

## APPENDIX D

### PROPOSED NATURAL RESOURCES PLAN

## REVIEW OF WETLAND DEFINITIONS AND METHODS OF IDENTIFICATION

PREPARED BY JEROME WYETH, CONSULTANT

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### 1 INTRODUCTION

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This paper provides an analysis of questions raised by the Hearing Panel about the approach to manage wetlands in the proposed Natural Resources Plan for the Wellington Region (proposed Plan). Specifically, the Hearing Panel has raised questions about the approach to define and identify wetlands and whether the rules for unmapped wetlands (R104 and R105) are consistent with the principle that permitted activity rules should be clear, certain and enforceable. To respond to these questions, this paper focuses on three key issues:

- The definition of wetland(s) in the proposed Plan;
- The identification of wetland(s) in the proposed Plan; and
- The risk of acting (proposed Plan approach), not acting, or acting through different management approaches.

In considering these issues, particular regard has been given to the directives in the RMA and higher order planning documents, the approach taken by other regional councils, and relevant case law.

### 2 ISSUE 1: WETLAND DEFINITIONS

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#### 2.1 Question from Hearing Panel

During the hearing, the Hearing Panel asked whether there is a need for the terms 'natural wetland' and 'significant natural wetland' in the proposed Plan when in effect they capture the same thing. A response is set out below.

#### 2.2 Wetland definitions in proposed Plan

The proposed Plan includes three definitions of wetlands:

- Natural wetlands;
- Significant natural wetlands; and
- Outstanding natural wetlands;

The Section 32 report: Wetlands (pg. 35) explains the rationale for these three categories as follows:

- Natural wetlands: Do not meet at least one of the criteria in Policy 23 of the Regional Policy Statement (RPS) ecosystems and habitats with significant indigenous biodiversity values;
- Significant natural wetlands: Do meet at least one of the RPS Policy 23 criteria for significance; and
- Outstanding natural wetlands: The best-of-the-best (implementing the directive in the National Policy Statement for Freshwater Management 2014 (NPS-FM) to protect outstanding waterbodies).

These three wetland categories and changes recommended to the associated definitions in the Section 42A Report: Wetlands and Biodiversity are explained further below.



**Natural wetland:** The RMA definition for wetland forms the first part of definition in the proposed Plan natural wetland. Further clauses have been added to provide “a more useful definition for the proposed Plan, that is more practical for identifying wetlands in the field and which excludes wetlands associated with waterbodies constructed for other purposes.”<sup>1</sup> I note recommendations in the Section 42A Report: Wetlands and Biodiversity to:

- Delete the exclusion in clause (a) of the definition related to damp gully heads (refer to paras 101-107). This is because damp gully heads often contain seepage wetlands and excluding this landform would then inadvertently exclude seepage wetlands from the provisions of the proposed Plan; and
- Clarify that the exclusions in clause (b) of the definition relate to habitats *that have established* around the listed bodies of water (refer to para 113) because it is only fair that a wetland should be able to be managed for the purpose for which it has been constructed, without being subject to the constraints of the proposed Plan.

**Significant natural wetland:** The test of significance is whether a natural wetland meets one of more of the criteria in RPS Policy 23 (representativeness, rarity, diversity, ecological context of an area). The definition also notes that identified significant natural wetlands that are greater than 0.1ha for the purpose of implementing Rule R97 (incorrectly referred to as Rule R98) are listed in Schedule F3. The Section 42A Report recommends that this reference is made through a note, rather than forming part of the definition, because otherwise there is an incorrect implication that size is a criterion for assessing significance (refer to paras 124-126).

**Outstanding natural wetland:** The definition simply refers to outstanding natural wetlands that are listed in Schedule A3. The Section 42A Report recommends that, for clarity, the definition should set out the criteria used to identify outstanding natural wetlands (being that they are highly representative **and** either have high rarity values or are highly diverse), with Schedule A3 referred to as a note.

## 2.3 Comparison with other approaches

A summary of how regional councils and unitary authorities have defined wetlands is attached as **Appendix A**. This highlights a degree of variation in how wetlands are defined in the 15 plans reviewed, with a degree of increasing specificity in second generation plans (particularly in terms of exclusions). The wetland definitions in these other plans fall into four main categories:

- Adopt the RMA definition of wetland (Auckland, Taranaki, Horizons, Tasman, Southland);
- Adopt a wetland definition that is consistent with the RMA, with more specific guidance on what it includes (Northland);
- Adopt the same definition of wetland as the RMA, with more specific guidance/clarification on what it excludes<sup>2</sup> (Hawke’s Bay, Marlborough, Nelson, West Coast); or
- Adopt a definition that is consistent with the RMA, with some additional guidance/clarification on what it includes and excludes (Bay of Plenty<sup>3</sup>, Gisborne, Canterbury).

This last approach is arguably the most certain and the proposed Plan falls into this category. I note that the definition of natural wetlands in the proposed Plan is based on the Bay of Plenty wetland definition in response to feedback from stakeholders on the draft Plan (as explained in the Section 32 report: Wetlands (pg. 37).

Some recent second generation plans also include definitions for significant wetlands. This includes the proposed Northland Regional Plan, the proposed Marlborough Environment Plan, and proposed Southland Land and Water Plan. No definition of outstanding wetland was identified in this review of other plans.

<sup>1</sup>Page 36 of the Section 32 Report: Wetlands, with further explanation on pages 36-7.

<sup>2</sup> Hawke’s Bay Regional Plan also sets out the exclusions as a footnote within the wetland rules rather than in the definition. Similarly, the Tasman Resource Management Plan also sets out which wetlands the rule applies to/excludes within the rules rather than as a definition.

<sup>3</sup> The Bay of Plenty plan also provides diagrams and photos to provide additional guidance on what is/isn’t a wetland.

## 2.4 Analysis - Natural wetland v significant natural wetland

Since the development of the proposed Plan, it has become apparent that all wetlands that meet the definition of a 'natural wetland' also meet the definition of a 'significant natural wetland'. This is because all remaining natural wetlands in the region meet the following RPS criteria for significance:

- **'Representativeness'** – this criterion is met where a habitat or ecosystem is no longer 'common place' (defined in the RPS as less than about 30% remaining). This will always be met as only approximately 2.3% of wetlands remain in the region; and
- **'Rarity'** – this criterion is met when the ecosystem or habitat has biological or physical features that are scarce or threatened in a local, regional or national context. Similarly, will always be met due to the limited extent of wetlands remaining in the region.

The wetland rules in section 5.5 of the proposed Plan apply to natural wetlands and significant natural wetlands in the same manner. This is a change from what was proposed in the draft Plan as explained in the Section 32 Report Wetlands:

*"The rules in the proposed (draft) Plan make a distinction in activity status between natural wetlands and significant natural wetlands. However, this approach requires the applicant to know whether the wetland on their property is natural or significant in order to determine which consent they need to apply for. The final framework makes no distinction between natural wetlands and significant natural wetlands in terms of which consent is required for an activity; rather, which policies and objectives in the proposed Plan inform the processing of the consent".<sup>4</sup>*

The only distinction between natural wetlands and significant natural wetlands is that significant natural wetlands that are greater than 0.1ha and that had been identified by Council at the time the proposed Plan was notified are listed in Schedule F3, and Rule R97 (livestock exclusion) applies to these significant wetlands. The rationale to identify Schedule F3 wetlands for the purpose of Rule R97 is discussed further in section 3.3 of this paper. An important point is that 0.1ha was selected as an appropriate threshold to exclude stock access under Rule R97 – it does not relate to the significance of the wetland.

Given that all natural wetlands in the region meet the proposed Plan definition of significant natural wetland, I consider that it would be clearer from a plan interpretation and administration perspective to:

- Amend the wetland rules in section 5.5 to only refer to significant natural wetlands;
- Amend Rule R97 to refer to 'identified significant natural wetlands greater than 0.1 ha'; and
- Add an advice note to the definition of natural wetland to make it clear that these will meet the definition of significant natural wetland in the proposed Plan.

This would make it clear that Schedule F3 wetlands are not more significant than other natural wetlands in the region and reduce the duplication and potential confusion between natural and significant natural wetlands in the interpretation and implementation of wetland rules in section 5.5. This will also help reduce the risk that landowners will consider that smaller wetlands may not be significant and therefore not be subject to the rules which refer only to significant natural wetlands.

There could be concerns that this option has implications in terms of the objectives and policies that apply to natural wetlands when consent is required under Rule R107 or Rule R108. The relevant objectives and policies are:

- **Objective O28** - *The extent of natural wetlands is maintained or increased and their condition is restored.*
- **Objective O35** - *Ecosystems and habitats with significant indigenous biodiversity values are protected and restored.*

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<sup>4</sup> Ibid, Page 43.

