

Agenda Item 5: Direction on implementing Regional Policy Statement decisions for wetlands

Purpose

1. This document seeks direction on how to manage wetlands in the Otago region, in light of the recent changes introduced through the decisions on the proposed Otago Regional Policy Statement (pORPS).

Executive summary

2. The draft LWRP policies and rules are outlined, along with the implications of the decisions on the pORPS. The pORPS decision makes notable changes to the requirements to manage all wetlands, not just the natural inland wetlands addressed by the Stock Exclusion Regulations and the National Environmental Standard for Freshwater (NESF). The gaps and issues that need to be addressed to improve the management of wetlands in the draft Land and Water Regional Plan (LWRP) are set out.
3. Two main options for changes to the draft LWRP are set out. Both are within the scope of the clause 3 feedback received. The first is to fully implement the pORPS direction immediately, while the second is to stage that implementation over time, with some initial strengthening of the draft LWRP provisions, and a further stage of more significant requirements in the future.

Wetland definitions

4. The RMA currently defines “wetland” as “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”. This is important, as many provisions in the decisions version of the pORPS refer to “wetlands”.
5. Most national direction, including the NPSFM, NES-F, and the Stock Exclusion Regulations, relates to only a sub-set of wetlands, being “natural inland wetlands”. The definition of natural inland wetlands has been subject to a number of amendments over recent years. The key part of the current definition is that it applies only to naturally occurring wetlands and excludes wetlands where there is more than 50% pasture grass. Wetlands in the coastal marine area (such as around some estuaries) do not come under the jurisdiction of the NPSFM and NES-F, but the Stock Exclusion Regulations do apply to them. The New Zealand Coastal Policy Statement is strongly protective of coastal wetlands. Staff understand that there is likely to be further legislative change to the definition of “wetland” or “natural inland wetland” in the RMA or the NPSFM.

National direction

6. The NPSFM requires that there is no further loss of the extent of natural inland wetlands, their values are protected, and their restoration is promoted. As noted above, natural inland wetlands

are a subset of wetlands. The NPSFM requires ORC to include provisions in the LWRP that prevent the granting of consent for activities that may contravene these requirements, except in limited circumstances. The NPSFM also requires ORC to map and monitor natural inland wetlands by 2030.

7. The NES-F regulates activities in natural inland wetlands.¹ Permitted activity pathways are provided where these activities are associated with certain uses.² If permitted conditions cannot be met, these activities generally require a resource consent as a restricted discretionary activity. There are a number of other activities that require consent in relation to natural inland wetlands under the NES-F.³ These regulations are essentially rules and must not be duplicated in the LWRP. However, the LWRP can be more stringent than the NES-F.
8. The Stock Exclusion Regulations manage the access of stock to water bodies and natural inland wetlands. Under these regulations, the term 'stock' includes beef cattle, dairy cattle, dairy support cattle, deer and pigs. The Stock Exclusion Regulations do not apply to wetlands that are less than 500m², or where they are not located on low slope land. Stock exclusion needed to have occurred by July 2023 for any wetland already listed in a regional or district plan, or by July 2025 otherwise. The Regulations also contain exclusions for the Upper Taiari Scroll Plain, where the exclusion of all stock from natural wetlands and non-intensively grazed beef cattle and deer from lakes and wide rivers on low slope land does not apply. Staff understand that changes to the Stock Exclusion Regulations have been signalled by Government, but the exact nature of those changes are not yet known.

Draft LWRP provisions – clause 3 version

9. The WET chapter of the draft LWRP manages the:
 - a. Restoration and protection of natural inland wetlands;
 - b. Protection of other natural wetlands not classified as natural inland wetlands;
 - c. Grazing and vehicle access in natural inland wetlands;
 - d. Use of land within other natural wetlands; and
 - e. Construction, use, and maintenance of constructed wetlands.
10. The draft LWRP relies heavily on the NES-F, the Stock Exclusion Regulations and Freshwater Farm Plans in the draft policies and rules for managing wetlands.
11. Under the draft LWRP rules, there are additional exclusion requirements for other classes of heavy stock (such as horses and buffalo) and limits on vehicle access to natural inland wetlands.

