

PDP HEARING 15D

APPENDIX to STATEMENT OF EVIDENCE BY KATERINA DVORAKOVA

TURNSTONE REZONING – PUBLIC ACCESS AREAS

BACKGROUND NOTES ON STREAM AND WETLAND PROTECTION MEASURES

September 2025

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PROTECTION OF NATURAL CHARACTER OF RIVER MARGINS AND PUBLIC ACCESS

RMA 1991 (version at 21 August 2025)¹

RMA s6 matters of national importance:

“all persons exercising functions ... in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- “(a) the preservation of the natural character of ... rivers and their margins, and the protection of them from inappropriate subdivision, use, and development; ...
- (d) the maintenance and enhancement of public access to and along... rivers; ...
- (h) the management of significant risks from natural hazards.” [such as flooding]

¹ RMA 1991 version at 21 Aug 2025, <https://www.legislation.govt.nz/act/public/1991/0069/latest/whole.html>

RMA s7 matters: All persons exercising functions .. in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to –

- “(c) the maintenance and enhancement of amenity values;
- (d) intrinsic values of ecosystems; ...
- (f) maintenance and enhancement of the quality of the environment; ...
- (i) the effects of climate change.”

RMA s229-237 Taking esplanade reserves

RMA s229 purposes of esplanade reserves and strips:

“An esplanade reserve or an esplanade strip has 1 or more of the following purposes:

- (a) to contribute to the protection of conservation values by, in particular,—
 - (i) maintaining or enhancing the natural functioning of the adjacent ... river; or
 - (ii) maintaining or enhancing water quality; or
 - (iii) maintaining or enhancing aquatic habitats; or
 - (iv) protecting the natural values associated with the esplanade reserve...; or
 - (v) mitigating natural hazards; or
- (b) to enable public access to or along any sea, river, or lake; or
- (c) to enable public recreational use of the esplanade reserve ... and adjacent river..., where the use is compatible with conservation values.”

RMA s230 taking of esplanade:

“(3) Except as provided by any rule in a district plan... or a resource consent which waives, or reduces the width of, the esplanade reserve –

“where any allotment of less than 4 hectares is created when land is subdivided, an esplanade reserve 20 metres in width shall be set aside from that allotment along the ... bank of any river... and shall vest in accordance with section 231.” [vesting in Council].
.... and no compensation is payable for land of 20m width (s237E).

“For the purposes of subsection (3) [above], a river means a river whose bed has an average width of 3 metres or more where the river flows through or adjoins an allotment; ...”

S230(5) specifies that the taking of esplanade also applies to the creation of any allotment of 4 hectares or more ...”If any rule made under section 77(2) so requires.”

S237E compensation for greater reserve width, unless owner agrees otherwise:

“Where an esplanade reserve or esplanade strip of a width greater than 20 metres is required to be set aside on an allotment of less than 4 hectares created when land is subdivided, the territorial authority shall pay compensation for the area of the esplanade reserve or esplanade strip above 20 metres, to the registered owner of that allotment, unless the registered owner agrees otherwise.”

S237F compensation for esplanade on allotments of 4 hectares or more, unless owner agrees otherwise:

“Where any esplanade reserve or esplanade strip of any width is required to be set aside or created on an allotment of 4 hectares or more created when land is subdivided, the territorial authority shall pay to the registered owner of that allotment compensation for any esplanade reserve or any interest in land taken for any esplanade strip, unless the registered owner agrees otherwise.”

S237H valuation: If the territorial authority and owner cannot agree the amount, it shall be determined by a registered valuer agreed on by the parties (or, failing agreement, nominated by the President of the New Zealand Institute of Valuers).

s235 Creation of esplanade strip or s237B access strip - by agreement

s235: "An esplanade strip may at any time be created for any of the purposes specified in section 229 by agreement between the registered owner of any land and the local authority..."

S237B "A local authority may agree with the registered owner of any land to acquire an easement over the land, and may agree upon the conditions upon which such an easement may be enjoyed..."

Regional Policy Statement (RPS)

RPS Policy 4.4.1 "Maintaining and protecting significant ecological areas and habitats"

Clause (3): "avoid, remedy or mitigate adverse effects of subdivision, use and development so they are not significant on any of the following: ... (c) Indigenous ecosystems and habitats that are particularly vulnerable to modification, including ... headwater streams, floodplains and margins of freshwater bodies ..."