- **Policy P37 - Values of wetlands** - Activities in and adjacent to **natural wetlands** shall be managed to maintain their values including .....
- **Policy P40: Ecosystems and habitats with significant indigenous biodiversity values** - Protect and restore the following ecosystems and habitats with significant indigenous biodiversity values:
  - ...(c) significant natural wetlands, including the significant natural wetlands identified in Schedule F3 (significant wetlands), and...

The main difference in the policy direction is that the extent and values of natural wetlands are to be **maintained** (Objective 028 and Policy P37) whereas significant natural wetlands are to be **protected and enhanced** (Objective 035 and Policy P40). However, in practice, this is unlikely to result in any material difference in the protection provided to natural wetlands through the consent process as these are all likely to be assessed as significant (for the reasons outlined above) either by the applicant or Council when assessing the application.

## 2.5 Recommendation:

I consider the simplest and most effective option is to retain the definitions for 'natural wetland' and 'significant natural wetland' and amend the relevant rules in section 5.5 of the proposed Plan to delete references to 'significant natural wetland'. In my view this will help to reduce duplication and clarify that the focus of the proposed Plan is on protecting natural wetlands which are all significant in the context of the Wellington region due to the huge loss that has occurred.

I also recommend that the following advice note is added to the definition for **natural wetland** to make it clear to plan users that natural wetlands are highly likely to meet the definition of significant natural wetlands (and therefore the rules and relevant objectives and policies relating to significant natural wetlands will apply):

Note: See Refer also to **significant natural wetland** and **outstanding natural wetland**. Note that, because of the rarity of wetlands in the Wellington Region, all **natural wetlands** will meet the representativeness and rarity criteria listed in Policy 23 of the Regional Policy Statement 2013 and therefore meet the definition of **significant natural wetland**.

## 3 ISSUE 2: IDENTIFICATION OF WETLANDS

### 3.1 Questions from Hearing Panel

During the course of the hearing, the Hearing Panel asked the following questions:

1. Whether the rules relating to unmapped wetlands are sufficiently certain?
2. Whether the lack of boundary definition for Schedule F3 wetlands presents an issue for the certainty of Rule 97?
3. How do other councils deal with this issue?

A response to these questions is set out below, along with a comparison of the approaches other councils have taken to identify wetlands in their plans.

### 3.2 Comparison of other approaches

The identification of wetlands is an inherently challenging issue, and this is reflected in the various approaches different councils have taken to identify wetlands in their plans. **Appendix A** provides a summary of the approaches taken to identify wetlands in 15 regional and unitary plans, along with a high-level summary of the corresponding rules. This demonstrates that there is a high degree of variation in the approach taken to identify wetlands and associated level of certainty.



At one end of the spectrum, some councils have not identified the location or spatial extent of any wetlands in their region. In those plans the identification of wetlands relies on the definition in the plan/RMA and any supporting guidance from the council. This includes the regional plans for Northland<sup>5</sup>, Bay of Plenty, Hawkes Bay, Horizons<sup>6</sup>, Tasman, Canterbury. Some councils have sought to provide more certainty on location/boundary of wetlands through guidance in the plan on wetland boundary (Canterbury), the edge of a wetland (Tasman), or the use of diagrams (Bay of Plenty).

Where wetlands are identified in plans, this is generally through a Schedule and/or maps and focused on the identification of wetlands with significant values. Examples include:

- **Gisborne Freshwater Plan (Proposed)**<sup>7</sup>: has mapped regionally significant wetlands but also has rules relating to wetlands generally (which are not identified/mapped);
- **Marlborough Environment Plan (proposed)**: has identified approximately 1600 significant wetlands (spatial area unknown). These are all spatially defined on planning maps and the rules only relate to significant wetlands. This appears to be the most certain approach in the plans reviewed.
- **West Coast Land and Water Regional Plan (operative)**: two schedules of wetlands are mapped. Schedule 1 wetlands are ecologically significant wetlands as determined by the ecological criteria in Schedule 3 of the Plan. Schedule 2 are wetlands that are, or are likely to be, ecologically significant and the plan notes that a site-specific assessment is still required to determine if these are significant according to the criteria in the plan (NB: Schedule 2 was the result of an Environment Court decision).
- **Southland Land and Water Plan (proposed)**: has mapped regionally significant wetlands, but also has rules relating to wetlands generally (which are not identified/mapped).

Other councils have identified the location of significant wetlands, but these are not mapped. This includes:

- **Auckland Unitary Plan (operative in part)**: includes a Wetland Management Area Overlay where the location of overlay is identified on planning maps, but spatial extent of the overlays/wetland area is not mapped. The plan also includes rules for wetlands generally that are not within this overlay.
- **Taranaki Regional Freshwater Water Plan (operative)**: includes two schedules of significant wetlands with general details on the listed wetlands. One schedule includes grid reference to identify the location of the wetland.

In terms of significant wetlands, a number of regional plans refer back to the significance criteria in the RPS or plan to determine whether a wetland is significant. This includes Northland, Waikato, Horizons, and West Coast (Schedule 2 wetlands). Conversely, a number of regional plans do not differentiate between significant wetlands and non-significant wetlands, with the rules applying to wetlands generally (e.g. Bay of Plenty, Canterbury).

### 3.3 Mapping of wetlands in the proposed Plan

#### 3.3.1 Summary of approach

The approach in the proposed Plan to identify wetlands is as follows:

- **Outstanding wetlands**: 14 wetlands with outstanding indigenous biodiversity values are listed in Schedule A3 and their location is shown on Map 1. These wetlands have been assessed by wetland ecologists and their

<sup>5</sup> Although Northland has a GIS map layer identifying the location and spatial extent of wetlands in the region which the plan definitions of wetland refer to.

<sup>6</sup> This is based on 'habitat-typ' approach to identify at-risk, rare, threatened habitats, including wetlands.

<sup>7</sup> Now forms part of Tairāwhiti Resource Management Plan. There are no appeals relating to wetlands.

boundaries have been accurately mapped. The boundaries of these wetlands can be identified at a property scale through Council's Web Map Viewer.

- **Identified significant natural wetlands:** 197 wetlands that are greater than 0.1ha are listed in Schedule F3 (NB: This list only identifies wetlands which Council was aware of at the time of notification of the proposed Plan). Schedule F3 provides the name of each wetland and a map reference (a northing and easting) to identify the location of each wetland. The boundaries of these wetlands are shown on Council's Web Map viewer, being a mix of scientifically delineated boundaries, negotiated boundaries and indicative boundaries. More details on Schedule F3 wetlands and identification of their boundaries is provided in section 3.4 of this report.

**Natural wetlands:** these are identified through the definition provided in the proposed Plan, but the location of these is not identified in the proposed Plan. Council is proactively working with landowners to identify natural wetlands<sup>8</sup> that have not been scheduled in the proposed Plan. When requested, Council's wetland specialists will go out to a property to identify and/or delineate natural wetland boundaries. Council is also currently developing guidance material to support wetland identification.

It has been estimated by Council's wetland specialists that approximately 95% of natural wetlands in the region (by area) are listed in Schedule A3 or Schedule F3. There are wetlands within the region that were not known at the time the proposed Plan was developed and therefore are not identified by any means. These are generally high-country wetlands (damp gully heads) that are relatively small and wetlands in forested park areas that are too small to be identified from aerial photography. New wetlands are added to Council's wetland database as they are identified.

### 3.3.2 Options considered to identify significant natural wetlands

Council's focus when developing the proposed Plan was on the identification of significant and outstanding wetlands, consistent with the requirements in the RMA and higher order planning documents. A number of approaches to identify significant wetlands were considered<sup>9</sup>, including:

- **A habitat type approach<sup>10</sup>:** this is the approach taken in the Horizon's OnePlan which was tested by a number of parties through the Environment Court<sup>11</sup>. Council chose not to take this approach because it:
  - Is inconsistent with the approach taken in the rest of the proposed Plan where significant sites are scheduled;
  - Does not provide the same level of certainty to landowners as to when parts of their properties are subject to wetland rules; and
  - Increases the risk that these wetlands are lost or degraded through lack of information on the actual location of wetlands.
- **Surveys:** Te Upoko Taiao determined that listing significant wetlands would be consistent with the directive in RPS Policy 23 to "*identify and evaluate habitats and ecosystems with significant indigenous biodiversity values*". Site-specific assessments were recognised as the best method to provide evidence of wetland

<sup>8</sup> These wetlands include many that have not so far been identified on maps. These likely include types such as hillside seepage wetlands, that can only be identified on site, rather than by remote methods (eg. analysis of high-resolution satellite imagery)

<sup>9</sup> As outlined in section 7.2.3 of Section 32 Report: Wetlands.

