

# Practice and Guidance note

## Managing Natural Wetlands under the National Environmental Standards for Freshwater Regulations 2020

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- *the information provided does not alter the Auckland Unitary Plan, Auckland Council District Plan - Hauraki Gulf Islands Section, Resource Management Act 1991 or other laws of New Zealand and other official guidelines and requirements*
- *this document sets out general principles which may be used as guidance for matters relating to the interpretation and application of the Auckland Unitary Plan; it is not intended to interfere with, or fetter, the professional views and opinions of council officers when they are performing any function or exercising any power under the RMA. Each consent application will be considered on a case-by-case basis and on its own merits*
- *Users should take specific advice from qualified professional people before undertaking any action as a result of information obtained in this practice and guidance note*
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# 1 Introduction

The “[Essential Freshwater](#)” package introduces nationally consistent objectives, policies and regulations to restore and protect the health of New Zealand’s waterways. This includes a range of policy and regulatory tools under the Resource Management Act 1991 (“RMA”) to manage natural wetlands.

This Practice and Guidance Note (“PGN”) provides guidance on the management of natural wetlands within the [National Policy Statement for Freshwater Management 2020](#) (“Freshwater NPS”) and the [Resource Management \(National Environmental Standards for Freshwater\) Regulations 2020](#) (“NES-F”).

Interpretations used in this PGN are based on the most recent Court decisions and Ministry for the Environment (“MfE”) guidance. Should this information change this PGN will be updated as soon as possible. MfE are currently consulting on proposed changes to the NES-F in relation to natural wetlands. These changes will likely be gazetted in mid-2022. This guidance will be updated in line with any regulatory amendments as soon as practicable.

Auckland Council has prepared a PGN on the Essential Freshwater package, titled [National Instruments for Freshwater Management](#). Please refer to this PGN for broad guidance on the Essential Freshwater package, its statutory context and its implications on the resource consenting process.

## 2 How to identify wetlands regulated by the NES-F

This section will provide guidance on the types of wetland systems that the regulations are applicable to, including how these are defined and identified.

Page 11 of [Defining ‘natural wetlands’ and ‘natural inland wetlands’](#) released by the MfE includes a useful flow diagram to assist with identifying natural wetlands. This flow diagram should be used when interpreting the coming section.

## 2.1 What types of wetlands are the NES-F regulations applicable to and how are these defined?

Wetlands are defined in section 2 of the RMA as follows:

*Wetland includes permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions.*

The RMA definition of wetlands encompasses all wetlands. The NES-F regulations only apply to natural wetlands. The definition of a natural wetland in Clause 3.21 of the Freshwater NPS, is:

*A wetland (as defined in the RMA) that is not:*

- a) A wetland constructed by artificial means (unless it was constructed to offset impacts on, or restore, an existing or former natural wetland); or*
- b) A geothermal wetland; or*
- c) Any area of improved pasture that, at the commencement date, is dominated by (that is more than 50% of) exotic pasture species and is subject to temporary rain-derived water pooling.*

A High Court decision<sup>1</sup> has determined that the NES-F natural wetland provisions apply to all natural wetlands, including natural inland wetlands and natural wetlands within the coastal marine area (CMA). This decision overrules an earlier Environment Court decision<sup>2</sup> which determined that when applying the NES-F natural wetland regulations within the CMA, the provisions only apply to natural wetlands that are within the portion of the CMA that is upstream of the river mouth, called the 'connected area'. This is no longer relevant. Applicants should now be applying the provisions of the NES-F with respect to any natural wetland, including those located anywhere within the CMA.

MfE is currently investigating the approach to managing natural wetlands within the CMA under the NES-F. Regulatory amendments providing more clarity on natural wetlands in the CMA (among other matters) are anticipated in mid-2022. The guidance provided in this PGN to assist applicants identifying natural wetlands in the CMA is an interim approach, while council awaits further direction from MfE. This PGN will be updated as soon as possible following the regulatory amendments.

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<sup>1</sup> Minister of Conservation v Mangawhai Harbour Restoration Society Inc. [2021] NZHC 3113

<sup>2</sup> Bay of Islands Maritime Park Inc. v Northland Regional Council [2021] NZEnvC 006

## 2.2 How do I know if a wetland was constructed by artificial means?

Wetlands constructed by artificial means are wetlands that are intentionally constructed and are made, built or formed directly through human effort to fulfil a specific purpose and may require maintenance over time (for example, vegetation or silt removal) to continue to fulfil that purpose. This includes but is not limited to wetlands constructed for water storage, the detention, attenuation or treatment of stormwater, irrigation, or for landscaping purposes.

Wetlands constructed by artificial means are excluded from the definition of "natural wetland" and are not regulated by the NES-F. However, they are wetlands and are subject to the provisions of the AUP(OP) and/or existing resource consent conditions.

An applicant must provide evidence that a wetland has been constructed by artificial means to demonstrate that it is not a natural wetland when applying the NES-F.

Wetlands constructed to offset the impacts on, or restore, an existing or former natural wetland come within the definition of "natural wetland". Although intentionally constructed, these wetlands are designed to restore or replicate the functions of natural wetland systems. They are therefore treated as natural wetlands when applying the NES-F.



