

# Submission on the recommendations on proposed changes to the wetland regulations

July 2022

## Introduction

The Aggregate and Quarry Association (AQA) is the industry body representing construction material companies which produce an estimated 45-50 million tonnes of aggregate and quarried materials consumed in New Zealand each year.

Funded by its members, the AQA has a mandate to increase understanding of the need for aggregates to New Zealanders, improve our industry and users' technical knowledge of aggregates, and assist in developing a highly skilled workforce within a safe and sustainable work environment.

## Key points of our submission

- 1) We support proposed changes to the definition of a 'natural wetland' subject to a national review of the proposed exotic pasture species list as suggested.
- 2) We agree with the policy rationale that a specific definition of quarrying activities is unnecessary and that the National Planning Standards definition can be relied on to achieve policy outcomes.
- 3) If a specific and narrow definition of quarrying activity is adopted, there is no need for the functional need test as it has been established that the aggregate itself is locationally constrained.

## General comments

Adequate provision must be made in national instruments and regulations such as the *Essential Freshwater* regulatory package to recognise existing and potential aggregate and sand deposits and provide for their extraction. Quarry materials are not universally available and can only be sourced from where they are located (locationally constrained due to geology). Without a consenting pathway that provides for adequate access to resources at workable locations, there is the real risk of losing access to such proximate resources.

We support changes to the regulatory framework for 'natural wetlands' to provide a consent pathway for quarries, cleanfills and managed fills so that development can occur where necessary, while ensuring no net loss of natural wetland extent or values.

We make the following submission in relation to the recommendations on proposed changes to the wetland regulations.

### Part 1: Changes to part (c) of the definition of a 'natural wetland'

The current definition of 'natural wetland' in the NPS-FM is problematic as it captures some heavily modified, exotic pasture dominated wetlands even though part (c) of the definition was intended to exclude these areas. This is having unintended consequences, such as restricting changes in land use and development in these areas.

The attached case study on Flat Top Quarry (Appendix 2 of this submission) is an example of the unintended consequences when applying the current wetland definition.

We support **Recommendation 1** to delete the term 'improved pasture' from the NPS-FM definition of a 'natural wetland' and replace with 'pasture'; and to remove the definition of 'improved pasture' from the NPS-FM.

We support **Recommendation 2** to delete 'at the commencement date' from part (c) of the definition of 'natural wetland' in the NPS-FM.

We support **Recommendation 3** to delete 'is dominated by (that is, more than 50% of) exotic pasture species' from part (c) the definition of 'natural wetland' in the NPS-FM, and **Recommendation 4** to replace it with 'that has 50% or more ground cover comprising exotic pasture species, or words to that effect. The revised definition reflects the original intent that wet pasture areas, even if they were once 'natural wetlands', are now highly modified environments and should be able to continue their current use or be able to shift in land use.

We support **Recommendation 5** to incorporate by reference into the NPS-FM, under section 46B of the RMA, a national list of exotic pasture species that will define what is included and meant by the phrase 'exotic pasture species', however, agree that it is important to test the list currently employed by Greater Wellington Regional Council with all other regional councils to ensure its relevance nationwide.

We support **Recommendation 6** to delete 'and is subject to temporary rain-derived water pooling' from part (c) of the definition of 'natural wetland' in the NPS-FM, and **Recommendation 7** to not replace it with an alternative measure of wetland hydrology within the exclusion for pasture-dominated wetlands in part (c) of the definition of 'natural wetland'.

## Part 2: Proposed consent pathways

The current non-complying and prohibited activity status is hindering the activities of the quarrying sector to the extent that the regulations are not workable in practice. We support the provision of consent pathways for quarrying and cleanfill activities and agree that the protection of natural inland wetlands from further loss need not be mutually exclusive.

We support the use of the environmental effects management hierarchy to ensure no net loss of natural wetland extent or values, and support **Recommendation 12** to include principles for offsetting and compensation in an appendix of the NPS-FM as set out in Appendix 1 of the Summary Report and link the application of these principles to the effects management hierarchy.

### Part 2A: Quarries

"Aggregates are the foundation of our roads and buildings, they are the most consumed commodity in the world after freshwater. Our need for them is set to increase and it is unclear if we have enough in the right places" (Infrastructure Commission, September 2021).

The current wetland regulations are preventing access to resources for the construction of specified infrastructure (as defined in the NPS-FM). Because the regulations already provide a consent pathway for the construction of specified infrastructure, it is sensible that a consent pathway also be provided for the resources necessary for the construction and maintenance of that infrastructure.

