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Managing our Wetlands Submission

Managing our Wetlands, Ministry for the Environment

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Christchurch City Council Submission on the Proposed *Natural Wetland Regulations*

Introduction

1. Christchurch City Council (referred to hereafter as ‘Council’) thanks the Ministry for the Environment for the opportunity to provide comment on the proposed *Natural Wetland Regulations*. The Council’s submission points on the proposed Natural Wetland Regulations are provided below.
2. The Council has provided overall submission points which should be read as an executive summary of its substantive submission points set out in proceeding sections.

Overall Submission Points

3. The Council notes that the National Policy Statement for Freshwater Management (NPS-FM) and the National Environmental Standards for Freshwater (NES-F) are key components of the Government’s Essential Freshwater package that work in tandem to maintain and enhance water quality, and prevent the further loss in extent of natural wetlands.
4. The Council understands that in response to feedback from stakeholders and users implementing the wetland provisions of these documents, consenting and compliance issues have been identified with the definition of “natural wetland” in the NPS-FM, and the regulations contained in the NES-F.
5. The Council is supportive of additional regulations being included in the NES-F that relate to maintenance and biosecurity activities and considers that such regulations are likely to result in positive environmental effects on wetlands in the long term.
6. The Council considers that the proposed “Natural Wetland” definition is too narrow in scope to determine whether an area of pasture has ecological values that should be protected as it only includes consideration of one factor. As drafted, its application in the Christchurch District and the Canterbury Region is likely to result in the further loss in extent of natural wetlands. On this basis, the Council opposes the proposed amended definition.
7. The Council supports the proposed regulations that provide consenting pathways for quarrying, mining, clean-fill and managed landfill activities and urban development (in limited and restricted circumstances), provided that there are further safeguards to manage adverse effects.

8. The Council seeks that safeguards include a tiered approach to activity statuses for the activities depending on whether they are located within 100 metres of, or within, a natural wetland, and excluding biodiversity compensation as part of the “effects management hierarchy” contained in the NPS-FM.
9. The Council also considers that the consenting pathway for mining should only be for projects that are of national significance as set out in the discussion document to further limit the occurrence of these activities within close proximity to, or within, natural wetlands. The Council also notes that the activities may also need to be subject to further safeguards to mitigate against other effects (e.g. carbon emissions).
10. While not subject to amendment through the proposal, the Council also seeks amendments to the regulations that apply to “specified infrastructure” as defined in the NPS-FM. The amendments seek a more enabling consenting pathway where specified infrastructure is proposed to be constructed in highly modified and/or degraded natural wetlands.
11. The Council is aware that Te Rūnanga o Ngāi Tahu are also making a submission on the “Managing our Wetlands” proposal. While there are some differences in view on some components of the proposal, the Council is committed to continuing to work with Te Rūnanga o Ngāi Tahu and mana whenua on a regionalised and local basis when the final proposal is released by the Ministry to protect natural wetlands.
12. For any clarification on points within this submission, please contact Craig Davison, (Craig.Davison@ccc.govt.nz).

Yours sincerely,



Hon Lianne Dalziel

Mayor of Christchurch

Substantive Submission Points

Wetland Definition

13. Defining “natural wetlands” is problematic when their protection relates largely to remnant wetland values that are often vastly different to ‘original’ natural systems. A definition that is too narrow can easily lead to perverse outcomes, including further loss in the extent of wetlands, loss of significant biodiversity values and degradation of water quality. Almost all ecologically significant wetlands remaining throughout the Christchurch District, and the low-land Canterbury Region, are highly modified due to human settlement, and typically support high proportions of exotic ‘pasture’ species that can often comprise greater than 50 percent of the wetlands cover (e.g. Travis Wetland and Te Waihora). Therefore, under the proposed definition, these wetlands would not be subject to the regulations in the NES-F, and would render most remaining wetlands, or large parts thereof, vulnerable to further loss.
14. The proposed definition does not take account of local context nor the full extent of ecological values that may be present, and places too much reliance on the presence of exotic species as a determinant for whether an area is a “natural wetland” or not. Further, many wetland bird species (e.g., Pukeko, Paradise Shelduck, Pied Stilt, Spur-wing Plover, and the South Island Pied Oystercatcher) utilise lowland wet pastures and ephemeral ponding areas, some at crucial stages of their life cycles, such as in the breeding season, as habitat. Most, if not all, of these habitats in the eastern South Island would comprise cover with greater than 50 percent of exotic species. Excluding these areas from the definition of “natural wetland” and therefore the application of the regulations contained in the NES-F, would render many significant habitats, or large parts thereof, vulnerable to further loss except where otherwise identified as a significant natural area.
15. On this basis, the Council opposes the proposed natural wetland definition.
16. The Council considers that there are many factors that should be considered when determining whether or not an area of pasture is a wetland ecosystem (e.g. vegetation type, species present, ecological context, hydrology, and topography aspects). Ideally, any definition should be sufficiently broad to include consideration of these factors, and recognise that many natural wetlands are highly modified. It is important to note that proper consideration of such factors requires an expert ecological assessment, meaning that their inclusion in a definition that serves a purpose of determining whether the regulations in the NES-F apply to an area of pasture is not possible without the safeguard of a resource consent that requires such an assessment to be undertaken.
17. Given the limitations associated with a definition, the Council seeks that the Ministry incorporate other mechanisms into the NES-F that assist landowners to determine whether areas of pasture have significant ecological values that should be protected, and therefore, whether the regulations in the NES-F apply.

