

HAMILTON CITY COUNCIL STAFF SUBMISSION

Exposure Draft of Changes to the National Policy Statement for Freshwater Management 2020 and National Environmental Standards for Freshwater 2020 (including Wetland Regulations)

Ministry for the Environment



13 July 2022



**Hamilton
City Council**
Te kaunihera o Kirikiriroa

Improving the Wellbeing of Hamiltonians

Hamilton City Council is focused on improving the wellbeing of Hamiltonians through delivering to our five priorities of shaping:

- **A city that's easy to live in**
- **A city where our people thrive**
- **A central city where our people love to be**
- **A fun city with lots to do**
- **A green city**

The topic of this submission is aligned to the priority '**A green city**'.

The focus of this priority is to become a more sustainable city by challenging the way we grow our city and how we live within it. To achieve this, we want to take a thoughtful and city-wide partnership approach between Council, businesses, organisations, and community groups to tackle how the city responds to its freshwater and wetland environments.

Council Approval and Reference

This staff submission was approved by Hamilton City Council's Chief Executive on 13 July 2022.

Hamilton City Council Reference D-4268871 - submission # 696.

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.

Key Messages and Recommendations

1. Council staff have significant concerns about the effects of some of the proposed changes to wetland provisions set out within the **Exposure Draft of Proposed Changes to the National Policy Statement on Freshwater Management (NPS-FM) and the National Environmental Standards for Freshwater (NES-F)**.
2. Wetlands as defined are found throughout Hamilton. It will be difficult to avoid them in areas already identified for urban development. Some of the proposed provisions will require numerous resource consents to be obtained for urban development and supporting infrastructure. Furthermore, the requirement for a 100m setback from each wetland may prevent development of large areas of land containing multiple small wetlands.
3. This is likely to make it difficult to implement identified growth areas and achieve the intensification of land development required by the National Policy Statement on Urban Development and the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act.
4. To address these concerns, our submission recommends:
 - (a) “Induced wetlands” be excluded from the definition of “natural wetland”. Without this, necessary improvement works, such as installing larger culverts to minimise flooding, are likely to become more difficult to consent.
 - (b) Amendments to Clause 3.22(1)(c). Without these, proposed NPS-FM Clauses 3.22(1)(c)(i) and 3.22(1)(c)(iv) will require a great deal of analysis and evidence to be prepared and could prevent implementation of proposed development already identified in statutory plans.
 - (c) That nuisance species be included in the definition of “pest”. Without this change, large-scale blackberry removal, which is necessary for gully restoration and maintenance, will require resource consent and this will simply add to the cost of these operations.
 - (d) The definition of “specified infrastructure” be amended to include “infrastructure necessary to support plan enabled urban development”. This will enable the construction or upgrade of the latter infrastructure to be undertaken, despite effects on inland wetlands, provided these effects are managed using the effects management hierarchy and the other requirements of NPS-FM Clause 3.22 (1)(b) are satisfied.
 - (e) Amendments to Policy 6 of the NPS-FM to allow loss of natural inland wetland extent or values where this is a consequence of consented activities to which the effects management hierarchy has been applied.

Introduction

5. Hamilton City Council staff (staff) appreciate the opportunity to make a submission to the Ministry for the Environment on the **Exposure Draft of Proposed Changes to the NPS-FM and NES-F (including Wetland Regulations)**.
6. As outlined in our original submission¹, Hamilton is a rapidly growing city. The National Policy Statement on Urban Development (NPS-UD) recognises it as a Tier 1 Local Authority. Hamilton has in place a long-term urban growth strategy that coordinates intensification of existing urban areas and plan-enabled greenfield urban development with new/upgraded infrastructure provision.

¹ Dated 27 October 2021, HCC Ref D-3900252/Submission #: 664

7. Hamilton’s geographic setting 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. These wetlands may be difficult to completely avoid within areas already identified for urban development. With the provisions as currently drafted, we anticipate numerous resource consents will inevitably be required for urban development and supporting infrastructure. Alternatively, large areas of land containing multiple small wetlands may become subject to sterilisation or perverse urban outcomes resulting from the requirement for a 100m setback from each wetland.
8. Land development and intensification requirements in accordance with the NPS-UD are also likely to be frustrated and difficult to achieve with the proposed wetland regulations.

