



AGENDA

Ordinary Council meeting Tuesday, 26 October 2021

I hereby give notice that an Ordinary Meeting of Council will be held on:

Date: Tuesday, 26 October 2021

Time: 10.30am

**Location: Tauranga City Council
Council Chambers
91 Willow Street
Tauranga**

Please note that this meeting will be livestreamed and the recording will be publicly available on Tauranga City Council's website: www.tauranga.govt.nz.

**Marty Grenfell
Chief Executive**

Terms of reference – Council

Membership

Chairperson	Commission Chair Anne Tolley
Members	Commissioner Shadrach Rolleston Commissioner Stephen Selwood Commissioner Bill Wasley
Quorum	<u>Half</u> of the members physically present, where the number of members (including vacancies) is <u>even</u> ; and a <u>majority</u> of the members physically present, where the number of members (including vacancies) is <u>odd</u> .
Meeting frequency	As required

Role

- To ensure the effective and efficient governance of the City
- To enable leadership of the City including advocacy and facilitation on behalf of the community.

Scope

- Oversee the work of all committees and subcommittees.
- Exercise all non-delegable and non-delegated functions and powers of the Council.
- The powers Council is legally prohibited from delegating include:
 - Power to make a rate.
 - Power to make a bylaw.
 - Power to borrow money, or purchase or dispose of assets, other than in accordance with the long-term plan.
 - Power to adopt a long-term plan, annual plan, or annual report
 - Power to appoint a chief executive.
 - Power to adopt policies required to be adopted and consulted on under the Local Government Act 2002 in association with the long-term plan or developed for the purpose of the local governance statement.
 - All final decisions required to be made by resolution of the territorial authority/Council pursuant to relevant legislation (for example: the approval of the City Plan or City Plan changes as per section 34A Resource Management Act 1991).
- Council has chosen not to delegate the following:
 - Power to compulsorily acquire land under the Public Works Act 1981.
- Make those decisions which are required by legislation to be made by resolution of the local authority.
- Authorise all expenditure not delegated to officers, Committees or other subordinate decision-making bodies of Council.
- Make appointments of members to the CCO Boards of Directors/Trustees and representatives of Council to external organisations.
- Consider any matters referred from any of the Standing or Special Committees, Joint Committees, Chief Executive or General Managers.

Procedural matters

- Delegation of Council powers to Council's committees and other subordinate decision-making bodies.
- Adoption of Standing Orders.
- Receipt of Joint Committee minutes.
- Approval of Special Orders.
- Employment of Chief Executive.
- Other Delegations of Council's powers, duties and responsibilities.

Regulatory matters

Administration, monitoring and enforcement of all regulatory matters that have not otherwise been delegated or that are referred to Council for determination (by a committee, subordinate decision-making body, Chief Executive or relevant General Manager).

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- 1 OPENING KARAKIA**
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- 5 CONFIDENTIAL BUSINESS TO BE TRANSFERRED INTO THE OPEN**
- 6 CHANGE TO THE ORDER OF BUSINESS**

7 CONFIRMATION OF MINUTES

7.1 Minutes of the Council meeting held on 4 October 2021

File Number: A12995730

Author: Robyn Garrett, Team Leader: Committee Support

Authoriser: Robyn Garrett, Team Leader: Committee Support

RECOMMENDATIONS

That the Minutes of the Council meeting held on 4 October 2021 be confirmed as a true and correct record.

ATTACHMENTS

1. Minutes of the Council meeting held on 4 October 2021



MINUTES

**Ordinary Council meeting
Monday, 4 October 2021**

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MINUTES OF TAURANGA CITY COUNCIL

**ORDINARY COUNCIL MEETING
HELD AT THE TAURANGA CITY COUNCIL, COUNCIL CHAMBERS, 91 WILLOW STREET,
TAURANGA
ON MONDAY, 4 OCTOBER 2021 AT 10.30AM**

PRESENT: Commission Chair Anne Tolley, Commissioner Shadrach Rolleston, Commissioner Stephen Selwood, Commissioner Bill Wasley

IN ATTENDANCE: Marty Grenfell (Chief Executive), Paul Davidson (General Manager: Corporate Services), Barbara Dempsey (General Manager: Regulatory & Compliance), Susan Jamieson (General Manager: People & Engagement), Nic Johansson (General Manager: Infrastructure), Christine Jones (General Manager: Strategy & Growth), Gareth Wallis (General Manager: Community Services), Carlo Ellis (Manager: Strategic Māori Engagement), Anne Blakeway (Manager: Community Partnerships), Josephine Meuli (Council Controlled Organisation Specialist), Mohan De Mel (Treasurer), Emma Joyce (Policy Analyst), Kathryn Sharplin (Manager: Finance), Cathy Davidson (Manager: Directorate Services), Kelvin Hill (Manager: Water Infrastructure Outcomes), Jeremy Boase (Manager: Strategy & Corporate Planning), Alistair Talbot (Team Leader: Transport Strategy & Planning), Brendan Bisley (Director of Transport), Gert van Staden (Senior Strategic Advisor), Brigid McDonald (Manager: Strategic Investment & Commercial Facilitation), Jenna Quay (Events Facilitation Manager), Fiona Nalder (Strategic Advisor), Emma Cottin (Strategic Community Relations Advisor), Pete Mouldey (Advisor: Active Reserves), Coral Hair (Manager: Democracy Services), Robyn Garrett (Team Leader: Committee Support).

1 OPENING KARAKIA

Carlo Ellis, Manager: Strategic Māori Engagement, provided a karakia.

2 APOLOGIES

Nil

3 PUBLIC FORUM

3.1 John Robson – Three Waters Reform

Key points

- Considered that Council was in a very difficult situation. Agreed there were some issues with water infrastructure but considered the Three Waters reform as proposed was not the right solution.
- Noted that the Commissioners had been criticised for failing to communicate with the community clearly on Three Waters.
- Considered that Council was let down by Local Government New Zealand (LGNZ) in that the heads of agreement signed was unacceptable and committed LGNZ before councils had completed their own due diligence.
- A significant part of the Three Waters discussion was a finance discussion; requested that independent financial advice be commissioned to analyse and assess the government's Three Waters proposal, and that this information be provided to the Tauranga community.

- Peer review had raised a number of issues with the assumptions used in the Water Industry Commission for Scotland's report. Suggested the Welsh water model was more appropriate than the Scottish water model.

In response to questions

- Noted that the Three Water reforms were government reforms not Council reforms and that central government had a responsibility to inform the public. Councils had been asked to provide feedback on how the proposed reforms would affect their communities; the TCC feedback report was being tabled at today's meeting.
- It was intended to get independent financial analysis of the government's final proposal when it was available.

3.2 Te Pio Kawe – development contribution grants

Key points

- Opportunity to support Māori land trusts with their aspirations to provide affordable safe homes on whenua by providing grants for development contributions.
- The new policy provides a discretion for Council to support papakāinga housing both for upcoming development and retrospectively.
- Reweti and Te Pere Whānau Trust had followed all guidelines and met all criteria for development of papakāinga housing. Outlined the history of the application and consent processes and the proposal for support of development contributions. There had been an ongoing relationship with Tauranga City Council.
- The Trust proposal was to develop 45 house lots in several stages. Development contributions of \$14,000 per house were a significant barrier to provision of quality whare; the money used to pay development contributions could have been used to fund better quality housing.

In response to questions

- Council could consider, on a case-by-case basis, retrospective application of the policy to development contributions already paid in papakāinga housing.

4 ACCEPTANCE OF LATE ITEMS

RESOLUTION CO18/21/1

Moved: Commissioner Bill Wasley

Seconded: Commissioner Shadrach Rolleston

That the Council:

Accepts the following late item for consideration in the public excluded session of this meeting:

- Direct Appointment – Elizabeth Street carpark

The above item was not included in the original agenda because it was not available at the time the agenda was issued, and discussion cannot be delayed until the next scheduled meeting of Council because a decision is required in regard to this item.

CARRIED

5 CONFIDENTIAL BUSINESS TO BE TRANSFERRED INTO THE OPEN

Nil

6 CHANGE TO THE ORDER OF BUSINESS

Nil.

7 CONFIRMATION OF MINUTES

7.1 Minutes of the Council meeting held on 13 September 2021

RESOLUTION CO18/21/2

Moved: Commissioner Bill Wasley

Seconded: Commissioner Stephen Selwood

That the minutes of the Council meeting held on 13 September 2021 be confirmed as a true and correct record, with the following amendment:

- That Item 11.1, bullet point 5 under “In response to questions” be amended with the addition of the words “*subsequent to a meeting between elected members*” to read “It had been agreed subsequent to a meeting between elected members with tangata whenua in August 2020...”

CARRIED

7.2 Minutes of the Council meeting held on 12 July 2021

RESOLUTION CO18/21/3

Moved: Commissioner Shadrach Rolleston

Seconded: Commissioner Stephen Selwood

That the minutes of the Council meeting held on 12 July 2021 be confirmed as a true and correct record.

CARRIED

8 DECLARATION OF CONFLICTS OF INTEREST

Nil

9 DEPUTATIONS, PRESENTATIONS, PETITIONS

Nil

10 RECOMMENDATIONS FROM OTHER COMMITTEES

10.1 Waiāri Kaitiaki Advisory Group - recommendations on an updated Terms of Reference and appointment of Co-Chair

Staff Commissioner Wasley spoke to the recommendation

Key points

- The changes to the Terms of Reference and creation of Co-Chairs was the result of a number of discussions formally and informally with the Waiāri Kaitiaki Advisor Group and provided clarity around a number of governance processes for the Advisory Group.

In response to questions

- It was confirmed that Western Bay of Plenty District Council had passed the recommendations unchanged at their recent Council meeting.

RESOLUTION CO18/21/4

Moved: Commissioner Bill Wasley

Seconded: Commission Chair Anne Tolley

That the Council:

- (a) Receives the report “Waiāri Kaitiaki Advisory Group – recommendations on an updated Terms of Reference and appointment of Co-Chair”;
- (b) Approves the recommendations of the Waiāri Kaitiaki Advisory Group on 15 September 2021:
 - (i) Agrees to a Co-Chairing arrangement for the Waiāri Kaitiaki Advisory Group.
 - (ii) Approves the following Co-Chairs selection process to be included in the Terms of Reference:
 - Co-Chairs will be appointed every three years in alignment with the local government election cycle. The appointments will take place as soon as is reasonably practical following local government elections.
 - The Co-Chair representing the consent holder will be appointed by the Tauranga City Council and Western Bay District Council.
 - The Co-Chair representing iwi/hapū will be appointed by the iwi/hapū representatives.
 - (iii) Adopts the updated Terms of Reference for the Waiāri Kaitiaki Advisory Group as set out in Attachment 1, subject to amendments on how Co-Chairs are to be selected and amendments to the quorum requirements as follows:
 - Two representatives from the consent holders and two representatives from iwi/hapū including one of the Co-Chairs. However, where a major decision is required, the quorum will be one representative from each entity. The Bay of Plenty Regional Council representative is not counted towards quorum.
 - (iv) Recommends to the consent holders (Tauranga City Council and Western Bay of Plenty District Council) that the updated Terms of Reference for the Waiāri Kaitiaki Advisory Group be approved.
 - (v) Adopts the position description for the Co-Chairs as set out in Attachment 2.
 - (vi) Notes that a holistic conversation on the future governance of the Waiāri Stream will be commenced.
- (c) Appoints Commissioner Shadrach Rolleston as the Co-Chair of the Waiāri Kaitiaki Advisory Group representing the consent holders (Tauranga City Council and Western Bay of Plenty District Council).

CARRIED

11 BUSINESS**11.1 Council-Controlled Organisations' Draft and Final Annual Reports for 2020/2021**

Staff Josephine Meuli, Council Controlled Organisation Specialist
Anne Blakeway, Manager: Community Partnerships

A copy of the presentations and tabled documents for this item can be viewed on Tauranga City Council's website in the Minutes Attachments document for this meeting.

Bay Venues Limited (BVL) – Adam Ellmers, Interim Chief Executive; and Simon Clarke, Chair.

Key points

- Kaitiaki of community facilities; aim to improve quality of life for Tauranga residents.
- 351 employees; BVL was developing a strong recruitment and retention policy.
- Outlined the facilities managed across the city and summarised the highlights of the year.
- A particular highlight was taking part in the healthy school lunches programme, BVL was the biggest provider in the Bay. An unused kitchen had been converted to provide the service and 33 new jobs created.
- The new governance board was in place and provided a good mix of skills around the table. A key focus was to look at ways to align better with TCC e.g. strategic alignment around investments; co-branding and use of community facilities.
- Noted the challenges with particular areas of staffing such as pool lifesavers and other seasonal jobs. The Board planned to implement the living wage for all staff, which would add about \$500,000 per year to operational expenditure.
- Highlighted the challenges around holding events this summer with COVID.
- Noted several key risks identified for BVL – the continuing impact of COVID; health, wellness and safety; cyber security; and financial risk.

In response to questions

- Some co-branding “quick wins” were currently being worked on; but there was a bigger conversation about what Brand Tauranga could look like which needed collaboration with various entities.
- Recruitment challenges such as with the aquatic centres were being addressed, with new pathways being developed with school leavers and career progression opportunities within BVL. The idea was to build a pool of talented workers that could fill a variety of roles within BVL.
- There was some risk of not winning the re-tender for the lunch programme. BVL was currently the service provider to 10 schools; however, some schools were looking to move the service inhouse. The government was not keen to change these contracts often; the key thing would be to continue to provide a good service. The income from the programme was useful to have as an over and above to baseline revenue streams.

BOPLASS - Stephen Boyle, Chief Executive Officer; and Craig O'Connell, Independent Director (via video conference).

Key points

- BOPLASS was a small organisation, with only 2.5FTE. Return on investment was 4-6 times the council contributions, and primarily achieved through purchasing arrangements.
- Running one procurement process for all councils provided purchasing benefits and staff savings.
- Three experienced and developed LASSes in NZ worked together cooperatively, with each having developed its own area of expertise. The organisations were increasingly being approached by other councils, with the idea of collaboration gaining traction.
- Noted that the Annual Report was a draft; delays with the auditors meant the final report would be delivered by December. It had been a successful year for BOPLASS in spite of various challenges.
- Key projects undertaken included: the collective insurance programme; debt recovery services; a collaborative project for courier and postal services; the LIDAR and aerial imagery projects.

In response to questions

- Business limitation was the size of the organisation; to develop and implement further collaborative projects and initiatives would require extra resourcing. BOPLASS was not the

only collaborative opportunity available to councils.

Tauranga Art Gallery Trust (TAGT) - Stephen Cleland, Director; and Rosemary Protheroe, Chair.

Key points

- The Tauranga Art Gallery was launched in 2007 and has developed a national reputation for delivering class exhibitions and events.
- While TCC was the Gallery's most important stakeholder, the Trust had worked hard to maintain and develop close relationships with all stakeholders.
- It had been an active and busy year for the Gallery, featuring the best of contemporary art with high calibre exhibitions delivered for Tauranga audiences. Noted the review of the Gallery by the international magazine Artforum.
- The Gallery had exceeded reduced expectation (due to COVID impacts) visitation targets. Two touring exhibitions attracted over 60,000 visitors.
- Achieved the target of over 7500 school attendees for the Gallery's education programmes, and enabled access to a broader range of students across the region with significant numbers of schools using the Art Bus.
- The Statement of Intent financial targets were impacted by COVID, with \$100,000 less revenue from forecasted targets. There had been some offset from an increase in retail shop sales.
- The Gallery was partnering with Council to investigate how cultural organisations impacted the city and the value delivered to the community by these organisations.
- The Art Gallery Foundation was a relatively new entity with a focus on supporting the long-term ambitions of the Gallery; looking to build on some seed investments to establish a larger funding pool that could be used for larger structural changes.
- The Gallery primarily focused on temporary exhibitions; there were only modest facilities to house a permanent collection.

In response to questions

- The average annual visitor rate prior to COVID in the strongest years was about 70,000; this year's visitor count was 42,000. Noted that over 20% of pre-2019 attendances were international tourists. The Gallery needed to work on synergies and connections with other events being put on around the city e.g. the Arts Festival.

Tourism Bay of Plenty (TBOP) - Oscar Nathan, General Manager; and Laurissa Cooney, Chair.

Key points

- A key aim of Board was to develop more collaborative opportunities. The leadership advisory group was launched this year to bring different sector groups together.
- Outgoing CEO Kristin Dunne was acknowledged for her leadership and contribution to the organisation.
- TBOP had taken a leadership role in the development and uptake of destination management. Destination management involved adopting a position that was best for the destination and for both the people living in the region and those visiting.
- Regenerative tourism space was a real opportunity for the Bay.
- Challenges faced during the year included the loss of international visitors and the Auckland lockdown. Reorganisation and resourcing constraints were being addressed. 32 out of 48 KPIs were achieved; these had been impacted by COVID and closure to international visitors.
- Noted that the I-site network was being restructured which would have an impact on Tauranga.
- Highlights included the launch of Te Whānau Tāpoi Māori o Tauranga Moana as a collective of operators working across the region to elevate the Bay's Māori cultural tourism; domestic marketing – websites, social media, advertising campaign; "Flavours of Plenty" theme and events to showcase the region's food and horticulture reputation.
- Noted the Regional Events Fund with funding for 15 events in the Bay confirmed.
- Cruises would not happen over this summer; problematic in that 75% of the rest of the world had resumed cruises, NZ/Australia/South Pacific needed to catch up.

In response to questions

- STAPP funding of \$700,000 supported five key areas which were clearly laid out in the organisational reporting. The biggest challenge with this funding was that the funding would not continue so needed to make best bang for bucks while available.
- Leadership Advisory Group outcomes included mapping strategic objectives to see where TBOP could align with other organisations and entities, looking for overlapping objectives and then working collaboratively to deliver. One identified area was Cruise which included Priority1 and the Port of Tauranga.
- Noted the work Council was doing on a number of cultural sites across the city. TBOP was launching an ambassador programme in the next six months to gather the region's authentic stories.