See further RPS details below.

If a provision in RPS differs from NES or NPS-FM, the more stringent or specific provision normally takes precedence.

National Policy Statement for Freshwater Management (NPS-FM)

- Policy 7: "The loss of river extent and values is avoided to the extent practicable."
- Policy 9: "The habitats of indigenous freshwater species are protected"

Comment: Kerikeri River is acknowledged to have high ecological values; large areas around the river are protected as conservation land and heritage areas.

PROTECTION OF WETLANDS

Regional Policy Statement (RPS)

RPS Policy 4.4.1 "Maintaining and protecting significant ecological areas and habitats"

Clause (1): "outside the coastal environment avoid, remedy or mitigate adverse effects of subdivision, use and development so they are no more than minor on: ...

(b) Areas of indigenous vegetation and habitats of indigenous fauna, that are significant using the assessment criteria in Appendix 5."

Clause (3): In case where clause (1) does not apply [ie. if the area does not meet the significance criteria of Appendix 5]:

"avoid, remedy or mitigate adverse effects of subdivision, use and development so they are not significant on any of the following: ... (c) Indigenous ecosystems and habitats that are particularly vulnerable to modification, including wetlands ... northern wet heathlands, headwater streams, floodplains and margins of freshwater bodies ..."

RPS Policy 4.4.1 clause (4) – relevant to clause (1) & (3):

"when considering whether there are any adverse effects and/or any significant adverse effects:

- (a) Recognise that a minor or transitory effect may not be an adverse effect;
- (b) Recognise that where the effects are or maybe irreversible, then they are likely to be more than minor;
- (c) Recognise that there may be more than minor cumulative effects from minor or transitory effects.”

RPS explanation of Policy 4.4.1:

“It should be noted that Policy 4.1 (2) and (3) are broader in scope than section 6(c) of the Resource Management Act, which requires the protection of areas of significant indigenous vegetation and significant habitats of indigenous species as a matter of national importance. This is because in Northland many such habitats have been degraded, so there is a greater need to give some protection to the valued habitats that remain extant.”

RPS Appendix 5 criteria for areas of significant vegetation or habitat

RPS Appendix 5 assessment criteria for identifying areas of significant indigenous vegetation and significant habitats of indigenous fauna -

“An area of indigenous vegetation or habitat(s) of indigenous fauna is significant if it meets one or more of the following criteria:...”

Wetland classes² that “exceed any of the following area thresholds³ (boundaries defined by Landcare delineation tool⁴):

- c) Swamp greater than 0.4 hectare in area; or
- d) Bog greater than 0.2 hectare in area; or ...
- f) Marsh; Fen; Ephemeral wetlands or Seepage / flush greater than 0.05 hectares in area.”

The RPS states: “boundaries defined by Landcare delineation tool.”⁵

Regional Plan (version Feb 2024)

Proposed Regional Plan for Northland⁶ definitions of ‘natural wetland’:

Natural wetland: “Any wetland including an induced wetland and a reverted wetland, regardless of whether it is dominated by indigenous vegetation...”

² Appendix 5 refers to Johnson P., Gerbeaux P. 2004. Wetland types in New Zealand. Department of Conservation, Wellington. Relevant pages: Bog p.27; Fen p.28; Swamp and Marsh p.29; Seepage p.30; Ephemeral wetland p.33. <https://www.orc.govt.nz/media/xalnctf3/wetland-types-in-new-zealand-johnson-gerbeaux-2004.pdf>.

³ Footnote in Appendix 5 states that “The area thresholds for wetland types in these criteria have been developed by ecologists to act as a trigger to identify indigenous wetlands, which due to their scale alone are likely to have significant biodiversity value above this size threshold. Wetlands of a smaller size may also be considered significant if other criteria are met (such as the presence of threatened species).

