SUBMISSION ON

Managing our wetlands discussion document

27 October 2021

To: Ministry for the Environment
Name of Submitter: Horticulture New Zealand

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Horticulture™ New Zealand
Ahumāra Kai Aotearoa

OVERVIEW

Submission structure

1. **Part 1**: HortNZ's Role
   An overview of HortNZ, executive summary and overarching themes of this submission: food security, good management practice and highly productive land

2. **Part 2**: Feedback on the Discussion Document and Parts 5 and 6 of the MfE interpretation guidance *Defining 'natural wetlands' and 'natural inland wetlands'*. This is accompanied by Attachment A, an ecological perspective on the discussion document provided by Boffa Miskell.

Our submission

Horticulture New Zealand (HortNZ) thanks Ministry for the Environment (MfE) for the opportunity to submit on the Discussion Document and welcomes any opportunity to continue to work with MfE and to discuss our submission.

If there is an opportunity, HortNZ wishes to be heard in support of our submission.

The details of HortNZ's submission and decisions we are seeking are set out in our submission below.

Executive Summary

Background to HortNZ

HortNZ represents the interests of 6000 commercial fruit and vegetable growers in New Zealand, who grow around 100 different crop types and employ over 60,000 workers.

HortNZ is active within the RMA system, representing the interests of growers in district, regional and national planning processes. This submission summarises the key issues for horticulture and draws in many years of experience with the RMA to make recommendations.

High level issues for horticulture

Food security as an essential human health need

Food security must be an issue that is promoted and considered alongside other uses for essential human health, when making trade-offs that will inevitably be required to meet natural environmental limits.

New Zealand's food insecurity

Over 80 percent of vegetables grown in New Zealand are for domestic consumption.[1]

Ministry of Health data indicates that only 33.5% of adults and 44.1% of children are meeting fruit and vegetable intake guidelines[2]. Many New Zealanders live in food insecurity. A 2019 Ministry of Health study analysed household food insecurity among children in New Zealand, it estimated that 174,000 (19%) of all children in New Zealand live in food-insecure households[3].

Regulatory pressure is preventing the expansion of vegetable growing from keeping up with population growth. This is predicted to result in increased cost for consumers, with tangible health consequences. Otago University has recently modelled the potential health impacts of increased vegetable prices. This study found that using the health costs of an increase in vegetable prices of 43 - 58 percent, would be a loss of 58,300 – 72,800 Quality Adjusted Life Years and health costs of $490 -$610 million across the population[4].

Food security as an essential human health need

In the HortNZ submission to the NBA exposure draft[5], we note that humans, as animals, form part of the proposed definition for natural environment. We support this approach but seek that this be refined to essential physiological needs of humans. This will avoid an

[1] Deloitte, 2018. *The New Zealand Food Story: Pukekohe Hub* https://www2.deloitte.com/nz/en/pages/primary/articles/pukekohe-hub.html

[2] https://minhealthnz.shinyapps.io/nz-health-survey-2019-20-annual-data-explorer/_w_b6ac76b1/#!/explore-topics

[3] Ministry of Health. (2019). Household food insecurity among children, New Zealand Health Survey

[4] https://www.hortnz.co.nz/assets/Environment/National-Env-Policy/Resource-Management-Act/HortNZ-Submission-on-NBA-Exposure-Draft-4-August-2021.pdf

[5] Ibid

overall judgement approach that prioritises the environmental outcomes associated with the built environment (beyond those associated essential human health needs of people such as social, economic and cultural well-being), above natural environmental limits.

This approach is consistent with the Te Mana o Te Wai hierarchy of obligations which sets separates out (and prioritises) human health needs from other aspects of human well-being(social, cultural and economic well-being).

In the HortNZ's NBA submission we define essential human health needs to mean *the physiological needs of humans, it includes safe drinking water and sanitation, nutritious food, adequate shelter and warmth*.

Good management practices

Good management practices are critical to managing environmental effects of an activity while improving operational efficiency. HortNZ believe good management practice is critical to successful horticultural operation. Horticulture is a unique farming system which is very different from other farming sectors. The Horticulture sector has invested in scientific research to support development of a range of Codes of Practices specific to the needs of the horticulture sector:

- Erosion and Sediment Control Guidelines for Vegetable Production.[6]
- Vegetable Washwater Discharge Code of Practice
- Code of Practice for Nutrient Management 2014
- A Growers Guide to The Management of Greenhouse nutrient discharges June 2007

It is critical that regulation supports the use of good management practices such as sediment ponds/trapswater storage (including storage ponds, canals and dams) water treatment and attenuation devices ,and riparian planting. All of these constructed good managements practices, may include constructed wetland margins.