¹ Including vegetation clearance, earthworks, wetland drainage or the taking, use, damming, diversion or discharge of water.

² restoration, wetland maintenance and biosecurity, scientific research, maintenance of wetland utility structures, natural hazard works, maintenance and operation of infrastructure, existing sphagnum moss harvesting, arable and horticulture land use, and other activities not specifically captured.

³ Construction of specified infrastructure, quarrying activities, landfills and cleanfills, urban development, extraction of minerals and ancillary activities, new sphagnum moss harvesting, and drainage of natural inland wetlands

12. In the draft LWRP, the use of land in other natural wetlands (that are not natural inland wetlands) is permitted unless it involves specific activities that are likely to be highly destructive to the natural wetland.⁴ The draft LWRP also enables the construction of wetlands as a permitted activity provided a number of conditions are met.
13. In summary, the draft LWRP relies on the national direction, with limited additions to respond to particular Otago circumstances.

Clause 3 Feedback – brief summary

14. The feedback from the clause 3 consultation was discussed at the Council workshop on 19 March 2024. In summary, the feedback was split between:
 - a. those parties who consider the policies and rules in the WET chapter of the draft LWRP are unnecessary and that the Council should simply rely on the NES-F and Stock Exclusion Regulations; and
 - b. those parties that consider the provisions in the draft LWRP are not stringent enough to prevent further loss of wetlands, and that the NES-F and LWRP policies and rules should be extended to protect all wetlands.

pORPS wetland provisions

pORPS – as notified

15. As notified, the pORPS sought to:
 - a. Protect or restore Otago's natural wetlands to ensure that there is no further loss of extent, their values are protected, and if degraded they are improved (Objective LF-FW-O9). This objective applied to a broader category of natural wetlands, which at the time reflected the relevant objective and definition in the NPSFM.
 - b. Preserve and protect the natural character of wetlands and their margins from inappropriate subdivision, use and development (Objective LW-FW-O10). This accords with section 6(a) of the RMA.
 - c. Identify and map natural wetlands 0.05 hectares or larger, or that contain threatened species (LF-FW-P8)
 - d. Protect natural wetlands by avoiding a reduction in their values or extent unless certain requirements are met (Policy LF-FW-P9). This largely mirrored the requirements in clause 3.22(1) of the NPSFM.
 - e. Require restoration of natural wetlands where they have been degraded or lost (Policy LF-FW-P10).

⁴ Being cultivation, installation of new sub-surface or open drains, earthworks or land disturbance (other than for the installation of a fence or utility lines and pipes), or herbicide spraying (unless it is undertaken using hand-held appliances).

- f. Avoid new infrastructure locating in a natural wetland, and if that was not possible due to the functional or operational need of the infrastructure, adverse effects were to be managed in accordance with the NES-F (Policy EIT-INF-P13).