⁴ Appendix 5 refers to Landcare Research, March 2014. A vegetation tool for wetland delineation in New Zealand, http://www.landcareresearch.co.nz/__data/assets/pdf_file/0003/71949/vegetation_tool_wetland_delineation.pdf

⁵ Appendix 5 refers to Landcare Research, March 2014. A vegetation tool for wetland delineation in New Zealand, http://www.landcareresearch.co.nz/__data/assets/pdf_file/0003/71949/vegetation_tool_wetland_delineation.pdf

⁶ NRC <https://www.nrc.govt.nz/media/2yojfgax/proposed-regional-plan-february-2024.pdf>

Note: “If there is any doubt over wetland extent use: Clarkson, B. R., 2013. A vegetation tool for wetland delineation in New Zealand. Prepared by Landcare Research for Meridian Energy Limited.”

Rule C.2.2.4 Activities in natural and constructed wetlands – discretionary activities

Relevant to RMA s9(2) re: disturbance of the bed of a wetland. Discretionary activities include:

“In natural or constructed wetlands any:

1) damage, destruction, disturbance, or removal of a plant in a wetland or deliberate introduction of a plant in a wetland for wetland maintenance or wetland enhancement, or...”

C.2.3 General conditions applicable to C.2.2 activities relating to Natural wetlands:

“8) The activities must not cause change to the seasonal or annual range in water level of any natural wetland to an extent that may adversely affect the wetland’s natural ecosystem.

“9) The vegetation and the bed of any natural wetland are not disturbed to a depth or an extent greater than that required to give effect to the permitted activities.”

C.3.1.1 Off-stream damming and diversion – permitted activity:

“The damming or diversion of rainfall runoff, including in sediment ponds and stormwater detention structures, or water in an artificial watercourse are permitted activities, provided:

1) the activities do not dam or divert water in a continually or intermittently flowing river, natural wetland ...”

C.3.1.8 Damming or diverting water – discretionary activity:

“The use, erection, reconstruction, placement, alteration or extension of a dam in the bed of a river, lake or natural wetland... and the associated damming and diversion of water that is not the subject of any other rule in this Plan are discretionary activities.”

National Policy Statement for Freshwater Management (NPS-FM)

- **NPS-FM Policy 6:** “There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.”
- **Policy 9:** “The habitats of indigenous freshwater species are protected”

National Environmental Standards for Freshwater (NES-F)

NES-F (version at 1 Jan 2025)⁷ Part 3 sets out provisions for “natural inland wetlands” (as defined by NPS for Freshwater Management⁸). Natural inland wetland is defined in clause 3.21.

⁷ Resource Management (National Environmental Standards for Freshwater) Regulations 2020, version at 1 January 2025, <https://www.legislation.govt.nz/regulation/public/2020/0174/latest/LMS364099.html>

⁸ Definition relevant to NES-F is in NPS-FM (amended Oct 2024), <https://environment.govt.nz/publications/national-policy-statement-for-freshwater-management-2020-amended-october-2024/>. MfE wetland delineation protocol and related documents MfE Freshwater documents <https://environment.govt.nz/acts-and-regulations/national-policy-statements/national-policy-statement-freshwater-management/#material-incorporated-by-reference>; <https://environment.govt.nz/publications/wetland-delineation-protocols/>

“receiving environment includes, but is not limited to, any water body... such as a river,... wetland...”

“restoration, in relation to a natural inland wetland, means active intervention and management, appropriate to the type and location of the wetland, aimed at restoring its ecosystem health, indigenous biodiversity, or hydrological functioning.”

Clause 3.21 effects management hierarchy:

“effects management hierarchy, in relation to natural inland wetlands and rivers, means an approach to managing the adverse effects of an activity on the extent or values of a wetland or river (including cumulative effects and loss of potential value) that requires that:

- (a) adverse effects are avoided where practicable; then*
- (b) where adverse effects cannot be avoided, they are minimised where practicable; then*
- (c) where adverse effects cannot be minimised, they are remedied where practicable; then*
- [etc]...*

NES-F regulation 45C urban development at wetlands – restricted discretionary activity

NES-F regulation 45C: the following activities “for the purpose of constructing urban development”⁹ are restricted discretionary activities –

- Vegetation clearance within, or within a 10m setback from, a natural inland wetland
- Earthworks or land disturbance within, or within a 10m setback from, a natural inland wetland
- Taking, use, damming, diversion or discharge of water within, or within 100m setback from a natural inland wetland if there is a hydrological connection between the taking, diversion, etc and the wetland, and is likely to change the water level range or hydrological function of the wetland.

