

8 July 2022



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Tēnā koutou,

Canterbury Regional Council (Environment Canterbury) submission on exposure drafts of proposed changes to the National Policy Statement for Freshwater Management (NPSFM 2020) and National Environment Standard for Freshwater (NES-F).

Environment Canterbury welcomes the opportunity to provide feedback on exposure drafts of proposed changes to the NPSFM and NES-F.

Please find attached our enclosed submission which is focused on the drafting of provisions and any unintended consequences that could arise from the proposals.

We welcome further opportunities to discuss the drafting with you prior to finalisation and gazettal of the changes.

Yours sincerely

A handwritten signature in black ink, reading 'Jenny Hughey', is displayed on a light blue background.

Jenny Hughey
Chair, Environment Canterbury

Submission to the Ministry for the Environment on exposure drafts of proposed changes to the National Policy Statement for Freshwater Management (NPSFM 2020) and National Environmental Standard for Freshwater Management (NES-F)

Introduction

1. The Canterbury Regional Council (“Environment Canterbury”, “the Council”) welcomes the opportunity to provide feedback on exposure drafts of proposed changes to the National Policy Statement for Freshwater Management 2020 (NPSFM) and the National Environmental Standard for Freshwater Management (NES-F). Our submission is presented in relation to Environment Canterbury’s roles, functions and responsibilities under the Resource Management Act 1991 (RMA) and the Local Government Act 2002 (LGA).
2. In developing this submission, Environment Canterbury has drawn on feedback provided to the Ministry in previous consultations (i.e. *Managing our Wetlands consultation*) and experiences garnered through implementation of the Government’s Essential Freshwater Package. Those experiences have demonstrated the need for national direction that is clear, robust, integrated and implementable.
3. In accordance with Ministry guidance¹, the Council has focused its feedback on provisions that are ambiguous or subjective, areas where there is a mismatch between policy intent and outcome, and changes that would result in unintended consequences. While attempts have been made to limit feedback to these points, inevitably there are some proposals that stray in to policy areas. Where this occurs the Council has commented on the policy implications of the change.
4. Environment Canterbury recognises the importance of getting the drafting “right”. For that reason, the Council welcomes any further opportunities to review the drafting prior to changes being finalised and gazetted.

Structure of our submission

5. Environment Canterbury has structured its feedback into three parts:
 - Part 1 contains feedback on overarching matters relevant to the changes as a whole.
 - Part 2 contains feedback on specific proposals. Comments in this section should be read alongside additional feedback provided in Appendix 1.
 - Appendix 1 contains additional detailed feedback on changes not covered in the body of the submission.

¹ Refer to <https://consult.environment.govt.nz/freshwater/npsfm-and-nesf-exposure-draft/> for directions on the scope of feedback sought on the exposure drafts.

Part 1 – Feedback and overarching comments

Environment Canterbury's previous submission on the "Managing our Wetlands" consultation document

6. Environment Canterbury lodged a [comprehensive submission](#) on the "Managing our Wetlands" consultation document setting out its concerns with the proposals. These included a weakening of the protection for natural wetlands, inequitable treatment of urban vs rural activities and a failure to recognise the broader benefits of wetland systems (e.g. improved resilience to the impacts of climate change).
7. Having read the Ministry's [summary of submissions](#), the Council is disappointed some matters have not been responded to or position statements mischaracterised². Furthermore where issues have been acknowledged, there is often a lack of robust policy analysis.
8. While these issues may appear inconsequential, there are real and significant consequences for local authorities developing future planning documents. For example, local authorities may³ include rules in plans that are more stringent than regulations in a national environmental standard, but any greater level of stringency must be justified⁴. Justifying more stringent rules can only occur if local authorities have a sound understanding of the policy basis that underpins the provisions of the NES. Where this is absent, the process become harder and the potential for legal challenge increases. For this reason, it is important that in finalising the changes to the NPSFM and NES-F that all changes are supported by a robust policy analysis as required under s32 of the RMA.

Rationale for proposed changes to the NPSFM and NES-F

9. Environment Canterbury is disappointed the rationale for some changes to the NPSFM has not been included in the consultation document. Examples include proposed changes⁵ to policies, clauses and definitions in the NPSFM 2020 that replace 'river' with 'riverbed' and changes to the definition of a 'limit'.
10. Given the policy implications of the changes (e.g. impacts for integrated management and Te Mana o te Wai) this is surprising. The Council strongly encourages the Ministry to clearly communicate the rationale for all changes to the framework so as to enable informed feedback in response.

Alignment with other reform programmes and national direction

11. The NPSFM and NES-F form part of a suite of 'national direction' that includes National Policy Statements, National Planning Standards, National Environmental Standards and regulations. Collectively, these instruments establish a nationally consistent framework to guide the development of local authority planning documents and regulate activities.

² e.g. P31 of the report infers Environment Canterbury's concern is the "functional need" test is too strict. This represents the Council's position that landfills and cleanfills should not be established in natural wetlands.

³ S43B(1) of the RMA.

⁴ s32(4) of the RMA.

⁵ e.g. Policy 7, Clauses 1.7, 3.21, and 3.24, definition of "effects management hierarchy" and "loss of value", "aquatic offset" and new Appendix 6 and 7

12. The Council's review of the proposed changes has identified a number of inconsistencies or areas of misalignment with other pieces of national direction. These include:

- a reliance on the "ordinary meaning" for terms already defined in National Planning Standards (e.g. the adoption of the "ordinary meaning" for 'quarrying').
- misaligned policy responses between the NPSFM 2020 and the draft National Policy Statement for Indigenous Biodiversity (e.g. clause 3.22 of the NPSFM which requires local authorities to include policies in plans that allow for further wetland loss⁶ conflicting with clause 3.21(2)(d) of the NPSIB which requires local authorities to include objectives, policies and methods in plans that prioritise restoration of degraded wetlands).
- inconsistent use of definitions (e.g. the proposed deletion of the definition of "improved pasture" in the NPSFM, but inclusion of this definition in the NPSIB).

13. Combined these issues contribute to national direction that is more complex and challenging to implement. Costs for both resource users and local authorities are likely to increase as each party attempts to understand the intent of provisions and resolve policy conflicts.

14. In the Council's opinion, a thorough review of the integration and alignment between all existing and draft national direction is needed before changes are finalised. Undertaking a review now would help minimise the number of conflicts requiring resolution during development of the National Planning Framework⁷ (NPF) and improve confidence that the NPF will be an effective tool for resolving tensions between Environmental Outcomes.

Complexity, ambiguity and enforceability

15. Environment Canterbury's review of the proposed provisions has identified a high level of complexity in the drafting of provisions. Commonly encountered issues include:

- provisions phrased in the negative rather than positive, or the use of double negatives (e.g. areas excluded from the definition of a "natural wetland" being subject to further exclusions or exceptions).
- conditions in regulations that require subjective assessments (e.g. condition 3A of Regulation 39 which requires an assessment of the "*likely adverse effects of the discharge on the hydrological functioning or habitat or the biodiversity values of a natural wetland.*")
- terms defined by reference to the "intended outcome" of the activity or which are unclear as to the parameters to be enhanced or improved as a result of the activity (e.g. the definition of "wetland maintenance" which is defined as activities "*intended to prevent deterioration of the wetland*").
- definitions that do not define the scope or type of activities covered by the definition (e.g. the definition of wetland maintenance).