We support **Recommendation 13** to include quarries in the list of activities exempt from the general policy to avoid natural inland wetland loss, protect their values and promote their restoration in 3.22(1)(a) of the NPS-FM.

We support **Recommendation 14** to apply the same provisions to quarries as in the NPS-FM at 3.22(1)(b)(i), including the gateway tests of: significant national or regional benefit in 3.22(1)(b)(ii), and functional need in (iii); and the effects management hierarchy as per 3.22(b)(iv).

It is appropriate that quarrying be a discretionary activity within, or within 100 metres of, a 'natural wetland'. This is consistent with the activity status of similar activities in the regulations and will enable development within environmental biophysical limits including a significant improvement in housing supply, affordability and choice, and timely provision of specified infrastructure. We therefore support **Recommendation 15** to amend the NES-F to provide for quarrying activities as a discretionary activity and subject to the same provisions already in place for the construction of specified infrastructure.

### **Defining quarrying and scope of the consent pathway**

In order to retain consistent definitions across planning documents and avoid confusion and potential conflict, the 2019 National Planning Standards definitions of quarry and quarrying activities should be used and referenced within the wetland regulations. These definitions were established to streamline the resource consenting process to avoid multiple consents being sought for various activities associated with a quarry application and to avoid the 'bundling' of activities with different activity statuses in one consent application.

This is supported by comments in the Policy rationale for exposure draft amendments page 15 which concludes that "a specific definition is unnecessary for quarrying and that the ordinary use of the word can be relied on. Further, a definition is not needed to restrict the consent pathway to the area of resource, as the test of 'functional need' achieves this".

The exposure draft of the NPS-FM, in clause 3.22.(d) refers to extraction of aggregate which again is inconsistent with the National Planning Standards definition of quarrying activity. This should be replaced with quarrying activities, or a definition inserted in clause 3.21 to define extraction of aggregate as meaning quarrying activities as defined in the National Planning Standards 2019.

We therefore support **Option 1 in Recommendation 16** to include the definition for quarry and quarrying activities as set out in the National Planning Standards 2019 which also includes ancillary activities associated with quarrying.

If a specific and narrow definition of quarrying activity is adopted, despite policy rationale suggesting it is not necessary, then the functional need test becomes unnecessary and

should be removed as the extraction can only occur where the resource is located, and all ancillary activities would therefore be dealt with under other relevant clauses in the regulations

## **Part 2B: Cleanfills, managed fills and landfills**

Quarrying often requires the removal and stockpiling of overburden (soil required to be removed in order to extract rock), and/or the importation and stockpiling of cleanfill and managed fill for site rehabilitation. Most fill sites are located within valleys or gullies and are often damp areas of pasture or gully heads.

We support **Recommendation 18** to include cleanfills, managed fills and landfills in the list of activities exempt from the general policy to avoid natural inland wetland loss, protect their values and promote their restoration in 3.22(1)(a) of the NPS-FM.

We support **Recommendation 19** to apply the same provisions to cleanfills, managed fills and landfills as in the NPS-FM at 3.22(1)(b)(i), including the significant national or regional benefit gateway test at 3.22(1)(b)(ii) and the effects management hierarchy as per 3.22(1)(b)(iv).

Quarry cleanfills and managed fills need to be close to the quarry to avoid substantial cost implications and higher carbon emissions from transport. We support **Option 3 in Recommendation 22** to make the gateway test in the NPS-FM 'best practicable location' for landfills, cleanfills and managed fills, and to include the definition of best practicable location listed in **Recommendation 23**. We further note that this recommendation is in conflict with the proposed wording on Page 18 of Policy rationale for exposure draft amendments, "there is either no practicable alternative location, or every other practicable alternative location would have equal or greater adverse effects on a natural inland wetland". We believe the wording in Recommendation 23 better reflects the policy intent of the term 'best practicable location':

**Best practicable location:** means the best location for an activity to be undertaken in, having regard, among other things to–

- a) in relation to 'plan-enabled' development, and landfill, cleanfill and managed fill activities
  - i. the scope and design of the activity, so that adverse effects are avoided to the extent possible, and
  - ii. the effects on the natural inland wetland of that activity compared to effects on the environment in other locations, and
- b) in relation to 'plan-enabled' urban development, the extent to which development is required to meet development capacity under the NPS-UD

We support **Recommendation 24** to amend the NES-F to make landfill, cleanfill and managed fill activities a discretionary activity subject to the same provisions already in place for the construction of 'specified infrastructure'. This is consistent with the activity status of similar activities in the regulations and will enable consents for this type of activity to be determined by councils on a case-by-case basis.

