



Essential Freshwater amendments

Managing our wetlands: Policy rationale for exposure draft amendments 2022

In support of amendments to the NES-F and NPS-FM in the 2022 exposure draft



Ministry for the
Environment
Manatū Mō Te Taiao



Te Kāwanatanga o Aotearoa
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Acronyms

Acronyms	
DOC	Department of Conservation
ENGO	Environmental non-government organisation
EPA	Environmental Protection Authority
GWRC	Greater Wellington Regional Council
NES-F	Resource Management (National Environmental Standards for Freshwater) Regulations 2020
NIWA	National Institute of Water and Atmospheric Research
NPS-FM	National Policy Statement for Freshwater Management 2020
NPS-UD	National Policy Statement on Urban Development 2020
RMA	Resource Management Act 1991
TCC	Tauranga City Council
WMA	Waste Minimisation Act 2008

Introduction

Purpose of this document

The Ministry for the Environment (the Ministry) is seeking feedback on proposed drafting of amendments to the wetland regulations in the [National Policy Statement for Freshwater Management 2020 \(NPS-FM\)](#) and the [Resource Management \(National Environmental Standards for Freshwater\) Regulations 2020 \(NES-F\)](#). The draft amendments to both the NPS-FM and NES-F are collectively referred to as the **exposure draft**.

This document sets out the policy rationale for the proposed wetlands amendments in the exposure draft.

Following gazettal of the NPS-FM and NES-F in September 2020, councils and sector groups raised issues about the wetland regulations, which guidance alone could not resolve. In August 2021, the Government agreed to consult on proposed amendments to the wetland regulations, and public consultation took place from 1 September to 27 October 2021.

The proposed amendments were set out in the **discussion document** [Managing our wetlands: A discussion document on proposed changes to the wetland regulations](#).

The proposals consulted on were:

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

Issues that were raised during public consultation required further consideration. We engaged further with a number of key stakeholders to understand some of the complex issues.

The proposed amendments in the exposure draft include responses to the issues raised. As a result, there are additional changes beyond what was consulted on in September/October last year.

The purpose of this document is to provide context for the additional changes reflected in the exposure draft that you may not have seen before. It also includes the policy rationale behind the proposed amendments recommended to the Minister, which were consulted on in September/October 2021.

This document does not reflect all possible options, or include a full analysis of why the recommended options were preferred. A full assessment of all options will be included in the final regulatory impact statement and section 32 evaluation to support the Minister’s decision making. These documents will be published after gazettal of the amendments. Analysis of submissions and proposed options, including detail about which amendments were not progressed, is in the [report, recommendations and summary of submissions](#).

We welcome your feedback on the proposed amendments in the exposure draft.

Wetland regulations: Overview

Regulatory framework

In 2020, the Government introduced the *Essential Freshwater* regulatory package to help protect wetlands from loss and degradation. That package included:

- the NPS-FM, which seeks to embed long-term change through regional plans with policies to restore and map wetlands, and
- the NES-F, which contains the regulatory framework for undertaking activities within, or within a buffer zone of, natural wetlands.

The NPS-FM and NES-F are the main sources of national direction and rules about how to manage wetland ecosystems. Together they are referred to as the ‘wetland regulations’ or ‘the regulations’. The intention of the regulations is to provide strong protection for natural wetlands, while acknowledging that activities for certain purposes may need to continue within natural wetland environments.

The NPS-FM

Policy 6 of the NPS-FM states, ‘There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted’. The NPS-FM *also* lists certain purposes which have a resource consent pathway (to undertake activities in natural inland wetland areas) set out in the NES-F. Consent may be granted for these select purposes for activities in wetlands – as long as offsetting ensures a **no net loss and preferably a net gain in the extent and values of the wetland**.

For the purpose of constructing or upgrading ‘specified infrastructure’ (defined in the NPS-FM) the NPS-FM sets out additional requirements. There are two gateway tests,¹ and the effects of the activity must be managed through the effects management hierarchy. The new consent pathways are for natural inland wetlands only, and follow this same approach – though with different tests as appropriate.

The NES-F

The NES-F regulates those purposes provided with a consent pathway in the NPS-FM. Prohibited or non-complying activity status would apply to purposes that do not have a consent pathway where activities within, or around it, would result in adverse effects on a natural wetland.

The NES-F generally regulates three activities within natural wetland areas:

- vegetation clearance
- earthworks and/or land disturbance
- the take, use, damming, discharge and diversion of water.

Each purpose provided with a consent pathway (eg, urban development) has tailored regulations for these three activities set out in the NES-F.

¹ The gateway tests are: (1) The specified infrastructure will provide significant national or regional benefits, and (2) There is a functional need for the specified infrastructure in that location.

References to amendments in the exposure draft

Each of the proposed amendments in this document has relevant proposed drafting in the exposure draft (ie, both the NPS-FM and the NES-F). Table 1 is intended to guide readers to the relevant drafting for each proposed amendment.

Table 1. Proposed amendments in relation to the NPS-FM and NES-F

Proposed amendment	Reference to the NPS-FM	Reference to the NES-F
Amendment 1 Definition of 'natural wetland'	3.21(1) (Definitions relating to wetlands and rivers) Amended definitions of 'improved pasture' and 'natural wetland'	Regulation 3 (Interpretation) Amended definitions of 'improved pasture' and 'natural wetland'
Amendment 2 The tests of 'functional need' and 'national and/or regional benefit'	3.22 (Natural inland wetlands) Within new 3.22(1)(c) to (f) (ie, the 4 new consent pathways)	
Amendment 3 New consent pathway for quarrying	3.22 (Natural inland wetlands) New 3.22(1)(d)	<i>Quarrying</i> Regulation 45A (Discretionary activities)
Amendment 4 New consent pathway for landfills and cleanfills	3.22 (Natural inland wetlands) New 3.22(1)(f) 1.4 (Interpretation) Amended at 1.4(3) (to clarify that the National Planning Standards apply, unless otherwise defined)	Regulation 3 (Interpretation) New definitions of 'cleanfill area' and 'landfill' <i>Landfills and cleanfill areas</i> Regulation 45B (Discretionary activities)
Amendment 5 New consent pathway for mining (minerals)	3.22 (Natural inland wetlands) New 3.22(1)(e)	<i>Mining</i> Regulation 45D (Discretionary activities)
Amendment 6 New consent pathway for activities necessary for urban development	3.22 (Natural inland wetlands) New 3.22(1)(c) Amended at 3.22(3)(c)(iii) New 3.34 (Urban development in Tauranga)	<i>Urban development</i> Regulation 45C (Restricted discretionary activities)
Amendment 7 Include 'water storage' in the definition of 'specified infrastructure'	3.21(1) (Definitions relating to wetlands and rivers) Amended definition of 'specified infrastructure'	
Amendment 8 Include aquatic offset/compensation principles	3.21(2) (Definitions relating to wetlands and rivers) Amended definitions of 'aquatic compensation' and 'aquatic offset' 3.22 (Natural inland wetlands) Amended at 3.22(3)(b) New appendices 6 and 7	
Amendment 9 Amend the 'restoration' provisions	3.21(1) (Definitions relating to wetlands and rivers) New definitions of 'biosecurity' and 'wetland maintenance'	Regulation 3 (Interpretation) New definitions of 'biosecurity' and 'wetland maintenance'

Proposed amendment	Reference to the NPS-FM	Reference to the NES-F
	3.22 (Natural inland wetlands) Amended at 3.22(1)(a)(ii)	<i>Restoration, wetland maintenance, and biosecurity of natural wetlands</i> Regulation 38 (Permitted activities) Regulation 39 (Restricted discretionary activities) <i>General matters</i> Regulation 55 (General conditions on natural wetland activities) Amended at 55(3)(e) <i>Local authorities may charge for monitoring permitted activities</i> Regulation 75 – What local authorities may and must not charge for
Amendment 10 Clarify the take, use, dam, diversion, and discharge of water		<i>Restoration, wetland maintenance, and biosecurity of natural wetlands</i> Regulation 38 (Permitted activities) Amended at 38(4)(c) Regulation 39 (Restricted discretionary activities) Amended at 39(3) and (3A) <i>Scientific research</i> Regulation 40 (Permitted activities) Amended at 40(4)(d) Regulation 41 (Restricted discretionary activities) Amended at 41(3) and (3A) <i>Construction of wetland utility structures</i> Regulation 42 (Restricted discretionary activities) Amended at 42(3) and (3A) <i>Maintenance of wetland utility structures</i> Regulation 43 (Permitted activities) Amended at 43(4)(e) Regulation 44 (Restricted discretionary activities) Amended at 44(3) and (3A) <i>Construction of specified infrastructure</i> Regulation 45 (Permitted activities) Amended at 45(4) and (5) <i>Maintenance and operation of specified infrastructure and other infrastructure</i> Regulation 46 (Permitted activities) Amended at 46(4)(f) Regulation 47 (Permitted activities) Amended at 47(3) and (3A) <i>Drainage of natural wetlands</i> Regulation 52 (Non-complying activities) Amended at 52(2)