⁶ through offsetting and compensation mechanisms

⁷ as part of the Natural and Built Environments Act

- frequent use of cross-referencing to other rules to clarify permissions or additional requirements (e.g. condition 4(a) of Regulation 46 which cross-refers to further criteria and exemptions in Regulation 55.)
16. Overall the drafting for the changes falls short of the “Principles of Clear Drafting” as set out in the Parliamentary Counsel Office’s *In-house Drafting Manual*. Left unaddressed these issues will hinder the Council’s ability to assess and enforce compliance with provisions in the NES-F. A comprehensive review of proposed changes to the NPSFM and NES-F is required to ensure the proposals meet commonly accepted drafting principles related to certainty and enforceability.

Natural wetlands vs natural inland wetlands

17. In reviewing the NPSFM and NES-F provisions the Council notes the terms ‘natural wetland’ and ‘natural inland wetland’ are used interchangeably and inconsistently between the policy documents and provisions. Most existing regulations in the NES-F restrict activities within or near ‘natural wetlands’, while the proposed new regulations for quarrying, mining, fills and urban development regulate activities in or near ‘natural inland wetlands’.
18. The use of different terminology is significant given each term has a defined meaning and geographic application. ‘Natural wetlands’ include wetlands located either side of the boundary of the coastal marine area (CMA), while ‘natural inland wetlands’ are only those located landward of the CMA boundary.
19. The consultation document does not set out the reasons for use of the narrower definition in some regulations. However, the Council assumes the change has been made in response to a recent declaration from the High Court declaration⁸ which clarified the meaning and application of each term.
20. From the Council’s perspective, the ‘solution’ that has been decided on (i.e. using the narrower definition in some regulations but not others) creates complexity and lacks a sound resource management basis. Presumably, if there are sound resource management reasons for restricting some regulations to landward of the CMA boundary, these reasons apply to other regulations. The Council therefore requests changes are made to the NES-F to align the definitions used across all regulations, or alternatively requests the use of different terms to be clearly justified in the s32 Report.

Part 2 – Feedback on specific proposals

Proposals to replace “river” with “river beds”

21. Environment Canterbury opposes proposed changes to provisions in the NPSFM⁹ which seek to replace reference to “river” with “river bed”.
22. As set out in our comments above, the consultation document does set out a clear policy basis for the changes and as a consequence the outcomes sought to be achieved through the changes are unclear. Principal concerns with narrowing

⁸ Minister of Conservation v Mangawhai Harbour Restoration Society Incorporated [2021] NZHC 3113 [18 November 2021]

⁹ Policy 7, CI 3.21 (definitions for ‘effects management hierarchy’, ‘loss of value’, ‘aquatic offset’) and CI 3.24.

provisions to apply to the “bed” rather than the river system as a whole (i.e. bed, surface, banks, margins, wai) include:

- the changes are inconsistent with the fundamental tenet of the NPSFM which is *integrated management* of freshwater.
- the changes significantly weaken the NPSFM 2020 as a framework for protecting, enhancing and promoting the values of freshwater.
- the changes reinforce outdated approaches to freshwater management that compartmentalise components of the natural and physical environment. Such an approach is inconsistent with other provisions in the NPSFM which adopt a te ao Māori lens to freshwater management through treating the environment as a single interconnected system.
- the changes fail to appreciate that some values listed in provisions¹⁰ are associated with the wai (rather than the bed), or are derived from complex interactions between different parts of the river system (e.g. wai, surface, bed, banks and margins of the river) or the river and surrounding landscapes (e.g. outstanding values of natural landscapes associated with iconic river systems).
- the changes narrow the types of activities provisions will be relevant to when considering and deciding applications for consent. For example, amended provisions will be relevant when deciding consent applications involving use or disturbance of the bed (i.e. activities in s13 of the RMA), but will be less relevant when deciding applications involving the taking, using, damming and diversion of water (s14 of the RMA) or discharges of water and contaminants (s15 of the RMA).

23. These changes will have implications for the Council’s ability to protect braided river systems through future planning processes. Local authorities are required to ‘give effect’ to national policy statements which must be reflected in provisions in local authority planning documents. A practical example of the challenge the proposed change will create can be observed through the changes to Policy 7 of the NPSFM. As currently worded Policy 7 directs that:

“The loss of river extent and values is avoided to the extent practicable’.

24. Narrowing the policy to apply only to the ‘bed’ of a river will make it more difficult for local authorities to justify provisions in plans that avoid the loss of other values associated with the river system. Attempts to include provisions in plans that are more protective are likely to be contested on the basis that these provisions inappropriately extend the application of Policy 7, and that doing so would not be consistent with the requirement to “give effect” to the NPSFM 2020.

25. Furthermore, the proposed changes create implementation challenges for management of Canterbury’s braided river systems. Canterbury’s braided rivers are typified by meandering river braids that move over time and which have ill-defined banks. Establishing where the “bed” of a braided river ceases and the “bank” begins can be a complex and litigious exercise. Consequently, the Council considers one of the unintended consequences of these changes will be increased costs for resource users

¹⁰ ecosystem health, indigenous biodiversity, hydrological functioning, Māori freshwater values, amenity values.

and local authorities as determinations as to edge of the 'bed' of a river are made on a case by case basis.

26. It is the Council's assumption that the policy and implementation challenges arising from these changes have not been fully appreciated. Given the significance of these changes for the Council's ability to protect and enhance braided river systems the Council requests these changes are deleted.

Natural wetland definition

27. The Council reiterates comments made in its [previous submission](#) that the proposed changes to the definition of a 'natural wetland' will have implications for policy outcomes. However, in this round of feedback Environment Canterbury has focused its comments on matters relating to issues of clarity and potential unintended consequences arising from the changes.

28. In general the Council considers the definition to be complex, given the use of double negatives, exceptions to exclusions and repeated use of the word 'wetland'. This is evident when reading the first line of the definition in combination with clause (d). When read as a single sentence it reads:

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

(d) a wetland that:

is within ~~any~~ an area of pasture.....

29. The repeated use of the phrase 'a wetland' creates ambiguity which in turn will create implementation challenges. These, and other issues, described below need to be addressed to provide confidence to local authorities and resource users as to the meaning and application of the term.

Effects management hierarchy (clause (a) of the definition)

30. The Council supports the exclusion of 'deliberately constructed wetlands'¹¹ from the definition of a natural wetland, except wetlands constructed for offsetting or restoration purposes.
31. However, the phrase "*as part of giving effect to the effects management hierarchy*" inappropriately narrows the exception and there is a risk that wetlands constructed for offsetting or restoration purposes prior to 2020, may be excluded from the definition.
32. This risk exists because the 'effects management hierarchy' is a relatively new concept that was only introduced into the NPSFM in 2020. Wetlands constructed for offsetting and restoration purposes prior to 2020, would not meet the test of being constructed 'as part of giving effect to the effects management hierarchy'. This outcome appears inconsistent with the policy intent which is to ensure wetlands constructed for offsetting and restoration purposes are still considered a "natural wetland" for the purpose of the NPSFM and NES-F provisions. On that basis the Council considers the phrase should be deleted.

¹¹ Including wetlands constructed for stormwater management, retention or treatment purposes.

Threatened species (clause (d)(iii))

33. The Council supports the intent that wetlands with >50% coverage of exotic pasture species should not be excluded from the definition, if the wetland contains threatened species. However, the intent would be better understood if clauses (d)(ii) and (d)(iii) were combined into a single clause.
34. However, the Council notes the exemption for only 'threatened species' appears inconsistent with other provisions in the NPSFM which reference both 'threatened' and 'at-risk' species. An example is Principle 9 of the Appendix 7 of the NPSFM which directs that proposals involving aquatic compensation must not result in the loss of 'threatened' or 'at-risk' species. For this reason, the Council requests the intent and scope of the exemption in clause (d)(iii) is reviewed and clarified before changes are finalised.
35. Furthermore, while the Council supports the intent to provide greater recognition and protection to habitats of threatened species, the size of the task and resources required to carry it out appears significantly under-estimated. There is a general presumption that information on the location of threatened species will be readily available from the Department of Conservation (DOC¹²). However, a recent collaborative initiative by Environment Canterbury and DOC to identify critical habitats of indigenous freshwater species as part of a plan change¹³, have highlighted the challenges involved with this type of task. Data on threatened species is often incomplete, held in different databases, or distributed between different agencies and there may be practical challenges in gaining access to private land to survey areas for threatened species. Accordingly if the policy intent is to be achieved, the Government will need to consider additional mechanisms (beyond legislative change) to deliver this outcome. This includes investment in centralised systems to enable easy access and sharing of data between agencies.

