SUBMISSION ON ACTION FOR HEALTHY WATERWAYS

EXECUTIVE SUMMARY

1. NZ Airports welcomes the opportunity to submit on the Ministry for the Environment’s (“MfE”) “Action for Healthy Waterways – Discussion document” (“Discussion Document”), the amended National Policy Statement for Freshwater Management ("Draft NPS-FM"), and the proposed National Environmental Standard for Freshwater ("Draft NES-F") (together, the "Freshwater Policy Documents").

2. NZ Airports generally supports the objectives of the Freshwater Policy Documents to stop further degradation of New Zealand’s freshwater resources. However, as currently drafted, the Freshwater Policy Documents would impose unreasonable constraints on the safe and ongoing efficient operation of New Zealand’s airports.

3. In summary, NZ Airports seeks:
   (a) that the policy framework in the Draft NPS-FM be adjusted to better recognise the social and economic benefits communities draw from both quality freshwater management and core infrastructure;
   (b) removal of coastal wetlands from wetlands captured under the Draft NES-F, to make it consistent with the policies of the Draft NPS-FM;
   (c) amendments to the types of airports included in the nationally significant infrastructure provisions for wetland and river bed restrictions;
   (d) clarity and refinement of the scope, content and nature of offsetting requirements under the Draft NES-F;
   (e) that relocation or modifications to habitats of threatened freshwater species are allowed; and
   (f) greater clarity as to the alignment of goals across the various national direction proposals and legislative changes interacting with the changes proposed through the Freshwater Policy Documents.

4. We address each of these matters in turn below.

WHO WE ARE

5. NZ Airports is the industry association for New Zealand’s airports and related businesses. Its members operate 41 airports across the country, including the international gateways to New Zealand and the domestic airports making up the national air transport network. This infrastructure is essential to a well-functioning economy and the wellbeing of our communities.

Our member airports include Ardmore Airport, Ashburton Airport, Auckland Airport, Chatham Islands Airport, Christchurch Airport, Dunedin Airport, Gisborne Airport, Hamilton Airport, Hawke’s Bay Airport, Hokitika Airport, Invercargill Airport, Kapiti Coast Airport, Kaikōhe Airport, Katikati Airport, Kerikeri Airport, Marlborough Airport, Masterton Airport, Matamata Airport, Motueka Airport, Nelson Airport, New Plymouth Airport, Oamaru Airport, Palmerston North Airport, Queenstown Airport, Rangiora Airport, Timaru Airport, Rotorua Airport, Takaka Airport, Taupo Airport, Tauranga Airport, Wairoa Airport, Wanaka Airport, Whanganui Airport, Wellington Airport, West Auckland Airport, Westport Airport, Whakatane Airport, and Whangarei Airport.
NZ Airports’ members have extensive experience dealing with resource management processes and issues, and in particular with managing the environmental effects that can arise from the operation, maintenance and development of New Zealand’s airports.

NZ Airports has provided a range of feedback on resource management and related reforms in the past, most recently the Kāinga Ora – Homes and Communities Bill and the proposed National Policy Statement for Urban Development. Its members have also been closely involved in extensive plan review processes in Auckland, Christchurch, and Queenstown, along with other regions and districts throughout New Zealand.

AIRPORTS AND FRESHWATER

Like many large scale infrastructure operators in New Zealand, airports interact with freshwater systems in multiple ways. As airports grow and expand to meet both domestic and international demand for air travel, their activities can conflict with existing freshwater sources. The need to effectively manage potential safety risks around airports can have impacts on freshwater, including the management of flood risk and the avoidance of bird strike issues from birds settling in neighbouring freshwater habitats like wetlands or lakes.

When it comes to the management of these conflicts, airports have less flexibility than many other activities. Runways and aircraft activities require flat, open space with clear visibility. While airports strive to manage adverse effects on freshwater bodies as far as practicable, the requirements of aviation safety and security can mean that, in some cases, airports cannot avoid effects on freshwater systems.

There are also a range of other considerations that must be taken into account and balanced in determining the location of airport infrastructure. These include noise effects on neighbouring properties, the establishment of necessary infrastructure such as transport links, maintenance and service facilities and stormwater facilities as well as geotechnical and other engineering considerations. Beyond this, the cost of shifting an airport's entire operations would, in most cases, simply not be feasible from a practical or economic perspective. While the management of freshwater health and quality is a key environmental objective, which NZ Airports supports, this must be appropriately balanced against the functional and operational needs of airports, as regionally and nationally significant infrastructure, and the safety of the flying public.