Local Government Funding Authority (LGFA) – Mohan de Mel, Treasurer.**Key points**

- LGFA had experienced another good year.
- Outlined LGFA structure and dividend payment.
- Noted debt level and the varying amounts lent to councils.
- Noted the uncertainty for local government around the financial and structural impacts of Three Waters reforms.

Discussion points raised

- Of the councils that had not joined LGFA, several had no borrowing. Otago was now close to joining.

RESOLUTION CO18/21/5

Moved: Commissioner Bill Wasley

Seconded: Commissioner Stephen Selwood

That the Council receives the Council-controlled organisations' draft and final annual reports for 2020/2021.

CARRIED

Attachments

- 1 Presentation - Annual Report 2020-21 Bay Venues Ltd
- 2 Presentation - Annual Report 2020-21 Tauranga Art Gallery Trust
- 3 Presentation - Annual Report 2020-21 Tourism BOP
- 4 Tabled item - Bay Venues Ltd Annual Report 2021-21

11.2 Approval to use oxadiazon (oxa-pro) at Blake Park Summer 2021/2022

Staff Emma Joyce, Policy Analyst; Pete Mouldey, Advisor: Active Reserves

External Dr Ian McLean, Toxic Agrichemicals Advisory Forum (TAAF)

A copy of the TAAF presentation for this item can be viewed on Tauranga City Council's website in the Minutes Attachments document for this meeting.

Key points

- Noted an inconsistency in the report regarding the timing of the application of oxadiazon to

Blake Park, which could be interpreted as multiple applications being possible, although that was not what was intended.

- TAAF was well consulted on the oxadiazon trials and had received the reports; but considered the reports were inadequate and did not address the issues.
- TAAF was concerned that there would be remnants of the chemical remaining in the soil.
- TAAF considered it necessary to take a precautionary position and could not move forward to support another trial. Support of previous trials did not necessarily mean that a further trial would be supported.
- Noted that Council had always treated TAAF with respect and heeded its recommendations.
- TAAF considered the proposal was not clear on methodology, timeframe and procedural constraints. The primary issue was one of process – TAAF was sidestepped due to timing.
- Issuing warnings to players would not really address the problem as the level of exposure to the chemical residual in the soil was very difficult to predict.

In response to questions

- Clarified that the request was for a single application for this summer season, which would be applied as soon as possible if permission was granted.
- Bay Oval itself was kept to a stadium standard; very little weed was present so it could be removed piece by piece.
- NZ Cricket had a list of recommended agrichemicals for use on cricket grounds, which included oxadiazon.

Discussion points raised

- Council would normally respect the proper process; but had been caught by the requirements of the international tournament and the impact of COVID.

RESOLUTION CO18/21/6

Moved: Commission Chair Anne Tolley

Seconded: Commissioner Bill Wasley

That the Council:

- (a) Receives the report and acknowledges the late notice by New Zealand Cricket (NZC) for the requirement to upgrade the community sports field facility at Blake Park to stadium standard for the purposes of supporting the ICC Women's Cricket World Cup;
- (b) Approves a single use application of oxadiazon (oxa-pro) at Blake Park as soon as practicable;
- (c) Advises NZC that oxadiazon has been applied to Blake Park's community sports field facility;
- (d) Acknowledges the feedback received from TAAF and notes the normal consultation process has not been completed in this instance.

CARRIED

Attachments

- 1 TAAF presentation - application for oxadiazon Oct 2021

At 12.55pm the meeting adjourned.

At 1.35pm the meeting reconvened, and moved into public excluded session for Agenda Item 13.3.

13 PUBLIC EXCLUDED SESSION

RESOLUTION TO EXCLUDE THE PUBLIC

RESOLUTION CO18/21/7

Moved: Commissioner Shadrach Rolleston

Seconded: Commissioner Bill Wasley

That the public be excluded from the following parts of the proceedings of this meeting, with the exception of Jesse Phillips and Andrew Wade, from KPMG (attending by video link), who are permitted to remain at this meeting after the public has been excluded, because of their knowledge of property sales contracts and negotiation experience.

The general subject matter of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48 of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48 for the passing of this resolution
13.3 - Sale of the Elder Housing Portfolio to Kāinga Ora: Homes and Communities	s7(2)(i) - The withholding of the information is necessary to enable Council to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)	s48(1)(a) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7

CARRIED

The open session of the meeting resumed with Agenda Item 11.3.

11.3 Executive Report

Staff Marty Grenfell, Chief Executive
 Gareth Wallis, General Manager: Community Services
 Nic Johansson, General Manager: Infrastructure Services
 Susan Jamieson, General Manager: People & Engagement
 Barbara Dempsey, General Manager: Regulatory & Compliance
 Paul Davidson, General Manager Corporate Services
 Christine Jones, General Manager: Strategy & Growth

Key points

- The report was taken as read and any questions would be directed to the appropriate General Manager as required.

RESOLUTION CO18/21/8

Moved: Commissioner Stephen Selwood
 Seconded: Commissioner Shadrach Rolleston

That the Council:

- (a) Receives the Executive Report;
- (b) Rescinds the recommendation from 27 October 2020, to remove the tree outside 15 Lavender Place.

CARRIED**11.4 Approval of Temporary Alcohol-Free Areas for the summer period**

Staff Jenna Quay, Events Facilitation Manager
 Emma Joyce, Policy Analyst

RESOLUTION CO18/21/9

Moved: Commissioner Bill Wasley
 Seconded: Commissioner Stephen Selwood

That Council:

- (a) In accordance with section 147B of the Local Government Act 2002, agrees that the proposed temporary alcohol-free areas are appropriate and proportionate in the light of the evidence; and justified as a reasonable limitation on people's rights and freedoms.
- (b) Resolves under clause 8 of the Alcohol Control Bylaw 2018 to implement a temporary alcohol-free area between the hours of 9pm and 7am for all beaches, reserves and public places on the seaward side of Marine Parade (eastwards from its intersection of Grove Avenue), Oceanbeach Road and Maranui Street and Surf Road from 24 October 2021 to 3 April 2022.
- (c) Resolves under clause 8 of the Alcohol Control Bylaw 2018 to implement the temporary alcohol-free areas as follows:

Fergusson Park	Fergusson Park including Tilby Drive from the intersection of Tainui Street and Waratah Street (all inclusive) from 10am, 31 December 2021 to 6am, 1 January 2022.
Gordon Spratt Reserve	Gordon Spratt Reserve and Alice Way (all inclusive) and Parton Road (between Tara Road and Papamoa Beach Road) from 10am, 31 December 2021 to 6am, 1 January 2022.
Tauranga Racecourse Reserve	Tauranga Racecourse Reserve from 10am, 31 December 2021 to 6am, 1 January 2022.

- (d) Clarifies that during the period from 26 December 2021 to 6am on 6 January 2022, a temporary alcohol-free area is in place, 24 hours a day, seven days a week, for:
 - (i) All beaches, reserves and public places on the seaward side of Marine Parade (eastwards from its intersection of Grove Avenue to its intersection of Tweed Street);
 - (ii) Omanu Surf Club and car park area; and
 - (iii) Waiariki Street.

CARRIED

11.5 Amended Temporary Road Closure Report

Staff Brendan Bisley, Director of Transport
Jenna Quay, Events Facilitation Manager

RESOLUTION CO18/21/10

Moved: Commissioner Shadrach Rolleston

Seconded: Commissioner Bill Wasley

That the Council:

- (a) Receives the report of Amended Temporary Road Closure Report.
- (b) Pursuant to Clause 11(e) of the Tenth Schedule of the Local Government Act 1974, grants approval to close the roads listed below to ordinary vehicular traffic on the dates and during the hours stated for the purposes of facilitating safe and successful operations during the following events in Tauranga.

CARRIED

11.6 Three Waters Reform - Report on the Government's Proposal

Staff Marty Grenfell, Chief Executive
Paul Davidson, General Manager: Corporate Services
Nic Johansson, General Manager: Infrastructure Services
Kathryn Sharplin, Manager: Finance

A copy of the tabled document for this item can be viewed on Tauranga City Council's website in the Minutes Attachments document for this committee meeting.

Key points

- There was a lack of understanding in the community about why the reforms were needed; this void was being filled by misinformation. Tauranga water assets were generally well-maintained and functional; TCC was one of the top five councils in the country for provision of three waters services.
- No case for change had been adequately proposed by central government. No details were provided regarding how the interests of the ratepayers will be reflected in the proposed regional water manager Entity B; or on how the people of Tauranga that had paid and invested in water infrastructure would be represented or have any influence in the governance of the new entity.
- The commissioners emphasised that when the time came for the decision for Tauranga to be involved or not, there would be a full public consultation process.
- Noted that there were communities around the country who could not know if their drinking water was safe. Councils had been asked to provide data and analyse the government's proposal; and provide feedback back to government.
- Existing levels of service would become increasingly costly due to increased rain events, changing national standards, management of environmental effects, climate conditions such as droughts and the move towards a low carbon economy.
- While it was clear that there would be significant impact on financial management for TCC, there were currently too many unknowns to quantify financial implications thoroughly.

Discussion points raised

- Noted the risks and uncertainties in the current proposal.
- The new water service regulator would manage administration and enforcement in terms of waters. There were a number of councils around the country that did not comply with current

standards and consents, standards needed to rise.

- The role and influence of local communities in the four water entities was not known.
- Council was not yet at a decision point but at the point of providing feedback to the central government to explain the views and concerns of the Tauranga community.

RESOLUTION CO18/21/11

Moved: Commissioner Bill Wasley

Seconded: Commissioner Shadrach Rolleston

That the Council:

- (a) Receives the report Three Waters Reform – Report on the Government's Proposal;
- (b) Notes the key implications for Tauranga City Council of the Three Waters Reform;
- (c) Approves the Tauranga City Council's response to the Minister of Local Government as tabled at the meeting; and
- (d) Makes both the agenda report and the tabled item – Feedback Report – available on the Three Waters section of the TCC website.

CARRIED

Attachments

- 1 Tabled item - Three Waters reform feedback

11.7 City Centre Development Incentive Fund

Staff Christine Jones, General Manager: Strategy and Growth
Jeremy Boase, Manager: Strategy & Corporate Planning

Key points

- Clarified that the recommendation covered both the city centre and the wider city living zone.
- Need to include possible collaboration with other educational providers as well as the University of Waikato.

In response to questions

- The framework refers to dwelling units; it was intended that student accommodation would be captured by the term "dwelling units".

RESOLUTION CO18/21/12

Moved: Commissioner Bill Wasley

Seconded: Commissioner Stephen Selwood

That the Council:

- (a) Agrees that the City Centre Development Incentive Fund be used to investigate and further understand the feasibility of residential accommodation developments in the city centre and wider city living zone; and
- (b) Adopts the draft City Centre Development Incentive Fund Framework as appended, with the inclusion of other education providers at Attachment 1;
- (c) Revokes part resolution CO12/21/6 as follows “(b) *Creates a \$500,000 City Centre Development Incentive Fund. with a range of criteria that can target the costs of development, especially promoting affordable residential development, covering the likes of development contributions, consenting fees, parking fees during development and public amenity in the vicinity of developments (Option 6).*”

CARRIED

11.8 National Land Transport Programme 2021-24 release - Update

Staff Alistair Talbot, Team Leader: Transport Strategy & Planning
Brendan Bisley, Director of Transport

Key points

- The report provided an update on the release of the National Land Transport Programme (NLTP) by Waka Kotahi, the Urban Form and Transport Initiative (UFTI) and the Transport System Plan (TSP).
- TCC submitted projects had been classified as either committed, approved or probable activities.
- Noted key corridor projects business cases; considerable investment was signalled.
- Next stage of work was focussed on delivery.

Discussion points raised

- The Commission thanked staff for their work developing the Waka Kotahi business cases.
- Considered that the funding mechanisms available were inadequate to fund the infrastructure needed by a growing city like Tauranga.

RESOLUTION CO18/21/13

Moved: Commissioner Bill Wasley

Seconded: Commissioner Stephen Selwood

That the Council receives the report “National Land Transport Programme 2021-2024 Release Update”.

CARRIED

11.9 Council Objectives and Role in Housing and Urban Development of Council Land

Staff Christine Jones, General Manager: Strategy and Growth
Andy Mead, Manager: City & Infrastructure Planning

Key points

- Housing Action Plan – highlighted that there was not enough land supply in the city. Some land was council-owned and could be made available but there was no overall strategic direction around how to best utilise land to make available for urban development. There were a range of options available to proceed with development of land; the report recommended that council did not develop land itself but either sold the land or worked in partnership for development.
- Council could choose to use land for community facilities – all factors should be considered when deciding if a particular piece of land should be made available for housing.

RESOLUTION CO18/21/14

Moved: Commissioner Bill Wasley

Seconded: Commissioner Stephen Selwood

That the Council:

- (a) Approves the following objectives where Council decides to utilise Council-owned land for housing and urban development purposes:
 - (i) Enabling and supporting the increase of public and private housing supply, including affordable housing and a range of housing types, for example social or elder housing, to meet community need;
 - (ii) Facilitating a change in greenfield development in Tauranga away from a traditional model of single level detached housing toward a model of medium density master planned development with variation in housing choice and typology;
 - (iii) Recognising cultural connections with the land, supporting cultural values and working collaboratively with mana whenua;
 - (iv) Supporting quality urban development and thriving communities. Plans that consider sustainability (including carbon emissions), the integration of public transport networks, and community facilities to support urban growth in the area will be key to any future development;
 - (v) Achieving prudent financial returns from the development and/or sale of property while appropriately balancing risk and achievement of broader outcomes.
 - (vi) Reinvesting funds received through the development of land currently owned by Council into other strategic purposes including housing projects and initiatives aligned with the objectives above.
- (b) Notes the intent to explore, on a site-by-site basis, the role of Council as vendor and/or development partner where Council owned land is to be utilised for housing and urban development purposes.

CARRIED

11.10 Use of Council Land - Parau Farms / Smith's Farm

Staff Andy Mead, Manager: City & Infrastructure Planning

Key points

- TCC had not met the targets of the National Policy Statement - Urban Development (NPS-UD); consequently, there was a need to look at any options available for housing provision. While Council had originally acquired Parau Farms for active reserve, the use of the land should be revisited in the new context of the housing crisis.
- If it was intended to use the land for a different purpose than what it was acquired for, a special consultative process would have to be followed.
- Council was exploring an opportunity with Kāinga Ora and Ngāti Kahu hapū.
- Smiths Farm was a possible viable alternative for active reserve provision, and it was intended that investigations into sports options on Smiths Farm continue. The use of land for rural residential lots could also be looked at as part of overall consideration of the Smiths Farm land.
- Working alongside partners like Kāinga Ora and Ngāti Kahu meant more affordable housing options could be developed.

RESOLUTION CO18/21/15

Moved: Commissioner Shadrach Rolleston

Seconded: Commissioner Stephen Selwood

That the Council:

- (a) Approves in principle the utilisation of the Parau Farms site in Bethlehem for housing development, and proceeding with:
 - (i) Investigation of housing development options in partnership with Kāinga Ora – Homes and Communities and Ngāti Kahu; and
 - (ii) Process of public consultation for the disposal of park under section 138 of the Local Government Act 2002;
- (b) In relation to Smith's Farm:
 - (i) Notes that the investigation into sports field options in the western and central corridors is progressing and that consequential decisions will impact on the availability or otherwise of Council-owned Smith's Farm land for housing; and
 - (ii) Notes that lead-in time for access and services means that land development for any purpose will not commence for at least 3 years; and
 - (iii) Approves, subject to housing options being pursued, the future reconsideration of the four rural residential lots that provide a buffer between the Westridge community and the proposed development to ensure efficient use of this site for housing, including engagement with those affected.

CARRIED

11.11 Proposed Cultural Centre - Pukehinahina / Gate Pā Recreation Reserve

Staff Christine Jones, General Manager: Strategy and Growth

Key points

- Year 1 of the Long-Term Plan (LTP) provided funding for progression of work at Gate Pā; there had also been discussions with Ngāi Tamarawaho regarding a cultural centre.

- The recommendations in the report would provide a clearer mandate than the LTP funding resolution to move forward with substantive work. An issues and options paper would then be brought back to Council.

In response to questions

- The provision of a cultural centre was specifically related to Ngāi Tamarawaho as mana whenua in recognition of the impact of putting Route K through a culturally significant area, and was to make up to the hapū for the loss of the land.
- Noted that Gate Pā had a broader cultural significance which included the other iwi that fought at Gate Pā, while Ngāi Tamarawaho was mana whenua.

RESOLUTION CO18/21/16

Moved: Commissioner Shadrach Rolleston

Seconded: Commissioner Bill Wasley

That the Council:

- (a) Approves the continued investigation and related work to support the proposal by Ngāi Tamarawaho for a cultural and historic centre on Gate Pā Domain Recreation Reserve, in particular, as it relates to land tenure; and
- (b) Notes that a subsequent report setting out options and considerations regarding land tenure and the future use of the reserve will be presented.

CARRIED

11.12 Marine Park - Proposed Reserve Reclassification and Marine Research and Education facility

Staff Brigid McDonald, Manager: Strategic Investment & Commercial Facilitation
Gert van Staden, Senior Strategic Advisor

Key points

- Noted that the separate attachment to the report provided a clear map/diagram of the area being referred to.
- The report sought approval to reclassify part of Marine Park from recreation reserve to local purpose reserve; the balance of Marine Park would stay as recreation reserve.

In response to questions

- Clarified that the carparks to the south near the boat ramps were part of the recreation reserve classification.
- Clarified that the distance between the area being revoked and the coastal edge was a 20m step back.

RESOLUTION CO18/21/17

Moved: Commission Chair Anne Tolley

Seconded: Commissioner Bill Wasley

That the Council:

- (a) Approves in principle, subject to community consultation and deliberations, the reclassification of a portion of Marine Park identified as SO plan 530292, appended to this report as **Attachment A**, from recreation reserve to local purpose (marine research and education facility) reserve, subject to feedback following engagement with tangata

whenua and public consultation being considered;

- (b) Confirms the consideration of feedback following public consultation [*will*] include the hearing of oral submissions; and
- (c) Subject to a decision to reclassify the area of reserve referred to above, approves the initiation of the lease tender process under the Public Bodies Leases Act 1969, if and when the new classification has been confirmed.