Decisions version of the pORPS

16. During the hearing of the pORPS, the NPSFM definition of natural inland wetland was amended, and the NPSIB was introduced. As a result, in the reply version of the pORPS, Council officers recommended a two-pronged approach that sought to manage activities in *natural wetlands* to ensure they maintain and enhance ecosystem health, indigenous biodiversity values and hydrological functioning, and for *natural inland wetlands*, to manage activities in accordance with the more stringent provisions in the NPSFM and NES-F. In essence, a tiered approach, providing a higher level of protection for the smaller subset of wetlands known as natural inland wetlands.
17. The Panel's decision on LF-FW-09 widens the objective to apply to all wetlands, and seeks to protect all wetlands from inappropriate subdivision, use, and development, and where degraded, promote their restoration. This elevates the requirement to protect or restore natural wetlands, to a requirement to protect wetlands and if degraded to promote their restoration. A copy of the relevant pORPS provisions in the decisions version is attached as Appendix 5.1.
18. Further, as a result of the pORPS decision, the Panel has strengthened the pORPS provisions in relation to wetlands by amending two key policies to apply to all wetlands.
19. The decision version requires all wetlands (and not just natural inland wetlands) to be managed by applying clause 3.22(1) to (3) of the NPSFM (new Policy LF-FW-P10A). This means that the loss of extent of any wetland must be avoided except where the loss of extent or values arises from specified activities or where the Council is satisfied of certain matters as set out in clause 3.22(1) of the NPSFM. It also means that the effects management hierarchy in the NPSFM will apply to any activity that will result in the loss of extent and values in any type of wetland.
20. The decisions version of LF-FW-P10A(3) also requires that all wetlands are managed to improve the ecosystem health, hydrological function, and extent of wetlands that have been degraded or lost by promoting:
 - a. An increase in the extent and condition of habitat for indigenous species;
 - b. The restoration of hydrological processes;
 - c. Control of pest species and vegetation clearance; and
 - d. The exclusion of stock, except where stock grazing is used to enhance wetland values.
21. There is also no differentiation of the Taieri Scroll Plain wetlands, high or low slope wetlands, constructed wetlands, or wetlands on Crown pastoral lease land. This is notably more stringent than the Stock Exclusion Regulations and the draft LWRP.
22. Similarly, the Panel has amended EIT-INF-P13, so that new infrastructure (including nationally and regionally significant infrastructure) must first avoid locating in any type of wetland, and if that is

not reasonably practicable, the effects of the activity in wetlands must be managed by applying the NESF. This appears to have the effect of widening the scope of the NES-F in relation to the regulation of infrastructure to also apply to other wetlands (and not just natural inland wetlands) for the purpose of the pORPS (and consequently, the LWRP).

Appeals

23. LF-FW-O9 and new Policy LW-FW-P10A are freshwater planning instrument (FPI) provisions and can only be appealed to the High Court on a point of law. High Court appeals have been lodged on each of these provisions, as follows:
 - a. LF-FW-O9 has been appealed by Forest and Bird, and Kāi Tahu. In summary, the two appeals allege that the Panel failed to give effect to the NPSFM as the reference to ‘no net decrease’ in wetland extent does not implement the NPSFM direction that “there is no further loss of extent of natural inland wetlands”. The appeals also allege various failures to give effect to the NZCPS.
 - b. LF-FW-P10A has been appealed by Forest and Bird, Kāi Tahu, and OceanaGold. In summary, the appeal by Forest and Bird is related to an alleged failure to give effect to the NZCPS and the appeal by Kāi Tahu relates to the lack of reference to Māori freshwater values or amenity values. Of most relevance to the draft LWRP is the appeal by Oceana Gold, which, in summary, alleges that the Panel’s decision to expand the NPSFM provisions to all wetlands was an error as it was not a recommendation that was reasonably open to the Panel or consistent with its other findings.
24. If the High Court appeals are successful, the High Court may decide to amend the pORPS (particularly where parties agree on any changes to the provisions) or may send it back to the Council/Hearing Panel to reconsider or rehear those aspects.
25. The appeal period on the non-freshwater planning provisions, including EIF-INF-P13 closed on 14 May 2024. At the time of writing this paper, the Environment Court appeals had not yet been fully assessed and collated, so the paragraphs below are a preliminary summary only.
26. Ten appeals have been lodged specifically on EIT-INF-P13, some of which are related to how this policy manages infrastructure effects on wetlands. In summary, the relevant appeals include that EIT-INF-P13 be amended as follows:
 - a. to only apply to “natural inland wetlands” and not all wetlands (NZTA).
 - b. to better align or give effect to various national direction including the NPSREG (Manawa Energy), NPSET (Transpower), NPSIB and NPSFM (EDS, Forest and Bird).
 - c. to provide exceptions or a bespoke policy framework for effects arising from electricity distribution infrastructure, which includes managing effects in relation to “natural wetlands” (and not all wetlands) (Aurora Energy Ltd, Network Waitaki Ltd and PowerNet Ltd)

- d. to provide a bespoke policy framework for the National Grid, which includes managing effects on wetlands in accordance with LF-FW-P10A (Transpower).
- 27. In addition, Oceana Gold seeks to re-instate the definition of 'natural inland wetland' in the pORPS, to align with the NPSFM and which aligns with its High Court appeal on the FPI provisions. Forest and Bird also seek any consequential changes to the non-FPI provisions required as a result of its High Court appeal on the FPI provisions in relation to wetlands.
- 28. Although not yet determined, it is likely that the High Court appeals on the points of law in relation to wetlands will be heard first, before the merits appeals are heard or scheduled for mediation.