DRAFT NPS-FM OBJECTIVES AND POLICIES

The Draft NPS-FM has one objective and 13 policies. The proposed objective is to, manage freshwater resources in a way that prioritises (in descending order of importance):

(a) the health and wellbeing of freshwater bodies;
(b) the essential health needs of people; and
(c) the ability of people and communities to provide for their social, economic, and cultural well-being.

NZ Airports is generally supportive of the movement towards holistic management of freshwater resources, under the broad scope of Te Mana o te Wai. However, we are concerned that there is only one policy that seeks to enable economic well-being (and thereby give effect to the third priority of the objective). Proposed Policy 13 provides:
Communities are enabled to provide for their economic well-being while managing freshwater in a manner consistent with Te Mana o te Wai and as required by the national objectives framework and other requirements of this National Policy Statement.

13. The Draft NPS-FM does not provide enough direction to regional councils to provide for core elements of economic and social well-being, such as key infrastructure, in their regional plans:

(a) The twelve other policies of the Draft NPS-FM are focused on the environmental and cultural concerns of the policy proposal. While NZ Airports supports the matters addressed in these policies, including just a single policy to cover all community and economic concerns fails to achieve the appropriate balance required by the sustainable management purpose of the Resource Management Act 1991 (“RMA”). In our view, this approach risks directing regional authorities' focus to environmental bottom lines without being cognisant of the impact on social and economic wellbeing of our communities.

(b) Policy 13 is the only policy to be qualified by reference to Te Mana o te Wai, the national objectives framework and the rest of the Draft NPS-FM. This qualification has the effect of diminishing and overcomplicating Policy 13, to the extent it may be overlooked, or otherwise misapplied, by decision-makers.

(c) It is overly restrictive to limit the third element of the objective to one policy addressing only economic well-being. Freshwater resources provide numerous social and other benefits to communities beyond economic well-being. Conversely, nationally significant activities that may have effects on freshwater, such as airports, also provide necessary lifeline and other benefits to communities which cannot always be set aside. As currently drafted, the policies of the Draft NPS-FM fail to address these community well-being and necessary infrastructure concerns.

14. We believe that addressing these matters, and including additional policies to better reflect the necessary balance between key infrastructure, the wellbeing of our communities and the health and quality of freshwater will provide a more nuanced policy framework. This is necessary to support the maintenance and improvement of freshwater quality while recognising the need to enable necessary infrastructure for social and community wellbeing.

WETLAND & RIVER BED ACTIVITY RESTRICTIONS

15. The Draft NES-F and NPS-FM both provide for the protection of natural wetlands under the broader goal of "no further loss or degradation of natural inland wetlands". The Freshwater Policy Documents further prohibit the infilling of river beds under a similar goal of "no further net loss of streams".

16. NZ Airports supports the broad purpose of these provisions, to support the maintenance and enhancement of freshwater resources. However, we have concerns as to the lack of clarity across several of the definitions used in these sections, and how some of the bottom lines will interact with other key interests.

---

2 Draft NPS-FM, Policy 8.
3 Draft NPS-FM, Policy 8.
Inconsistent definition for wetlands

17. Natural wetlands are defined in the documents, as:4

   Permanently or intermittently wet areas, shallow water and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions.5 […]

   Except that it does not include wet pasture or paddocks where water temporarily ponds after rain in places dominated in pasture, or that contain patches of exotic sedge or rush species.6

18. However, the Draft NPS-FM and NES-F include different definitions of the wetlands that are to be protected from inappropriate use and development. The Draft NES-F refers to the protection of natural wetlands, as per the definition above. The Draft NPS-FM refers to the protection of natural inland wetlands, excluding coastal wetlands.7

19. The inconsistency across these two definitions creates uncertainty between the policy goals and framework of the Draft NPS-FM and NES-F in relation to wetlands. If the Draft NES-F is intended to also capture coastal wetlands, there is a lack of policy recognition of, and provision for, this goal due to their exclusion from the definition of wetlands proposed under the Draft NPS-FM.

20. This is of particular significance for airports, as many of our member airports are located in coastal areas. Some of New Zealand’s largest airports, including Auckland International Airport, Wellington International Airport and Tauranga Airport are all located in coastal environments. NZ Airports consider that greater certainty is required as to the application of the policies and standards of the Freshwater Policy Documents that relate to coastal wetlands.