CARRIED

11.13 Adoption of Property Acquisitions and Disposals Policy

Staff Christine Jones, General Manager: Strategy & Growth

A copy of the tabled documents for this item can be viewed on Tauranga City Council's website in the Minutes Attachments document for this meeting.

Key points

- The Policy had been updated following direction from a previous Council meeting and had been brought back for adoption.

In response to questions

- Clarified that clause 5.6.3.3 should read "Council staff will meet with mana whenua..."
- All submitters to the draft policy had been contacted; while several individuals responded with queries which were answered, nothing new was received. The consolidated feedback on the Policy would be tabled as part of this report.

RESOLUTION CO18/21/18

Moved: Commissioner Bill Wasley

Seconded: Commissioner Shadrach Rolleston

That the Council:

- a) Adopts the Property Acquisitions and Disposals Policy with proposed amendments in red contained in Attachment 1
- b) Revokes the following policies:
 - (i) Council Land: Recognition of Tangata Whenua Interests and Aspirations Policy
 - (ii) Property Acquisition and Divestment Road Stopping Policy
 - (iii) Strategic Acquisitions Fund Policy
- c) Authorises the Chief Executive to make any necessary minor drafting or presentation amendments to the Property Acquisitions and Disposals Policy prior to final publishing.

CARRIED

11.14 Distribution Policies for Grants for Development Contributions on Community and Papakāinga Housing

Staff Jeremy Boase, Manager: Strategy & Corporate Planning

Key points

- With community housing, only citywide development contributions would be covered by the policy and would be charged at the time of building consent. If not all grant funds are used in one year, the balance could be rolled over into the next year or distributed through local development contributions paid.
- Recommended that the policy would be reviewed after a year's operation.
- Progressive home ownership would be included as eligible for grant funding.
- With papakāinga housing, funding would similarly be limited to citywide development contributions.
- The policy would not be applied retrospectively.

In response to questions

- There were already provisions in the development contributions policy for deferrals.

RESOLUTION CO18/21/19

Moved: Commissioner Bill Wasley

Seconded: Commissioner Stephen Selwood

That the Council:

- (a) Adopts the Grants for Development Contributions on Community Housing Policy (with the amendments listed in paragraph 27 – Option 1B, paragraph 30 and paragraph 32 – Option 2A of this report, and any consequential amendments required);
- (b) Adopts the Grants for Development Contributions on Papakāinga Housing Policy (with the amendments listed in paragraph 37 – Option 3B, paragraph 40, paragraph 43 – Option 4A, and paragraph 47 – Option 5A of this report, and any consequential amendments required); and
- (c) Delegates to the General Manager: Strategy & Growth the approval of the final wording of the policies consistent with Council's direction above.

CARRIED

12 DISCUSSION OF LATE ITEMS

Discussed as part of the public excluded business.

13 PUBLIC EXCLUDED SESSION**RESOLUTION TO EXCLUDE THE PUBLIC**

RESOLUTION CO18/21/20

Moved: Commissioner Stephen Selwood

Seconded: Commissioner Bill Wasley

That the public be excluded from the following parts of the proceedings of this meeting.

The general subject matter of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48 of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48 for the passing of this resolution
13.1 - Public Excluded Minutes of the Council meeting held on 13 September 2021	s6(b) - The making available of the information would be likely to endanger the safety of any person s7(2)(a) - The withholding of the information is necessary to protect the privacy of natural persons, including that of deceased natural persons s7(2)(b)(i) - The withholding of the information is necessary to protect information where the making available of the information would disclose a trade secret	s48(1)(a) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7
13.2 - Public Excluded Minutes of the Council meeting held on 12 July 2021	s7(2)(a) - The withholding of the information is necessary to protect the privacy of natural persons, including that of deceased natural persons	s48(1)(a) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7
13.4 - Papamoa East Infrastructure Corridor Planning	s7(2)(i) - The withholding of the information is necessary to enable Council to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)	s48(1)(a) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7
13.5 - Procurement of Plant Material for the Kopurererua Stream Realignment Project	s7(2)(i) - The withholding of the information is necessary to enable Council to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)	s48(1)(a) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7
13.6 - Direct Appointment - Elizabeth Street carpark	s7(2)(b)(i) - The withholding of the information is necessary to protect information where the making available of the information would disclose a trade secret s7(2)(h) - The withholding of the information is necessary to enable Council to carry out, without prejudice or disadvantage, commercial activities	s48(1)(a) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7

CARRIED

14 CLOSING KARAKIA

Commissioner Rolleston provided a karakia.

The meeting closed at 3.15pm.

The minutes of this meeting were confirmed as a true and correct record at the Ordinary Council meeting held on 26 October 2021.

.....
CHAIRPERSON

UNCONFIRMED

8 DECLARATION OF CONFLICTS OF INTEREST

9 DEPUTATIONS, PRESENTATIONS, PETITIONS

Nil

10 RECOMMENDATIONS FROM OTHER COMMITTEES

Nil

11 BUSINESS

11.1 Submission to Discussion Document on Proposed Changes to the Wetland Regulations

File Number: A12963861

Author: Brad Bellamy, Project Leader: Urban Planning
Richard Harkness, Project Leader: Urban Planning

Authoriser: Christine Jones, General Manager: Strategy & Growth

PURPOSE OF THE REPORT

1. To consider our draft submission to the discussion document prepared by the Ministry for the Environment on proposed changes to the wetland regulations.

RECOMMENDATIONS

That the Council:

- (a) Endorses the draft submission (Attachment 1) to the discussion document on proposed changes to the wetland regulations for lodgement to the Minister for the Environment.

EXECUTIVE SUMMARY

2. On 1 September 2021 the Ministry for the Environment (MfE) released “Managing our wetlands: A discussion document on proposed changes to the wetland regulations”. The discussion document outlines proposed changes to the National Policy Statement for Freshwater Management (NPS-FM) and the accompanying Resource Management (National Environmental Standards for Freshwater) Regulations (NES-F), which came into force on 3 September 2020.
3. The consultation period for feedback to the Minister for the Environment on this discussion document runs from 1 September to 27 October 2021. Following the close of this submission period, Ministry officials will report back to the Minister on submissions received and develop final policy advice. No date has been given on when a draft NPS-FM or NES-F will be available, however this process will provide a further formal submission process to the proposed draft wording. As a result, this submission is only to the discussion document.
4. Council has previously submitted on concerns with these national directions and the supplementary guidance documents that have been made available. More recently, direct engagement between Council Commissioners, staff and Ministry officials has occurred with officials visiting Tauranga to discuss growth area planning and implications on growth planning in July this year. The concerns that Council staff have with these national directions primarily relate to the potentially significant barriers that it creates to the efficient delivery of urban growth in the City’s two key future urban growth areas.
5. Whilst the discussion document sets out proposed changes that seek to address concerns that have been raised, it is considered that significant gaps in these regulations would still remain; and that without these being addressed, the ability to deliver efficient urban growth across the City will continue to be challenging. It is recommended that a submission be lodged with the Minister that sets out key issues that have been identified.

BACKGROUND

6. The National Policy Statement for Freshwater Management (NPS-FM) and the Resource Management (National Environmental Standards for Freshwater) Regulations (NES-F), came into force on 3 September 2020. These national directions form part of Central

Government's 'Essential Freshwater' regulatory package that aims to stop further degradation, reverse past damage, prevent further loss and degradation of freshwater habitats and introduce rules on some high-risk activities.

7. To achieve these anticipated outcomes both policies and rules were introduced that provide a stringent resource consent regime for activities that affect or may affect the extent and values of wetlands and rivers. Some activities that may drain or modify a wetland are prohibited, such that resource consent simply cannot be applied for. Other activities may allow a resource consent application to be applied for, however are subject to a prescriptive policy regime that may affect the ability to obtain such consent.
8. These issues are exacerbated by the definition of a 'natural wetland', which has broadened the definition of what was previously assessed as a wetland to now include any damp/ wet/ boggy areas that comprise predominantly non-exotic pasture species – without any scale or values assessment.
9. The regulatory framework for 'natural wetlands' was a focus of the "Essential Freshwater" package. The discussion document released by MfE at the beginning of September 2021 is a response to feedback that it had received from various parties on the difficulties identified in the implementation of the wetland regulations. The two key proposals set out in the discussion document that are of particular relevance to Council include:
 - amending (narrowing) the definition of natural wetlands to make it clear and to better capture those areas that were intended to be dealt with through the regulations; and
 - amending the regulatory framework to provide a consent pathway (prohibited to discretionary) for certain activities, including urban development, so that development can occur while still appropriately protecting natural wetland extent or values.
10. A number of issues have been identified not only in respect to the changes being proposed, but also in relation to matters that are not covered through the discussion document. The intention is to respond to these in a submission to be lodged with the Minister (Attachment 1). These issues are generally identified and discussed as follows, but are further detailed, with example information included with the submission:
 - (a) The proposed change to provide a consent pathway for urban development through the NES-F regulations is not complemented with a corresponding change to the existing policy framework within the NPS-FM. This means that the current framework of 'no loss' in extent and values for wetlands and rivers (Policy 6 and Policy 7) is proposed to remain. This policy framework sets a very high threshold to achieve, particularly in delivering urban development. It is considered a 'no net-loss' approach for the extent and values of freshwater bodies would be an improved outcome that enables opportunities for re-creation and enhancement of freshwater bodies and to make maximum use of aquatic offsetting (ie creating new wetlands to offset wetland areas lost) to achieve superior environmental outcomes whilst at the same time providing for urban development.
 - (b) The requirement for urban development to demonstrate a 'functional need' to be located in or adjacent to a wetland is a test that is unlikely to be met. As such the recommendation would be that this test be removed for urban development or a new policy specific to urban development be created that provides an appropriate set of considerations.
 - (c) The proposal outlines that urban development (amongst other specific activities) would have a consent pathway similar to what is currently in place for specified infrastructure. This pathway would therefore likely be as a discretionary activity, however it is considered that a restricted discretionary activity classification would deliver the same outcome and allow the focus to be on matters specific to the nature of the proposal. In addition, identifying urban development areas solely as 'plan-enabled areas' is considered problematic and it is recommended that these would be better defined to

include areas identified in a Future Development Strategy or other relevant plan or strategy, RMA planning document, LTP or 30-year Infrastructure Strategy.

- (d) The proposed changes to the wetland definition are considered to be an improvement but could be further improved by specifying a minimum size of wetland to which the regulations apply. In addition, amending the definition to specifically exclude wetlands that are artificially induced by construction and similar man-made works and to be able to be applied consistently and equitably in an urban context.
- (e) There is a need to provide clarification and address how a 'potential loss' of values for wetlands and rivers is to be consistently applied when considering a consent application where there is a requirement to ensure there is to be no 'loss of values' as currently defined in the regulations.

STRATEGIC / STATUTORY CONTEXT

- 11. This national direction has an effect on Council's strategic and statutory context. Councils' have a statutory obligation to "give effect" to National Policy Statements under the RMA through their respective resource management plans. The National Environmental Standards, in part, are the means to implement the National Policy Statement. As such, careful and precise drafting of policy and regulations are of significant importance.
- 12. Although, while supportive of the intent behind the outcomes being sought through these national directions, it is considered that gaps remain and that these are highly likely to impact adversely on Council's ability to meet its statutory obligations under other national directions – specifically the NPS for Urban Development.

SIGNIFICANCE

- 13. The Local Government Act 2002 requires an assessment of the significance of matters, issues, proposals and decisions in this report against Council's Significance and Engagement Policy. Council acknowledges that in some instances a matter, issue, proposal or decision may have a high degree of importance to individuals, groups, or agencies affected by the report.
- 14. In making this assessment, consideration has been given to the likely impact, and likely consequences for:
 - (a) the current and future social, economic, environmental, or cultural well-being of the district or region
 - (b) any persons who are likely to be particularly affected by, or interested in, the matter.
 - (c) the capacity of the local authority to perform its role, and the financial and other costs of doing so.
- 15. In accordance with the considerations above, criteria and thresholds in the policy, it is considered that the matter is of medium significance, but that the decision related to this report is of low significance.

NEXT STEPS

- 16. Council will, as part of its submission, express a desire to work directly with Ministry Officials in providing further detail around the matters as set out in its submission including further elaboration around suggested policy wording. Beyond that, Council will look to further review and submit on a draft set of policy and regulation changes when these become available.

ATTACHMENTS

- 1. **TCC Submission to MfE Discussion Document - managing our wetlands - Oct 2021 - A12995212** [↓](#)

Managing our wetlands: A discussion document on proposed changes to the wetlands regulations

Exposure Draft circulated 1 September 2021

Tauranga City Council Feedback, 27 October 2021

1.0 Introduction

Tauranga City Council (TCC) welcomes the opportunity to submit on the Ministry for the Environment's (MfE) proposed amendments to the national policy statement (NPS-FM) and national environmental standards (NES-FW) on freshwater as set out in '*Managing our wetlands – A discussion document on proposed changes to the wetlands regulations*' – dated 1 September 2021 (the Discussion Document).

We are happy to discuss our submission further with you or provide additional information and evidence that would be of assistance. General enquires should be directed to:

Richard Harkness, City & Infrastructure Planning
027 272 1505
Richard.Harkness@tauranga.govt.nz

Or

Christine Jones, General Manager: Strategy and Growth
027 4672334
Christine.Jones@tauranga.govt.nz

TCC has previously identified its concerns to MfE in submissions on the freshwater national directions and guidance documents and more recently via direct engagement between Tauranga City Council Commissioners and staff and government representatives. TCC appreciated how key staff for MfE were able to travel to Tauranga for site visits and workshoping; and we welcomed the opportunity to be involved and discuss these issues regarding wetland protection. Some ten years ago, TCC proactively sought to protect its special ecological areas (areas of significant fauna and flora), of which many are wetland areas.

TCC supports the changes proposed in the Discussion Document in principle, particularly to provide a consenting pathway for urban development in growth areas, and to amend the definition of natural wetlands to avoid unintended outcomes. In addition, and in response to the questions set out in the Discussion Document, TCC seeks further amendments to the NPS-FM / NES-FW provisions to ensure such a consenting pathway as proposed is indeed achievable, as the policy direction of no further loss and the gateway test for functional need are likely to result in this proposed consenting pathway not being achievable. If the amendments sought by TCC are not provided, there would be a high likelihood of essential large-scale urban development projects like Te Tumu and Tauriko West being subject to more risk, and potentially not being able to proceed.

1

TCC's concerns primarily relate to the ability to deliver efficient urban growth in TCC's two key future urban growth areas – Te Tumu and Tauriko West – which are priority areas for urban development and are being progressed, along with other intensification projects, to meet the requirements of the National Policy Statement on Urban Development (NPS-UD). The restrictive regime that results from both the NPS-FM and the NES-FW, brings into question the viability of these two growth areas and council's ability to provide the necessary growth capacity required under the NPS-UD. Similar concerns have been raised by other parties and industry sectors.

To support the points set out in our submission, we have provided the following two supporting documents:

- An assessment of wetlands within the two proposed urban growth areas of Te Tumu and Tauriko West (Attachment 1) against the changes proposed to the definition as suggested in the discussion document. This assessment has included consideration of how the current definition and proposed changes along with the recently released MfE wetland delineation hydrology tool will impact in wetland identification when undertaking field assessments; and
- A worked example (Attachment 2), demonstrating the difficulties faced to obtain consent under the proposed changes for the present regime for the activities required to enable urban development, such as earthworks, vegetation clearance, preloading, dewatering, stormwater management, site enabling works and construction – where a natural wetland and/or its drainage is affected by the proposed site works necessary to carry out said activities.

2.0 MfE Discussion Document: Managing our wetlands

TCC recognises and supports the intent of the national direction to stop further degradation, reverse past damage, prevent further loss of freshwater habitats, and introduce controls on some high-risk activities. Wetland and freshwater systems nationally have been demonstrably lost and degraded by past land use activities and continue to be under pressure from urban development and other land use activities.

TCC is also required to provide for urban growth and development under the NPS-UD; and has identified major growth areas that are recognised as priority development areas. It is important that growth is able to be undertaken efficiently; as inefficient growth leads to greater demand for more land, i.e. it pushes the problem elsewhere. Hence the concerns raised by TCC regarding the need for a consenting pathway for urban development, as well as addressing the problem of unintended outcomes arising from the definition of natural wetlands and the wetland delineation methodology.

MfE has responded to the concerns that have been raised with a set of proposed changes to the wetland regulations that are summarised as follows:

- Changes to the definition of a 'natural wetland';
- Changes to better enable 'natural wetland' restoration, maintenance and biosecurity work;
- Proposals for additional consent pathways – including for urban development.

The first and last are of most relevance to TCC's need to address the high urban growth pressures and are the focus of the submission points set out below.

3.0 Context

Tauranga is New Zealand's fifth-largest city and subject to significant and rapid growth. As a Tier 1 urban environment under the NPS-UD, TCC is required to provide for a greater supply of developable land, both zone enabled and infrastructure ready to meet this growing housing and business land demand. The NPS-UD is administered by MfE, with support from Te Tūāpapa Kura Kāinga - Ministry of Housing and Urban Development (MHUD). The NPS-UD sets out the national direction for urban development under the Resource Management Act 1991 (RMA), and councils must give effect to these objectives and policies.

Tauranga's growth opportunity is significantly constrained by the topography and coastal setting – where city development is restricted to the east by the coast, and by multiple harbour estuaries which effectively spread the city out along northern, western and eastern corridors. Hence, opportunities for new urban growth areas are limited and faced with a number of key challenges / competing priorities. This includes the ability to increase the extent of developable land through large scale earthworks and land development, as well as to service the growth areas for housing and industrial/commercial development; in order to meet its short, medium and long-term obligations under the NPS-UD, while at the same time sustaining a quality natural environment.

TCC has two main future urban growth areas, Te Tumu and Tauriko West, within the Urban Limits set out in the Bay of Plenty Regional Council's (BOPRC) Regional Policy Statement (RPS); and both have been long-identified by SmartGrowth as priority areas for urban development, which are critical to the delivery of the recently adopted Urban Form & Transport Initiative (UFTI).

