

Submission

To: **Freshwater Consultation 2016**
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By: **Northland Regional Council**

On

Next steps for fresh water: Consultation document

Northland Regional Council

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1. Northland Regional Council (the council) appreciates the opportunity to provide feedback on the proposals in *Next steps for fresh water: Consultation document*.
2. The council supports the intent of the proposals and commends the Government for its ongoing efforts to improve the state and management of fresh water in New Zealand.
3. This submission is made with council's statutory functions in mind and in the interests of promoting workable improvements to the management of freshwater in New Zealand.

'Maintain or improve overall' water quality

4. Water quality by its definition is a measure of the microbiological, chemical, and physical characteristics of water relative to a particular use or value. Determining if water quality is maintained or enhanced not only involves identifying the particular concentration or other measure of a particular water quality variable (i.e. attribute), but also includes measuring the state of the water quality dependent value or use (e.g. algal biomass and diversity of macroinvertebrates). In other words, determining whether water quality is maintained or enhanced should be considered in the light of identified values and objectives. Given freshwater management units (FMU) are the basis for identifying values and setting

objectives, it makes sense to apply the direction to maintain or improve overall water quality to the FMU rather than across a region as a whole.

5. The council therefore supports the proposed amendment to Objective A2 of the National Policy Statement for Freshwater Management 2014 (NPS-FM) to maintain or improve overall water quality within a FMU. The amendment is supported because the fundamental concept behind FMU is to group water bodies by environmental characteristics – objectives can then be developed for each FMU informed by uses and values. FMU are also the basis for monitoring water quality. It therefore makes sense to constrain the direction on maintaining or improving overall water quality to within a FMU (rather than across a region).
6. The council also supports amending the NPS-FM to clarify that maintaining water quality includes tolerating lower (or conversely higher) contaminant levels provided that they remain within an attribute band. This is because the primary aim after all is to ensure the ecosystem health or human health objective is met (as opposed to a specific numeric value). In other words, a shift to a lower band is the critical issue in relation to objectives, rather than a shift within a band.

Macroinvertebrate Community Index (MCI)

7. We support use of MCI as a consistent measure of ecosystem health. However, we advise caution in how it is applied – as we understand it applying a nationally applicable measure for MCI is problematic given variation across NZ- some species may differ biogeographically in their pollution tolerances depending on, for example, water temperature. Also MCI is influenced by the geographical range of particular species and the influences of such things as climate, geology and topography meaning the MCI would be problematic to apply as a national metric for ecosystem health, without some ability to ‘index’ or adjust for specific a region. In our experience MCI performs differently as a measure across stream type (hard vs soft bottom) and does not accurately reflect ecosystem health in soft bottom streams in Northland. We therefore recommend that any mandatory requirement to use MCI as a measure recognise and provide for this variation across regions and stream types.

Significant Infrastructure

8. Council agrees with the principle of allowing exceptions to bottom lines to provide for significant infrastructure and supports the approach signalled that Appendix 3 be populated following evidence gathered during the limit setting process. We also support the intent that any exceptions to bottom lines for infrastructure be subject to public consultation.

Stock exclusion from water bodies

9. The council strongly supports the proposal to create national regulation that requires exclusion of livestock (dairy, beef, deer, and pigs), particularly given that the proposal is a robust product of the Land and Water Forum. A nationally consistent approach is more efficient than debating the issue region-by-region. We also support the ability for council’s to be more stringent than the regulations as this will better enable freshwater objectives to be achieved. The regulations should however provide for exceptions (E.g. for stock crossings) as part of a pragmatic approach to stock exclusion. The regulations should also be explicit that in the event stock exclusion cannot reasonably be achieved, then a resource consent is available. This recognises that there will be instances where land contour or stock water reticulation costs make stock exclusion impractical. Council would also like to highlight that there are

potential consequences that could arise from stock exclusion, namely decreased capacity for flood flows and greater incidence of stream blockage as a result of increased riparian vegetation.

