Essential Freshwater: Action Plan for healthy waterways

Submission of the Kapiti Coast District Council

Thank you for the opportunity to make submissions on the Essential Freshwater: Action Plan for healthy waterways. It is helpful to be able to review and comment on general package of changes proposed, as well as the specific proposals in the discussion document that are in formal consultation.

Structure of this submission

This submission is constructed in 2 sections.

Section 1 sets out our general comments about the package of proposals, including the process.

Section 2 identifies our specific concerns in detail about elements of the proposals, organised under the questions in the discussion document.

Section 1: General commentary

Overall the Council supports the direction of the package. We recognise that improvements need to be made to the way we manage freshwater, and welcome the initiatives that improve clarity of expectations and consistency of performance across the sector.

In particular, we welcome the clarity of expectation of the role of iwi, stronger support for water sensitive urban design, and the clarification of the roles of TLAs and regions.

We have identified however elements of the package in relation to the protection of wetlands and streams that are likely to pose significant costs and barriers for both the Kapiti Coast District Council and the community, and foreclose opportunities for future beneficial urban growth, without delivering any significant benefits to the environment. We therefore urge the Minister for the Environment to consider fine-tuning of those parts of the package, and in so doing, achieve a more coherent overall package of national direction across freshwater, urban development, highly productive land, and other yet-to-be-released proposals.

Process challenges

The timing of the release of the package means that this Council has not been able to engage with its elected representatives, iwi, or the Kapiti Coast community in evaluating the impacts of the proposals. The submission is therefore the views of officials. This is unfortunate as the proposals, if adopted, have significant implications for this district.

While the proposals have been well signalled, some specific provisions (in particular wetland proposals) have significant implications for the community. There has been insufficient time to unpack the implications of these proposals, and involve the community in formulating a response. This means that many parties may be blindsided by new requirements, and have few options to contribute to balanced feedback to the Minister.

Section 2: Detailed Responses to Questions

Please note that the questions not responded to specifically are greyed out.

The Government welcomes your feedback. The questions below, and at the end of each section, are a guide only. You do not have to answer all the questions and all comments are welcome. See section 12 for how and when to make a submission.

1. Do you think the proposals set out in this document will stop further degradation of New Zealand's freshwater resources, with water quality materially improving within five years?
2. Do you think the proposals will bring New Zealand's freshwater resources, waterways and ecosystems to a healthy state within a generation?
3. What difference do you think these proposals would make to your local waterways, and your contact with them?
4. What actions do you think you, your business, or your organisation would take in response to the proposed measures?

The Kapiti Coast District Council is impacted by many of the proposals, and by a number of these proposals in combination. While the Council acknowledges and supports the need to improve freshwater management, the net effect this suite of proposals will be to increase the cost burden on existing ratepayers, while constraining growth and development opportunities.

5. What support or information could the Government provide to help you, your business, or your organisation to implement the proposals?

Government needs to address the consequences of decisions that put costs onto local authorities and communities where the benefits are only experienced at a national scale. The example here is wetland protection – where the burden of protection will fall unequally on a community that has already protected a wealth of wetlands – in order to meet a national objective (no further loss of wetlands).

6. Can you think of any unintended consequences from these policies that would get in the way of protection and/or restoration of ecosystem health?

Cumulative impacts from the suite of instruments proposed is likely to result in poorer outcomes in some areas. In the case of the Waikanae River, which currently already scores well against the FMU outcomes sought by the proposed NPS FM with ratings of A and B, a combination of requirements proposed for a Wastewater NES could very well pose significant cost for little ecological benefit. This risks scarce resources being diverted into compliance activities for little environmental gain, at the expense of other initiatives needed to improve the overall health of our waterways.

A requirement that limits wastewater discharge options on blanket cultural grounds could likely to lead to significant additional cost and trade-offs with other holistic cultural values, with a poorer overall cultural outcome. The cost of meaningful land treatment for the Paraparaumu Wastewater Treatment Plant would be significant, given there is little suitable land available where cultural treatments could be applied to the existing surface water discharge.

In addition, duplicative requirements such as end-of-pipe standards as well as FMU outcomes mandated through the proposed NPSFM will add cost significantly. End-of-pipe parameters may oblige network operators to take action to ensure compliance, whether or not there is any environmental benefit.