<sup>10</sup> Rather than identifying sites/wetlands, the plan includes a schedule of habitat types classed as either 'rare', 'threatened' or 'at-risk'. For each habitat, Schedule F provides definition (e.g. the type of vegetation the wetland supports), classification and further description.

<sup>11</sup> Refer *Day v Manawatu Whanganui Regional Council* Interim decision [2012] NZEnvC 182; *Horticulture New Zealand v Manawatu-Whanganui Regional Council* [2013] NZHC 2492., Importantly the Environment Court upheld this approach concluding that a schedule of habitat types rather than a list of scheduled/mapped significant natural areas provides enough certainty to support regulatory protection. The Court then reinstated the non-complying rule for Rare and Threatened habitat types, and removed the use of 'condition' as a qualifying filter within significance assessment criteria.

values and a programme was initiated to survey wetlands. However, a number of practical, logistical and financial constraints became apparent as this work proceeded. This included access issues (approx. 20% of landowners declined access), the time and resources required to contact landowners and gain access, and the expense of ecological assessments. Additionally, every natural wetland surveyed was found to be significant. There was also a concern that only identifying wetlands where permission has been granted would be perceived as punishing these landowners and not regulating those that refused access. As a result, Council considered that further survey work was not the best use of rate-payer dollars and the work was put on hold.

- **Significance criteria:** Council determined that this approach would work where works are proposed in a wetland as Council could work with landowners to determine whether the wetland is a natural wetland, significant wetland or outstanding wetland. However, it was not considered sufficiently certain for the livestock access rules where the onus is on landowners to ensure stock are excluded from wetlands.
- **Using best available information:** Council determined that there was strong rationale to use the best available information to schedule significant wetlands, even when they have not been surveyed. The basis of this decision was that there has been a reasonable amount of research into wetlands, and the fact that all natural wetlands will meet the RPS significance criteria of rarity and representativeness.

### 3.4 Schedule F3 Wetlands and Rule 97

When developing the proposed Plan, it was considered necessary for farmers to have certainty about which areas the livestock access rule (Rule R97) applied to, as the rule requires a range of stock (Cattle, farmed deer and farmed pigs) to be excluded from wetlands identified in Schedule F3 by three years after the notification of the proposed Plan. All significant natural wetlands larger than 0.1 ha that had been identified at the time of notification are therefore listed in Schedule F3 of the proposed Plan and Rule R97 only applies to these wetlands. The list is based on best available knowledge at the time and 0.1 ha was selected as an appropriate threshold to require the exclusion of livestock under Rule R97.

As part of this process, Council consulted 350 landowners associated with 215 wetlands. Each landowner was given a map showing the proposed Schedule F3 wetland(s) located on their property, provided an opportunity to respond, and a number of meetings were held. A number of landowners took this opportunity, questioning either the existence of the wetland and/or the location of its boundaries. This led to additional assessments being undertaken and some refinement to the list of Schedule F3 wetlands, including reducing the number from 215 to 197.

Council land management officers are now working with landowners to identify the boundaries of Schedule F3 wetlands on the ground. Of the 197 significant natural wetlands listed in Schedule F3:

- 160 have had their boundaries assessed, meaning that a land management advisor or biodiversity advisor has gone out and done an initial site assessment.
  - 149 of these have boundaries that have been agreed between Council and landowners for practical purposes, including the feasible location of fencing<sup>12</sup>. For five wetlands, landowners have requested a scientific delineation of the wetland boundary.
  - The remaining eleven sites need further conversation with the landowner to determine the best way to manage those specific areas.
- 37 wetlands are still to have their boundaries assessed. Of these, 25 are actively managed either by Council through the Key Native Ecosystem Programme, or by the Department of Conservation (DOC).

I recognise that there may be some uncertainty associated with the boundaries of some Schedule F3 wetlands. However, I consider that the proposed Plan's approach is the most effective and efficient way to ensure that significant wetlands are protected from the impacts of livestock access, while still being sufficiently certain and reasonable to landowners. Key reasons are as follows:

<sup>12</sup> Expert delineation (by a wetland ecologist) may or may not have been undertaken in these cases



- Landowners were consulted on the list and location of Schedule F3 and their feedback led to refinement of the list.
- Rule R97 provides landowners with a three-year timeframe before the livestock access requirements need to be met. This is a reasonable timeframe to allow them to put measures in place to ensure stock are excluded from significant natural wetlands. Council has also provided support for landowners to fence wetlands during this time (as detailed further in section 3.5 below).
- The location of all wetlands in Schedule F3 is based on best available information, including site-specific assessments, and Council is currently working with landowners to identify their spatial extent on the ground. Landowners can also request a scientific delineation from a wetland ecologist in Council's Environmental Science department if there are concerns about boundary location.
- Section 6(c) of the RMA requires protection of wetlands with significant biodiversity values regardless of how these are identified. The approach in the proposed Plan to protect significant natural wetlands from livestock access is consistent with this obligation.

## 3.5 Analysis - Mapping wetlands and rule certainty

### 3.5.1 Mapping wetlands

As discussed above, the identification of wetlands is challenging and contentious and a number of technical, practical and resourcing constraints/barriers exist, particularly on private land. This has limited the extent to which councils have identified wetlands within their region/district and this is one contributing factor to the continued loss of wetlands throughout New Zealand. Recent wetland loss between 2001 and 2016 analysed nationally shows that over this period, 214 wetlands were lost, with a further 146 wetlands declining in size<sup>13</sup>.

There is currently an absence of national guidance on the identification and protection of wetlands. The NPS-FM introduced an obligation on councils to protect the 'significant values of wetlands' (Objective A2). However, there is a lack of guidance from the Ministry for the Environment on how to identify and protect these 'significant values', with the guidance simply noting that a regional plan could include criteria for significant values of wetlands and how to identify them could then be determined through the public planning process<sup>14</sup>. The NPS-FM also requires the protection of "outstanding water bodies" but provides no guidance on how to identify them.

The work currently underway by the Biodiversity Collaborative Group<sup>15</sup> to develop a National Policy Statement for Indigenous Biodiversity may provide more direction on the identification and protection of significant natural areas, including wetlands. In the absence of any national guidance, the key obligations in relation to wetlands arise from obligations under section 6(a), 6(c) and 30(1)(ga) of the RMA, Objective A2 of the NPSFM and the RPS.

The key challenge is reconciling the need to identify wetlands to provide certainty (which at a regional-scale is an ongoing exercise) while ensuring that there are adequate levels of protection in place for wetlands to meet the requirements above. It is well recognised that mapping of wetlands (and significant natural areas generally) provides the most certainty to landowners. However, it also has some disadvantages (costs, access issues, accuracy, incomplete coverage etc.). Of significance, the Courts have confirmed that other methods are valid approaches to meet obligations under section 6(c) of the RMA. The Courts have also found that desk-top methodologies can be a

<sup>13</sup> Land and Water Forum (2018), *'Land and Water Forum advice on improving water quality: preventing degradation and addressing sediment and nitrogen - May 2018'*.

<sup>14</sup> Ministry for the Environment (2017), *'A Guide to the National Policy Statement for Freshwater Management 2014 (as amended 2017)'*, pg. 34.

<sup>15</sup> The Biodiversity Collaborative Group is a stakeholder-led group that has been funded by the Minister for the Environment to develop national-level policy for indigenous biodiversity) in New Zealand. The 'core' members of the group include Royal Forest and Bird Protection Society of New Zealand Inc, Federated Farmers of New Zealand Inc, New Zealand Forest Owners Association, Environmental Defence Society Incorporated and Iwi Chairs Forum, and a representative from the extractive/infrastructure industries.





sufficient form of identification for section 6(c) areas<sup>16</sup>, which recognises that site-specific surveys are not always practicable or achievable. For example:

- **One Plan:** The proposed One Plan was notified in May 2007 containing not a schedule of discrete sites, but instead a schedule of habitat types classified as either 'Rare', 'Threatened' or 'At-risk'. This approach was challenged by a number of parties through the hearing and Environment Court. The Environment Court decision concluded that a schedule of habitat types, rather than a list of scheduled significant ecological sites, provides enough certainty to support regulatory protection, reinstated the non-complying rule for Rare and Threatened habitat types<sup>17</sup>.
- **West Coast:** When notified, the West Coast Plan only included protections for 23 scheduled wetlands, with other wetlands to be protected by non-regulatory means. The Council was challenged on this approach to the Environment Court. In its decision, the Court added 200 wetlands to a new schedule and refined the criteria that these wetlands would need to be assessed against to confirm ecological significance. The Court considered that this is a more effective and efficient approach for the Council to achieve its functions as it would be very expensive to look at every wetland and definitely put it in a category of ecological significance against the criteria<sup>18</sup>.