10. Council understands the need for a pragmatic and readily applicable set of criteria in the regulations for streams where stock exclusion is to be required. In this regard the consultation document signals the regulations would require stock exclusion from permanently flowing waterways greater than 1m wide and 300mm deep on plains and in lowland/rolling hill country. This creates interpretation / application issues as waterways typically vary widely in width and depth (i.e. one part of a stream may be less than a metre wide or 300mm deep and therefore not require stock to be excluded, whereas another part of the same stream would exceed these dimensions and require stock exclusion - making implementation 'patchy' and the regulations less effective). Council considers clear guidance is needed to ensure national consistency and application (which after all is the intent of the regulations). Council is also not aware of any evidence that depth of a waterbody has a material bearing on the transport of sediment and contaminants and it may be best to remove this requirement.
11. Council also queries why the timeframes for dairy support / third party support are different to beef in lowland/rolling hill country (4-15⁰). This does not appear effects based and in our view they should be treated alike. Council strongly support the voluntary approach to exclusion of beef and other non-dairy stock in hill country above 15⁰ slopes on the basis that fencing and other stock exclusion methods can be problematic in steeper areas.
12. There is potential for ambient water temperatures to increase with climate change. Temperature, along with reduced dissolved oxygen levels and a lack of shade are thought to be key drivers of macrophyte and algal biomass in Northland's rivers. Riparian buffers are a key remedy for these issues. A potential shortcoming with the proposed regulation is that it will not require a riparian buffer. The council appreciates the reasons for this: different buffer sizes for different water quality remediation purposes, the costs of lost production, and planting and weed control. However siting fences at the edge of waterbodies may preclude or frustrate future efforts to create vegetated riparian buffers because of the costs and practicalities of shifting or installing new fences.

Economic use of freshwater

Technical efficiency / good management practice

13. Council supports technical efficiency in relation to use of freshwater, however the consultation document is light on detail on how standards will be developed, for what uses of water and by when. Developing standards to define the amount of water used by an 'efficient' user for different end uses in various climates and soil types will need to cater for regional and even local variation, which will be complex. Any such standards should be developed in close association with the relevant industry and perhaps better yet by industry themselves (supported by Government) – we support the intent for such an approach signalled in the discussion document. Council also supports the intention to only apply these standards in areas approaching or at full allocation – we also recommend that technical efficiency standards only become a requirement once tested/proven and supported by the relevant industry.
14. The same comments made above apply to good management practice (GMP). We also note that GMP would only be required where councils have allocated discharge allowances and

where catchments are near or at full allocation. We support this intent because as at this point in time council does not intend to regulate nutrient input or loss (i.e. apply nutrient load limits), as we are not experiencing water quality issues that warrant such an approach. We would therefore oppose mandatory nutrient loss standards applied broad brush.

Council funding for freshwater management

15. Proposal 2.6 is to increase the ability of councils to recover costs from water users for monitoring, enforcement, research and management. The proposal is made correctly on the basis that the “Government recognises that effective implementation of the existing freshwater management system will require local councils to spend more on science, monitoring, management, and enforcement.”
16. No details are provided however on how the proposal will be implemented. A major resourcing issue relates to the council’s ability to recover the costs of monitoring permitted activities. There is divergent legal opinion on whether the costs of such monitoring can be passed on to the people carrying out the activities, which in absence of a rule in a regional plan would be unlawful under sections 14 and 15 of the RMA. The community (i.e. the council) can also incur costs monitoring section 14(3)(b) RMA takes to ensure that they do not, or are not likely to, have an adverse effect on the environment.
17. How the proposal will work is further clouded by section 20(2) of the Resource Legislation Amendment Bill 2015, which if enacted would insert the following paragraph as section 36(1)(cc) of the RMA:

...charges payable by a person who carries out a permitted activity, for the monitoring of that activity, of the local authority is empowered to charge for the monitoring in accordance with section 43A(8)
18. Section 43A(8) is also a new proposed subsection of the RMA – pertaining to the contents of national environmental standards – that states:

A national environmental standard may –

 - (a) empower a consent authority to charge for monitoring any permitted activities specified in the standards; and*
 - (b) specify how consent authorities must perform their functions in order to achieve the standard.*
19. These proposed amendments strongly infer that councils will only be able to charge people carrying out permitted activities for the monitoring of the activities if they are specified in a national environmental standard, and the standard empowers the monitoring.
20. If this is the Government’s intention, the council may have to constrain its monitoring of permitted water takes and discharges or pass the costs on to general ratepayers. Such an approach is inconsistent with the user pays doctrine, which is based on the principle that the most efficient allocation of resources occurs when consumers pay the full costs of the goods that they use. In this case a common pool resource – freshwater.
21. The council requests the Government to expressly provide for the monitoring of any permitted activities associated with the use of freshwater (including as a receiving environment for contaminants), and other common pool resources (coastal water, air, etc). The Resource Legislation Amendment Bill provides an opportunity to do so in changes to Section 36 RMA.