UFTI is a joint initiative prepared by Tangata Whenua, Smartgrowth, BOPRC, TCC, Western Bay of Plenty District Council, Waka Kotahi NZTA, MHUD, and Kāinga Ora. More recently, both urban growth areas have been identified as 'Priority Development Areas' (PDA) within the Western Bay Sub-region, along with other growth areas in Te Papa, Omokoroa and Rangiora. The PDA forum is coordinated by MHUD in partnership with a number of government bodies and local authorities within this sub-region of the Bay, being tasked at enabling housing and business development areas to be delivered at scale and pace, given the significant growth pressures currently faced.

TCC is committed to delivering developable land within these growth areas as fast as possible, while ensuring a quality natural environment is maintained; and therefore, supports the direction of the NPS-FM and NES-FW provisions for protection and enhancement of New Zealand's remaining wetlands. However, this needs to be undertaken in a way that enables multiple objectives, including growth and environmental, to be met.

TCC's experience to date is that the NPS-FM and the NES-FW are, in combination, creating a significant impediment to the efficient development of Tauranga's two strategic growth areas: Te Tumu and Tauriko West. The NPS-FM and NES-FW requirements currently bring into question the whole viability of these two growth areas; particularly when considering the natural inland wetland definition and the way extensive areas are likely caught through the wetland delineation methodology of 2m x 2m quadrat vegetation assessments, combined with a highly restrictive regime of Prohibited and Non-complying status for housing development works - that may affect wetland drainage both within the wetlands and their respective 100m setbacks.

It is noted that within Tauranga that TCC some ten years ago protected its special ecological areas (areas of significant fauna and flora), of which many are wetland areas. In stating this it needs to be recognised that TCC is not opposed to, but welcomes the continued protection of these areas, as wetlands and other wetlands through New Zealand which have value, both in terms of size,

significance and value. In regard to TCC's submission it is the smaller areas of relatively little ecological significance that are of concern, as well as the restrictive cascade of policy and environmental standards which result once an area is identified as a wetland, and how TCC is seeking a 'no net loss' approach to achieve superior outcomes through offsetting, enhancement and protection of the larger wetland areas established along river margins or gulley areas.

Accordingly, TCC welcomes the opportunity to provide feedback on the Discussion Document.

4.0 Key Issues

The Discussion Document introduces possible changes to the definition of natural wetlands, and identifies a consenting pathway for urban development, as well as for landfill, cleanfill and managed fill; quarrying; and mining. TCC supports the provision of a consenting pathway for urban development as well as the amended definition for natural wetlands in principle, however further changes are required to the NPS-FM and NES-FW framework to make such a consenting pathway workable / achievable. Details on the changes required are set out below.

The Discussion Document raises a number of questions for feedback purposes, and this response from TCC will provide both specific answers to the questions asked, and also identify key issues which should be included in the review of the NPS-FM / NES-FW framework - but are not mentioned in this Discussion Document. These additional matters include the following aspects:

- Policy framework to provide for 'no net loss' (rather than 'no further loss');
- Removal of the 'functional need' from gateway tests given the inherent difficulty of meeting such a requirement;
- Urban development areas need to be more broadly defined, not limited to 'plan-enabled' under NPS-UD, as this is the incorrect use of this term;
- Introduction of a new policy approach required for Urban Development, to recognise the change in consenting pathway proposed;
- Changes proposed for policy and 'functional need' to include rivers as well as wetlands; and
- Clarify or change reference to 'potential loss' of values in 'loss of values' definition.

TCC welcomes the opportunity to discuss such matters further to assist MfE in this regard, and aid with policy drafting as examples if so desired.

5.0 Feedback on the Guidance Document

Our feedback has been grouped into the various sections of the Discussion Document for ease of reference. We have also provided details on those matters not included in the Discussion Document which also require amendments to the NPS-FM / NES-FW provisions to enable the consenting pathway proposed for urban development (and well-functioning urban environments to meet the requirements of the NPS-UD). In addition, we have provided the amended wording sought within both the NPS-FM and NES-FW provisions.

6.0 Section 2: Change to the Definition of a 'natural wetland'

MfE's proposed amendments to part (c) of this 'natural wetland' definition as set out below are supported in principle, however further changes are required to avoid unintended outcomes, as described further in this submission:

(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.

6.1 Question 1. Do you agree with the proposed changes to the definition of 'natural wetland'? Why/why not?

The proposed amendments to the natural wetland definition are generally supported, as they aid in simplifying the delineation of a wetland area – particularly wetlands within pasture. These supported changes include:

- removal of a reference to 'improved' pasture;
- removal of a commencement date;
- providing clarification for the 50 percent ground cover comprising exotic pasture or exotic species associated with pasture; and
- deleting reference to 'temporary rain derived water pooling'.

To aid in the understanding of the changes being proposed to the definition and the practicality of its implementation on the ground, TCC commissioned Boffa Miskell Ltd to undertake a desktop assessment of natural wetlands within the two growth areas of Te Tumu and Tauriko West. This work was based off a prior assessment undertaken using the current definition in the NPS-FM. Included in this new assessment is discussion on the impact that the proposed change to natural wetland definition in the "discussion document" (including the guidance now available within the hydrology tool) would mean in respect to wetland identification in these two growth areas. The outcomes of this work are set out in Attachment 1¹ and includes the following aspects:

- The revised assessment retained four features and complexes within Te Tumu as having high likelihood with a further three retained at medium likelihood of meeting the proposed NPS-FM natural wetland definition; while four features and complexes have been moved to medium likelihood with a further two re-classified from medium to low likelihood due to the prevalence of pasture species.
- For Tauriko West, the re-assessment retained three features and complexes as having high likelihood with four retained at medium likelihood of meeting the proposed NPS-FM natural wetland definition; while two features and complexes have been moved to medium likelihood with a further three re-categorised from medium to low likelihood due to the prevalence of pasture species.
- Essentially, the change proposed to the definition has resulted in little change in the number and extent of 'natural wetlands' identified in the two growth areas; and unfortunately, there is now a greater level of risk and uncertainty, particularly for medium likelihood features – i.e. much more ground truthing / assessment field work will be required to determine whether these are indeed natural wetlands or not.
- The report also notes that there is not a definitive list detailing species of grasses and herbs that constitute a 'pasture species' or associated exotic species; and the assessment used introduced grasses or herbs as listed in 'technical guidance for the determination of natural wetlands under Greater Wellington's Proposed Natural Resources Plan', and where the introduced species were grazed by livestock and maintained as pasture, as well as where historic evidence indicated they were originally introduced to NZ as pasture species.

¹ Memorandum: 'Proposed change to definition of natural wetland' by Boffa Miskell Ltd, dated 15 October 2021

While there has been changes to the definition it is TCC's position that these amendments alone do not go far enough to enable the practical implementation of the national directions and ensure unintended or inappropriate outcomes are avoided, across the board for all matters, not just urban growth. Key concerns identified by TCC include:

- There is no minimum size for a wetland area. Very small wetland patches, of relatively little ecological significance, may be scattered amongst pasture, which when applying a 100m setback around each one can cumulatively result in large areas being subject to restrictions. Steeper slopes may also be affected in the same manner.
- There is no guidance on what species are exotic pasture species or exotic species associated with pasture. This needs to be clear to ensure consistent and equitable application of the definition.
- The recent MfE guidance states that 'induced wetlands' come under the NPS-FM definition of a natural wetland. While these wetlands can form from natural processes, they typically occur as an unintended consequence of manmade alterations to hydrology and/or landform. TCC's view is that small wetland areas inadvertently caused by other works should not be considered a 'natural wetland' and hence subject to protection under the national directions.
- The definition of wetland refers to 'pasture' – reflecting that its primary focus relates to rural areas. This has implications for grassed areas in urban environments – which are not pasture – such as parks and reserves. The definition should be able to be applied in both a rural and urban setting consistently and equitably, and not just for pasture.

6.2 Question 2. Should anything else be included or excluded from the definition of 'natural wetland'?

The definition for natural wetlands requires further amendments as follows:

1. Provide a minimum size for a wetland area to which the NES-FW rules apply, to avoid capturing small areas of relatively little ecological significance; and to ensure protection of larger wetlands that can be restored. The NPS-FM already sets a size threshold for mapping and monitoring natural inland wetlands of 0.05 hectares; and TCC seeks that a similar minimum area be adopted in the definition - except where a smaller area is known to contain threatened species which do warrant such protection.
2. Amend the definition of a natural wetland to specifically exclude wetlands that are artificially induced by construction and similar man-made works and amend the guidance document accordingly.
3. Amend the wetland exclusions to be able to be applied consistently and equitably in an urban context.
4. Consider the need for a maximum slope to avoid steep areas being captured; i.e. springs, streams and intermittent or ephemeral watercourses on steep land are covered by other provisions.
5. Provide an addendum that includes a list of wetland species to avoid this having to be determined on a case-by-case or regional basis.

6.3 Amendments sought by TCC:

Proposed Amended NPS-FM provisions:

natural wetland means a wetland (as defined in the Act) that is not:

(a) a wetland constructed by or resulting from 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 grassed or pasture area that has more than 50 percent ground cover comprising exotic grass / pasture species or exotic species associated with pasture; or

(d) less than 0.05 hectares in extent and/or greater than 5° slope angle, except where there are threatened species present.

Add an addendum that includes a list of wetland species.

7.0 Section 3: Better provision for restoration, maintenance and biosecurity activities

7.1 Question 3. Should maintenance be included in the regulations alongside restoration? Why/why not?

TCC supports maintenance being included alongside restoration for the ongoing health of natural wetlands. Regulation 38 NES-FW provides for restoration as a Permitted Activity, and it makes sense to include ongoing maintenance as a Permitted Activity here too. This avoids having to seek numerous resource consents for ongoing maintenance which is important for the ongoing health of the wetland system. These activities would be required to comply with the general conditions set out in Regulation 55 NES-FW, which are quite prescriptive and comprehensive. TCC supports changes that enable the values of wetlands to be enhanced.

8.0 Section 4: Additional consenting pathways

This section proposes a consenting pathway for quarrying, landfills, cleanfills and managed fills, mining and urban development. In principle, TCC supports the changes proposed to provide a consenting pathway for these activities; however, the gateway test of functional need needs to be removed or amended for each of these activities to ensure that such consents are achievable, subject to addressing the Effects Management Hierarchy, and consideration of any aquatic offsetting required or environmental enhancement works. In this regard, the TCC response to questions 8, 10, 12, and 15 is that each of these activities should have a consenting pathway, and that Restricted Discretionary Activity status is preferable, using the '*matters to which discretion is restricted*' set out under Regulation 56 of the NES-FW. It is TCC's position that Restricted Discretionary Activity status is supportable in that the effects are able to be quantified, and appropriately assessed and management/mitigated through those matters set out under Regulation 56.

Regarding the gateway test related questions 9, 11, 14, and 16, TCC does not support the functional need gateway test for the respective activities; and further details are provided below.

When considering the importance of quarrying, TCC recognizes that the supply of good aggregate close to the area of demand is critical for urban growth; hence there is little / no flexibility for quarry sites and expansion works. And during greenfield and brownfield development, the need for cleanfills, managed fills and landfills in close proximity to urban development is also necessary, both in terms of economic considerations and also in terms of greenhouse gas emission reductions. Shorter travel times have significant environmental and economic benefits, when considering the scale / volumes involved; and in some instances, greater efficiencies are possible where trucks bring cleanfill into a quarry area, and then truck aggregate out. Urban development includes both housing and business / industrial development which need minerals, hence the support for mining here too.

9.0 Consenting pathway for plan-enabled development

9.1 Question 15. Should a consenting pathway be provided for plan-enabled urban development? Is discretionary the right activity status? Why/why not?

The intent of the changes proposed by MfE to enable a consenting pathway for urban development are welcomed by TCC, particularly in light of the obligations under the NPS-UD. However, TCC is concerned that the proposed changes do not go far enough, as described below; and if not altered further in line with our suggestions mean that there would be a high likelihood of essential large-scale urban development projects like Te Tumu and Tauriko West being subject to more risk, and potentially not being able to proceed.

9.2 Consenting pathway for urban development in an identified growth area:

Further changes to those set out in the Discussion Document are required to address several issues of concern, and these are summarised as follows:

- While a consenting pathway for urban development is supported, consent will be considered under the relevant policy framework. This includes policies requiring no further loss and the 'gateway tests' under the NPS-FM. TCC's concern, supported by legal advice we have reviewed, is that urban development would generally not be considered to have a 'functional need' to occur in a specific wetland or river location – hence this key policy clause would not be met. Additionally, while strategic growth areas will meet the test of regional benefit, not all 'plan enabled' growth will be of a scale that meets this. Hence there is a likelihood that even a plan enabled urban growth will not meet the policy test and consent would be refused.
- The use of Discretionary activities for critical infrastructure and plan enabled urban development is not supported. Rather, the NES-FW (and NPS-FM) focus is specifically on wetland and river extent and values, which can be adequately managed through a focused Restricted Discretionary Activity (which can be refused). The use of a 'Discretionary Activity' classification opens up the consent to the full gambit of issues beyond these freshwater issues, which have already been considered in the relevant plan, with the attendant complexity and cost, and risks associated with notification / seeking written consents. While the importance of protecting remaining

wetlands and rivers is acknowledged, Discretionary Activity status is not considered necessary to achieve the desired consenting outcome.

- The proposal to utilise the NPS-UD definition of 'plan enabled' is not supported as this definition is not suitable for the context in which it is intended under the NES-FW. Concerns are:
 - The purpose of the term 'plan enabled' within the NPS-UD is to enable calculation of development capacity available over the short, medium and long-term. This can then be compared against housing demand (and the required buffers) to determine sufficiency. Using this approach in the context of the NPS/NES Freshwater will therefore only work in areas where sufficient development capacity is available, but not places like Tauranga where there is insufficient development capacity. For example, Tauriko West and Te Tumu, two key urban growth areas are not plan enabled by any of the measures in the NPS-UD but are essential to meeting our development capacity requirements. Where there is insufficient development capacity to NPS-UD directs councils to review their district plans to increase capacity (a full plan making process) – the revised NPS/NES provisions need to align with this, and they should also align with the NPS-UD provisions which provide for out of sequence and unforeseen development to occur where it adds significantly to development capacity. As a result, this change does not help Tauranga progress any growth areas – and the challenge under the NPS-FM will remain.
 - Future growth areas need to be identified in a Future Development Strategy (FDS) as per the change– an FDS is unlikely to be adopted in Tauranga for several years, and a 'first generation' FDS was never adopted in Tauranga (and the Western Bay of Plenty sub-region) because at the time there was no agreed transport strategy to support the agreed future land use and urban growth settlement pattern.
 - Section 3.4 (2) of the NPS-UD defines plan-enabled development capacity as "*land zoned for housing or for business (as applicable) only if the housing or business is a permitted, controlled, or restricted discretionary activity on that land.*" Therefore, a discretionary activity status through the freshwater NPS and NES would mean that an identified development such as within a future growth area could not be considered plan-enabled and therefore could not count toward meeting the development capacity requirements of the NPS-UD.
- Urban development areas should be more broadly defined to include an area identified in a FDS, or relevant plan or strategy, RMA planning document (i.e. RPS, District Plan (including those areas zoned as future urban), Long Term Plan or 30 year Infrastructure Strategy).

9.3 Policy Direction: 'No loss' of wetlands/river extent and values vs 'no net loss'

The protection for wetlands and rivers is driven by the NPS-FM, which contains specific overarching policies for wetlands and rivers (Policy 6 and 7 respectively) and Clauses 3.22 and 3.24 which require wetland and river policies to be inserted into regional plans. TCC's experience of the interpretation of these policies for urban development is that there can be no loss of any wetland areas (even if replaced/restored elsewhere) but that rivers/streams can be diverted, provided that there is no loss of extent and values.

TCC's view is that a superior environmental outcome would be achieved by the NPS-FM and NES-FW adopting a 'no net loss' approach for the extent and values of freshwater bodies. This would enable lower value, marginal wetland areas (for example boggy grass areas, or channeled modified watercourses) to be developed on the proviso that this would necessarily be offset by the

establishment and enhancement of equivalent freshwater bodies such as wetlands and/or rivers. This provides the opportunity for development to utilise land efficiently, while ensuring no net loss, and preferably a net gain, in the extent and values of the respective wetland or river /modified watercourse.

TCC seeks the following amendments to Policy 6, 7 and NPS-FM sections 3.22 and 3.24 for no net loss:

1. That NPS-FM Policy 6 (Wetlands) and Policy 7 (Rivers, streams and modified watercourses) be amended to adopt a 'no net-loss' approach for the extent and values of freshwater bodies, and enable re-creation and enhancement of freshwater bodies, to provide greater levels of opportunity for development to make maximum use of aquatic offsetting to achieve superior environmental outcomes.
2. That similar and subsequent changes be made to the policies directed by NPS-FM sections 3.22 and 3.24 for no net loss.

9.4 Loss of Potential Values for a natural inland wetland or river:

Section 3.21 of the NPS-FM provides a definition of 'loss of value', in relation to a natural inland wetland or river; and means the wetland or river is less able to provide for the following existing or potential values:

- a) any value identified for it under the NOF process; or
- b) any of the following, whether or not they are identified under the NOF process:
 - i. ecosystem health
 - ii. indigenous biodiversity
 - iii. hydrological functioning
 - iv. Māori freshwater values
 - v. amenity

TCC is concerned with how the 'loss of potential value' for a wetland or river will be determined in a consistent and pragmatic manner that is realistic and achievable.

For example, it is not clear if the potential value is based on how a wetland would grow naturally if left alone, i.e. stop mowing, draining, grazing or maintaining the area for some farming or amenity purposes. Or whether the potential value might be perceived as what could be possible with further enhancement works, and substantial upgrades, additional planting and significant restoration works. TCC is concerned that without clear guidance, such an ambiguity could lead to unreasonable expectations being put on applicants by the community and consenting authorities ie an area currently with low value could be perceived as having high potential value and hence a significant loss of value that would have to be addressed through the consenting process.

