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Ministry for the Environment  
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Lodged via: <https://consult.environment.govt.nz/>

Tēnā koutou

## **EXPOSURE DRAFT OF PROPOSED CHANGES TO THE NPS-FM AND NES-F (INCLUDING WETLAND REGULATIONS)**

Powerco Limited (Powerco) appreciates the opportunity to provide feedback on the National Policy Statement for Freshwater Management (NPS-FM) and National Environmental Standard (Freshwater) Regulations 2020 (NES-F) relating to wetlands (Exposure Draft).

This submission builds on the two earlier submissions from Powerco being the Wetlands Definitions Guidance Feedback (dated 03 May 2021) and the Managing our Wetlands Feedback (dated 27 October 2021).

Powerco is concerned that many of our submission points made to date have not been addressed. It is extremely important to acknowledge that distribution networks will have a pivotal role in connecting areas of new urban development as well as providing connections for process heat / industrial conversions as we move to a decarbonised economy.

For the purposes of this current submission, we have focused on the changes proposed in the Exposure Draft, followed by changes needed to ensure distribution networks can provide for individuals and communities; whilst also delivering climate change outcomes.

### **Summary of Submission**

While Powerco supports protection and enhancement goals of the NPS-FM and NES-F, we consider that those protection goals need to take into account and enable critical infrastructure without disproportionate constraints. Powerco notes that there have been considerable dispensations made for the agricultural sector<sup>i</sup>, urban development<sup>ii</sup> and the extractive industry<sup>iii</sup> within the Exposure Draft, however no further consideration has been made to the electricity distribution sector; in particular where activities are concentrated around the use of heavily modified transport corridors.

This submission suggests four additional changes to the Exposure Draft:

1. Revisions to the NPS-FM definition of 'natural wetland' to ensure it is workable;
2. Clarification of the consenting pathway of specified infrastructure under the NPS-FM;
3. Revisions to NES-F regulation 45 to ensure workability; and
4. Changes that provide for consistency with other National Policy Statements, including importantly the draft National Policy Statement on Indigenous Biodiversity (NPS-IB).

## About Powerco

Powerco is an electricity and gas distribution company providing essential infrastructure to diverse communities across the North Island of Aotearoa. Powerco keeps the lights on and gas flowing to around 1.1 million customers, across 452,000 homes, businesses, and organisations in the North Island. We operate more than 28,000km of electricity lines and cables, and over 6,170km of gas pipelines. As such, Powerco's distribution networks traverse or adjoin a wide range of environments including water courses and wetlands.

Powerco's existing distribution networks need to be operated, maintained, repaired, and upgraded. In addition, new network infrastructure may need to be installed to respond to demand for its infrastructure to enable urban growth and decarbonisation. In recognition of the critical nature of our distribution networks, we are within the definition of "Lifeline Utility" as described in Part B of Schedule 1 of the Civil Defence Emergency Management Act 2002.

A reliable and constant energy supply is critical to sustaining the economy, population and way of life. Demand for energy is constantly increasing. Powerco faces an increasing number of constraints on its ability to provide secure and reliable energy supplies to meet increasing demand resulting from both population growth and the transition to a low carbon economy.

## Definition of 'Natural Wetland'

Powerco supports the Exposure Draft's attempt to clarify what is meant by a 'wetland constructed by artificial means'. However, it has a number of concerns with the revised definition.

Principally, we remain concerned that the definition does not adequately exclude wetlands that have resulted from, or been induced by, human activities. While the exclusion of wetlands that have developed around a deliberately constructed water body is supported, it is also the case that wetlands develop around a range of man-made structures or human influenced activities (e.g. road carriageways).

Powerco also notes that the inclusion of offset wetlands should specify that this captures offset wetlands created not simply "*as part of giving effect to the effects management hierarchy*" but also expressly links this to offsetting undertaken pursuant to the NPS-FM 2020. Without such clarification, the definition may inappropriately capture deliberately constructed wetlands before the NPS-FM's effects management hierarchy came into force.