Iwi rights and interests in freshwater

22. Council supports amendment to the NPSFM to clarify the role and status of Te Mana o Te Wai in implementing the NPSFM, as this is currently ambiguous.
23. Council supports engagement with iwi and hapu to identify relationships with water bodies that are important in the context of implementing the NPSFM and the Resource Management Act generally. However, the intent of this proposal as set out in the discussion document is vague. The term 'relationships with water bodies' is unclear - arguably iwi / hapu have a relationship with all waterbodies within their rohe. The resource management purpose for identifying all iwi / hapu relationships with water bodies in regional planning documents is also unclear. Council considers there should be a clearly stated resource management outcome established prior to this proposal being pursued and also suggests rather than being directive at a national level, it is better that iwi / hapu identify those relationships with water bodies that they consider are a matter to be addressed in RMA plans.
24. Council supports better engagement between iwi / hapu and councils, however the discussion document is very vague on how the 'mana whakahono a rohe' agreement would work in relation to the iwi participation arrangements (IPA) proposed in the Resource Legislation Amendment Bill. The need for both tools being available is unclear and if both tools were available, there would be significant potential for inconsistency, overlap and unnecessary duplication. Council considers implementation could be problematic in the event both mechanisms were enacted. Council therefore considers government should only pursue one or the other of IPA or 'mana whakahono a rohe' rather than making both mechanisms available.
25. If the 'mana whakahono a rohe' mechanism is to be embedded in the RMA, council considers that the provisions be designed to provide a framework that is not exclusive to iwi and that it provide for hapu engagement (council also submitted to this effect in relation to the IPA provisions of the Resource Legislation Amendment Bill).
26. Regardless of whichever of the two mechanisms (IPA or mana whakahono a rohe) is progressed (or if both are pursued), it should not over-ride the ultimate decision making powers of democratically elected councils. Council reiterates its view that the current roles the regional sector has in the administration and management of freshwater are appropriate. Council also considers the government should:
 - i. legislate to clarify that the Crown is the caretaker (kaitiaki) of freshwater as part of the commons on behalf of all New Zealanders, and
 - ii. meaningfully engage and involve regional councils in any proposed changes to the current system for the management of freshwater prior to adopting a position.
27. Council supports the amendments to require that applications for water conservation orders (WCOs) include evidence of consultation with tangata whenua and that tangata whenua be represented on any tribunal to hear the application, subject to requirements for suitable qualifications and accreditation (similar to those applicable for RMA commissioners) and obligations relating to conflicts of interest. We also support the proposal to provide a streamlined process for establishment of WCO over outstanding water bodies.

Freshwater funding

28. Council supports broadening of the scope of the Freshwater Improvement Fund beyond just land purchase to include support for other initiatives that provide environmental benefit and assist in managing within water quality and / or water quantity limits. The criteria proposed in Proposal 4.1 appear sound, however we see some tension between the first two criteria;

namely that supporting water users to manage within water quantity or water quality limits may not necessarily provide an obvious environmental benefit (other than it being more likely a limit will be met) – for example, technical efficiency gains in water use may not result in tangible environmental benefits (i.e. would only create capacity within the limit unless the 'saved' water is returned to the water body and the allocation limit is adjusted accordingly to secure the benefit for the environment). We therefore suggest the first two criteria are subject to an and / or condition. This will enable funding to be allocated to projects that assist to manage within limits and / or provide environmental benefits.

Conclusion

29. Council thanks the Government for the opportunity to submit on the proposals set out in the consultation document and looks forward to working with both the Ministry for the Environment and Ministry for Primary Industries to progress these initiatives.



Bill Shepherd [redacted]
On behalf of Northland Regional Council

Dated: 22 April 2016

