

30 October 2019

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NP:RJK

Ministry for the Environment
Environment House
PO Box 10362
Wellington 6143

Via email consultation.freshwater@mfe.govt.nz

Dear Sir or Madam

HORIZONS REGIONAL COUNCIL RESPONSE: PROPOSED NATIONAL DIRECTION FOR ESSENTIAL FRESHWATER

Thank you for the opportunity to provide feedback on the consultation document containing Government's proposed action plan for freshwater. Horizons Regional Council (Horizons) is the regional authority for the Manawatū-Whanganui Region. This submission should read together with the Local Government New Zealand submission which is supported by Horizons.

Horizons believes that our region is a great place to live, work and play. Our responsibilities include managing the region's natural resources, flood control, monitoring air and water quality, pest control, leading regional land transport planning, and coordinating our region's response to natural disasters.

In our role as a Regional Council, we have made steady progress in addressing the adverse effects of land and urban development on our region's freshwater bodies. To summarise our submission, the Council is looking for the Government to:

- Promulgate a coordinated and integrated package that delivers clear policy direction, and minimises the need to reinterpret national policy at a regional level;
- provide a range of tools and appropriate flexibility so that Councils can engage with iwi and communities on the most appropriate activities and interventions in catchments ;
- ensure both regulatory and non-regulatory approaches can be used in our region;
- enable an appropriate transition package, including support of science and collaboration between central and local government, and recognition of early adopters of good environmental practice;

in order to deliver freshwater improvement in the short-term, while providing an enduring pathway for continued environmental progress.

Over the last 15 years, we have worked in partnership with central government, landowners, and territorial authorities, to invest millions in successfully reducing hill-country erosion. Our support for riparian planting and fencing has been well recognised by our community, and has had good uptake across the region, with recent years being fully subscribed.

As a Council we have also worked hard on water quality improvement initiatives reducing the impact of point source discharges such as wastewater, and better managing water allocation. Also, through the Horizons One Plan¹, we have taken an integrated approach to environmental improvement, including being the first regional council to take specific action to regulate diffuse nutrient losses from intensive farming. While progress has been made across the region, this has been balanced with affordability and pace of change for our community – particularly where initiatives and improvements are multi-million dollar investments by land owners.

The Essential Freshwater proposals have the opportunity to come together as a comprehensive and integrated package, and to enable us to hold the line on water quality across New Zealand. Horizons strongly supports the overall purpose of the freshwater proposals and understands the issues it seeks to address. However, making this happen in practical terms is a challenge, and we are not confident that the current proposals will achieve the outcomes the Government is seeking for freshwater improvement. The Council also regards that the proposed timeframes as **ambitious when considering the Government's** interest in creating meaningful, enduring change for New Zealand communities.

We welcome the initiative of clear and stable policy direction to enable government, sectors, industries and communities to make their contribution to freshwater improvement. We also appreciate that improving our water quality is not one single issue, and therefore requires an integrated and coordinated approach. We note there is further policy development to come, and the proposals also need to be considered alongside the recently released Resource Management Amendment Bill.

The Council considers that it has been on the freshwater improvement journey for many years, and is already delivering interventions on many of the issues the Government has identified. However, as the decline in water quality has occurred over generations, it is not a quick fix, and will require consistent and concerted effort. The Council has a ten year (plus) plan in place to work with our communities to continue to improve our catchments, and has both regulatory and non-regulatory responses already in place to address the most pressing freshwater issues.

We look forward to the package being able to offer regional councils further tools and flexibility. This will ensure Councils can work locally on a catchment-by-catchment basis, and utilise both regulatory and non-regulatory options, supported by simplified legislative and regulatory pathways to help New Zealand achieve greater progress on improving (and maintaining) freshwater quality. At this stage the package appears to offer new tools but to reduce the flexibility needed to work with different catchments and communities.

We are hopeful that the finalised set of proposals carefully considers the pace of transition – allowing sufficient time for iwi and community engagement, along with consideration of the social and economic factors associated with significant change processes. We would also like to see the package account for the positive steps taken by early adopters who are already contributing environmental gains to our region, and provide certainty; enabling some land and asset owners to overcome their hesitancy to invest in improved environmental outcomes.