Technical update – mapping wetlands

- 29. Following the Ministry for Environment (MfE) mapping guidelines and NPS-FM 2020 wetlands at risk framework, ORC is mapping wetlands in three phases.
- 30. In phases 1 and 2, natural wetlands in the Upper Taieri Scroll Plains and the regionally significant wetlands/wetland management areas were mapped.
- 31. Phase 3 of the programme (i.e., to map natural wetlands that are larger than 500m², and smaller if they are naturally less than 500m² and known to contain threatened species) represents a significant body of work, as Otago region contains large areas of dissected hill country and upland landforms that contain many thousands of smaller wetlands. This phase of mapping is further staged:
 - Phase 3.1: Dunedin Coast FMU and Upper Lakes Rohe (FY 2022-23) – completed
 - Phase 3.2: North Otago FMU, Lower Clutha Rohe and Catlins FMU (FY 2023-24) – status 80% completed
 - Phase 3.3: Taiari/Taieri FMU, Manuherikia Rohe, Dunstan Rohe and Roxburgh Rohe (FY 2024-25) – will be completed next year.
- 32. ORC has now mapped wetlands in about 60% of the geographic extent of the region. Mapping is the first step in the natural inland wetland delineation process. The final step is vegetation assessments which have been carried out for a selection of regionally significant wetlands to date.

Wetland management – including stock exclusion

- 33. The decisions version of LF-FW-P10A(3) requires stock to be excluded from wetlands that have been degraded or lost, except where stock grazing is used to enhance wetland values. Technical advice from the Science team has been sought on the updated pORPS direction, but is not yet finalised. It will be circulated in advance of the workshop.

Key implications of the pORPS decision

34. As a result of the pORPS decision, the clause 3 version of the draft LWRP (discussed on page 2 above) arguably no longer gives effect to the pORPS in relation to the management of wetlands. This is particularly for 'other' wetlands that are not natural inland wetlands.
35. The pORPS (decisions version) requires greater stringency around managing various activities in or near a broader set of wetlands, including induced or artificial wetlands, and wetlands that don't meet the definition of natural inland wetlands. For example, the draft LWRP currently permits a wide range of activities in natural wetlands and does not provide any specific activity restrictions for artificial wetlands. However, due to the decision in the pORPS to apply clause 3.22 of the NPSFM to all wetlands, unless the activity is specified in that clause, a permitted activity status in the LWRP could only be for activities that will avoid the loss of extent of any wetland, protect wetland values, or promote wetland restoration. Further, the pORPS now requires that the provisions in the NES-F are used to manage the adverse effects of new infrastructure that seeks to locate in any wetland (where it is not reasonably practicable to avoid doing so because of the functional or operational needs).
36. The pORPS (decisions version) also requires the restoration of all degraded wetlands to be promoted.
37. The pORPS (decisions version) does not include any exceptions for the management of Upper Taieri Scroll Plain that reflects those found in the Stock Exclusion Regulations. This creates uncertainty for the exemption process which is in the early stages of developing a programme to deliver on this.

Options

38. Based on the implications of the pORPS decisions, two options for the draft LWRP provisions have been identified.
39. Potentially, there is a third option of no change to the draft LWRP WET chapter provisions (clause 3 version). However, this option would not give effect to the decisions version of the pORPS and is challenging for staff to support. This option would be inconsistent with the approach to the rest of the LWRP, which is to give effect to the pORPS, and the differentiation for this chapter would be hard to justify. It is also likely to be strongly criticised by some submitters (possibly reflecting the diverse feedback received on the clause 3 version of these provisions) and would likely require substantial re-drafting during the hearing process. A decision not to implement the pORPS would be able to be judicially reviewed.