Proposed amendment	Reference to the NPS-FM	Reference to the NES-F
		Regulation 53 (Prohibited activities) Amended at 53(2)) <i>Other activities</i> Regulation 54 (Non-complying activities) Amended at 54(c) and (d)
Amendment 11 Allow an increase in size of infrastructure for fish passage		<i>Maintenance and operation of specified infrastructure and other infrastructure</i> Regulation 46 (Permitted Activities) Amended at 46(4)(b)
Amendment 12 Exempt flood control and drainage works from certain general conditions		<i>Maintenance and operation of specified infrastructure and other infrastructure</i> Regulation 46 (Permitted Activities) Amended at 46(4)(a) Regulation 47 (Restricted discretionary activities) Amended at 47(6)
Amendment 13 Sphagnum moss harvesting and refuelling		Schedule 4 (Form for assessing natural wetlands after harvest of sphagnum moss)

Proposed amendments

Amendment 1 – Definition of ‘natural wetland’

The NPS-FM uses a sub-set of the Resource Management Act 1991 (RMA) definition of a wetland. This narrows the scope of the policy and accompanying NES-F regulations to ‘natural inland wetlands’ and ‘natural wetlands’.

The current definitions in the NPS-FM are:

natural wetland means a wetland (as defined in the Act) 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.

natural inland wetland means a natural wetland that is not in the coastal marine area.

Proposed amendments

The exposure draft proposes the following new definition of ‘natural wetland’ in the NPS-FM:

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

- (a) a deliberately constructed wetland, other than a wetland constructed to offset impacts on, or to restore, an existing or former natural wetland as part of giving effect to the effects management hierarchy; or
- (b) a wetland that has developed in or around a deliberately constructed water body, since the construction of the water body; or
- (c) a geothermal wetland; or
- (d) a wetland that:
 - (i) is within an area of pasture; and
 - (ii) has ground cover comprising more than 50% exotic pasture species (as identified in the *National List of Exotic Pasture Species* (see clause 1.8)); and
 - (iii) is not known to contain threatened species.

The NES-F defines ‘natural wetland’ by reference to the definition in the NPS-FM, so this amendment would flow into the NES-F.

The specific proposed amendments to the definition of ‘natural wetland’ in the NPS-FM are:

- **Amendment 1A:** Replace ‘improved pasture’ with ‘pasture’ and delete the defined term ‘improved pasture’. This aims to address ambiguity in the interpretation of ‘improved’. The intent is to exclude wetlands within pasture areas, where the wetland is dominated by exotic pasture species, so those areas can continue to be used for agriculture.
- **Amendment 1B:** Delete ‘at the commencement date’. This addresses the challenges with establishing an accurate baseline, which depends on having accurate data from the [original] commencement date (3 September 2020).
- **Amendment 1C:** Replace ‘is dominated by (that is more than 50% of) exotic pasture species’ with ‘has ground cover comprising more than 50% exotic pasture species’ and

incorporate by reference into the NPS-FM a national list of exotic pasture species. This removes redundant wording (ie, 'is dominated by' is unnecessary as it already says 'more than 50%'). It guides the assessment of whether an area falls within this definition – focusing on exotic pasture species to achieve the intent of enabling continued use of pasture for agriculture.

National list of exotic pasture species

A national list of exotic pasture species is proposed to be incorporated into the NPS-FM, to clarify which species are included. The list will resolve the confusion caused by both the current term 'improved pasture' and the term 'exotic pasture species associated with pasture', as was proposed in the discussion document.

The purpose of the national list is to capture species that contribute to productive pasture for livestock grazing. Recommendations for the national list were developed by pasture species experts at AgResearch. It was reviewed by a NIWA expert in wetland weed species to ensure it did not over-capture those species. The approach of defining a national list of species was based on that used by GWRC to develop a regional list of pasture species for their '[Wetland Technical Determination](#)' guidance.

The list includes both 'commercial' species (commercially available exotic pasture species) and 'non-commercial' species (other exotic herbaceous species commonly found in pasture and considered palatable to livestock). The list considers only those species which have a wetland indicator status rating of UPL (upland), FACU (facultative upland), or FAC (facultative). FACW (facultative wetland) and OBL (obligate wetland) species were not considered as these are highly indicative of wetland conditions.

Commercially available exotic pasture species were primarily sourced from *Pasture and Forage Plants for New Zealand* (Stewart et al, 2014, 4th edition), with additional species identified from the (currently unpublished) 5th edition also included. Non-commercial species were based on existing pasture surveys. Some exotic herbaceous species are common in pasture areas. However, they have little forage value and may be considered weeds. These species are listed under the 'neutral' category and not included in the list. For more information, see the [literature review](#) and the [draft national list of exotic pasture species](#).²

Methodology for assessing pasture exclusion

The Ministry is currently developing a methodology for assessing the pasture exclusion, in collaboration with Manaaki Whenua Landcare Research. This is expected to be released alongside gazettal of the policy changes. The methodology will address the issue of the scale of application of the pasture exclusion, and provide guidance on assessing multiple tiers of vegetation.

- **Amendment 1D:** Remove 'and is subject to temporary rain-derived water pooling'. This acknowledges that the [wetland delineation hydrology tool](#) is now in place, and the 'rain-derived pooling' qualifier has limited utility. Removing it reduces ambiguity.
- **Amendment 1E:** Clarify what is a 'wetland constructed by artificial means'. The NPS-FM does not define 'wetland constructed by artificial means', leaving this open to interpretation. There have been many questions about whether this included

² See the full detail of this list at: https://consult.environment.govt.nz/freshwater/wetlands-exposure-draft/supporting_documents/draftnationalpasturespecieslistexcel.xlsx.

wetlands unintentionally induced by human activities (eg, a wetland induced by a constraining culvert).

In the guidance *Defining 'natural wetlands' and 'natural inland wetlands'*, the Ministry clarified that induced wetlands are considered 'natural wetlands' for the purposes of the NPS-FM and NES-F. Some submitters, however, favoured excluding induced wetlands from the 'natural wetland' definition.

Following the analysis of submissions, the Ministry recommended defining these terms. Subsequently, there was not agreement on the need to define **induced wetlands** (and clarify that they are covered by the regulations), on the basis that they are already captured under the definition of a wetland in the RMA (which does not differentiate on the basis of how wetlands come about).

In addition, during the drafting process a better description of what is meant by 'constructed by artificial means' in the original definition of a 'natural wetland' has removed the need for a separate definition of this term, as set out below:

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

- (a) a deliberately constructed wetland, other than a wetland constructed to offset impacts on, or to restore, an existing or former natural wetland as part of giving effect to the effects management hierarchy; or
 - (b) a wetland that has developed in or around a deliberately constructed water body, since the construction of the water body; or
 - (c) ...
- **Amendment 1F:** Provide for the protection of threatened species by disapplying part (c) of the definition where threatened species are known to be present. This will ensure that, where a wetland passes the pasture exclusion test (ie, has ground cover comprising more than 50% exotic pasture species), *but is also known to contain threatened species*, the protections in the NES-F will apply.

The NPS-FM provides for the protection of threatened species as a compulsory value in the National Objectives Framework (NOF). Some submitters considered that the exclusion in part (c) of the definition of a 'natural wetland' does not adequately provide for threatened species (as defined in the NPS-FM).

To align the NPS-FM compulsory value for threatened species and the protections for 'natural inland wetlands' set out in the NPS-FM, the presence of threatened species needs to be acknowledged in the part (c) exclusion in the 'natural wetland' definition. We propose to achieve this by ensuring the pasture exclusion does not apply to natural wetlands known to contain threatened species.

We consider that on balance, the costs and uncertainty associated with this change are necessary in order to give effect to Section 6(c) of the RMA.³ We note that in many cases DOC will already have data on the presence and location of threatened species.

³ Section 6(c) requires that all persons exercising functions and powers under the Act, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna as a matter of national importance.

Without this amendment, there would be a risk of losing threatened species through the pasture exclusion in part (c) of the definition.

For further detail about options not progressed, see the [report, recommendations and summary of submissions](#). This includes the suggestions to also define ‘pasture’, and to include the wetland delineation hydrology tool in the definition of ‘natural wetland’.

Amendment 2 – The tests of ‘national and/or regional benefit’ and ‘functional need’

The tests of ‘national and/or regional benefit’ and ‘functional need’ are set out at 3.22(1)(b) of the NPS-FM as applied to ‘specified infrastructure’. Functional need is defined in the [National Planning Standards](#):

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.

These tests mean activities can only be consented in natural inland wetlands when they are of national and/or regional benefit, and when the activity can only occur in that environment. Although the tests are having the intended effect, it became apparent during public consultation that the tests may not be suitable for the proposed new consent pathways. In particular, the functional need test as applied to urban development, and landfills, cleanfills and managed fills as proposed in the discussion document.

