

BEFORE THE FRESH WATER HEARINGS PANEL APPOINTED BY THE
OTAGO REGIONAL COUNCIL

IN THE MATTER OF the Resource Management Act 1991

AND

IN THE MATTER OF the Proposed Otago Regional Policy Statement 2021
Fresh Water Planning Instrument Hearing

**SUPPLEMENTARY EVIDENCE OF CLAIRE HUNTER REGARDING THE NATIONAL POLICY
STATEMENT FOR INDIGENOUS BIODIVERSITY 2023**

18 AUGUST 2023

INTRODUCTION

- 1 In its Minute 7, the Freshwater Hearing Panel directed submitters to respond by Friday 18 August 2023 to the Otago Regional Council's (ORC) supplementary evidence on the implications of the National Policy statement for indigenous Biodiversity 2023 (NPSIB) for freshwater planning issues.
- 2 Ms Boyd has prepared the ORC evidence as the section 42A report author. I respond to her evidence below.

AMENDMENTS TO WETLAND DEFINITIONS

- 3 Ms Boyd recommends that the Panel:
 - a. Amend the PORPS definition of “natural wetland” to align with the definition of the term “wetland” at section 2 of the Act¹ excluding constructed wetlands and wetlands induced by the construction of artificial water bodies; and
 - b. Add a separate definition of “natural inland wetland” aligning with the definition of that term that is given in the National Policy Statement for Freshwater 2020 (NPSFM).
- 4 When the parties to the PORPS freshwater planning process prepared evidence, the PORPS defined “natural wetland” similarly to how the NPSFM defines “natural inland wetland”².
- 5 Ms Boyd’s amended definition of “natural wetland” will significantly widen the spatial application of the PORPS policy framework (and potentially that of the future Land and Water Regional Plan) for “natural wetlands” in Otago.
- 6 As an example, Ms Boyd’s supplementary evidence at describes an assessment exercise that distinguished wetland extent differently depending on whether or not the NPSFM pasture exclusion methodology was applied. In her view this resulted in a large area of wetlands comprising pasture and therefore being excluded from this definition³.
- 7 Ms Boyd’s recommended amendment to the definition of “natural wetland” means the PORPS provisions will apply to *all* “natural wetlands” that do not otherwise qualify as a “natural inland wetland” under the NPSFM. I consider

¹ **wetland** includes permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions.

² Ms Boyd’s supplementary evidence explains the fairly minor differences at [64].

³ See para [65]

this to be potentially problematic, particularly in light of the amendments to the NPSFM that the Ministry for the Environment implemented in early 2023.

- 8 The Ministry for the Environment amended the NPSFM in early 2023 on the basis of consultation undertaken since its commencement. The consultation identified a broad range of issues with the NPSFM⁴.
- 9 As a result of the 2022 amendments, exemptions to the wetland provisions were introduced to NPSFM clause 3.22, along with refined tests to clarify what does and does not qualify as a “natural inland wetland”.
- 10 I am therefore concerned by Ms Boyd’s recommendation that the PORPS should manage “natural wetlands” in the same way as “natural inland wetlands”.
- 11 Ms Boyd’s evidence at [91] to [93] recalls that the PORPS wetland policies were always meant to be broader than the NPSFM, for example by including wetlands in the coastal marine area that are excluded by the NPSFM. However, in altering the definition, I am concerned that the recommended approach goes significantly further than the previous provisions did, especially when coupled with her proposed amendments to LF-FW-P9 which I discuss further below.
- 12 Based on my experience since the NPSFM was introduced in 2020, and in the absence of any Council analysis in terms of section 32 of the Act that indicates otherwise, extending the PORPS protection and restoration directives to all “natural wetlands” will very likely be problematic for the consenting of various projects.
- 13 Referring to the section 32 report prepared by the MfE in support of the proposed amendments to the definition of a natural inland wetland, it was considered that such exceptions to the definition were deemed to be effective on the basis that:
 - a. *Together, these changes will better achieve the original intent, which is to enable existing pastoral land use to continue and not be subject to under the strong rules (and cumulative effect of the setbacks) in the NES-F. It aligns with the NOF by providing protection for threatened species;*