### 3.5.2 Council initiatives to help identify, protect and restore wetlands

Council is progressing a package of initiatives to work with landowners to confirm whether there is a natural wetland(s) on their property, the boundary of identified wetlands and their significance. These initiatives will assist in improving certainty to landowners and are directly related to the implementation of Method M20 in the proposed Plan. Method M20 is as follows:

#### **Method M20: Wetlands**

*Wellington Regional Council will work in partnership with **mana whenua**, landowners, territorial authorities, and the community to:*

- a) promote the value of wetlands and advocate for their management, **restoration** and protection, and*
- b) provide guidance to landowners with wetlands on their **property** to assist with the management of those wetlands, and*
- c) develop and implement **Restoration Management Plans** for landowners with **outstanding wetlands** and **significant wetlands** as required, and*
- d) provide incentives to landowners, such as assistance with the costs of riparian and wetland fencing, planting and pest control, and*
- e) encourage and assist with the legal protection of wetlands through covenanting with the QEII National Trust, the Department of Conservation and Ngā Whenua Rahui.*

Current initiatives to implement Method M20 include:

- Establishment of a Wetland Programme to support the protection, management, and restoration of wetlands in the Wellington Region, which provides advice and incentives for wetland restoration on private land;
- Providing funding and direct assistance to landowners. As of 1 March 2018, Council has:

<sup>16</sup> For example, *Royal Forest and Bird Protection Society of New Zealand Inc v New Plymouth District Council* [2015] NZEnvC 219.

<sup>17</sup> *Day v Manawatu Whanganui Regional Council* Interim decision [2012] NZEnvC 182.

<sup>18</sup> *Friends of Shearer Swamp Inc. v West Coast Regional Council* First Interim Decision [2010] NZEnvC 345; Second Interim Decision [2012] NZEnvC 006; Third Interim Decision [2012] NZEnvC53; Final Decision [2012] NZEnvC 162; *West Coast Regional Council v Friends of Shearer Swamp Incorporated* High Court decision [2011] CIV-2010-409-002466.



- Provided funding to support landowners meet the requirements of Rule R97, including partial funding to assist with the fencing of wetlands (4.9km of fencing);
- Supported the development of and/or approved 16 wetland restoration management plans,
- Supported the restoration of 88.9ha of wetlands, including \$30.5K funding for pest plant control and \$5.5K for restoration planting; and
- Provided wetland expert boundary mapping where requested.
- Updating the guidance on ‘when is wet land a wetland’ which will provide information about geographic settings, water regimes and identifying plant species; and
- Actively working with landowners on site when they request assistance from Council to confirm the presence of a wetland.

These initiatives demonstrate Council’s commitment to work with landowners to identify and protect wetlands on their properties, helping to reduce potential uncertainties associated with the wetland rules.

## 4 ISSUE 5: RISK OF ACTING AND NOT ACTING

As part of the Section 32 and 32AA evaluations, there is a requirement to assess the risks of acting or not acting if there is uncertain or insufficient information on the subject matter of the provisions. While there a reasonable understanding of wetlands across the region, there is some uncertainty about their exact location/boundary and therefore the application of the wetland provisions that apply to those wetlands.

### 4.1 Risk of not acting – Option 1: no wetland rules in proposed Plan

#### 4.1.1 Overview of option

This option presents the ‘do nothing’ approach; essentially relying on district plans to manage wetlands throughout the region. This would mean that there is no protection for the indigenous biodiversity values of wetlands in the coastal marine area and the beds of lakes and rivers as this is outside the responsibility of district plans as allocated by the RPS Policy 61. **Appendix B** provides a summary of district plan rules in the region relating to wetlands with the high-level findings outlined in Table 1 below. This highlights the variability in the extent to which wetlands are identified and protected in district plans in the region.

Table 1: High level summary of district plan wetland identification and rules in the Wellington Region

Plan	Identification of wetlands	Wetland rules
Upper Hutt District Plan	No.	No wetland rules in Plan.
Lower Hutt District Plan	Identifies Significant Natural, Cultural and Archaeological Resources, some of which are wetlands.	Rule to manage Significant Natural, Cultural and Archaeological Resources. No specific wetland rules.
Wellington City District Plan	No. ‘Conservation Sites’ are mapped and one of these is a recognised wetland habitat.	Rules to manage Conservation Sites. No specific wetland rules.
Wairarapa Combined Plan	Appendix 1.3 is a list of Significant Natural Areas (SNA) and Appendix 1.9 is a list of Significant Water Bodies, which includes wetlands.	Plan includes rules to manage SNAs, setbacks to Significant Water Bodies and specific rules relating to wetlands (restoration and modification/damage).
Porirua City Plan	No.	Plan rules permit establishment and maintenance of wetlands. Setbacks to wetlands in Judgeford Hills. No





		other wetland rules.
Kāpiti Coast District Plan (appeals version)	Schedule 3.1 is list of Ecological Sites, 3.4 is list of Outstanding Natural Landscapes and Features, and 3.5 is Special Amenity Landscapes. These areas are all mapped and include some wetlands.	Plan includes range of rules to manage wetlands and rules to manage activities in Ecological Sites, Outstanding Natural Features and Landscapes, and Special Amenity Landscapes.

#### 4.1.2 Analysis

This ‘do-nothing’ option would provide certainty to landowners, particularly those with unmapped Schedule F3 wetlands on their property and landowners with other potential wetlands on their property that would need to be assessed. However, that certainty is significantly outweighed by the significant costs and risks under this option. Key risks and costs include:

- **Would not meet Council’s obligations under the RMA and NPS-FM** – in particular section 6(a) and 6(c) of the RMA which place an obligation on regional councils to preserve the natural character of wetlands and protect ecologically significant wetlands. It would also not give effect to Objective A2 of the NPS-FM which Schedule A3 and the associated rules are specifically intended to achieve.
- **Would not give effect to the RPS** - in particular Policy 61 which allocates responsibilities for land use controls for indigenous biodiversity. This states that Wellington Regional Council shall be responsible for developing objectives, policies, rules and/or methods in regional plans for the control of the use of land to maintain and enhance ecosystems in water bodies and coastal water, and **this specifically includes wetlands**.
- **Continued loss of wetlands** – this option would not only lead to continued loss of wetlands but likely accelerate the rate of loss as there would be no protection of wetlands outside territorial authority jurisdiction (i.e. in the beds of lakes and rivers, in the CMA).
- **A highly inconsistent approach to manage wetlands in the region** - there is a high level of variation in the level of protection currently provided to wetlands in district plans, with only two plans including specific rules to manage wetlands. The result therefore would be a significant reduction in the level of protection provided to wetlands with no/very limited protection provided to wetlands in most districts.
- **Inconsistent with the approach taken by other regional councils** – all regional plans include some provisions to manage wetlands, with a general trend towards more specific wetland provisions in second generation regional plans. This reflects more recent obligations in section 30(1)(ga) for regional councils to include provisions to maintain biodiversity and the obligations in the NPSFM to protect the significant values of wetlands.

## 4.2 Risk of not acting – Option 2: limit rules to wetlands in bed of lake or river

### 4.2.1 Overview of option

This option is essentially the same as the approach taken in the Operative Freshwater Plan which is focused on managing activities in wetlands in the beds of lakes and rivers through a catch-all discretionary rule<sup>19</sup>. Alternatively, there could be a specific rule or set of rules managing activities in wetlands and/or disturbance to wetlands in the bed of a lake or river and the CMA.

<sup>19</sup> Rule 49 is a catch all rule where every use of the river or lake bed not provided for under another rule or which cannot meet requirements of other rules is a discretionary activity.





#### 4.2.2 Analysis

Limiting rules to wetlands in the beds of lakes and rivers and the CMA would provide some certainty benefits as the focus of the proposed Plan would be confined to wetlands in the beds of lakes and rivers and CMA and not the landward component of wetlands. This would likely make it easier for landowners to identify the boundary of wetlands that the proposed Plan applies to. For some properties it would also reduce the extent of area from which livestock access needs to be excluded.

