

Attachment 8a Rules assessment - NES

1.0 National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011

Regulation	Consent Required	Comment
10 Restricted discretionary activities (1) This regulation applies to an activity described in any of regulation 5(2) to (6) on a piece of land described in regulation 5(7) or (8) that is not a permitted activity or a controlled activity. (2) The activity is a restricted discretionary activity while the following requirements are met: (a) a detailed site investigation of the piece of land must exist: (b) the report on the detailed site investigation must state that the soil contamination exceeds the applicable standard in regulation 7: (c) the consent authority must have the report:	Consent Required – Restricted Discretionary Activity	A Detailed Site Investigation (DSI) has been prepared which confirms that the site is considered a piece of land under Regulation 5 of the NES-CS. The DSI confirms that the soil contamination exceeds the applicable standards in Regulation 7.

(d) conditions arising from the application of subclause (3), if there are any, must be complied with.		
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2.0 National Environmental Standard for Freshwater 2020

Rule	Activity Status
National Environmental Standard Freshwater	
Part 3 – Subpart 1 – Natural Inland Wetlands	
Regulation 37 – When the natural inland wetland provisions do not apply	No relevant exclusion has been identified for Wetlands K, L, M or N or the retained natural inland wetlands. The wetlands are therefore conservatively assessed under Subpart 1. The natural inland wetland provisions apply.
Regulation 38 - Restoration, wetland maintenance, and biosecurity of natural inland wetlands	
Regulation 38 Permitted Activities – (1) Vegetation clearance within, or within a 10 m setback from, a natural inland wetland is a permitted activity if it— (a) is for the purpose of natural inland wetland restoration, wetland maintenance, or biosecurity; and (b) complies with the conditions. (2) Earthworks or land disturbance within, or within a 10 m setback from, a natural inland wetland is a permitted activity if it— (a) is for the purpose of natural inland wetland restoration, wetland maintenance, or biosecurity; and (b) complies with the conditions. (3) The taking, use, damming, diversion, or discharge of water within, or within a 100 m setback from, a natural inland wetland is a permitted activity if—	The Project includes indigenous planting and ecological enhancement of retained wetlands and their margins, and proposes an offset/restoration wetland. Vegetation clearance, planting-related disturbance and water-management works undertaken solely for restoration or wetland-maintenance purposes may be permitted where all regulation 38 conditions and the general conditions in regulation 55 are met. Where required, a restoration plan must address Schedule 2 and be provided to the Council at least 10 working days before relevant clearance begins. The extent of vegetation clearance for the purpose of restoration is likely to exceed the maximum area enabled by Condition 4(c) and is therefore not permitted.

Rule	Activity Status
(a) the activity is for the purpose of natural inland wetland restoration, wetland maintenance, or biosecurity; and (b) there is a hydrological connection between the taking, use, damming, diversion, or discharge and the wetland; and (c) the taking, use, damming, diversion, or discharge will change, or is likely to change, the water level range or hydrological function of the wetland; and (d) the activity complies with the conditions. Conditions (4) The conditions are that— (a) the activity must comply with the general conditions on natural inland wetland activities in regulation 55; and (b) if the activity is vegetation clearance, earthworks, or land disturbance, the activity must not occur over more than 500 m² or 10% of the area of the natural inland wetland, whichever is smaller; and (c) if the activity is a discharge of water, it must not be a restricted discretionary activity as described in regulation 39(3A). (5) However, the condition in subclause (4)(b) does not apply if— (a) the earthworks or land disturbance is for planting for restoration or wetland maintenance purposes; or (b) the vegetation clearance, the earthworks, or the land disturbance is for clearance of exotic vegetation for biosecurity purposes; or (c) the vegetation clearance, the earthworks, or the land disturbance is for clearance of indigenous vegetation that is demonstrably necessary for biosecurity purposes; or (d) the vegetation clearance, the earthworks, or the land disturbance is for clearance of exotic vegetation, using hand-held tools, for restoration or wetland maintenance; or	