General comments on provisions for quarries, mines, landfills, cleanfills and urban development in, or adjacent to natural wetlands

36. As stated in its [previous submission](#), the Council opposes more enabling regulations for the establishment of quarries, mines, landfills, cleanfills and urban development in or near natural wetlands. However, if consent pathways are to be provided, the Council agrees it is appropriate to include new policies in the NPSFM 2020 to guide decisions on consent applications.
37. However, the Council's impression is the consultation document appears to misunderstand or overstate the role of policies in decision-making on consent applications. New policies covering 'national / regional benefit', 'functional need', 'no practicable alternative location', 'well-functioning urban environments' are described in the consultation document as "policy tests" or "gateway tests", with statements made that proposals would need to pass "policy tests" for consent to be granted.¹⁴

¹² As evidenced by p12 of the consultation document which states "*In many cases DOC will already have data on the presence and location of threatened species.*"

¹³ Plan Change 7 to the Canterbury Land and Water Regional Plan.

¹⁴ E.g. p13 of the consultation document states "*The proposed amendment is to apply the 'national and / or regional benefit' test to quarries, fills and mining. The test is important to retain a high level of protection for natural inland wetlands, by **only** allowing activities to be consented if they meet this test*".

38. However, policies are one, amongst a number of matters, that consent authorities must have regard to¹⁵ when considering applications for resource consent. In addition to policies, consent authorities must consider the actual and potential effects of allowing the activity, measures proposed or agreed to by the applicant to ensure positive effects or offset or compensate for adverse effects, and other relevant planning instruments prepared under other Acts.
39. The concept of a 'gateway test' of the kind described in the consultation document only applies for non-complying proposals. Non-complying applications may only be granted if the consent authority is satisfied the effects of the activity will be minor or that the application is not contrary to the objectives and policies of the relevant plan.
40. Consequently, if the policy intent is for a strong policy test to direct decision-making then a status of non-complying would be a more appropriate activity classification for activities establishing in or near natural wetlands.

Urban development

41. The Council supports the inclusion of a new policy¹⁶ to guide decisions for urban development in or near natural wetlands. In theory, a policy that requires urban development to contribute to "well-functioning urban environments"¹⁷ that "support reductions in greenhouse gas emissions"¹⁸ and "are resilient to the likely current and future effects of climate change"¹⁹ should ensure the broader benefits of wetlands (e.g. moderation of flooding, absorption of greenhouse gasses) are taken into account when deciding applications.
42. However, there appears no opportunity to consider these matters given the disconnect between Policy 3.22(c) of the NPSFM and regulations in the NES-F. Regulation 45C classifies urban development in a natural wetland as a 'restricted discretionary', with consent authorities able to consider only the matters listed in Regulation 56 when deciding applications.
43. The matters listed in Regulation 56 focus exclusively on the potential impacts of a proposal on *freshwater* values (e.g. fish passage, potential for flooding), and do not account for all matters set out in the definition of a "well-functioning urban development". For example, there is no discretion to consider the impacts of urban development on the capacity of a wetland to absorb greenhouse gas emissions.
44. Disconnects between policy intent and regulations are also apparent in other areas. For example, Policy 3.22(c)(ii) requires proposals to be sited on land identified for urban development in an operative regional plan²⁰ or district plan, however this is not reflected in the conditions of Regulation 45C or provided for as a matter of discretion in Regulation 56. Similarly, there is no linkage between Policy 3.22 (c)(iv) which requires consent authorities to be satisfied that 'no practicable alternative location' exists for the proposal, and the matters of assessment covered in Regulation 56.

¹⁵ under s104 of the RMA.

¹⁶ Policy 3.22(1)(c)

¹⁷ As defined by Policy 1 of the NPS for Urban Development.

¹⁸ Policy 1(e) of the NPSUD

¹⁹ Policy 1(f) of the NPSUD

²⁰ For completeness the Council notes the reference to "regional plan" is inappropriate and should be corrected to regional policy statement.

45. Combined, these problems severely hinder the overall effectiveness of the policy framework. While some matters could be resolved through the addition of new conditions to Regulation 45C (e.g. new condition to require proposals to be sited on land identified for urban development in an operative regional policy statement or district plan), other matters are best retained as matters to be taken into consideration when deciding a consent application (e.g. extent to which a proposal contributes to a 'well-functioning environment'. For this reason the Council considers it would be more appropriate to change the activity classification from 'restricted discretionary' to 'discretionary'. Making this change would ensure consent authorities have discretion to consider all relevant policy matters when making deciding applications

Quarrying

46. The Councils supports the addition of a "functional need" policy²¹ for quarrying in a natural wetlands. Canterbury has significant aggregate resources, both in-river and on-land and the inclusion of a policy related to 'functional need' should ensure consent is only granted for quarrying in a wetland where proposals can "only occur in that environment".
47. Similarly, the Council supports new policies that require wetland loss to be avoided, except where the extraction of aggregate will "provide significant national or regional benefit". However, the lack of a definition of "significant national or regional benefit", or criteria to be taken into account when considering proposals, is a weakness of the framework. Without clear national guidance on what constitutes "significant national or regional benefit", there is a high potential for patchy implementation across the country as each region debates the meaning on a consent by consent basis. For this reason the Council encourages the Ministry to develop clear criteria or a definition and to consult on this prior to changes being finalised.

Mining

48. The Council supports the inclusion of a "functional need" test and "no practicable alternative location tests" for mining activities. However, as with other provisions there are disconnects between policy intent and the drafting of the regulations.
49. The Council notes the intent²² is to provide a pathway for resource consent for mining of thermal coal up until 2030. However, Policy 3.22(1)(e) fails to distinguish the types or end-uses for coal, and includes no policy direction on the granting of consents for thermal coal mining, after 2030.
50. The absence of policy direction appears based on an (incorrect) assumption that the policy intent will be achieved through condition 6 of Regulation 45D which states:
- "On and from 1 January 2030, mining for coal, other than coking coal is excluded from the purposes for which consent may be obtained under this regulation".
51. However, there are issues with the drafting that mean the policy intent will not be achieved. Firstly, the restriction on granting a consent for mining of a coal after 2030

²¹ Policy 3.22(d)(iii)

²² P19 of the consultation document

applies to **all coal** (except coking coal), not just thermal coal. Consequently the condition appears to have a much broader application than the policy intent.

52. Secondly, the “requirement” is included as a condition of the regulation rather than a standalone regulation. This is significant because a failure to comply with the condition of a regulation either results in an activity being classified by another regulation (if one exists) or defaults to a discretionary status under s87B of the RMA.
53. In this case, there is no ‘catch-all’ regulation that applies in the NES-F. Regulation 54 (non-complying regulation) is not relevant because it applies only to a narrow range of activities²³ and does not cover the ‘use’ of coal. As a consequence, the activity would be classified as ‘discretionary’ under s87B of the RMA, which is presumably unintended given this results in the same level of stringency as Regulation 45D.
54. For these reasons, the policy intent would be better achieved if condition 6 was instead drafted as a standalone regulation that applies to the mining of thermal coal after 2030.