The Ministry received many submissions expressing concern that even if urban development and landfills were given a consent pathway, they would be unable to meet the ‘functional need’ test because they are not constrained by location in the same way that a quarry is. Activities associated with urban development and landfills may, however, need to occur in a natural inland wetland due to other considerations (eg, to meet requirements under the National Policy Statement on Urban Development 2020 (NPS-UD)).

In developing options for alternative tests, we considered modifying the existing test of ‘functional need’, or using another National Planning Standards term, ‘operational need’ (considered too permissive for the purposes of wetland protection). Neither of these approaches was suitable, so the recommendation in the [report, recommendations and summary of submissions](#) is to use a new term, ‘best practicable location’. Ultimately in the course of drafting this was further modified to better achieve the outcome needed (see [Amendment 2B below](#)).

For further detail about the options not progressed (eg, retaining the ‘functional need’ test for all pathways, or making the test ‘operational need’ for landfills and urban development), see the [report, recommendations and summary of submissions](#).

Amendment 2A – National and/or regional benefit

The proposed amendment is to apply the ‘national and/or regional benefit’ test to quarries, fills (cleanfill, landfill) and mining. It continues to apply to specified infrastructure.

This test is important to retain a high level of protection for natural inland wetlands, by only allowing activities to be consented if they meet this test.

There was also a recommendation to apply this test to urban development (and include district significance to recognise the requirements of the NPS-UD). However, during drafting the amendments it became clear that this test is unnecessary if the requirement is for the development to be on land identified appropriately in a plan.

Amendment 2B – New test for landfills, cleanfills and urban development

We recommended a new test for landfills, cleanfills and urban development of ‘best practicable location’ (see Part 2 (Proposed consent pathways) of the [report, recommendations and summary of submissions](#)).

We sought a test which has equivalent rigour to ‘functional need’, while providing scope for purposes that do not depend on location in specific areas. The recommended test ‘best practicable location’ was modified during drafting to **‘there is either no practicable alternative location, or every other practicable alternative location would have equal or greater adverse effects on a natural inland wetland’**.

The proposed amendments in the NPS-FM exposure draft apply the test (as set out above) to the consent pathways for urban development (see 3.22(1)(c)), as well as landfills⁴ and cleanfills (see 3.22(1)(f) in the NPS-FM).

We propose the test of **‘no practicable alternative location’** because while we consider the ‘functional need’ test fit for purpose for ‘specified infrastructure’ and for the proposed consent pathways for quarrying and mining, we do not consider the ‘functional need’ test, or an ‘operational need’ test, fit for purpose for landfill, cleanfill and urban development.

Applying an untested interpretation of ‘functional need’ as the test for these activities may 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.

Amendment 3 – New consent pathway for quarrying

Quarrying for aggregate can only occur where the resource is located. We heard through submissions that numerous quarries around New Zealand have been impacted by the restrictions in the wetland regulations. One submitter estimated that 15 million tonnes of aggregate and sand supply may be affected and noted these are essential resources for building houses and infrastructure.

Proposed amendment

The rationale for providing a consent pathway for quarrying is to recognise:

⁴ Note that the definition of landfill used in the National Planning Standards includes managed fills, so there is no separate definition for this.

- aggregate resources are required for the construction of specified infrastructure, which already has a consent pathway in the regulations
- the need to provide for increased housing supply.

Aggregate is locationally constrained – it can only be sourced from sites where the resource is naturally present.

The proposed amendment gives a discretionary activity status to activities necessary for expanding an existing, or developing a new, quarry for the extraction of aggregate. The discretionary activity status will enable councils to assess a range of matters on application for consent. Controls on the scale of activity will apply through the tests for ‘national and/or regional benefit’ and ‘functional need’.

This is set out in the NPS-FM at 3.22(1)(d), and in the NES-F at new regulation 45A.

The consent pathway in the NES-F applies to quarrying. It provides for both the construction and ongoing operations of a quarry site. This is a pragmatic approach because in providing for a quarry to be built, it logically follows that it will undertake the operations considered part of the quarrying activities.

The intent, however, is to provide only for activities where the resource occurs, and not for ancillary activities (which are not limited by location). This is to avoid seeking consent for access roads through a wetland.

During public consultation, many submitters (both in favour of, and opposed to, a consent pathway for quarrying) emphasised that if there was to be a consent pathway, ‘quarrying’ would need to be defined in the NPS-FM.

The National Planning Standards give the following definition of ‘quarry’:

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.

The recommended option, set out in the [report, recommendations and summary of submissions](#), was to adopt a sub-set of this definition. The purpose was to make it clear that the pathway relates only to extraction and not to ancillary activities on surrounding land associated with a quarry’s operation. We recommended:

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

This definition was intended to clarify that only the area of aggregate, and extraction of it, is subject to the consent pathway. Structures (eg, carparks, office buildings) that are not constrained by the area where the aggregate is located and are in a natural inland wetland area, would not fall within this definition, and would need to be located elsewhere.

Over the course of drafting, however, it became apparent that a specific definition is unnecessary for quarrying, and that the ordinary use of the word can be relied on. Further, a definition is not needed to restrict the consent pathway to the area of resource, as the test of ‘functional need’ achieves this.

Applying the ‘functional need’ test to ancillary infrastructure associated with quarries (eg, building and roads) will affect where that infrastructure can be situated. For example, it will likely not be possible within a natural inland wetland, and the buffers set out in the NES-F will apply. Importantly, however, the proposed consent pathway for cleanfill would enable the disposal of overburden near to the quarry site.

For further detail about options not progressed (eg, a definition based on the National Planning Standards definition), see the [report, recommendations and summary of submissions](#).

Amendment 4 – New consent pathway for landfills and cleanfills

Some submissions were opposed to enabling fills within natural wetland areas. Others emphasised that landfill and cleanfill areas will remain critical aspects of the waste management system for the foreseeable future. Without a consent pathway in the NPS-FM and the NES-F, it will be very challenging for disposal sites to continue to operate, and for new sites to be developed.

These submitters noted that because of where these sites tend to be located, they are effectively prohibited due to the lack of a consent pathway, and due to regulation 53 of the NES-F (which provides a prohibited activity status for activities which do not have another status under the NES-F).

Many submitters considered a consent pathway appropriate for cleanfills and managed fills, which absorb waste from the construction sector, but less appropriate for landfills. They noted that New Zealand ought to be reducing landfill waste, not providing infrastructure to house it, and that there was an increased risk of landfills leaching into freshwater ecosystems.

Landfills

Although the aim of the Waste Minimisation Act 2008 (WMA) is ‘to encourage waste minimisation and a decrease in waste disposal’, its aim is not to remove waste disposal outright. Waste production increases with population growth. There will be a continuing need to expand landfill sites and to develop new ones in new or rapidly growing urban areas.

There is no viable alternative to landfill for the disposal of large quantities of waste in New Zealand. Incineration is an alternative overseas, but this also comes with environmental consequences due to its carbon footprint. As not all waste can be incinerated, some must still go to a landfill.

Submitters’ concerns about leaching can be addressed through effective use of a complex lining system which contains waste to prevent run-off and leaching. Any leachate can be captured and removed for treatment by evaporation, which removes the risk of it entering groundwater and local streams.

Cleanfills and managed fills

Providers of ‘specified infrastructure’, and the mining, quarrying and development sectors, noted that managed fill and cleanfills are essential near their activities, if they are to operate without the large carbon and financial costs of transporting overburden and managed waste.

Quarrying and mining often remove and stockpile overburden, often for site rehabilitation. Cleanfill is used in rehabilitating a quarry site through backfilling, using only safe materials

which can be engineered to fit a required compaction standard. This ensures that the land can be rehabilitated for other uses in the future.

With a growing population and rising demand for aggregate materials to facilitate urban development and infrastructure, we can expect that the need for clean and managed fill sites will continue and may grow. We agree that where possible, fill sites should be outside natural inland wetland areas. However, because of the prevalence of natural wetlands in areas where fills tend to be located (ie, depressions in the landscape), this may not always be feasible.

On balance we consider the policy rationale is sufficient for a consent pathway for fills.

Amendment 4A – Provide a discretionary consent pathway for landfills and cleanfills

The proposed amendment is for a discretionary consent pathway for activities (as set out in the NES), for the purpose of expanding an existing, or developing a new, landfill or cleanfill (note that managed fills are captured under the Planning Standards definition of landfill – see [Amendment 4B](#) below). We consider that a discretionary consent will enable councils to scrutinise consent applications on a case-by-case basis.

Controls on granting consent apply through the ‘national and/or regional benefit’ test, and ‘no practicable alternative location’ test (see [Amendment 4C](#) below). We consider that other locations for a fill site should be considered before being situated in a natural inland wetland, and that this should only occur where there is an identified regional or national benefit.