In order to retain consistent definitions across planning documents, and avoid confusion and potential conflict, we support **Recommendation 25** to provide for the following definitions in the NPS-FM and NES-F:

Landfill has the meaning given by the National Planning Standards 2019

Cleanfill has the meaning given by the National Planning Standards 2019

Managed fill means an area used for the disposal of material with low-grade contamination, such as demolition material, received from existing infrastructure, or words to that effect.

#### **Part 4: Additional matters**

We agree that offsetting, if done well, can produce a net gain and an improvement in the ecology of a wetland. The proposals for additional pathways for quarrying and cleanfills are relatively constrained, and we are confident that the effects management hierarchy can address loss of extent and values.

We support **Recommendation 61** to include a requirement at 3.22(3) of the NPS-FM that council must be satisfied that where aquatic offsetting or aquatic compensation is being pursued, the applicant has given regard to the aquatic offsetting and compensation principles which will be appended to the NPS-FM.

We also support **Recommendation 62** to amend Policy 6 in the NPS-FM so that it clarifies that there is to be no further loss of natural inland wetland extent, their values are protected, and their restoration is promoted, except where loss is a consequence of consented activities, to which the effects management hierarchy has been applied.

We agree that the wetland regulations should not create an impediment to addressing barriers to fish passage. We therefore support **Recommendation 65** to provide an exception to regulation 46(4)(b) (Maintenance of infrastructure) so that the activity may increase the size of a structure if it is for the purpose of providing for fish passage and complies with the regulations set out in NES-F Part 3, Subpart 3 – Passage of fish affected by structures.

We have made some suggested changes to wording in the exposure drafts of changes to the National Environmental Standards for Freshwater 2020, and the National Policy Statement for Freshwater Management 2020 in Appendix 1.

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## Appendix 1.

### Recommended changes to Exposure Draft of changes to the National Environmental Standards for Freshwater 2020 Exposure Draft wording

Clause	Exposure Draft wording	Recommended wording
Part 1, 3 Interpretations	None	<b>Add a definition of quarrying:</b> <b>Quarrying activities:</b> has the meaning given to quarrying activities by the National Planning Standards 2019.

### Recommended changes to Exposure Draft of amendments to the National Policy Statement for Freshwater Management 2020

Clause	Exposure Draft wording	Recommended wording
3.21 Definitions relating to wetlands and rivers beds	None	<b>Add a definition of best practicable location:</b> <b>Best practicable location:</b> means the best location for an activity to be undertaken in, having regard, among other things to— a) in relation to ‘plan-enabled’ development, and landfill, cleanfill and managed fill activities i. the scope and design of the activity, so that adverse effects are avoided to the extent possible, and ii. the effects on the natural inland wetland of that activity compared to effects on the environment in other locations, and b) in relation to ‘plan-enabled’ urban development, the extent to which development is required to meet development capacity under the NPS-UD
3.21 Definitions relating to wetlands and rivers beds	None	<b>Add a definition of extraction of aggregate:</b> <b>Extraction of aggregate:</b> has the meaning given to quarrying activities by the National Planning Standards 2019.