Option 1 – Implement pORPS

40. Option 1 is to amend the draft LWRP WET provisions to give full effect to decisions version of the pORPS at notification.
41. Staff consider that the following amendments would need to be made to the draft LWRP to fully give effect to the decisions version of the pORPS:

- a. The scope of the WET provisions (policies and rules) will need to be expanded to apply to all wetlands, and not only natural wetlands or natural inland wetlands.
 - b. The rules will also need to be strengthened for all wetlands (to align with the current restrictions for natural inland wetlands), to ensure that loss of extent of any wetland is avoided. This would mean permitted activities are likely to be very limited and new infrastructure is unlikely to be a permitted activity in a wetland. A key feature is likely to be the need to require the exclusion of all stock, likely including sheep and goats from natural inland wetlands, and only allowing grazing of other wetlands where it will enhance wetland values.
 - c. Specific additional restrictions for wetlands in the coastal environment.
 - d. Additional enabling provisions for the creation of new wetlands and restoration of degraded wetlands.
42. This option would be a considerable shift from the clause 3 version of the draft LWRP. It is important to note that this approach will have significant implementation issues. For example, this level of protection, including full stock exclusion, is unlikely to align with expectations of some parts of the community and will be costly to implement in terms of fencing and loss of productive land. Another example would be the strong preference for all infrastructure to be located outside of wetlands, including constructed and induced wetlands, which would have significant impacts for resource consent processes.

Option 2 – Staged implementation

43. Option 2 is to stage the implementation of the pORPS requirements in the LWRP.
44. This option would largely continue reliance on the existing national instruments, with some strengthening of the additional provisions in the LWRP. However, it would need to include additional provisions that time-staged the implementation of the more stringent direction in the pORPS.
45. Staged implementation would allow time for the appeals (High Court and Environment Court) on the relevant pORPS provisions to be resolved (or narrowed), time for potential amendments to national directions (such as the signalled changes to the NPSFM and NES-F) to come into effect, time for non-regulatory approaches to be implemented and time for the council’s wetland mapping to be completed.
46. We consider that a staged approach to managing wetlands is reasonable based on the policy direction in the pORPS that uses terms such as “managed” and “promoting”, which suggest that the Council does not need to take a fully regulatory approach and provides some flexibility for the LWRP.
47. We consider that the staged framework could include:
- a. Protecting natural inland wetlands (i.e., similar to the current LWRP clause 3 provisions).

- b. Increasing protection for coastal wetlands, including where these wetlands extend landward of the coastal marine area, by regulating activities on the landward side of these coastal wetlands⁵.
 - c. Protecting other natural wetlands from particularly adverse activities or effects e.g., those things likely to result in the permanent destruction of these wetlands. These provisions would need to be refined, based on the technical advice that will be circulated ahead of the workshop. In line with the policy direction in the decisions version of the pORPS, that could result in a broader approach than just focussing on stock exclusion, as hydrological functioning, extent of wetlands, and weed and pest management also need to be considered and work in tandem to improve wetland health.
 - d. Expanding the enabling provisions for the creation of new wetlands and for restoring degraded wetlands so that there are fewer barriers and more support for positive actions.
 - e. Including “backstop” provisions to implement the full requirements of the pORPS, which would only kick-in at a certain date in the future. These “backstop” provisions would essentially seek to regulate all wetlands in the same way as natural inland wetlands, and would require the exclusion of all stock, including sheep and goats, except where it will enhance wetland values. These provisions would also address all other aspects of wetland health set out in the pORPS policies at the same time (hydrological functioning and processes, habitat for indigenous species, pest control and vegetation clearance) to help ensure that improvements occur.
48. Viewed as a whole, the WET provisions would give full effect to the pORPS (decisions version), but over a longer time period.
49. Under this Option, the WET provisions in the LWRP would need to be updated via a variation or plan change in the future if the pOPRS adjusts through the appeals process or there is new or amended national direction (unless this occurred during the Hearing process). A plan change (or variation) to the LWRP is already planned for once the existing wetland mapping work programme is completed. Any additional amendments required to the LWRP provisions regulating wetlands would be able to be included as part of that plan change or variation. At that time, the Council would also have information about the number, extent, and location of wetlands in the Otago region and this would allow a more tailored and responsive management approach for wetlands to be taken in the LWRP. In the interim, the more regulatory provisions could provide clear direction for the future, if the current situation is continued, and give time for non-regulatory methods to develop.

