river are uncertain, unknown or little understood, but potential effects are significantly adverse.
14. **Scale of aquatic compensation:** The values to be lost through the activity to which the compensation applies are addressed by positive effects that outweigh the adverse effects (ie, a net gain).
15. **Additionality:** Aquatic compensation achieves gains that are above and beyond gains that would have occurred in the absence of the compensation (ie, gains that are additional to any offsetting undertaken in relation to the adverse effects of the activity).
16. **Landscape context:** Aquatic compensation actions are undertaken where this will result in the best ecological outcome, preferably close to the impact site or within the same ecological district. The actions consider the context of both the impact site and the compensation site, taking into account interactions between species; habitats and ecosystems; spatial connections; and ecosystem function.
17. **Long-term outcomes:** Aquatic compensation is managed to secure outcomes of the activity that last as least as long as the impacts, and preferably in perpetuity.

18. **Trading up:** When trading up forms part of aquatic compensation, the proposal demonstrates that the indigenous biodiversity values gained are demonstrably of higher indigenous biodiversity value than those lost. The proposal also shows the values lost are not to threatened or at risk species or to species considered vulnerable or irreplaceable.
19. **Financial contributions:** Financial contributions are only considered when there is no effective option available for achieving gains in value or extent on the ground. Any contributions to address more than minor residual adverse effects must be directly linked to an aquatic gain or benefit.
20. **Science and mātauranga Māori:** The design, implementation and use of aquatic compensation is a documented process informed by science, and includes mātauranga Māori, where available.
21. **Stakeholder participation:** Opportunity for the effective and early participation of stakeholders is demonstrated when planning for aquatic compensation, including its evaluation, selection, design, implementation and monitoring.
22. **Transparency:** The design, implementation and use of aquatic compensation, and communication of its results to the public, is undertaken in a transparent and timely manner.