



Environment Institute
of Australia and
New Zealand Inc.

Ministry for the Environment
Wellington

Date: 10 July 2022

Dear MFE,

SUBMISSION: Exposure draft of amendments to the National Policy Statement for Freshwater Management 2020.

This letter sets out the Environmental Institute of Australia and New Zealand (EIANZ) submission on the '**Exposure draft of amendments to the National Policy Statement for Freshwater Management 2020**'.

We acknowledge the effort that the Ministry for the Environment have put into receiving submissions and feedback on the wetland definition document 'the discussion document in response to concerns about the ambiguity and unworkability of the definition as set out in the National Policy Statement for Freshwater Management (NPSFM).

Our feedback is focused on the **clarity and workability** of the proposed amendments to the NPS-FM.

About EIANZ

Founded in 1987, EIANZ is a professional association of some 2000 environmental practitioners from across Australia and New Zealand. We provide opportunities for professional and academic dialogue across all sectors of the environmental industry. The Institute membership includes specialists in a range of environmental disciplines: climate change, contaminated land, planning, engineers, law, environmental science, and ecology.

A significant initiative of EIANZ is the Certified Environmental Practitioner (CEnvP) Scheme, which is Australasia's first accreditation scheme designed exclusively for environmental practitioners and recognises environmental professionals in line with their professional counterparts from engineering, accounting, planning and architecture. Several members of EIANZ hold specialist CEnvP ecologist certifications. Three members residing in NZ are Fellows of the EIANZ recognising the contributions to environmental practice over several decades. These credentials are significant in the recognition of environmental practice in New Zealand.

Our approach

The feedback expressed in this letter is formed from a consensus approach amongst practitioners within EIANZ. The main thrust of the feedback was developed at an online workshop of some twenty practitioners in Auckland, and the outcome of that gathering circulated to all members for comment. Accordingly, it represents a whole of industry feedback rather than any regional or sector response.

We emphasise that this feedback is not a submission on the objectives and policy of the NPSFM and NESF. Our feedback is, in its entirety, focused on the **clarity** and **workability** of the exposure draft guidance on the wetland definition.

Key submission items from EIANZ

General Comments

EIANZ have concerns that the NPS-FM and the NES-F regulations are generally triggered by consent applications rather than permitted activities. We consider that this may have significant effects on river and wetland extent and water quality. Hence the application of the NPS is primarily a regulatory approach and lacks incentives for landowners to protect, enhance and restore freshwater wetlands.

Definition of Natural Wetland

EIANZ generally supports the amendments to the wetland definition, and we offer the following suggestions to minimise the continuing debate around this cornerstone of the NPS.

Natural wetland means a wetland (as defined in the Act) that is not:
a deliberately constructed wetland, other than a wetland constructed to offset impacts on, or to restore, an existing or former natural wetland) as part of giving effect to the effects management hierarchy; or –

We support this amendment.

a wetland that has developed in or around a deliberately constructed water body, since the construction of the water body; or

We support this amendment with the following comment.

However, we note the potential conflict between the ‘deliberately constructed’ and the definition of a waterbody in the RMA. We consider that further clarification of the status of potential wetland features within deliberately constructed artificial farm drains is required (i.e., confirm that it is a wetland that has formed within a deliberately constructed water body).

Under the RMA, a ‘water body’ includes a ‘river’, and a ‘river’ includes streams and modified watercourses but does not include an artificial watercourse such as a (deliberately constructed) farm drain. We consider that there is inconsistency and a lack of clarity with exclusion (b). Only those areas where wetlands have developed around a deliberately constructed meet the exclusion from natural wetlands, whereas those that have developed within or alongside equally deliberately constructed artificial farm drains (but not a modified waterbody) would fail the exclusion.

We consider that the exclusion (b) should be consistently applied to all deliberately constructed watercourses and not just those that meet the definition of a waterbody under the RMA.

(c) a geothermal wetland.

No change.