<p><b>3.22.1,(f),(iii)</b></p>	<p>there is either no practicable alternative location, or every other practicable alternative location would have equal or greater adverse effects on a natural inland wetland; and</p>	<p>the new or expanded landfill or cleanfill is located at the best practicable location as defined in 3.21</p>
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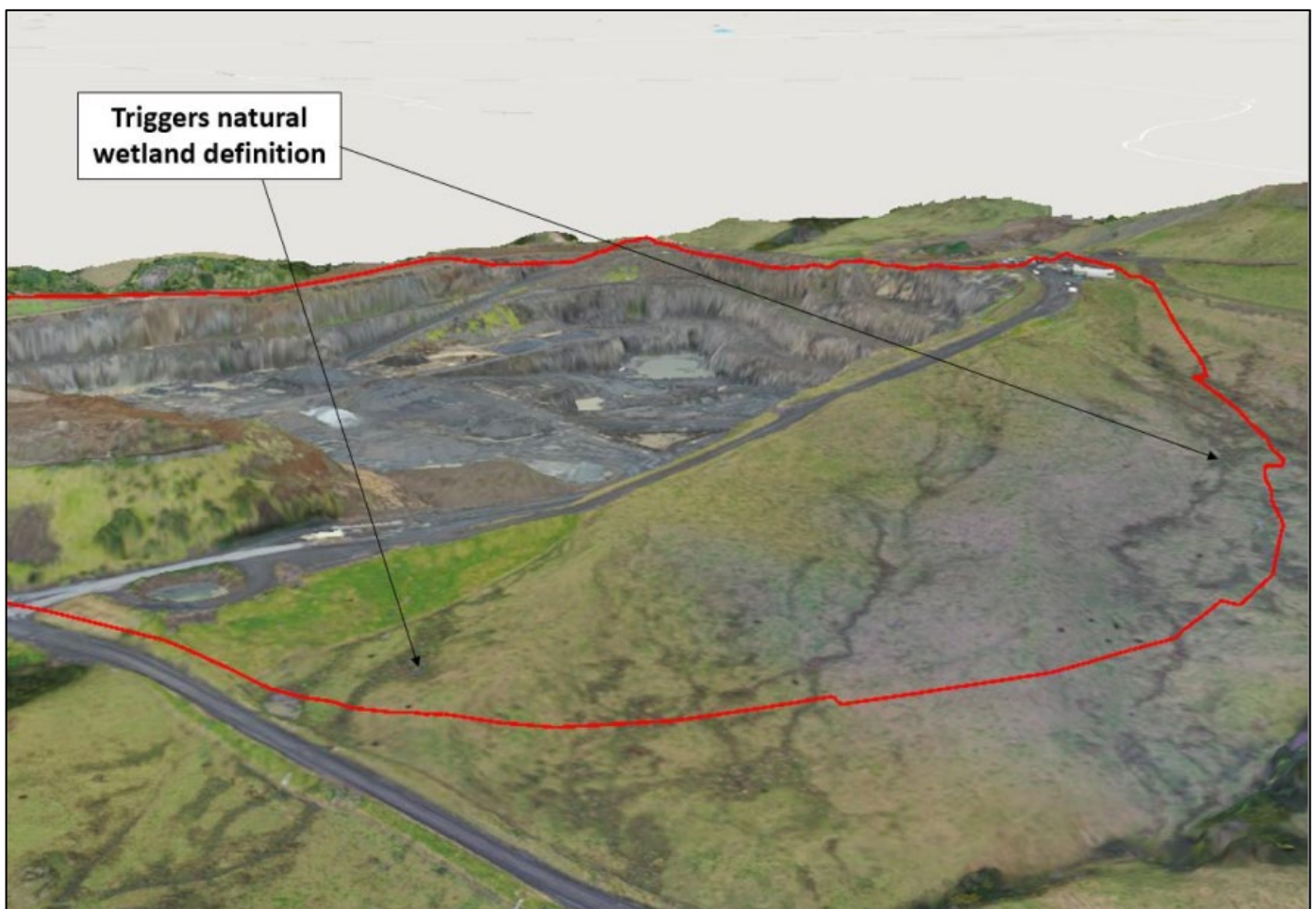
## Appendix 2.

### Case study - Quarry Expansion Consent Returned

Flat Top Quarry has been operating for over 70 years. It is approximately 15ha in size and in 2020 Winstone Aggregates was looking to expand it by a further 5ha into the adjacent paddock, on a hillside and currently grazed by cattle and sheep.

The image below outlines the expansion area in red and identifies two areas which were assessed by an independent ecologist as triggering the then new NES wetland rules. These areas represent approx. 400m<sup>2</sup> of the total 50,000m<sup>2</sup> or 0.8%.

Although the consent was lodged before the NES gazette date, the consent was returned by Auckland Council as the rules came into effect while it was being determined.





**Stock trampled northern wetland**



**This represents the roadside wetland**



The land is of low ecological value and contains reeds and rushes which have formed along overland flow paths which terminate at the roadside. The land is heavily pugged by cattle in the winter and has various slips and slumps where reeds and sedges grow. No fauna is present.

The NES has made it a prohibited activity to remove these areas which are defined as natural wetlands. As such, the quarry will be unable to expand and will eventually close, leaving potentially another 40-50 years of hard rock resource in the ground. Resources will need to be sourced from elsewhere and will most definitely be further from market.

It is unlikely the NES intended on capturing areas such as this in its broad definition.