⁵ Note that these were excluded from the draft LWRP because they are excluded from the definition of “natural inland wetland”.

Appendix 5.1 – Decisions Version of relevant pORPS provisions and clause 3.22 of the NPSFM

LF–FW–09 – Wetlands

Otago’s *wetlands* are protected from inappropriate subdivision, use and development and, where degraded, restoration is promoted so that:

- (1) mahika kai and other *mana whenua* values are sustained and enhanced now and for future generations,
- (2) there is no net decrease, and preferably an increase, in the extent and diversity of wetland indigenous ecosystem types and habitats, and
- (3) there is no reduction and, where degraded, there is an improvement in wetland ecosystem health, hydrological functioning, *amenity values*, extent or water quality, and
- (4) their flood attenuation and water storage capacity is maintained or improved.

LF-FW-P10A – Managing wetlands

Otago’s wetlands are managed:

- (1) in the coastal environment, in accordance with the NZCPS in addition to (2) and (3) below,
- (2) by applying clause 3.22(1) to (3) of the NPSFM to all wetlands, and
- (3) to improve the ecosystem health, hydrological functioning and extent of wetlands that have been degraded or lost by promoting:
 - (a) an increase in the extent and condition of habitat for indigenous species,
 - (b) the restoration of hydrological processes,
 - (c) control of pest species and vegetation clearance, and
 - (d) the exclusion of stock, except where stock grazing is used to enhance wetland values.

EIT–INF–P13 – Locating and managing *effects of infrastructure, nationally significant infrastructure and regionally significant infrastructure* outside the coastal environment

When providing for new *infrastructure, nationally significant infrastructure and regionally significant infrastructure* outside the coastal environment:

- (1) avoid, as the first priority, locating *infrastructure* in all of the following:

...

- (c) wetlands,

....

(2) if it is not reasonably practicable to avoid locating in the areas listed in (1) above because of the *functional needs* or *operational needs* of the infrastructure, *nationally significant infrastructure* and *regionally significant infrastructure* manage adverse effects as follows:

(a) for *nationally or regionally significant infrastructure*:

....

(ii) in wetlands, in accordance with the relevant provisions in the NESF,

....

(b) for all *infrastructure* that is not *nationally significant infrastructure* or *regionally significant infrastructure*, avoid adverse effects on the values that contribute to the area's outstanding nature or significance except in relation to historic heritage which is not significant or outstanding, then HCV-HH-P5(3) will apply.

Clause 3.22 of the NPSFM - Natural inland wetlands

(1) Every regional council must include the following policy (or words to the same effect) in its regional plan:

"The loss of extent of natural inland wetlands is avoided, their values are protected, and their restoration is promoted, except where:

(a) the loss of extent or values arises from any of the following:

(i) the customary harvest of food or resources undertaken in accordance with tikanga Māori

(ii) wetland maintenance, restoration, or biosecurity (as defined in the National Policy Statement for Freshwater Management)

(iii) scientific research

(iv) the sustainable harvest of sphagnum moss

(v) the construction or maintenance of wetland utility structures (as defined in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020)

(vi) the maintenance or operation of specified infrastructure, or other infrastructure (as defined in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020)

(vii) natural hazard works (as defined in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020); or