Rule	Activity Status
(e) the vegetation clearance, the earthworks, or the land disturbance is for clearance of exotic vegetation (other than clearance to which paragraph (d) applies) for restoration or wetland maintenance that is undertaken in accordance with— (i) a restoration plan; or (ii) a certified freshwater farm plan. (6) The restoration plan referred to in subclause (5)(e)(i) must— (a) assess any restoration or wetland maintenance activities against the relevant general conditions in regulation 55; and (b) address the matters in Schedule 2 that are relevant to the activity proposed; and (c) be provided to the council at least 10 working days before the clearance begins. (7) The certified freshwater farm plan referred to in subclause (5)(e)(ii) must— (a) assess any restoration or wetland maintenance activities against the relevant general conditions in regulation 55; and (b) address the matters in Schedule 2 that are relevant to the activity proposed. Where a certified freshwater farm plan is used under this regulation, the activity is exempt from needing to comply with regulation 55(2).	
Regulation 39 Restricted discretionary activities - (1) Vegetation clearance within, or within a 10 m setback from, a natural inland wetland is a restricted discretionary activity if it— (a) is for the purpose of natural inland wetland restoration, wetland maintenance, or biosecurity; and (b) does not comply with any of the conditions in regulation 38(4). (2) Earthworks or land disturbance within, or within a 10 m setback from, a natural inland wetland is a restricted discretionary activity if it—	As the proposed earthworks and vegetation removal associated with the restoration or wetland-maintenance works cannot comply with regulation 38, including the applicable area or general conditions, they are restricted discretionary. Activity Status: RDA

Rule	Activity Status
(a) is for the purpose of natural inland wetland restoration, wetland maintenance, or biosecurity; and (b) does not comply with any of the conditions in regulation 38(4). (3) The taking, use, damming, or diversion of water within, or within a 100 m setback from, a natural inland wetland is a restricted discretionary activity if— (a) the activity is for the purpose of natural inland wetland restoration, wetland maintenance, or biosecurity; and (b) there is a hydrological connection between the taking, use, damming, or diversion and the wetland; and (c) the taking, use, damming, or diversion will change, or is likely to change, the water level range or hydrological function of the wetland; and (d) the activity does not comply with the condition in regulation 38(4)(a). (3A) The discharge of water into water within, or within a 100 m setback from, a natural inland wetland is a restricted discretionary activity if— (a) the discharge is for the purpose of natural inland wetland restoration, wetland maintenance, or biosecurity; and (b) there is a hydrological connection between the discharge and the wetland; and (c) the discharge will enter the wetland; and (d) the discharge will change, or is likely to change, the water level range or hydrological function of the wetland; and (e) the discharge does not comply with the condition in regulation 38(4)(a). <i>Matters to which discretion restricted</i> (4) The discretion of a consent authority is restricted to the matters set out in regulation 56. <i>Requirement when applying for resource consent</i>	

Rule	Activity Status
(5) An application for a resource consent for the restricted discretionary activity must include a restoration plan that includes the information set out in Schedule 2. <i>Condition required in resource consent</i> (6) A resource consent granted for the restricted discretionary activity must impose a condition that requires compliance with the restoration plan. <i>Consent authority must apply effects management hierarchy</i> (7) A resource consent for a restricted discretionary activity under this regulation must not be granted unless the consent authority has first applied the effects management hierarchy.	
Regulation 40-41 – N/A	
Regulation 42- Construction of wetland utility structures	
Regulation 42 Restricted discretionary activity (1) Vegetation clearance within, or within a 10 m setback from, a natural inland wetland is a restricted discretionary activity if it is for the purpose of constructing a wetland utility structure. (2) Earthworks or land disturbance within, or within a 10 m setback from, a natural inland wetland is a restricted discretionary activity if it is for the purpose of constructing a wetland utility structure. (3) The taking, use, damming, or diversion of water within, or within a 100 m setback from, a natural inland wetland is a restricted discretionary activity if— (a) the activity is for the purpose of constructing a wetland utility structure; and (b) there is a hydrological connection between the taking, use, damming, or diversion and the wetland; and	No new structure has been proposed specifically to monitor, maintain or restore a wetland. Not applicable.

Rule	Activity Status
(c)the taking, use, damming, or diversion will change, or is likely to change, the water level range or hydrological function of the wetland; and (d)the activity complies with the conditions. (3A)The discharge of water into water within, or within a 100 m setback from, a natural inland wetland is a restricted discretionary activity if— (a)the discharge is for the purpose of constructing a wetland utility structure; and (b)there is a hydrological connection between the discharge and the wetland; and (c)the discharge will enter the wetland; and (d)the discharge will change, or is likely to change, the water level range or hydrological function of the wetland; and (e)it complies with the conditions.	
Regulation 43-45 N/A	
Regulation 45C Urban Development	
45C Urban Development (1) Vegetation clearance within, or within a 10m setback from, a natural inland wetland is a restricted discretionary activity if it is for the purpose of constructing urban development. (2) Earthworks or land disturbance within, or within a 10m setback from, a natural inland wetland is a restricted discretionary activity if it is for the purpose of constructing urban development. (3) Earthworks or land disturbance outside a 10m, but within a 100m, setback from a natural inland wetland is a restricted discretionary activity if it—	The Site is rural and the Project is confirmed not to be urban development for this regulation. The restricted discretionary urban-development pathway is unavailable and is not relied on for any wetland loss or setback works. Not applicable.

