

The Māori Trustee's submission on the Exposure draft of proposed changes to the NPS-FM and NES-F (including wetland regulations)

July 2022



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Summary of Position

1. The Māori Trustee administers, as trustee or agent, nearly 90,000ha of Māori freehold land on behalf of approximately 100,000 individual Māori landowners. Te Tumu Paeroa is the organisation that supports the Māori Trustee to carry out her functions, roles and responsibilities. Detailed information regarding the Māori Trustee and Te Tumu Paeroa is set out in Appendix 1. Additional information can be found on Te Tumu Paeroa's website, www.tetumupaeroa.co.nz.
2. The views expressed in this submission are those of the Māori Trustee informed as the single largest administrator of Māori land. The sheer scale and varied nature of the Māori land we administer for approximately 100,000 beneficial owners necessarily means our views may not be shared by some of the owners of the land concerned. Further, and to labour the point, the Māori Trustee does not speak for or otherwise represent iwi, hāpu or other holders of Māori land, some of whom are likely to submit on the exposure draft.
3. The Māori Trustee's overall position is as follows. The Māori Trustee supports the intention of the proposed amendments in the exposure draft, namely to clarify some aspects of wetlands regulations, under the National Policy Statement for Freshwater Management 2020 (NPS-FM) and the National Environmental Standards for Freshwater 2020 (NES-F).
4. The Māori Trustee considers that while the proposed changes have provided some additional clarity regarding the implementation of wetlands regulations, further clarity is required, in particular with regard to certain definitions.

General Submission

5. In summary, the major concern the Māori Trustee has with the proposal is that there continues to be ambiguity within the definitions, which could undermine the fundamental principles of Te Mana o te Wai, and allow the policy to be open to challenge. For example the Māori Trustee considers:
 - That, the change from 'rivers' to 'river beds' will alter the effect of policy 7 and clause 3.24 of the NPS-FM, that the policy rationale for this change is unclear, and that without a clear definition of 'river beds' there could be confusion as regional councils develop rules and decisions could be open to challenge. The proposed wording can be interpreted to allow for all values of the river to be managed according to the effects management hierarchy. That interpretation would be inconsistent with Policy 1, Policy 5 and the fundamental principle of Te Mana o te Wai. The change to narrow 'river' to 'river bed' does not alleviate that interpretation issue.
 - That, to avoid interpretation disputes, or otherwise disadvantage the interests of Māori landowners, a new definition of 'deliberately constructed wetlands' is required, and the definitions of 'wetland' and 'pasture' require additional clarity.
 - That, a national/regional benefit test or a functional need test should apply to urban growth, landfill and cleanfill activities in or near wetlands.
 - That, Appendices 6 and 7 of the NPS-FM do not appropriately provide for Māori freshwater values, which are included in the list of values that must be considered for



wetlands and river bed extent. These values need to be identified at a hapū/iwi level to ensure they are specific to the local environment and culturally significant wetlands and river beds are recognised and provided for in the rohe.