Restoration, Maintenance and Biosecurity Activities

18. The Council supports additional regulations being included in the NES-F that permit maintenance and biosecurity activities alongside those already permitted as restoration activities, where such activities benefit the ecological health of wetlands. The current regulations that require resource consent to undertake maintenance activities is a significant disincentive to organisations (including Councils), groups and individuals who wish to retain, restore and manage the country’s remaining natural wetlands.

19. The Council acknowledges that minor short-term adverse effects may need to be accepted to achieve a positive net effect on wetlands through restoration and maintenance activities (e.g. weed clearance that may expose bare ground and lead to sediment entering the waterway). Accordingly, it supports such activities only being permitted where they are undertaken in accordance with a council approved wetland management strategy.

Additional Consenting Pathways

20. The Council here provides individual submission points on the proposed activity specific regulations for quarrying, mining, clean-fill and landfill activities, and urban development, which are outlined below. Accompanying these submission points, the Council also provides comments on the proposed gateway tests and activity statuses.
21. While not subject to amendments through this proposal, the Council has also proposed amendments to the “effects management hierarchy” that these activities would be subject to in order to better protect and maintain natural wetlands.

Gateway Tests

22. The Council supports the existing “gateway tests” as set out in the NPS-FM applying to the new activities that consent pathways are proposed for. With regard to urban development, the Council considers that the gateway test should be amended to provide for circumstances where the urban growth is of significant benefit to a district, rather than it being limited to circumstances of national or regional benefit.

Activity Statuses

23. The Council acknowledges that the proposed discretionary activity statuses will enable full consideration of adverse effects. However, the magnitude of adverse effects may differ based on the scale or type of activity and its distance from, or whether it is within, a natural wetland. On this basis, the Council seeks that where these activities are located within 100 metres of a natural wetland, discretionary activity status applies, and where they are located within a natural wetland, non-complying activity status applies.

Effects Management Hierarchy

24. The Council seeks that the effects management hierarchy for quarrying, mining, clean-fill and landfill activities, and urban development, does not provide for aquatic compensation to occur, especially when the activity may be located within, or within close proximity to, relatively intact wetlands, as these types of wetland are almost impossible to recreate or replace through biodiversity compensation. It is extremely difficult to re-establish a wetland in a new location with all the ecological species and natural associations present in a natural biological system once loss has occurred. Without this amendment, the Council considers that the proposal may be in conflict with Policy 6¹ of the NPS-FM.

¹ There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.

25. The specific changes sought to the effects management hierarchy for quarrying, mining, clean-fill and landfill activities, and urban development is set out as follows (additions are **bolded** and deletions are ~~struck through~~):

Effects management hierarchy, in relation to natural inland wetlands and rivers, means an approach to managing the adverse effects of an activity on the extent or values of a wetland or river (including cumulative effects and loss of potential value) that requires that:

- a. *adverse effects are avoided where practicable; and*
- b. *where adverse effects cannot be avoided, they are minimised where practicable; and*
- c. *where adverse effects cannot be minimised, they are remedied where practicable; and*
- d. *where more than minor residual adverse effects cannot be avoided, minimised, or remedied, aquatic offsetting is provided where possible; and*
- e. *if aquatic offsetting of more than minor residual adverse effects is not possible **after all practicable avoidance, minimisation and remediation measures have been sequentially applied, the activity itself is avoided.** ~~aquatic compensation is provided; and~~*
- f. ~~*if aquatic compensation is not appropriate, the activity itself is avoided*~~