Rule	Activity Status
(a) is for the purpose of constructing urban development; and (b) results in, or is likely to result in, the complete or partial drainage of all or part of the wetland. (4) The taking, use, damming, or diversion of water within, or within a 100m setback from, a natural inland wetland is a restricted discretionary activity if— (a) the activity is for the purpose of constructing urban development; and (b) there is a hydrological connection between the taking, use, damming, or diversion and the wetland; and (c) the taking, use, damming, or diversion will change, or is likely to change, the water level range or hydrological function of the wetland. (5) The discharge of water into water within, or within a 100m setback from, a natural inland wetland is a restricted discretionary activity if— (a) the discharge is for the purpose of constructing urban development; and (b) there is a hydrological connection between the discharge and the wetland; and (c) the discharge will enter the wetland; and (d) the discharge will change, or is likely to change, the water level range or hydrological function of the wetland.	
Regulation 45D-51 N/A	
Drainage of natural inland wetlands	

Rule	Activity Status
Regulation 52 – Non-complying activities (1) Earthworks outside, but within a 100 m setback from, a natural inland wetland is a non-complying activity if it— (a) results, or is likely to result, in the complete or partial drainage of all or part of a natural inland wetland; and (b) does not have another status under any of regulations 38 to 51. (2) The taking, use, damming, or diversion of water outside, but within a 100 m setback from, a natural inland wetland is a non-complying activity if it— (a) results, or is likely to result, in the complete or partial drainage of all or part of a natural inland wetland; and (b) does not have another status under any of regulations 38 to 51.	Bulk earthworks, land raising, construction dewatering, excavation of stormwater devices, pipelines and changes to the drainage network will occur within 100 m of natural inland wetlands. Where works outside a wetland result, or are likely to result, in complete or partial drainage of a retained wetland and do not have another status under regulations 38–51, they are non-complying. This is particularly relevant to any changes to groundwater or surface-water inputs to retained wetlands that are not demonstrated to be part of qualifying specified infrastructure. Proposed changes to the hydrology around natural wetlands is anticipated to result in partial drainage of retained wetlands. Activity Status: Non-complying activity.
Regulation 53 Prohibited activities (1) Earthworks within a natural inland wetland is a prohibited activity if it— (a) results, or is likely to result, in the complete or partial drainage of all or part of a natural inland wetland; and (b) does not have another status under any of regulations 38 to 51. (2) The taking, use, damming, or diversion of water within a natural inland wetland is a prohibited activity if it— (a) results, or is likely to result, in the complete or partial drainage of all or part of a natural inland wetland; and (b) does not have another status under any of regulations 38 to 51.	Filling, excavation or diversion within Wetlands K, L, M and N to remove those wetlands will result in their complete drainage. Because regulation 45C does not apply, those activities are prohibited unless they have another status under regulations 38–51. As such, removal of Wetlands K–N is a prohibited activity.
Regulation 54 – Other activities	
Regulation 54 – Non complying Activities	The Project includes vegetation clearance and earthworks within natural inland wetlands and their 10 m setbacks, together with dewatering,

Rule	Activity Status
The following activities are non-complying activities if they do not have another status under this subpart: (a)vegetation clearance within, or within a 10 m setback from, a natural inland wetland: (b)earthworks within, or within a 10 m setback from, a natural inland wetland: (c)the taking, use, damming, or diversion of water within, or within a 100 m setback from, a natural inland wetland if (i)there is a hydrological connection between the taking, use, damming, or diversion and the wetland; and (ii)the taking, use, damming, or diversion will change, or is likely to change, the water level range or hydrological function of the wetland: (d)the discharge of water into water within, or within a 100 m setback from, a natural inland wetland if (i)there is a hydrological connection between the discharge and the wetland; and (ii)the discharge will enter the wetland; and (iii)the discharge will change, or is likely to change, the water level range or hydrological function of the wetland.	drainage diversions and stormwater discharges within 100 m that may be hydrologically connected to retained wetlands and may change their water-level range or hydrological function. Where these activities do not have another status under regulations 38–51 and do not cause drainage governed by regulations 52 or 53, they are non-complying. This captures the proposed non-infrastructure bulk earthworks and site formation within 10 m of retained wetlands, and operational discharges into retained wetlands that are likely to alter wetland hydrology. Activity Status: Non-complying activity.
Regulation 70 - Culverts	
Regulation 70 - Permitted Activities The placement, use, alteration, extension, or reconstruction of a culvert in, on, over, or under the bed of any river or connected area is a permitted activity if it complies with the conditions.	The Project includes new or altered culverts in modified natural watercourses. Their placement, use, alteration, extension or reconstruction is permitted under regulation 70 as all design, installation, fish-passage, monitoring, maintenance and information conditions are anticipated to be met. Permitted activity.