We also suggest that a consistent approach to wetland size is addressed throughout RMA regulations and National Direction. We note that under the Resource Management (Stock Exclusion) Regulations 2020 the focus on stock exclusion is on wetlands smaller than 0.05 ha. Powerco suggests that this approach to materiality be adopted under the NPS-FM.

Finally given the incoming NPS-IB focuses on protections for threatened species and their habitat, the reference to such species in the natural wetland definition is not appropriate and risks overlapping the purposes of two separate pieces of national direction. Powerco therefore suggests this reference is deleted from the definition of natural wetland.

In light of the comments outlined above, Powerco suggests the following changes to the Exposure Draft's definition of natural wetland (all Exposure Draft tracking having been accepted and Powerco's additional proposed drafting shown in underlined and ~~strike through~~ tracking):

***"natural wetland*** means a wetland (as defined in the Act) that exceeds 0.05 ha in area and is not:

- (a) a deliberately constructed wetland or wetland that has resulted from human activity, other than a wetland constructed to offset impacts on, or to restore, an existing or former natural wetland as part of giving effect to the effects management hierarchy under this National Direction ; or
- (b) a wetland that has developed in or around a deliberately constructed water body, structure, road or landform since the construction of the water body, structure, road or landform; or
- (c) a geothermal wetland; or
- (d) a wetland that:
  - (i) is within an area of pasture; and
  - (ii) has ground cover comprising more than 50% exotic pasture species (as identified in the National List of Exotic Pasture Species (see clause 1.8)); ~~and~~
  - ~~(iii) is not known to contain threatened species"~~

### CI 3.22 NPS-FM consenting pathway for specified infrastructure

Clause 3.22 of the NPS-FM provides for the inclusion of a policy in regional plans which relates to specified infrastructure and provides a consenting pathway. However, it is inconsistent in its approach to which specified infrastructure activities are anticipated. Powerco considers the provision should provide consistent reference to the construction, operation, maintenance or upgrading of the specified infrastructure. For example, the following edits are needed:

**Clause 3.22(1)(a)(vi)** should be amended to read "the construction, operation, maintenance or upgrading ~~operation~~ of specified infrastructure, or other infrastructure (as defined in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020".

**Clause 3.22(1)(b)(i)** should be amended to read “the activity is necessary for the purpose of the construction, operation, maintenance or upgrade of specified infrastructure;”

Additionally, the test that applies to the specified infrastructure consenting pathway is narrower in the NPS-FM than is provided for in the NPS-IB. Powerco suggests consistency between these two pieces of national direction such that both provide for both functional and operational needs, as follows:

**Clause 3.22(1)(b)(iii)** should be amended to read “there is a functional or operational need for the specified infrastructure in that location; and...”

## Revisions to Regulation 45 NES-F

A further improvement to activity status consistency would be useful to ensure all activities within or near wetland are treated consistently. For example, intensive winter grazing activities within 5m of a wetland is a permitted activity under clause 26(4) of the NES-F, yet works associated with specified infrastructure resulting in vegetation clearance or earthworks within 10m of a wetland are a discretionary activity under clause 45. Powerco considers this distinction is inappropriate as a temporary construction activity associated with electricity pole installation would most likely have a much lesser environmental impact than ongoing intensive winter grazing.