Regulatory hurdles to the operation and maintenance of good management practice will result in perverse outcomes where resource users may choose alternative options, resulting in adverse environmental effects.

Regulations must also provide flexibility to enable adaptation of good management practice over time, which will continually improve environmental outcomes.

Highly Productive Land

Horticulture is limited in where it may locate due to a reliance on several factors, including soil quality. Typically, horticulture is best suited to land classified LUC 1-4, with commercial vegetable production being best suited to LUC 1-2. This type of land is in short supply, with LUC 1 – 2 representing only 5% of New Zealand's landmass and LUC 1 – 3 representing 14%[7].

[6] https://www.hortnz.co.nz/assets/Compliance/Erosion-and-Sediment-Control-Guidelines-for-vegetable-production-v1.1.pdf

[7] Fiona Curran-Cournane, Melaine Vaughan, Ali Memon, Craig Fredrickson 'Trade-offs between high class land and development:Recent and future pressures on Auckland's valuable soil resources' 2014 https://ac.els-cdn.com/S0264837714000489/1-s2.0-S0264837714000489-main.pdf?_tid=5b7e5b49

HortNZ's submission on the proposed National Policy Statement for Highly Productive Land (NPS-HPL) was very clear that protection of HPL, without also enabling its use for food production is an unacceptable outcome and would further disadvantage an already economically fragile domestic food system.

The ability to offset provides the opportunity to maximise the productive potential of HPL for essential human health needs, while achieving overall net gains for wetland ecosystems.

Decisions sought

Definition of wetland:

- Generally, HortNZ supports the definition and proposed amendments within the NPS-FM, but seek that riparian margins within a functional purpose are included as constructed wetlands.
- HortNZ do not support the interpretation that constructed wetlands are deemed natural wetlands where they have not been maintained over time. HortNZ seek that this be removed from the MfE interpretation guidance.

Restoration, maintenance and biosecurity:

- HortNZ supports provision of maintenance and biosecurity works as permitted activities, but seek separate regulation that enables rapid response from the agricultural sector to unknown biosecurity incursions.

Additional pathways:

- HortNZ seeks a Discretionary Activity pathway for vegetation clearance, earthworks or land disturbance associated with arable and horticultural land uses outside, but within 10m, of a natural wetland that:
    - do not meet s(50)(1)(a) or s50(2)(a), or
    - do not comply with permitted activity conditions s(55) and
    - meets the gateway test of significance, 'functional need' and the effects management hierarchy.
- HortNZ seeks a Discretionary Activity pathway for water storage facilities that enable expansion of horticultural production.

PART 1

HortNZ's Role

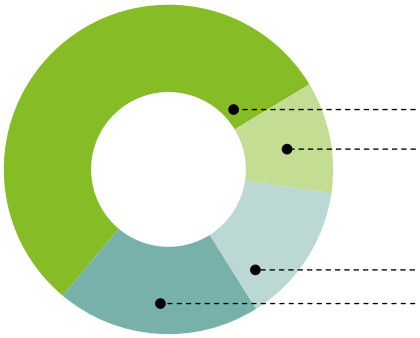
Background to HortNZ

HortNZ represents the interests of 6000 commercial fruit and vegetable growers in New Zealand, who grow around 100 different crop types and employ over 60,000 workers.

There is approximately 120,000 hectares of horticultural land in New Zealand - approximately 80,000 ha of this is fruit and vegetables. The remaining 40,000 ha is primarily made up of wine grapes and hops, which HortNZ does not represent.

It is not just the economic benefits associated with horticultural production that are important. The rural economy supports rural communities and rural production defines much of the rural landscape. Food production values provide a platform for long term sustainability of communities, through the provision of food security.

HortNZ's purpose is to create an enduring environment where growers prosper. This is done through enabling, promoting and advocating for growers in New Zealand.



Industry value $6.73bn
Total exports $4.55bn
Total domestic $2.18bn

HortNZ's Resource Management Act 1991 Involvement

On behalf of its grower members HortNZ takes a detailed involvement in resource management planning processes around New Zealand. HortNZ works to raise growers' awareness of the Resource Management Act 1991 (RMA) to ensure effective grower involvement under the Act.