Definition of “Natural Wetland”

9. Staff support in principle the amendments to the definition of “natural wetland” as outlined within the Exposure Draft of Amendments to the NPS-FM as this will improve the intent of the definition and provide clarity.
10. As set out in our original submission, staff submit that “induced wetlands” should be excluded from the regulations², as within an urban setting these often form inadvertently around undersized or blocked culverts.
11. It is noted that flood control works are already included within the specified infrastructure provisions³, however the size of the infrastructure (culvert) cannot be increased without obtaining a resource consent⁴. If “induced wetlands” are not excluded from the regulations this may hinder or prevent necessary improvement works, particularly where larger culverts are required to be installed for flood control purposes.
12. Unblocking of a culvert does not require resource consent under the NES-F and is likely to result in drainage of any wetland that has formed because of the blocked culvert. If culverts are upsized for flood control purposes, this may also result in drainage of the wetland, however in this case a resource consent would be required pursuant to s46(4)(b) of the NES-F.
13. Staff submit that this requirement goes beyond the general intent of the regulations and that wetlands that form specifically because of a blocked or undersized culvert should be specifically excluded. Introduction of such an exclusion would be consistent in intent with the already proposed amendment to exclude wetlands that have developed in or around a deliberately constructed waterbody since the construction of the waterbody.

Specific Relief Sought

14. Amend the definition of natural wetland to read as follows:

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

.... or

(e) a wetland that has developed because of failure, blockage, or capacity inadequacy of infrastructure.

Urban Development

15. Staff are pleased to see the issues with the term “plan enabled development” and the application of the functional need test to urban development have been recognised.

² Definition of “natural wetland”

³ Definition of “specified infrastructure”

⁴ Section 46(4)(b)

16. However, staff stress that the replacement provisions⁵ are particularly onerous and will overly complicate and frustrate the consent pathway for urban development.
17. The requirement⁶ that the activity is necessary for the purpose of urban development that contributes to a “well-functioning urban environment” as per the NPS-UD is likely to require a great deal of analysis and evidence to demonstrate the contribution of the proposal to the “well-functioning environment” aspect of the regulations. These matters include variety of homes, variety of sites, accessibility and the like which are not directly relevant to the effects on the wetland. Although staff in principle welcome the use of consistent terms within New Zealand’s resource management framework, the use of this term for the purpose of assessing a consent for urban development that may affect a wetland is not appropriate.
18. The practicable alternative location test now proposed⁷ is overly complex and would require substantial assessment of alternative locations and spatial arrangements together with associated effects assessment to support any consent application.
19. The provisions as drafted fail to recognise the extensive strategic and legislative planning processes that would already have been undertaken to identify areas for urban development within a plan. The onerous requirements for consents mean this underpinning work can potentially fail near the time of implementation.
20. Staff submit that a clear consent pathway for plan enabled development – being land identified for development within any recognised statutory planning document - is required, and the gateway test should be the existing effects management hierarchy which is consistent with other activities.

Specific Relief Sought

21. Amend clause 3.22 of the NPS-FM to read as follows:
 - (1) *Every regional council must include the following policy (or words to the same effect) in its regional plan:*

“The loss of extent of natural inland wetlands is avoided, their values are protected, and their restoration is promoted, except where:
 - (c) *the regional council is satisfied that:*
 - (i) *the activity is necessary for the purpose of urban development which will occur on land identified for urban development in an operative district plan and/or land identified for development in any relevant statutorily recognised document (e.g., Smartgrowth plan, Future Proof Strategy); and*
 - (ii) *the activity does not occur on land that is zoned in a district plan as general rural, rural production, or rural lifestyle; and*
 - (iii) *the effects of the activity are managed through applying the effects management hierarchy and, if aquatic offsetting or aquatic compensation is applied, the offsetting or compensation will be maintained and managed over time; or*
 - (d) *the regional council is satisfied that:”*

Restoration, Maintenance, and Biosecurity Activities

22. Staff support in principle the amendments related to restoration, maintenance, and biosecurity activities.

⁵ NPS-FM Clause 3.22(1)(c)