21. We support the clear exclusion of coastal wetlands from the requirements set out in both the Draft NPS-FM and Draft NES-F due to the different considerations required to appropriately manage them in comparison to inland wetlands, and their limited role in freshwater quality and habitats in New Zealand. Coastal wetlands are more appropriately provided for under the New Zealand Coastal Policy Statement, which recognises and provides for the particular considerations that are relevant to the coastal environment.

Relief sought

22. NZ Airports seeks that all references to “natural wetlands” in the Draft NES-F are changed to “natural inland wetlands”. Alongside this, the definition for coastal wetlands as set out in section 3.15(1) of the Draft NPS-FM will need to be inserted at section 4 of the Draft NES-F.

Constructed wetlands

23. NZ Airports supports the distinction in both the Draft NPS-FM and NES-F between “natural wetlands” and “constructed wetlands”. “Constructed wetlands” are defined separately, as:

---

4 The RMA employs this definition for “wetland” more generally. “Natural wetlands” are not defined in the RMA. The NPS-FM and NES-F refer to “natural wetlands”, which are defined separately from constructed wetlands, as discussed at paragraph 23-24.

5 RMA, section 2 as described in Proposed NES Part 2, Subpart 1 – Wetlands, (4) definitions for subpart 1.

6 Proposed NES Part 2, Subpart 1 – Wetlands, 4 Definitions for subpart 1 “natural wetland”.

7 Coastal wetlands are defined as follows: “a natural wetland that is influenced by marine or coastal geomorphological processes to the seaward extent of freshwater influence, and includes:
   a) saltmarshes (of which mangroves can be a structural component); and
   b) seagrass meadows in intertidal and subtidal zones less than 2 m below mean low water spring tide.”
a wetland constructed by artificial means that:

a) supports an ecosystem of plants that are suited to wet conditions; and
b) is constructed for a specific purpose in a place where a natural wetland does not already exist

24. NZ Airports considers this distinction important and necessary to ensure the focus of these reforms remains on natural freshwater resources. Our members have areas (eg ex-decantation ponds) which would be captured by the "constructed wetlands" definition, and which it would be impractical and unnecessary to subject to the protections of the Freshwater Policy Documents. It is important these definitions remain separate. We also support the distinction between "natural" and "constructed wetlands" in the policies of the Draft NPS-FM.

**Draft NES-F exceptions for "nationally significant infrastructure"**

25. The Draft NES-F contains several exceptions for works completed for the "purpose of building, maintaining or operating any new or existing nationally significant infrastructure" in relation to the resource consent requirements for activities affecting wetlands and riverbed infills. These shift several activities from being non-complying or prohibited to discretionary, including:

(a) vegetation destruction or earth disturbance carried out in, or within 10 metres of a wetland;

(b) earth disturbance for drainage or water-take, in or within 100 metres of a wetland, where it would affect the wetland's water levels; or

(c) the infilling of the bed of a river.

26. Within the Proposed NES-F, nationally significant infrastructure includes:

[...] g) airports that have a runway used for regular air transport services by aeroplanes that have a seating configuration of more than 30 passenger seats

27. While this is a useful measure of medium-large airports within New Zealand many of New Zealand's smaller airports fall outside of this definition. For example, all the airports located in the Far North (including Kaitaia and the Bay of Islands), the Ministry of Defence's Whenuapai Air Base and Wanaka Airport would be excluded. Other airports left out of the definition include: Hamilton, Matamata, Milford Sounds, Motueka, Parakai, Rangiora and Wairoa.

28. Should airports fall outside of these exception clauses, the impact of having to meet the new consenting requirements imposed under the Draft NES-F would be onerous, and in some cases prohibitive. As detailed above at paragraphs 8 to 10, airports can come into conflict with freshwater resources in numerous ways. Furthermore, due to civil aviation requirements, location constraints and operational needs (such as operational resilience), airports have very limited flexibility as to the location of activities on their own landholdings, and their ability to shift to new locations.

29. In relation to the RMA (and therefore the Draft NES-F), a river means "a continually or intermittently flowing body of fresh water; and includes a stream and modified watercourse; but does not include any artificial watercourse", with its bed including "the space of land which

---

8 Other airports left out of the definition include: Hamilton, Matamata, Milford Sounds, Motueka, Parakai, Rangiora and Wairoa.
the waters of the river cover at its fullest flow without overtopping its banks”. This provides a broad definition of potential river beds which many airports would be restricted from infilling if not captured by the exception for nationally significant infrastructure.