PART 2

Submission

Definition of natural wetland

HortNZ generally supports the protection of natural wetlands of ecological value, and enhancement of those degraded natural wetlands that have identified ecological value.

CONSTRUCTED WETLANDS:

HortNZ supports the exclusion of constructed wetlands from the definition of natural wetland.

It is noted in the latest MfE interpretation guidance[8] that the exclusion for constructed wetlands extends to incidental wetlands created as a result of constructed wetlands. HortNZ supports this approach to ensure that good management practices, such as sediment ponds, sediment traps, riparian planting and water storage are not disincentivised.

The exclusion of incidental wetlands (as described in the guidance) is critical to assist in enabling the effective operation and maintenance of constructed wetlands. Regulation that hinders the operation and maintenance of these features is likely to result in disincentivising good management practices, thereby resulting in unintended impacts on water quality.

Figure 1: Planting adjacent to Lake Manwai, a water reservoir in Northland[9]

We note the interpretation guidance confirms that the exclusion from the definition applies to constructed wetlands regardless of when the feature was constructed. HortNZ supports this approach.

[8] Defining-natural-wetlands-and-natural-inland-wetlands.pdf (environment.govt.nz)
[9] https://www.nzmcd.co.nz/Destinations/Northland/the-magic-of-lake-manuwai/

However, the guidance goes on to state that the exclusion is provided due to the need for maintenance and that if a feature has not been maintained "over time", then the exclusion no longer applies. The guidance leaves this assessment to the discretion of council to be undertaken on a case-by-case basis.

We do not support the notion that the exclusion is based solely on maintenance. Good management practices are intended to avoid or remedy the environmental effects of an activity. For instance, sediment traps and ponds significantly reduce, and can prevent, sediment run-off from cultivation of fresh vegetables. Where sediment traps or ponds are identified as the most appropriate action, failure to install the feature would have adverse effects on water quality. Similarly, irrigation is an important practice for managing nutrient leaching from plants. Associated water storage supports irrigation systems to ensure a reliable rate of irrigation.

Maintenance requirements for constructed wetlands will differ depending on the function, size and environmental factors (for example the frequency of heavy rainfall events resulting in sediment run-off).

We do not support the ability for councils to determine what an appropriate timeframe is for maintenance to have occurred before the exclusion expires. This does not provide any certainty for resource users or councils and is contradictory to the statement exclusion applies no matter when the wetland was constructed (Part 5.4).

Riparian planting associated with good management practices:

Riparian planting adjacent to any waterbody that is undertaken for a functional purpose, such as sediment control, should also be recognised as a constructed wetland.

Cultivation setbacks from waterbodies are a common good management practice for managing water quality effects of commercial vegetable production. These setbacks are required to be planted, as either buffer strips or riparian margins to enhance effectiveness in reducing sediment run-off. [10] While pasture is effective, some growers choose to plant indigenous vegetation to enhance biodiversity and amenity values.

HortNZ are concerned that the current approach will disincentivise indigenous riparian planting within cultivation setbacks to avoid incurring additional barriers to land use. In the case of horticulture, s50 of the NES-F would require a cultivation setback from the already established planted cultivation setback. Good management practice would then require the additional setback imposed by the NES-F to be planted to mitigate sediment run-off.

Although the hydrology is likely to change at some point, the continual setbacks would significantly impact the viability of the operation. This is particularly relevant when considering that horticulture is limited to locating on highly productive land, which is identified as a finite resource.

HortNZ's submission on the proposed National Policy Statement for Highly Productive Land (NPS-HPL) was very clear that protection of HPL, without also enabling its use for food production is an unacceptable outcome and would further disadvantage an already economically fragile domestic food system

HortNZ is concerned that the provisions will disincentivise riparian planting, both voluntary efforts and those associated with good management practices.

[10] https://www.hortnz.co.nz/assets/Compliance/Erosion-and-Sediment-Control-Guidelines-for-vegetable-production-v1.1.pdf

Outcome sought:

- Amend the MfE interpretation guidance to include riparian planting with a functional purpose within the list of constructed wetland examples.
- Amend 5.4 of the MfE interpretation guidance to delete the second paragraph relating to maintenance over a period of time.

