



10 July 2022

Ministry for the Environment
PO Box 10362
Wellington 6143
Wellington

Via web portal

Dear Sir/Madam,

**SUBMISSION FOR WATER NEW ZEALAND ON THE EXPOSURE DRAFT OF
PROPOSED CHANGES TO THE NPS-FM AND NES-F (INCLUDING WETLAND
REGULATIONS)**

INTRODUCTION AND OVERVIEW

1. Water New Zealand ("Water NZ") appreciates the opportunity to provide a submission on the exposure draft of proposed changes to the NPS-FM and NES-F ("Proposed Amendments – NPS-FM and NES-F")
2. Water NZ is a national not-for-profit organisation which promotes the sustainable management and development of New Zealand's three waters (drinking water, wastewater and stormwater).
3. Water NZ is the country's largest water industry body, providing leadership and support in the water sector through advocacy, collaboration and professional development. Its 2,300 members are drawn from all areas of the water management industry including regional councils and territorial authorities, consultants, suppliers, government agencies, academia and scientists.
4. Water NZ is the leading voice for the three waters sector in New Zealand.
5. Water NZ notes that many of its members will be making their own submissions on the Proposed Amendments – NPS-FM and NES-F and these submissions are intended to compliment those of its members.

COMMENTS ON SPECIFIC QUESTIONS

7. Water NZ wishes to make a number of comments on specific provisions in the discussion document.

General Feedback

Q. 1 General feedback on proposed amendments to wetland provisions

The proposed amendments to the wetland provisions are highlighted blue in the exposure draft of the NPS-FM and NES-F.

Are the amendments clearly drafted? Does the drafting achieve the intent of the amendments (as set out in the attached policy rationale document)? Are there unintended consequences of this drafting?

8. Generally, Water NZ supports the changes made to the wetland provisions. These provide clearer guidance, and greater recognition of important activities. Water NZ seeks to ensure that sufficient reference is made to water infrastructure and use in New Zealand, to ensure the future wellbeing of our communities by being able to provide healthy water in an efficient and cost-effective manner.

Q. 2 General feedback on other proposed amendments

The proposed technical or clarificatory amendments to other provisions are highlighted yellow in the exposure draft of the NPS-FM and NES-F.

What are your views on these proposed amendments? Are the proposed technical corrections clearly drafted? Does the drafting provide clarity on existing policies? Are there wider consequences of this drafting?

9. These proposed amendments seem to offer increased clarity and direction in the provisions. Water NZ is generally in support of these amendments.

Water NZ notes that some of the technical amendments will result in a change in the decision making and reporting functions of local authorities, such as clause 3.6(2), which will set a higher threshold for council decision making regarding their record keeping and reporting.

Amendment 1: Definition of 'natural wetland'

Q. 3 Are these proposed amendments clearly drafted? Does the drafting achieve the intent of the amendments (as set out in the attached policy rationale document)? Are there unintended consequences of this drafting?

In particular, we welcome your feedback on this list of 'exotic pasture species', in particular commentary on any missing species, and whether the list would work when applied in your region.

10. Determination of the presence of a natural wetland has significant implications for whether activities relating to specified infrastructure are subject to consenting requirements under the NES-F. The proposed changes to the definition of a natural wetland, which more clearly exclude certain wetlands that are not "natural wetlands" within the ordinary understanding of that term from the regulatory framework, are supported. However, further amendment is sought to expressly exclude induced wetlands (e.g., wetlands created indirectly by human activity like a culvert, blocked drain, or earthworks). This amendment is critical to ensure the delivery of specified infrastructure, particularly essential three water services, are not unnecessarily compromised.
11. While in some circumstances induced wetlands may have ecological values, the amendments proposed to the definition do not go so far as to exclude induced wetlands with little to no ecological values. The consequences of this are high under the NES-F and could impact three waters providers ability to upgrade essential infrastructure in the future.
12. For example, in a situation where three waters infrastructure is causing flooding, pooling or other hazards, but also inadvertently creates an induced wetland, any works to upgrade that infrastructure will require a resource consent under the NES-F. It would be a perverse outcome if a three waters provider was prevented from undertaking an upgrade of a pipe or culvert needed for growth because of a wet area created by that very pipe or culvert.
13. The justification for excluding induced wetlands from the constructed wetland definition is not contextualised against the policy intention of the wetland policy framework which is to protect valuable ecosystems. While some induced wetlands will no doubt have valuable ecosystems, induced wetlands are more appropriately controlled through consenting requirements within regional plans rather than through the NES-F. It would be inappropriate for works within or near induced wetlands to be subject to the specified infrastructure consenting requirements under the NES-F rules for natural wetlands.

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

Q. 4

Are these proposed amendments clearly drafted? Does the drafting achieve the intent of the amendments (as set out in the attached policy rationale document)?
Are there unintended consequences of this drafting?