Landfills and cleanfills

55. The Council notes Regulation 45B provides a consent pathway for works²⁴ in or adjacent to a natural inland wetland, provided the works are for the purpose of “operating or constructing a landfill or cleanfill area.” The proposed changes include the adoption of the definition of “cleanfill area” as defined by the National Planning Standards.
56. However, while the Council supports the adoption of the National Planning Standards definition, it notes this will be meaningless unless the companion definition of “cleanfill material” is also included. The definition of ‘cleanfill area’ in the National Planning Standards incorporates and cross-references the definition of cleanfill material as set out below:

Cleanfill area means an area used exclusively for the disposal of cleanfill material

Cleanfill material means virgin excavated material including clay, gravel, sand, soil and rock that are free of:

- a. combustible, putrescible, degradable or leachable components;
- b. hazardous substances and materials;
- c. products and materials derived from hazardous waste treatment, stabilisation or disposal practices;
- d. medical and veterinary wastes, asbestos, and radioactive substances;
- e. contaminated soil and other contaminated materials; and
- f. liquid wastes.

57. Consequently, the Council considers the NES-F should be amended to also include the definition of ‘cleanfill material’. Making this change would provide clarity to readers on the type of material authorised for disposal at a ‘cleanfill area’.

²³ Vegetation clearance, earthworks, land disturbance and associated discharges, damming and diversion of water

Aquatic offset and aquatic compensation principles and application of the effects management hierarchy

58. As set out in its previous submission the Council has significant concerns with the proposal to provide consent pathways for urban and industrial activities and reliance on aquatic offsetting and aquatic compensation principles to address any more than minor effects on extent and values. Offsetting and compensation are poor substitutes for preservation, and given the extent of wetland loss that has already occurred the NSPFM should prioritise preservation of remaining wetland systems.
59. However, putting aside the appropriateness of the policy position, the Council has identified issues with the integration between Policy 3.22(3)(b) and the offsetting and aquatic compensation principles in Appendices 6 and 7 of the NPSFM. Policy 3.22(b) directs that regional councils must change their regional plans to ensure resource consent is not granted, unless *“the council is satisfied the applicant has **had regard to the principles in Appendix 6 or 7**”*.
60. The requirement for a council to be satisfied an applicant has turned their mind to the principles in Appendices 6 and 7 sets a relatively low policy bar. A more direct and stronger policy position would be to require consent authorities to be satisfied that proposals aquatic offsetting or aquatic compensation measures **align with** or **implement** the principles in Appendix 6 or 7. This would also better align Policy 3.22(b) with Policy 3.22(b)(iv) which requires *“the effects of the activity **are managed** through applying the effects management hierarchy”* and the first paragraph in Appendix 6 and 7 which states *“These principles apply to the use of aquatic offsets / aquatic compensation for the loss of extent or values of natural inland wetlands and river beds.”*
61. In addition and consistent with our earlier comments, the aquatic offsetting and aquatic compensation principles should apply to ‘rivers’ and not just ‘river beds’ as currently proposed. Furthermore, the policy should be explicit that where a proposal affects both the extent **and** values there is a need for any aquatic offsetting or aquatic compensation measures to address both matters.

Restoration, maintenance and biosecurity provisions

62. The Council supports the intent for provisions that enable restoration, maintenance and biosecurity activities in wetlands but considers improvements are needed to the drafting of provisions.
63. In particular the definitions for ‘wetland maintenance’ and ‘biosecurity’ are ambiguous, with no clear differentiation between the terms, their purpose or the activities covered by each term. For example, removal of pest plant species could be considered *“weed control”* as provided for in the definition of ‘wetland maintenance’, or alternatively the elimination of *‘pest species* as provided for in the definition of ‘biosecurity’.
64. In addition, the drafting of some definitions does not align with the policy intent. For example, the consultation document states *“the proposed definition of “biosecurity” limits the scope of the associated activities to the removal of pest **plants** and unwanted organisms*. However, the definition does not constrain itself to pest plants, and the regulations would appear to enable vegetation clearance for management of non-plant pests (eradication of insect or vertebrate pests). Given the benefits of biosecurity, the Council considers the definition should apply to all pests, not just those plant pests.

65. Both definitions would also be improved if clear linkages were included between the *types of activities* covered by each definition and the *purpose* for which it is carried out. Terms used in other legislation and strategies to define 'biosecurity' include "eradication", "management" and "containment"²⁵. These would be appropriate to include in the definition and would ensure better alignment with provisions used in other Acts, strategies and secondary legislation.
66. Furthermore, the conditions for regulations applying to "wetland maintenance", "restoration" and "biosecurity activities" do not recognise the different purpose and benefits of each activity. While all three activities can contribute positively to freshwater outcomes, the distribution of benefits will be markedly different. For example, the benefits of "wetland maintenance" (e.g. improved ecosystem health) are often localised to the wetland and surrounding environs, while the benefits of biosecurity actions often extend further than the area of control or containment. Consideration of the distribution of these benefits should be taken into account when drafting conditions specific to each activity. In addition, the conditions should recognise that the risk of potential adverse impacts on wetlands or surrounding environs will generally vary depending on the level of skill and expertise of the person carrying out the activity.

Allowing increases in the size of specified infrastructure to enable fish passage

67. The Council supports the intent to enable fish passage where this contributes to positive outcomes for indigenous biodiversity. However, the proposal to permit increases in the size of specified infrastructure, where this is for the purpose of enabling fish passage, has the potential to result in poor outcomes for indigenous species.
68. In some locations, in-stream structures act as barriers, isolating and protecting up-stream indigenous invertebrates and fishes from predation from down-stream, introduced species. For this reason the Council considers proposals to modify existing in-stream structures to enable fish passage where passage does not currently exist, should be subject to a consent process. This would allow the impacts on indigenous biodiversity to be assessed and would give effect to Policy 3.26(1) of the NPSFM which requires:

The passage of fish is maintained, or is improved, by instream structures, **except where it is desirable to prevent the passage of some fish species in order to protect desired fish species**, their life stages, or their habitats."

Exemptions for flood control and drainage works

69. The Council supports changes to Regulation 46 to exempt public flood control, flood protection and drainage works from conditions that require notification to local authorities at least 10 days prior to works commencing and conditions restricting the timing of discharges. The proposed changes are pragmatic and provide for urgent maintenance works to be carried out prior to flooding occurring.
70. However, the drafting of condition 4(ii) of the regulation could be improved to make it clear the terms 'public flood control', 'flood protection' and 'drainage works' are terms

²⁵ Biosecurity 2025 – Strategic Direction for New Zealand.

defined as part of the definition of “specified infrastructure”. At present this connection is not clear and readers could misconstrue these terms as having a broader meaning (e.g. applying to private flood protection works). The linkage could be achieved by amending the condition to state “*if the activity is for specified infrastructure and relates to the maintenance of public flood control, flood protection or drainage works*”.

Special provisions affected by nutrients

71. The Council supports the intent of the proposed changes to Clause 3.13 of the NPSFM which aim to clarify the process regional councils must follow when setting target attribute states for attributes affected by nutrients. However, there is the potential for some changes to have unintended consequences and these are discussed further below.