Example of a wetland constructed by artificial means

## 2.3 What if a wetland is unintentionally induced and forms because of man-made activities?

Wetlands may unintentionally form because of human activity that alters natural hydrological processes. These are induced wetlands and can occur because of modifications within a watercourse (constructing a culvert, weir, structure or earthworks), as a result of a stormwater pond, or other activities such as stock pugging.

Although influenced by human activity, induced wetlands are formed through natural processes and are not deliberately "constructed". They therefore fall within the definition of natural wetland and are regulated by the NES-F.

The following includes examples of induced wetlands:



Natural wetland induced due to a culvert



Natural wetland induced due to stock pugging

## 2.4 What is improved pasture and how do I know if this exemption applies to me?

The definition of 'improved pasture' is contained in Clause 3.21 of the Freshwater NPS, being:

*“an area of land where exotic pasture species have been deliberately sown or maintained for the purpose of pasture production, and species composition and growth has been modified and is being managed for livestock grazing.”*

In order to demonstrate that the area falls within the exception in clause (c) of the definition of natural wetland an applicant must first demonstrate that an area of pasture is 'improved pasture'.

This must include evidence that at the commencement of the NES-F (3 September 2020) exotic pasture species commercially available for livestock consumption had been deliberately sown or maintained for pasture production over more than 50% of the area. Non-wetland species present, or self-established, amongst wetland species do not qualify as 'improved pasture'. This requires an ecological assessment demonstrating vegetation species and should be supported by dated aerial



photography. Use the vegetation delineation tool discussed in the next section to assist with carrying out vegetation assessments on-site. MfE are currently developing a national list of exotic pasture species and a methodology for identifying 50% exotic pasture species ground coverage. This will further support the identification of 'improved pasture', once released.

An applicant must then demonstrate that these exotic pasture species are being managed for livestock grazing. This could include evidence of fertilizer use to influence the growth rate and nutrient content of these species and/or regular weeding.

If an applicant can demonstrate an area is 'improved pasture', they must then provide evidence that the area is only subject to temporary rain-derived pooling. Temporary rain-derived pooling can be challenging to assess, depending on when a site visit is conducted and the slope of an area. Instead, applicants can demonstrate that wetland hydrology is absent during the growing season, using the hydrology tool indicators discussed in the next section. Evidence demonstrating the absence of wetland hydrology is sufficient to infer temporary rain-derived water pooling. Auckland's growing season is considered between 12 July to 23 June of the following year, any site visits must occur within this window. This may require an applicant to engage a suitably qualified hydrologist to carry out a hydrological assessment.

If an applicant cannot provide sufficient evidence for these matters, then the area will be assessed as a natural wetland. For example, if:

- an area is not 'improved pasture' as defined in the NES-F, or
- an area is 'improved pasture' but contains exotic pasture species of less than 50%, or
- an area is subject to wetland hydrology

Apply the vegetation, soil and hydrology delineation protocols outlined in the next section of this PGN if there is any doubt or uncertainty on the identity and extent of a natural wetland. Support these assessments with aerial photography.

The improved pasture exception requires 'improved pasture' to exist as 3 September 2020. It does not enable existing natural wetlands to be converted into improved pasture, including natural wetlands that are highly modified or degraded.

## 2.5 How to identify and delineate natural wetlands

Identifying natural wetlands is not always straightforward. This is particularly challenging in the Auckland region, where many natural wetlands are highly modified or degraded and may not immediately demonstrate the typical attributes of what people think of as wetlands. Furthermore, the approach to identification will differ between natural inland wetlands and natural wetlands within the CMA. The NES-F regulates all natural wetlands, including those anywhere within the CMA, or that are highly modified or degraded. Accurate identification and delineation is essential to ensure compliance with the applicable NES-F standards.

MfE has released a national approach to assist with identifying and delineating natural inland wetlands. This uses three delineation tools: vegetation, soils, and hydrology.

The vegetation tool, developed by Clarkson (2014) and found [here](#), categorises hydrophytic vegetation (aquatic and wetland vegetation) and establishes tests to determine if their abundance passes the threshold for a natural inland wetland. This applies two vegetation tests, the dominance test and prevalence index. Both tests must be used when assessing vegetation.

The hydric soils tool, developed by Fraser, Singleton and Clarkson (2018) and found [here](#), assists with identifying the presence of hydric soils. This categorises and defines the features of hydric soils and provides a matrix of assessment methods.

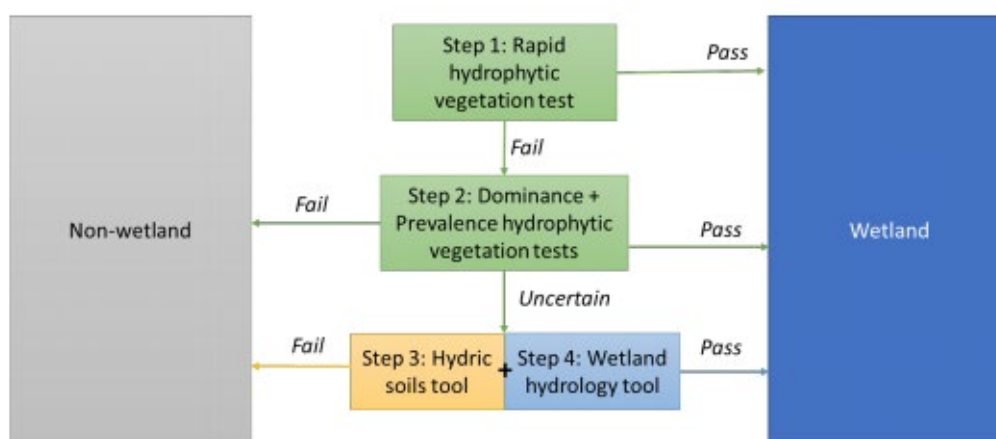
The hydrology tool, developed by MfE (2021) and found [here](#), provides an assessment methodology to determine the presence of a natural inland wetland based on hydrology. This includes both direct and indirect indicators of natural inland wetland hydrology, including how these are assessed on-site.