¹ The Manawatū-Whanganui combined regional policy statement and regional plan

Horizons recognises that there will be substantial cost associated with taking action to address water quality, but that there would also be costs if nationally we do not act. However, the balance of regulatory and non-regulatory effectiveness needs to be considered in terms of where effort and resourcing is best spent.

Horizons has supported consistent environmental improvement in our region, and a lot of this has been delivered due to long term non-regulatory programmes (such as the Sustainable Land Use Initiative) run in partnership with our community. Our success in delivering a range of effective non-regulatory programmes that provide real, tangible on-the-ground improvement would be diminished if this package advanced as proposed, as our resources would be diverted from water improvement activities to policy and regulatory development.

There is also the unavoidable fact that across the country costs will not be evenly shared. For example, in the Horizons region we have 8% of New Zealand's land area, and 4% of New Zealand's population. In our region our primary producers have an important role in domestic food production, supporting the Government's aims to have fresh, healthy, accessible and affordable food. For example, the Horizons region contributes an estimated 22% of fresh vegetables to New Zealand's supply. The financial impost of these proposed changes will be felt significantly by our rural stakeholders and our small rural community clusters. Horizons urges government to fully understand the social, economic cultural and environmental consequences of its proposed package before it proceeds further.

As a key environmental regulator, Horizons takes strong interest in Government's proposed policy response, and the requirements for our Council and the regional sector as a whole in implementing these proposals. We are also keen to understand if the Ministry for the Environment has sufficient capability, capacity and available in-depth expertise to ensure successful implementation of the Essential Freshwater package. Our commentary on each of the sections of the proposals is attached as an appendix.

Horizons also note that there are several impacts on iwi that have not been well explored in the package, including the implications of the proposals on treaty arrangements. Further, there does not appear to be consideration of the impacts on iwi for their aspirations of further land development. For example, we understand that in our region there is a significant proportion of land locked land that, if made accessible, could be brought into production (rural and urban uses). Therefore the components of this package could act unintentionally to further limit iwi development of their lands, which has been limited through no fault of their own.

Transition package

The Council understands and appreciates the Government's driving need to see tangible improvement in freshwater quality. However, like issues such as climate change, turning the ship around will take both time and persistence. We believe there is value in the Government in considering a transition package that builds in the following factors:

- Recognition of early adopters of good environmental practice, and that these gains are already in place for the benefit of NZ inc;
- Flexible tools that allow Councils to move swiftly with the minimum of bureaucracy and litigious debate (even if these are time limited, or opportunity constrained);

- Establishment of national consistency, prioritisation of effort and joined up processes for water science, so that the technical platform is quickly established with focused effort;
- Coordination of effort and pooling of expertise, including working in partnership with the regional sector on matters of information collection and management, policy development, and related consenting elements (for example, compliance & enforceability);
- Ensure that decision making retains an appropriate element of community and key sector involvement even with an elevated pace;
- Workforce building, training and upskilling to ensure that talent is developed to lead, manage and ensure results are produced across the key elements of the freshwater improvement package.

The Council would be happy to discuss further with the Ministry what elements of a transition package may contain.

From our current understanding of the proposed package, the direct new cost to the Horizons Regional Council to be borne by our ratepayers would be significant in the next 1-5 years. It will include significant additional policy, planning, regulatory and science spend. There is more work to be done once the package is finalised to understand this better. By way of information a \$400,000 cost is equivalent to a 1% increase in Horizons rates. We note that prioritising the package to deal with the most significant issues first will mean the best return on ratepayers' investment.

Thank you for providing the opportunity for the Council to set out its feedback on the Essential Freshwater proposals.

Yours sincerely



Rachel Keedwell
CHAIR

Appendix – Horizons Regional Council Submission on Essential Freshwater

Resource Management Amendment Bill (Freshwater changes only)

The introduction of a freshwater panel with specific powers creates the opportunity to increase the speed of regulatory change and imbed the Government's policy changes more rapidly in regional and local planning documents. However, we approach this opportunity with caution, as while we potentially gain access to some elite skill sets through this process, there are currently unquantified costs attached to this approach.