This is equally of concern to TCC for rivers, which includes streams and modified watercourses. The same uncertainties and ambiguity prevail here too, whereby it might also be expected that the applicant must provide further enhancement works, and substantial upgrades, additional riparian planting and significant restoration works to achieve the 'potential value' identified by the community or consenting authority. A more realistic approach is to establish that potential value is determined by what would happen naturally if the river, stream or modified watercourse is left alone, i.e. stop taking water, discharging contaminants, diverting, dredging, draining, or spraying activities, and/or grazing the riparian bank margins.

To avoid inconsistent interpretation and unrealistic expectations of what 'loss of potential value' means, TCC seeks the following amendment to the Section 3.21 definition in the NPS-FM:

3.21 Definitions relating to wetlands and rivers:

loss of value, in relation to a natural inland wetland or river, means the wetland or river is less able to provide for the following existing or potential values, where potential values are based on such wetlands or rivers being allowed to remain in or return to their natural state without requiring further enhancement:

- a) any value identified for it under the NOF process; or
- b) any of the following, whether or not they are identified under the NOF process:
 - i. ecosystem health
 - ii. indigenous biodiversity
 - iii. hydrological functioning
 - iv. Māori freshwater values
 - v. amenity

Subsequent changes would be required to the policy requirements under NPS-FM Section 3.22 'Natural inland wetlands' and Section 3.24 'Rivers' to ensure that references to 'loss of potential value' are also based on allowing such wetlands or rivers to remain in or return to their natural state, and without requiring further enhancement. A Guidance Note may also be required to assist with explaining how the potential value is not 'what could be' with unlimited funds for significant planting, modification and large-scale upgrades, but on what could occur naturally if left undisturbed.

9.5 Amendments sought by TCC:

TCC supports a consenting pathway for urban development within and/or within 100 m of a wetland subject to the following amendments:

- Restricted Discretionary Activity status for urban development that may affect wetland and/or river extent and values.
- Amending Policies 6 and 7 to require a 'no net loss' approach to wetlands and rivers, respectively, in the NPS-FM;
- Amending the gateway test for urban development to remove the 'functional need' component as this is unlikely to be met – or consider alternatives, such as replacing this with an 'operational need', and provide a new policy for urban development in the NPS-FM that provides an appropriate set of considerations for urban development;
- Retaining the effects management hierarchy such that any net loss is appropriately mitigated and if necessary, compensated.
- Replacing the use of the NPS-UD definition of 'plan-enabled urban development' with an improved definition for 'urban development in an identified growth area', as follows:
 - 'Urban development in an identified growth area' means future urban land that is identified in a:
 - § Future Development Strategy, or relevant plan or strategy;
 - § RMA Planning document;
 - § Long Term Plan;
 - § 30-year infrastructure strategy; or similar.
- Adding a new definition for 'urban development' to ensure that all infrastructure, associated activities, ancillary services and supporting social infrastructure are also included (as well as

housing and business / industrial land). Urban communities need schools, active reserves and sports fields, community centres, places of assembly and worship, play centres, medical centres and the like for community well-being and place-making.

- Amending the references to 'loss of potential values' to ensure the potential values are based on such wetlands or rivers being allowed to return / remain as they are naturally, and without further (unlimited) enhancement.

Restricted Discretionary Activity status should also be afforded to specified infrastructure that may affect wetland and/or river extent and values.

A discretionary activity status unnecessarily increases the complexity, uncertainty, and risk in obtaining consent; and could give rise to protracted consenting and condition negotiations, or notification complications. Restricted Discretionary Activity status provides applicants, consent processing officers and the community with certainty; and the '*matters to which discretion is restricted*' are clearly set out under Regulation 56 of the NES-FW.

9.6 Question 16. Should resource consents for urban development listed in a district plan be subject to any conditions beyond those set out in the 'gateway test'? Why/why not?

TCC's main concern with the gateway tests is that addressing the 'functional need' test will be so difficult as to prevent a potential application even reaching the effects management hierarchy and consideration of any appropriate aquatic offsetting that would potentially enable an equivalent or superior environmental freshwater outcome. This when coupled with a no further loss policy direction will likely lead to the consent being declined. There is no certainty here, in the pathway being proposed in the Discussion Document for urban development.

When considering case law, and legal counsel comments to date, demonstrating that there is a functional need for an activity related to urban development within a wetland or the setback area requires the applicant to show that the proposal 'can only occur' in that wetland environment. It will be difficult to refute that greenfield / brownfield development could accommodate housing / business development elsewhere; i.e. it does not 'only occur' or 'need to occur' in that wetland environment to function.

To support this position, TCC has prepared a worked example of proposed earthworks and vegetation clearance - based on a growth area where it is possible that natural wetlands may be identified under the NPS-FM definition and wetland delineation methodology. This case study traverses the key steps an applicant would need to address under the gateway tests and assessment criteria under the NPS-FM / NES-FW provisions, as well as indicating the possible response from the consenting authority. A copy of this worked example is in Attachment 2.

Accordingly, TCC seeks that the functional need gateway test for urban development be removed - as this is unlikely to be met - or consider alternatives, such as replacing this with an 'operational need', and provide a new policy for urban development in the NPS-FM that provides an appropriate set of considerations for urban development. Other alternatives include amending the definition for 'functional need' to recognise that activities related to urban development in an identified growth area can now meet this test, i.e. to recognise that such activities have to take place in that specific environment/location where they are in accordance with an identified growth area.

9.7 Question 17. Is the current offsetting requirement appropriate for all types of urban infrastructure, for example, public amenities such as schools and medical centres? Why/why not?

There are a wide range of facilities that are central to an efficient and livable urban development. Picking out 'winners' – i.e. activities that are not subject to offsetting requirements (the effects mitigation hierarchy) – does not recognise this. It also risks 'perverse' outcomes where such facilities may be selectively located in (previous) wetland areas to avoid offset requirements. Such an approach will also be difficult to administer in practice.

TCC seeks to have a new definition for 'urban development' that includes all infrastructure, associated activities, ancillary services and supporting social infrastructure necessary for community well-being and place-making. This includes housing and business / industrial land, and public amenities such as schools and medical centres, as well as active reserves and sports fields, community centres, places of assembly and worship, play centres, and the like for community well-being and place-making.

TCC would not support provisions that identify certain activities that are exempt from off-set requirements, as urban development needs to be considered in an integrated and holistic way, hence a 'listing' approach to what constitutes urban development is bound to miss some urban activities and therefore create further implementation challenges that are not intended.

9.8 Other matters - activities in proximity to, but not affecting, a wetland:

A number of the NES-FW rules apply to activities (such as takes, discharges and earthworks), undertaken within a wetland or within 100 metres of a wetland. The latter has the practical effect of requiring discretionary or non-complying activity consents – even when the activity may have no physical connection to a wetland (for example the activity could be in a neighbouring sub-catchment or be a small-scale discharge downstream of a wetland). This results in the entire activity becoming discretionary/non-complying with the attendant consenting costs associated with this status, for no environmental reason. In this regard, the NES-FW provisions are a 'blunt tool' for managing effects on wetlands.

Therefore, TCC considers that further refinement to the rules is required so that small scale and other activities that will not affect a wetland are not required to obtain resource consent. If such a conservative approach is required, then resource consent should be restricted discretionary focused on protection of the wetland, so as not to unnecessarily broaden considerations beyond those necessary to achieve the desired outcome.

Accordingly, TCC seeks the following amendment to Regulation 45 of the NES-FW:

*Subpart 1 – Natural Wetlands**Construction of specified infrastructure*45a Permitted Activity

- 1) Earthworks or land disturbance outside a 10 m, but within a 100 m, setback from a natural wetland is a permitted activity if it—
 - a. is for the purpose of constructing specified infrastructure; and
 - b. does not result, or is unlikely to result, in the complete or partial drainage of all or part of the natural wetland.
- 2) The taking, use, damming, diversion, or discharge of water within, or within a 100 m setback from, a natural wetland is a permitted activity if it—
 - a. is for the purpose of constructing specified infrastructure; and
 - b. does not result, or is unlikely to result, in the complete or partial drainage of all or part of the natural wetland or affect the quality or quantity of water of the natural wetland.

45 Restricted discretionary activities

- 1) Vegetation clearance within, or within a 10 m setback from, a natural wetland is a restricted discretionary activity if it is for the purpose of constructing specified infrastructure.
- 2) Earthworks or land disturbance within, or within a 10 m setback from, a natural wetland is a restricted discretionary activity if it is for the purpose of constructing specified infrastructure.
- 3) Earthworks or land disturbance outside a 10 m, but within a 100 m, setback from a natural wetland is a restricted discretionary activity if it—
 - a. is for the purpose of constructing specified infrastructure; and
 - b. results, or is likely to result, in the complete or partial drainage of all or part of the natural wetland.
- 4) The taking, use, damming, diversion, or discharge of water within, or within a 100 m setback from, a natural wetland is a restricted discretionary activity if it—
 - a. is for the purpose of constructing specified infrastructure; and
 - b. results, or is likely to result, in the complete or partial drainage of all or part of the natural wetland or affects the quality or quantity of water of the natural wetland.

10.0 Amendments sought by TCC to the NPS-FM and NES-FW

TCC proposes the following amendments to the NPS-FM and NES-FW:

10.1 Proposed NPS-FM Amendments:

2.2 Policies:

Policy 6: There is no net loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.

Policy 7: There is no net loss of river extent and values.

Policy 16: Freshwater is managed in a way that gives effect to urban growth requirements and associated infrastructure under other national policy statements.

3.22 Natural inland wetlands

(1) Every regional council must include the following policy (or words to the same effect) in its regional plan(s):

"The loss of extent of natural inland wetlands is avoided, their values are protected, and their restoration is promoted, except where:

(a) the loss of extent or values arises from any of the following:

- i. the customary harvest of food or resources undertaken in accordance with tikanga Māori
- ii. restoration activities
- iii. scientific research
- iv. the sustainable harvest of sphagnum moss
- v. the construction or maintenance of wetland utility structures (as defined in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020)
- vi. the maintenance or operation of specified infrastructure, or other infrastructure (as defined in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020)
- vii. the maintenance or operation of existing quarries, landfills, cleanfills and managed fills, mines, and infrastructure / facilities / services associated with urban development
- viii. natural hazard works (as defined in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020); or

(b) the regional council is satisfied that:

- i. the activity is necessary for the construction or upgrade of specified infrastructure; and
- ii. the specified infrastructure will provide significant national or regional benefits; and
- iii. there is a functional or operational need for the specified infrastructure in that location; and
- iv. either:
 - a. there is no net loss of extent or values of natural inland wetlands, or
 - b. the effects of the activity are managed through applying the effects management hierarchy; or

(c) the regional council is satisfied that:

- i. the activity is necessary for the provision of urban growth in an identified growth area; and

- ii. either:
 - a. there is no net loss of extent or values of natural inland wetlands, or
 - b. the effects of the activity are managed through applying the effects management hierarchy

(2) Subclause (3) applies to an application for a consent for an activity:

(a) that falls within any exception referred to in paragraph (a)(ii) to (viii) or (b) or (c) of the policy in subclause (1); and

(b) would result (directly or indirectly) in the loss of extent or values of a natural inland wetland.

(3) Every regional council must make or change its regional plan(s) to ensure that an application referred to in subclause (2) is not granted unless:

(a) the council is satisfied that the applicant has demonstrated how each step of the effects management hierarchy will be applied to any loss of extent or values of the wetland (including cumulative effects and loss of potential value based on allowing such wetlands or rivers to remain in or return to their natural state without requiring further enhancement), particularly (without limitation) in relation to the values of: ecosystem health, indigenous biodiversity, hydrological functioning, Māori freshwater values, and amenity value; and

(b) any consent is granted subject to:

- i. conditions that apply the effects management hierarchy; and
- ii. a condition requiring monitoring of the wetland at a scale commensurate with the risk of the loss of extent or values of the wetland.

(4) Every regional council must make or change its regional plan(s) to include objectives, policies, and methods that provide for and promote the restoration of natural inland wetlands in its region, with a particular focus on restoring the values of ecosystem health, indigenous biodiversity, hydrological functioning, Māori freshwater values, and amenity value.

3.24 Rivers

(1) Every regional council must include the following policy (or words to the same effect) in its regional plan(s):

"There is no net loss of river extent and values, and the council is satisfied:

- (a) that there is an operational need for the activity in that location; and
- (b) the effects of the activity are managed by applying the effects management hierarchy."

(2) Subclause (3) applies to an application for a consent for an activity:

(a) that falls within the exception to the policy described in subclause (1); and

(b) would result (directly or indirectly) in the loss of extent or values of a river.

(3) Every regional council must make or change its regional plan(s) to ensure that an application referred to in subclause (2) is not granted unless:

(a) the council is satisfied that the applicant has demonstrated how each step in the effects management hierarchy will be applied to any loss of extent or values of the river (including cumulative effects and loss of potential value based on allowing such wetlands or rivers to remain in or return to their natural state without requiring further enhancement), particularly (without

limitation) in relation to the values of: ecosystem health, indigenous biodiversity, hydrological functioning, Māori freshwater values, and amenity; and

(b) any consent granted is subject to conditions that apply the effects management hierarchy.

(4) Every regional council must:

(a) develop and undertake a monitoring plan that:

- i. monitors the condition of its rivers; and
- ii. contains sufficient information to enable the council to assess whether its policies, rules, and methods are ensuring no loss of extent or values of the rivers; and

(b) have methods to respond if loss of extent or values is detected.

3.21 Definitions relating to wetlands and rivers:

identified growth areas means future urban land identified in a:

- a) Future Development Strategy, or relevant plan or strategy;
- b) RMA Planning document;
- c) Long Term Plan;
- d) 30 year infrastructure strategy; or similar.

natural wetland means a wetland (as defined in the Act) that is not:

- a) a wetland constructed by or resulting from 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 grassed or pasture area that has more than 50 percent ground cover comprising exotic grass / pasture species or exotic species associated with pasture; or
- d) less than 0.05 hectares in extent and/or greater than 5° slope angle, except where there are threatened species present.

Add an addendum that includes a list of wetland species.

loss of value, in relation to a natural inland wetland or river, means the wetland or river is less able to provide for the following existing or potential values, where potential values are based on such wetlands or rivers being allowed to remain in or return to their natural state without requiring further enhancement):

- a) any value identified for it under the NOF process; or
- b) any of the following, whether or not they are identified under the NOF process:
 - i. ecosystem health
 - ii. indigenous biodiversity
 - iii. hydrological functioning
 - iv. Māori freshwater values
 - v. amenity

urban development, means housing and commercial, business and industrial development, including all infrastructure, associated activities, ancillary services and supporting social infrastructure, inclusive of (but not limited to) schools, reserves, community and social infrastructure.

10.2 Proposed NES-FW Amendments: Part 3 Standards for other activities that relate to freshwater: Subpart 1 – Natural Wetlands

<i>Subpart 1 – Natural Wetlands</i>	
<i>Construction of specified infrastructure</i>	
45a	<p><u>Permitted Activity</u></p> <ol style="list-style-type: none"> 1) <u>Earthworks or land disturbance outside a 10 m, but within a 100 m, setback from a natural wetland is a permitted activity if it—</u> <ol style="list-style-type: none"> a. <u>is for the purpose of constructing specified infrastructure; and</u> b. <u>does not result, or is unlikely to result, in the complete or partial drainage of all or part of the natural wetland.</u> 2) <u>The taking, use, damming, diversion, or discharge of water within, or within a 100 m setback from, a natural wetland is a permitted activity if it—</u> <ol style="list-style-type: none"> a. <u>is for the purpose of constructing specified infrastructure; and</u> b. <u>does not result, or is unlikely to result, in the complete or partial drainage of all or part of the natural wetland or affect the quality or quantity of water of the natural wetland.</u>
45	<p><u>Restricted discretionary activities</u></p> <ol style="list-style-type: none"> 1) Vegetation clearance within, or within a 10 m setback from, a natural wetland is a <u>restricted</u> discretionary activity if it is for the purpose of constructing specified infrastructure. 2) Earthworks or land disturbance within, or within a 10 m setback from, a natural wetland is a <u>restricted</u> discretionary activity if it is for the purpose of constructing specified infrastructure. 3) Earthworks or land disturbance outside a 10 m, but within a 100 m, setback from a natural wetland is a <u>restricted</u> discretionary activity if it— <ol style="list-style-type: none"> a. <u>is for the purpose of constructing specified infrastructure; and</u> b. <u>results, or is likely to result, in the complete or partial drainage of all or part of the natural wetland.</u> 4) The taking, use, damming, diversion, or discharge of water within, or within a 100 m setback from, a natural wetland is a <u>restricted</u> discretionary activity if <u>it—</u> <ol style="list-style-type: none"> a. <u>is for the purpose of constructing specified infrastructure; and</u> b. <u>results, or is likely to result, in the complete or partial drainage of all or part of the natural wetland or affects the quality or quantity of water of the natural wetland.</u>
<i>Establishment of Urban Development in identified growth areas</i>	
45b	<p><u>Restricted discretionary activities</u></p> <ol style="list-style-type: none"> 1) <u>Vegetation clearance within, or within a 10 m setback from, a natural wetland is a restricted discretionary activity if it is for the purpose of establishing urban development in an identified growth area.</u> 2) <u>Earthworks or land disturbance within, or within a 10m setback from, a natural wetland is a restricted discretionary activity if it is for the purpose of establishing urban development in an identified growth area.</u>

- 3) Earthworks or land disturbance outside a 10m, but within a 100m, setback from a natural wetland is a restricted discretionary activity if it—
 - a) is for the purpose of establishing urban development in an identified growth area; and
 - b) results, or is likely to result, in the complete or partial drainage of all or part of the natural wetland.
- 4) The taking, use, damming, diversion, or discharge of water within, or within a 100 m setback from, a natural wetland is a restricted discretionary activity if it is for the purpose of establishing urban development in an identified growth area.