There are also likely to be substantive costs with reporting against two sets of parameters to two different agencies for wastewater discharges (Regional Councils, and a new water oversight entity).

These three requirements represent a "belts and braces" approach. If NZ is meeting the relationships with māori, and has established FMUs and improved compliance and reporting as envisioned in the proposed NPS, these should deliver the desired outcomes.

The diversion of scarce ratepayer funds into activities that may deliver little or no additional ecological benefit, away from other areas where greater environmental gain might be achieved (such as restoring riparian edges and wetlands) would represent a perverse outcome.

7. Do you think it would be a good idea to have an independent national body to provide oversight of freshwater management implementation, as recommended by KWM and FLG?

If greater oversight is required (and performance to date identifies that more oversight and action on data produced is required) then that capability and capacity will need to be built. Organisationally it would appear to be efficient to build this into an existing agency with a like mandate, such as the EPA, rather than create another special purpose entity. The benefit of this is that it also builds capacity and capability into an agency that already has responsibilities under the RMA, potentially benefitting both functions.

8. Do you have any other comments?

Our concerns are not so much with the intent or direction of travel, but with the need to target implementation costs to deliver best benefits. It appears that implementation costs of these proposals to local government have not been taken in to account. These costs come about in two ways: the cost of the policy adjustments that have to be made to statutory and associated supporting documents, but more importantly the impost on the cost of running the business of the Council. These initiatives will impact on all aspects of delivery of water services.

There is apparently no analysis of the impact of these changes on the institutions of local government, nor how government expects local government to meet them.

We would recommend that the Minister take a closer look at the impact of the proposed National Environmental Standards for Freshwater in particular, as these instruments create very blunt tools that impose stringent rules on the community and on Council infrastructure maintenance for little if any environmental gain. These are more fully described under Q 25 and 26.

Te Mana o te Wai

9. Do you support the Te Mana o te Wai hierarchy of obligations, that the first priority is the health of the water, the second priority is providing for essential human health needs, such as drinking water, and third is other consumption and use?

The principle of protecting the health and wellbeing of the water above other considerations is sound conceptually, in that we cannot achieve sustainability unless this is a pre-requisite. However, the interpretation of this principle creates risk of a hard line being taken or sought, rather than a consideration of how justifiable and reasonable human health needs are met.

The risk is some human health needs may be traded off against ecological values, which will sit uneasily in some communities. In the Kapiti Coast context, this applies to scarce water supply as set out under question 25.

10. Do you think the proposals will have the desired effect of putting the health of the water first?
11. Is it clear what regional councils have to do to manage freshwater in a way consistent with Te Mana o te Wai?
12. Will creating a long-term vision change how councils and communities manage freshwater and contribute to upholding Te Mana o te Wai?

New Māori value

13. Do you think either or both of these proposals will be effective in improving the incorporation of Māori values in regional freshwater planning?

The value of either option is to require a level of engagement that is not currently even or universal. What is proposed will require a minimum level of good practice.

14. Do you foresee any implementation issues associated with either approach?

Lifting the status of mahinga kai may well set unrealistic expectations of what is achievable. Absolute safety for human consumption for some mahinga kai (such as freshwater mussels, watercress) is not realistic in a natural or built environment.

15. What are the benefits and impacts of either of these approaches?

16. What implementation support will need to be provided?

New planning process for freshwater

17. Do you support the proposal for a faster freshwater planning process? Note that there will be opportunity to comment on this proposal in detail through the select committee process on the Resource Management Amendment Bill later this year.

More integrated management of freshwater

18. Does the proposal make the roles and responsibilities between regional councils and territorial authorities sufficiently clear?

The clarification is helpful.

Exceptions for major hydro schemes

19. Does the proposal to allow exceptions for the six largest hydro-electricity schemes effectively balance New Zealand's freshwater health needs and climate change obligations, as well as ensuring a secure supply of affordable electricity?

Attributes

20. Do you think the proposed attributes and management approach will contribute to improving ecosystem health? Why/why not?

21. If we are managing for macroinvertebrates, fish, and periphyton, do we also need to have attributes for nutrients that have been developed based on relationships with aquatic life?