Quarrying, Mining, Clean-fill and Managed Landfill Activities

26. The Council supports consenting pathways being included in the NES-F for quarrying, mining, and clean-fill and managed landfill activities, provided that the amendments sought relating to activity statuses and the effects management hierarchy above are incorporated. It is acknowledged that the primary responsibility relating to water quality and the NES-F rests with regional councils. However, the Council's District Plan also includes rules to manage these activities either in their entirety (e.g. quarrying and landfill activities), or parts thereof (e.g. earthworks). The Council supports these consenting pathways in so far as it assists the Council achieve the integrated management of the use of land and associated natural and physical resources as set out in Section 31 of the RMA.
27. With regard to the consenting pathway for mining, the Council seeks that these activities should be further restricted by being limited to projects that are of national significance as set out in the discussion document.
28. The Council acknowledges the proposed shift from the status quo (a non-complying or prohibited activity to a proposed discretionary activity) for these activities represents a significant shift in the regulatory regime. However, the Council considers that where a prohibited activity status applies, this may be too restrictive as a resource consent is unable to be applied for, and its use needs to be underpinned by an evidential basis justifying its necessity. Prohibited activities should only be used in circumstances where it can be concluded that the activity in question should not be contemplated or occur under any circumstances. Such a strict test should be accompanied by consideration of local context to determine whether its use is warranted and can be justified. The Council notes that regional councils have the ability to consider the use of a prohibited activity status in their plans for these activities under Regulation 6² at their discretion.

² Relationship between regulations and plan rules and resource consents.

Urban Development

29. The Council supports the proposal for the NES-F to include a consenting pathway for urban development where it has been “plan enabled” in a District Plan in giving effect to the National Policy Statement for Urban Development (NPS-UD). The Council notes that the supporting documentation for the proposal indicates that a consenting pathway is required for areas identified in a District Plan as the current NES-F only includes a pathway for urban development where it is listed in a regional plan as “specified infrastructure”. The Council does not consider that urban development would be “specified infrastructure” as it is currently defined, meaning further consideration may need to be given to this component of the NPS-FM at a later date by the Ministry, unless it is incorporated into the proposed changes.
30. Irrespective of this, the inclusion of additional regulations in the NES-F for “plan enabled” urban development will assist territorial authorities in meeting their obligations under the NPS-UD, particularly as plan changes to give effect to that NPS are required to be publicly notified by 20 August 2022. The Council notes that in supporting this component of the revised regulations, there are safeguards included in the NPS-UD that apply to regional and territorial authorities where wetlands can be protected from the effects of urban growth as “qualifying matters”.

Specified Infrastructure

31. While not subject to amendments through this proposal, the Council seeks amendments to the regulations that apply to “specified infrastructure”. More specifically, stormwater infrastructure where it is located within close proximity of, or within, a natural wetland, to provide a more enabling consenting pathway in circumstances where the natural wetland is highly modified and/or degraded.
32. Under Regulation 45, the construction of specified infrastructure (which by way of definition includes stormwater treatment facilities) is a discretionary activity. The council considers that this activity status for stormwater infrastructure is too restrictive in circumstances where wetlands are highly modified and/or degraded, and the stormwater infrastructure may improve environmental outcomes of a wetland relative to its current state.
33. The Council considers that the construction of stormwater infrastructure within, or within close proximity, to a natural wetland should be provided for as a restricted discretionary activity in the regulations.
34. The specific relief sought in relation to the NES-F regulations set out as follows:

New Regulation 44A – Construction of stormwater infrastructure

Restricted discretionary activities:

- 1. Vegetation clearance within, or within a 10 m setback from, a natural wetland is a restricted discretionary activity if it is for the purpose of constructing stormwater infrastructure.**
- 2. Earthworks or land disturbance within, or within a 10 m setback from, a natural wetland is a restricted discretionary activity if it is for the purpose of constructing stormwater infrastructure.**
- 3. Earthworks or land disturbance outside a 10 m, but within a 100 m, setback from a natural wetland is a restricted discretionary activity if it—**

- a. is for the purpose of constructing stormwater infrastructure; and**
 - b. results, or is likely to result, in the complete or partial drainage of all or part of the natural wetland.**
- 4. The taking, use, damming, diversion, or discharge of water within, or within a 100 m setback from, a natural wetland is a restricted discretionary activity if it is for the purpose of constructing stormwater infrastructure.**