Attachment 1 - Memorandum: 'Proposed change to definition of natural wetland' by Boffa Miskell Ltd, dated 15 October 2021

Boffa Miskell 

Memorandum

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Attention:	Campbell Larking
Company:	Tauranga City Council
Date:	15 October 2021
From:	Ian Boothroyd
Message Ref:	Proposed change to definition of 'natural wetland'
Project No:	T18140

Introduction

Boffa Miskell have undertaken ecological and wetland assessments for two key growth areas within Tauranga City: Te Tumu Urban Growth Area; and - Tauriko West Urban Growth Area. Following the gazettal of the National Policy Statement on Freshwater Management (NPS-FM), Boffa Miskell completed two key assessments ("the assessments"):

- Te Tumu urban growth area: Preliminary wetland survey. Report prepared by Boffa Miskell Limited for Tauranga City Council, version 1, 27 January 2021 (BML Te Tumu 2021).
- Tauriko West urban growth area: Preliminary wetland survey. Report prepared by Boffa Miskell Limited for Tauranga City Council, version 1, 31 March 2021 (BML Tauriko 2021).

"The Assessments" identified potential wetlands within both Urban Growth Area's which were likely to meet the definition of a natural inland wetland under the NPS-FM. Since the completion of "the assessments", the Ministry for the Environment (MfE) has released a "discussion document" 'Managing our wetlands: A discussion document on proposed changes to the wetlands regulations'. The "discussion document" now proposes changes to the definition of a natural inland wetland, which varies from that of the original definition currently provided for in the NPS-FM. In addition, since the time of these assessments being completed a 'wetland delineation hydrology tool' (July 2021) has been released and is now available for use in identifying natural inland wetlands'.

We also note that MfE have also released a 'guidance document' 'Defining 'natural wetlands' and 'natural inland wetlands.' Although not the subject of our further assessment here, we make reference to this guidance document later in our response.

Tauranga City Council (TCC) would now like to test the proposed change to the definition in the "discussion document" and the steps now outlined in 'the tool' against the work previously undertaken by Boffa Miskell to determine what the actual changes may mean in regard to the previously identified wetlands, their extent, and likelihood of these features being defined as natural inland wetlands under the proposed revised definitions. The outputs will be used to inform the TCC submission on the "discussion document". The review work is a desktop-only assessment.

Scope

The tasks to be undertaken for this scope and nature of service including deliverables are: -

Review of "the assessments" with a view to understand what the new proposed definition as outlined in the NPS-FM "discussion document: and the steps set out in the wetland delineation hydrology tool may mean for wetland identification in Te Tumu and Tauriko West Urban Growth Areas.

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Approach

We have used the prior reports, photos and fields notes to inform our review of the proposed changes to the definition of a natural inland wetland NPS-FM. We have followed a similar approach as laid out in the earlier BML assessments using aerial images, GIS topography and plant species recorded during previous site visits by Boffa Miskell staff. No new site visits were undertaken.

NPS-FM and discussion document

The NPS-FM and NES-F contain regulations that use a definition of a wetland that is a subset of the Resource Management Act 1991 (RMA) definition. The wetland regulations are concerned with the protection of 'natural wetlands.' The Government has received feedback that the current definition of 'natural wetland' in the NPS-FM is problematic to apply and captures some heavily modified, exotic pasture-dominated wetlands even though part (c) of the definition seeks to exclude these areas. This is having unintended consequences, such as restricting changes in land use and development in these areas. Accordingly, the Government is proposing to amend the definition of 'natural wetland'.

The assessments at Te Tumu and Tauriko were based on the existing NPS-FM definition of natural wetland, which includes the exemption if:

- (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.

The revised definition reads:

- (c) any area of pasture that has more than 50% ground cover comprising exotic pasture species or exotic species associated with pasture.

The current NPS-FM defines improved pasture as an area of land where exotic pasture species have been intentionally sown or maintained for the purpose of pasture production and species composition and growth has been modified and is being managed for grazing. However, at present, a definitive list detailing which species of grasses and herbs constitute a 'pasture species' or associated exotic species does not exist. In our assessment of which species are considered pasture species which should be included under the definition of pasture we considered introduced grass and herb species that met the following criteria as improved pasture species:

- Introduced grasses or herbs as listed in '*Technical guidance for the determination of natural wetlands under Greater Wellington's proposed Natural Resources Plan*'.
- Introduced grasses or herbs that are grazed by livestock and maintained as pasture.
- Introduced grasses or herbs where historic evidence indicates that they were originally introduced to New Zealand as pasture species.

Wetland delineation hydrology tool

Published in July 2021 by MfE the wetland hydrology tool was developed to be used in conjunction with the vegetation tool (Clarkson, 2013) and hydric soils tool (Fraser et al., 2018) in the identification and delineation of wetlands. The wetland hydrology tool outlines the primary and secondary hydrology indicators and assessment procedure and integrates these within established protocols for identifying hydrophytic vegetation and hydric soils to delineate wetlands. Wetland hydrology indicators are assigned to four groups:

1. Observation of flooding or groundwater;
2. Evidence of flooding or ponding;
3. Evidence of current or recent soil saturation; and
4. Other hydrological evidence from site conditions or data.

Group 1 are primary indicators, and groups 2, 3 and 4 are a combination of primary and secondary indicators. To confirm the presence of wetland hydrology, the following are required:

- one primary indicator, or
- two secondary indicators.

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As a four-prong approach to wetland delineation, the hydrology tool provides supporting evidence for the hydrophytic vegetation and hydric soils tools (Figure 1). Vegetation and soil assessments indicate whether an area was a wetland over the medium to long term, while the hydrological tool indicators confirm that an area remains a wetland. Therefore, wetland hydrology indicators provide evidence that hydrophytic vegetation and hydric soils are not relics of a past hydrologic regime.

Figure 1: Four steps for delineating wetlands using the hydrophytic vegetation, hydric soils and wetland hydrology tools

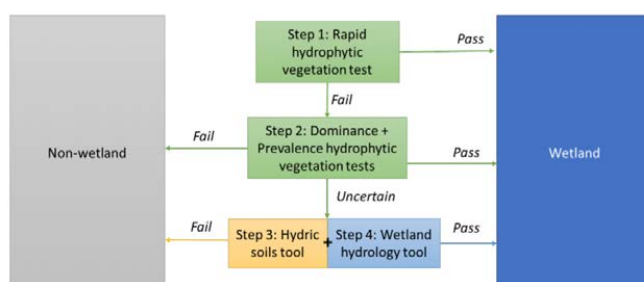


Figure 1 Four steps for delineating wetlands using the hydrophytic vegetation, hydric soils. Extracted from Ministry for the Environment. 2021. Wetland delineation hydrology tool for Aotearoa New Zealand. Wellington: Ministry for the Environment.

Interpreting hydrological indicators is undertaken during the growing season and includes observation of primary and secondary indicators, after assessment with vegetation and hydric soil tools, and confirms the presence or absence of a wetland. Where possible from previous field data collected, we have utilised the hydrology tool to inform our review. In the absence of quantitative soil data from site visits, soil and associated hydrology information from the Manaaki Whenua New Zealand Map S-Map (<https://smap.landcareresearch.co.nz/>) were utilised as a proxy. Use of the hydrology tool is generally constrained in this review, as it is primarily a ground tool and therefore difficult to assess from aerial and existing field notes.

Review

A review of natural wetlands features identified at the initial assessment in response to proposed changes in the NPS-FM natural wetland definition are outlined below. Our review utilises a similar approach to previous BML assessments to identify natural wetland areas, as follows:

- A feature with high likelihood (greater than 90% likelihood) of meeting the *proposed* NPS-FM natural wetland definition,
- A feature with a medium likelihood of meeting the *proposed* NPS-FM natural wetland definition (i.e. between 50 – 90% likelihood), and
- A feature with low likelihood of meeting the *proposed* NPS-FM wetland definition (<50% likelihood)

Te Tumu Urban Growth Area Natural Wetland Area Review

The proposed Te Tumu urban growth area is comprised of 740 ha of land between Pāpāmoa East and the Kaituna River mouth. Our revised assessment retains four features and complexes as having a high likelihood with a further three retained at medium likelihood of meeting the proposed NPS-FM natural wetland definition. However, four features and complexes have been moved to medium likelihood with a further two re-classified from medium to low likelihood due to the prevalence of pasture species.

Features with a ' high likelihood ' of meeting the current NPS-FM wetland definition		Revised likelihood of meeting the proposed NPS-FM wetland definition
Feature number	Description (December 2020)	(orange shading shows wetland areas that have been re-categorised).
1a	Wairākei Wetland is part of the Wairākei Stream relic channel and is a linear feature that crosses the north western part of the site. The feature has three main habitat types including: medium to tall obligate wetland vegetation (raupo, spike sedge, etc), open water with aquatic macrophytes and turf communities along the margin, and mixed native and exotic vegetation (willow and manuka canopy).	A desktop review retains this feature as high likelihood of meeting the proposed NPS-FM natural wetland definition. A review of S-maps indicates this area has moderate to high soil moisture levels with areas of permanent inundation.
3	This elongated feature is located near the sand mine. The vegetation included obligate and facultative wetland species as well as surface water.	A desktop review retains this feature as high likelihood of meeting the proposed NPS-FM natural wetland definition. A review of S-maps indicates this area has high soil moisture levels with areas of permanent inundation.
6a	The low-lying floodplain adjacent to the Kaituna River is the largest and most diverse feature of the site. It contains several different wetland vegetation assemblages and numerous obligate and facultative wetland plant species.	A desktop review retains this feature as high likelihood of meeting the proposed NPS-FM natural wetland definition. A review of S-maps indicates poorly drained gley and organic soils which are frequently waterlogged.
8a & 8b	Elizabeth Wetland is the largest wet area located in a paleo channel towards the centre of the site. The feature has two main vegetation types including: <ul style="list-style-type: none"> medium to tall wetland vegetation (raupo, spike sedge and Juncus communities), and open water with indigenous turf margins and aquatic macrophytes. <p>There is an associated small feature to the west of the Elizabeth Wetland with similar characteristics.</p>	A desktop review retains these features as high likelihood of meeting the proposed NPS-FM natural wetland definition. A review of S-maps indicates well drained, high moisture-podzolised soils with areas of permanent inundation.

Features with a ' medium likelihood ' of meeting the current NPS-FM wetland definition		Revised likelihood of meeting the proposed NPS-FM wetland definition
Feature number	Description (December 2020)	(orange shading shows wetland areas that have been re-categorised).
4a – c	The low-lying flood plain area adjacent to Bell Road oxbow at the southwestern end of the survey site has vegetation that consists of a mix of pasture and rush species. The dominance of rushes is variable within this area.	A desktop review retains these features as medium likelihood of meeting the proposed NPS-FM natural wetland definition. S-maps indicate this area to comprise poorly drained gley soils with very high-high moisture levels.
5a & 5b	These two features near the Bell Road entrance to the site contain a mix of vegetation complexes including rush and pasture and other herbaceous species, mixed sedge and rush complexes and taller stature assemblages (i.e. willow and cabbage trees).	Prevalence of pasture species move these features to medium likelihood of meeting the proposed NPS-FM natural wetland definition. A review of S-maps indicates poorly drained gley soils which are frequently waterlogged.
6b – c	These two features are located on slightly elevated terrain next to the large low-lying habitat that borders the Kaituna River (i.e. the area transitioning from low lying floodplain habitat to more elevated dryland habitat). Vegetation in these features comprises a mix of pasture and herbaceous species (willow weed, umbrella sedge) that are commonly found in wetland habitats (i.e. mix of different species categories).	A desktop review retains these features as medium likelihood of meeting the proposed NPS-FM natural wetland definition. S-maps indicate these areas to comprise poorly drained gley soils with very high-high moisture levels.

7a – h	These features are a sequence of wet areas/dune lakes / depressions that follow a paleo channel towards the southern end of the site. The features are similar in size (except for 7a which is slightly larger) and plant species composition. The features comprise a mix of rushes and herbaceous wetland species (marsh bedstraw, willow weed, water pepper, mercer grass, water purslane, with pasture species becoming more abundant around the edge. There were also small damp areas within agricultural crops. These areas have not been marked as wetlands as they did not meet the definition at the time of the site visit due to a lack of wetland vegetation cover. However, herbaceous wetland plants will likely recolonise these sites if they are not managed for farming purposes and re-assessment is advised.	The dominance of pasture species and exotic species associated with pasture move these features to medium likelihood of meeting the proposed NPS-FM natural wetland definition. Generally, well-drained, podzolised soils with an area of poorly drained gley soils near 7a. Note the comment regarding recolonisation should land management practices change. That might elevate them back into the high likelihood category.
9b	This small feature is located within a depression and adjacent to a "high likelihood" feature. The vegetation includes a mix of pasture and rush species (i.e. mix of different species categories).	A desktop review retains this feature as medium likelihood of meeting the proposed NPS-FM natural wetland definition. Review of S-maps indicates generally, well drained, high moisture-podzolised soils.
9a, c – n	These features are a sequence of wet areas/dune lakes/depressions that follow a paleo channel through the centre of the site, east of Elizabeth Wetland. The features are similar in size and plant species composition. The vegetation assemblages comprise a mix of herbaceous wetland species (marsh bedstraw, willow weed, water pepper, mercer grass, water purslane) with pasture species becoming more abundant around the edge.	The dominance of pasture species and exotic species associated with pasture (i.e. mercer grass, perennial ryegrass) move these features to medium likelihood of meeting the proposed NPS-FM natural wetland definition. Generally, well-drained, high moisture-podzolised soils.
10	This feature is a small low-lying area between a pine plantation and the Kaituna River low-lying flood plain. The vegetation is comprised mostly willow weed and other herbaceous wetland plants and surface water.	The dominance of pasture species and exotic species associated with pasture move this feature to medium likelihood of meeting the proposed NPS-FM natural wetland definition. Well-drained, high moisture-podzolised soils are present across this area.

Features with a 'low likelihood' of meeting the current NPS-FM wetland definition		Revised likelihood of meeting the proposed NPS-FM wetland definition
Feature number	Description (December 2020)	(orange shading shows wetland areas that have been re-categorised).
1b	The small intermittently wet areas at the eastern end of the Wairākei Wetland paleo channel have vegetation comprised of a mix of pasture species and herbaceous species that are found in wetland environments (i.e. umbrella sedge, willow weed, water purslane, etc). Some of these features may have resulted from human landform modification and may therefore meet the definition of <u>artificial wetlands</u> .	The dominance of pasture species and exotic species associated with pasture (i.e. mercer grass, water pepper, creeping buttercup) move this feature to low likelihood of meeting the proposed NPS-FM natural wetland definition. A review of S-maps indicates this area has moderate to high soil moisture levels, is generally well-drained with areas of permanent inundation. <i>Further quantitative surveys are strongly recommended at this location.</i>
2a – c	There are three small damp areas near the sand mine at the western end of the survey site with vegetation assemblages comprised of a mix of pasture, rush, and umbrella sedge species (i.e. mix of different species categories). Two of the sites (a and b) have also been subject to modification from sand mining activities.	The dominance of pasture species and exotic species associated with pasture (i.e. mercer grass, broad-leaved plantain) move these features to low likelihood of meeting the proposed NPS-FM natural wetland definition. A review of S-maps indicates this area to be well-drained with high moisture-podzolised soils.

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Tauriko West Urban Growth Area Natural Wetland Review

Tauriko West urban growth area is comprised of 340 ha of rolling hills, gullies and low-lying floodplains of the Wairoa River. Our re-assessment of vegetation assemblages retains three features and complexes as having a high likelihood with four retained at medium likelihood of meeting the proposed NPS-FM natural wetland definition. However, two features and complexes have been moved to medium likelihood with a further three re-categorised from medium to low likelihood due to the prevalence of pasture species.

Features with a 'high likelihood' of meeting the current NPS-FM wetland definition		Revised likelihood of meeting the proposed NPS-FM wetland definition
Feature number	Description (December 2020)	(orange shading shows wetland areas that have been re-categorised).
1	There is a small feature towards the southern extent of the site that consists of a mix of obligate and facultative wetland species including rushes and sedges, reed sweetgrass, swamp millet, and willow trees.	A desktop review retains this feature as high likelihood of meeting the proposed NPS-FM natural wetland definition. A review of S-maps indicates this area has high soil moisture levels with areas of permanent inundation.
5b, d, e (east), f		A desktop review retains these features as high likelihood of meeting the proposed NPS-FM natural wetland definition. A review of S-maps indicates this area has high soil moisture levels across well-drained allophanic soils with areas of permanent inundation.
9a	There is a feature within the centre of the site and towards the western boundary which mostly comprises a willow canopy over a mix of obligate and facultative wetland species such as swamp millet, rush species, swamp kiokio and Carex species.	A desktop review retains this feature as high likelihood of meeting the proposed NPS-FM natural wetland definition. S-maps indicate this area to generally comprises poorly drained grey soils with high moisture levels.

Features with a 'medium likelihood' of meeting the current NPS-FM wetland definition		Revised likelihood of meeting the proposed NPS-FM wetland definition
Feature number	Description (December 2020)	(orange shading shows wetland areas that have been re-categorised).
4		A desktop review retains this feature as medium likelihood of meeting the proposed NPS-FM natural wetland definition. A review of S-maps indicates this area has high soil moisture levels across well-drained allophanic soils.
5c, e (west), h		A desktop review retains this feature as medium likelihood of meeting the proposed NPS-FM natural wetland definition. A review of S-maps indicates this area has high soil moisture levels across well drained allophanic soils.
5a (east)	There is a complex of small gully features found along the escarpment near the south eastern boundary of the site. The features vary in size and include areas which have been categorised as both "high likelihood" and "medium likelihood" of meeting the natural wetland definition. The sites which have been categorised as "high likelihood" features comprise several obligate and facultative wetland species such as mercer grass, rush and sedge species and swamp millet. There are also sites which include raupo and willow trees.	The dominance of pasture species and exotic species associated with pasture (i.e. Yorkshire fog, perennial ryegrass) moves the eastern section of 5a from high to medium likelihood of meeting the proposed NPS-FM natural wetland definition. A review of S-maps indicates this area has high soil moisture levels across well-drained allophanic soils.
6b	There is a linear feature along a section of the eastern boundary. The feature comprised rush and sedge species, swamp millet, mercer grass and other herbaceous species often associated with wetland habitat.	Prevalence of pasture species and associated exotics (i.e. perennial ryegrass, cocksfoot, gorse) moves these features from high to medium likelihood of meeting the proposed NPS-FM natural wetland definition. A review of S-maps indicates this area has high soil moisture

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		levels across well-drained allophanic soils.
8	A mosaic of low-lying areas, springs and watercourse channels are present within an area towards the south east / centre of the site. The area had been recently subject to grazing and harvesting and it was difficult to identify species as well as determine the extents. There are likely to be a combination of all three categories present within this area (low, medium and high likelihood).	A desktop review retains this feature as medium likelihood of meeting the proposed NPS-FM natural wetland definition. Pasture species are prevalent in certain areas (i.e Yorkshire fog, perennial ryegrass, gorse, common daisy). A review of S-maps indicates generally poorly drained soils with very high moisture levels across a mix of gley and allophanic soil types. <i>Further surveys strongly recommended across this feature.</i>
9b & c	Adjacent to the "high likelihood" feature near the western boundary of the site are two features which comprise a mix of herbaceous plants commonly associated with wetlands (i.e. rushes, mercer grass) and pasture species and have a medium likelihood of meeting the definition. One feature is a depression that feeds into the "high likelihood" feature, while the other is a channel (with riparian margin) that drains away from the "high likelihood" feature. Species present include rush species, swamp kiokio and Carex species.	A desktop review retains this feature as medium likelihood of meeting the proposed NPS-FM natural wetland definition. S-maps indicate this area to generally comprises poorly drained gley soils with high moisture levels.