The pathway in the NES would enable both constructing and operating a fill site. This is a pragmatic departure from the pathway in the NPS-FM and NES-F for ‘specified infrastructure’, where ‘construction’ and ‘maintenance and operation’ are subject to different rules. In providing for fills to be constructed, it logically follows that they will undertake the operations.

Amendment 4B – Define fill operations for the scope of the consent pathway

We propose to use the existing definitions for landfill and cleanfill areas in the National Planning Standards:

landfill means an area used for, or previously used for, the disposal of solid waste. It excludes cleanfill areas.

cleanfill area means an area used exclusively for the disposal of cleanfill material.⁵

Managed fill is not defined in the National Planning Standards, but these types of fill are captured in the definition of landfill (see Table 2).

We note that the WMA and the Waste Minimisation (Calculation and Payment of Waste Disposal Levy) Regulations 2009 use a more in-depth system of distinguishing fill types. However, because the NPS-FM and NES-FM sit under the RMA we have used the definitions in the National Planning Standards to distinguish between types of fill. This is appropriate because instruments that sit under the RMA regulate the effects of land use on the environment, whereas the WMA and instruments that sit under it regulate the waste management sector.

⁵ ‘Cleanfill material’ is also defined in the National Planning Standards.

Table 2 sets out the terms used in this document, alongside their corresponding classes under the WMA.

Table 2: Equivalent fill classifications under the Waste Minimisation Act

Proposed NPS-FM/NES-F definition	WMA definition
Landfill	Class 1 landfills: household waste, waste from commercial or industrial sources, waste from institutional sources eg, hospitals, green waste, waste that is not accepted at any of the below facilities. Class 3 and 4 landfills: Managed and controlled fill facilities that accept inert waste material from construction and demolition activities and from earthworks or site remediation.
Cleanfill area	Class 2 and 5 landfills: Construction and demolition fill disposal facilities, virgin excavated natural material (such as clay, soil or rock).

Amendment 4C – Application of the ‘no practicable alternative location’ test to landfills, cleanfills and managed fills

During public consultation, many submitters noted that fill sites do not have a ‘functional need’ to operate in a natural inland wetland area, because they can be sited anywhere. Many provided this as a rationale for opposing the proposed consent pathway.

However, several made a case for why fills may be required in natural inland wetland areas. They noted that fills are commonly located within valleys or gullies, which are often damp and meet the definition of ephemeral wetlands.

There are several reasons why fills are commonly located in geographic depressions such as valleys or gullies. In the case of cleanfill, the reason is to infill an area so that it may be used for other purposes (eg, development). Landfills and managed fills tend to be located in depressions in the landscape (where natural inland wetlands also commonly occur), to avoid the displacement of waste, or odour, by prevailing winds.⁶

We agree with submitters, however, that it would be difficult to establish a ‘functional need’ for fill sites to operate in natural inland wetland areas, because they can be located elsewhere and retain their function. As set out in [Amendment 2](#), applying the ‘functional need’ test to fills would require a broad interpretation of the term, which is not currently the case where the term is used elsewhere.

The proposed drafting instead uses the following phrase:

there is either no practicable alternative location, or every other practicable alternative location would have equal or greater adverse effects on a natural inland wetland;

This test will ensure that alternative locations are considered, and used, if the effects on the natural inland wetland would be less in the alternative location (see NPS-FM 3.22(1)(f)(iii)).

⁶ <https://www.wasteminz.org.nz/wp-content/uploads/2016/04/Technical-Guidelines-for-Disposal-to-Land-9Aug18-FINAL.pdf>. p. 43.

Amendment 5 – New consent pathway for mining (minerals)

Mining (minerals) can only occur where the resource is located. New Zealand has many mineral deposits other than coal and gold (which were the main focus of submitters who opposed a consent pathway for mineral mining). Submissions emphasised that to function, New Zealand society requires many of these minerals.

There was strong opposition to a consent pathway for mining. However, as was highlighted in submissions, mined areas can be rehabilitated or used for other commercial or community activities. As per the other consent pathways, offsets of the lost wetland extent and values would be required under the effects management hierarchy.

The Ministry sought feedback on whether there should be additional constraints on the proposed mineral mining consent pathway, such as controlling which minerals can be mined.

Amendment 5A – Provide a discretionary consent pathway for mining

The Ministry has heard that, as with quarrying:

- the effect of regulation 53 of the NES-F, and the lack of a consent pathway in the NPS-FM, is to prohibit mining
- there is a clear ‘functional need’ to site mineral mines where the minerals are.

We consider a discretionary consent pathway is appropriate for mining activities. Councils can assess consent applications on a case-by-case basis, and unnecessary activity will be controlled through the tests for ‘national and/or regional benefit’ and ‘functional need’.

The pathway would be for an activity necessary for the purpose of extracting any mineral, and as with the other consent pathways the NES-F lists the relevant activities. As with quarries, there is a question about also providing for ancillary activities for mining (see the following definition section).

Thermal and coking coal mining

In line with the Government’s goal of 100 per cent renewable electricity generation by 2030, the consent pathway for thermal coal mining where this would need to occur in a natural inland wetland is available only until 2030. Consents for coking coal mining in a wetland will continue past this date, due to fewer alternatives for coking coal, and the reliance on this for steel production.

Amendment 5B – Define mining for the scope of the proposed consent pathway

The same question applies to mining as to quarrying: whether the proposed pathway should also provide for purposes ancillary to the location and extraction of the mineral.

In the [report, recommendations and summary of submissions](#), we recommended defining the proposed consent pathway for ‘mining’ by reference to the definition in the Crown Minerals

Act, but excluding ‘mining operations’ (also defined in the Crown Minerals Act.) As with quarrying, we do not consider it appropriate to include ancillary activities in the definition of mining, for the purposes of the NPS-FM and NES-F. The intent is to provide a pathway for minerals to be extracted. We expect that ancillary infrastructure (eg, office buildings, carparks) will be situated to avoid natural inland wetlands.

As with quarries, over the course of drafting it became apparent that the scope of mining operations need not be constrained through a definition in the NPS-FM, as the ‘functional need’ test will achieve this.

As mining operations are not specifically covered by the consent pathway, this will likely affect the layout of a mine. In our view, however, the alternative is not justifiable. The impact is mitigated to an extent by the proposed consent pathways for cleanfill and managed fill. These allow for disposing of overburden near a mine (see [Amendment 4](#)).

Amendment 5C – Additional controls on coal mining

Public consultation generated substantial concern about the proposed consent pathway for coal mining within a natural inland wetland. Many submitters noted that sacrificing natural inland wetlands for coal mining was contrary to the requirement for sustainable management under the RMA, and that it conflicted with New Zealand’s commitment to sustainable energy.

Other submitters stressed the ongoing importance of coal, not only for energy, but also for steel and food production. Industry submitters noted that it would be constitutionally inappropriate to use subsidiary environmental legislation ie, freshwater regulations, to implement a political policy of banning future coal mining in New Zealand.

We agree that if the future of coal mining is to be regulated, it should be by legislation other than these regulations. However, as these regulations provide for mining in natural inland wetlands it is appropriate to consider the scope of coal mining as part of a consent pathway.

Thermal and coking coal

New Zealand is currently still reliant to some extent on thermal coal for energy provision.⁷ If access to coal reserves is required to meet the country’s immediate needs for electricity, this should be taken into account.

Coking coal is used in the production of structural steel, stainless steel for water infrastructure, and steel for heavy and civil engineering.⁸ Over half of our steel is produced by the New Zealand Steel Mill at Glenbrook.⁹ New Zealand competes for the remaining 40 per cent of its steel on the global market, where spikes in demand can reduce supply and increase costs.¹⁰ For these reasons, it is important that New Zealand retain access to coking coal.

⁷ [New Zealand's use of coal for electricity generation surges | RNZ News](#).

⁸ ‘Physical resources study’, New Zealand Infrastructure Commission, September 2021, page 36.

⁹ ‘Physical resources study’, New Zealand Infrastructure Commission, September 2021, page 37.

¹⁰ ‘Physical resources study’, New Zealand Infrastructure Commission, September 2021, page 36.

Commitment to sustainable energy

A consent pathway for coal mining should align with the Government's commitment to move to 100 per cent sustainable energy by 2030.¹¹

On 31 May 2021 the Climate Change Commission released the report 'Ināia tonu nei: a low emissions future for Aotearoa; Advice to the New Zealand Government on its first three emissions budgets and direction for its emissions reduction plan 2022-2025'. This noted that there are alternatives to coal for generating energy.¹² The Commission recommended that New Zealand phase out its coal-powered electricity to meet its commitments, as part of the 'Powering Past Coal' Alliance. This states that to meet the requirements of the Paris Agreement, there should be no more coal used in energy generation, and that OECD countries should achieve this by no later than 2030.¹³

On the other hand, the Commission found that solutions for decarbonising the cement and steel industry are further off. It cautioned against acting too quickly to end the use of coal in the production of these materials, which are important in the construction of 'specified infrastructure'.¹⁴

Consent pathways for coal mining

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

It is appropriate for the mining consent pathway to allow for mining coking coal past 2030 (see NES-F new regulation 45D(6)).