Because many wetlands within Auckland are modified or degraded all three delineation tools must be used before determining the presence or absence of a natural inland wetland. A natural inland wetland may not pass hydrophytic vegetation tests but may still demonstrate hydric soils and/or hydrological attributes of a natural inland wetland, for example natural inland wetlands that have been recently mown or have been accessed by stock. Vegetation assessments alone do not provide sufficient evidence on the absence of a natural inland wetland.

The matrix overleaf demonstrates how to sequentially apply the delineation tools. Page 35 of the [hydrology tool](#) provides a step-by-step guide to applying this matrix. Assessments must be carried out by a suitably qualified ecologist and hydrologist.

MfE have released a wetland delineation data form, found [here](#), which will assist with carrying out on-site investigations.

## Steps to delineate natural inland wetlands using delineation protocols



(Ministry for the Environment 2021)

The natural wetland delineation tools are not tailored to identify and delineate natural wetlands within the CMA, which have different vegetation, hydrology, and soil characteristics. Auckland Council has raised this with MfE, who are investigating how to best manage natural wetlands within CMA under the NES-F. Further detail is anticipated by mid-2022. In the interim any vegetation, salt marsh, mudflats or estuarine environment within the CMA should be treated as a natural wetland for the purpose of applying the NES-F. Applicants proposing an activity regulated by the NES-F natural wetland provisions (section 3 of this PGN) within, or near the CMA should carefully investigate the presence of these environments.

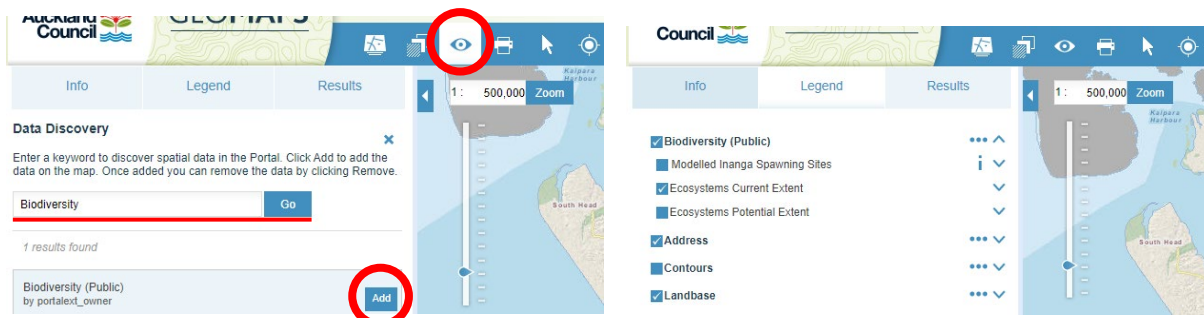
## 2.6 Does Auckland Council have a database to assist in natural wetland identification?

Auckland Council has a database of wetlands within [GeoMaps](#). Follow the process identified in the figure on the next page to add this database to your [GeoMaps](#) page. This database maps ecosystem classifications of terrestrial and wetland ecosystems within the Auckland region, as identified by Singers et al (2017). For background on these ecosystem classifications and the species that make up these ecosystems refer to the *Indigenous terrestrial and wetland ecosystems of Auckland* publication, found [here](#).

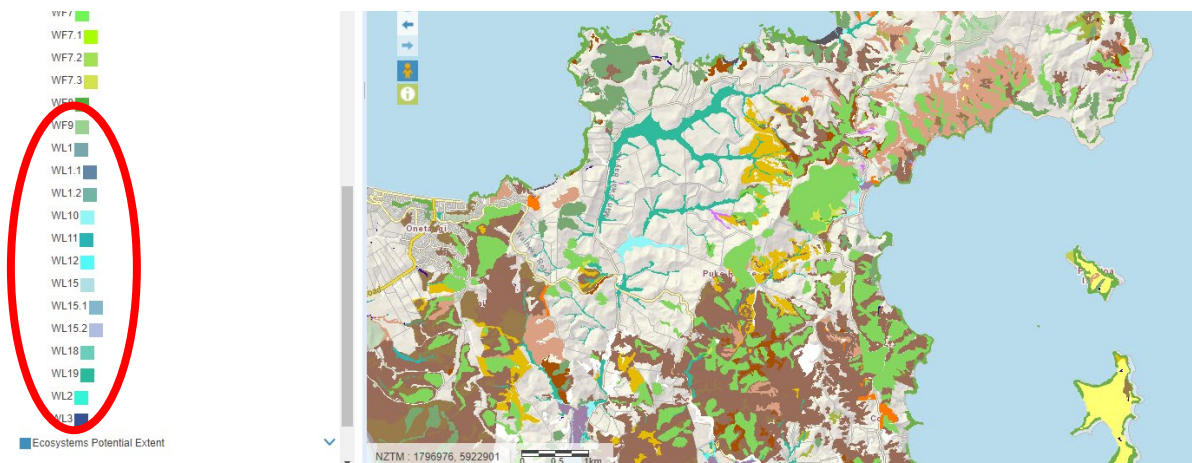
This database is a useful tool when initially investigating the presence of a natural wetland. However, use this tool with caution. The spatial extent of wetlands in the dataset is not always accurate. Likewise, the dataset does not capture all natural wetlands in the region, particularly those that have been highly modified or degraded, such as in areas of pasture that do not meet the improved pasture exception. The database is a good starting point. However, it does not negate requirements for ground truthing or on-site investigations using the delineation tools outlined in section 2.5 of this PGN.