INDUCED WETLANDS

HortNZ generally opposes the inclusion of all other induced wetlands (those that are not incidental to constructed wetlands). Many induced wetlands have no ecological value and would not obtain ecological value through restoration and on-going maintenance. [11]

We note and support the existing permitted and consented pathways for works involving induced wetlands that are natural wetlands (as currently defined). However, as discussed below (in relation to additional pathways), there are limited opportunities for diversification of land to horticulture which will be necessary to provide for current and future food security. In order to support the on-going operation and development of horticultural land uses

OFFSETTING AND CONSERVATION

HortNZ supports the inclusion of constructed wetlands that respond to offsetting or conservation purposes within the definition of natural wetland. Offsetting affords a real opportunity in terms of positive environmental outcomes and net gains that could be made for degraded wetlands, particularly those that would otherwise not receive funding for restoration and long-term maintenance. Offsetting allows for appropriate development to continue within environmental limits by managing the effects of activities on the environment, including the restoration, enhancement and long-term maintenance of degraded environments, while still having regard to environmental limits.[12]

Better provision for restoration, maintenance and biosecurity activities

HortNZ supports the provision of maintenance and biosecurity works within natural wetlands as permitted activities. Many growers undertake voluntary restorative planting on land unsuitable for production. Maintenance and biosecurity works are critical to ensure growers can continue to operate horticultural activities while supporting biodiversity values. This is also relevant for wetlands constructed to offset effects of an activity to ensure the net gains achieved from the offset continue to balance, or outweigh, any residual effects.

The ability to undertake biosecurity works within natural wetlands must be extended to landowners and farm operators to enable rapid response to biosecurity incursions.

While incursions of unwanted organisms are managed under the Biosecurity Act 1993 there is an interface with the RMA as some of the actions that need to be taken to respond

[11] Boffa Miskell, Attachment 1
[12] Ibid

to an incursion may be regulated under a regional or district plan. Such actions may include:

- Removal of infected material, including from riparian areas
- Application of agrichemicals
- Burning of infected materials
- Earthworks for burying infected materials

The Regional Council manages known pests through the Pest Management Strategy. However, these do not address currently unknown species – unwanted organisms under the Biosecurity Act.

In the event of a biosecurity incursion a response is triggered by the either the Minister declaring an emergency, or the Chief Technical Officer of MPI declaring an incursion, under the Biosecurity Act 1993.

If the Minister declares an emergency, then the Biosecurity Act overrides RMA provisions. However there has never been an emergency declared, even with PSA or fruit fly incursions. If the declaration is made by the Chief Technical Officer of MPI, the RMA provisions are not overridden, and any response needs to comply with relevant regional and district plan rules.

In the event of a biosecurity incursion of an unwanted organism there is the need to be able to respond rapidly to manage spread. Vegetation removal, burial, burning, spraying of material are methods that may be used. Therefore, it is important to adequately provide for these activities to be undertaken.

It became evident during the PSA incursion in the kiwifruit industry that regional and district plans can unintentionally be regulatory hurdles to a rapid response to an incursion through provisions such as limitation of earthworks for burying infected material or clearance of infected vegetation, including in riparian areas.

If an incursion of an unwanted organism was unable to be appropriately managed due to regulatory barriers in the plan it could have significant impact on the region and the rural economy.

Outcome sought:

- Amend s38 or include a new section that provides for biosecurity works to be undertaken by the agricultural sector with similar conditions as provided for in s55.
- Support proposed amendments providing for general maintenance and biosecurity works within natural wetlands.

Additional consenting pathways

HortNZ generally supports the provision of additional consenting pathways for essential activities that align with the Te Mana o Te Wai hierarchy of obligations:

> (a) first, the health and well-being of water bodies and freshwater ecosystems
>
> (b) second, the health needs of people (such as drinking water)
>
> (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

ADDITIONAL PATHWAY FOR HORTICULTURAL LAND USES NOT PROVIDED FOR UNDER S50

Food security must be an issue that is promoted and considered alongside other uses for essential human health, when making trade-offs that will inevitably be required to meet natural environmental limits. Provision for those activities that contribute to domestic food security is in keeping with the hierarchy of obligations, particularly that of human health. Such activities should also be considered to be of regional and national significance as provided for in the 'gate way' test applied to specified infrastructure.

