

27 October 2021

Submission by

Hamilton City Council Staff

MANAGING OUR WETLANDS - A DISCUSSION DOCUMENT ON PROPOSED CHANGES TO THE WETLANDS REGULATIONS

It should be noted that the following submission is from staff at Hamilton City Council and does not necessarily represent the views of the Council itself.

1.0 EXECUTIVE SUMMARY AND KEY MESSAGES

- 1.1 Hamilton City Council staff support in principle the intent to simplify the definition of wetland and to provide consenting pathways for various activities, including plan-enabled urban development. However, greater clarity is required in the drafting of the provisions to ensure that they are effective and efficient in practice and do not frustrate Hamilton City Council's and our development community's ability to give effect to other central government requirements around the supply of infrastructure to enable provision of housing and other planned urban development.
- 1.2 In particular, Hamilton City Council staff submit that the provision of a specific consenting pathway for urban development will be ineffective in practice unless it is accompanied by parallel amendments to the gateway policies applicable to both wetlands and rivers. The amendments required are to address the effect of the 'functional need' gateway requirement, which is inappropriately prohibitive and is foreclosing on opportunities for (potentially significant) wetland and river restoration and enhancement.
- 1.3 In the Hamilton context this is particularly undesirable given the presence of the prevailing Te Ture Whaimana o Te Awa o Waikato ('the Vision and Strategy') which requires the restoration and protection of the health of the Waikato River. The Vision and Strategy prevails over any inconsistent provision in a National Policy Statement, and Hamilton City Council is the only Tier 1 Local Authority that is subject to the requirements of the Vision and Strategy.
- 1.4 Hamilton City Council staff have suggested in this submission both specific and broad relief to address the concerns raised. We would welcome the opportunity to discuss the Hamilton specific legislative context and the content of our submission with the Ministry for the Environment in more detail.

2.0 INTRODUCTION AND BACKGROUND

- 2.1 Hamilton City Council staff would like to thank the Ministry for the Environment for the opportunity to make a submission to the September 2021 Discussion Document **Managing our Wetlands - Proposed Changes to the Wetlands Regulations**.
- 2.2 Hamilton is a rapidly growing city, as recognised by the Tier 1 Local Authority status given to Hamilton City Council under the National Policy Statement on Urban Development.
- 2.3 Hamilton City Council staff wish to endorse the submission of Tauranga City Council to the

Discussion Document, as another Tier 1 Local Authority with long-term urban growth plans, facing very similar issues as Hamilton in providing for growth.