However, this option will have similar costs and risks to Option 1, particularly the continued loss and degradation of wetlands in the region, including a number of outstanding wetlands<sup>20</sup>. Importantly, the review of the Operative Freshwater Plan concluded that its effectiveness to manage wetlands is limited due to the rules only capturing wetlands in the beds of lakes and rivers.<sup>21</sup> The Section 32 Report also highlighted the fact that the extent of wetlands decreased from 'less than 10%' when the Operative Freshwater Plan was developed to an estimated 2.3% in 2013. The loss of wetlands during this period demonstrates that the discretionary rule for wetlands in the Plan has not been effective, and this was noted by Council staff implementing the rule<sup>22</sup>. This option would also undermine the existing work that Council and landowners have done to identify and fence wetlands for the purposes of protecting wetlands and implementing Rule R97. In addition, this option would not give effect to the more specific direction for regional councils to manage wetlands has come into effect since the Operative Freshwater Plan was prepared, namely:

- The 2003 RMA amendments added section 30(1)(ga) to regional council functions to “*manage the establishment, implementation, and review of objectives, policies, and methods for maintaining indigenous biological diversity*”;
- Policy 11 of the NZCPS 2010; and
- Objective A2 of the NPSFM.

For these reasons, this option is not considered to be the most efficient or effective option to achieve the proposed Plan’s objectives relating to wetlands and give effect to Councils obligations under Part 2, the NPSFM and the RPS.

### 4.3 Risk of not acting – limit rules to mapped/identified wetlands

This approach would limit the rules in the proposed Plan to wetlands that have been identified – outstanding wetlands in Schedule A3 and significant wetlands in Schedule F3. It has been estimated that these two schedules account for approximately 80% of the wetlands in the region, and over 95% of known wetlands by area at the time the proposed Plan was notified.

The key benefit of this approach is greater certainty on where the wetland rules apply in the region, although there would still be some uncertainty about the exact boundary of Schedule F3 wetlands. This would be of particular benefit to landowners who suspect they may have a wetland on their property but there has not yet been a site-specific assessment to confirm whether it is a natural wetland/significant natural wetland. This approach would also ensure the wetland rules continue to apply to the majority of the wetlands in the region.

The key risk/cost associated with this option is the continued loss and degradation of other wetlands that have not yet been identified but still have significant values. As noted in the evidence of Dr Crisp<sup>23</sup> and the Section 42A Report: Wetlands and Biodiversity, the ecological significance of wetlands does not relate to their size, with many small wetlands having significant values. Removing the protections for these wetlands would likely lead to their

<sup>20</sup> For example, Te Hapua Swamp Complex A Mt Cone Turf Bog, Maymorn Wetlands and Turakirae Head Wetland would be unprotected by this approach as they are not located in the bed of a lake or river or in the coastal marine area.

<sup>21</sup> GWRC (2006), ‘*Regional Freshwater Plan Evaluation*’.

<sup>22</sup> GWRC (2015), ‘*Section 32 Report: Wetlands*’.

<sup>23</sup> Statement of Primary Evidence, Phillipa Crisp on behalf of Wellington Regional Council – Technical – Wetlands and Biodiversity, March 2018.

continued loss and degradation. This would not be consistent with the obligations under section 6(c) of the RMA and Objective A2 of the NPSFM, nor would it be consistent with Council's obligations under section 30(1)(ga) of the RMA to establish methods to maintain biodiversity. For these reasons, this option is not considered to be the most efficient or effective option to achieve the proposed Plan's objectives relating to wetlands and give effect to Council's obligations under Part 2, the NPS-FM and the RPS.

#### 4.4 Risk of acting – proposed Plan

The proposed Plan uses a combination of definitions, criteria, and identification of wetlands in schedules, and includes associated rules that seek to restore, manage and protect those wetlands. The main risk/cost associated with this approach relates to uncertainty for landowners with:

- Schedule F3 wetlands on their property that are not mapped or where the boundary is unclear (i.e. excluding all landowners that have undertaken fencing of wetlands on their property with council assistance). However, these landowners will know the indicative boundary of these wetlands through the maps provided to them when the list was being developed; and
- Areas on their property that may be a natural wetland/significant natural wetland, but these have not been identified in the proposed Plan.

There is also a risk that unidentified natural wetlands/significant natural wetlands are degraded or lost because landowners are not aware of their presence and the rules in the proposed Plan that might apply.

However, these risks are mitigated through the range of actions Council has underway to help landowners identify, protect and restore wetlands (as outlined in section 3.5.2 above). The approach in the proposed Plan has also been tested with landowners and other stakeholders which led to some refinement of the list of wetlands and associated rules. Certainty will also be increased over time as Council progressively works with landowners to identify and map wetlands on their property.

Overall, this approach is considered to be the most effective and efficient to achieve the relevant objectives in the proposed Plan for wetlands and meet council's obligations under the RMA and higher order planning documents. In particular, it will ensure the proposed Plan recognises and provides for section 6(a) and 6(c) of the RMA, Policy 11 of the NZCPS, Objective A2 of the NPSFM, and Policies 23 and 24 of the RPS.



**APPENDIX A: WETLAND PROVISIONS IN REGIONAL PLANS - SUMMARY OF FINDINGS**

Plan	Definitions	Identification of wetlands	Wetland specific rules	Other restrictions on wetlands	Comment
<b>Proposed Northland Plan</b>	<p>Multiple types of wetlands defined in the Plan including <b>constructed wetland, induced wetland, natural wetland and significant wetlands</b>. The definition of natural wetland specially excludes “wet pasture, damp gully heads, or where water temporarily ponds after rain, or pasture containing patches of rushes”.</p> <p>Plan also includes definition of <b>wetland</b> that is the same as the Act (with a note to clarify that Pakihi are wetlands).</p> <p><b>Damp gully heads</b> are excluded from natural wetland definition/rules.</p>	<p>The planning maps in the Proposed Plan do not identify or map wetlands. Significant wetlands are also not defined spatially in the proposed Plan - the definition are significant wetlands refers to significance criteria in RPS and sets out some specific thresholds for wetlands to be defined as significant.</p> <p>The wetland definitions note that the council’s wetlands mapping indicates the extent of know wetlands. The mapped wetlands can be found on the ‘Biodiversity Wetlands’ layer of the councils GIS. It shows all types of wetlands including swamps, saltmarsh, marsh, bog etc. which are all spatially defined at a property scale.</p>	<p>Section 2.2 of the Proposed Plan includes rules to manage activities affecting wetlands. The rules generally set a low threshold for permitted activities within wetlands (covering enhancement, minor structures, and alteration of constructed wetlands only).</p> <p>All other activities that construct, alter, disturb or extent a wetland are discretionary activities unless they are located in a significant wetland, and these activities are a non-complying activity.</p>	<p>The general conditions contain two conditions specifically related to wetlands:</p> <ul style="list-style-type: none"> <li>The activity will not cause change in water level that will adversely affect the natural wetland; and</li> <li>Disturbance is limited to the extent required to give effect to the permitted activity.</li> </ul> <p>The permitted activity rules for activities such as earthworks, cultivation, demining and diversion etc. also contain permitted activity conditions that state these activities must not occur within or in close proximity to wetlands (i.e. through defined setbacks).</p>	<p>While the proposed Plan does not spatially identify wetlands, the Biodiversity Wetlands layer of council’s GIS provides a good indication on where these are located. Identifying their exact boundary may still require a site-specific assessment.</p> <p>The proposed Plan provides a restrictive regime for wetlands generally. It also applies a more stringent regime for significant wetlands which needs to be assessed using the criteria in RPS and proposed Plan.</p>
<b>Auckland Unitary Plan</b>	<p>No specific definition of <b>wetland</b>. The Plan notes that words defined in the RMA have that meaning except where expressly provided for in the Plan.</p> <p><b>Damp gully heads</b> are not excluded from natural wetland definition/rules.</p>	<p>Plan includes Schedule 1 (Wetland Management Areas). The schedule includes a large list of wetlands which are considered to be significant and identifies the name, very general description of location (e.g. south head), and ecological values for each wetland.</p> <p>The location of the scheduled wetlands are identified in the planning maps as a Wetland Management Area Overlay. However, the planning maps just identify the location of the wetlands not the boundary/spatial extent of the wetland.</p> <p>All other wetlands are not mapped and their identification relies on a site specific assessment.</p>	<p>E3.4 includes an extensive range of rules managing activities in, under or over wetlands. These rules apply to wetlands generally are not limited to wetlands identified in Schedule 1.</p> <p>Activities within wetlands not provided for in rules are a discretionary activity unless located in a Wetland Management Area Overlay, where the activities are non-complying.</p>	<p>There are permitted activity conditions relating to natural wetlands and the Wetland Management Area Overlay in the rules for:</p> <ul style="list-style-type: none"> <li>Taking, use, damming and diversion of water;</li> <li>Land disturbance; and</li> <li>Vegetation management and biodiversity.</li> </ul> <p>These conditions generally limit the activities that can occur within or in close proximity to natural wetlands and the Wetland Management Area Overlay.</p>	<p>The Plan identifies the location of significant wetlands, but these are not spatially defined. Assessment of their boundary is likely to require a site-specific assessment.</p> <p>The focus on the Plan is on managing activities in natural wetlands through a range of rules, with a more restrictive regime for significant wetlands. Non-significant wetlands are not identified in the Plan and will need assessed on case by case basis.</p>
<b>Waikato Regional Plan</b>	<p>Plan includes RMA definition of <b>wetland</b>.</p> <p><b>Damp gully heads</b> are not excluded from wetland definition/rules.</p>	<p>Table 3.7.7 of the Plan includes a list of wetlands that certain rules apply to. The table includes the name of each wetland, area of the wetland, and its ecological values. These wetlands are not mapped in the Plan.</p> <p>The Plan notes that the significance of wetlands other than those referred to in Table 3.7.7 need to be assessed according to the significance criteria in Appendix 3 of the RPS. Section 3.7.8 of the Plan provides indicative photos of wetlands that may be</p>	<p>Section 3.7 of the Plan includes provisions relating specifically to wetlands. There are two discretionary rules:</p> <ul style="list-style-type: none"> <li>Creation of drains or deepening of drains within 200m from legal boundary of any wetland listed in Table 3.7.7; and</li> <li>Drainage of wetlands that is an area of significant indigenous vegetation or significant habitat of indigenous fauna.</li> </ul>	<p>The Plan includes rules and conditions restricting activities (e.g. water takes, discharges, etc.) within or near wetlands referred to in table 3.7.7 and/or are assessed as significant according to the criteria in Appendix 3 of the RPS. These rules are generally non-complying. The Plan also includes rules for wetland creation or enhancement (controlled activity).</p> <p>There does not appear to be any rules relating to the protection of wetlands that are not in Table</p>	<p>Focus of rules in Plan is only a list of unmapped wetlands and significant wetlands which need to be assessed using the criteria in the RMA. While the Plan provides some guidance on where wetlands may be considered significant this provides limited certainty to landowners.</p> <p>The Plan includes not controls for wetlands that are not listed or not assessed as significant.</p>