6. Detail regarding these and other points are set out in the Specific Submission table below.



Specific Submissions

7. The specific submissions from the Māori Trustee are set out in Table 1 below.

Table 1

<p>General feedback on proposed amendments to wetland provisions</p>	<p>Q1 Are the amendments clearly drafted? Does the drafting achieve the intent of the amendments (as set out in the attached policy rationale document)? Are there unintended consequences of this drafting?</p>	<p>Partially support</p>	<p>The Māori Trustee considers the change from ‘rivers’ to ‘river beds’ will alter the effect of policy 7 and clause 3.24.</p> <p>A definition of a ‘river bed’ should be provided in the Sec 1.4 Interpretation of the NPS-FM, or a link provided to the RMA definition.</p> <p>The change from ‘rivers’ to ‘river beds’ does not address the potential for different interpretations of Policy 7 and clause 3.24.</p> <p>The proposed wording can be interpreted to allow for all values of the river to be managed according to the effects management hierarchy. That interpretation would be inconsistent with Policy 1, Policy 5 and the fundamental principle of Te Mana o te Wai. The change to narrow ‘river’ to ‘river bed’ does not alleviate that interpretation issue.</p> <p>The Māori Trustee submits that the wording of Policy 7 and clause 3.24 (1) of the NPS-FM be changed from “The loss of river bed extent and values is avoided” to: “the loss of the extent and values of the river bed is avoided to the extent practicable”.</p>
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<p>General feedback on other proposed amendments</p>	<p>Q2 What are your views on these proposed amendments? Are the proposed technical corrections clearly drafted? Does the drafting provide clarity on existing policies? Are there wider consequences of this drafting?</p>	<p>Partially support</p>	<p>The Māori Trustee considers there is a need to provide better definitions for:</p> <ul style="list-style-type: none"> • deliberately constructed wetlands • natural wetland • pasture. <p>Guidance notes are also required for specified surveying techniques should be included in the NPS-FM.</p> <p>Reasons and wording are provided below under the relevant “Amendment”.</p>
<p>Amendment 1: Definition of ‘natural wetland’</p>	<p>Q3 Are these proposed amendments clearly drafted?</p>	<p>Partially support</p>	<p>The Māori Trustee believes that a definition for “Deliberately constructed wetlands” needs to be provided.</p> <p>The terminology ‘deliberately constructed wetlands’ is not sufficiently clear to enable consistent interpretation. It could unintentionally be applied to a variety of situations where the intention is for the natural wetland definition to apply. For example, many wetlands or lakes with wetland margins have their levels artificially controlled by weirs. This deliberately controls the location and extent of the wetland, even though it would naturally occur in the same or a similar location. It is unclear whether the exclusion for ‘deliberately constructed’ would apply in those situations. The Māori Trustee submits it should not.</p> <p>Similarly, exclusion (b) refers to ‘deliberately constructed water body’. In-stream water detention dams are ‘deliberately constructed’ but affect a natural water body. The dam may impact where riparian wetlands form, even</p>



			<p>though those wetlands may form naturally. It may affect habitat for many kilometers upstream of the dam structure. It is unclear where the influence of ‘in or around’ a deliberately constructed water body ends. This should be clarified in the definition.</p> <p>The definition relies on an assessment of whether or not a threshold of 50% cover of pasture species is met. There are standard ecological sampling techniques that should be used to ascertain this.</p> <p>The Māori Trustee considers that an approved ecological surveying technique should be used to determine pasture land and that this should be included in the NPS-FM.</p> <p>The definition relies on whether or not threatened species are ‘known’ to be in the wetland. It is not clear who would be required to ‘know’ this and what level of evidence should be used to understand this. There is a risk that a lay person undertaking works in a wetlands doesn’t ‘know’ that threatened species exist, and that this is used as reason for the NES-FW regulations being unenforceable in that circumstance. Changing the burden of knowledge to require the person undertaking the works to find out if threatened species exist there would be a better approach than relying on their existing knowledge.</p> <p>The Māori Trustee’s view is that clause (d)(iii) of the definition of natural wetland be changed from “is not known to contain threatened species” to “<u>does not</u> contain threatened species.</p>
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			<p>The Māori Trustee considers there should be a more ecologically relevant approach to defining exclusions for wetlands in pasture. The current exclusions do not provide for important ecological functions that wetlands dominated by pasture provide.</p> <p>The following exclusions for wetland in pasture should be included in clause (d) of the definition of natural wetland:</p> <ul style="list-style-type: none">i. It is adjacent to lakes or other habitats of indigenous fauna, or;ii. It is important seasonal socialising and feeding habitat for water birds, or;iii. There are indigenous turf plant species present. <p>The Māori Trustee submits that “Pasture” in (d)(i) should be defined by reference to the list of ‘exotic pasture species’ in (ii).</p> <p>Alternatively, “pasture” could be replaced by a reference to ‘within production land’ as production land is defined by the RMA on the provision, an exclusion is stated to exclude forestry production land.</p>
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	<p>Are there unintended consequences of this drafting? In particular, we welcome your feedback on this list of ‘exotic pasture species’, in particular commentary on any missing species, and whether the list would work when applied in your region.</p>	<p>Support</p>	<p>The Māori Trustee considers the list of ‘exotic pasture species’ appears comprehensive.</p> <p>However, there may be regional variations in the types of species that are considered to comprise pasture. There should be provision for regional councils, working with their communities to add to that list.</p> <p>The Māori Trustee supports the inclusion of a pathway in the National list, for regional additions to be made.</p>
<p>Amendment 2: The tests of ‘national and/or regional benefit’ and ‘functional need’</p>	<p>Q4 Are these proposed amendments clearly drafted? Does the drafting achieve the intent of the amendments (as set out in the attached policy rationale document)? Are there unintended consequences of this drafting?</p>	<p>Oppose</p>	<p>The current drafting does not apply the national/regional benefit test or the functional need test to damage to wetlands for landfill, cleanfill or urban development.</p> <p>The Māori Trustee submits that both of these tests should apply. Wetlands have reduced to less than 10% of their historic extent, and provide numerous ecological and cultural values. Damage to them needs to be the exception, not the rule.</p>