Given the above, Powerco suggests the following changes to the Exposure Draft NES-F Regulation 45 (all Exposure Draft tracking having been accepted and Powerco’s additional proposed drafting shown in underlined and ~~strike through~~ tracking):

### ***“45 Discretionary activities***

- 1) *Vegetation clearance within, or within a ~~10 m~~ 5 m setback from, a natural wetland is a discretionary activity if it is for the purpose of constructing specified infrastructure.*
- 2) *Earthworks or land disturbance within, or within a ~~10 m~~ 5 m setback from, a natural wetland is a discretionary activity if it is for the purpose of constructing specified infrastructure.*
- 3) *Earthworks or land disturbance outside a 10 m 5 m, but within a 100 m, setback from a natural wetland is a discretionary activity if it—*
  - (a) *is for the purpose of constructing specified infrastructure; and*
  - (b) *results, or is likely to result, in the complete or partial drainage of all or part of the natural wetland.”*

Powerco supports the insertion of Regulation 45(5) regarding discretionary activity status for the discharge of water within, or within a 100 m setback from, a natural wetland. However, Powerco is concerned that Regulation 45(5) does not recognise that the discharge of water may be for the purpose of activities relating to specified infrastructure other than its construction. In addition to the construction of new specified infrastructure, Powerco is responsible for the maintenance, operation, repair and upgrade of its existing distribution network, which are critical to ensuring a reliable and constant energy supply. Powerco seeks that Regulation 45(5) recognises these additional purposes.

Powerco suggests the following changes to the Exposure Draft Regulation 45(5) (all Exposure Draft tracking having been accepted and Powerco's additional proposed drafting shown in underlined and ~~strike through~~ tracking):

#### **"45 Discretionary activities**

...

- (5) *The discharge of water within, or within a 100 m setback from, a natural wetland is a discretionary activity if —*
- (a) *it is for the purpose of maintaining, operating, repairing, upgrading or constructing specified infrastructure; and*
  - (b) *there is a hydrological connection between the discharge and a natural wetland; and*
  - (c) *there are likely to be adverse effects from the discharge on the hydrological functioning or the habitat or the biodiversity values of a natural wetland."*

Powerco also suggests that these changes could be reflected more broadly in Regulation 45, which currently only refers to the construction of specified infrastructure.

## **Consistency with other National Direction**

Powerco notes that as drafted there are a number of apparently unintentional inconsistencies between the NPS-FM and the NPS-IB in terms of their language, terms and approach.

For example, Powerco notes the following inconsistencies between the Exposure Draft and the NPS-IB:

- The "effects management hierarchy" is a central concept to both National Direction documents but it is defined differently in each document without any apparent reason or intentional outcome.
- Both documents provide a consenting pathway for infrastructure but use different terms ("specific infrastructure" in the NPS-IB and "specified infrastructure" in the NPS-FM) despite there being no need to have subtly different terms.
- The NPS-IB specified infrastructure pathway provides for both a functional and operational need test whereas the NPS-FM only provides for a consideration of functional need (see drafting above that suggests resolution of this point).

These differences will result in difficulties in interpretation and implementation that will lead to cost, delays uncertainty and conflict. Powerco suggest that wherever possible consistent definitions and language is used throughout national direction.

In making this submission Powerco is also very cognisant that existing National Direction will likely form the basis for the National Planning Framework under the Natural and Built Environments Act. Addressing issues with inconsistency now is therefore critical to securing an enduring clear and consistent policy framework.

Guidance documents should also be published to assist with the implementation of the NPS-FM Appendix 6: (Principles for aquatic offsetting) and Appendix 7 (Principles for aquatic compensation) so as to assist users and ensure efficient administration and transparency of these principles.

## Additional Matters Requiring Consideration

As outlined earlier, Powerco is concerned that many of our submission points made via the Wetlands Definitions Guidance Feedback and the Managing our Wetlands Feedback have not been addressed to date. While some matters have been covered in the above submission points, Powerco would encourage Officials and decisions makers to consider the following matters as part of this review:

- The definitions of *earthworks* is very broad in the NES-F - even a power pole installation (which would have effects comparable to the installation of a fence post which is permitted<sup>iv</sup>) would trigger the need for a resource consent. Power poles involve minimal disturbance of earth and potentially allows infrastructure to span over wetlands which should be a permitted activity.