Plan	Definitions	Identification of wetlands	Wetland specific rules	Other restrictions on wetlands	Comment
		considered significant. However, a site-specific assessment of wetlands will be required to determine whether they are significant.		3.7.7 or are significant wetlands.	
<b>Bay of Plenty Natural Resources Plan</b>	<p>The Plan includes RMA definition of <b>wetland</b> with some additional guidance to make it clear it does not apply to dry land that does not support a natural ecosystem of plants and animals that are adapted to wet conditions for the avoidance of doubt.</p> <p>The definition also sets out some specific exclusions (wettered pasture, oxidation ponds, artificial waterbodies used for treatment, artificial reservoirs, temporary ponded rainfall etc.)</p> <p><b>Damp gully heads</b> are not excluded from wetland definition/rules.</p>	<p>Wetlands are not identified in the Plan. The Plan relies on the definition and also provides supporting diagrams and photos on what is/isn't a wetland for the purpose of the Plan.</p> <p>The Plan also notes that identifying wetlands and their boundary will require expert input or a site assessment by the council.</p>	<p>Chapter 9 of the Plan includes some specific permitted activity rules for wetlands (e.g. introducing plants into wetland for enhancements, wetland maintenance and enhancements when agreed with council, harvesting and sustainable use of wetlands etc.).</p> <p>Modification of a wetland is a discretionary activity when not provided for under these rules and/or permitted activity conditions not met.</p>	The Plan includes rules and conditions for other activities (e.g. discharges) that limits what can be done within wetlands, limits disturbance in wetlands, or states that the activity must not change the quality or quantity of a wetland etc. These rules relate to wetlands generally and do not differentiate between significant and other wetlands.	The Plan rules relating to wetlands not differentiate between significant and other wetlands. They apply to wetlands generally and identification of wetlands and their boundary will require site specific assessment with expert and/or council input.
<b>Proposed Gisborne Freshwater Plan</b>	<p>Includes a definition for <b>wetland</b> which is largely consistent with RMA definition. However, it also identifies "wetland margins" as the "dry area associated with wetlands where vegetation is adapted to wet conditions" and many of the rules apply to 'wetland and their margins'.</p> <p>Wetland definition also includes specific exclusions (e.g. constructed wetlands, pasture that is wet for less than 3 months etc.).</p> <p><b>Damp gully heads</b> are not excluded from wetland definition/rules.</p>	<p>Schedule 3 identifies approx. 22 regionally significant wetlands which have been assessed in accordance with significance criteria. The schedule describes the site, catchment and key values of each of the regionally significant wetlands. The regionally significant wetlands are also identified spatially on the planning maps.</p> <p>All other wetlands are not mapped, and their identification relies on a site-specific assessment.</p>	<p>Section 7.1 includes a number of rules relating to wetlands and their margins which includes rule for wetlands generally and more stringent rules for regionally significant wetlands. The rules are relatively restrictive and only permit limited range of activities in wetlands and their margins.</p> <p>Activities within wetlands not provided for in rules in section 7.2. are a discretionary activity unless they are located in regionally significant wetland, where these activities are non-complying.</p>	Many of the rules and permitted activity conditions in the Plan state that activities must not occur within regionally significant wetlands (generally a non-complying activity when this occurs). There are also permitted activity conditions relating to activities within or near wetlands generally that are not regionally significant.	
<b>Hawkes Bay Regional Resource Management Plan</b>	The Plan includes RMA definition of <b>wetlands</b> with the addition of "Constructed wetland" means an artificial wetland.	The Plan does not spatially identify wetlands.	No specific wetland rules – protections for wetlands are within the rules and conditions for other activities.	Plan includes general rule and conditions restricting activities (e.g. vegetation clearance, discharge of agrichemicals) near or within wetlands. There are also permitted activity rules and conditions stating that "the activity shall not	





Plan	Definitions	Identification of wetlands	Wetland specific rules	Other restrictions on wetlands	Comment
	<p>A number of the rules relating to wetlands also include a note that for the purposes of the Plan, wetland does not include certain waterbodies (e.g. wet pasture, artificial wetlands used for treatment, farm dams, reservoirs, temporary ponded rainfall etc.).</p> <p><b>Damp gully heads</b> are not excluded from wetland definition/rules.</p>			<p><i>adversely affect any wetlands</i>”, including for discharge of drainage, minor takes. Overall, there is limited number of rules/conditions relating to wetlands overall.</p>	
<p><b>Taranaki Regional Freshwater Plan</b></p>	<p>The Plan includes RMA definition of <b>wetland</b>.</p> <p>The Plan also include definition of constructed wetland “<i>means an artificial permanently or intermittently wet treatment area that supports an ecosystem of plants that are suited to wet conditions</i>”.</p> <p><b>Damp gully heads</b> are not excluded from wetland definition/rules.</p>	<p>Appendix 11A identified a schedule of ‘protected wetlands’ and Appendix 11B identified a schedule of ‘regionally significant unprotected wetlands’. Each schedule provides a table with a name, area, ecological values and other natural and amenity values for each wetland. This list of wetlands is based on an inventory of wetlands in the area but technical report could not be located on website.</p> <p>Appendix 111 includes a schedule of 10 wetlands under 5 ha in the Taranaki region that contain nationally or regionally rare, threatened or uncommon indigenous flora or fauna. For these wetlands, the schedule includes name, area, grid reference, ecological values and general description for each wetland in the schedule.</p> <p>Wetlands are not mapped.</p>	<p>Plan includes discretionary rules for activities in regionally significant wetlands identified in Appendix 11B. This includes discretionary activity rules for diversion, drainage, planting or introducing vegetation, discharge of contaminants into these regionally wetlands. The Plan also prohibits these activities in a wetland listed in Appendix 11A through a number of prohibited activity rules.</p>	<p>The Plan includes permitted activity conditions for drainage that this must not drain a wetland over 5ha or scheduled wetland, and a permitted activity condition that fertiliser must not directly drain into a wetland. The Plan does not include other rules relating to other wetlands.</p>	<p>Focus of Plan is scheduled wetlands with limited rules relating to wetlands in the rest of the Plan. Schedule identifies the location and values of protected wetlands but a further site-specific assessment may be required to confirm exact boundary of these wetlands.</p>
<p><b>Horizons One Plan</b></p>	<p>The Plan does not define <b>wetland</b> but notes that terms defined in RMA and not in glossary have the same meaning as in the RMA. Symbols are also used to identify terms defined in RMA, which are used for wetland throughout the Plan.</p> <p><b>Damp gully heads</b> are not excluded from wetland definition/rules.</p>	<p>The Plan uses a ‘habitat type’ approach to identify at-risk, rare and threatened habitats, including wetlands. Schedule F (indigenous biological diversity) sets out specific criteria to identify whether a wetland is classified as threatened, rare or at-risk habitat for the purposes of the Plan. It also includes criteria for wetlands not to be considered in one of these categories (e.g. damp gully heads, ditches and drains, artificial wetlands for specific purposes etc.)</p>	<p>No general wetland rules but there are conditions restricting activities within/near wetlands which meet the criteria in Schedule 7 for at-risk, rare and threatened habitats.</p>	<p>Plan includes range of rules and permitted activity rules that limit the activities (small/large scale land disturbance, cultivation, vegetation clearance, diversion etc) that can be carried within or in close proximity to a wetland which meet the criteria in Schedule F of the Plan. Other permitted activity conditions refer to:</p> <ul style="list-style-type: none"> <li>• Activities not occurring within wetlands that are a rare habitat or threatened habitat (which must be assessed in accordance with Schedule</li> </ul>	







