

SUBMISSION ON *MANAGING OUR WETLANDS* - PROPOSED CHANGES TO WETLAND REGULATIONS

By: Waipā District Council

INTRODUCTION

Waipā District Council (Council) welcomes the opportunity to provide comment on Ministry for the Environment's (MfE) discussion document *Managing Our Wetlands* on proposed changes to the wetland regulations¹.

The wetland regulations are three-fold; The Resource Management Act 1991 (RMA), the Freshwater National Policy Statement 2020 (NPS-FM) and the National Environmental Standards for Freshwater 2020 (NES-F). These regulations are complemented by a number of technical guidelines and definitions to provide a sound, defensible basis for wetland protection in Waipā.

In addition to statutory functions, Waipā District Council's engagement with wetlands has several aspects: Council owns and manages wetland sites under the Reserves Act 1977, and also collaborates with other agencies and fora - such as the Waipā Peat Lakes Accord - to contribute to wetland restoration goals in the wider district and Waikato Region. In a regulatory capacity, the Resource Management Act 1991 (RMA) via the Waipā District Plan outlines the processes for protection of Significant Natural Areas, some of which are wetlands.

DEFINITION OF 'NATURAL WETLAND'

1. Do you agree with the proposed changes to the definition of 'natural wetland'?

Council disagrees with the proposed changes to the definition of a 'natural wetland', specifically the wording of the exclusion in section (c) because the proposed change reduces the clarity of the definition of a 'natural wetland'.

The RMA, the NES-F, and the NPS-FM together with the *Wetland Delineation Protocols* and the guidelines for *Defining 'natural wetlands' and 'inland natural wetlands'* already provide a clear, sound, legislation-based definition.

Council proposes amendments to achieve a clear, well-defined and unambiguous definition that is consistent with the regulations. In Waipā, wetlands have been reduced to 0.2% of their former extent, and include nationally significant peat lakes. Clear defensible definitions complement the regulations, enabling Council and landowners to protect wetlands by providing greater certainty about what is, and is not, a natural wetland.

2. Should anything else be included or excluded from the definition of a 'natural wetland'?

If the exclusion in Section (c) is retained, it should be reworded to include hydrology in the definition of a natural wetland. In addition, the term 'improved pasture' is too subjective and vague, and should be replaced with 'facultative species' so as to be consistent with the wetland delineation protocols.

a. The exclusion should include some reference to water or hydrology.

Council endorses the use of the *Wetland delineation protocols* (MfE, 2021²) (the wetland protocols) as used in the NPS-FM to clarify the extent of a natural wetland. In addition, the recently released guidelines *Defining 'natural wetlands' and 'inland natural wetlands'* (MfE, 2021³) (the guidelines) provide a clear explanation of how hydrology, soils and vegetation define a wetland. The wetland protocols and the guidelines should form the basis for a revised definition of natural wetland.

A clear, well-defined, unambiguous definition of 'natural wetland' is beneficial for Council in identifying and monitoring Significant Natural Areas, and should it be necessary, enforcing compliance with the District Plan.

b. Pasture is an inappropriate basis for defining a wetland, and section (c) risks undermining the protections provided by the NPS-FM and the NES-F. Including "pasture" in the definition would introduce confusion, ambiguity, and lack of clarity in the definition. It would work against landowners by potentially exposing them to the risk of legal action for undertaking management of a site that is not a natural wetland. It would also prove more costly for Council and landowners to engage consultants to determine what is and is not a natural wetland.

The wetland protocols provide a robust and adequate methodology for defining a natural wetland by the hydrology, soils and vegetation. The wetland protocols include vegetation in three classes, based on their ability to tolerate wetland conditions. A site can only be excluded as a wetland when >50% dominance of facultative species, such as pasture species, is complemented by the absence of soil and hydrology indicators. This contradicts the proposed exclusion based on pasture alone, and introduces confusion to the definition of improved pasture. The term improved pasture is subjective and should be replaced with the term 'facultative species' as used in the wetland protocols.

BETTER PROVISION FOR RESTORATION, MAINTENANCE AND BIOSECURITY ACTIVITIES

Council supports the proposed changes because the existing regulations have contributed to restoration being both expensive and onerous, or not attempted at all. However, permitted activities and actors should be inclusive and clearly defined.

3. Should maintenance be included in the regulations alongside restoration?

Maintenance and biosecurity activities contribute to protection and restoration aims and goals. Council supports the inclusion of these terms within the regulations relating to restoration.

4. Should the regulations relating to restoration and maintenance activities be refined, so any removal of exotic species is permitted, regardless of the size of the area treated, provided the conditions in regulation 55 of the NES-F are met?