Threatened indigenous species

22. Do you support the new compulsory national value? Why/why not?

Fish passage

23. Do you support the proposed fish passage requirements? Why/why not?

In principle the concept of protecting and restoring fish passage is sound – however the blanket requirements will be challenging to implement. The scale of environmental effect and benefit does not appear to be a consideration. Treating the installation of passive flap gates as a non-complying activity will effectively rule them out apart from in the most extreme cases – however in urban redevelopment we are frequently dealing with existing highly modified systems, and there will be cases where alternatives are simply not practical, or may not be compatible with its functional operation. It would be preferable to set expectations through the NPS, and leave implementation to regional plans where more granularity can be applied.

24. Should fish passage requirements also apply to existing instream structures that are potentially barriers to fish passage, and if so, how long would it take for these to structures to be modified and/or consented?

In principle it would be good to upgrade all infrastructure over time. However, the practical realities of implementing this is densely developed areas challenging and prohibitively expensive, and may have little ecological benefit. Again, our view is that this is a matter that should be dealt with through more granular provisions in regional plans.

Wetlands

25. Do you support the proposal to protect remaining wetlands? Why/why not?

In principle the concept of protecting the wetlands we have remaining is sound and supported. The NES as drafted however is a blunt instrument that may well deliver the benefits anticipated, but restricts development using alternatives that could provide improved wetland outcomes. The NES provisions will likely increase the number of wetlands under protection exponentially.

Much of the Kapiti Coast community is built on a duneland / wetland complex, on which much of the community and related infrastructure has been located.

The Kapiti Coast District Council has invested significant effort in identifying more than 17 ecological sites that contain nationally significant wetlands, ranging from little more than 1 ha to nearly 70 ha. These have been mapped in conjunction with the regional council, and have been through a rigorous process with the community through our Proposed District Plan. While the District Plan is not yet operative due to appeals, there are none outstanding in relation to wetlands.

In addition, the Council has proactively been undertaking water sensitive design in its own works, and encouraging it in developments. A review of the current Subdivision and Development Principles and *Requirements is under way, with the intent of requiring higher standards in all developments.*

The definition of wetlands, and in particular constructed wetlands is problematic. Constructed wetlands are often located in positions in the landscape where natural wetlands once would have existed. The provision will stop the repurposing of former or highly degraded wetlands for matters such as enhancing water detention, stormwater treatment, and amenity features in subdivisions, even when the existing (or previously existing) wetlands have no ecological values. In effect this will prevent even partial restoration where there is an associated use, and benefit to the community. This would be a perverse outcome for wetlands, and could severely hamper beneficial water sensitive urban design. More guidance would be required to identify circumstances where constructed wetlands are acceptable in areas that may have previously accommodated wetlands (and meet the new definition of a natural wetland as set in the definitions within the standard).

Impacts on the community

There are significant numbers of other wetlands in the district. These wetlands occur in many parts of our communities – in private ownership (including in gardens), in golf courses, business areas, parks, reserves, and even as feature points in subdivisions. We have many within and adjacent to major developments which are served by Council and private infrastructure.

We are very keen to integrate the management of our remaining wetlands into our community environment, but the controls proposed will effectively make many individuals, businesses and organisations non-compliant with the standards.

Impacts on Council infrastructure

As noted, the Council has significant horizontal infrastructure assets located close to or crossing wetlands. Many of these are historical. Maintenance of these assets can require pumping of

groundwater to expose pipes and other subsurface structures to enable works to be undertaken, as well as disturbance and earthworks. These structures and assets are not for the purposes of drainage or flood control, and so are not protected by the mechanisms proposed by Clauses 10,12 and 14 of the proposed NES. Some activities will become non-complying, if not prohibited.

Impacts on Council water sources

The Council currently holds resource consent to take groundwater as part of its drinking water supply system. Council has invested significant resources over the last decade to improve drinking water supply, and to build resilience into the system. This has included instituting water metering to reduce demand, and the implementation of a recharge system to improve resilience of supply. This recharge system involves drawing groundwater to replenish the Waikanae River, enabling greater use of river water while protecting flows in the river.