Features with a 'low likelihood' of meeting the current NPS-FM wetland definition		Revised likelihood of meeting the proposed NPS-FM wetland definition (orange shading shows wetland areas that have been re-categorised).
Feature number	Description	
2	There are two features located in the centre of the site towards the southern extent that are found on low-lying land. The features consist of a mix of plant species commonly found in wet habitats (i.e. rushes, willow weed and occasional sedge – facultative wetland species) as well as common pasture species.	Dominance of pasture species and exotic species associated with pasture (i.e. Yorkshire fog, perennial ryegrass, creeping buttercup) moves this feature to low likelihood of meeting the proposed NPS-FM natural wetland definition.
5a (west), g	There is a complex of small gully features found along the escarpment near the south eastern boundary of the site. Features that have been categorised as "medium likelihood" comprise a mix of species some of which are suited to dryland conditions and some which are categorised as facultative wetland species.	The dominance of pasture species and exotic species associated with pasture (i.e. Yorkshire fog, perennial ryegrass) moves these features to low likelihood of meeting the proposed NPS-FM natural wetland definition. A review of S-maps indicates this area has high soil moisture levels across well-drained allophanic soils.
7	A linear feature is present within the centre of the site within the riparian margin of a small waterway. The feature includes a mix of plant species commonly found in wet habitats (i.e. rushes, willow weed and occasional sedge – facultative wetland species) as well as common pasture species. The site is marginal as to whether it will meet the definition of a wetland or not.	The dominance of pasture species and exotic species associated with pasture (i.e. Yorkshire fog, perennial ryegrass) moves these features to low likelihood of meeting the proposed NPS-FM natural wetland definition. A review of S-maps indicates this area has high soil moisture levels across well-drained allophanic soils.

Constructed/induced wetlands

The discussion document on 'Managing our Wetlands' does not offer any proposed modifications or comment on the exemption as a wetland where:

- (a) a wetland constructed by artificial means (unless it was constructed to offset impacts on, or restore, an existing or former 'natural wetland').

However, the guidance document ('Defining 'natural wetlands' and 'natural inland wetlands.') clarifies that:

- 'Wetlands constructed by artificial means' includes wetlands and waterbodies that have been deliberately constructed for a specific purpose and that may require maintenance over time (for example, vegetation or silt removal) to continue to fulfil that purpose. This includes areas of wetland habitat that have formed in or around any deliberately constructed waterbody (Sec. 5.1).
- 'Induced wetlands' are wetlands that have resulted from any human activity, except the deliberate construction of a wetland or waterbody by artificial means (see above). They are considered 'natural wetlands' (Sec. 6).

The guidance goes on to further clarify that:

Where a wetland is induced as the result of a wetland or waterbody constructed by artificial means for a specific purpose, it falls under 'wetland constructed by artificial means.'

Three features and complexes have been identified as constructed wetlands within Tauriko West urban growth area as follows:

Feature number	Description
3 a – c	There is a series of three constructed ponds towards the south west of the site at the base of a small gully. The two larger ponds comprise mostly surface water with rushes and herbaceous species (i.e. willow weed, mercer grass, etc) as well as mixed pasture grasses along the margin. The smallest and most northern pond includes several different rush species as well as macrophyte species growing within and around the pond.
6a	Considered a constructed wetland as it is evident the feature has been constructed for landscaping purposes. The feature comprises emergent macrophyte species within the pond and plant species commonly associated with wetlands around the margins (i.e. rushes and sedges and other herbaceous species).
5f	Considered as constructed wetlands as they may have been constructed for stock watering and/or landscaping.

Updated Maps

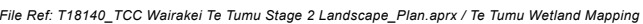
Te Tumu and Tauriko West maps with the revised likelihood of wetland features and complexes meeting the proposed NPS-FM definition are outlined below. Wetlands considered constructed/induced are shown for completeness.

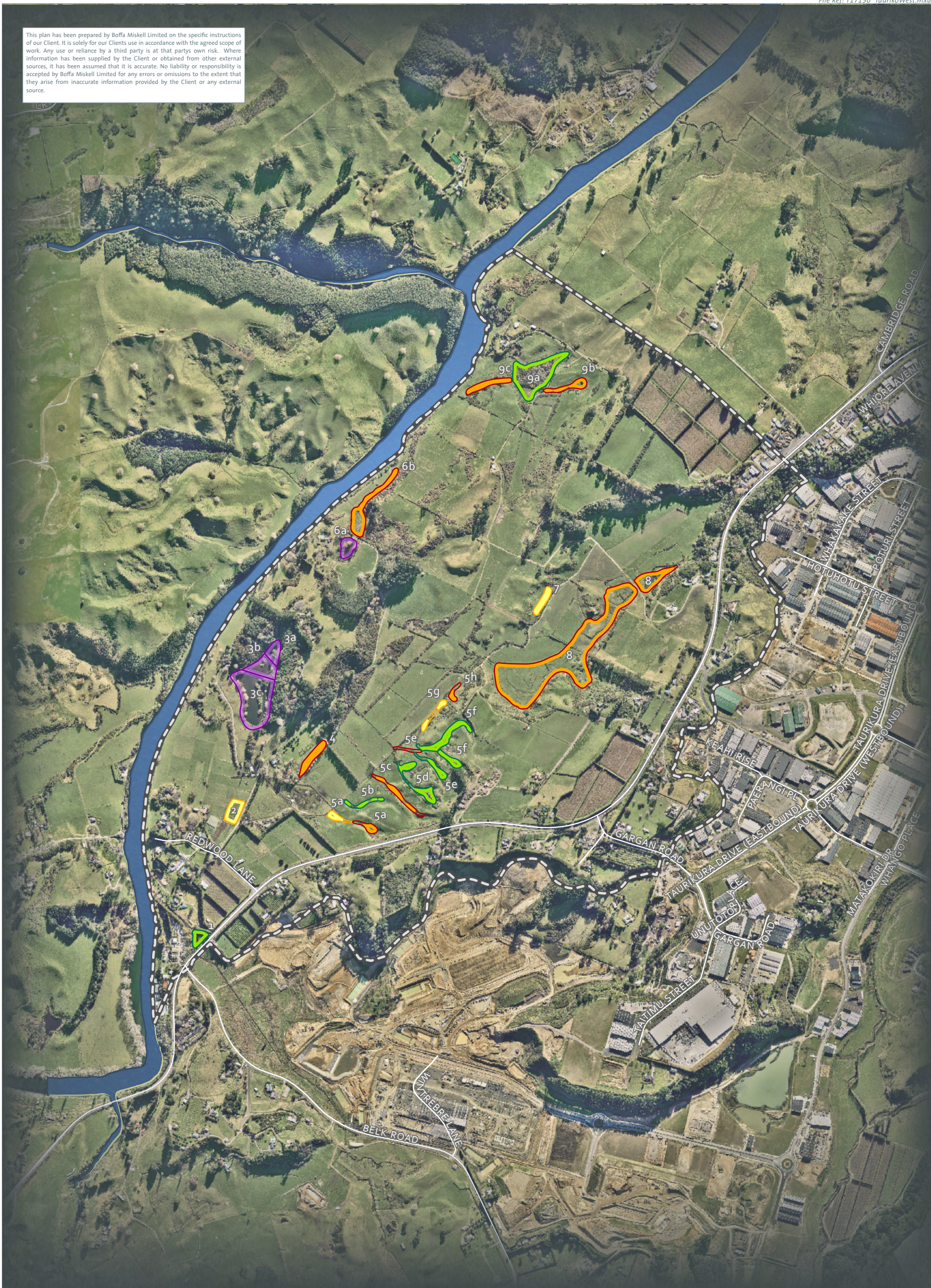
Uncertainties

We emphasise that this exercise is a desktop assessment based on some very preliminary field observations. As also emphasised in "the assessments", features classified as having "high likelihood" or "medium likelihood" of meeting the natural wetland definition in this assessment may require further quantitative assessment using the standard methods to determine their status and the extent (boundary) of the feature. This will be particularly relevant to areas where:

- there is greater uncertainty (i.e. the "medium likelihood" features),
- the classification is disputed by stakeholders, and/or
- within or adjacent to proposed development.

Some features may not require further assessments, including those “high likelihood” features where a qualified ecologist can confirm without further survey that the vegetation composition and habitat characteristics are such that the feature would meet the definition of a natural wetland, and where the wetland extent can be easily demarcated. While we have endeavoured to assess the entire proposed development site, it is possible that small features exist on site that have not been captured in this assessment. This is due to the extensive area of the site and complex topography (i.e. dune hollows, paleo channels) which can obscure small wetland areas (i.e. less than 50 m²). Further, it is possible that natural pond features not categorised as wetland habitat may still meet the definition of dune lakes. This is a term that applies across the range of ecosystem types that occur on damp sand plains from lakes with permanent open water to ephemeral wet areas that regularly dry up. Dune lakes and wetlands are both considered to be critically endangered ecosystems. We also note that changing land management practices may change the status of some of the wetlands.





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Data Sources: Tauranga City Council, BOPLASS Ltd, Bay of Plenty Regional Council
Projection: NZGD 2000 New Zealand Transverse Mercator

Tauriko West Urban Growth Area - Central-Southern Area

Constructed Wetland

High Probability of Meeting Wetland Definition

Moderate Probability of Meeting Wetland Definition

Low Probability of Meeting Wetland Definition

TAURIKO WEST ECOLOGICAL ASSESSMENT

Tauriko West Wetland Mapping

Date: 15 October 2021 | Revision: D

Plan prepared for Tauriko Property Group by Boffa Miskell Limited

Project manager: Kieran.Miller@boffamiskell.co.nz | Drawn: JWA | Checked: KMy

Attachment 2 - Resource Consent Pathway under Proposed
Changes to NPS-FM Framework – 1 September 2021

A worked example based on a hypothetical case study

Resource Consent Pathway under Proposed Changes to NPSFM Framework – 1 September 2021

A worked example based on a hypothetical case study¹

(Key Assumptions of Process and Risk Outcomes in Consenting Process Proposed)

1. Identified Growth Area:

Subject site is within an identified growth area that has been long identified by SmartGrowth as a priority area for urban development; and is critical to the delivery of the recently adopted Urban Form & Transport Initiative (UFTI)². The growth area is also identified as a 'Priority Development Area' (PDA) within the Western Bay Sub-region; and the PDA forum is coordinated by MHUD in partnership with a number of government bodies and Bay of Plenty local authorities (through SmartGrowth) - being tasked at enabling housing and business development areas to be delivered at scale and pace, given the significant growth pressures currently faced in Tauranga as a Tier 1 urban environment under the National Policy Statement on Urban Development 2020 (NPS-UD). TCC is required to provide for a greater supply of developable land, both zone enabled and infrastructure ready to meet this growing urban land demand.

2. Natural Inland Wetland:

Subject site has an area (or multiple areas) of natural wetland identified by the ecological assessment based on the new wetland delineation assessment tool³ for Natural Wetland and the revised MfE definition (MfE discussion document, 1 September 2021), as follows:

(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.

3. Impact on wetlands and modified watercourse:

Proposal involves large scale earthworks for future housing development, which impact on the newly identified wetland areas and a modified watercourse. The large-scale earthworks are part of a larger scale development programme across a number of adjoining properties, and to be staged over more than one earthworks season, until completion. The development, upon completion will deliver approximately 3500 new dwellings. The overall volumes are approximately as follows, subject to final design and volume adjusted factors, top-soil management, as well as further detailed geotechnical assessment to determine preload volumes and timeframes:

Ø Cut – 800,000m³

Ø Fill – 2,000,000m³

¹ All site ownership and property details have been kept confidential.

² UFTI is a joint initiative prepared by Tangata Whenua, Smartgrowth, BOPRC, TCC, Western Bay of Plenty District Council, Waka Kotahi NZTA, MHUD, and Kāinga Ora

³ The Wetland Delineation Protocols, published by MfE in August 2020, are referred to in clauses 3.23 and 1.8 of the NPS-FM. The hydrology tool referred to in the protocols was published by MfE in July 2021, as the 'Wetland delineation hydrology tool for Aotearoa New Zealand'.

The earthworks require up to 5m of fill to raise the future residential building platforms above the identified flood risk levels⁴; and thereby impacting existing wetlands and watercourses to deliver on the requirements of Council Strategy and the NPS-UD. The wetlands, as identified under the proposed definition would be impacted in that they will result in the full or partial drainage of the wetland due to the earthworks proposed to achieve minimum building platforms to provide for housing and deliver a resilient community for Tauranga.

4. Consenting Pathway provided under National Environmental Standards for Freshwater:

[Proposed 'new'] Regulation XXX45A under Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-FW) provides a consenting pathway as a Discretionary Activity for urban development that is plan-enabled for housing or business use – within, or within 100m of a 'natural wetland'.

5. Ecological Assessment undertaken:

The ecological assessment has identified natural wetland areas on the subject site, meeting the NPS-FM definition and comprising a mosaic of low-lying areas, springs and watercourse channels; where the area has been recently subject to grazing and harvesting. Further field work was required to ground-truth the actual extent of natural wetland in accordance with the NPS-FM definition and the Wetland delineation protocols. The ecological assessment also established that there is a combination of farm drains, artificial watercourses, and also part of the modified watercourse extent - based on meeting the RNRP definition, particularly as this area used to have wetlands long before it was drained for farming purposes. The research indicates that there was likely to have been an historic natural stream channel within a larger wetland complex. While it is difficult to determine the actual path of the historic natural watercourse, the assessment has used the defined drainage channels that traverse the subject site between/surrounding the farm paddocks.

6. Effects Management Hierarchy and Recommended Aquatic Offsetting:

An ecological assessment has been undertaken which addresses loss of value in terms of

- Ø ecosystem health
- Ø indigenous biodiversity
- Ø hydrological functioning
- Ø Māori freshwater values
- Ø amenity

⁴ Flood heights calculated on the basis of the 100-year 2130 Wairoa River flood event combined with a 20 year tidal event. Climate change assumptions are to be based in line with MFE Coastal Hazards and Climate Change Report (BOPRC, 2019), which requires the consideration of the RCP 8.5H+ (1.59m SLR & 3.68° temperature projection) sea level rise scenario for greenfield developments.

The ecological assessment addresses the impact of the proposal (on both the wetlands and modified watercourse) against the effects management hierarchy. The effects are deemed to be more than minor residual adverse effects which cannot be avoided, minimised, or remedied, hence the assessment recommends aquatic offsetting to achieve no net loss for both the wetland and modified watercourse. This is provided for through the discretionary activity status.

Five Key Processing Issues for the Application:

Processing Issue # 1 – Urban Growth progressed under resource consent (ahead of rezoning)

A. Scenario One: Site does not meet plan-enabled definition under the NPS-UD

The site is located within a defined urban growth area of the SmartGrowth Strategy, Long Term Plan and Regional Policy Statement. It is not zoned for urban development in the operative or a proposed city plan yet, nor identified in a required Future Development Strategy (FDS) – as there is no adopted FDS in Tauranga. It is noted that an FDS is unlikely to be adopted in Tauranga for several years. The proposal is to progress a consent by the developer, in line with higher order statutory documents and will deliver a significant contribution to housing. The proposal is to progress ahead of rezoning occurring.

The consent authority cannot receive an application as a Discretionary Activity. As a result, the consent cannot progress in regard to effects on wetlands. This is because the proposed earthworks within the natural wetland would not, therefore, have any other status under any of the NES-FW regulations 38 to 51 and fall to be Prohibited under regulation 53 NES-FW. The earthworks proposed within the surrounding 100m setback would be Non-complying, and subject to further risk of not meeting the s104D RMA gateway tests for a Non-complying activity; i.e. the effects have been assessed as more than minor, and the proposal will be contrary to the relevant objectives and policies requiring 'no further loss' of extent and values of the freshwater bodies.

B. Scenario Two: Site can meet plan-enabled definition under the NPS-UD

The site is (now) zoned for urban development within the operative City Plan. Consideration was given to the extent of 'natural wetlands', including the higher value wetlands with significant flora and fauna protected. Wider wetland areas defined under the NPS-FM are not protected outright, with reliance on the discretionary activity status within the NES-FW. The area is, because of inclusion in the City Plan (being zoned) recognised as "plan enabled." The consent application can be accepted and processed as a Discretionary Activity. It is assumed in this scenario notification will always occur. This assumes a Discretionary Activity status can still be termed 'plan-enabled' in light of NPS-UD clause 3.4(2) requiring the activity to be permitted,

controlled or restricted discretionary (only). This is because in the Plan the delivery of housing is a permitted activity and subdivision is controlled. Consent is only required for earthworks within and around wetlands.

Note: If this interpretation of NPS-UD clause 3.4(2) requiring the activity to be permitted, controlled or restricted discretionary (only) is incorrect, then the consent applications cannot be progressed.