30. Being required to overcome the hurdle of non-complying activity status or, in the case of prohibited activities, having to seek a private plan change to enable resource consent to be sought, for the maintenance or necessary development of airport facilities would not be economically feasible for many of New Zealand’s smaller, regional airports. This could result in broader impacts on regional economies, as many of these airports act as gateways for tourism and business development within their regions.

Relief sought

31. NZ Airports seeks that the "nationally significant infrastructure" definition in the Freshwater Policy Documents is amended to read:

[...] g) airports that have a runway used for regular air transport services by aeroplanes that have a seating configuration of more than 30 passenger seats, are requiring authorities under the RMA, or are considered "significant assets" of local authorities under the Local Government Act 2002.

32. This amendment would capture airports currently excluded from these exceptions that are significant for the purposes of future local authority planning and provision of services to their local communities throughout New Zealand.

OFFSET CONDITIONS FOR NATIONALLY SIGNIFICANT INFRASTRUCTURE

33. While the Draft NES-F provides exceptions for works where they are required for nationally significant infrastructure (meaning stream or wetland works are discretionary, not non-complying or prohibited), it imposes further conditions for the offsetting of these works. For works relating to wetlands, this is expressed in section 6:

[...] a) to the extent that adverse effects on a natural wetland cannot be avoided, remedied, or mitigated, any residual adverse effects on the natural wetlands must be offset to achieve a net gain; [...] (emphasis added)

34. Section 18(2)(a) of the Draft NES-F, in relation to the infilling of river beds, employs the same wording although adjusts the requirements for offsets to achieve "no net loss" rather than a "net gain". Both of these conditions also come with further requirements to monitor the activity and its effects on the adjacent river or wetland.

35. NZ Airports are concerned as to the lack of adequate direction and the broad scope of the current offset requirements, which we anticipate will become central to the way the Freshwater Policy Documents work. This is discussed below.

Scope of offset criteria

36. The reference to the criteria for adequate offsets is given little direction in the Draft NES-F or associated Discussion Document. Offsetting is an approach for water management in New Zealand which was largely brought in by 2017 amendments to the RMA allowing consent authorities to consider offsets to compensate for adverse effects.\(^9\) National offsetting guidance
to date has focussed almost exclusively on biodiversity offsetting, which does not usefully transfer to water offsetting due to the different environmental factors at play.\(^\text{10}\) Case law on the adequacy of offsetting measures has similarly focused on biodiversity or landscape protection, with the leading case *JF Investments Ltd v Queenstown Lakes District Council* concerning landscape effects.\(^\text{11}\) This case set out several "desiderata" for offsets, including that offsets should:\(^\text{12}\)

(a) be of the same kind and scale as the work or directly remedy its adverse effects;

(b) be close to the site, with benefits diminishing with distance;

(c) include public consultation or participation in the process setting the offset; and

(d) be assessed under a standard methodology; preferably one set out under a local authority plan or other public document.

These matters place relatively onerous demands on those required to offset, anticipating that offsetting is to be an exceptional measure to be taken by consent authorities in limited circumstances. Elements of these "desiderata" are clearly linked to landscape and biodiversity concerns. For example, preserving biodiversity in a region requires offsetting to occur nearby. However, freshwater may not always benefit from offsetting closest to the adverse effects. Instead, it can be more beneficial to have offsets occur upstream, away from the impact location to result in a positive outcome over a greater portion of the river.\(^\text{13}\)

While NZ Airports is not opposed to offsetting, it is practically challenging for many airports, in particular for those that have limited areas of land that they can feasibly incorporate offsetting measures on. Additionally, there are some activities covered by the Draft NES-F that may not be able to be offset on airport land, even when the land holdings of an airport are larger. For example, as discussed above, wetlands can be untenable environments to sit alongside airports due to the potential risks they provide in elevating bird strike concerns. It is not therefore possible to offset effects such as draining on a wetland by shifting this somewhere else nearby. Safety and other aviation-specific considerations like these mean that many airports may not always be able to achieve the offsetting required of adverse effects on natural streams or wetlands on their own land. Further, it would be especially difficult to achieve "net gain" from offsetting in relation to wetlands as is currently required under the Draft NES-F. In our view, alternative processes should be established for airports to be able to offset their adverse effects on freshwater resources through other methods due to these practical challenges.