These process costs have been observed in both the development of the Auckland Unitary Plan, and ECan's plan development. We understand that preparation for the panel needs to include consideration of every eventuality, and be of a standard similar to an Environment Court hearing, therefore commissioning expert planners and legal counsel early (and continuously) through the process. Given the likely occurrence of concurrent processes for many of the 16 regional councils, there would obviously be constraints in availability of panel members, expert planners, senior scientists and appropriately experienced legal counsel.

There is significant attraction to a process that limits the legal trail that often follows on from the first decision processes in a plan change, particularly from a cost and certainty perspective. However, we do believe there is benefit in having engagement and representation in the process from the community we serve; although this is not necessarily reflected in the nomination of elected members on the water panel. Previous experience demonstrates that this can be a divisive and difficult process for those members. The short timeframe by which notification is required would effectively limit any meaningful iwi or community participation in plan preparation.

The Ministry may also wish to consider the consequential impact of the proposals on treaty settlement legislation, an issue that is particularly pointed in our region for both the Whanganui and Whangaehu catchments, where specific recognition has been given to the status of the river. We note that the settlement legislation for the Whanganui River makes specific provision for collaborative planning to be run through mechanisms established in the legislation. These settlement approaches include the development of catchment strategies.

Horizons, in common with a number of regional councils, is in the process of designing co-governance arrangements with iwi. Significantly contracting the time available for councils to engage meaningfully in designing catchment outcomes threatens to undermine these processes.

It would be useful for the Ministry to give consideration as to whether the panel process was required to be mandatory, and potentially retain the option for Councils to follow the schedule 1 process, or to enable the streamlined and simplified pathway to be open for Council by resolution to manage water-related plan change processes. There would also be benefit in giving careful thought towards the perverse incentives that may be created through the water panel process – particularly where there may be acceptance of decisions by the panel simply to avoid follow on costly legal processes; reducing the potential of a more robust and enduring decision for the community to be attained.

In consideration of other constituent parts of the package, there is a question as to whether further consideration should be given to introduction of amendments to Part 2 of the Act. Water is not currently a matter of national importance under the Act, and the emphasis in the proposed NPSFM of Te Mana o Te Wai does not adequately give recognition to the principle of sustainable management as set out in the Act. Under section 45 & 45A national instruments need to achieve the purpose of the Act. Similarly, the variation in emphasis of considering factors more or less important in the hierarchy

(environmental, social, cultural, economic) as set out in the proposed NPSFM is in contrast with the balancing requirements of section 32.

S.360 Stock exclusion regulations

Overall we have a question as to whether this form of regulation is the right “fit” for policy direction on stock exclusion. In particular, we consider that it could form a more integrated and robust suite of proposals if these provision were rolled into the proposed National Environmental Standard. From our perspective this would achieve greater cohesion, and ensure that similar matters were considered together in further policy development that will be required regionally to implement these changes.

If this was to be rolled forward as a regulation, there are a number of drafting matters that need to be attended to. This includes removing contradictory references, providing greater clarity on definitions to assist compliance, monitoring and enforcement, and ensuring exemptions that can be provided at the regional scale are clear. For example, the definition of streams and drains under a metre wide. A more detailed analysis of these issues has been provided in the Local Government New Zealand submission.

In practical terms, we would welcome Government’s consideration of a staged approach to fencing and planting of the 35,000km of waterways in our region, given the positive gains that have been made by land owners, and the supply constraints we have experienced in our region recently. The unavailability of sufficient fencing materials and suitably experienced contractors does place constraints on how much fencing can be completed in any given year. Horizons would strongly support the recognition of “early adopters” of good environmental practice who have completed their riparian fencing to be exempted from meeting the new requirements; as these farmers are already making environmental gains for freshwater, in some cases years ahead of their compatriots.

Horizons also invites the Ministry to consider the effects of requiring reticulated water when the catchment is overallocated (for water availability). We would not wish to see an unintended policy consequence of fencing to be serious animal welfare issues due to no access to stock drinking water. We would be happy to provide practical examples of where this issue has arisen. We also note that there has been a significant underestimation of the costs associated with fencing, planting and reticulated stock water supply and that costs of monitoring and enforcement would also be high.