A resource consent for above restricted discretionary activity “must not be granted unless” the consent authority has first satisfied itself that –

- “the urban development... will contribute to a well-functioning urban environment; and ... provide significant national, regional, or district benefits” and
- “there is no practicable alternative location for the activity within the area of the development; or every other practicable alternative location in the area of the development would have equal or greater adverse effects on a natural inland wetland;” and
- “applied the effects management hierarchy.”

NES-F regulation 56: Matters to which discretion is restricted

NES-F reg. 56 restricts the discretion of a consent authority to the following matters “(under this subpart)”:

“(a) the extent to which the nature, scale, timing, intensity, and location of the activity may have adverse effects on—

- (i) the existing and potential values of the natural inland wetland, its catchment ... and*
- (ii) the extent of the natural inland wetland; and*
- (iii) the seasonal and annual hydrological regime of the natural inland wetland; and*
- (iv) the passage of fish in the natural inland wetland or another water body.”*

⁹ This applies to land that is identified for urban development in an operative regional or district plan, not rural zoned land.

- (b) whether there are practicable alternatives to undertaking the activity that would avoid those adverse effects:
- (c) the extent to which those adverse effects will be managed to avoid the loss of the extent of the natural inland wetland and its values:
- (d) other measures to minimise or remedy those adverse effects”

Comment: We note that Regulation 55 (general conditions on wetland activities) does not appear to apply to regulation 45C in cases of urban development. It is necessary to check whether reg. 56 applies (or not) to reg. 45c on urban development.

RMA s14 Restrictions relating to water

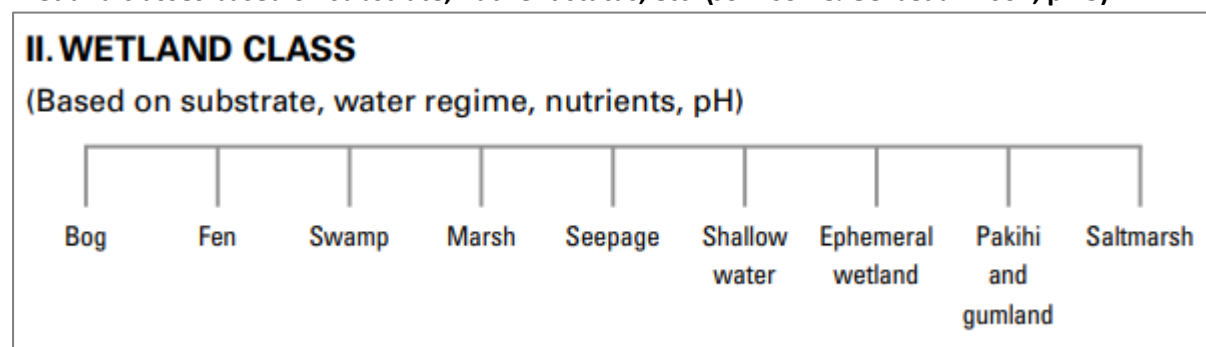
RMA s14 may also be relevant to wetlands. But NES-F would be more useful/appropriate.

“(2) No person may take, use, dam, or divert [water] unless the taking, using, damming, or diverting is allowed by subsection (3):

(3) If “the taking, using, damming, or diverting is expressly allowed by a national environmental standard, a rule in a regional plan as well as a rule in a proposed regional plan for the same region (if there is one), or a resource consent;...”

Background information: NZ wetland classes

Wetland classes based on substrate, nutrient status, etc. (Johnson & Gerbeaux 2004, p.15)



Brief description of wetland classes (based on Johnson & Gerbeaux 2004, p.27-33)

Wetland class	Brief description
Swamp	Relatively rich in nutrients, often also sediment from runoff and groundwater
Bog	Peatland, water supplied only by precipitation, nutrient-poor substrate
Marsh	Fed by ground or surface water, slow to moderate flow, mainly mineral wetland
Fen	Predominantly peat, groundwater & nutrients from adjacent ground
Ephemeral	Fluctuations in water, may dry completely in summer
Seepage/flush	Flow of groundwater, sometimes surface water as well