(d) a wetland that:

(i) is within an area of pasture; and

(ii) has ground cover comprising more than 50% exotic pasture species (as identified in the National List of Exotic Pasture Species (see clause 1.8)); and

(iii) is not known to contain threatened species

We make the following submission.

(ii) The definition of 'natural wetlands' excludes wetlands (as defined in the RMA) that occur 'within an area of pasture and has ground cover comprising more than 50% exotic pasture species (as identified in the National List of Exotic Pasture Species'.

The draft national list of exotic pasture species comprises commercially available grasses and legumes, a selection of plants historically sown as forage species, and a few species that may have productive potential as fodder plants but are not widely cultivated in New Zealand. All non-forage species that commonly occur in pasture are excluded, as are fodder crops (e.g., beets and brassicas) that could be cultivated in seasonally wet sites. All wet-tolerant (OBL or FACW) exotic grasses are excluded, including common and widespread species such as Mercer grass that were intentionally established to increase the productivity of seasonally wet sites.

In summary, evaluation using the draft list of specified pasture species will exclude substantial areas (both wet and dry) that are routinely used to graze livestock and would intuitively be regarded as pasture. Furthermore, the decision to leave all species tolerant of wet conditions off the list rather defeats the purpose of the 'pasture exclusion' to the natural wetland definition, as no sites that meet the definition of pasture using this list would qualify as wetlands.

We consider that the list of pasture species should reflect common species of pasture, including wet-tolerant and non-forage species, to avoid situations where a wetland does clearly not occur; and where landowners, in the course of routine farm operations such as cultivation and pasture management, would be in breach of NES regulations. We consider that further work needs to be undertaken to compile a list that is representative of pasture communities throughout New Zealand and taking into account regional variations.

(iii) We note that 'threatened species' is defined in the NPS-FM (clause 1-4) but further note that the definition also requires that a threatened species 'relies on water bodies for at least part of its life cycle'. The term 'life cycle' is not defined but can be considered to mean 'the series of changes and developments that a species passes through from the beginning of its life until its death'¹. Essentially this means that any single, some, or all stages of life from hatching/rearing/juvenile growth/dispersion/adulthood/residency/reproduction/nesting may be applicable to 'contain'.

We support the inclusion of a criterion that recognises threatened species within natural wetlands, but we are concerned that the term 'contain' is ambiguous and will be subject to different and potentially conflicting interpretations. Whilst we accept 'contain' as purposeful for resident flora (permanently growing and present), it is a much more difficult term to apply to fauna that may disperse amongst a variety of different locations and ecosystem types. For example, a transient or occasional visitor for a short period (or a series of short periods) for feeding or dispersal purposes would potentially be accepted as 'contain' for the purpose of defining a natural wetland. If that is the case, then we submit that needs to be clearly articulated in the definitions for the avoidance of any doubt.

Furthermore, we consider that the ambiguity of 'not known to contain' is equally vexed. The ability to respond to such a criterion may require extensive data collection and/or observations over different seasons and possibly several years to confirm the presence (or not) of a threatened species. We consider that there may be a need for extensive surveys to prove there are no threatened species, or the significance of the natural wetland area is elevated on the

¹ Collins dictionary

premise that threatened species might visit briefly. Indeed, incidental sightings of threatened birds in transit are common in many wetland areas as well as wet pasture (and also in constructed wetlands).

On this latter point, the ability to access databases of known records and locations of threatened species data is difficult to obtain. Agencies such as the Department of Conservation will often not release location data for threatened species. Accordingly, councils and applicants will not know if their wetland contains threatened species.

We seek further clarification to part (iii) of the wetland exclusion. In order to improve the workability of the amendments to the NPS-FM, we seek clarification of the intention of the term 'contain'. One option may be to clarify whether incidental visits by transient individuals is part of the life cycle, and or to define specific stages of life cycle that meet the 'contain' category.

Amendment sought: We seek the following modifications to the amendment 1.