3.4 Meaning of plan-enabled and infrastructure-ready (NPS UD)

- 1) Development capacity is plan-enabled for housing or for business land if:
 - a. in relation to the short term, it is on land that is zoned for housing or for business use (as applicable) in an operative district plan
 - b. in relation to the medium term, either paragraph (a) applies, or it is on land that is zoned for housing or for business use (as applicable) in a proposed district plan
 - c. in relation to the long term, either paragraph (b) applies, or it is on land identified by the local authority for future urban use or urban intensification in an FDS or, if the local authority is not required to have an FDS, any other relevant plan or strategy.
- 2) For the purpose of subclause (1), land is zoned for housing or for business use (as applicable) only if the housing or business use is a permitted, controlled, or restricted discretionary activity on that land

Key Issues:

- Plan enabled does not apply to all growth planning, which can occur, even when compliant with growth strategies. Urban growth can be responsive to need and innovation – which may occur outside of a normal zoning process.
- Plan enabled could be interpreted to not apply to activities where discretionary consents (i.e. under the NPS-FM) applies.
- Where an earthworks proposal for urban development is not plan enabled, it falls to be Prohibited within the wetlands, and Non-complying in the 100m setback with s104D RMA gateway tests (either minor effects OR not contrary to objectives and 'no further loss' policies).
- The proposal above shows that at the outset, activities not covered by the definition of Plan Enabled, cannot proceed and fall to be a prohibited activity.

Processing Issue # 2 – Risk that proposal fails to meet gateway tests**NPS-FM gateway tests:**

- (i) the activity must be of significant national or regional benefit; and
- (ii) there must be a 'functional need' for that activity in that location; and
- (iii) the effects of the activity are managed through applying 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.

The assessment process to be undertaken by the consenting authority must meet all the gateway tests of the above. The key risk issues to be determined by the consent authority is that the activity does not have a functional need to be located over the wetland area, even though offsetting is proposed.

Further, the activity is not exempted from complying with the policy direction – being no further loss in extent and values. This has led to the conclusion that with a consenting pathway for urban development being provided for on a similar basis to specified infrastructure (which also has a gateway test of functional need) that it is not possible to demonstrate a functional need to be in a wetland environment. Urban development, and specified infrastructure do not rely on the wetland resource to function.

Under the NPS-FM, the health and wellbeing of waterbodies and freshwater ecosystems is prioritised above all else (Objective 1). Te Mana o te Wai is to inform the interpretation of the NPS-FM, and provisions required by the NPS-FM to be included in lower order documents (clause 3.2(4)), and Policy 3.22 requires regional plans to implement policies that ensure loss of extent is avoided and values for wetlands are protected, and their restoration is promoted. Hence, consent cannot be granted where the functional need test cannot be addressed.

Key issues:

- Consent cannot be granted; and must be declined because functional need test cannot be met.
- The policy intent (as per 3.22) cannot be achieved as Gateway Test b (ii) cannot be met, and therefore, Gateway Test b (iii) cannot be considered.

Note that the BOPRC Regional Natural Resources Plan (RNRP) has an amendment required by the National Planning Standards 2019:

- Definition of Terms - new term, 'functional need' inserted

Functional need - means the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment.

Processing Issue # 3 – Risk that Discretionary Activity is to be fully notified

The result of the process, when considering the scale of earthworks proposed and magnitude of potential loss in extent and values, as well as not being able to step through the gateway test will likely result in full public notification. This places time, cost and risk on the progression of the development proposed and may impact, if the consent cannot be granted, on the viability of the entire growth area, Central Government and local authority funding of infrastructure already in place to progress with the urban growth.

Key issues:

- No certainty of outcome;
- Risk to viability of structure plan and wider settlement pattern;
- Opens up process to wider parties, who may be opposed to urban growth or seek to provide significant levels of scrutiny on wetland protection and higher ratio offsetting;
- Risk of increased costs and timeframes;
- Likely opposition received to application, and use of existing policy approach to oppose project

Processing Issue # 4 – Risk that proposal is deemed to be contrary to the objectives and policies

NPS-FM policy framework:

- Policy 6: There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.
- Policy 7: The loss of river extent and values is avoided to the extent practicable.

3.22 Natural inland wetlands

- (i) Every regional council must include the following policy (or words to the same effect) in its regional plan(s):
 “The loss of extent of natural inland wetlands is avoided, their values are protected, and their restoration is promoted, except where...”

3.24 Rivers

- (i) Every regional council must include the following policy (or words to the same effect) in its regional plan(s):
 “The loss of river extent and values is avoided, unless the council is satisfied:
 - (a) that there is a functional need for the activity in that location; and
 - (b) the effects of the activity are managed by applying the effects management hierarchy.”

The application is required to address both the gateway tests for wetlands and for rivers where modified watercourses are involved. At the same time the application must demonstrate that it is consistent with the policy direction of avoiding further loss; i.e. no further loss of extent for wetlands, and their values protected, etc. The policy framework uses language requiring the avoidance of loss and does not actually say, 'no net loss'.

Note: If the applicant is able to follow the Effects Management Hierarchy and demonstrate (through full assessment of every step, from avoid to minimise, to remedy) that only aquatic offsetting is appropriate, then there is opportunity to demonstrate no net loss, even net gain.

It is possible that the consent authority might interpret aquatic offsetting as (only) being achieved where the existing wetland can still maintain the extent and values (through on-site enhancement works), i.e. the offsetting cannot be achieved by other (different) wetlands being constructed/enhanced elsewhere on the site or nearby.

The applicant is, therefore, required to build a case using S104(1)(ab) RMA - which states that the consent authority must, subject to Part 2, have regard to, "*any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity*". The application would also need to address any case law related matters relating to any Part 2 RMA assessment, and whether the RNRP provisions of 'no further loss' leave little room for Part 2 RMA to influence the consent authority's decision; i.e. these RNRP provisions have been properly prepared having regard to Part 2 RMA and the national direction set under the NPS-FM.⁵

Key Issues:

- The applicant faces uncertainty and the risk of a lengthy / costly process to (firstly) try to meet the functional need test, and be consistent with the policy framework of avoiding loss of extent and values, to then address the Effects Management Hierarchy, and then determine whether the application should be fully notified regarding any aquatic offset or compensation proposed for 'no net loss'; OR
- The consent authority deems the application to be contrary to the policy framework of no further loss, and consent is declined.

Note: The first Key Issue appears not possible to achieve so this step cannot be undertaken through the consent processing – and consent would be declined.

⁵ On 21 August 2018 the Court of Appeal released its decision of *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316, which clarifies how Part 2 of the RMA should be considered in resource consent applications. The Court of Appeal agreed with the High Court that allowing plans to be rendered ineffective by general recourse to Part 2 is inconsistent with the scheme of the RMA, provided that the plans have been properly prepared having regard to Part 2. However, the High Court was incorrect to apply the reasoning in *King Salmon* with equal force to resource consent applications. Rather, the implications of *King Salmon* in resource consent applications are that proper application of relevant plans may leave little room for Part 2 to influence decisions.

Processing Issue # 5 – Risk that filling in modified watercourse with proposed recreated stream for aquatic offsetting fails to meet gateway tests

- RNRP: IM Chapter - New loss of river extent and values policy IM P1A

IM P1A The loss of river extent and values is avoided, unless the council is satisfied:

- (a) that there is a functional need for the activity in that location; and
- (b) the effects of the activity are managed by applying the effects management hierarchy.

For the purposes of this policy, effects management hierarchy and loss of value have the meaning given by the National Policy Statement for Freshwater Management 2020.

The applicant must also address the impact on the modified watercourses (river⁶), as well as on natural wetland.

The applicant will have to show that after 5m of fill, the existing modified watercourses will be replaced by a recreated stream designed to flow at a higher elevation (above flood risk levels) – and ensure that the extent and values of the former watercourse are maintained, as a minimum. By retaining the same modified watercourse link to the Wairoa River, and diverting the watercourse through the newly raised developable land area, and maintaining groundwater connectivity and riparian planting/habitat provision, the loss of extent and values will be avoided – and therefore, no need to address any gateway tests. This approach avoids having to demonstrate functional need, assuming the consent authority accepts this position. If the consenting authority does not accept this position, then proving functional need to fill in a ‘river’ in this location for housing development will be problematic, even a fatal flaw. The consent authority will likely judge the merits of the case before it, and not place weight on case law unless it is exactly the same situation to the case in point. The consent authority may also place greater weight on the potential value of a modified watercourse than the applicant.

Key issues for impacts on a river / stream / modified watercourse:

- Failure to meet functional need test for a modified watercourse being filled in at that location, and then relocated, means consent declined.
- Risk of potential value being determined on significant enhancement works, and a higher than necessary ratio being applied by the consent authority.

⁶ Section 2 Interpretation - RMA: river means a continually or intermittently flowing body of fresh water; and includes a stream and modified watercourse; but does not include any artificial watercourse (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal):

11.2 Civic Redevelopment Programme Progress Report

File Number: A12990982

Author: Mike Naude, Programme Manager Civic Redevelopment Projects

Authoriser: Marty Grenfell, Chief Executive

PURPOSE OF THE REPORT

1. The purpose of the report is to provide Council with the first progress report on the Civic Redevelopment Programme and associated projects.

RECOMMENDATIONS

That the Council receives the Civic Redevelopment Progress Report.

EXECUTIVE SUMMARY

2. The Civic Redevelopment Programme was adopted as part of the Council's LTP 2021-31. The Programme includes six projects, detailed as follows:
 - (a) Willow Street Civic Rebuild Planning
 - (b) 90 Devonport Road – Commercial Development
 - (c) Willow Street Council Building and Library Demolition
 - (d) Temporary Accommodation 306 Cameron Road
 - (e) Interim Library and Customer Services Centre
 - (f) Civic Precinct Phase 1 Development.
3. The Civic Redevelopment Programme Governance Group comprises an Independent Chairperson, the Chief Executive, two members of the Executive team, an independent member and an Iwi Representative. The Governance Group operates in accordance with the objectives of the adopted Terms of Reference. The Programme Manager provides monthly progress reports to the group and quarterly reports to the Council. The inaugural monthly meeting of the Governance Group was held on 9 July 2021.

BACKGROUND AND PROJECT UPDATES

4. The Civic Redevelopment Programme was approved as part of the Council's LTP 2021-31. The programme comprises 6 major projects scheduled to be delivered within the first five to six years of the LTP. The following update provides a progress report on the individual projects for the period 01 July to the present.
5. *Project 1 - Willow Street Civic Rebuild Planning* - The brief for the refresh of the Civic Precinct Masterplan was issued to Willis Bond on 19 August 2021. The masterplan refresh will include 3 sites, namely:

Site A includes the Civic Precinct site bounded by Willow Street, Hamilton Street, Wharf Street and Durham Street, Masonic Park and a section of Waterfront reserve and;

Site B the site on the western (upper) side of Durham Street known as the TV 3 site.

The brief for the draft masterplan review requires the inclusion of a proposed library and discovery centre; a museum and cultural centre; and a facility to conduct Council/Iwi meetings/functions, set within an urban space located on Site A and a hotel, conference and performance venue located on Site B. Willis Bond engaged Studio Pacific Architecture (the Design Team) in conjunction with several specialist consultants to develop the draft

masterplan by 30 October 2021. The refresh is considering community feedback received during the recent Long-term Plan process about the various activities and amenities people would like to see at the civic precinct and to consider and reflect the significant and rich cultural history of the whenua. An intensive design process has been undertaken, involving workshops including the Commissioners, the Executive team and representatives of Ngāi Tamarāwaho Ngai Tapu. The draft Civic Masterplan will be presented to the Council for consideration at the Council Meeting in November 2021.

6. *Project 2 - 90 Devonport Road – Commercial Development* – A high level spatial planning exercise to determine the Council's future space requirements was completed by TwentyTwo Consultants. Negotiations on the key terms of the draft Agreement to Lease documentation are progressing between the parties. The Council has provided direction on the key requirements for the new building, including support for a 10,000m² timber structure building which fronts onto Devonport Road. Willis Bond has a fully engaged design team, which is close to completing the base building concept design. The base concept design is scheduled for delivery in November 2021.
7. *Project 3 - Willow Street Council Building and Library Demolition* - Willis Bond has provided a proposal to develop a demolition strategy for the Willow Street Site. As part of the demolition of the Willow Street buildings, the bus interchange on Wharf and Willow Streets will be relocated for an interim period (up to six years). Abley Consultants has completed a Multi Criteria Assessment (MCA) to determine potential site options for the interim bus facility. The various options are being discussed with BOPRC and NZBUS and the outcome of these discussions, the cost and the funding options of the physical relocation of the interchange will be reported to a future Council meeting.
8. *Project 4 - Temporary Accommodation 306 Cameron Road* – Fitout works on the Council offices at 306 Cameron Road commenced in late-September 2021 and will be completed by mid-February 2022. The Commissioners and Office of the Chief Executive will be relocated from Willow Street to Cameron Road in early-November. The fitout works provide staff with a modern work environment that recognises the principles of flexible ways of work, providing spaces for project collaboration and individual work styles. Two additional tenancies on Third Avenue will provide spaces to conduct meetings, training and public engagement activities. From February 2022, all Council and Council Committee meetings will be accommodated in the BOPRC Council Chambers and all other meetings will be held in the ground floor meeting room located at 306 Cameron Road. The Community Relations and Democratic Services teams are finalising the details and communications plans to inform the public on the proposed changes to meeting venues.
9. *Project 5 - Interim Library and Customer Services Centre* - The Council signed the Agreement to Lease (ATL) for the Goddards Centre for a four-year term in September. The centre will provide an interim location for the central library and Council's Customer Services Centre. The landlord has substantially completed the base building works, as per the ATL, including the installation of a new elevator on the Devonport Road side of the building, the installation of automatic doors on the ground floor entrance on Devonport Road and the installation of a glass and timber screen between the mezzanine floor and arcade.

Several work streams were initiated and finalised as part of the due diligence process prior to signing the ATL. The developed design for the fitout has been received and is under review by the project team, the contractor, an independent quantity surveyor and the external project management office.

A project Cultural Advisory Group has been established to guide cultural displays and curated presentations of local history and taonga in the new facility.

The Council fitout commenced on 15 October, with the Customer Services Centre scheduled to open in the new location on 24 January 2022 and the library scheduled to open in late-March 2022. A communication and engagement strategy to inform customers, the community and staff has been finalised and communications are planned for release over the next three months.

10. *Project 6 - Civic Precinct Phase 1 Development* - Staff are reviewing previous Council studies completed on the various facilities proposed for the Civic Precinct site. This project will be further advanced after the adoption of the Draft Civic Master Plan.

STRATEGIC / STATUTORY CONTEXT

11. The Civic Redevelopment Programme was approved through the adoption of Council's LTP 2021. All relevant legislative requirements are considered as part of the feasibility, concept and detailed design for each project.

FINANCIAL CONSIDERATIONS

12. Budgets for the Civic Redevelopment Programme have been approved. All project costs are reported monthly to the Governance Group and to the Council through various reports. Budget allocation in the LTP for the Civic Precinct development has been approved for the construction of a library discovery centre and landscaping. A construction timeline and funding plan will be reported to the Council at an upcoming meeting for a single-phase comprehensive development of the precinct.

LEGAL IMPLICATIONS / RISKS

13. Legal advice is sought and received on matters relating to property and contract matters.

CONSULTATION / ENGAGEMENT

14. The projects were approved as part of the LTP process. A Communications and Engagement Strategy has been developed to provide direction for engagement with the community. Community engagement will be undertaken as part of the development of the various project planning stages for the individual projects included in the Civic Redevelopment Programme. A project Cultural Advisory Group has been established to provide cultural context and direction to the programme.

SIGNIFICANCE

15. The Civic Redevelopment Programme progress report is not regarded as significant in accordance with the Council's significance policy. However, details of each project relating to cultural significance, concept design and costs may be deemed as significant and will be considered further as part of future reports.

NEXT STEPS

16. Key deliverables within the next three months include:
 - (a) Delivery of the draft master plan for the Civic Precinct Redevelopment
 - (b) Completion of the fitout of the temporary accommodation of 306 Cameron Road
 - (c) Commencement of the fitout of the interim Library and Customer Services Centre at Goddards Centre and scheduled opening of Customer Services on 24 January 2021
 - (d) Finalising the terms of the Agreement to Lease for the commercial development at 90 Devonport Road
 - (e) Extensive internal and external communications programme to inform customers, staff and wider community on location changes for Council and Council Committee meetings, the draft Civic Precinct masterplan and the relocation of the library and customer services to the Goddards Centre.

ATTACHMENTS

Nil

12 DISCUSSION OF LATE ITEMS**13 PUBLIC EXCLUDED SESSION****RESOLUTION TO EXCLUDE THE PUBLIC****RECOMMENDATIONS**

That the public be excluded from the following parts of the proceedings of this meeting.

The general subject matter of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48 of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48 for the passing of this resolution
13.1 - Public Excluded Minutes of the Council meeting held on 4 October 2021	<p>s7(2)(a) - The withholding of the information is necessary to protect the privacy of natural persons, including that of deceased natural persons</p> <p>s7(2)(b)(i) - The withholding of the information is necessary to protect information where the making available of the information would disclose a trade secret</p> <p>s7(2)(b)(ii) - The withholding of the information is necessary to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information</p> <p>s7(2)(h) - The withholding of the information is necessary to enable Council to carry out, without prejudice or disadvantage, commercial activities</p> <p>s7(2)(i) - The withholding of the information is necessary to enable Council to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)</p> <p>s7(2)(j) - The withholding of the information is necessary to prevent the disclosure or use of official information for improper gain or improper advantage</p>	s48(1)(a) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7
13.2 - Ohauti Site Access Assessment: Option Identification and Evaluation	<p>s7(2)(g) - The withholding of the information is necessary to maintain legal professional privilege</p> <p>s7(2)(h) - The withholding of the information is necessary to enable Council to carry out, without prejudice or disadvantage, commercial activities</p> <p>s7(2)(i) - The withholding of the information is necessary to enable Council to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)</p>	s48(1)(a) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7

13.3 - Land Acquisition - Kennedy Road	<p>s7(2)(h) - The withholding of the information is necessary to enable Council to carry out, without prejudice or disadvantage, commercial activities</p> <p>s7(2)(i) - The withholding of the information is necessary to enable Council to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)</p>	<p>s48(1)(a) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7</p>
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14 CLOSING KARAKIA