This approach has been highly successful, securing a future water source for consumers, reduced demand which has meant no bore water has been needed for supply and a reduced total take from the environment.

Conditions of the resource consent to take groundwater are complex, and take an adaptive management approach as the underpinning knowledge of the behaviour of aquifer system over time develops. A key component is monitoring of wetlands, with trigger points that require the council to take actions in order to both protect wetlands, and remedy or mitigate any adverse effects that may be observed in those wetlands. Those actions are defined in a management plan agreed as part of the consenting process. If the NES is implemented in the form proposed, and in conjunction with the changed hierarchy identified in the proposed NPS for Freshwater that puts ecological functioning ahead of human health needs, the conditions of the consent must be reviewed in the light of the policy and standards at the next review point.

If the conditions become more restrictive on review, resilience of the current system could be severely curtailed, with no certainty that any environmental gain for the wetlands will result. The current minimum median water level change requirements (0.1m) are similar to current trigger levels. To strictly observe the standards will mean a significant level of additional conservatism would need to be built into consent conditions, and agreed remedies and mitigations in management plans subject to further resource consent, potentially placing the Council's water supply in a Catch-22 situation. Requiring further consent to undertake activities required by a consent is legally untenable, and the current approach would need to be reviewed.

26. If this proposal was implemented, what would you have to do differently?

Impacts on the community

Many activities – such gardening, vegetation clearance (such as mowing) and maintenance and use could require consent, or become non-complying or even prohibited (Clauses 11, 13, 14).

Impacts on Council infrastructure

Maintenance of Council infrastructure will be made either a discretionary activity (for stormwater) under Clauses 10, 12 and 14, or non-complying (Clauses 11 and 13) or prohibited (Clause 14) for other purposes such as wastewater, water supply, or roading.

Impacts on Council water supply

The current water take consent is likely to be further complicated and restricted, and any future replacement consent is likely to be deemed non-complying (Clause 17). Further constraints on the water supply will severely impact the Council's ability to support future growth and development for the Waikanae and Paraparaumu communities. The Council would need significantly bring forward

future water supply options, which is likely to involve damming to provide acceptable resilience and security of supply. This requires very long lead times (10-20 years) for investigations, consenting and construction and involves significant investment. New water supply was canvassed in 2009, when the costs were in the order of $36M. Today's cost is likely to be more than double that.

Streams

27. Do you support the proposal to limit stream loss? Why/why not?

In theory this sounds reasonable – however in practice it could be very difficult to implement. The standard is very blunt, and does not provide any flexibility for circumstances. The definition of a river in the RMA is wide-ranging, and the impact in a community built largely on a wetland / duneland system with multiple small watercourses is considerable. This standard will prevent recontouring of large areas of land identified for subdivision and future growth in the Kapiti District. The option of off-setting at the scale required for very small and minor watercourses is impractical.

28. If this proposal was implemented, what would you have to do differently?

It will impact on urban design, meaning either a reduced developable area, or an acceptance of densification. This may require rethinking approaches to subdivision design, and possibly a new approach to growth for the Kapiti District.

29. Do the 'offsetting' components adequately make up for habitat loss?

New bottom line for nutrient pollution

30. Do you support introducing new bottom lines for nitrogen and phosphorus? Why/why not?
31. If this proposal was implemented, what would you have to do differently?
32. Do you have a view on the STAG's recommendation to remove the 'productive class' definition for the periphyton attribute?

Reducing sediment

33. For deposited sediment, should there be a rule that if, after a period (say five years), the amount of sediment being deposited in an estuary is not significantly reducing, then the regional council must implement further measures each and every year? If so, what should the rule say?
34. Do you have any comments on the proposed suspended sediment attribute?
35. If this proposal was implemented, what would you have to do differently?

Higher standard for swimming

36. Do you agree with the recommended approach to improving water quality at swimming sites using action plans that can be targeted at specific sources of faecal contamination? Why/why not?

Minimum flows

37. Is any further direction, information, or support needed for regional council management of ecological flows and levels?

Reporting water use

38. Do you have any comment on proposed telemetry requirements?

Raising the bar on ecosystem health

39. Do you have any other comments?

Draft NPS-FM (see the draft NPS-FM on the Ministry for the Environment's website)

40. Are the purpose, requirements, and process of the National Objectives Framework clearer now? Are some components still unclear?

