

26 July 2022

Ministry for the Environment – Wetlands Team
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Tēnā koutou

**SUBMISSION ON EXPOSURE DRAFT OF PROPOSED CHANGES TO THE NPS-FM AND NES-F
(INCLUDING WETLAND REGULATIONS)**

1. The Dunedin City Council (DCC) welcomes the opportunity to submit on the exposure draft of amendments to the National Policy Statement for Freshwater Management 2020 (NPS-FM) and National Environmental Standards for Freshwater 2020 (NES-F).
2. The DCC would like to thank the Ministry for the Environment (MfE) for granting an extension to Thursday 28 July 2022.

Submission

3. The DCC supports the creation of discretionary activity status for activities and operations of landfills, cleanfills and other fills (fills) within, or within 100 meters of 'natural wetlands' under clause 45B of the NES-F.
4. The DCC generally supports the recognition of urban development in the National Policy Statement for Freshwater Management 2020 (NPS-FM), but submits that the NPS-FM should include a definition of 'urban development'.
5. The DCC does not support the application of the 'no practicable alternative location' test set out in clause 3.22(1)(c)(iv) to urban development and also in clause 3.22(1)(f)(iii) of the NPS-FM to fills.
6. The DCC does not support the creation of a discretionary consenting pathway for mines within natural inland wetlands.
7. To address these concerns, the DCC seeks:
 - a) the replacement of the 'no practicable alternative location' test in clauses 3.22(1)(c)(iv) and 3.22(1)(f)(iii) of the NPS-FM with a 'best practicable location' test; and
 - b) the inclusion of a definition of 'urban development' in the NPS-FM; and
 - c) the removal of the proposed clause 3.22(1)(e) from the NPS-FM.

Specific comments on the 'no practicable alternative location' test

8. As the DCC previously submitted in October 2021 on *Managing our wetlands*, 'discretionary' is the correct activity status for the activities and operations of fills within, or within 100 meters of 'natural wetlands' under clause 45B of the NES-F.

Specific comments on the 'no practicable alternative location' test

Urban development

9. The DCC submits that the 'gateway test' set out in clause 3.22(1)(c)(iv) of the NPS-FM is not appropriate for urban development.
10. Specifically, the DCC submits that the test in clause 3.22(1)(c)(iv) that "*there is either no practicable alternative location for the activity, or every other practicable location would have equal or greater adverse effects on a natural inland wetland*" (i.e., 'no practicable alternative location' test) is not suitable for urban development.
11. Urban expansion occurs at different locations within an urban area due to a wide range of factors. Examples can include intensification of existing areas, re-zoning or "up-zoning" of brownfield areas, and potentially greenfield areas. There will always be some practicable alternatives for urban development, however these alternatives may be less preferential for a range of reasons. On this basis, the DCC submits that it may be impossible to pass this test to demonstrate there is 'no practicable alternative location'.
12. The DCC also submits that the NPS-FM should include a definition of "urban development", given that this term does not have the same meaning as "urban environment" or "well functioning urban environment" – which are each defined in the National Policy Statement on Urban Development 2020 (NPS-UD) – updated May 2022.

Fills

13. Similarly, the DCC submits that the 'no practicable alternative location' test is also not appropriate as a 'gateway test' for fills and therefore should not be used in clause 3.22(1)(f)(iii) of the NPS-FM.
14. Decision-making on the location of fills involves the assessment of alternatives against criteria to identify the "best" or most preferable location. A requirement that there be "no practicable alternative location" is therefore too onerous and unlikely to be satisfied. There can often be alternative locations, but it is that they are often inferior.
15. The DCC notes that the Ministry for the Environment's *Report recommendations and summary of submissions: Managing our wetlands: Proposed changes to the wetlands regulations* (Recommendation Report) proposed that a council "must be satisfied that the location is the 'best practicable location' for the plan-enabled urban development, landfill, clean fill or managed fill to occur in"¹.
16. The Recommendation Report provided the following definition of 'best practicable location', to be included in the amended NPS-FM:

¹ Ministry for the Environment. 2022. Essential Freshwater Amendments: Report recommendations and summary of submissions: *Managing our wetlands: Proposed changes to the wetlands regulations*. Wellington: Ministry for the Environment, p.35.

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 the 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.

17. However, the *Policy rationale for exposure draft amendments 2022* states that the recommended 'best practicable location' test was "modified during drafting" and the exposure drafts now use the 'no practicable alternative location' test².

18. The DCC submits that if a 'gateway test' is to be applied to fills, the DCC supports the 'best practicable location' test as set out in the Recommendation Report. The DCC believes that, for the reasons set out above, the 'no practicable alternative location' test will not be workable.

Opposition to mines in natural inland wetlands

19. The DCC does not support the provision of a discretionary consent pathway for mines within natural inland wetlands.

20. The DCC submits that the 'national and/or regional benefit' and 'functional need' tests are insufficient to justify the potential environmental destruction or loss of natural inland wetlands that can occur from mining and the extraction of minerals.

21. The DCC notes the management of effects of mineral extraction through the effects management hierarchy is not consistent with policy 6 of the NPS-FM; which states 'there is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted'. To encourage consistent application of policy 6 of the NPS-FM and prevent the loss or destruction of natural inland wetlands by mining, the DCC suggests the removal of the proposed discretionary consent pathway for mines in natural inland wetlands.

Concluding remarks

22. Thank you for the opportunity to submit on the exposure draft of amendments to the NPS-FM and the NES-F.

² Ministry for the Environment. 2022. Managing our wetlands: Policy rationale for exposure draft amendments 2022. Wellington: Ministry for the Environment, p.14.

Nāku noa nā

A handwritten signature in black ink, appearing to read 'Aaron Hawkins', written in a cursive style.

Aaron Hawkins
MAYOR OF DUNEDIN