

# Submission from Straterra

## To the Ministry for the Environment

### Exposure Draft - Essential Freshwater Interpretation

### Guidance: Wetlands Definitions

### May 2021

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#### Key points

- We support the government's intent to resolve the problems for a wide range of land uses associated with the treatment of wetlands in the freshwater regulations.
- The comprehensive solution to this, which we understand the government agrees with, is a consenting pathway under the new freshwater package for earthworks in relation to natural wetlands.
- We are working on the basis the Draft Guidance is an interim solution, the key objective of which is to give relevant businesses practical options while the comprehensive solution is developed, and the required regulations are put in place.
- Our view is that the Draft Guidance will not achieve that objective.
- While the Draft Guidance is designed to clarify wetland definitions, this simply entrenches the unworkability of the freshwater regulations for a wide range of land uses including cleanfills.
- On a positive note, the Draft Guidance does strengthen the case for amending Regulation 53 to classify earthworks in relation to natural wetlands as a discretionary activity, enabling access to the effects management hierarchy in the consenting process. This should be the government's priority as a matter of urgency.
- Prohibiting all earthworks regardless of their nature or scale in all natural wetlands impacts on most land uses in most of New Zealand and is unworkable.

#### Introduction

1. Straterra is the industry association representing the New Zealand minerals and mining sector. Our membership is comprised of mining companies, explorers, researchers, service providers, and support companies.
2. We welcome the opportunity to comment on the [Exposure Draft](#) of the Essential Freshwater Interpretation, Guidance: Wetlands Definitions (the Draft Guidance).

3. We strongly support the government's desire to protect and preserve wetlands. However, this must not prevent the ability of economic activities involving earthworks, including the expansion and development of mines and quarries, to be considered on their merits and on proposals for managing environmental effects, e.g. under an effects management hierarchy.

## Submission

### The problem

4. Late last year a major problem was identified with the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 that came into force just prior to the Election on 3 September 2020.
5. Under the regulations, "mineral and aggregate extraction" activity, along with earthworks generally (Reg 53), would be 'prohibited' on land deemed to be natural wetlands.
6. As well as the definition of natural wetlands creating uncertainty (which the Draft Guidance attempts to remedy), the 'prohibited' activity status under the RMA means there will be no opportunity to assess the merits of proposed mining and quarrying projects relative to the conservation/environmental value of the land where it is to occur. And no opportunity to consider offsets or compensation for disturbance to wetlands.
7. The industry had been consulted on the regulations but was largely taken by surprise as the outcome was not one which was considered as part of the consultation and nor was it foreshadowed in the May 2020 Cabinet paper introducing the regulation.
8. A paper we wrote at the time, linked [here](#), discusses the issue in more detail and provides examples of the implications of Regulation 53 as it stands and evidence of a number of projects involving earthworks which, unintendedly, would not be able to proceed under the regulation. Examples include OceanaGold's Deepdell mine, Winstone Aggregates' Flat Top quarry and an Envirowaste clean fill. There are also case studies from Bathurst Resources of offsetting for impacts on natural wetlands. These examples will be helpful in many of the Feedback Requests made in the Draft Guidance.
9. The paper points out that the freshwater regulations are unworkable for a wide range of land uses including: cleanfills, resolving the housing crisis, and extractives including the supply chain for the NZ Upgrade infrastructure programme.
10. We are grateful that the government and officials have recognised the failings of the regulation, for the generous time spent with us in endeavouring to understand the implications of the regulation and for the good faith they have shown in the steps taken to remedy it.

### The solution

11. Clarifying the definition of wetlands, which the Draft Guidance attempts to do, is an important part of the solution but the real solution lies in changing the activity status for earthworks from 'prohibited' to 'discretionary' so that a consenting pathway can be accessed.
12. As we understand it, the government agrees with this and this Draft Guidance is intended as an interim, short term solution only as changing the activity status, and other necessary amendments, need to be

done by regulation. Due to the timeframes required to enact that amendment, this Draft Guidance is deemed by the government to be helpful in the interim period.

13. We understand that steps are being taken to instigate the regulatory amendment with the aim of having it in place by the end of this year.
14. We support the intent of this process, i.e. an interim step to enable immediate and necessary activities until the new regulation is amended. However, we remain strongly of the view that amending the regulation to enable a consenting pathway, as set out above, is the only real solution and that the interim solution needs to do more than just clarify the definitions. We also do not think the Draft Guidance is able to achieve what is needed to meet the dual objective of enabling projects to proceed in the interim period while protecting significant wetlands. It will only do the latter.
15. This means there will be no progress for the urgently required projects such as the quarries and cleanfill applications that are currently in the pipeline and any others that emerge before the new regulation is put in place and comes into effect.
16. We also think there needs to be a more sophisticated problem definition as regards natural wetlands. Wetlands range in size from small patches of wet grass to ponds, tarns and small lakes, and they form as the hydrology allows. Therefore, prohibiting all earthworks regardless of their nature or scale in all natural wetlands impacts on most land uses in most of New Zealand and is unworkable.