Adding the “Ecosystem current extent” layer to your GeoMaps page:



- 1) Search items by clicking the eye on the blue ribbon. Search for the “Biodiversity (Public)” layer to your Legend
- 2) Select “Biodiversity (Public)” and then “Ecosystem Current Extent”.



- 3) Any data denoted by WL is an inland wetland system. Coastal saline ecosystems, which include some coastal wetland classifications are denoted as SA.

### 3 Understanding the NES-F natural wetland regulations

The regulations applicable to works within or near a natural wetland are dependent on the type of activity. This section will provide guidance on applying the NES-F provisions. The purpose of this section is to provide a brief overview. When applying for a resource consent under the NES-F, refer directly to the text of the regulation.

The definitions and provisions used in this section apply to the NES-F. If an applicant is applying for a resource consent under the AUP(OP) or ACDP:HGI as well, the appropriate corresponding definitions and assessment criteria within the plans should also be used.

### 3.1 What activities within or in proximity to a natural wetland does the NES-F regulate?

The NES-F regulates three general types of activities and their effects within or near natural wetlands. This includes:

- vegetation clearance,
- earthworks or land disturbance, and
- the taking, use, damming, diversion or discharge of water.

#### Vegetation clearance:

The NES-F regulates all vegetation clearance activities in or within 10m of a natural wetland.

Vegetation clearance is defined in Regulation 3 of part 1 of the NES-F and summarised as the disturbance, damage, destruction, or removal of vegetation by any means. This is not limited to direct and intentional vegetation clearance but can also include activities that have a subsequent effect on existing vegetation, such as over-planting, applying the seed of exotic pasture species, mob-stocking or draining away water. Refer to the NES-F for the complete definition. Vegetation clearance does not include:

- harvesting sphagnum moss in accordance with reg 48 and 49, including the crushing of other vegetation for the purpose of maintaining the dominance of sphagnum moss during harvest or to rehabilitate sphagnum moss after it is harvested, or
- disturbance, damage, destruction or removal of vegetation for the construction or maintenance of stock exclusion or property boundary fencing, for the maintenance of shelter belts, or for the grazing of improved pasture with the relevant setback from a natural wetland.

Please note, an activity associated with the removal of vegetation in, or within 10m of, a natural wetland may also require land disturbance or earthworks activities. In these instances, both activity types need to be assessed.

#### Earthworks and land disturbances:

The NES-F regulates all earthworks and land disturbance activities within 10m of a natural wetland. If earthworks or land disturbances result in, or are likely to result in, the complete or partial drainage of a natural wetland, then this setback is extended to 100m.

Under the NES-F, earthworks and land disturbance are defined in the [National Planning Standards 2019](#). Earthworks means the alteration or disturbance of land, including by moving, removing, placing, blading, cutting, contouring, filling, or

excavating earth (or any matter constituting the land including soil, clay, sand, and rock). It excludes gardening, cultivation, and disturbance of land for the installation of fence posts. Land disturbance means the alteration or disturbance of land (or any matter constituting the land, including soil, clay, sand, or rock), that does not permanently alter the profile, contour, or height of the land.

The High Court has determined that the term 'earthworks' includes the alteration or disturbance of land under coastal water in the CMA<sup>3</sup>.

### **Take, use, damming, diversion or discharge of water:**

The NES-F regulates taking, using, damming, diversion or discharge of water within 100m of a natural wetland.

Taking, using, damming, diverting or discharging water includes all physical forms of water, whether flowing or not and whether over or underground. This includes freshwater, coastal water and geothermal water. Discharging water containing contaminants, such as stormwater or wastewater are included, provided the discharge of water is not to a pipe, tank, or cistern and is not an activity that has another status under subpart 1 of part 3 of the NES-F.

### **Understanding setbacks:**

Setbacks are measured on a horizontal plane from the edge of a natural wetland. If a relevant activity is proposed within the appropriate setback distance it is regulated by the NES-F, irrespective of whether the activity location is hydrologically connected to the natural wetland or not. For example, if an activity proposes to discharge water within 100m of a natural wetland but that activity is within a different catchment than the wetland, it still requires assessment under reg 54c of the NES-F.