⁴ Ministry for the Environment. 2023. Summary of recommendations and the Minister for the Environment’s decisions on amendments to the NPS-FM 2020. Wellington: Ministry for the Environment.

b. Controls on activities that can be undertaken within, or within the setback of, natural wetlands will be achieved through the select purposes with a consent pathway, relevant gateway tests (eg, significant national or regional benefit, functional need or no practicable alternative location) and the application of the effects management hierarchy. The provisions are appropriate, and through removing ambiguity and uncertainty, they are both an effective and efficient way of achieving the objectives of the proposal.⁵

14 With regard to analysis in terms of section 32/32AA of the Act. Ms Boyd's evidence states:

*"I consider that there are environmental (and associated cultural) benefits from ensuring that wetlands falling outside the definition of 'natural inland wetlands' are protected from activities that would irreversibly damage them. In my view, while this may place additional restrictions on resource users, it is an outcome that would likely have arisen by the application of the NPSFM regardless. Addressing this gap in the policy framework is a more effective way of achieving the objective and policies of the NPSFM than leaving it for the LWRP to address"*⁶.

15 I do not agree that this outcome would have arisen out of application of the NPSFM alone, particularly in light of the section 32 findings as noted above. However I do acknowledge that Councils have an ability to control activities affecting any wetlands including those which may fall outside of the definition of 'natural inland wetland'. However, where any such regulation is proposed it needs to be coupled with a fulsome evaluation in terms of section 32. Ms Boyd's section 32AA evaluation has not been undertaken at a level of detail that corresponds to the scale and significance of the changes. In particular, I am concerned that the definition, coupled with the amendments to LF – FW – P9 would likely result in a more onerous policy environment for activities where there may be 'natural wetlands' present, and likely result in significant costs to resource users which have not been properly quantified.

16 More specifically, Ms Boyd recommends amending LF-FW-P9 to include a new sub-clause which would require:

⁵ Page 32, [Amendments-to-the-NES-F-and-NPS-FM-Section-32-report.pdf \(environment.govt.nz\)](#)

⁶ At paragraph [93]

Protect natural wetlands by:

(1) preventing activities that will, or are likely to, result in irreversible damage to a natural wetland;

- 17 Otherwise, under LF-FW-P9, the recommendation is that “natural inland wetlands” be managed as per NPSFM clause 3.22.
- 18 Ms Boyd’s recommended amendments broaden the policy framework to apply the preceding directions for protection, restoration, no reduction in extent or value and preventing “irreversible damage” to all areas, which would qualify as a “natural wetland”.
- 19 For the reasons discussed earlier in this evidence, I consider this approach will probably result in unforeseen outcomes and significant constraints on a number of proposals in Otago. Unlike the approach adopted by the NPSFM there is no deliberate exemption for pastoral farming activities, nor is there any apparent consenting pathway and effects management hierarchy for any activities which may have ‘irreversible damage’. I am also unclear on what the term “preventing irreversible damage” means. It would appear akin to the “avoidance of adverse effects”, which would potentially mean that in lower order plans, activities that impact on a natural wetland are to be prohibited (as per the National Environmental Standards for Freshwater). However, this is not clear.
- 20 I am unaware of an analysis by the council that adequately quantifies the costs to the region of applying such a stringent policy framework over the proposed more broadly defined category of “natural wetland”, where there are only limited exceptions.
- 21 For the reasons discussed above, I am concerned that Ms Boyd’s recommended amendments:
 - a. Are unsupported by an analysis in terms of section 32 of the Act; and
 - b. Do not represent the most appropriate way to manage the policy gap (if any) between areas defined as “natural inland wetlands” and other areas that do not meet that threshold but remain to be defined as “natural wetlands”.
- 22 A more appropriate approach would see the policy framework responding more specifically to the distinction between higher value “natural inland wetlands” and “natural wetlands”.

Claire Hunter
18 August 2023