

Essential Freshwater Interpretation Guidance: Wetlands Definitions Exposure Draft April 2021

Introduction

The Aggregate and Quarry Association (AQA) is the industry body representing construction material companies which produce an estimated 40 million tonnes of aggregate and quarried materials consumed in New Zealand each year.

The dominant uses of quarried material in New Zealand are roading (50%), building (20%), then limestone for the agriculture industry (10%). Approximately 10,000 New Zealand jobs directly rely on aggregate. Quarries within New Zealand are limited to discrete areas of high-quality accessible rock. These areas (and the associated overburden cleanfills required for quarry operations) can overlap with that of wetlands, including those wetlands in a natural state or those of wetted pasture – considered a ‘wetland’.

We make the following submissions in relation to the Exposure Draft circulated 7 April 2021 and would be happy to discuss these concerns and submissions with you further.

The problem

Under the NPS Freshwater Management and NES Freshwater regulations, ‘mineral and aggregate extraction’ activity, along with earthworks generally (Reg 53), are prohibited on land deemed to be natural wetlands. The definition of natural wetlands itself has created uncertainty due to its breadth – unintentionally capturing many small patches of wet grass and wetland areas dotted throughout New Zealand. All wetlands are treated the same under the regulation. In reality, wetlands can vary from a damp patch of grass to a wet area with common indigenous vegetation right through to a lake and its margins supporting significant indigenous flora and fauna, and so have a range of ecological values and sizes. Wetlands are present in a wide range of varying landscapes. While greatly reduced in overall areal extent, wetlands are in fact extremely common for the above reasons. Their presence, therefore, has a very significant impact on economic land-use in New Zealand under current regulation.

Expanding existing quarries can take 2-3 years and developing a new quarry from scratch takes approximately 5 years in a complex consenting environment. A delayed response to the wetland issue will result in delays to resolving the housing crisis, developing Auckland’s major infrastructure projects (CRL, Central Interceptor) and delivery of the Government’s \$6.8B road and infrastructure plan.

The AQA have been actively engaging Minister Parker, MfE officials and local councils about the impact of the regulations and their unintended consequences. We were advised that these guidelines aimed to provide a consenting pathway for locationally constrained industries by clarifying that paddocks with low ecological value wetted areas be excluded from the regulations. However, the guidelines indicate that the ‘intent of Policy 6 is that the extent of all individual natural inland wetlands is maintained – regardless of their ecological state’.

Therefore, rather than assisting the quarry industry, or other affected industries, the guidelines appear to reinforce the position that essentially all wetland areas, from wet grass to lakes, are to be preserved from all activities.

Section 3 of the guidelines addresses the wetland definitions; however, we are still left with very subjective and vague exclusions, particularly around the improved pasture exclusion.

Issues with the guidance in its current form

Our concerns with the guidance in its current form are:

- It is not clear if the exemption is intended to capture areas of land that are at least half covered by exotic pasture species themselves, or areas of land that sit within a broader area where at least half of the species are exotic. It is also unclear how '50% ground cover of exotic pasture species' should be assessed while the national methodology is being developed.
- The definition of 'heavily modified' pasture is not clear.
- It is not clear how wetland hydrology should be assessed until the Landcare Research hydrological tool is available. Also, it is not clear how 'most years', 'inundated', and '50% probability of inundation recurrence' are to be interpreted with regards to wetland hydrology.

Evidence to date of the impacts of the regulation

Already the seriousness of the issue, and the lack of action to date to resolve it, has been reinforced by a number of third-party decision makers in relation to resource consent applications, including:

Flat Top Quarry

Auckland Council had to return Flat Top Quarry's extension application in September 2020 because ecologists' advice was that a small wet area in the middle of the land is deemed to be a wetland under the new regulation making it a 'prohibited' activity.



These photos show the nature of 'wetlands' at Flat Top Quarry. Both Minister Parker and MfE officials have stated that the areas in the following photos are not wetlands as they intended in the regulations, yet the draft statutory guidance would confirm these areas as natural wetlands.