Auckland Council has a fast-tracked resource consent process with reduced fees for applications proposing discharges of water (including sediment laden water, stormwater, and wastewater) to areas that are not hydrologically connected to a natural wetland but are within 100m of it. Further information on this process and applicable criteria can be found [here](#).

A natural wetland may be within the applicable setbacks to a proposed activity, but not on the subject site. In these instances, landowner approval should be sought by the applicant to ensure access so that the wetland can be appropriately identified, and any effects assessed.

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<sup>3</sup> Minister of Conservation v Mangawhai Harbour Restoration Society Inc. [2021] NZHC 3113, paragraph [83].



Setback example

### 3.2 How do these activities apply to specific types of work?

The general activities outlined above may be carried out for a variety of different purposes. The NES-F prescribes different activity statuses and conditions to these activities depending on their purpose.

The different types of work regulated by the NES-F where these activities could occur are outlined in Table 1. Except for the customary harvest of food or resources undertaken in accordance with tikanga Māori, which the NES-F does not regulate, any activities outlined in section 3.1 carried out for a purpose not identified in Table 1 is a non-complying activity pursuant to reg 54.

**Table 1: Types of work regulated by the NES-F<sup>4</sup>**

Activities for the purpose of:
<p><b>Restoration of natural wetlands</b> – regulated by regs 38-39 of the NES-F and defined in clause 3.21 of the Freshwater NPS in relation to a natural inland wetland, as <i>active intervention and management, appropriate to the type and location of the wetland, aimed at restoring its ecosystem health, indigenous biodiversity, or hydrological functioning.</i></p>

<sup>4</sup> In many cases definitions used in Table 1 are summarised. Refer directly to the linked source when relevant.

**Scientific research** – regulated by regs 40-41 of the NES-F

**Construction and maintenance of wetland utility structures** – regulated by regs 42-44 and defined in reg 3 of the NES-F – summarised as a *structure placed in or adjacent to a wetland whose purpose, in relation to the wetland, is recreation, education, conservation, restoration, or monitoring*. This includes but is not limited to examples such as jetties, boardwalks or monitoring devices.

**Constructing or maintaining specified infrastructure** – regulated by regs 45-47 of the NES-F and defined in clause 3.21 of the Freshwater NPS as meaning any of the following:

- infrastructure that delivers a service operated by a lifeline utility as defined in the Civil Defence Emergency Management Act 2002 [a lifeline utility is an entity named, described or carrying out the business outlined in [Schedule 1](#) of the [Civil Defence Emergency Management Act 2002](#)]; or
- Regionally significant infrastructure identified as such in a regional policy statement or regional plan [see Chapter B: Regional Policy Statement of the AUP(OP)]; or
- Any public flood control, flood protection, or drainage works carried out by or on behalf of Auckland Council or for the purpose of drainage by drainage districts under the [Land Drainage Act 1908](#).

To qualify as specified infrastructure, there must be a functional need (as defined in the Freshwater NPS), meaning the need for the works to traverse, locate or operate in the proposed environment because the activity can only occur in that environment), works must be necessary for the operation and construction of said infrastructure and the infrastructure will provide significant national or regional benefits. Please also refer to [PGN National Policy Statement for Freshwater Management 2020 What is a Functional Need?](#)

**Maintenance and operation of other infrastructure** – regulated by regs 46-47 and defined in reg 3 of the NES-F as maintaining and operating infrastructure, other than specified infrastructure and that was lawfully established before, and in place at, the close of 2 September 2020.

**Sphagnum moss harvesting** – regulated by regs 48-49 of the NES-F.

**Arable and horticultural land-uses** – regulated by reg 50 of the NES-F and defined in s217B of the RMA, including:

- **Arable land-uses:** the use of land to grow any of the following crops for harvest: grain cereal, legumes, pulse grain, herbage seed, oilseed, maize grain, maize silage, cereal silage, mangles, crops grown for



<p>seed multiplication and a crop prescribed in regulations under s217M of the RMA relating to freshwater farm plans.</p> <ul style="list-style-type: none"> <li>• <b>Horticultural land-uses:</b> the use of land to grow food or beverage crops for human consumption (other than arable crops) or flowers for commercial supply.</li> </ul>
<p><b>Natural hazard works</b> – regulated by and defined in reg 51 of the NES-F as works for the purpose of removing material, such as trees, debris and sediment that is deposited as a result of a natural hazard and is causing, or likely to cause, an immediate hazard to people or property.</p>
<p><b>Draining natural wetlands</b> – regulated by regs 52-53 of the NES-F. There are strict regulations regarding the complete or partial drainage of natural wetlands.</p>

Each type of activity is prescribed unique conditions within the relevant regulation, as well as general conditions applicable to that activity within reg 55.

Ultimately, the activity status is determined by the type of activity (section 3.1), the purpose of the activity (outlined in Table 1), compliance with the applicable conditions and the expected adverse effects of an activity on a natural wetland.

For example, earthworks/land disturbances for the purpose of wetland restoration is a permitted activity if it complies with conditions in regs 38(4) and 55, but restricted discretionary if it does not. If the earthworks or land disturbance is for the construction of a wetland utility structure it has a restricted discretionary activity status under reg 42(2). However, if earthworks within a natural wetland result in, or is likely to result in, the complete or partial drainage of all or part of the natural wetland and does not have another activity status under any of regs 38 to 51, then it is a prohibited activity under reg 53.