Replacing references to total nitrogen and total phosphorus with reference to DIN and DRP

72. The proposed changes to clause 3.13(3) include the strikeout of clause (b) which requires regional councils to “*derive instream concentrations (instream loads) for **nitrogen and phosphorus** that achieve the environmental outcomes for nutrient-sensitive down-stream receiving environments*”. The replacement clause requires regional councils to “*adopt instream concentrations or instream loads set under clause 3.13(2) as target attribute states for **DIN and DRP***”. The key difference between the provisions is the form of nutrients. DIN and DRP are only the dissolved portion of the nutrient, while nitrogen and phosphorus include all forms.
73. The consultation document makes cursory mention of the change, stating only that amendments are necessary for reasons of consistency. However, for down-stream nutrient-sensitive receiving environments (e.g. lakes, coastal lakes, hāpua, estuaries and coastal environments) instream limits for **total nitrogen (TN)** and **total phosphorus (TP)** can be as, or more important, for achieving target attribute states. The importance of managing TN and TP to achieve environmental outcomes is reflected in Tables 3 and 4 of Appendix A which requires regional councils to set target attributes for total nitrogen and total phosphorus in order to achieve ecosystem health outcomes.
74. In addition, there are efficiency benefits to retaining provisions that enable regional councils to manage total nitrogen (TN) and total phosphorus (TP), rather than solely DIN or DRP. For regional councils developing integrated plans that implement a *ki uta ki tai* (mountains to sea) approach to resource management, the flexibility to set limits on either or both forms of nutrients will enable plan provisions to be tailored and targeted to the specific form of nutrient that requires management. The Council notes this approach is consistent with recently released guidance material from the Ministry for the Environment (*Guidance on look-up tables for setting nutrient targets for periphyton*) which recognises the relationship of both dissolved **and** total nutrients to periphyton outcomes.

Distinctions between limit-setting and action-planning attributes

75. The consultation document states the changes to clause 3.12(1) are intended to clarify that regional councils must set limits on resource use to achieve DIN and DRP outcomes, irrespective of whether these limits derive from an attribute in Appendix 2A (limit-setting attribute) or Appendix 2B (action-plan attribute). However, as with other provisions the Council considers there are unintended consequences of the change.

76. Clause 3.12(1) of the NPSFM 2020 requires that for any attribute listed in Appendix 2A, regional councils are to identify limits on resource use that will achieve target attribute states and **include those limits as rules in its regional plans** (emphasis added). The proposed changes to clause 3.12(1) extend this obligation to apply to “any target attribute state adopted under clause 3.13”. Clause 3.13(4) then includes examples of attributes affected by nutrients, and includes some attributes from Appendix 2B including fish, ecosystem metabolism, macroinvertebrates and submerged plants.
77. From the Council’s perspective it is neither practical nor appropriate to include limits in **rules** in regional plans to achieve target attribute states for some attributes (e.g. fish, ecosystem metabolism). Factors impacting the state of some of these attributes cannot readily be managed by including limits **in plan rules**, and often the most effective mechanisms to achieve outcomes is through non-statutory mechanisms (e.g. catchment scale interventions). The Council therefore requests the proposed changes to clause 3.12(1) are deleted, or changes made to clause 3.13(1) or 3.13(4) to clarify which attributes limits need to be set for in plan rules.

Use of best information

78. The Council generally supports the change to require the use of ‘best information’ when making decisions related to implementation of the NPSFM 2020.
79. However, the implications of changing clause 1.6 to refer solely to ‘local authorities’ may not be fully understood. The consultation document justifies the change on the basis that the amendment simply clarifies that use of ‘best information’ applies in relation to implementation of all parts of the NPSFM 2020.
80. However, one of the consequences of amending Clause 1.6 to include reference to ‘local authorities’ is that the clause has a narrower application. There are, however, a range of other organisations and persons with responsibilities that directly, or indirectly relate to implementation of the NPSFM 2020. These include persons currently carrying out powers and functions **on behalf** of local authorities (e.g. independent hearing commissioners making recommendations or decisions on local authority plans or decisions on consent applications) and central government agencies carrying out functions and duties under other legislation. For example Taumata Arowai is required to “give effect” to Te Mana o te Wai²⁶ when exercising functions and duties under the Water Services Act, and the Water Services Bill proposes that Water Service Entities must “give effect” to Te Mana o te Wai when exercising functions and duties.
81. For this reason, changes should be made to clause 1.6 to reflect the broader range of persons and organisations with responsibilities related to implementation of the NPSFM. This could be achieved by either deleting reference to “local authorities’ or extending the clause to reflect other organisations and entities described above.

Transparent decision-making

82. The Council supports the use of transparent decision-making processes noting this is a fundamental cornerstone of open and democratic governance.

²⁶ as defined in the NPSFM 2020

83. Clause 3.6 of the NPSFM currently requires regional councils to record and publish information on decisions relating to **tangata whenua involvement** in freshwater management or the preparation of action plans.
84. The proposed change to clause 3.6 to require regional councils to record and publish reasons relating to **all decisions** made under the NPSFM 2020 is a significant expansion of the clause. Decisions captured by the change could include decisions related to non-statutory works (e.g. catchment-scale restoration or enhancement works) or decisions to delay or postpone those works. Relevantly the Council notes that a “decision” includes a decision not to decide on, or to postpone deciding any substantive issues. In general the council considers this to be onerous and not proportionate to the benefits arising from the change. On that basis the change is opposed.

Appendix 1 – Detailed feedback on drafting of NPSFM 2020 and NES-F provisions.

Table 1 – Feedback on proposed changes to NPSFM 2020. Only provisions the Council has provided feedback on are set out below, and for brevity some provisions are not set out in full (e.g. Policy 3.22).

NPSFM 2020 Provision	Comments
<p>Clause 1.6 Interpretation</p> <p>(2) Terms defined in the Act and used in this National Policy Statement have the meanings in the Act, except as otherwise specified.</p> <p><u>(3) Terms defined in the National Planning Standards issued under section 58E of the Act and used in this National Policy Statement have the meanings in those Standards, unless otherwise specified.</u></p> <p><u>(4) A reference in this National Policy Statement to a zone is:</u> (a) <u>a reference to a zone as described in Standard 8 (Zone Framework Standard) of the National Planning Standards; or</u> (b) <u>for local authorities that have not yet implemented the Zone Framework Standard of the National Planning Standards, a reference to the nearest equivalent zone.</u></p>	<p>See comments in body of submission regarding alignment with national direction. Adoption of terms and definitions in the National Planning Standards is supported.</p>
<p>1.6 Best Information</p> <p>(1) A requirement in implementing this National Policy Statement to local authorities must use the best information available at the time is a requirement to use, which means, if practicable, using complete and scientifically robust data.</p> <p>...</p> <p>(3) A person who is required to use the best information available at the time local authority: (a) must not delay making decisions solely because of uncertainty about the quality or quantity of the information available; and (b) if the information is uncertain, must interpret it in the way that will best give effect to this National Policy Statement.</p>	<p>See comments in the body of the submission. The requirement for only local authorities to use “best information” when implementing the NPSFM 2020 is too narrow. Other organisations also have responsibilities that relate to implementation of the NPSFM (e.g. Taumata Arowai) and this should be reflected in the clause.</p> <p>Relief sought: Amend the clause to reflect the fact there are a broader range of parties with responsibilities for implementation of the NPSFM.</p>
<p>1.7 Application of section 55(2A) of Act</p> <p>(1) The changes to regional policy statements and regional plans required by the following provisions of this National Policy Statement are amendments referred to in section 55 of the Act (which, because of section 55(2A) of the Act, means that the changes must be made without using a process in Schedule 1 of the Act): (a) clause 3.22(1) (Natural inland wetlands) clause 3.24(1) (Rivers beds) (b) clause 3.26(1) (Fish passage) </p>	<p>See feedback in the body of the submission. Clause 1.7 should retain its broad application and apply to “rivers” and not just “river beds”.</p> <p>Relief sought: Delete all changes to the NPSFM that replace “river” with “river beds”.</p>
<p>Policy 7: The loss of river bed extent and values is avoided to the extent practicable.</p>	<p>See feedback in the body of the submission. Clause 1.7 should retain its broad application and apply to “rivers” and not just “river beds”.</p>