There are pathways provided for horticultural land uses within the NPS and NES framework:

- S3.33 of the NPS-FM provides for specified vegetable growing areas
- S50 of the NES-F permits land disturbance (such as cultivation) and vegetation removal up to 10m from a natural wetland for horticultural activities that existed between 1 January 2010 and 2 September 2020;
- S46 and s47 of the NES-F provide permitted and consented pathways for maintenance and operation of 'other infrastructure' within, and within 100m of, a natural wetland. As defined in the RMA, this includes irrigation and drainage systems, both of which are critical for horticultural land uses.

Furthermore, the Regulatory Impact Statement notes that support of transitioning to a low emissions economy (for mining) and Government funding committed as part of the Covid-19 economic response, as key reasons for providing additional consenting pathways.

The Climate Change Commission have identified diversification of land to horticulture as a means of reducing emissions (as discussed further below).

The Horowhenua wetland development[13] [14]and the Northland water project[15] are two projects that received Covid-19 related funding which directly relate to the operation of horticultural activities.

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[13] https://www.stuff.co.nz/national/300318500/wetland-creation-aims-to-help-restore-polluted-lake-horowhenua

[14] https://www.hortnz.co.nz/news-events-and-media/media-releases/hortnz-backs-horowhenua-wetland-development/

[15] https://www.beehive.govt.nz/release/fast-tracked-northland-water-project-will-accelerate-economic-recovery

It is clear from the above, that national direction is recognising the national significance of providing for food security. and the role of horticulture in lower emissions food production.

Although there is provision for horticultural activities within the NES relevant to natural wetlands, this provision is limited to land used for those activities between 1 January 2010 and close of 2 September 2020 (s50). Those activities that are outside this time period, or do not meet the permitted activity conditions (s55) are non-complying activities. This does not provide for the diversification necessary to support increases in market demand because of population growth, or the transition to a lower emissions economy.

HortNZ believe there is a valid case for provision of an additional pathway that supports horticultural land uses as a discretionary activity and which are subject to the 'gateway test', including assessment against the effect's management hierarchy. This would ensure provision of essential human health needs, for current and future generations, within specified environmental limits and is consistent with the Mana o Te Wai hierarchy of obligations.

Outcome sought:

- Include a Discretionary Activity pathway for vegetation clearance, earthworks or land disturbance associated with arable and horticultural land use outside, but within 10m, of a natural wetland that:
  - does not meet s(50)(1)(a) or s50(2)(a), or
  - does not comply with permitted activity conditions s(55) and
  - meets the gateway test.

ADDITIONAL PATHWAY FOR WATER STORAGE FACILITIES

Many water storage projects – in addition to enhancing water security for productive use (and providing the opportunity for land use such as horticulture), also provide drinking water for communities.

Land use change to horticulture was part of the Climate Change Commission's advice to Government outlining how New Zealand can meet its climate targets.[16]

In summary, the Climate Change Commission:

- Stated that diversification of land use and switching some land that is currently in livestock agriculture to horticulture or arable could reduce emissions.
- The Demonstration Path assumed 2,000 hectares of land conversion to horticulture per year from 2025 and states that this could increase if barriers (such as water availability are addressed).
- Recommended that the Government support systems and infrastructure for alternative, lower emissions land uses so that there is more potential to convert land

[16] Ināia tonu nei: a low emissions future for Aotearoa. https://ccc-production-media.s3.ap-southeast-2.amazonaws.com/public/Inaia-tonu-nei-a-low-emissions-future-for-Aotearoa/Chapter-17-inaia-tonu-nei.pdf

to low emissions uses in the future (including as example, infrastructure and supply chains for horticulture).

Water storage projects are important for enabling New Zealand to adapt to climate change (where some areas may become drier) and mitigate the effects of climate change, through land use change to horticulture.

Many water storage projects – in addition to enhancing water security for productive use (and providing the opportunity for land use such as horticulture), also provide drinking water for communities.

HortNZ understands that water storage facilities do not always meet the definition of 'specified infrastructure' – this can create a significant consenting risk to these projects due to Regulation 53.

HortNZ believe there is a valid case for provision of an additional pathway that supports water storage facilities, that do not meet the definition of specified infrastructure as a discretionary activity. This would ensure provision of climate change adaptation, mitigation, and resilience, and provide for activities which are in our view, of significant national or regional benefit.

Outcome sought:

Include a Discretionary Activity pathway for activities associated with water storage facilities that are not provided for as specified infrastructure, and subject to Regulation 54 or Regulation 53.

Submission on Managing Our Wetlands

Without limiting the generality of the above, HortNZ seeks the following decisions, as set out below, or alternative amendments to address the substance of the concerns raised in this submission and any consequential amendments required to address the concerns raised in this submission.