The gateway tests for mining are 'functional need' and 'national and/or regional benefit'. The offsetting requirements in the effects management hierarchy also apply.

Amendment 6 – New consent pathway for activities necessary for urban development

In August 2020, the Government replaced the National Policy Statement on Urban Development Capacity 2016, with the National Policy Statement on Urban Development 2020 (NPS-UD).

Under the NPS-UD, local authorities must ensure that New Zealand has well-functioning urban environments that are responsive to change. Planning decisions must improve housing affordability by supporting competitive land and development markets, and intensification in specified areas. Local authority decisions on urban development must be strategic, responsive and integrated with infrastructure planning and decisions.

¹¹ [100% renewable electricity generation by 2030 - NZ Labour Party](#).

¹² The New Zealand Climate Change Commission, 'Ināia tonu nei: a low emissions future for Aotearoa; Advice to the New Zealand Government on its first three emissions budgets and direction for its emissions reduction plan 2022-2025', 31 May 2021, p. 111.

¹³ The New Zealand Climate Change Commission, 'Ināia tonu nei: a low emissions future for Aotearoa; Advice to the New Zealand Government on its first three emissions budgets and direction for its emissions reduction plan 2022-2025', 31 May 2021, p. 282.

¹⁴ The New Zealand Climate Change Commission, 'Ināia tonu nei: a low emissions future for Aotearoa; Advice to the New Zealand Government on its first three emissions budgets and direction for its emissions reduction plan 2022-2025', 31 May 2021, p. 75.

Local authorities have informed the Government that they are having significant difficulties balancing the requirements of the NPS-UD with those of the wetland regulations.

There were also concerns from councils, construction companies and the major aggregate companies, which often have a vertical integration business structure (ie, they supply aggregates and run construction projects, including urban development, that rely on aggregates). They noted the impact of hectares lost to wetland protection. In their view this will reduce the planned housing yield and affect both supply and cost.

The sector seeks clarity from central government on how to rationalise the various pieces of national direction.

The proposed amendments, as set out in the discussion document, suggested using the NPS-UD definition of 'plan-enabled' to explicitly provide a consent pathway for urban development. The term 'plan-enabled' has since been replaced with another from the NPS-UD: 'well-functioning urban environment' (discussed below).

Amendment 6A – Provide a restricted discretionary consent pathway for urban development

Urban development listed in district plans

The NPS-FM and NES-F currently provide a discretionary consent pathway for urban development that is listed in a *regional* policy statement or plan as regionally significant infrastructure (under the definition of 'specified infrastructure'). However, there is no equivalent for urban development listed in a *district* plan.

New Zealand is experiencing a housing crisis, with home ownership rates at their lowest in 60 years. Underlying this is an inadequate supply of new housing to keep up with population growth. Constraints on planning, resource and building consents are partly to blame. There is also a growing need to provide urban infrastructure to support new house building.¹⁵

Objective 3 of the NPS-UD is as follows:

Objective 3: Regional policy statements and district plans enable more people to live in, and more businesses and community services to be located in, areas of an urban environment in which one or more of the following apply:

- (a) the area is in or near a centre zone or other area with many employment opportunities
- (b) the area is well-served by existing or planned public transport
- (c) there is high demand for housing or business land in the area, relative to other areas within the urban environment.

To align with Objective 3 of the NPS-UD – in particular, 'district plans enable more people to live in, and more businesses and community services to be located in areas of urban environment', it is appropriate that development listed in a district plan also be provided with a consent pathway in the NPS-FM and NES-F.

¹⁵ [A Stocktake of New Zealand's Housing.pdf \(beehive.govt.nz\)](#). p 4.

We expect that the NPS-UD, the NPS-FM and the NES-F can work together to incentivise water-sensitive urban design – including avoiding wetlands and increasing density in other areas to ensure similar housing unit yield.

However, we accept that wetland loss may be unavoidable in some circumstances. Offsetting in line with the ‘effects management hierarchy’ would be required to ensure no net loss of wetland extent or values.

In accordance with what is currently provided for constructing ‘specified infrastructure’ (and proposed for the other new consent pathways) the discussion document proposed to make ‘plan-enabled’ urban development a discretionary activity.

However, submitters correctly pointed out that Clause 3.4(2) of the NPS-UD states that land zoned for business or housing use is only ‘plan-enabled’ if the activities required for housing or business development are subject to permitted, controlled or restricted discretionary activity status.

Some submitters considered restricted discretionary activity status to be a lower threshold than discretionary activity status. This is because councils do not have the same degree of discretion over whether to grant a consent. The matters to which they can apply discretion are limited to those in the regulations.

However, in our view, many of the matters over which we would require councils to exercise discretion are covered by RMA requirements for plan rules, and by the gateway test and offsetting requirements in the NPS-FM.

We consider the matters to which discretion is restricted (set out in regulation 56 of the NES-F) to be fit for purpose for development that contributes to well-functioning urban environments. However, one matter ought to be included – that the consent authority must be satisfied there is clear provision, including who is responsible, for the ongoing maintenance and management of aquatic offsets once the development is completed. This ensures that once the consent applicants have finished the development, the aquatic offsets required by the ‘effects management hierarchy’ continue to be managed and maintained.

Amendment 6B – Define urban development for the scope of the proposed consent pathway

To ensure consistency across national policy statements, we proposed using the term ‘plan-enabled’ to define the scope of the consent pathway. ‘Plan-enabled’ is defined in clause 3.4(1) of the NPS-UD.

Subsequently through the drafting process it became clear that the term ‘plan-enabled’ was not capturing what was intended. ‘Plan-enabled’ is strictly to do with *sufficient development capacity* required under the NPS-Urban Development. Instead, a different term defined in the NPS-UD, **well-functioning urban environment**, is used in the proposed drafting. This better describes what is sought for this consent pathway. Using this term will signal that the provision is for housing, but also other aspects of good urban environments required to meet the needs of people to ‘live, work and play’.

The intent is still, however, to provide for urban development, identified as such in a plan.

Special provision for Tauranga

In their submission, Tauranga City Council (TCC) emphasised that the term ‘plan-enabled’ will exclude, in the short term, work on key developments at Tauriko West and Te Tumu, which are not currently on land zoned residential or business.

TCC intend to apply for a Streamline Planning Process to progress a plan change to rezone the areas identified for urban development. However, resourcing and other factors may mean this will take some time, and TCC wish to ensure they can begin works without delay.

As it is not the policy intent to delay urban developments in Tauranga, we recommended including a transitional provision for TCC, so that they can continue planned development prior to a plan change.

We propose a transitional provision for a consent pathway for urban development, as defined in the Bay of Plenty *SmartGrowth Urban Form and Transport Initiative Connected Centres Programme*. This will enable urban development specifically listed in the BoP SmartGrowth programme to continue while TCC undertakes a plan change. This transitional provision is therefore only available for five years from the day the regulations come into effect (see 3.34 in the NPS-FM).

Amendment 6C – Application of the ‘no practicable alternative location’ test to urban development

During public consultation on the discussion document, the Ministry received many submissions on the applicability of the ‘functional need’ test to ‘plan-enabled’ urban development. Submitters, whether they supported or opposed the consent pathway, agreed that ‘functional need’ test was not fit for purpose for urban development.

We agree that there is probably not going to be a ‘functional need’ for urban development to occur in a natural inland wetland. However, there are significant other reasons why urban development may end up occurring within or near to natural inland wetland areas (eg, to meet the national need for greater urban infrastructure and housing).

We proposed a ‘best practicable location’ as a replacement to functional need in the [report, recommendations and summary of submissions](#). However, there was concern that this test may be ambiguous. The proposed gateway test is now drafted as:

there is either no practicable alternative location, or every other practicable alternative location would have equal or greater adverse effects on a natural inland wetland;

We propose that this test also applies to the proposed landfill and cleanfill pathways. It is significantly more fit for purpose than the ‘functional need’ test. It focuses on the nature of the activity, and ensures that adverse effects on a natural inland wetland will be considered, and that alternative locations are sought.

Amendment 7 – Include water storage in the definition of ‘specified infrastructure’

Submitters requested that the NPS-FM and NES-F specifically provide for water storage, as these facilities, like landfills, tend to be sited in valleys where there are often natural inland wetlands.

Proposed amendment

In our view, provision for water storage is needed for a range of purposes, including hydro-generation, agriculture and horticulture, stock drinking and fire fighting for rural communities.

Water storage is an essential and growing part of New Zealand's infrastructure in the face of climate change. For this reason, it is appropriate to include the construction and maintenance of water storage in the definition of 'specified infrastructure', which currently has a consent pathway under the regulations.