NZ Airports therefore suggests that, if offsetting is to be required, it must be enabled, at the very least, within a broader catchment or Freshwater Management Unit ("FMU") so these effects can be fully and properly managed. We further suggest that, for consistency and ease of application by consent authorities, offsets for both streams and wetlands should be managed under a "no net loss" approach. We also note that significant further guidance will need to be provided from a national level as to a standard methodology for form, locations and other requirements that are necessary to fill these offsetting conditions.

\(^{10}\) See further discussion of these factors in Derek Nolan QC (ed) *Environmental and Resource Management Law* (looseleaf ed, LexisNexis) at [8.51].


\(^{12}\) Nolan, above n 10 at [8.51].
Relief sought

40. NZ Airports seeks that section 6 of the Draft NES-F is amended as follows:

   […] a) to the extent that adverse effects on a natural wetland cannot be avoided, remedied, or mitigated, any residual adverse effects on the natural wetlands must be offset within the broader freshwater management unit to achieve a net gain a no net loss;

41. Similarly NZ Airports seeks that section 18(2) of the Draft NES-F is amended as follows:

   […] a) to the extent that the adverse effects cannot be avoided, remedied, mitigated, any residual adverse effects on the river must be offset within the broader freshwater management unit to achieve a no net loss; and […]

42. In addition, we seek that the Ministry for the Environment produce further national guidance as to a standard methodology for form, locations and other requirements that are necessary to fill these offsetting conditions.

THREATENED INDIGENOUS SPECIES

43. One of the compulsory values in the Draft NPS-FM is the extent to which an FMU supports a population of threatened species that has the conditions necessary to support the survival of the species. NZ Airports supports the identification of these species within each FMU to ensure these species can be adequately monitored and protected.

44. However, there will be some situations where, to provide for the safety and efficient operation of airports, these species need to be relocated. For example, threatened bird species from nearby freshwater habitats which threaten the safety of aircraft operations through the associated increased risk of bird strike cannot always be appropriately managed within their original habitat. NZ Airports does not consider that identifying threatened species within the compulsory values of the Draft NPS-FM should preclude all modifications to these habitats in the future.

Relief sought

45. NZ Airports seeks that the reference to threatened species within clause 3 of "Appendix 1A: Compulsory values" is amended to include:

   3 Threatened species

   This refers to the extent to which an FMU that supports a population of threatened species has the conditions necessary to support the continued presence and survival of the threatened species. The basic conditions relate to aquatic habitat, water quality, and flows or water levels, but may also include specialised habitat or conditions needed for only part of the life-cycle of the threatened species. If this specialised habitat is unable to be adequately provided for in the FMU, the ability to relocate a threatened species will need to be considered.

   This amendment will assist decision-makers in considering the best possible habitat for a threatened species when these conflict with existing activities.

14 Draft NPS-FM Appendix 1A: Compulsory values.
46. We also recommend the Draft NPS-FM be amended to provide more fulsome direction to regional authorities to plan for situations where adverse effects on threatened species cannot be avoided, but where those effects can still be remedied, mitigated or offset. In particular, as per the amendment in paragraph 45 above, regional authorities should be enabled to allow activities where the relocation of a threatened species is a viable option, so as not to constrain critical infrastructure from establishing in an otherwise suitable location.

ALIGNMENT WITH OTHER NATIONAL DIRECTION AND RMA REFORM

47. The Ministry is currently consulting on, or about to commence consultation on, a wide range of proposals to reform New Zealand’s resource management system. This includes other national direction proposals relating to urban development, indigenous biodiversity and climate change, as well as a second Kāinga Ora – Homes and Communities Bill and amendments to the RMA itself.\(^{15}\)

48. NZ Airports has a significant interest in all these reforms, which will each impact on its existing and future operations. From NZ Airports' perspective, it is critical that these reforms are not developed in isolation from each other. Although the focus of these processes is necessarily different in each case, it is crucial that they are ultimately aligned in terms of how they provide for nationally significant infrastructure such as airports.

CONCLUSION

49. NZ Airports would welcome the opportunity to discuss this submission with MfE in any further consultation relating to the Freshwater Policy Documents.

---

\(^{15}\) Planning for successful cities: A discussion document on a proposed National Policy Statement on Urban Development – Consultation Question 17.