⁶ NPS-FM Clause 3.22(1)(c)(i)

⁷ NPS-FM Clause 3.22(1)(c)(iv)

23. Staff submit that plants listed in a pest management plan as per the Biosecurity Act 1993 (linked to the definition of “pest” in the NES-F) may not be broad enough to capture relevant local pests and nuisance species. For example, blackberry is defined as a nuisance species (i.e., not a pest species) that can become extremely invasive and well established within gullies in Hamilton. Hamilton City Council’s gully restoration programme relies on being able to remove nuisance species. However, under the exposure draft provisions, because “nuisance species” are not a pest species large scale blackberry removal would require resource consent. This will inevitably lead to increased costs associated with seeking consents for restoration and maintenance works which may deter these works from being carried out.

Specific Relief Sought

24. Amend the definition of “pest” in the NES-F to read as follows:

pest has the meaning given by section (2)(1) of the Biosecurity Act 1993, means an organism specified as a pest or nuisance in a pest management plan prepared under the Biosecurity Act 1993.

The Definition of “Specified Infrastructure”

25. As outlined in the original submission from staff, the existing definition of specified infrastructure does not include the often-significant infrastructure that is required at the city and district scale to support urban development. City councils have limited land area available for bulk linear infrastructure and therefore limited options for their alignment. This needs to be recognised within the regulations and should be included within the definition of “specified infrastructure”.

Specific Relief Sought

26. Amend the definition of “specified infrastructure” in the NPS-FM to read as follows:

specified infrastructure means any of the following:

(e) infrastructure necessary to support plan enabled urban development

27. This amendment will enable the construction or upgrade of infrastructure necessary to support plan enabled urban development to be undertaken, despite effects on inland wetlands, provided these effects are managed using the effects management hierarchy, and the other requirements of NPS-FM Clause 3.22 (1)(b) are satisfied. In addition, Te Ture Whaimana o Te Awa o Waikato requires such works in Hamilton to provide an appropriate degree of betterment to the health and wellbeing of the Waikato River.

Policy 6 of the NPS-FM

28. Staff note that within the discussion document *Essential freshwater amendments report, recommendations and summary of submissions*, it is recognised that the policy framework, and in particular Policy 6 of the NPS-FM, contradicts the provision of consent pathways. This document proposes an amendment to Policy 6 which Hamilton City Council staff support - that is, providing an exception to the need to avoid loss of wetland extent and value where that loss is a consequence of consented activities to which the effects management hierarchy has been applied.
29. However, staff note that this change is not included within the exposure draft. Staff assume this mismatch between the report and the exposure draft (which staff also note is not confined to this matter) is an error and seek clarification of this wider matter as soon as possible.
30. Staff wish to reiterate the point contained within our original submission, that 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. Accordingly, staff support the proposed amendments to Policy 6 as mentioned above.

Specific Relief Sought

31. Amend Policy 6 in the NPS-FM so that it reads as follows:
 1. *There is to be no further loss of natural inland wetland extent, their values are protected, and their restoration is promoted, except where loss is a consequence of consented activities, to which the effects management hierarchy has been applied.*
32. Staff also wish to reiterate that the prohibited activity status for other development is too blunt an instrument. There will inevitably be situations where a resource consent could be granted and is appropriate and a consent pathway should be available. Non-complying activity status would still afford significant wetland protection whilst enabling consideration of these situations.

Further Information and Opportunity to Discuss our Submission

33. Should the Ministry for the Environment require clarification of any points in this submission from Hamilton City Council staff, or additional information, please contact **Paul Ryan** (Principal Planner - City Planning) on 07 838 6478 or email paul.ryan@hcc.govt.nz in the first instance.
34. **Hamilton City Council staff would welcome the opportunity to discuss the content of this submission in more detail with the Ministry for the Environment.**

Yours faithfully



Lance Vervoort
CHIEF EXECUTIVE

Hamilton City Council
Garden Place, Private Bag 3010, Hamilton

 /HamiltonCityCouncil

 @hamiltoncitycouncil

 07 838 6699

hamilton.govt.nz