Where council consider earthworks within a natural wetland has the potential to result in, or is likely to result in, the complete or partial drainage of all or part of the natural wetland a hydrological assessment will be requested.

For a full overview of applicable activity statuses depending on an activity and its purpose, refer to [Appendix 1](#). Note that Appendix 1 is an overview, refer directly to the NES-F text when applying for resource consents or understanding applicable conditions.

### 3.3 I need a resource consent under the NES-F, what do I do?

Auckland Council has prepared a PGN on the Essential Freshwater package and how it broadly affects resourcing consenting, titled [National Instruments for](#)



[Freshwater Management](#). Refer to this PGN for guidance on technical detail relating to the resource consent process under the NES-F. This includes guidance on:

- how an application should address the Freshwater NPS
- how existing use rights, including existing resource consents and other lawfully established activities, interact with the new NES-F regulations
- making a resource consent application
- bundling reasons for consent under the NES-F
- how the NES-F may affect an application to change or cancel consent conditions under s127 of the RMA
- how resource consents are processed under the NES-F in relation to varying activity statuses

Auckland Council has developed a diagrammatic summary of applying for a resource consent under reg 54 when undertaking “other activities” not included in Table 1. This diagram provides an example to assist applicants with understanding the types of consents under the RMA when applying the NES-F, as well as potential assessments and specialist input required. This summary can be found [here](#).

It is recommended that applicants engage Auckland Council in a [pre-application meeting](#) if they are applying for a resource consent under the NES-F.

### **3.4 How do I apply the effects management hierarchy?**

All resource consents applied for under the NES-F will be assessed against the ‘effects management hierarchy’ as defined in clause 3.21 of the Freshwater NPS. This process is based on international best practice and is in addition to the requirement under [s17 of the RMA](#) to avoid, remedy or mitigate adverse effects.

The effects management hierarchy is applied sequentially. It requires adverse effects to first be avoided, where practicable. Where they cannot be avoided, they should be minimised, where practicable. Where they cannot be minimised, they should be remedied, where practicable.

Where more than minor residual effects cannot be avoided, minimised, or remedied, aquatic offsetting should be provided, where possible. Aquatic offsetting should achieve a net gain in wetland values and extent, or at a minimum, no net loss. If aquatic offsetting cannot be achieved, aquatic compensation should be employed.

Aquatic offsetting and compensation are two last-resort options. When considering values, an applicant must include the full range of natural wetland values. This includes ecosystem health, indigenous biodiversity, hydrological functioning, Māori freshwater values and amenity. Where wetland values are irreplaceable, such as

indigenous biodiversity values, neither offsetting nor compensation is appropriate. Resource consent will not be granted in these instances.

## 4 How does the NES-F interact with other regulatory tools?

The NES-F regulations function within a wider regulatory framework. In some cases, other regulations may take precedence over the NES-F provisions. Likewise, where the NES-F does not apply, other regulatory controls may. Applicants must understand when the NES-F provisions are applicable and how they interact with other regulatory tools. This section of the PGN will provide guidance on this.

Refer to Auckland Council's [National Instruments for Freshwater Management](#) guidance for further information on how the NES-F interacts with other regulatory documents.

### 4.1 How does the NES-F interact with Auckland Council district or unitary plans?

Currently the NES-F regulations and Auckland Council planning documents, including the AUP(OP) and [Auckland Council District Plan: Hauraki Gulf Island section](#) ("ACDP:HGI"), may have cases where provisions are duplicated<sup>5</sup> and are more stringent or lenient than their counterpart. As per s43B of the RMA and reg 6 of the NES-F, if any activity within or near a natural wetland is provided for in the AUP(OP) or ACDP:HGI, and is also regulated by the NES-F then the most stringent provision will prevail. This includes the most restrictive activity status and conditions.

A rule within the AUP(OP) or ACDP:HGI may currently duplicate a regulation within the NES-F, but neither is more stringent. In these instances applicants should refer to both rules as reasons for consent, including assessment against all relevant criteria. Note that the definitions for similar topics in the NES-F and Auckland Council planning documents can differ. When referring to both sets of provisions, the applicant must reference the correct corresponding definition.

Similarly, a proposed activity may trigger multiple controls within the AUP(OP), ACDP:HGI and/or the NES-F. In these instances, an applicant must refer to all rules/regulations that apply.

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<sup>5</sup> For example section 8.5.1 of the ACDP:HGI plan includes vegetation removal restrictions and earthworks restrictions near wetlands (with the setback distance depending on the slope, elevation and/or height of vegetation) and 10c.5.6 includes earthworks restrictions within wetland protection yards (which differ by land-unit).

Auckland Council is currently annotating the AUP(OP) to identify duplications and conflicts with the NES-F regulations. Duplications and conflicts will be amended or removed from the plan as soon as practicable.

#### **4.2 If my proposed activity is permitted or not controlled under the NES-F, do I still need a consent?**

Even if a resource consent is not required for a proposed activity under the NES-F, it may still be required under the AUP(OP) or ACDP:HGI.

Where the NES-F regulations are not applicable, such as activities within wetlands that are not natural wetlands, or areas of the CMA that are not considered “natural wetlands”, the provisions of the AUP(OP) and ACDP:HGI still apply, and a resource consent may still be required.