In 2021 the Ministry for Primary Industries released the report [Water availability and security in Aotearoa New Zealand](#). This noted that the declining natural availability of water due to climate change – combined with the need to halt further degradation of natural water bodies and set environmental limits – poses significant challenges to the availability of water for the food and fibre sector, and rural communities. Because of this, there is a need to consider solutions such as investment in water storage.

The report also noted that recent droughts in Northland and Tairāwhiti show that for communities lacking the infrastructure for a reliable water supply for households, livestock and fire fighting, the impacts can be severe.

The Climate Change Commission Report of 2021 noted that meeting the Government's goal of 100 per cent renewable electricity generation by 2030, would require aligning resource management processes to enable a fast-paced and sustained build of low-emissions electricity generation and infrastructure.

The proposed amendment provides for the construction and maintenance of water storage in the current NPS-FM definition of 'specified infrastructure'. Water storage will need to:

- demonstrate a 'functional need' to operate in a wetland area
- meet the test of national or regional benefit
- meet the requirements of the effects management hierarchy.

Other pathways

We received requests for additional consent pathways. For detail about options not progressed, see the [report, recommendations and summary of submissions](#).

Amendment 8 – Include aquatic offset/compensation principles

We acknowledge that a net positive outcome from offsetting cannot be guaranteed. We are also aware of the [National Wetland Trust Report of 2020](#). This found that not all offsetting required by consents has been done in the past.

We consider that the NPS-FM can do more to ensure that off-setting is undertaken effectively by appending offsetting principles. Forest and Bird suggested basing these on the proposed offsetting principles for the proposed National Policy Statement for Indigenous Biodiversity. We agree this is a pragmatic approach to ensure consistency across national policy statements, and to align Policy 9 of the NPS-FM (which states, 'The habitats of indigenous freshwater species are protected') as much as possible with the proposed National Policy Statement for Indigenous Biodiversity.

Proposed amendment

The proposed amendment includes a requirement at 3.22(3) of the NPS-FM, that councils are 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. The principles themselves will be included in new appendices 6 and 7.

Amendment 9 – Amend the ‘restoration’ provisions

Councils, ENGOs, DOC and others have given feedback that the wetland provisions are too constraining for maintenance works and restoration activities. DOC has had an ongoing role in developing amendments addressing these issues throughout the policy amendment process.

The proposed amendments, publicly consulted on and now reflected in the exposure draft, address the following issues.

- The way vegetation clearance, earthworks and land disturbance are controlled, including the restrictions on the total area of these activities.
- Providing for weed and pest control activities that are undertaken for maintenance and biosecurity purposes, rather than being limited to restoration.
- Matching the controls to activities that are low impact in the short term but beneficial in the long term (eg, permitting weed clearance by hand-held tools).
- Enabling clearance of non-indigenous vegetation, in accordance with a restoration plan provided to the council 10 working days prior, to be undertaken as a permitted activity, subject to conditions.

Proposed amendments

Feedback received from DOC, Forest and Bird, regional councils, and other conservation groups noted that the current restoration provisions in the NES-F may be overly restrictive, preventing desirable restoration, maintenance and biosecurity work.

The proposed amendments to the restoration provisions in the NES-F and NPS-FM are:

- **Amendment 9A:** Define ‘maintenance’ and ‘biosecurity’ in the NPS-FM and NES-F and include activities undertaken for those purposes in the consent pathway for ‘restoration’.
- **Amendment 9B:** Clarify the intent of the area restrictions at regulation 38(4)(b) of the NES-F.
- **Amendment 9C:** Enable clearance of non-indigenous vegetation by any means for biosecurity purposes, and of indigenous vegetation where necessary for biosecurity, beyond the area threshold.
- **Amendment 9D:** Enable clearance of non-indigenous vegetation using hand-held tools for maintenance and restoration purposes, beyond the area threshold.
- **Amendment 9E:** Enable clearance of non-indigenous vegetation by any means for maintenance and restoration purposes, beyond the area threshold, provided the activities are set out in a restoration plan.

- **Amendment 9F:** Clarify that the exception to regulation 38(4)(b) (area restrictions) listed at regulation 38(5) of the NES-F in relation to earthworks or land disturbance for planting, only applies to planting *for restoration or wetland maintenance purposes*.
- **Amendment 9G:** Clarify that the intent of regulation 55(3)(c) of the NES-F is about the placement of sediment and debris, and does not relate to incidental entrance of sediment to wetlands.
- **Amendment 9H:** Clarify that councils must not charge to receive and review notifications of intended permitted activity work (including restoration plans where required) for wetland restoration, maintenance and biosecurity.

Amendment 9A – Define ‘maintenance’ and ‘biosecurity’ in the NPS-FM and include in the consent pathway for ‘restoration’

DOC has highlighted that currently, the regulations only provide for activities that meet the definition of ‘restoration’, as currently defined in the NPS-FM:

restoration, in relation to a natural inland wetland, means active intervention and management, appropriate to the type and location of the wetland, aimed at restoring its ecosystem health, indigenous biodiversity, or hydrological functioning.

An unintended consequence of this definition is that the pathway for restoration activities in the NPS-FM and NES-F only applies to activities ‘aimed at restoring’ a natural wetland. It does not apply to maintaining present state or protecting a natural wetland from future or incumbent threats.

Maintenance is an important part of retaining the ecological health of a natural wetland. For example, clearing exotic and invasive species so they do not smother threatened, native or ecologically significant wetland species. Likewise, biosecurity is necessary to eradicate or manage invasive species that are not yet widespread, so that they do not spread and adversely affect freshwater and other ecosystems.

As ‘maintenance’ and ‘biosecurity’ are related to, but distinct from, ‘restoration’, we consider it appropriate to include these activities in the restoration consent pathway in the NES-F, with several provisions specific to ‘biosecurity’. We have worked with DOC to develop definitions of ‘maintenance’ and ‘biosecurity’.

The definitions align as closely as possible with the proposed additional provisions for ‘biosecurity’ (see [Amendment 9C](#)). This ensures that no additional untested activities are captured in the regulations and subject to a more permissive activity status.

The proposed amendment:

- defines ‘wetland maintenance’ and ‘biosecurity’ in the NPS-FM at 3.22 (the NES-F refers back to the NPS-FM)
- amends NES-F regulations 38 and 39 (relating to the restoration of natural wetlands) so that wherever ‘is for the purpose of natural wetland restoration’ appears, it reads ‘is for the purpose of natural wetland restoration, maintenance or biosecurity’.

Amendment 9B – Clarify the intent of the area restrictions in regulation 38(4)(b) of the NES-F

The condition set out in regulation 38(4)(b) of the NES-F states that ‘if the activity is vegetation clearance, earthworks or land disturbance, the activity must not occur over more than 500m² or 10% of the natural wetland, whichever is smaller’.

DOC stressed that many large scale ‘restoration’, ‘maintenance’ and ‘biosecurity’ activities may require a scale broader than 500m² or 10 per cent of the natural wetland (eg, targeted removal of invasive vegetation at the wetland perimeter).

We propose amending this condition to apply only to the area that the activity *affects*, instead of the area over which the activity *occurs*.

This subtle change would ensure that weed management, in particular, could cover an entire natural wetland area, where the work would only affect a small area eg, removal of a few scattered trees.

This would make conservation work more efficient and cost effective. It could be done over an entire wetland of which pest species were known to occupy less than 500m² or 10 per cent.

We acknowledge that compliance monitoring may be more difficult, as the assessment of effects would be required before starting the activity. However, we consider this change necessary for ‘restoration’, ‘maintenance’ and ‘biosecurity’ restrictions to apply only to the area where adverse effects may result.

The proposal amends regulation 38(4)(b) to read that if an activity is vegetation clearance, earthworks or land disturbance, it must not *affect* more than 500m² or 10 per cent of the natural wetland, whichever is smaller.

Amendment 9C – Enable clearance of non-indigenous vegetation by any means for ‘biosecurity’ purposes, and of indigenous vegetation where necessary for biosecurity, beyond the area threshold

The proposed definition of ‘biosecurity’ (see [Amendment 9A](#)), limits the scope of associated activities to the removal of ‘pest’ plants and ‘unwanted organisms’, both of which are defined in the Biosecurity Act 1993:

pest means an organism specified as a pest in a pest management plan

unwanted organism means any organism that a chief technical officer believes is capable or potentially capable of causing unwanted harm to any natural and physical resources or human health; and

(a) includes—

- (i) any new organism, if the Authority has declined approval to import that organism; and
- (ii) any organism specified in Schedule 2 of the Hazardous Substances and New Organisms Act 1996; but

(b) does not include any organism approved for importation under the Hazardous Substances and New Organisms Act 1996, unless—

- (i) the organism is an organism which has escaped from a containment facility; or

- (ii) a chief technical officer, after consulting the Authority and taking into account any comments made by the Authority concerning the organism, believes that the organism is capable or potentially capable of causing unwanted harm to any natural and physical resources or human health.