To address this matter, Powerco seeks amendments to the definition of earthworks in section 3 of the NES-F (Powerco's drafting shown underlined and ~~strike through~~ tracking):

### ***"3 Interpretation...***

***earthworks has the meaning given by the National Planning Standards 2019, but excludes the alteration or disturbance of land associated with the installation of single pole specified infrastructure"...***

- There needs to be a right to construct specified infrastructure within roads. Legislation provides Powerco with a legal right of access to road corridors for the construction of infrastructure (e.g. Electricity Act 1992, Gas Act 1992, Utilities Access Act 2010). As road corridors are already significantly modified from an environmental effects point of view, it seems logical that utilities should be able to locate within them. Given most roads are approximately 20m wide – if a wetland is located adjacent to the road, then the 10m setback would mean new works would not be able to be located on that side of the road corridor. It is considered with appropriate earthwork practices, placing utilities within a road corridor could occur without impacting upon adjacent wetlands. Wetlands abutting road corridors including state highways, are causing significant frustration within Powerco and other electricity distribution businesses, and across infrastructure providers generally. The unintended consequences of the Freshwater Management provisions on wetland areas abutting road corridors to upgrade and construct specified infrastructure needs to be addressed as a priority.

To address this matter, Powerco seeks amendments to the regulation 46 of the NES-F (Powerco's drafting shown underlined and ~~strike through~~ tracking):

**"46 Permitted activities**

- (1) *Vegetation clearance within, or within a 10 m setback from, a natural wetland is a permitted activity if it—*
- (a) *is for the purpose of maintaining or operating specified infrastructure or other infrastructure; ~~or and~~*
  - (b) is for the purpose of constructing specified infrastructure within the boundaries of a formed legal road; and
  - ~~(c)~~ *complies with the conditions.*
- (2) *Earthworks or land disturbance within, or within a 10 m setback from, a natural wetland is a permitted activity if it—*
- (a) *is for the purpose of maintaining or operating specified infrastructure or other infrastructure; ~~or and~~*
  - (b) is for the purpose of constructing specified infrastructure within the boundaries of a formed legal road; and
  - ~~(c)~~ *complies with the conditions...*
- (4) *The conditions are that—...*
- (g) if the activity is earthworks or land disturbance associated with construction of specified infrastructure within the boundaries of a formed legal road the activity must be undertaken in an area that –
    - (i) has previously been disturbed by activities in the road corridor; or
    - (ii) is actively maintained as part of the road corridor."

It is considered the above changes will help ensure that the objectives and policies of the NPS-FM are able to be met – particularly Policies 4 and 15.

## Conclusion

Powerco would welcome the opportunity to meet with staff from the Ministry for the Environment to discuss / elaborate on the concerns outlined above.

Ngā mihi



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<sup>i</sup> Pg 13 '*The intent, however, is to enable existing pastoral land use to continue and not be compromised by the strong protection of the NES-F regulations*'. Ministry for the Environment. 2022. *Essential Freshwater Amendments: Report recommendations and summary of submissions: Managing our wetlands: Proposed changes to the wetlands regulations*. Wellington: Ministry for the Environment.

<sup>ii</sup> Pp 56 recommends a consent pathway for urban development listed in a district plan as a restricted discretionary activity; that the gateway test for plan-enabled urban development be at the district level (instead of national and/or regional significance); and that the function need gateway test is replaced with best practicable location. Ministry for the Environment. 2022. *Essential Freshwater Amendments: Report recommendations and summary of submissions: Managing our wetlands: Proposed changes to the wetlands regulations*. Wellington: Ministry for the Environment.

<sup>iii</sup> Parts 2A-C: Ministry for the Environment. 2022. *Essential Freshwater Amendments: Report recommendations and summary of submissions: Managing our wetlands: Proposed changes to the wetlands regulations*. Wellington: Ministry for the Environment.

<sup>iv</sup> The definition of *earthworks* in the National Planning Standards 2019 excludes '*disturbance of land for the installation of fence posts*'.