Likewise, an activity permitted under the NES-F may require resource consent under the AUP(OP) or ACDP:HGI if it triggers a rule requiring resource consent. For example, if land disturbance is proposed within a significant ecological area adjacent to a natural wetland but is otherwise permitted under the NES-F because it is for natural wetland restoration, a resource consent may be required under the AUP(OP) for land disturbance within a significant ecological area.

Applicants must therefore check all relevant standards in both the NES-F and AUP(OP)/ACDP:HGI to understand whether a resource consent is required.

Even if a proposed activity is permitted under the NES-F, information may still need to be submitted to Auckland Council at least 10 working days prior to the commencement of that activity. As outlined in reg 55(2), the general conditions for permitted activities include:

- a. A description of the activity undertaken; and
- b. A description of, and map showing, where the activity will be undertaken; and
- c. A statement of when the activity will start and when it is expected to end; and
- d. A description of the extent of the activity; and
- e. Contact details of the person(s) carrying out the activity.

Applicants can fill in the permitted activity notice [linked here](#) to provide the information required.

### 4.3 How does the NES-F interact with the Natural Environmental Standard for Plantation Forestry?

Natural wetlands located within a plantation forest are also subject to the [Resource Management \(National Environmental Standards for Plantation Forestry\) Regulations 2017](#) (“NES-PF”). As per reg 7 of the NES-F, where the NES-PF and the NES-F conflict or overlap, the relevant provisions within the NES-PF will prevail. This occurs even if the regulations within the NES-PF are more lenient than the NES-F.

For example, under the NES-F earthworks in, or within a 10-metre setback from a natural wetland is only a permitted activity for restoration or scientific research, with all other earthworks activities requiring a resource consent. However, under reg 29(1)(b) of the NES-PF earthworks for any purpose in, or within a 10-metre setback from a natural wetland less than 0.25ha in size is a permitted activity, subject to conditions. In this situation the NES-PF prevails, despite being more lenient than NES-F.

It is noted that as per reg 6 of the NES-PF, if the AUP(OP) is more stringent than regulations within the NES-PF concerning the following, then the AUP(OP) provisions prevail:

- outstanding natural features
- significant ecological areas
- water supply management areas
- outstanding natural landscapes,
- lakes, rivers, streams and wetlands
- activities generating sediment that impact the coastal environment.

## 5 Moving Forward

The AUP(OP) will be amended to give effect to the instruments introduced under the Essential Freshwater Package. This process will occur incrementally to align with central government’s staged implementation approach.

Council must include provisions within the AUP(OP) to restore natural inland wetlands, including ecosystem health, indigenous biodiversity, hydrological functioning, Māori freshwater values and amenity. An overarching policy to avoid the loss of extent of natural inland wetlands, protect their values and promote their restoration has already been included in the plan.

Council is also in the process of identifying where conflicting rules are more stringent or lenient between the NES-F and AUP(OP). Duplication and conflicts will be addressed as soon as practicable.

The Freshwater NPS also requires Auckland Council to map and monitor all natural inland wetlands in the region that are 0.05 ha or greater in extent, or less than 0.05 ha in extent but containing known threatened species. This excludes land that is not administered by council, such as conservation lands.

Natural wetland mapping will assist in the identification and delineation of natural wetland systems. However, it is noted the NES-F regulates all natural wetlands, including those smaller than 0.05 ha or within the CMA, as defined in clause 3 of the NES-F and clause 3.21 of the Freshwater NPS. As with the existing datasets on wetlands, wetland mapping provides a useful starting point when doing initial investigations. However, use the wetland identification and delineation protocols to determine the presence and extent of a natural wetland if there is any uncertainty or doubt.

For further guidance, please refer to the 'Essential Freshwater Policies & Regulations' section of the [Auckland Design Manual](#).

## 6 References

Clarkson BR. 2014. A vegetation tool for wetland delineation in New Zealand. Landcare Research Contract Report LC1793. Hamilton, NZ: Manaaki Whenua – Landcare Research.

Fraser S, Singleton P, Clarkson B. 2018. Hydric Soils – Field Identification Guide. Landcare Research Contract Report LC3233. Hamilton, NZ: Manaaki Whenua – Landcare Research.

Ministry for the Environment. 2021. Wetland delineation hydrology tool for Aotearoa New Zealand. Wellington: Ministry for the Environment.