It is helpful to have the framework spelt out.

41. What are your thoughts on the proposed technical definitions and parameters of the proposed regulations? Please refer to the specific policy in your response.

42. What are your thoughts on the timeframes incorporated in the proposed regulations? Please refer to the specific policy in your response.

Drinking water (due for consultation mid 2020)

43. Do you agree with the proposed amendments to the Drinking Water NES? Why/why not?

In principle yes. The challenges will be in the detail, and the cost of implementation. Bringing in smaller supplies may have an impact on current landuse, or on future patterns of growth particularly if water supply is being drawn from lowland streams / shallow aquifers.

There will also be significant costs to changing the risk management regimes that will need to be funded.

44. Are there other issues with the current Drinking Water NES that need to be addressed?

45. Do you have any other comments?

Possible wastewater NES (due for consultation mid 2020)

46. Does the proposed Wastewater NES address all the matters that are important when consenting discharges from wastewater networks? Will it lead to better environmental performance, improve and standardise practices, and provide greater certainty when consenting and investing?

The challenge posed by the discharges and overflow requirements in the proposed Wastewater NES, as outlined in responses to question 6, is that it risks being duplicative. From an assurance perspective it is useful to have benchmark standards that all operators are obliged to comply with and report on, building a better national picture. There is no certainty however that they will lead to better environmental performance, or lead to better environmental outcomes. In effect, the standard is imposing additional cost onto local government and infrastructure operators in order to resolve information and assurance challenges at the national level. There may be better mechanisms that can achieve this outcome.

At best, regulation (and compliance with regulation) stops undesirable behaviours. As we have seen with the RMA since inception, the law has been highly effective at stopping point source pollution.

National Standards work best when the impacts of the matters being controlled on the subject are predictable (eg human health). They are not efficient or effective in complex receiving environments where many variables need to be taken into account. The tools for this exist through regional plan provisions, and application of a best practicable option approaches.

Standardised practice is attractive, and creates potentially creates certainty for investment. It has co-benefits in potentially enabling shared services, which may assist in managing capacity and capability issues in local government. What it does not do is ensure right-sizing and targeting of investment to ensure the best environmental outcome.

An example of this creating targets or limits on wet weather overflows. Imposing a national target or limit rather than an effects-based approach is likely to create major challenges. We recognise that

containing overflows is socially and culturally beneficial, and to a lesser extent ecologically/ environmentally. While the Council recognises the deep cultural and social concerns about overflows, nevertheless the costs of full containment are extreme, and will take many years if not decades of investment. In the meantime, because overflows do not necessarily cause environmental harm as they generally occur during flood events, prioritising this issue over others means that the Council will not be meeting the overall intent of the package, which is to improve our freshwater quality and ecological health.

47. Do you agree with the scope of the proposed risk management plans for wastewater and stormwater operators? Are there other aspects that should be included in these plans?

Risk management planning is in line with improving practice, and will be a core element for outcome planning and management.

48. What specific national level guidance would be useful for supporting best practice in stormwater policy and planning and/or the use of green infrastructure and water sensitive design in stormwater network design and operation?

Further guidance at a national level that deals with matters of design parameters and implementation of water sensitive urban design would be helpful. This could include templates and best practice examples.

49. What are the most effective metrics for measuring and benchmarking the environmental performance of stormwater and wastewater networks? What measures are most important, relevant and useful to network operators, regional councils, communities, and iwi?

50. Do you have any other comments?

Restricting further intensification

51. Do you support interim controls on intensification, until councils have implemented the new NPS-FM? Why/why not?

52. For land-use change to commercial vegetable growing, do you prefer Option 1: no increase in contaminant discharges OR Option 2: farms must operate above good management practices. What are your reasons for this?

53. How could these regulations account for underdeveloped land, and is there opportunity to create headroom?

Farm plan options

54. Do you prefer mandatory or voluntary farm plans (acknowledging that farm plans may be required by councils or under other parts of the proposed Freshwater NES?) What are your reasons for this?