Using these two legally defined terms ensures that the scope of 'biosecurity' activities is quite narrow, and that 'pests' or 'unwanted organisms' require identification by a chief technical officer or a national or regional pest management plan.

If the infestation of a natural wetland by a 'pest' plant or 'unwanted organism' occurs, removal beyond the area threshold will be required to remove it and get the area under control.

Removing 'pest' plants and 'unwanted organisms' with hand-held tools is viable in limited circumstances. A large infestation may require aerial spraying and other non-hand-held methods of weed control (for example, infestations of gorse or blackberry, that ground-based methods cannot control).

Agrichemicals

Many submitters expressed concern over the use of agrichemicals to manage 'pest' plants or 'unwanted organisms' in natural wetland areas. However, agrichemicals are the only way to effectively eradicate or manage some weed species. In some instances, agrichemicals may have fewer potential adverse effects on the natural wetland than non-chemical tools (eg, targeted drill and fill to remove woody weeds).

Furthermore, the use of agrichemicals is managed through a regulatory framework that involves the Environmental Protection Authority (EPA), to safeguard people and the environment. Based on risks associated with an agrichemical, the EPA applies controls, including for using some agrichemicals over water. Regional plans regulate the intentional discharge of chemicals or inadvertent discharge of chemicals to water through run-off.

Clearing vegetation

All operations to remove 'pest' plants or 'unwanted organisms' must comply with the EPA regulations and regional plan rules, and compliance, monitoring and enforcement.

In some limited circumstances, where it is not possible to isolate the targeted 'pest' plant or 'unwanted organism', it may be necessary to clear incidental indigenous vegetation. In this case we consider it appropriate to provide for the clearance of indigenous vegetation, only where it is demonstrably necessary to 'biosecurity'.

Because of the limited scope of the proposed 'biosecurity' definition, and the benefits to natural wetlands, associated with the control of 'pest' plants and 'unwanted organisms' we propose that non-indigenous vegetation clearance for 'biosecurity' purposes, and indigenous vegetation clearance demonstrably necessary for 'biosecurity' purposes, be a permitted activity over any area of natural wetland, in exception to the area restrictions in regulation 38(4)(b) of the NES-F.

Vegetation clearance for 'biosecurity' purposes must still comply with the general conditions in regulation 55 of the NES-F. The general conditions will be an important check and balance on any unintended consequences of removing vegetation.

The proposed amendment to regulation 38(5) adds exceptions to the area threshold in subclause 4(b) for:

- (i) non-indigenous vegetation clearance for 'biosecurity' purposes, and
- (ii) indigenous vegetation clearance demonstrably necessary for 'biosecurity' purposes.

Amendment 9D – Enable clearance of non-indigenous vegetation using hand-held tools for 'maintenance' and 'restoration' beyond the area threshold

We consider that the above exception to the area threshold should also apply to the clearance of non-indigenous vegetation for 'restoration' or 'maintenance' purposes, but only where this will be done with hand-held tools.

This exemption would be limited to the use of hand-held tools because it is more likely to be carried out by practitioners who do not have significant expertise in large-scale 'pest' management, or operations and experience with non-hand-held machinery (eg, landowners and community restoration groups).

Both 'restoration' and 'maintenance' may require removing non-indigenous vegetation, for a wetland habitat to function. However, we have residual concerns about the habitats of wetland species that may have adapted to non-indigenous species, as raised in feedback.

As proposed above for 'biosecurity', we acknowledge that:

- extensive non-indigenous vegetation clearance may be necessary where a weed has colonised large areas of a natural wetland
- incremental vegetation clearance is not practical where it must be done quickly to prevent seeding.

Some concerns about the disturbance of habitats will be addressed by limiting non-indigenous vegetation clearance to hand-held tools beyond the area threshold for 'restoration' and 'maintenance'. For example, because hand-held tools are used on the ground, practitioners can be more cautious in the areas that they disturb.

Some submitters noted that hand-held tools may include agrichemical applicators (eg, drill and fill, and spray packs). This is the intent. The use of agrichemicals is regulated by the EPA and in regional plans, and operations will remain subject to this. However, we consider targeted spraying and drill and fill work to have less potential for harm in some cases than removal by non-chemical means (eg, targeted spraying of an area of gorse, rather than hand removal, which may cause seed dispersal and sediment run-off).

As proposed for 'biosecurity' above, we consider it appropriate to still require vegetation clearance for 'maintenance' and 'restoration' purposes to comply with the general conditions in regulation 55 of the NES-F. These conditions will be an important check and balance on any unintended consequences of vegetation removal.

We also note that the habitats of threatened species will be known to regional councils, who can notify and caution applicants when they receive notification of intention to undertake the activity (as required under regulation 55).

The proposed amendment to regulation 38(5) adds exceptions to the area threshold in subclause 4(b) for non-indigenous vegetation clearance using hand-held tools for 'restoration' and 'maintenance'.

Amendment 9E – Enable clearance of non-indigenous vegetation by any means for ‘maintenance’ and ‘restoration’ purposes, beyond the area threshold, provided the activities are in a restoration plan

We consulted on a broad proposal to ‘make the restoration and maintenance of a natural wetland a permitted activity if undertaken in accordance with a council-approved wetland management strategy’.

This proposal has been subsequently refined through policy development for the following reasons.

- Activity status is set through the NES-F and by extension the RMA. Councils cannot have an approval role that changes an activity from restricted discretionary to permitted.
- The proposals listed above, in relation to exceptions to the area threshold at regulation 38(4)(b) of the NES-F, will address many of the concerns about the restrictiveness of the restoration provisions.
- Defining a ‘council-approved wetland management strategy’ and setting criteria for permitted activity status, would unnecessarily complicate the regulations, and may create an equally restrictive process, or conversely overlook important considerations for particular localities.

We now propose to extend the area restriction exemptions (see [Amendment 9D](#)). We accept that in some instances, non-indigenous vegetation clearance may be required for large-scale ‘restoration’ or ‘maintenance’ using non-hand-held tools.

We propose to accommodate the non-indigenous vegetation clearance of an area greater than 500m² or 10 per cent of wetland extent with non-hand-held-tools for ‘restoration’ and ‘maintenance’, as a permitted activity, provided that the activity is in accordance with a restoration plan given to council at least 10 days before starting the activity.

Schedule 2 of the NES-F currently sets out requirements for restoration plans, including but not limited to the details of the site, the features and values of the natural wetland, the issues that the restoration or maintenance seeks to address, and the operational details of the proposed restoration or maintenance.

We consider this information, coupled with meeting the general conditions in regulation 55 of the NES-F, an appropriate threshold for non-hand-held ‘maintenance’ and ‘restoration’ activities beyond the area threshold.

The proposed amendment to regulation 38(5) adds an exception to the area threshold 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 before the activity begins. The 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 (Restoration plans for natural wetlands) of the NES-F relevant to the activity proposed.

Amendment 9F – Clarify that the exception to regulation 38(4)(b) (area restrictions) listed in 38(5) of the NES-F in relation to earthworks or land disturbance for planting, applies only to planting for restoration or wetland maintenance purposes

Regulation 38(5) of the NES-F currently states that the area threshold in regulation 38(4)(b) does not apply if the earthworks or land disturbance is for planting for the purposes of restorations or wetland maintenance.

The only operation we consider appropriate for planting at this scale is restoration or wetland maintenance. The proposed amendment clarifies this by adding that the planting must be *for restoration or wetland maintenance purposes* in regulation 38(5).

Amendment 9G – Clarify that the intent of regulation 55(3)(e) of the NES-F concerns the placement of sediment and debris, and not incidental entrance of sediment to wetlands

During public consultation, Te Rūnanga o Ngāi Tahu highlighted a contradiction in the general conditions in regulation 55 of the NES-F. Regulation 55(3)(a) allows the discharge of contaminants to water if it does not cause one or more of five listed effects.

It was submitted that sediment would be considered a ‘contaminant’ under the broad RMA definition, which is:

contaminant includes any substance (including gases, odorous compounds, liquids, solids, and micro-organisms) or energy (excluding noise) or heat, that either by itself or in combination with the same, similar, or other substances, energy, or heat—

- (a) when discharged into water, changes or is likely to change the physical, chemical, or biological condition of water; or
- (b) when discharged onto or into land or into air, changes or is likely to change the physical, chemical, or biological condition of the land or air onto or into which it is discharged.

However, the discharge of contaminants (including sediment) allowed in regulation 55(3)(a) is nullified by regulation 55(3)(e) which states:

debris and sediment must not—

- (i) be placed within a setback of 10m from any natural wetland; or
- (ii) be allowed to enter any natural wetland.