<p>3.6 Transparent decision-making</p> <p>(1) This clause applies to <u>all</u> decisions by regional councils relating to: made under this National Policy Statement, and applies in addition to any other requirement under the Act relating to processes for making or changing regional policy statements or plans.</p> <p>(a) clause 3.4(3) (about mechanisms to involve tangata whenua in freshwater management); and (b) clause 3.15 (about preparing action plans).</p> <p>(2) Every regional council must:</p> <p>(a) make decisions, record <u>the</u> matters considered <u>and the decision reached</u>; and</p> <p>(b) <u>specify</u> the reasons for <u>the</u> decisions reached; and</p> <p>(c) publish the <u>publish</u> this <u>the</u> matters considered, <u>the decision reached, and the reasons for the decision,</u> as soon as practicable after a <u>the</u> decision is reached, unless publication would be contrary to any other legal obligation.</p>	<p>Relief sought: Delete all changes to replace “river” with “river beds”.</p> <p>See our comments in the body of the submission. The proposal to apply clause 3.6 to “<u>all</u>” decisions made by regional councils significantly extends the scope of decisions affected by this clause and is opposed.</p> <p>Relief sought: Delete proposed changes to clause 3.6(1)(a) and (1)(b).</p>
<p>3.12 How to achieve target attribute states and environmental outcomes</p> <p>(1) In order to achieve the target attribute states for the attributes in Appendix 2A <u>and any target attribute states adopted under clause 3.13</u>, every regional council:</p> <p>(a) must identify limits on resource use that will achieve the target attribute state, and any nitrogen and phosphorus exceedance criteria and instream concentrations set under clause 3.13; and</p> <p>(b) must include the <u>those</u> limits as rules in its regional plan(s); and</p> <p>....</p> <p>(2) In order to achieve the target attribute states for the attributes in Appendix 2B, every regional council:</p> <p>... (b) may identify limits on resource use, and any nitrogen and phosphorus exceedance criteria and instream concentrations set under clause 3.13, and include them as rules in its regional plan(s); and...</p>	<p>See comments body of submission regarding potential unintended consequences arising from the interaction of clause 3.12(1) and clause 3.13(4) and</p> <p>Relief sought: Clarify the interaction between clause 3.12(1) and 3.13(4). Delete the proposed amendments to clause 3.12(1), or make changes to clause 3.13(4) to clarify which attributes from Appendix 2B that councils must include limits in rules in plans for.</p>
<p>3.13 Special provisions for attributes affected by nutrients</p> <p>(1) To achieve a target attribute state for periphyton, any other nutrient attribute, and any attribute that is affected by nutrients, every regional council must, at a minimum, set appropriate instream concentrations or instream loads, and temporal exceedance criteria, for dissolved inorganic nitrogen (DIN) and dissolved reactive phosphorus (DRP).</p> <p>(2) Where there are nutrient-sensitive downstream receiving environments, <u>the</u> instream concentrations <u>or instream loads</u>, and <u>the temporal</u> exceedance criteria, for DIN and DRP must be set for the upstream contributing water bodies <u>must be set so as to achieve the environmental outcomes sought for the nutrient-sensitive downstream receiving environments.</u></p> <p>(3) Every regional council must adopt the instream concentrations or instream loads, and the</p>	<p>Clause 3.12(3)</p> <p>The proposed changes require instream concentrations to be set for DIN and DRP. However DIN and DRP are not always the most suitable nutrient criteria when setting target attribute states for nutrient-sensitive downstream waterbodies (e.g. hapūa, lakes, coastal environments)</p> <p>Relief sought: Clarify that councils can still set limits on total nitrogen and total phosphorus (rather than DIN and DRP) for nutrient sensitive downstream locations.</p>

<p><u>temporal exceedance criteria, set under subclauses (1) and (2) as target attribute states for DIN and DRP.</u></p> <p>(3) In order to determine instream concentrations and exceedance criteria for DIN and DRP, for upstream contributing water bodies, every regional council must apply the following process, in the order given:</p> <p>(a) either:</p> <p>(i) if the FMU or part of an FMU supports, or could support, conspicuous periphyton, derive instream concentrations and exceedance criteria for DIN and DRP to achieve the periphyton target attribute state; or</p> <p>(ii) if the FMU or part of an FMU does not support, or could not support, conspicuous periphyton, consider the instream concentrations (or instream loads) and exceedance criteria for nitrogen and phosphorus needed to achieve any other target attribute state</p> <p>(b) if there are nutrient sensitive receiving environments, derive the relevant instream concentrations (instream loads) and exceedance criteria for nitrogen and [Exposure Draft – For Consultation Purposes Only] 20 National Policy Statement for Freshwater Management 2020 phosphorus needed to achieve the environmental outcomes sought for those receiving environments</p> <p>(c) compare instream concentrations and exceedance criteria for nitrogen and phosphorus derived in steps (a) and (b) and adopt those necessary to achieve the relevant target attribute state and the environmental outcomes sought for the nutrient sensitive receiving environments as instream concentrations and exceedance criteria for DIN and DRP for the upstream contributing water bodies.</p> <p>(4) Examples of attributes affected by nutrients include <u>periphyton</u>, dissolved oxygen (Appendix 2A, Tables <u>2</u> and <u>7</u> and Appendix 2B, Tables 17, 18, and 19), submerged plants (invasive species) (Appendix 2B, Table 12), fish (rivers) (Appendix 2B, Table 13), macroinvertebrates (Appendix 2B, Tables 14 and 15), and ecosystem metabolism (Appendix 2B, Table 21).</p>	
<p>Subpart 3 Specific requirements</p>	
<p>3.21 Definitions relating to wetlands and rivers <u>beds</u></p> <p>(1) In clauses 3.21 to 3.24:</p> <p><u>biosecurity</u> means eliminating or managing pests and unwanted organisms</p>	<p>See comments in the body of the submission. In addition there is a potential gap in the definition as it relates to the control of invasive organisms that are new to NZ and are not yet included in Regional Pest Management Plans or identified as Unwanted Organisms. Recent example was Great Willowherb.</p> <p>Relief sought: Clarify which “pests” are covered by the definition and how pests that are new, but not yet included in RPMPs or on the Unwanted organisms list are to be managed.</p>
<p><u>effects management hierarchy</u>, in relation to natural inland wetlands and rivers <u>beds</u>, means an approach to managing the adverse effects of an activity on the extent or values of a wetland or river <u>bed</u> (including cumulative effects and loss of potential value) that requires that:</p> <p>.....</p>	<p>See comments in main body of submission. The proposed changes inappropriately constrain the “effects management hierarchy” to applications that affect or involve only the “bed” of a river.</p> <p>Relief sought: Delete the proposed amendments to the definition of “effects management hierarchy”.</p>