Plan	Definitions	Identification of wetlands	Wetland specific rules	Other restrictions on wetlands	Comment
		<p>There is no spatial identification of wetlands in the Plan. Identification of wetlands and their significance will require a site-specific assessment using the criteria in the Plan.</p>		<p>F); and</p> <ul style="list-style-type: none"> <li>Avoiding discharges into wetland greater than 1ha.</li> </ul> <p>There does not appear to be any rules/conditions providing protection to wetlands that do not fall into one of the categories in Schedule F or are over 1ha in size.</p>	
<p><b>Proposed Marlborough Environment Plan</b></p>	<p>Plan definition of <b>wetland</b> states this the same as RMA definition but notes that it does not include these areas when they are entirely man made.</p> <p>The proposed Plan also includes definition of significant wetland <i>‘as identified on the planning maps’</i>.</p> <p><b>Damp gully heads</b> are not excluded from wetland definition/rules.</p>	<p>Significant wetlands are identified spatially on the planning maps with a ID for each wetland. This is at the property level scale.</p> <p>Unable to identify the schedule of significant wetlands the maps are based on to identify their name and values.</p>	<p>There does not appear to be any rules specifically related to wetlands. The focus of the rules is also on significant wetlands as identified on the planning maps.</p>	<p>The general and zone rules include a number of conditions restricting what activities can occur within or in close proximity to significant wetlands. Examples of permitted activity conditions include:</p> <ul style="list-style-type: none"> <li>Take must not be from significant wetland;</li> <li>Diversion a must not be within 8m of significant wetland;</li> <li>Buildings must not be in significant wetland; and</li> <li>Vegetation clearance, excavation must not be within 8m of significant wetland.</li> </ul>	
<p><b>Nelson Resource Management Plan</b></p>	<p>The Plan includes RMA definition of <b>wetland</b> with some exclusions (e.g. artificial wetlands constructed for treatment, lawfully constructed ponds, exotic rush/pasture communities, pasture understorey within plantation forest).</p> <p><b>Damp gully heads</b> are not excluded from wetland definition/rules.</p>	<p>Appendix 5 – conservation overlay (schedule of sites) includes a few wetlands but this is limited. This schedule identifies the planning map these wetlands are located on, grid reference, vegetation type and conditions, general description and ranking (regional importance, national importance, conservation covenant etc.). These scheduled sites are also located on planning maps.</p>	<p>No specific rules relating to wetlands but the Plan has general controls relating to activities near and within wetlands.</p>	<p>The zone rules include some conditions relating to activities within a wetland, and provide for the maintenance of structures and extension of a utility structure as controlled activity. It appears that other activities within wetlands are all discretionary activities. There also appears a general rule limiting activities near wetlands (OSr.33) but its application is unclear.</p> <p>There are also freshwater rules in Appendix 28 rules setting out the level of disturbance, vehicle disturbance, planting etc. that can occur in wetland as permitted activity, where these activities are controlled activities or discretionary activities.</p>	
<p><b>Tasman Resource Management Plan</b></p>	<p>Plan includes RMA definition of <b>wetland</b>.</p>	<p>The Plan does not spatially identify wetlands but appears to rely on the definition and guidance on the rules on what is/isn't a wetland.</p>	<p>The Plan includes a discretionary rule for the diversion and take from naturally occurring wetland. The Plan has limited specific wetlands</p>	<p>There are a few permitted activity conditions in the zone chapters, such activity conditions that vegetation removal does not occur in naturally</p>	





Plan	Definitions	Identification of wetlands	Wetland specific rules	Other restrictions on wetlands	Comment
	<p>The Plan also includes the following definition <i>“Naturally occurring - in relation to wetlands, means not specifically created by someone as a wetland, and includes wetlands formed by natural processes of reversion and sedimentation.”</i></p> <p>Certain rules also provide further clarification on the wetlands they apply to (e.g. natural swamps, marshes, coastal wetlands) and waterbodies that are not considered wetlands (e.g. wet pasture, artificial ponds used for treatment, land drainage ditches and farm drains, reservoirs, temporary ponded rainfall etc.).</p> <p><b>Damp gully heads</b> are not excluded from wetland definition/rules.</p>	<p>The Plan provides some guidance on how to identify the edge of a wetland as follows:</p> <p><b>Note:</b> <i>The edge of a wetland (i.e. where a wetland becomes land) is where terrestrial plant species become dominant and where the substrate changes from being permanently or intermittently wet to ‘dry land’. Where plants can be used as an indicator, a wetland becomes dry land where the plant species are those typical of terrestrial environments over more than 80 percent of the area.</i></p>	<p>rules.</p>	<p>occurring wetland. Plan appears to have limited rules/conditions relating to wetlands.</p>	
<p><b>Canterbury Land and Water Plan</b></p>	<p>Definition of <b>wetland</b> lists specific types of wetlands that are included, and states that it includes other naturally wet areas that support ecosystems adapted to wet conditions etc. Definition also includes specific exclusions (wet pasture, artificial wetlands, artificial far dams, reservoirs etc.).</p> <p>Plan also includes definition for <b>wetland boundary</b>.</p> <p><b>Damp gully heads</b> are not excluded from wetland definition/rules.</p>	<p>Wetlands are not spatially identified in the Plan. The Plan appears to rely on the definition of wetland and wetland boundary to identify wetlands.</p> <p>Wetland boundary is defined as:</p> <p><i>“means the point in the transition from wetland to dryland where wetland plant species occur at more than four times their ungrazed height apart. Wetland edge has a similar meaning.”</i></p> <p>The Plan does include ‘high naturalness waterbodies’ and these are identified on the planning maps. These waterbodies are lakes or rivers but some include a wetland component as part of the waterbody.</p>	<p>There are four general wetland rules (5.159 to 5.162). The permitted activity rule is limited to enhancement/ restoring/creation of wetlands. Restricted discretionary consent is required when permitted activity conditions are not met.</p> <p>The other wetland specific rules relate to reducing the area of wetland by taking, use, damming or diversion etc. which is either restricted discretionary or non-complying activities.</p>	<p>The rules and permitted activity conditions for other activities such as discharges, water take etc. also restrict these activities within or in close proximity to wetlands, and the Plan uses different terms (e.g. natural wetland, wetland, wetland boundary).</p>	
<p><b>West Coast Land and</b></p>	<p>The Plan includes RMA definition of</p>	<p>Identifies wetlands in Schedule 1 and 2. Both types</p>	<p>Rule 7 allows for certain permitted activities</p>	<p>Rules include conditions that certain activities (e.g.</p>	