Te Rūnanga o Ngāi Tahu noted that in effect, this contradiction would make any vegetation clearance within a natural wetland unable to be undertaken as a permitted activity, due to the inevitable displacement of sediment caused by vegetation removal.

This was not the policy intent. Regulation 55(3)(e) is intended to regulate the placement of sediment in proximity to a wetland, and the subsequent risk of run-off. Not, the incidental displacement of sediment from undertaking activities, which is already covered by regulation 55(3)(a).

Te Rūnanga Ngāi Tahu proposed pragmatic wording, which we agree removes this contradiction and clarifies the intent of regulation 55(3)(e). The proposed amendment replaces regulation 55(3)(e) with:

debris and sediment must not be placed–

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

Amendment 9H – Control on the ability to charge for notifications of intended permitted activity work (including restoration plans where required) for wetland restoration, maintenance, and biosecurity

Several submitters noted that some regional and district councils are charging to receive notice of intended permitted activity work. They expressed concern that the proposed ‘restoration plan’ provisions would also incur charges.

Regulation 75 of the NES-F enables councils to charge for monitoring permitted activities if the council is responsible for the monitoring. We consider this reasonable, given the compliance and monitoring burden that permitted activities place on councils.

However, we note that this is a different principle from charging to receive notice of permitted activity, which is an administrative fee. We do not consider this appropriate, as receipt of permitted activity notices should be standard business for councils, and covered by their day-to-day costs.

Furthermore, charges to receive notice of permitted activity place an undue financial burden on people and organisations undertaking restoration, maintenance and biosecurity activities that will have no more than minor effects on natural wetlands, and often be of net benefit.

We consider it appropriate to amend regulation 75 of the NES-F to clarify 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.

For more detail about options not progressed (eg, the request for permitted activity status for wetland restoration and maintenance if carried out in accordance with tikanga Māori, or for permitted activity status for the construction of wetland utility structures), see the [report, recommendations and summary of submissions](#).

Amendment 10 – Clarify the take, use, dam, diversion, and discharge of water

Feedback received during public consultation highlighted the confusion arising from the way ‘discharge’ is addressed in regulations 52 and 53 of the NES-F, which relate to the *drainage of natural wetlands*. Submitters stated that a discharge of water into or near a natural wetland is unlikely to result in the drainage of a natural wetland.

Further, regulation 54 regulates the taking, use, damming, diversion, or discharge of water within, or within a 100-metre setback from, a natural wetland as a catch-all for all other activities. Feedback indicated this regulation is being applied more broadly than intended

– that is, to capture the discharge of contaminants. Examples include applying the regulation to stormwater discharges, septic tank overflows for rural-residential developments with tertiary treated wastewater systems, and overflows from drinking water tanks.

Amendment 10A – Delete ‘discharge’ from regulations 52 and 53

In the current NES-F:

- **regulation 52** makes the taking, use, damming, diversion, or discharge of water within a 100-metre setback from a natural wetland a **non-complying activity** if it is likely to drain all or part of a natural wetland and it does not have a consent pathway
- **regulation 53** makes the taking, use, damming, diversion, or discharge of water within a natural wetland a **prohibited activity** if it is likely to drain all or part of a natural wetland and it does not have a consent pathway.

We agree with submitters that the *discharge* of water into or near a natural wetland is unlikely to result in the *drainage* of a natural wetland.

The proposed amendment addresses this by deleting ‘discharge’ from regulations 52 and 53, while discharges remain adequately covered by regulation 54 (see also below for further proposed clarifications to the discharge rules).

Amendment 10B – Clarify that ‘discharge’ means discharges of water with adverse effects

In the current NES-F, regulation 54 makes the taking, use, damming, diversion, or discharge of water within, or within a 100-metre setback from a natural wetland a non-complying activity (if it does not have another status under Part 3, Subpart 1 of the NES-F).

Feedback on regulation 54 indicated that the regulation is being interpreted more broadly than intended, and being applied to contaminants, regardless of whether there is a hydrological connection to the natural wetland or it would have an adverse effect. It was not the intent for the NES-F to add an additional layer of regulation to the discharge of contaminants, as these are addressed via other regulations. The intent is to prevent discharges of water that may adversely affect biodiversity, habitat or the ecological function of the natural wetland.

Clarifying the intent of the regulation will prevent the capture of small-scale discharges of water to wetlands and enable activities to proceed if they do not adversely affect the natural wetland or its values.

The proposed amendment revises and clarifies all references to ‘discharges of water’ in Part 3, Subpart 1 of the NES-F. The aim is to specify that discharges are only regulated if:

- there is a hydrological connection between the discharge of water and the wetland, and
- there are likely to be adverse effects from the discharge on the hydrological functioning, habitat or biodiversity values of a natural wetland.

Amendment 11 – Allow an increase in the size of infrastructure for fish passage

Submitters highlighted a disconnect between the fish passage provisions in Part 3, Subpart 3 of the NES-F, and regulation 46(4)(b), which states activities permitted under regulation 46 must not increase the size of the specified infrastructure or other infrastructure.

Proposed amendment

Culverts throughout New Zealand have been identified as obstacles to fish passage. In our view, allowing culverts to be enlarged to enable fish passage is in keeping with the intent to provide for the passage of fish in New Zealand's freshwater bodies.

The proposed amendment provides an exception to regulation 46(4)(b) to allow activities to increase the size of infrastructure if it:

- is for the purpose of providing for fish passage, and
- complies with the fish passage provisions in Part 3, Subpart 3.

Amendment 12 – Exempt flood control and drainage works from certain general conditions

Submitters noted that under the permitted activity regulation for the maintenance of specified infrastructure (regulation 46), hydro-electricity infrastructure is exempt from some general conditions in regulation 55 (exempt from regulation 55(2), (3)(b)-(d) and (5)).

Submitters sought the same exemption for flood management and drainage works, which require activities of a similar nature to hydro-electricity infrastructure.

Proposed amendment

The general conditions from which hydro-electricity infrastructure are exempt are:

- Regulation 55(2), which requires notification 10 working days before starting the activity, including a description of the activity and expected start and end dates.
- Regulation 55(3)(b) to (d), which set requirements relating to the level of flood waters, altering natural movement of water, and the taking or discharge of water to or from natural wetlands.
- Regulation 55(5), which restricts the timing of the activity in relation to the risk of flooding, requires records to be made before the activity is undertaken, and a return to the original state, as well as limits on damming, pumps and fish screens.

Applying these conditions to flood and drainage management is not pragmatic. Flood protection and drainage works may need to be carried out and maintained quickly in the event of flooding. Flood mitigation may include both taking water from and discharging water into a natural wetland. It also may require installing drains, pumps, within a natural wetland for more than 14 days.

The proposed amendment to regulation 46(4)(a) includes flood protection and drainage works as activities exempt from the general conditions in regulation 55(2), (3)(b) to (d) and (5).

The other part of the proposed amendment is to regulation 47, for the same reasons as above. That regulation states:

Regulation 47(5) – The conditions are that–

...

- (a) the bed profile and hydrological regime of the natural wetland must be returned to their original condition no later than 30 days after the start of the activity.

The proposed amendment provides an exception to this general mandatory condition in regulation 47(5)(c), if the maintenance and operation of the infrastructure necessitates the ongoing taking, use, damming, diversion, or discharge of water.

Amendment 13 – Sphagnum moss harvesting and refuelling

The West Coast group of councils expressed concern about the provisions for refuelling within a natural wetland, in relation to harvesting sphagnum moss. The NPS-FM and NES-F provide a consent pathway for existing harvests (permitted activity), and for new harvests (discretionary activity).

Controls on refuelling machinery, vehicles and equipment within a natural wetland are currently set out at Schedule 4, Condition (7) of the NES-F. That condition requires that:

Only containers of 20 litres or less were used to refuel machinery, vehicles, and equipment outside a 10m setback from the natural wetland.

Prior to the introduction of the NES-F, the West Coast Regional Plan allowed refuelling with containers of 20 litres or less *within* a natural wetland (rather than requiring refuelling to be undertaken beyond a 10-metre setback, as the NES-F requires). The feedback requested that the NES-F be amended to align with the West Coast Regional Plan.

Submitters also requested there be no differentiation in activity status between existing and new sphagnum moss harvesting.

Proposed amendment

We agree there is likely to be a greater risk of damage to a natural wetland where vehicles are traversing it to refuel beyond the 10-metre setback, than due to the risk of a fuel spill from refuelling within the natural wetland.

We therefore propose amending Schedule 4, Condition (7) to allow the use of containers of 20 litres or less to refuel machinery, vehicles or equipment *within* a natural wetland, removing the requirement of the 10-metre setback.

We do not consider it appropriate to amend the status of new sphagnum moss harvesting to a permitted activity, to align with the status for existing harvests. New harvests are already provided for through a discretionary activity status, which we consider appropriate to ensure there is a process to consider the benefits of the operation within a natural wetland area.