14. While not significantly modified in the exposure draft, the thresholds in clause 3.22(1)(b) (ii) and (iii) set an unreasonably high bar for the delivery of lifeline utility infrastructure. In particular:
15. It is overly burdensome to require every lifeline utility application to demonstrate that the infrastructure provides a significant national or regional public benefit. A service operated by a lifeline utility will, by its nature, provide a significant national or regional benefit. However, requiring applicants to demonstrate this creates risk, particularly for

smaller applications where the public benefit might be considered and assessed in isolation to the broader network.

16. The requirement for there to be a functional need for the new specific infrastructure is often incredibly challenging to demonstrate and burdensome for applicants.
17. It is considered that the exception for specific infrastructure in clause 3.22(1)(b) is an overly restrictive approach that ignores the realities and requirements of essential infrastructure, as well as the critical contributions that infrastructure makes to the social and economic well-being of our communities.
18. A new exception is recommended for clause 3.22(1) for specific infrastructure which is delivering a service operated by a lifeline utility. This exception would require (g) the regional council is satisfied that: (i) the activity is necessary for the purpose of the construction or upgrade of specified infrastructure that delivers a service provided by a lifeline utility (as defined in the Civil Defence Emergency Management Act 2002); and (ii) the effects of the activity are managed through applying the effects management hierarchy. There should be no qualifiers to this exception.

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

Q. 8 Are these proposed amendments clearly drafted? Does the drafting achieve the intent of the amendments (as set out in the attached policy rationale document)? Are there unintended consequences of this drafting?

19. The proposed new consenting pathway for urban development is provided for as a restricted discretionary activity. In comparison, the consenting pathway for constructing specified infrastructure is a discretionary activity.
20. If certain activities are considered a restricted discretionary activity provided it is for the purpose of constructing urban development, then the activity status for the construction of specified infrastructure (cl 45) should also be restricted discretionary.
21. Housing does not occur in a vacuum – it needs to be connected and serviced by infrastructure, including water, wastewater and stormwater infrastructure. Adequate provision of these three waters services is essential for well-functioning urban environments and the construction of new urban development and three waters infrastructure is often interrelated. Setting different bars for the consenting of these interrelated activities is likely to result in perverse outcomes, such as urban development being constructed but unable to be serviced by specified infrastructure.
22. To avoid such outcomes, the construction of specified infrastructure should be amended to be a restricted discretionary activity to ensure that new urban development can be adequately serviced in the future. The matters to which discretion is restricted (set out in cl 56 of the NES-F) will be fit for purpose for specified infrastructure that contributes to well-functioning urban developments.

Amendment 7: Include water storage in the definition of 'specified infrastructure'

Q. 9 Are these proposed amendments clearly drafted? Does the drafting achieve the intent of the amendments (as set out in the attached policy rationale document)?
Are there unintended consequences of this drafting?

23. Water NZ strongly supports the amendments the inclusion of water storage within the definition of specified infrastructure. This recognises the importance of providing clean, healthy drinking water to communities, and ensures that the infrastructure required for this will be provided for under the new policy framework. The proposed provision is not overly enabling, by requiring the infrastructure to meet the various tests as with other kinds of consent pathways. This is a reasonable limit from the perspective of Water NZ.

Amendment 8: Include aquatic offset/compensation principles

Q. 10 Are these proposed amendments clearly drafted? Does the drafting achieve the intent of the amendments (as set out in the attached policy rationale document)?
Are there unintended consequences of this drafting?
Are these principles fit for purpose for aquatic offset/compensation? What weight should be given to these principles in the decision making by the consent authority?

24. Water NZ generally supports the inclusion of the aquatic offset and compensation principles. These are in line with the current case law, and will provide consistency with other policy areas such as indigenous biodiversity.

Amendment 9: Amend the 'restoration' provisions

Q. 11 Are these proposed amendments clearly drafted? Does the drafting achieve the intent of the amendments (as set out in the attached policy rationale document)?
Are there unintended consequences of this drafting?

25. Water NZ generally supports these amendments, as they clarify the degree of restoration and maintenance required to be undertaken. These requirements are now more clearly outlined, which will provide ease in application and understanding. There had been uncertainty as to the extent intended for these requirements, and Water NZ considers that the drafting goes a long way to clarifying this. In addition, folding in wetland maintenance and biosecurity throughout the policy provisions ties the overall policy with others, such as the NPS-IB, and ensures that there is consistency throughout.

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

Q. 12 Are these proposed amendments clearly drafted? Does the drafting achieve the intent of the amendments (as set out in the attached policy rationale document)?
Are there unintended consequences of this drafting?