Council supports the removal of exotic species as a permitted activity, regardless of the area, provided the conditions outlined in reg.55 NES-F are met. Council notes that clear authorisation will be required to avert potential for abuse of this permission.

Vegetation clearance is a task that is often associated with protection and restoration aims at wetland sites. The regulations as they currently stand have made weed control in restoration projects both onerous and expensive for Council. Some restoration work has been deferred in the hope that the regulations will be changed to make this work easier. Clearance of exotic species >500 m² should be permissible if there are no effects on water quality. For instance, poisoning large areas of willows or other exotic tree species will not disturb soil or create bare land. The regulations outlined in reg.55 NES-F are designed to avoid these effects, and thus provide adequate control for permitted vegetation clearance.

Permitting *carte blanche* clearance of exotic vegetation risks conversion of wetlands to pasture or for development, hence the need for authorisation. However, authorisation raises the need for other parties (such as iwi) and mandates to be permitted to clear vegetation for wetland restoration.

5. Should activities be allowed that are necessary to implement regional or pest management plans and those carried out by a biosecurity agency for biosecurity purposes?

Council supports actions to implement RPMS plans and actions for biosecurity purposes, provided the conditions outlined in reg.55 NES-F are met.

Vegetation clearance as a permitted activity to meet RPMS plans is a clear form of authorisation, addressing the concerns noted in 4.

However, Council notes that the RPMS is concerned with a narrowly defined list of species, and may not include all plant threats to a wetland. Restoration can include manipulation of native plant species that are inappropriate for restoration goals for a specific site (e.g., karaka, raupō), or exotic species that are not yet included in RPMS (i.e., naturalised blueberries). Therefore, RPMS plans and actions should be incorporated into a broader holistic wetland restoration plan for each site.

6. Should restoration and maintenance of a 'natural wetland' be made a permitted activity, if it is undertaken in accordance with a council-approved wetland management strategy?

Council understands the intention of a "council-approved wetland management strategy" and how this might complement an RPPMS as a form of authority to guide permitted restoration and maintenance activities, however the term is unclear.

Does the term 'council' refer to Regional Council, and/or to TLA's? Does the term 'wetland management strategy' refer to site-specific management plans, or to Regional strategies such as the RPS? Or does the term refer to the action plans of section 3.15 in the NPS-FM? The

term also excludes environmental management plans developed by iwi and hapū, and farm environmental management plans.

Waipā District Council has invested time, expense and expertise to develop site-specific wetland management plans to meet the requirements of the Reserve Act 1977. Considerable additional expense has been required for restoration plans to obtain a consent to clear vegetation under the NES-FW. These plans comply with Schedule 2¹ of the NES-F that specifies the detail to be included in a restoration plan. However it is unclear if these plans meet the proposed definition of a “council-approved wetland management strategy”.

Further definition is required of a “council-approved wetland management strategy”.

7. Should weed clearance using hand-held tools be a permitted activity?

Council supports weed clearance with hand-held tools, only if the conditions outlined in reg. 55 NES-FM are met.

COMMENTS ON CONSENTING PATHWAYS

Council generally supports the proposed consenting pathways as currently there are no consenting pathways for the specified types of priority activities near wetlands (quarries, landfills, mining and urban development).

- In providing for these activities, the proposal enables the consideration of effects on wetlands, and provides for applications to be declined where effects are significant and cannot be avoided, remedied or mitigated.

In particular, Council supports the consenting pathway for “plan enabled” urban development. Our reasons for supporting this include:

- Waipā is in a high growth phase currently and for the foreseeable future, and needs to make provision for urban growth.
- Our Council is having to respond to increased urban demand, population growth and urban development. This is not only a response to implement Council’s Local Government Act 2002 and RMA functions, but also to specifically give effect to Government Direction to provide for urban development under the NPSUD.
- The proposed consenting pathway better enables urban development (in appropriately zoned areas) to proceed.
- It also better aligns the National Environmental Standard for Freshwater (NESFW) with the National Policy Statement for Urban Development (NPSUD).
- In providing for urban development as a discretionary activity, effects on natural wetlands are able to be considered and applications determined according to whether effects on natural wetlands can be mitigated, remedied or avoided.
- Council in particular supports proposed effects offset provisions which may provide for increased biodiversity gains.

¹ <https://www.legislation.govt.nz/regulation/public/2020/0174/latest/LMS364330.html>

- The proposed amendments also potentially avoid the need for lengthy and expensive plan changes.

ADDITIONAL COMMENTS

While slightly out of scope of this consultation, but nevertheless related, Council also implores the Ministry to undertake an audit of the draft National Policy Statement for Indigenous Biodiversity and National Policy Statement for Highly Productive Soils, prior to public release, to ensure these are well aligned and integrated with both the freshwater NES and NPS and also the NPSUD.