Additions are indicated by bolded underline, and deletions by strikethrough text.

Provision	Support/ oppose	Reason	Decision sought
National Policy Statement for Freshwater Management 2020			
3.21(1) Definition – natural wetland	Support	HortNZ supports the retention of clause a) because: • Exclusion of constructed wetlands supports and facilitates the uptake of good management practices, which contribute to maintaining and improving other water quality values addressed in the NPS-FM. • Inclusion of wetlands constructed for offsetting validates and protects the overall net gains to wetland ecology and biodiversity values.	Retain (a) *a wetland constructed by artificial means (unless it was constructed to offset impacts on, or restore, an existing or former natural wetland)* and Adopt proposed amendments to (c) *Any area of pasture that has more than 50% ground cover comprising exotic pasture species or exotic species associated with pasture.*

		HortNZ supports proposed amendments to clause (c) as the amendments are clear and concise. HortNZ seeks amendments to the interpretation guidance to ensure riparian planting that has a functional purpose is included as a constructed wetland.	
Resource Management (National Environmental Standards for Freshwater) Regulations 2020			
S38 Restoration and maintenance of natural wetlands – Permitted activities	Support	HortNZ supports amending s38 to provide for maintenance of natural wetlands.	Amend s38 to include reference to restoration and maintenance.
New SX Biosecurity works relating to natural wetlands – Permitted activities	Support in part	HortNZ supports provision for biosecurity works as permitted activities in and around natural wetlands. However, the ability to undertake biosecurity works needs to be extended beyond pest management plans and biosecurity agencies. The Biosecurity Act can override provisions in the RMA only after following a process of notification. This process does not allow for rapid response.	Provide a new regulation for biosecurity works within, and around, natural wetlands that enables rapid response by agricultural activities (including arable and horticultural land uses) as a permitted activity. Permitted biosecurity works could be required to meet specified conditions similar to s55.

		In the event of a biosecurity incursion of an unwanted organism there is the need to be able to respond rapidly to manage spread. Vegetation removal, burial, burning, spraying of material are methods that may be used. Therefore, it is important to adequately provide for these activities to be undertaken. It became evident during the PSA incursion in the kiwifruit industry that regional and district plans can unintentionally be regulatory hurdles to a rapid response to an incursion through provisions such as limitation of earthworks for burying infected material or clearance of infected vegetation, including in riparian areas. If an incursion of an unwanted organism was unable to be appropriately managed due to regulatory barriers in the plan it could have significant impact on the region and the rural economy.	
New Sxx – Arable and horticultural land uses Discretionary Activity	Seeking new pathway	HortNZ generally supports provision for additional activities where the gateway test is applied.	Insert new regulation Sxx: *Arable and horticultural land uses* (1) Vegetation clearance outside, but within 10m of, a natural

		HortNZ seeks an additional pathway for horticultural land uses that do not meet the requirements of s50. Food security is an essential human health need and there is existing policy support recognising the importance of providing for this activity. As population increases, so does demand for food supply. Furthermore, the Climate Change Commission have identified land diversification to horticulture, by 2,000ha every year from 2050, as one action for reducing emissions. An additional pathway for horticultural land uses therefore aligns with the Te Mana o Te Wai hierarchy of obligations: (a) first, the health and well-being of water bodies and freshwater ecosystems (b) second, the health needs of people (such as drinking water) (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.	wetland is a discretionary activity if it (a) Is for the purpose of arable land use or horticultural land use that does not meet s50(1)(a), or (b) does not comply with the general conditions on natural wetland activities in regulation 55 (but regulation 55(2) does not apply), and (c) meets the following requirements: (i) the activity is of significant national or regional benefit (ii) there must be a 'functional need' for that activity in that location (iii) adverse effects must be managed through the 'effects management hierarchy', which requires initial consideration of how to avoid adverse effects where practicable, then how to minimise, remedy, offset, and

			compensate, in that order. (2) Earthworks or land disturbance outside, but within a 10m setback from, a natural wetland is a discretionary activity if it – (a) Is for the purpose of arable land use or horticultural land use that does not meet s50(1)(a), or (b) does not comply with the general conditions on natural wetland activities in regulation 55 (but regulation 55(2) does not apply), and (c) meets the following requirements: (i) the activity is of significant national or regional benefit (ii) there must be a 'functional need' for that activity in that location (iii) adverse effects must be managed through the 'effects management hierarchy', which requires initial