Deepdell mining project

OceanaGold has recently been granted resource consent to develop the Deepdell North Stage III project at the Macraes gold mine in East Otago. Had Reg 53 been in force when the company lodged its application, the disturbance of 'natural wetlands' would have been a prohibited activity. In their ruling the hearing commissioners said, "We believe that regulation such as this leading to a prohibited activity rule has no place in a National Policy Statement". These photos show the nature of 'wetlands' at Deepdell.



EnviroWaste fill site

An Auckland cleanfill/managed fill site that has been operating since 2005, is due to reach capacity in 2021. A proposed expansion will require removal of approximately 100 metres of stream/wetland that has already been impacted by historical site works and stream diversions and infilling. (This is not a pristine environment). It was proposed to provide offset restoration at another 'like for like' wetland in the Auckland region. Approximately five times the wetland area would have been restored to provide 'no net loss' of ecological function and values. The new NES Freshwater Management and accompanying regulations now makes the wetland removal a prohibited activity. This photo shows the proposed wetland area to be removed.



The Solution

Natural wetlands

The prohibited activity status will act to sterilise quarrying activities in relation to natural wetlands. By changing the activity status for earthworks to 'discretionary', applications can be considered on a case-by-case basis and an effect management hierarchy can be applied to produce the best possible outcome for New Zealand. We have been advised by Minister Parker that this solution will be included in a Cabinet paper in May 2021, however such changes will take some time to implement and therefore this guidance is critically important in providing a pathway for consent of urgently required activities such as the extension of Flat Top Quarry and the EnviroWaste fill site in Auckland.

The guidelines in the Exposure Draft do not provide a temporary pathway for these operations to apply for consent on areas that contain small, wetted areas in a grazed paddock. Auckland Council, expert ecologists and industry peers have all reviewed the guidelines and agree that they do not offer a solution in their current form.

For the guidelines to be effective, within a limited set of circumstances, they must immediately offer the following:

- An exhaustive list of exotic pasture species, including associated exotic weed species
- An interim method for determining wetland hydrology
- A minimum size/area of wetland that is subject to the Regulations.

On the last point, Section 13 of the guidelines discusses why no minimum wetland size is stipulated, however this is significant to the quarry sector. As an example, Winstone's Flat Top Quarry expansion has an overall development area of 15ha. The presence of few small wetland areas (some just 0.02% of the overall area in size) within the paddock meant that the proposed expansion was a prohibited activity.

Induced wetlands

Part 6 of the Guidance Note puts 'induced wetlands', including those induced by culverts, in the natural wetland category. Culverts are used to maintain connectivity of creeks and streams that would otherwise be compromised by, and would in turn compromise, other structures such as roads and bridges. The ongoing maintenance of culverts

will ensure they continue to protect biodiversity and hydrological values, as part of their intended function. Currently, improvements to culverts are being actively sought to create more effective environments for fish passage, an initiative that this Guidance Note threatens to impact.

These structures commonly create a localised wetland environment, which is not an intentional result of their construction but is certainly contemplated as part of their continuing to function over time as intended. It is difficult to see how this form of intended water management structure, with its inevitable damming or diversion of water, does not fall within the class of waterbodies that have been deliberately constructed by artificial means for a specific purpose and that may require maintenance over time to continue to fulfil that purpose.

The Guidance Note should seek to differentiate between constructed versus natural wetlands based on the presumed purpose for which the artificial structure that is creating the wetland was constructed. If diversion, damming or maintaining the flow of water was foreseeable as part of a structure's purpose (i.e.: a bridge, culvert or dam for example, in addition to man-made ponds and lakes), the creation of a wetland where the structure may cause water to collect is part of that intended function and purpose and the result is a constructed wetland. Any other approach is contrary to the underlying logic of the policy and also fraught with unintended consequences.

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