26. The amendments to the NES-F which clarify that "discharges" means discharges of water with adverse effects is supported. This amendment is more appropriately aligned with the wetland policy framework, which is to protect the values of natural wetlands, including valuable ecosystems, and restrict activities which may adversely affect biodiversity, habitat or the ecological function of the natural wetland.
27. However, the amendment as proposed will create new challenges. Proposed clause 45(5)(c) requires that the discharge of water within, or within a 100 m setback from, a natural wetland is a discretionary activity if 'there are likely to be adverse effects from the discharge on the hydrological functioning or the habitat or the biodiversity values of a natural wetland'. This approach is problematic. Assessing the effect of an activity to determine if that activity triggers consent is inefficient and inappropriate. Assessing the effects of a proposed activity occurs during the assessment of a resource consent, not to determine if a resource consent is required. The rule as written will simply change the nature of the discussion between councils and applicants. It will not alleviate the unnecessary resource burden and challenges currently being caused by the current regulations. In fact, it will place considerable onus on applicants to demonstrate that an application will not have adverse effects before a resource consent is required or lodged.
28. Further to this, thought needs to be given as to whether these provisions should always apply, as the topography of a region may render the 100m delineation useless. Where, for example, the flow path of a discharge leads away from the relevant freshwater area, or where this an embankment providing sufficient diversion or obstruction, there should be greater clarity as to how the discharges may be dealt with.

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

Q. 13 Are these proposed amendments clearly drafted? Does the drafting achieve the intent of the amendments (as set out in the attached policy rationale document)?
Are there unintended consequences of this drafting?

29. The wetland regulations should not create an impediment to addressing barriers to fish passage, however, the amendment to clause 46(4)(b) may have unintended consequences.
30. Three waters service providers are often required to replace existing water, wastewater or stormwater infrastructure due to its age or deteriorating quality. As part of this relevant building codes, standards and industry best practice must be complied with. There is a risk that compliance with modern standards / codes or changes in construction material may mean that there are small increases to the size of the resultant infrastructure when compared to what was existing. To account for this, a margin of 15% should be included within 46(4)(b) to ensure that the amendment does not have unintended consequences

and require consent for like for like replacement of existing infrastructure. A similar approach is taken within many district and regional plans across New Zealand, where there is some tolerance provided.

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

Q. 14 Are these proposed amendments clearly drafted? Does the drafting achieve the intent of the amendments (as set out in the attached policy rationale document)? Are there unintended consequences of this drafting?

31. Water NZ supports this amendment, as it is line with allowing the three waters bodies to appropriately and effectively undertake their roles. This will ensure that flood control and drainage works can continue with greater ease than under the previous policy.

Further general comments

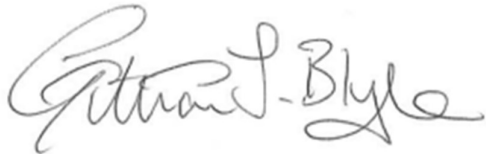
32. **Wastewater:** In addition to the above, Water NZ expresses concern that there is there is no mention in the proposed changes to on-site wastewater systems, or wastewater generally. As drafted, there is ambiguity in the specified infrastructure provisions, which may inadvertently pull in these wastewater systems, regulating them under the new freshwater policy regime. Water NZ submits that to avoid the duplication of effort outlined in point 27 there should be an express carve-out for wastewater treatment systems, so that they instead remain managed under the current legislation that governs them already. Water New Zealand acknowledges that there are opportunities to strengthen regulation of wastewater discharges, and in particular onsite wastewater systems. We would welcome engagement with the Ministry on how this could be achieved. However, we do not believe it was the intention, or worthwhile, to address shortcomings with the management of wastewater discharges through these regulations.
33. **Climate Change:** Finally, Water NZ wishes to submit on adaptation to climate change. Climate change is already impacting both water demand and availability, which will continue to increase over the coming decades. Future Water Service Entities will be required to address and respond to the impacts of a changing climate, while ensuring New Zealand's future water security. To do this, future alternative water sources such as desalination and the reuse of wastewater must be considered. If progressed, new infrastructure would need to be constructed to support these alternative sources, the construction of which may occur within or near to natural wetlands. The Ministry for the Environment must ensure that any amendments to the freshwater policy and regulations do not unnecessarily constrain the ability to provide essential three waters infrastructure to people and communities in the future.

CONCLUSION

34. Water NZ generally supports most of the amendments made to the draft NPS-FM and NES-F. The amendments are clearly thought through, and work to achieve the drafting intentions of the policy. They generally allow for more easily understood application of

the policy, and ensure that important activities are enabled. Further consideration needs to be given to the interactions with wastewater system management.

35. Water NZ thanks the Ministry for the opportunity to provide comments on the exposure draft of proposed changes to the NPS-FM and NES-F, including wetland regulations, and welcomes discussion on any of the points raised in our submission.

A handwritten signature in black ink, reading "Gillian Blythe". The signature is written in a cursive style with a large initial 'G' and 'B'.

Gillian Blythe
Chief Executive, Water New Zealand