			consideration of how to avoid adverse effects where practicable, then how to minimise, remedy, offset, and compensate, in that order.
New Sxx – Water storage facilities Discretionary Activity	Seeking new pathway	HortNZ believe there is a valid case for provision of an additional pathway that supports water storage facilities, that do not meet the definition of specified infrastructure as a discretionary activity. This would ensure provision of climate change adaptation, mitigation, and resilience, and provide for activities which are in our view, of significant national or regional benefit.	Include a Discretionary Activity pathway for activities associated with water storage facilities that are not provided for as specified infrastructure, and subject to Regulation 54 or Regulation 53.

Attachment A: Boffa Miskell Memorandum

Boffa Miskell

Memorandum

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Attention:	Michelle Sands
Company:	Horticulture New Zealand
Date:	5 October 2020
Subject:	Horticulture New Zealand submission to Managing Out Wetlands, Ministry for the Environment

This memo has been prepared at the request of Horticulture New Zealand in response to the Ministry for the Environment's latest consultation Managing Our Wetlands. The purpose of the memo is to provide an ecology perspective on the discussion document.

Changes to definition

THE NPS-FM CURRENTLY DEFINES A 'NATURAL WETLAND' AS:

… a wetland (as defined in the Act [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.

Exclusion (a)

The document states that ponds and stormwater treatment wetlands are not to be included as "natural wetland" (under exclusion part a). This is appropriate however, the issue about "induced" wetland persists.

While we appreciate this decision is unlikely to change, we wish to state our concern with the amalgamation of "natural" wetland with "induced" wetland. We consider that this is not a scientific approach and will continue to lead to perverse outcomes, assuming positive outcomes for wetlands is the MfE's objective.

By redefining "induced" wetlands (which are defined) as "natural" you are automatically assuming induced wetlands have the same values and require the same protections (avoid). This removes any possibility of offsetting and mitigation, activities which can often lead to significant positive outcomes for induced wetland habitats with very low ecological value.

We would rather see the following:

"Natural" Wetlands – are easy for any experienced ecologist to identify and describe. They are wetlands formed by natural processes and with a natural hydrology. Irrespective of degradation these wetlands have the ability to be restored.

There is no argument that "natural wetlands should be buffered and protected. We accept they should have a higher level of statutory protection (e.g. non-complying status or prohibited).

For these wetlands the only requirement once they are identified, is for them to be accurately delineated.

"Induced "Wetlands –These are formed accidentally by human activity (some mechanisms are described in the NPS), and importantly include overflow of drains.

These wetlands may or may not have values. For many, as soon as the human activity that formed them ceases (i.e. they are 'protected') they will revert to their original form, which in many cases was forest.

We consider that assessment of this class of wetland should be allowed to confirm whether they have values, and whether they are capable of persisting. Many will be found after assessment to require continued human activity to maintain. These should not be 'significant' or 'natural'.

We suggest that they should be subject to a different statutory regime (e.g. restricted discretionary or discretionary) than "natural" wetlands (non-complying or prohibited). It should be possible, if it is found that they have values, to consider modification or loss with appropriate remedy, mitigation and/or offsetting.

"Constructed" Wetlands – These are formed intentionally for a purpose. We are generally comfortable with the current policies relating to this class of wetlands except that planting along a stream is "riparian" planting for the purpose of water quality and freshwater biodiversity is not the same as wetland restoration.

Exclusion (c)

(c) any area of ~~improved~~ pasture that~~, at the commencement date, is dominated by (that is more than 50% of)~~ has more than 50 percent ground cover comprising exotic pasture species or exotic species associated with pasture ~~and is subject to temporary rain-derived water pooling~~.

These changes would have the exclusion read as follows:

> "*Any area of pasture that has more than 50 percent ground cover comprising exotic pasture species and / or exotic species associated with pasture*"

The change to exclusion (c) makes this work much better. A pasture is a community (including a range of plants like creeping bent and creeping buttercup and other "wetland" tolerant plants which come with pasture in most cases but may not be grazed or managed to stay - but do stay - and until this change is made those plants which use to allow the triggering of the Clarkson dominance or / and prevalence indices and so were "forced" to be called natural wetlands, even when it was clear they were a grazed, managed vegetation community will continue to do so.

The proposed change to exclusion (c) is much more fit for purpose.