<p>Amendment 4: New consent pathway for landfills and cleanfills</p>	<p>Q6 Are these proposed amendments clearly drafted? Does the drafting achieve the intent of the amendments (as set out in the attached policy rationale document)? Are there unintended consequences of this drafting?</p>	<p>Oppose</p>	<p>The Māori Trustee submits that the test of “functional need” be retained for tests for landfills and cleanfills.</p>
<p>Amendment 8: Include aquatic offset/compensation principles</p>	<p>Q10. Are these proposed amendments clearly drafted? Does the drafting achieve the intent of the amendments (as set out in the attached policy rationale document)? Are there unintended consequences of this drafting? Are these principles fit for purpose for aquatic offset/compensation? What weight should be given to these principles in the decision making by the consent authority?</p>	<p>Partially Support</p>	<p>The Māori Trustee supports the alignment of national direction with the NPS - Indigenous Biodiversity and best practice principles for offsetting and compensation.</p> <p>However, the framework in the NPS-FM provides for offsetting or compensation for values other than just biodiversity values.</p> <p>Of particular concern to the Māori Trustee is that the NPS-FM framework explicitly allows consideration of offsetting and compensation for Māori freshwater values. The offsetting and compensation principles need to include culturally appropriate consideration and guidance for these values. In particular Principle 2 in both Appendix 6 and 7 needs to acknowledge that some Māori freshwater values cannot be adequately offset or compensated for and offset and compensation should not be provided for in these circumstances.</p> <p>The Māori Trustee notes that Appendices 6 & 7 of the NPS-FM should be amended to provide guidance for when offsetting or compensation is being considered for Māori</p>



			<p>freshwater values, guidance on when offsetting or compensation is not appropriate, and/or provide for these principles to be identified at a hapū/ iwi level.</p> <p>The Māori Trustee considers that it is not appropriate for the applicants to simply 'have regard to' these principles. The principles are fundamental to deciding whether or not offsetting or compensation are appropriately applied, and that the offset or compensation is robust and adequate.</p> <p>The wording in 3.22(3)(b) should be changed to consent not to be granted unless the council is satisfied that the principles in Appendix 6 and 7 have been appropriately applied.</p>
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Conclusion

8. The Māori Trustee looks forward to the opportunity to discuss this submission with Ministry for the Environment officials.