- (b) the regional council is satisfied that:
 - (i) the activity is necessary for the purpose of the construction or upgrade of specified infrastructure; and
 - (ii) the specified infrastructure will provide significant national or regional benefits; and
 - (iii) there is a functional need for the specified infrastructure in that location; and
 - (iv) the effects of the activity are managed through applying the effects management hierarchy; or
- (c) the regional council is satisfied that:
 - (i) the activity is necessary for the purpose of urban development that contributes to a well-functioning urban environment (as defined in the National Policy Statement on Urban Development); and
 - (ii) the urban development will provide significant national, regional or district benefits; and
 - (iii) the activity occurs on land identified for urban development in operative provisions of a regional or district plan; and
 - (iv) the activity does not occur on land that is zoned in a district plan as general rural, rural production, or rural lifestyle; and
 - (v) there is either no practicable alternative location for the activity within the area of the development, or every other practicable location in the area of the development would have equal or greater adverse effects on a natural inland wetland; and
 - (vi) the effects of the activity will be managed through applying the effects management hierarchy; or
- (d) the regional council is satisfied that:
 - (i) the activity is necessary for the purpose of quarrying activities; and
 - (ii) the extraction of the aggregate will provide significant national or regional benefits; and
 - (iii) there is a functional need for the activity to be done in that location; and
 - (iv) the effects of the activity will be managed through applying the effects management hierarchy; or
- (e) the regional council is satisfied that:
 - (i) the activity is necessary for the purpose of:
 - (A) the extraction of minerals (other than coal) and ancillary activities; or

- (B) the extraction of coal and ancillary activities as part of the operation or extension of an existing coal mine; and
 - (ii) the extraction of the mineral will provide significant national or regional benefits; and
 - (iii) there is a functional need for the activity to be done in that location; and
 - (iv) the effects of the activity will be managed through applying the effects management hierarchy; or
 - (f) the regional council is satisfied that:
 - (i) the activity is necessary for the purpose of constructing or operating a new or existing landfill or cleanfill area; and
 - (ii) the landfill or cleanfill area:
 - (A) will provide significant national or regional benefits; or
 - (B) is required to support urban development as referred to in paragraph (c); or
 - (C) is required to support the extraction of aggregates as referred to in paragraph (d); or
 - (D) is required to support the extraction of minerals as referred to in paragraph (e); and
 - (iii) there is either no practicable alternative location in the region, or every other practicable alternative location in the region would have equal or greater adverse effects on a natural inland wetland; and
 - (iv) the effects of the activity will be managed through applying the effects management hierarchy.”
- (2) Subclause (3) applies to an application for a consent for an activity that:
- (a) is for a purpose referred to in subclause (1)(a) to (f), other than the purpose referred to in paragraph (1)(a)(i); and
 - (b) would result (directly or indirectly) in the loss of extent or values of a natural inland wetland.
- (3) Every regional council must make or change its regional plan to ensure that an application referred to in subclause (2) is not granted unless:
- (a) the council is satisfied that:
 - (i) the applicant has demonstrated how each step of the effects management hierarchy will be applied to any loss of extent or values of the wetland (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 values; and

- (ii) if aquatic offsetting or aquatic compensation is applied, the applicant has complied with principles 1 to 6 in Appendix 6 and 7, and has had regard to the remaining principles in Appendix 6 and 7, as appropriate, and
 - (iii) there are methods or measures that will ensure that the offsetting or compensation will be maintained and managed over time to achieve the conservation outcomes; and
- (b) any consent granted is subject to:
 - (i) conditions that apply the effects management hierarchy; and
 - (ii) a condition requiring monitoring of the wetland at a scale commensurate with the risk of the loss of extent or values of the wetland; and
 - (iii) conditions that specify how the requirements in (a)(iii) will be achieved.
- (4) Every regional council must make or change its regional plan to include objectives, policies, and methods that provide for and promote the restoration of natural inland wetlands in its region, with a particular focus on restoring the values of ecosystem health, indigenous biodiversity, hydrological functioning, Māori freshwater values, and amenity values.

Appendix 5.2 – Technical Advice (separate document) – to come separately