- 2.4 Given historic, current, and forecast future growth Hamilton has in place a long-term urban growth strategy that coordinates intensification of existing areas and plan-enabled greenfield urban development with new/upgraded infrastructure provision.
- 2.5 Land planned for urban growth within the city boundaries includes large greenfields growth areas at Ruakura, Rotokauri, Rototuna North, and Peacocke. Coordinated development of these areas, and through intensification of existing urban areas, are key to Hamilton City Council as a Tier 1 local authority meeting its obligations under the NPS-UD 2020. In that regard, Hamilton City Council has recently successfully gained first stage approval for two projects in the Infrastructure Acceleration Fund (IAF) process, which is designed to fund infrastructure to support new housing supply in New Zealand. As will be explained later in this submission, one of these projects at Rototuna North is at risk of being frustrated by NPS-FM 2020 wetland provisions.
- 2.6 Hamilton's geographic setting in the alluvial soils of the Waikato Basin, with the Waikato River and its associated tributary gully system traversing the city, means that waterways and potential wetlands are found throughout the city boundaries and within the greenfields growth areas. Given the rich history of agricultural activity in the Waikato basin, land that is now within the boundaries of Hamilton City that was previously farmland contains networks of ex-farm drains and artificial watercourses. The extensive gully system found within Hamilton means that both infill and greenfields development adjoins the tops of the gullies (which commonly contain wetlands at their base) - as a result the wetland setbacks within the NPS-FM have the potential to inappropriately constrain urban development in Hamilton.
- 2.7 The ecological value of some of the City's natural gully and waterway environments is recognised in the Operative Hamilton City District Plan through a series of protection overlays. However, the District Plan also provides consenting pathways for installing new and maintaining/upgrading existing infrastructure within these natural areas/features in recognition of the technical and operational need for such works to occur to ensure coordinated urban development is achieved.
- 2.8 Since the introduction of the NPS-FM 2020, Hamilton City Council has encountered issues with the ability to consent necessary urban infrastructure that will facilitate/support plan-enabled urban growth, or that simply requires maintenance/upgrading to maintain adequate levels of service to existing development.
- 2.9 These issues are primarily with the gateway policy wording and associated definitions of the NPS-FM associated with 'functional need'¹. These difficulties and some proposed remedies are discussed in greater depth in the following sections of this submission.
- 2.10 A further matter that is specifically relevant to the Hamilton context is the presence and effect of Te Ture Whaimana o Te Awa o Waikato ('the Vision and Strategy'). The Vision and Strategy was confirmed by the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and applies to the Waikato River and activities within its catchment which affect the Waikato River.
- 2.11 The Vision and Strategy requires the restoration and protection (i.e., betterment) of the health and wellbeing of the Waikato River (defined to include all of its tributaries and their environments) and prevails over any inconsistent provision in a National Policy Statement and parts of the RMA. Thus, any NPS provisions that preclude opportunities for environmental enhancement that would contribute to restoration and protection of the Waikato River and its tributary environments run the risk of being inconsistent with the prevailing Vision and Strategy.

3.0 FEEDBACK ON PROPOSED CHANGES TO WETLAND REGULATIONS

- 3.1 The following outlines feedback by Hamilton City Council staff on the proposed changes to the

¹ NPS-FM Section 3.21 definition of 'functional need' and Section 3.22(1)(b)(iii).

wetland regulations as outlined in the 'Managing our Wetlands' discussion document and the consultation questions contained therein.

3.2 Definition of 'natural wetland' (questions 1 - 2)

- 3.2.1 Hamilton City Council staff agree in principle with the proposed changes to Part (c) of the definition of 'natural wetland' as they represent an intent to simplify the definition.
- 3.2.2 However, Hamilton City Council staff submit that further clarification and simplification could be achieved without altering the intent of the definition.
- 3.2.3 Part (c) of the definition is defining what is not a natural wetland. It states that any area with more than 50% coverage with exotic pasture species or exotic species associated with pasture, is not a natural wetland. Could an area of natural wetland be nullified (as a natural wetland) if it is associated with a larger area of pasture - the combined areas will have more than 50 percent ground cover comprising exotic species? To avoid this potential and to achieve greater clarification and simplification, Hamilton City Council staff submit that there is merit in 'inverting' the structure of the definition to read along the lines of the following (subject to the further amendments set out in following paragraphs):
- "a natural wetland is a wet area with less than 50% coverage by exotic pasture species or exotic species associated with pasture"
- 3.2.4 Grassed open spaces within urban areas which may contain 'wetlands' are not necessarily considered to be 'pasture', for example urban areas can contain grassed or turfed areas which are used for recreation, landscaping or other functional purposes. These areas are therefore potentially not captured within the 'natural wetlands' exclusions as outlined within the definition. The term 'grass' should be included alongside 'pasture' in Part (c) of the definition for clarity to ensure this presumably unintended consequence is avoided.
- 3.2.5 'Induced' wetlands (being wetlands derived from human induced alterations to hydrology or landform) should be excluded from the definition. These are not natural wetlands, and in an urban setting usually form inadvertently due to other works such as water pooling behind an undersized culvert. The inclusion of these areas within the definition of natural wetlands is likely to hinder or prevent necessary improvement works for the maintenance and upgrade of existing drainage works and other structures.
- 3.2.6 Hamilton City Council staff submit that a minimum contiguous size for a wetland area to which the NES-F rules apply should be included. This would be consistent with the NPS-FM which sets a size threshold for mapping and monitoring natural inland wetlands of 0.05 hectares, except where a smaller area is known to contain threatened species. Providing a minimum size would avoid the situation of plan enabled development being frustrated in greenfields growth areas which might contain one or multiple small wetlands which otherwise would need to have a 100m setback area provided around them.
- 3.2.7 For example, an ecologist might survey a large greenfield site using grid methodology (say 10m x 10m grids) and identify multiple, isolated (i.e., non-contiguous) pockets of wetland habitat that do not contain threatened species. Each of these small wetlands would attract a development setback requirement, the overall effect of which could be to sterilise a large amount of land from development.