Proposed NPSFM

The robust emphasis on Te Mana o Te Wai gives clear and strong policy direction, but as discussed earlier, the relationship with the sustainable management purpose of the Act would benefit from being clarified, along with it’s consideration alongside matters of national importance set out in Part 2 of the Act.

The introduction of two new compulsory values complements the existing two. There is an opportunity for Government to take the lead on commissioning expert advice, at an appropriate level of detail, to enable all regions to set freshwater objectives and limits that reflect these values. This would ensure efficient use of nationally recognised water quality technical experts, and ensure greater conceptual consistency across plan-change proposals.

The proposed pace of change proposed by both the RMA amendment and the proposed NPSFM would result in significant re-engineering of Horizons existing work programmes and our planned approaches. This includes establishing new, large work programmes as the evidentiary base for some

of the required changes of the NPSFM (and therefore the information required to be presented to the water panel) does not yet exist¹.

Typically, a science programme needs 5 to 10 years of data to ensure robust findings can be derived, and this would have a knock-on effect of limiting the presentation of this information to iwi and the community for discussion and decision-making. Lack of long-run data would also present significant challenges in terms of the robustness of evidence and standard of defensibility required in the RMA process, and the engagement with submitters throughout the process. It therefore offers regional councils little opportunity to engage in evidence-based policy development, which is best practice in the local government sector.

There are a number of drafting queries around the nature and shape of the objective and policies. These have been fulsomely canvassed in the Local Government New Zealand submission, and therefore will not be repeated here in our submission. However, it should be noted that we anticipate significant investment in regional policy development will be required to be able to effectively interpret Government's intent.

Further work will then be required by local government policy teams to prepare objectives, policies and rules to be integrated into our existing regional planning instruments, along with the appropriate measures for effective monitoring and reporting. In our case we anticipate the size of our team requiring a four-fold increase to manage this work within the timeframe proposed by Government. This will come at a significant cost to our ratepayers, with the water quality gains from regulation being somewhat negligible in the short-term – and risks diverting resources from non-regulatory work we have demonstrated to be both practical and effective.

Proposed NES Freshwater

The issues set out in the National Environmental Standard present an interesting mix of components and a result, the context of the NES is not entirely clear. The issues addressed in the NES do not appear to be a full suite of considerations that we would anticipate to naturally result from the NPSFM. We also are interested in the approach taken to the planning cascade (permitted to prohibited activities), where some matters are permitted or controlled activities, whereas others with similar environment effects are discretionary. This seems to not follow a clear framework.

Apart from the drafting matters, which are covered comprehensively in the Local Government New Zealand submission, the draft NES places workforce issues front and centre at any attempt in implementation. While we agree with the development of farm plans - being one of the first Councils in New Zealand to promote the notion of farm plans and to support our communities and land owners to undertake these plans – it has taken many years to develop sufficient expertise for these plans to be developed so that they attain a high standard. However, demand generated by this NES could quickly lead to capacity constraints, particularly if staging or prioritisation is not provided for in the implementation package.

The information base needed to effectively implement the NES is extensive, and despite Horizons having significantly invested in this area over time, even we would be faced with a large data collection exercise. The Ministry needs to consider how it can deliver a coordinated and integrated approach to information collection with regional councils, particularly in view of the pace it wishes to effect this change.

¹ For any regional or unitary authority. This issue is not limited to Horizons.

The fixed nature of the NES may also discourage the continued evolution of environmental good management practice, along with a dampening effect on environmental restoration and continued improvement. As a Council we have seen significant change and adoption of improved practices across a number of sectors that have led to greater environmental outcomes.

We also invite the Ministry to carefully consider the proposals for commercial vegetable growing, to ensure this is not in direct conflict with the NPSFM, and with the provisions relating to a discretionary activity under the Act. As the industry has a high demand for nutrient inputs, and therefore high leaching outputs, the resulting impact on water quality cannot be ignored. Current processes, technology and investment by the sector will need continued support if the gains are to be made in both sector productivity and water quality improvements.