<p>loss of value, in relation to a natural inland wetland or river <u>bed</u>, means the wetland or river <u>bed</u> is less able to provide for the following existing or potential values:</p> <p>(a) any value identified for it under the NOF process; or</p> <p>(b) any of the following <u>values</u>, whether or not they are identified under the NOF process:</p> <ul style="list-style-type: none"> (i) ecosystem health (ii) indigenous biodiversity (iii) hydrological functioning (iv) Māori freshwater values (v) amenity <u>values</u> 	<p>See comments in main body of submission. The changes are in appropriate as the values listed in clauses (a) and (b) are associated with, or derive from the river as a whole, including the wai, banks, bed and natural character.</p> <p>Relief sought: Delete all proposed amendments to the definition.</p>
<p>natural wetland means a wetland (as defined in the Act) that is not:</p> <p>a) a <u>deliberately constructed</u> wetland, constructed by artificial means (unless it was 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</p> <p>b) <u>a wetland that has developed in or around a deliberately constructed water body, since the construction of the water body; or</u></p> <p>c) a geothermal wetland; or</p> <p>d) <u>a wetland that:</u></p> <ul style="list-style-type: none"> (i) is within any an area of improved pasture that, at the commencement date; and (ii) is dominated by (that is more than 50% of) exotic pasture species and is subject to temporary rain-derived water pooling 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 	<p>See comments in the body of the submission regarding comments on this definition and relief sought</p>
<p>specified infrastructure means any of the following:</p> <p>....</p> <p><u>(c) any water storage infrastructure.</u></p> <p>...</p>	<p>Relief sought: Include a definition of “water storage” infrastructure, that clarifies the type and scope of infrastructure provided for by the definition.</p>
<p>restoration, in relation to a natural inland wetland, means active intervention and management, appropriate to the type and location of the wetland, aimed at restoring its ecosystem health, indigenous biodiversity, or hydrological functioning.</p>	<p>See comments in submission regarding inconsistent use of the term ‘natural inland wetland’ and ‘inland wetland’. The Council notes this better aligns the terminology with that used in the “restoration” provisions in the NES-F (e.g. Regulation 37 and 38).</p> <p>Relief sought – align the terms used in the NPSFM and NES-F when referencing natural wetlands.</p>
<p>wetland maintenance means activities, such as weed control, intended to prevent the deterioration of a wetland’s condition.</p>	<p>See comments in body of submission regarding issues of certainty with the drafting.</p> <p>Relief sought: Clarify the type and scale of activities covered by the definition (as distinct from other definitions, e.g. biosecurity). .</p>
<p>aquatic offset means a measurable conservation outcome resulting from actions that are intended to:</p>	<p>See comments in body of submission.</p>

<p>(a) redress any more than minor residual adverse effects on a wetland or river <u>bed</u> after all appropriate avoidance, minimisation, and remediation, measures have been sequentially applied; and</p> <p>(b) achieve no net loss, and preferably a net gain, in the extent and values of the wetland or river <u>bed</u>, where:</p> <p>(i) no net loss means that the measurable positive effects of actions match any loss of extent or values over space and time, taking into account the type and location of the wetland or river <u>bed</u>; and</p>	<p>Relief sought: Delete all changes to the NPSFM that replace “river” with “river beds”.</p>
<p>3.22 Natural inland wetlands <i>(Policy not replicated in table due to length of provision. Refer to exposure draft for marked up changes proposed through this consultation).</i></p>	<p>For general feedback on provisions in Policy 3.22 see the body of submission. Additional points not covered in the submission are set out below:</p> <p>Urban development (Policy 3.22(c))</p> <ul style="list-style-type: none"> • The definition of ‘well-functioning urban environment’ is broad and could have implications for the breadth and type of information that needs to be submitted with applications. It would be useful to clarify the type of information to be provided. • Clauses 3(c)(i) and (iii) do not recognise complete wetland loss as a potential outcome of granting an application for consent. Complete wetland loss is a potential anticipated outcome of the “effects management hierarchy”, as provided for through “compensation” provisions. Monitoring should therefore only be required where there a wetland remains or where a wetland is to be constructed as part of an offsetting requirement. • Clause 3(c)(iii) should be amended to enable councils to impose a condition requiring payment of a bond for urban development proposals.
<p>3.24 River <u>beds</u></p> <p>The loss of river <u>bed</u> extent and values is avoided, unless the council is satisfied that:</p> <p>....</p> <p>(2) Subclause (3) applies to an application for a consent for an activity:</p> <p>(a) ...</p> <p>(b) would result (directly or indirectly) in the loss of extent or values of a river <u>bed</u>.</p> <p>(3) Every regional council must make or change its regional plan(s) to ensure that an application referred to in subclause (2) is not granted unless:</p> <p>(a) the council is satisfied that the applicant has demonstrated how each step in the effects management hierarchy will be applied to any loss of extent or values of the river <u>bed</u> (including cumulative effects and loss of potential value), particularly (without limitation) in relation to the values of: ecosystem health, indigenous biodiversity, hydrological functioning, Māori freshwater values, and amenity; and</p> <p>(b) any consent granted is subject to conditions that apply the effects management hierarchy.</p> <p>(4) Every regional council must:</p> <p>(a) develop and undertake a monitoring plan that:</p>	<p>See comments in body of submission.</p> <p>Relief sought: Delete all proposed changes and retain reference to “river” in recognition that the values provided for through this clause extend broader than just the “bed”.</p>

<p>(i) <u>to</u> monitors the condition of its rivers <u>beds</u>; and</p> <p>(ii) <u>that</u> contains sufficient information to enable the council to assess whether its policies, rules, and methods are ensuring no loss of extent or values of the rivers <u>beds</u>; and</p> <p>(b) ..</p>	
<p>Appendix 2A – Attributes requiring limits</p>	
<p>Table 9A – <i>Escherichia coli</i> (Amended note below table)</p> <p>Attribute state band must be determined by satisfying all <u>four</u> numeric attribute states, <u>or if that is not possible, according to the worst numeric attribute state.</u></p>	<p>Relief sought: Retain the proposed amendments on the basis these help clarify the intent of the provision.</p>
<p><u>Appendix 6: Principles for aquatic offsetting</u></p> <p><i>(Policy not set out in in table due to length of provision. Refer to exposure draft for marked up changes proposed through this consultation).</i></p>	<p>See our comments in the body of the submission, including our comments that provisions in Appendices 6 and 7 should apply to the river as a whole, not just the river bed.</p> <p>In addition, changes should be made to clarify that if an activity results in loss of wetland extent and values, the offset must address both extent and values. In practice, loss of quantum of wetland habitat cannot be readily offset by improvements in ‘quality’ of remaining wetland habitats elsewhere.</p>
<p><u>Appendix 7: Principles for aquatic compensation</u></p> <p><i>Policy not set out in in table due to length of provision. Refer to exposure draft for marked up changes proposed through this consultation).</i></p>	<p>The loss of quantum of wetland habitat cannot be satisfactorily compensated by improvements in quality of an equivalent area of existing/remaining wetland habitats elsewhere. Such an approach appears inconsistent with NPSFM objectives for no further loss of wetland extent.</p> <p>Principles for aquatic compensation should require both extent <i>and</i> values of affected wetlands be factored into compensation. If an activity applied for under RC involves reduction of wetland extent, ‘compensation’ must involve compensation for loss of wetland extent as well as wetland values. If activity involves loss of wetland values but not extent, compensation need not necessarily involve increased wetland extent, although that could still be a useful part of compensation package.</p> <p>There is also a disconnect between the definition of aquatic compensation in clause 3.21 and the principles in Appendix 7. The definition of aquatic compensation applies to the river as a whole, while the principles apply only to river beds.</p>