Specific Relief Sought

Amend the definition of wetland to read as follows:

"... a wetland (as defined in the Act [RMA]) **larger than 500m² in contiguous area that does not contain threatened species, has less than 50% coverage by exotic pasture species or exotic species associated with pasture and** is not:

(a) a wetland constructed **or induced** by artificial means (unless it was constructed **or induced** to offset impacts on, or restore, an existing or former 'natural wetland'); or

(b) a geothermal wetland; or

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

3.3 **Provision for restoration, maintenance and biosecurity activities (questions 3 – 7)**

3.3.1 Hamilton City Council staff agree that maintenance of wetlands should be included in the regulations alongside restoration. Maintenance of wetlands such as pest and weed control is an important and ongoing activity which needs to be provided for within the regulations.

3.3.2 Hamilton City Council staff agree in principle that the Regulations need to be amended so that removal of exotic species is permitted regardless of the size of the area, provided the conditions in Regulation 55 of the NES-F are met. The conditions in Regulation 55 provide suitable protection and a size limitation is not therefore necessary. However, in recognition of the fact that exotic species are not always weeds, and that weeds and nuisance species are not always pests as defined in Regional Pest Management Plans, Hamilton City Council staff submit that the permitted activity status for exotic species removal should either be replaced with or extended to include weeds, nuisance species, and pests.

3.3.3 Hamilton City Council staff are of the view that activities that are necessary to implement regional or pest management plans, and those activities carried out by a biosecurity agency for biosecurity purposes should be permitted. Hamilton City Council staff submit that restoration and maintenance of a 'natural wetland' should be permitted where undertaken in accordance with a council approved or directed restoration and maintenance programme (i.e., not specifically a wetland management strategy) - this rewording would avoid uncertainty as to what constitutes a wetland management strategy, what council needs to approve it, and whether restoration plans arising from consent or designation conditions or council 'business as usual' activities are captured. The regulations should not hinder these beneficial activities.

3.3.4 Weed clearance generally should be permitted subject to compliance with Regulation 55 (included within exotic species removal provisions) as discussed at 3.2.2 above. There is no need for a separate provision concerning handheld tools.

3.4 **Consenting pathway for quarrying, landfills, cleanfills, managed fills, mining for minerals (questions 8 – 14)**

3.4.1 Subject to the comments and relief sought in the following section, Hamilton City Council staff support the proposed changes in recognition of the importance of these activities to the functioning of cities and urban areas through providing raw materials for infrastructure construction and controlled locations for refuse disposal.

3.5 **Consenting pathway for plan-enabled development (questions 15 – 17)**

3.5.1 Hamilton City Council staff support a consenting pathway for 'plan-enabled' urban development.

3.5.2 However, clarity is required that 'plan-enabled' urban development on land zoned for urban development includes all activities within the zone regardless of District Plan activity status. It should also be made clear that Future Urban Zones (a common zoning found in District Plans throughout the country) are regarded as 'plan-enabled'.