Plan	Definitions	Identification of wetlands	Wetland specific rules	Other restrictions on wetlands	Comment
<p><b>Water Plan</b></p>	<p>wetland with one exclusion “<i>areas of pasture where water ponds after rain</i>”.</p> <p><b>Damp gully heads</b> are not excluded from wetland definition/rules.</p>	<p>of wetlands are mapped but Schedule 1 are more accurately mapped and considered to be significant in terms of section 6(a) and/or 6(c).</p> <p>For Schedule 2 wetlands, the plan notes:</p> <p><i>Schedule 2 identified wetlands that either are, or are likely to be, ecologically significant. A wetland in Schedule 2 is considered to be significant if it meets any one of the ecological criteria in Schedule 3. Wetlands identified in Schedule 2 require an assessment using the ecological criteria on Schedule 3 during any resource consent process.</i></p> <p><i>The general location of the Schedule 2 wetlands can be found on the Overview Maps and details of the individual wetlands are to be found in the following Schedule on the maps entitled West coast Schedule 1 and 2 Wetlands.</i></p> <p>The maps in Schedule 1 and 2 include an overview of the general location of wetlands and then a more detailed map of their location which can be assessed at the property level scale.</p>	<p>within Schedule 2 wetlands which are limited in scope, such as construction of boardwalks, maintain existing network utility structures etc. Discretionary activities within Schedule 2 wetlands include mechanical land preparation, vegetation disturbance and earthworks that does not comply with permitted activity conditions, livestock access, and planting of exotic trees. These activities are non-complying in Schedule 1 wetlands.</p>	<p>vegetation disturbance, earthworks) cannot occur within scheduled wetland. Plan also includes greater controls on structures and other activities within Schedule 1 and 2 wetlands, and there are conditions restricting activities such as gravel extraction within scheduled wetlands. The damming and diversion rules also include some conditions relating to wetlands generally (e.g. there shall be no inundation of a natural wetland, the diversion does not affect a natural wetland).</p>	
<p><b>Proposed Southland Water and Land Plan</b></p>	<p>Definition of <b>natural wetland</b> is consistent with RMA definition except it includes list of exclusions (wet pasture, damp gully heads, temporary water ponds, pasture with rushes, artificial water storage and watercourses, reservoirs etc.).</p> <p>Definition of <b>wetland</b> same as RMA definition.</p> <p><b>Damp gully heads</b> are excluded from natural wetland definition/rules.</p>	<p>Appendix A provides a list of regionally significant wetlands and sensitive waterbodies. These regionally significant wetlands are also spatially mapped in the planning maps (map – series 7).</p> <p>The appendix notes that “<i>there are also rules in the plan that manage activities in relation to all wetlands, not only those identified in this appendix</i>”. Identification of these non-significant wetlands will require site-specific assessment.</p>	<p>Rule 74 (wetlands – general rule) applies to use of land within all wetlands. This applies a restrictive approach with permitted activities limited to activities that will enhance or maintain the wetland, and maintain authorised structures within the wetland.</p> <p>There are two discretionary rules (peat harvesting, permitted activities that do not comply with a condition) and all other use of land within natural wetland is a non-complying activity.</p> <p>There are not more stringent controls for regionally significant wetlands within this</p>	<p>The Proposed Plan also includes rules and permitted activity conditions for other activities near, within or into a wetland (discharges, farming, cultivation etc.) There are also more stringent setbacks to regionally significant wetlands.</p>	





Plan	Definitions	Identification of wetlands	Wetland specific rules	Other restrictions on wetlands	Comment
			general wetland rule.		



**APPENDIX B: WETLAND PROVISIONS IN TERRITORIAL AUTHORITY PLANS IN THE WELLINGTON REGION- SUMMARY OF FINDINGS**

Plan	Definitions	Identification of wetlands	Wetland specific rules	Other restrictions on wetlands	Comment
<b>Upper Hutt City Council District Plan</b>	The plan states the definition of a <b>wetland</b> has the same meaning provided in section 2 of the Resource Management Act 1991.	No	No	No	One policy included in the plan which seeks to “ <i>protect wetland areas within the City from activities which would have adverse effects on their life supporting capacity, natural character or habitat values.</i> ”
<b>Lower Hutt District Plan</b>	No definition of wetland. However, the plan includes <b>Significant Natural, Cultural and Archaeological Resources</b> which includes wetlands.	Plan includes Appendix 1 Significant Natural, Cultural and Archaeological Resources. This schedule identifies the name of the natural resource and significant values associated with it (e.g. if a wetland).  These sites are mapped on Map Appendix 1 - Significant Natural, Cultural and Archaeological Resources. The Coastal Environment and specific Coastal Environment sites are mapped on Map Appendix 2 – Coastal Environment.	No.	14E2 includes an extensive range of rules to manage Significant Natural, Cultural and Archaeological Resources.	The Plan spatially defines significant natural areas, of which some are wetlands.
<b>Wellington City District Plan</b>	The plan defines <b>wetland</b> as “ <i>includes permanently or internationally wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions.</i> ”	Wetlands aren’t specifically mapped. Conservation Sites are mapped.	Chapter 30 Earthworks includes cut and fill setbacks from wetlands. An infringement of setback requirements requires resource consent as a restricted discretionary activity.	Conservation Sites identified in Chapter 19 and associated rules, controls activities such as “ <i>modification, damage, removal</i> ” of vegetation, earthworks and structures in these areas. One conservation site is recognised due to its wetland habitat (Karori Reservoir).	
<b>Wairarapa Combined District Plan</b>	The plan defines <b>wetland</b> as “ <i>has the same meaning as in the Resource Management Act 1991, but excludes wet pasture and artificially created waterbodies</i> ”.	Appendix 1.3 includes Significant Natural Areas (SNA), which includes wetlands. The schedule is broken down by SNA Number, Description, Location and Legal Description (where known) and Map Number.  Appendix 1.3 also includes Recommended Areas for Protection (RAP). The plan notes these areas are “ <i>included for information purposes only, and will be referred to if a resource consent is required under any rule in the District Plan</i> ”. These areas are broken down by RAP Number, RAP Name, Habitat Type, and Location (not mapped – general area only e.g. Masterton Castlepoint Road).  Appendix 1.9 includes Significant Water Bodies, which includes wetlands. The schedule is broken down by Reference Number, Waterbody, Location,	Chapter 21 includes the district wide land use rules which regulate activities affecting wetlands. A range of maintenance activities in SNAs are permitted. The plan also provides for wetland restoration and enhancement as a permitted activity. The plan has earthworks setbacks from Significant Water Bodies (restricted discretionary activity if not for maintenance type purposes).  Modification or damage to, or destruction of, or within, any Significant Natural Areas listed in Appendix 1.3; and any activity involving the disturbance, removal, damage or destruction (“ <i>modification</i> ”) of a wetland, except for planting restoration and enhancement work, are both discretionary activities.		Chapter 11 Indigenous Biodiversity and Chapter 12 Freshwater Environment has objectives, policies and methods relating to the protection of wetlands.



Plan	Definitions	Identification of wetlands	Wetland specific rules	Other restrictions on wetlands	Comment
		Map Number, and Values.			
<b>Porirua City District Plan</b>	No definition.	No.	Establishment and maintenance of wetlands are permitted activities.	<p>Wetlands are referred to in matters of control e.g. for Temporary Military Training Activities a matter of control is the <i>“Impact upon: water courses and riparian margins, wetlands, historic sites, sites of significance to the tangata whenua, and native vegetation.”</i></p> <p>Riparian yard setbacks apply to wetlands within the Judgeford Hills Zone.</p> <p>An Environmental Management Plan for all of the Environmental Enhancement Areas shown on the Structure Plan, in the Judgeford Hills Zone is required to have the key objective of <i>“revegetation and long term management of retirement areas including hillslopes, wetlands, and riparian margins”</i>.</p>	
<b>Kapiti Coast District Plan (Operative Version 1999)</b>	The plan defines <b>wetland</b> as having the same meaning as in the Resource Management Act 1991.	<p>Heritage Register – E. Ecological Sites (areas of significant indigenous vegetation and significant habitats of indigenous flora) includes a schedule with the following information: ID Number, Name, Origin, Location/NZMS 260 Map Grid Reference, and Description/Significance/Dominant Habitat or Vegetation/Significance.</p> <p>Ecological sites are shown on District Plan maps.</p>	<p>Part D includes Rules and Standards with a range of provisions to manage activities and effects on wetlands. For example, it is a discretionary activity to alter or modify a site identified in the heritage register (note – grazing of stock on wetlands does not meet the definition of alteration or modification). The plan also includes earthworks setbacks from wetlands.</p> <p>The plan also includes specific controls around subdivision near the Kawakahia Wetland</p>		
<b>Kapiti Coast District Plan (Appeals Version 2018)</b>	The plan defines <b>wetland</b> as having the same meaning as in the Resource Management Act 1991.	<p>Schedule 3.1 Ecological Sites includes areas of <i>“significant indigenous vegetation and significant habitats of indigenous flora”</i>. The schedule includes information on the District Plan ID, Name, Location (including grid reference), Size, Type (e.g. wetland), Description/Significance/Dominant Habitat or Vegetation and Significance (in terms of the RPS criteria).</p> <p>Schedule 3.4 Outstanding Natural Features and Landscapes includes wetlands. The schedule includes information on the District Plan ID, whether it is considered a ONF or ONL, Map Location, Factor, Criteria (or relative significance), and Factor/Criteria Description.</p> <p>Schedule 3.5 Special Amenity Landscapes includes</p>	The Natural Environment chapter and Zone chapters have a range of rules managing activities and effects on wetlands. The plan requires earthworks setbacks from wetlands. The plan also regulates activities in Ecological Sites, Outstanding Natural Features and Landscapes, and Special Amenity Landscapes which impact on wetlands.		



Plan	Definitions	Identification of wetlands	Wetland specific rules	Other restrictions on wetlands	Comment
		<p>wetlands. The schedule includes the same information as Schedule 3.4.</p> <p>District Plan maps show Ecological Sites, Outstanding Natural Landscapes and Features, and Special Amenity Landscapes.</p>			