## 7 Appendix 1: Activity status by the type and purpose of proposed works

Activity status	If proposing vegetation clearance in or within 10m of a natural wetland for the purpose of:	If proposing earthworks or land disturbance in or within 10m <sup>6</sup> of a natural wetland for the purpose of	If proposing the taking, use, diversion or discharge of water in/within 100m of a natural wetland for the purpose of:
	<ul style="list-style-type: none"> <li>• Wetland restoration that complies with conditions in reg 38(4).</li> <li>• Scientific research that complies with conditions in reg 40(4).</li> <li>• Maintenance of wetland utility structures that complies with conditions in reg 43(4).</li> <li>• Maintenance and operation of specified infrastructure and other infrastructure that complies with conditions in reg 46(4).</li> <li>• Arable and horticultural land-use outside of a natural wetland but within 10m of it and complies with conditions in reg 50(1) and reg 55 (except reg 55(2)).</li> <li>• Natural hazard work that complies with conditions in reg 51(5).</li> </ul>	<ul style="list-style-type: none"> <li>• Wetland restoration that complies with conditions in reg 38(4).</li> <li>• Scientific research that complies with conditions in reg 40(4).</li> <li>• Maintenance of wetland utility structures that complies with conditions in reg 43(4).</li> <li>• Maintenance and operation of specified infrastructure and other infrastructure that complies with conditions in reg 46(4).</li> <li>• Arable and horticultural land-use outside of but within 10m of a natural wetland and complies with conditions in reg 50(2) and reg 55 (except reg 55(2)).</li> <li>• Natural hazard work that complies with conditions in reg 51(5).</li> </ul>	<ul style="list-style-type: none"> <li>• Wetland restoration that complies with conditions in reg 38(4).</li> <li>• Scientific research that complies with conditions in reg 40(4).</li> <li>• Maintenance of wetland utility structures that complies with conditions in reg 43(4).</li> <li>• Maintenance and operation of specified infrastructure and other infrastructure that complies with conditions in reg 46(4).</li> <li>• Natural hazard work that complies with conditions in reg 51(5).</li> </ul>

<sup>6</sup> Further setbacks may be applicable in some instances, such as the construction of specified infrastructure.



RD	<ul style="list-style-type: none"> <li>• Wetland restoration that does not comply with either condition in reg 38(4).</li> <li>• Scientific research that does not comply with any conditions in reg 40(4).</li> <li>• Construction of wetland utility structures.</li> <li>• Maintenance of wetland utility structures that does not comply with conditions in reg 43(4).</li> <li>• Maintenance and operation of specified infrastructure and other infrastructure that does not comply with conditions in reg 46(4).</li> </ul>	<ul style="list-style-type: none"> <li>• Wetland restoration that does not comply with conditions in reg 38(4).</li> <li>• Scientific research that does not comply with any conditions in reg 40(4).</li> <li>• Construction of wetland utility structures.</li> <li>• Maintenance of wetland utility structures that does not comply with conditions in reg 43(4).</li> <li>• Maintenance and operation of specified infrastructure and other infrastructure that does not comply with conditions in reg 46(4).</li> </ul>	<ul style="list-style-type: none"> <li>• Wetland restoration that does not comply with conditions in reg 38(4).</li> <li>• Scientific research that does not comply with conditions in reg 40(4) but complies with conditions in 41(4).</li> <li>• Construction of wetland utility structures that complies with conditions in reg 42(4).</li> <li>• Maintenance of wetland utility structures that does not comply with conditions in reg 43(4) but does comply with conditions in reg 44(4).</li> <li>• Maintenance and operation of specified infrastructure and other infrastructure that does not comply with the conditions in reg 46(4) but does comply with conditions in reg 47(5) (unless for the purpose of maintaining hydroelectricity infrastructure).</li> </ul>
D	<ul style="list-style-type: none"> <li>• Construction of specified infrastructure.</li> </ul>	<ul style="list-style-type: none"> <li>• Construction of specified infrastructure in or within 10m of a natural wetland.</li> <li>• Construction of specified infrastructure outside a 10m setback from a natural wetland, but within a 100m setback if it results, or is likely to result in the complete or partial drainage of all or part of the natural wetland.</li> </ul>	<ul style="list-style-type: none"> <li>• Construction of specified infrastructure.</li> </ul>

NC	<ul style="list-style-type: none"> <li>Vegetation clearance in or within a 10m setback from a natural wetland that does not have another activity status under Subpart 1 of Part 3 of the NES-F.</li> </ul>	<ul style="list-style-type: none"> <li>Earthworks or land disturbance within or within a 10m setback of a natural wetland that does not have another activity status under Subpart 1 of Part 3 of the NES-F.</li> <li>Earthworks or land disturbance outside, but within a 100m setback of a natural wetland if it results or is likely to result in the complete or partial drainage of all or part of the natural wetland and does not have another activity status under regulations 38 to 51.</li> </ul>	<ul style="list-style-type: none"> <li>The taking, use, damming, diversion or discharge of water within, or within 100m from a natural wetland that does not have another activity status under Subpart 1 of Part 3 of the NES-F.</li> <li>The taking, use, damming, diversion or discharge of water outside, but within 100m of a natural wetland if it results in or likely results in the complete or partial drainage of all or part of a natural wetland and does not have another activity status under regulations 38 to 51.</li> <li></li> </ul>
Pr	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Earthworks or land disturbance within a natural wetland if it results in or is likely to result in the complete or partial drainage of all or part of the natural wetland and does not have another activity status under regulations 38 to 51.</li> </ul>	<ul style="list-style-type: none"> <li>The taking, damming, diversion or discharge of water within a natural wetland if it results in or is likely to result in the complete or partial drainage of all or part of a natural wetland and does not have another activity status under regulations 38-51.</li> </ul>

Note: This table does not include activities associated with harvesting Sphagnum moss. The harvest for sphagnum moss within a natural wetland is permitted if sphagnum moss was harvested, or actively managed for harvest, in the area being harvested at any time between 1 January 2010 and the close of 2 September 2020 and complies with conditions. If the harvest of sphagnum moss does not fit within these parameters, then it is a discretionary activity.