Agree with the change to exclusion (c) as much more fit for purpose Consider there should be clearer language around the nature of the wetlands which are rare (i.e. those that are indigenous dominated and representative) and that those are induced but valuable and those that are induced but not valuable, so that avoidance can be directed to the truly valuable and opportunity for offset, and so gains, for other wetland types.

Better provision for restoration, maintenance and biosecurity activities in natural wetlands.

Removing the need for consents to undertake restoration actions is sensible. Recognition of biosecurity actions and maintenance actions to enhance and protect natural wetland is likewise sensible. Both are good and appropriate changes.

MfE question	Response
include 'maintenance' within the regulations relating to 'restoration'?	Yes - because maintenance, especially in small wetlands surrounded by production landscapes or "waste" landscapes, is a crucial requirement to maintain or gain integrity and viability of the assemblage which we value. Maintenance prevents degradation by invasive weeds, sediment trapping etc.
amend the regulations relating to restoration and maintenance activities, so removal of exotic species is permitted, regardless of the size of the area treated, provided the general conditions listed in regulation 55 of the NES-F are met.	Yes - and with the care suggested.
allow activities that are necessary to implement a regional or national pest management plan or are undertaken by a biosecurity agency (which includes DOC, the Ministry for Primary Industries and regional councils) for biosecurity purposes, but with similar restrictions as those that apply to restoration activities, for example regulation 55	Yes - or else Councils could be viewed as failing their obligations in terms of weed and pest management. Needs to provide either for rapid response to novel biosecurity incursions, recent arrivals, or a fast tracking of the statutory process for not just known and present species of weed or predator or pathogen.
make the restoration and maintenance of a 'natural wetland' a permitted activity if it is undertaken in accordance with a council-approved wetland management strategy	Yes - so as to remove the time delays, cost, and administration around consent attainment. But provision of standards or guidance by councils would facilitate good outcomes.
make the use of weed clearance using hand-held tools a permitted activity	Yes – it is generally a careful and low risk method, only suitable for small areas.

Additional Consenting pathways

We support the provision of additional pathways which are assessed against the "gateway test" and the effects management hierarchy, including the ability to offset. However, we believe the limited ability to offset, afforded to a limited number of activities, is a lost opportunity in terms of the positive environmental outcomes and net gains that could be made for degraded indigenous wetlands and New Zealand's broader biodiversity outcomes.

Consenting pathways are a crucial tool to achieve biodiversity (including wetland) gains through the consenting process. Consenting is not simply a process for declining or approving proposals that affect the environment. The ability to offset is a critical means for managing the effects of activities on the environment, including the restoration, enhancement and long-term maintenance of degraded environments.

While there are sceptics of offsetting success (Brown et al. 2013), the gains over the last 10 years because of a consenting pathway that used mitigation and offset tools has been substantial in many regions.

Prohibited activities and natural wetlands – NES 53.

The prohibition only applies if drainage is to occur, but it should recognise differences in the type of drainage. While permanent drainage of natural wetlands should be prohibited, temporary drainage which, if managed carefully and for a short-term, does not impact on a wetland's integrity and survival.

Furthermore, if a natural wetland is identified as being of a rare indigenous representative natural wetland, then prohibition on activities with those features is entirely appropriate. If however, the process identifies a wide range of wetlands, such as exotic dominated, induced, features and production landscape regenerated opportunistic "natural" wetlands, that do not have the functions and values of indigenous wetlands, then the prohibited status is too absolute, overly restrictive and causes loss of opportunity for wetlands restoration and enhancement that we could gain through offsetting.

Additional activities to be provided a pathway is very good, if not far enough, because it brings effects management into play which brings otherwise unattainable gains in wetland condition and or abundance in lands otherwise unlikely to be managed or have restoration of indigenous wetland.

Proposed consenting pathways

Generally, we support the proposed consenting pathways for quarrying, landfills, mining and urban development. Both quarrying and mining activities (particularly recent ones) provide extensive ecological effects management and considerable, well adhered to, ecological offsets. Some of the more major gains in habitat recovery and protection, species protection and research into restoration come from mine offset programs (e.g. (Baber, King, and Robertson 2015), (Simcock and Ross 2017), (B. Clarkson et al. 2017) and others such as McCray's and Oceania gold projects.

In terms of landfills and urban developments, both provide critical services and with applying the effects management hierarchy, we consider these appropriate.