Table 1 – Feedback on proposed changes to NES-F

NES-F changes	Comments
<u>Part 1 Preliminary provisions - Definitions</u>	
biosecurity has the meaning given by the National Policy Statement for <u>Freshwater Management</u> .	See feedback in the body of the submission.
cleanfill area has the meaning given by the National Planning Standards 2019	See feedback in the body of submission regarding provisions for landfills and cleanfills. Relief sought: Incorporate the definition of “cleanfill material” into the NES-F
wetland maintenance has the meaning given by the National Policy Statement for <u>Freshwater Management</u>	See feedback and relief sought in the body of the submission.
<u>Part 2 Standards for farming activities</u>	
<p><u>Regulation 24 Discretionary activities: conditions on granting resource consents.</u></p> <p>(1) A resource consent for an activity that is a discretionary activity under this subpart may be granted only if the consent authority is satisfied that granting the consent will not result in an increase in—</p> <p>(a) contaminant loads in the catchment, compared with the loads as at the close of 2 September 2020; or</p> <p>(b) concentrations of contaminants in freshwater or other receiving environments (including the coastal marine area and geothermal water), compared with the concentrations as at the close of 2 September 2020</p> <p><u>(1) A resource consent for an activity that is a discretionary activity under this subpart must not be granted unless the consent authority is satisfied that granting the consent will not result in an increase in either of the following:</u></p> <p><u>(a) contaminant loads in the catchment, compared with the loads as at the close of 2 September 2020; concentrations of contaminants in freshwater or other receiving environments (including the coastal marine area and geothermal water), compared with the concentrations as at the close of 2 September 2020</u></p> <p><u>(b) concentrations of contaminants in freshwater or other receiving environments (including the coastal marine area and geothermal water), compared with the concentrations as at the close of 2 September 2020.</u></p>	<p>The proposed changes are supported on the basis that they provide greater clarity on the tests that must be satisfied for applications subject to this provision to be granted.</p> <p>Relief sought: Retain changes as proposed and make consequential amendments to clause Regulation 30(3) to align wording between provisions.</p>

<p>Subpart 4—Application of synthetic nitrogen fertiliser to pastoral land synthetic nitrogen fertiliser—</p> <p>....</p> <p>(c) does not include a compost, soil treatment, or fertiliser that—</p> <p>(i) is <u>wholly</u> derived from plant or animal waste or residue; and</p> <p>(ii) is minimally processed (for example, by being composted, mixed, dried, and pelleted).</p>	<p>The proposed change is supported on the basis it clarifies that only fertilisers sourced entirely from non-synthetic sources are excluded from the definition.</p> <p>Relief sought: Retain the proposed changes.</p>
<p><u>Part 3 Standards for other activities that relate to freshwater</u></p>	
<p>Restoration, wetland maintenance and biosecurity of natural wetlands</p> <p>Regulation 38 Permitted activities</p> <p><i>Regulation not replicated in table due to length of provision. Refer to exposure draft for marked up changes proposed through this consultation).</i></p>	<p>See comments in body of submission regarding proposals relating to provisions for wetland maintenance and biosecurity and specific comments below</p> <ul style="list-style-type: none"> • The conditions do not specify control methods, or the skills or competencies of persons undertaking the work. This may have impacts for both the wetland itself and broader values. • Reg 55 does not restrict clearance of indigenous vegetation, so provision 5(b)ii becomes very important for ensuring that biosecurity activities are undertaken appropriately. <p>Condition 4(b) (occurs over to affects)</p> <p>The change to condition 4(b) to refer to “affects” instead of “occurs over” is subjective and opposed. “Affects” could be interpreted as meaning “directly affects” in the sense that it applies only to the areas where clearance is actually occurring, or could be interpreted as “affects” in the broader RMA sense (whereby an activity can result in localised impacts outside the area of actual clearance).</p> <p>Relief sought: Delete proposed change and retain original wording of “occurs over”.</p> <p>Condition 4(c)</p> <p>We understand condition 4(c) is intended to clarify that discharges associated with wetland restoration, maintenance or biosecurity are to be assessed against Regulation 39A, rather than Regulation 39. However, the use of a “condition” as a means for directing a plan reader to an alternative rules is inappropriate. This outcome should be achieved through clear definitions and regulations that define the scope of the activity.</p> <p>Condition 5(b)(ii) (reference to demonstrably necessary).</p> <p>The words “demonstrably necessary” are subjective and will be difficult to enforce.</p> <p>Relief sought: Delete condition 5b(ii), or alternatively if the “demonstrably necessary” requirement is to remain, the condition should clarify that the resource user must demonstrate both the clearance, and the method used (e.g. helicopter spraying vs discrete on the ground removal) is demonstrably necessary.</p> <p>Condition 5(c) (exemptions to limits on area of clearance in a wetland.)</p>

	<p>The drafting of condition 5(c) is unclear, particularly the linkages between the exceptions to the 'areal limits' and the need for a restoration plan. In addition it's unclear whether the intent is for local authorities to simply receive, or review, restoration plans. A restoration plan that technically 'ticks' the boxes in the Schedule does not necessarily translate to good outcomes on the ground. In fact poor restorations can cause more harm than good.</p> <p>Relief sought: Clarify the requirements relating to restoration plans and areal limits and whether there is a requirement for councils to review plans prior to works being undertaken.</p>
<p>Comments relating to the proposed addition of condition 3A to Regulation 39, 41, 44, 47. <i>Note: For brevity we have replicated condition 3A of Regulations 39, 41, 44 and 47 below. This is a common condition proposed to be added to each of these regulations</i></p> <p><u>3A The discharge of water within, or within a 100m setback from a natural inland wetland is a discretionary activity if—</u></p> <p>(a) <u>it is for the purpose of [insert activity]; and</u></p> <p>(b) <u>there is a hydrological connection between the discharge and a natural inland wetland; and</u></p> <p>(c) <u>there are likely to be adverse effects from the discharge on the hydrological functioning or the habitat of the biodiversity values of a natural wetland.</u></p> <p><u>it does not comply with the condition in regulation [insert regulation] but does comply with the conditions in subclause (insert condition) of this regulation.</u></p>	<p>See body of submission for general comments on issues with the drafting of this condition. Additional feedback set out below.</p> <p>Chapeau to condition 3A (discharges of water). .</p> <p>Condition 3A regulates the discharge of “water” from a natural wetland but does not specify the circumstances under which the discharge of water is regulated. Under s15 of the RMA, only discharges of water to water are regulated, discharges of water into, or onto land are not.</p> <p>Relief sought: Amend condition 3A to only apply to discharges of water to water, e.g <i>The discharge of water <u>to water</u> within, or within a 100 m setback from, a natural wetland...</i></p> <p>Condition (c) “no adverse effect on the hydrological functioning or habitat of the biodiversity values.</p> <p>Condition c is inappropriate as an entry condition given the different subjective elements that form part of the rule. All discharges are likely to have an “effect” on the hydrological functioning of a wetland or its values, but the type (adverse or positive) and scale of effect is something that can only be established once the application has been received and assessed. In addition, this condition uses the phrase “natural wetland” whereas the term “natural inland wetland” is used in other parts of the rule. Given the differences in the meanings of this term, we suspect the change in language is not intended.</p> <p>Relief sought – Delete condition 3(c) or amend to remove subjective elements.</p> <p>Relationship between conditions (c) and (d)</p> <p>Condition 3A is framed as a condition that requires all four clauses (a), (b), (c) and (d) to be met in order for the condition to be satisfied. However, given the drafting of condition 4, we query whether clauses (c) and (d) should instead be separated by an “or”. Our assumption is that if an activity fails to meet either condition (4)(c) or 4(d) of the relevant regulation, that the activity is classified as non-complying under Regulation 54. However the intent is ambiguous and should be clarified.</p> <p>Relief sought: Clarify the relationship between clause (c) and (d), and if required amend the “and” at the end of the clause to an “or”.</p>

Regulations for mining, quarrying, landfills, cleanfills and urban development (Regulations 45A, 45B, 45C, 45D)	See our comments in the body of the submission.
Regulation 52 (Drainage of Natural wetlands – non-complying activity) Regulation 53 (Drainage of Natural wetlands – prohibited activity)	The change to delete “discharge” and replace with diversion is supported, although (as noted in previous comments on exposure drafts) the test of “results, or is likely to result, in the complete or partial drainage...”, is subjective and should not be an entry criteria as different people will have different opinions on this question. Entry criteria should be certain and unambiguous.