- 3.5.3 Consideration also needs to be given to the inclusion of public works or projects which are designated under the Resource Management Act 1991 and may not meet the current definition of 'plan-enabled' development. For example, future arterial roads and infrastructure corridors need to be designated years ahead of rezoning taking place to ensure that route protection is achieved in the interim period.
- 3.5.4 While supporting a consenting pathway for plan-enabled urban development (subject to the clarifications and additions set out above), Hamilton City Council staff believe that Restricted Discretionary Activity (RDA) status is more appropriate than Discretionary status. RDA status will deliver the same outcome under Regulation 56 of the NES-F without subjecting plan-enabled urban development activity to the more open-ended Discretionary Activity status.
- 3.5.5 Hamilton City Council staff also believe that in tandem with RDA status for urban development, the NES-F should specifically allow for such applications to be processed on a non-notified basis without the need for affected persons assessment/approvals. This is appropriate given that plan-enabled urban development will have been through a publicly notified RMA 1st Schedule process, and would make for more efficient consent processing.

The need for policy amendments

- 3.5.6 Importantly, and Hamilton City Council staff submit this as a key point, there is little value in creating more 'user-friendly' consenting pathways for developments set out above unless the policies of the NPS-FM are amended accordingly to be less prohibitive.
- 3.5.7 The existing gateway test for specified infrastructure² is not appropriate for urban development. While undoubtedly contributing to regionally and nationally significant urban growth, infrastructure activities required for urban development at the city or district scale may not in their own right have a significant national or regional benefit, thus undesirably leaving achievement of that part of the gateway policy open to interpretation.
- 3.5.8 Of most difficulty however, and the provision that in the view of Hamilton City Council staff is in most urgent need of amendment, is the functional need aspect of both the wetlands gateway policy and the equivalent rivers gateway policy at 3.24 of the NPS-FM.
- 3.5.9 The current NPS-FM definition of functional need, in tandem with regulator interpretations that have determined 'functional need' to mean infrastructure that is required to be within the wetland or river in order to function, means that urban development and infrastructure provision along with all of the other activities for which the Ministry for the Environment propose to establish a consenting pathway will likely find it impossible to gain consent (regardless of activity status - apart from controlled) due to an inability to demonstrate 'functional need' and thus being inconsistent with the directive gateway policy.
- 3.5.10 Hamilton City Council staff submit that the prohibitive nature of the gateway policy is inappropriately foreclosing on opportunities for (potentially significant) wetland and river restoration and enhancement due to the inability for development applications which affect wetlands to be able to 'get past go' and then apply the effects hierarchy³.
- 3.5.11 Hamilton City Council staff submit that in narrowly referring to only 'functional need' in the wetland and river gateway policies, the NPS-FM ignores the important aspect of the operational need for infrastructure to locate in or adjacent to wetlands and rivers, and the ecological benefits

² NPS-FM Section 3.22(1)(b).

³ As referenced earlier, this aspect of the NPS-FM risks being inconsistent with the Vision and Strategy for the Waikato River.

that can be produced through the requirements of associated consents and authorisations. Operational need (which goes to the technical and operational requirements of the activity proposed) is a legitimate consideration in all other facets of resource management decision-making.

3.5.12 Some real examples from a Hamilton City Council context that serve to illustrate the submission points set out above are provided as follows:

- (i) Urban infrastructure development in the Peacocke growth cell that for operational reasons unavoidably traverses wetland and gully environments has (in accordance with conditions on designations and resource consents confirmed and granted prior to the advent of the NPS-FM 2020) initiated a significant gully/wetland rehabilitation and restoration programme that will see 10-15ha of wetland/gully habitat restored and protected. The urban development in the growth cell that will be facilitated by the infrastructure provision will also contribute to positive wetland outcomes through areas of gullies and wetland being vested in Council at the time of subdivision, which in turn will allow those habitats to be subject to ongoing restoration programmes.
- (ii) To achieve stormwater treatment requirements from long planned⁴ urban development in the Rotokauri growth cell in order to give effect to the Vision and Strategy (i.e., restoration and protection of water quality in the Waikato River), Hamilton City Council has sought designation and consents for a large central 'greenway' swale system through the growth cell. The operationally necessary location and scale of the greenway, and the nature of the ground conditions in Rotokauri, means the development of the greenway (with its attendant environmental benefits in terms of stormwater treatment) will likely have some unavoidable but manageable effect on adjacent wetlands.
- (iii) To achieve the twin operational needs of stormwater treatment and the provision of a public transport hub in the Rototuna Structure Plan area, Hamilton City Council has sought consent for the piping of a length of waterway leading from an existing treatment swale to the Tuirangi floodway (the receiving environment). As the consent was not granted prior to the enactment of the NPS-FM 2020, the application is subject to the 'functional need' gateway policy test, and the Waikato Regional Council has advised that they will not be able to grant the consent, despite a mitigation and offset package being possible to address the effects of the proposal.
- (iv) The same situation set out in (iii) applies to the infrastructure necessary to facilitate a large housing development in Rototuna North adjacent to the Waikato Expressway for which Hamilton City Council has received first stage Infrastructure Acceleration Fund (IAF) approval. This inability to secure consent given the lack of policy recognition for operational need now puts at risk the coordinated development of the entire Rototuna Town Centre.

3.5.13 Hamilton City Council staff submit that on the basis of all the above:

- (i) The gateway policy that will apply to urban development should be amended to remove the 'functional need' clause; or
- (ii) Retain the functional need clause and introduce reference to operational need (e.g., so that the clause reads "there is a functional **or operational** need for the specified infrastructure in that location") and in tandem amend the definition of functional need to read as follows "functional **or operational** 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~~; or

⁴ The Rotokauri Structure Plan, which confirmed the future arrangement of urban development in Rotokauri (including the general route and nature of the greenway) was confirmed in 2010.

- (iii) A new policy for urban development should be introduced in the NPS-FM that provides an appropriate set of considerations for urban development including the importance of being able to give effect to planned urban growth in identified areas and the operational need for activities that support urban development to traverse, locate or operate in a particular environment provided that such activities restore and enhance the environment; or
 - (iv) Amend the definition of 'functional need' to recognise that such activities have to take place in that specific environment/location where they are in accordance with an identified growth area.
- 3.6 Finally, the prohibited activity status for all other development is a very blunt instrument that prevents consideration of activities which may affect wetlands which are of little to no ecological value or consideration of activities which may have effects on wetlands that can be mitigated, thereby enabling environmental enhancements. A non-complying activity status would enable consideration of proposals on a case-by-case basis in accordance with the relevant objectives and policies of the NPS-FM (subject to their amendment as discussed above) and the potential environmental effects, whilst still enabling the potential for significant protection for wetlands.

4.0 SUMMARY

- 4.1 Hamilton City Council staff support in principle the intent to simply the definition of wetland and to provide consenting pathways for various activities, including plan-enabled urban development. However, greater clarity is required in the drafting of the provisions to ensure that they remain effective and efficient in practice, and do not frustrate other central government imperatives around the supply of infrastructure to enable provision of housing and other urban development.
- 4.2 In particular, Hamilton City Council staff submit that the provision of a consenting pathway for urban development needs to be accompanied by amendments to the gateway policies applicable to both wetlands and rivers in order to be effective. Without such parallel policy amendments, foreclosure on opportunities for environmental restoration and enhancement by urban development and associated infrastructure provision will occur, which in the Hamilton context is particularly undesirable given the present of the prevailing Vision and Strategy.

5.0 FURTHER INFORMATION AND OPPORTUNITY TO DISCUSS OUR SUBMISSION

- 5.1 Should the Ministry for the Environment require clarification of the points outlined in the submission from Hamilton City Council staff, or additional information, please contact **Jamie Sirl** (Team Leader - City Planning) on 07 929 2714, email jamie.sirl@hcc.govt.nz in the first instance.
- 5.2 Hamilton City Council staff would welcome the opportunity to discuss the content of our submission with the Ministry for the Environment in more detail.

Yours faithfully



Lance Vervoort
CHIEF EXECUTIVE