9. Please contact [REDACTED]
[REDACTED]

For **Dr Charlotte Severne**
Māori Trustee



Appendices

Appendix A –

Who We Are

1. The Māori Trustee is appointed by the Minister for Māori Development under the Māori Trustee Act 1953. The role of the Māori Trustee, is to provide accurate and timely administration and management of whenua and other client assets in compliance with the principles and obligations of trusteeship and agency, and in accordance with the Māori Trustee Act 1953, Trusts Act 2019, Te Ture Whenua Māori Act 1993 and other legislation. The current Māori Trustee, Dr Charlotte Severne, was appointed for a three-year term in September 2018 and was re-appointed for a five-year term in October 2021.
2. Te Tumu Paeroa is the organisation that supports the Māori Trustee to undertake her functions, duties and responsibilities.
3. The Māori Trustee administers around 88,000 hectares of Māori freehold land, as well as general land and other interests and investments, on behalf of approximately 100,000 Māori Land owners.
4. A primary objective of The Māori Trustee, is to protect, utilise and grow the assets of our Māori land owners. The organisation provides land administration and professional trustee and agency services to one third of all Māori land trusts (over 1,700 trusts), as well as targeted development and sector-specific expertise. The organisation is involved in the management of a number of Māori enterprises and development projects.
5. The Māori Trustee currently employs 124 staff across five offices throughout New Zealand, with the Māori Trustee located in Te Whanganui-a-Tara. Our organisation is made up of, but not limited to, trust and property management, law, client services, and other specialist teams. Our employees are focussed on protecting and enhancing the whenua Māori that we have the privilege to administer on behalf of its landowners and their tipuna.
6. Te Tumu Paeroa is unique, in that it is the only nation-wide organisation that manages significant tranches of Māori land and assets on behalf of Māori landowners.

Our Vision and Priorities

7. Our vision is: *Ko Te Tumu Paeroa tēnei, te tauawhi nei, te taunaki nei, te tiaki nei ngā whenua Māori mō naianei, mō āpōpō hoki. Ensuring Māori land is protected and enhanced, now and for generations to come.*



Our vision requires a careful balance between protection of the whenua and taiao and enhancement of the whenua through a range of pathways, including commercial development.

8. Our purpose is to be a dedicated professional trustee service for Māori.
9. Our strategic priorities assist us to deliver on our vision and purpose:
 - a. Ensuring consistent delivery of professional trustee services.
 - b. Building trust and confidence across all of our engagements.
 - c. Demonstrating leadership in meeting new challenges to governance and administration of whenua Māori.
10. Our responsibility as trustee in the context of the Exposure draft of proposed changes to the NPS-FM and NES-F (including wetland regulations), is to ensure that the voices of the whenua that we are responsible for, and those landowners who whakapapa to that whenua, are heard and understood.

Our Portfolio

11. Our portfolio currently¹ consists of the following:
 - a. Number of trusts and other entities under administration – 1,751.
 - b. Number of hectares under management – 88,000.
 - c. Number of owner accounts maintained – 100,793.
 - d. Number of ownership interests – 252,580.
 - e. Number of leases administered – 1,732.
 - f. Client funds under management (market value) – \$ 133.2 million.
 - g. Māori Trustee equity – \$ 170.7 million.

Our Mahi

12. The Māori Trustee has the responsibility to ensure that the best interests and outcomes for Māori land owners are advanced by Te Tumu Paeroa's mahi.
13. Our core services are:
 - a. Administering trusts as responsible trustee, custodian trustee, and agent
 - b. Convening, running and recording proceedings of meetings of beneficial owners
 - c. Responding to requests for information
 - d. Consulting with advisory trustees and owners
 - e. Leasing property on behalf of owners and administering leases

¹ The Māori Trustee Annual Report 2021



- f. Collecting rent and managing arrears and bad debts
- g. Managing contracts for service entered into by trusts
- h. Managing and investing cash assets in the Common Fund
- i. Reporting to beneficial owners
- j. Acquiring and paying for goods and services
- k. Preparing financial statements and annual tax returns
- l. Keeping records for trusts we administer
- m. Making trust distributions to owners
- n. Administering grants and scholarships
- o. Making applications to the Māori Land Court
- p. Reviewing land use and considering, where appropriate, alternative land use options
- q. Developing and enhancing property and land management including Asset Management and Farm Environment Plans
- r. Managing and providing support services for the General Purposes Fund

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