(b) We submit that, for the avoidance of doubt, that the exclusion needs to clarify that river (as a defined water body), as defined in the RMA, does not include any artificial watercourse (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal) which would all be considered as a deliberately constructed water body for the purposes of the NPS-FM.

(c)(ii) We submit that the list of pasture species should reflect common species of pasture, including wet-tolerant and non-forage species, and that further work needs to be undertaken to compile a list that is representative of pasture communities throughout New Zealand and taking into account regional variations.

(c)(iii) We seek clarification of the intent of the use of the term 'contain' in the exclusion. One option may be to clarify whether incidental visits by transient individuals is part of the life cycle, and or to define specific stages of life cycle that meet the 'contain' category.

Induced wetlands

EIANZ acknowledges the reluctance to include 'induced' wetlands as part of the exclusion as a natural wetland. However, EIANZ considers that silence on the question of 'induced' wetlands in the NPS-FM is not helpful and will contribute to costly debates and inefficiencies in practice. At least reference in the definitions will add clarity to the workability of the document.

The experience of EIANZ practitioners is that for the most part, induced wetlands occur as an unintended consequence of the construction of barriers (or undersized culverts) and that these can be readily identified as such.

EIANZ submits that including a provision in the NPS-FM and NES-F that includes unintended induced wetlands as a separate definition AND with a requirement for effects management if the induced wetland is wholly or partially drained will overcome this.

Riverbed

EIANZ welcomes the clarification and inclusion of the riverbed definition.

Consenting Pathways

For the most part, EIANZ supports the inclusion of consenting pathways. We hold the view that the prohibited activity status was unnecessary, as under the RMA these activities require a plan change (and not actually prohibited). Consenting pathways should be focusing more on the effects of activities rather than favouring specific industries.

Urban Development

EIANZ supports the consenting pathway for Urban Development, but it does not account for wetlands and particularly significant wetlands on the outer edge of urban areas that may be resilient and appropriate areas for long-term catchment management to improve their value and enhance amenity values of adjacent areas of urban development.

Landfills

EIANZ generally supports the consenting pathway for landfills and cleanfills. We note that cleanfills are often not clean, and compliance monitoring can be weak. The consenting pathway needs to provide more specifically for "cleaner landfills" as identified in the latest proposed changes to the Waste Minimisation Regulations i.e., those facilities not subject to the waste levy (Class 5 landfills, industrial monofills and Transfer stations).

Quarries

EIANZ supports the consenting pathway for quarries.

Specified Infrastructure

EIANZ has serious concerns at the significant loopholes in the specified infrastructure definition as it provides for a wide range of local councils, utilities and commercial service providers to be exempt from the NPS-FM.

- a. *Lifeline utilities (as defined in Schedule 1 (Parts A&B) of the Civil Defence Emergency Management Act 2002*

This goes way beyond fire and emergency, ports and airports including:

- An entity that produces, supplies, or distributes manufactured gas or natural gas (whether it is supplied or distributed through a network or in bottles of more than 20 kg of gas).
- An entity that provides a wastewater or sewerage network or that disposes of sewage or storm water.

(c) *any water storage infrastructure*

There is no necessity or significance test or requirement for offsetting for the loss of wetlands.

Concluding comments

EIANZ is grateful for the opportunity to provide feedback on the discussion document. We feel that earlier opportunities for practitioners to contribute to the NPS-FM and NES-F might have avoided some of these issues. We hope that any future NPS or regulatory-related documents will consider seeking the input of practitioners such as members of EIANZ.

Accordingly, EIANZ would be happy to participate in any further workshops or advisory groups to further develop the NPS-FM and any future guidance documents.

Yours sincerely,

A handwritten signature in black ink on a light-colored background. The signature is written in a cursive style and appears to read 'M. Bellingham'. The letters are connected, and there is a long horizontal flourish at the end of the signature.

Dr Mark Bellingham

President, NZ Chapter, EIANZ