55. What are your thoughts on the proposed minimum content requirements for the freshwater module of farm plans?

56. What are your thoughts on the proposed priorities and timeframes for roll out of farm plans, as set out in the proposed Freshwater NES?

57. Do you have any comment on what would be required to ensure this proposal could be effectively implemented, including options for meeting the cost of preparing, certifying and auditing of farm plans; and on financing options for other on-the-ground investments to improve water quality?

Immediate action to reduce nitrogen loss

58. Which of the options (or combination of them) would best reduce excessive nitrogen leaching in high nitrate-nitrogen catchments? Why?
59. If you are in a high nitrate-nitrogen catchment, what would you have to do differently under these options?
60. In addition to those already identified, are there other high nitrate-nitrogen catchments that should be subject to these options?
61. Do you think the action already underway in five regions (identified in section 8.4) will be effective in reducing excessive nitrogen leaching in those high nitrate-nitrogen catchments?
62. Should there be higher thresholds for farms that produce food products in winter, and if so, which food products?
63. What alternative or additional policies could contribute to reducing nitrogen loss?
64. Do you have any comment on what would be required to ensure this proposal could be effectively implemented?

Excluding stock from waterways

65. Do you support excluding stock from waterways? Why/why not?
66. Do you have any comment on the proposed different approach for larger and smaller waterbodies?
67. Do you have any comment on the proposed five metre setback, or where it should be measured from?
68. Are there any circumstances that are appropriate for allowing exemptions to the stock exclusion regulations? If so, please give examples.

Controlling intensive winter grazing

69. Do you prefer Option 1: Nationally-set standards or Option 2: Industry-set standards? Why?
70. For the proposed nationally-set standards, which options do you prefer for the area threshold, slope, setback, and pugging depth components of the policy?

Restricting Feedlots

71. Do you have any comment on the proposal to restrict feedlots?

Reducing pollution from stock holding areas

72. Do you support the proposal relating to stock holding areas? Why/why not?
73. Do you think sacrifice paddocks should be included?
74. What would you have to do differently if this proposal was implemented?
75. Do you have any comment on what would be required to ensure this proposal could be effectively implemented?

Draft proposed National Environmental Standards for Freshwater

76. Are the definitions used in the policies accurate, and if not, how do you suggest improving them?

77. What are your thoughts on the proposed technical definitions and parameters of the proposed regulations? Please refer to the specific policy in your response.

The broad definitions leave uncertainty about their implications for strategic growth; and the development, operation, maintenance and upgrade / replacement of regionally significant infrastructure. National Significant Infrastructure doesn't recognise regionally / locally significant infrastructure or balance benefits of infrastructure to existing urban developments that facilitates strategic growth. There is no consideration of differing scales and nature of activities or rivers / wetlands with blanket provisions applying to all.

Information requirements are open ended and vague leaving uncertainty about their application and associated costs. In addition standard wetland monitoring obligations are challenging and without a baseline / state of the environment information applicants will be burdened with establishing baselines prior to monitoring any potential impacts.

78. What are your thoughts on the timeframes incorporated in the proposed regulations? Please refer to the specific policy in your response.

79. Do you think there are potential areas of tension or confusion between the proposals in this document and other national direction? If so, how could these be addressed?

There are tensions both between the proposals set out in this discussion document, and between these proposals and other national instruments.

The main tensions within the discussion document is set out under Question 26.

For Kapiti Coast, the combined impact of the provisions in this document, and in particular the NES as it affects wetlands and piping of streams will potentially impact on the ability to develop areas currently identified for future growth, or the viability of such development. This may require the Council to review the strategy, with future changes likely to be in conflict with the proposals to limit future development on Highly Productive Land. This will leave few options for the Council to meet its future growth requirements as set out in the NPS UDC or the proposed NPS UD.

More flexibility in the wetland provisions and protection of streams is needed. The definition set out in the proposed NES extends the definition in the primary Act, and its application to all wetlands whether modified or not. Certainty is required in the identification of wetlands to be protected, such that developers, communities, householders, and other property owners and managers are clear what their responsibilities are.

80. Do you think a planning standard is needed to support the consistent implementation of some proposals in this document? If so, what specific provisions do you consider would be effectively delivered through a planning standard tool?