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INC.**

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Clean Water 2017 Consultations including the Freshwater NPS Submissions from ECO NZ

Introduction

Who we are

The Environment and Conservation Organisations of NZ (ECO) is the national alliance of about 45 groups with a concern for the environment and conservation. Some of these member bodies are themselves federations or multiple groups. ECO has followed issues of conservation and environmental management and practice, law and policy since its formation in 1971-2 and we have member groups from all around New Zealand. We have a number of well-qualified and experienced policy and resource management specialists in our Environmental Law and Management Group. We have followed the conception, design and implementation of the RMA and related documents since the mid 1980s and the passage of the Act in 1991, and the problems of implementation and alteration of the RMA. Many of us are also involved in land and water based activities, including in some cases, farming and native ecosystem restoration.

These submissions:

This submission was done consistent with ECO policies and on the instruction of and with reference to the ECO Executive Committee and was led by the Environmental management and law working group of ECO, particularly the Water group. As you may know, ECO entered into the Land and Water Forum processes as part of the outer group, but withdrew in 2016 by decision of our AGM, due to dissatisfaction with some aspects of its operation and design, and particularly at the Government's failures to keep faith with that process.

We also made extensive submissions on the Resource Legislation Amendment Bill and, like many others, deplore the government's refusal to change that Bill in the light of submissions and the cynical disregard of the democratic processes that attended both the hearings and the Select Committee reports.

ECO can be contacted on 04 385-7545 and at eco@eco.org.nz.

Key submissions re Fresh Water 2017:

- 1 ECO welcomes genuine measures to improve the quality of water and aquatic ecosystems, but we think that the proposed amendments to the Freshwater NPS are in part unsound and ultra viries, in part inadequate and need better enforcement provisions.
- 2 ECO agrees that “swimmability” is better than “wadeability”, but we think that drinkable, within the anthropocentric paradigm is better still; BUT:
- 3 We submit that the standards for water should focus on the quality of wetlands, water and waterways and biodiversity within, with the primary goal being the ecological health of water and waterways and that human health indicators must also be the subject of standards.
- 4 **The standards outlined are inadequate and are poorly designed.** Nutrient limits are needed, but are insufficient.

Overall location is not properly dealt with. In particular the standards must look at the full range of impacts and duration and location because the proportion of the time that a water body is swimmable omits the crucial issue as to whether the impacts at the extremes destroy or damage the life supporting capacity of the environment. We refer you to points made by both Dr Mike Joy and by Fish and Game NZ and many others. As Dr Joy so neatly put it to our 2016 conference, looking at averages or proportion of the time that a river is swimmable is like looking at the proportion of the time that a room is ok to inhabit whilst ignoring that there is insufficient oxygen for an hour and that all within it will be dead.

- 5 We consider that the standards must be far more rigorous, and have greater scope and monitoring and reporting than proposed and should include:
 - a. The Macro Invertebrate Index, and
 - b. Hydrocarbons and any damaging and/or durable pollutants such as persistent or bioaccumulative pollutants, or pollutants of acute ecotoxicity.
 - c. Be defined in relation to more clearly defined Fresh Water Management Units. The definition of the latter in the NPS is no more than a “hand wave” and could be allowed by regional councils to be very big, leading to highly variable outcomes in practice.
 - d. The monitoring and reporting should cover much more and show the range and the duration of standard non-compliance and effects as well as any proportion of time or length of compliance. The range and duration and locations of effects are crucial, thus averages or proportions are not adequate.
 - e. The standards should also reference the human as well as ecological health indicators such as *E-coli* and other pathogens and contaminants.

- f. Sediment loads, concentrations and deposits should also be part of the suite of indicators since these can have huge impacts on both fresh water and and marine aquatic systems, as well as on human values, uses and activities.
 - g. The physical and chemical, as well as biological health of water bodies and wetlands and their margins must be monitored. Too often wetlands are converted to pasture with drains and the like. Similarly, the flows and sedimentation of water ways, chemical contamination and the presence of pathogens should be monitored, reported on and part of the requirements of the definition of quality and natural character in the NPS
- 6 ECO rejects the NPS changes that in effect disregard or amend the Resource Management Act's Purpose and Principles.
- 7 In particular we reject the provisions in Annex 1 Objective A2 that add economic considerations. The proposed NPS contains this:

“Objective A2

“The overall quality of fresh water within a ~~region~~ is freshwater management unit is maintained or improved while:

- . a) protecting the significant values of outstanding freshwater bodies;
- . b) protecting the significant values of wetlands; and
- . c) improving the quality of fresh water in water bodies that have been degraded by human activities to the point of being over-allocated.

then providing for economic well-being, including productive economic opportunities, within environmental limits.”

ECO opposes the addition regarding economic wellbeing and productive economic activities. This goes beyond the provisions of the RMA's own Purpose, which is not to “provide for” but to “enable” a range of matters social, cultural and economic.

The Principles in s6 of the Act, do provide for persons exercising duties powers and functions “to recognise and provide for” certain matters, but these do not include economic activities (see below for the text). Nor do the provisions of s7 mandate such a clause in relation to economic activities. As such, it should be withdrawn.

We recognise that the Resource Legislation Amendment Act 2017's new Section 45A to be inserted into the RMA 1991 on the contents of national policy statements provides for some direction of local authorities, but we consider that the Freshwater NPS invalidly elevates economic considerations over the provisions of the Purpose and Principles of the RMA. The text in Annexe 1 Objective 2A seems to try to override the Purpose and Principles and to modify

these. We consider that that is *ultra viries*. As such, we ask that the text after bullet points a)-c) in Objective 2A be deleted.

To help to grasp this argument, we reproduce the March 2017 text of the RMA's Purpose and Principles, and remind you that, although there were changes in relation to Natural Hazards, the rest of these remain unchanged by RLAB, despite earlier proposals to modify the Principles. The Freshwater NPS appears to have been drafted on the basis that those proposed changes to the Purpose and Principles were made – which they were not. For the convenience of those reading this submission, we reproduce these here:

RMA March 2017

5 Purpose

- . (1) The purpose of this Act is to promote the sustainable management of natural and physical resources.
- . (2) In this Act, **sustainable management** means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—
 - (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
 - (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
 - (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

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Reprinted as at

~~Resource~~ **Resource Management Act 1991** Part 2 s 7

- . **6 Matters of national importance** In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:
 - . (a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:

- . (b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:
- . (c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:
- . (d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:
- . (e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:
- . (f) the protection of historic heritage from inappropriate subdivision, use, and development:
- . (g) the protection of protected customary rights.

7 Other matters In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—

- (a) kaitiakitanga: (aa) the ethic of stewardship
- natural and physical resources: (ba) the efficiency of the end use of energy: (c) the maintenance and enhancement of amenity values:
- . (d) intrinsic values of ecosystems:
- . (e) *[Repealed]*
- . (f) maintenance and enhancement of the quality of the environment:
- . (g) any finite characteristics of natural and physical resources:
- . (h) the protection of the habitat of trout and salmon:

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Reprinted as at Part 2 s 8 **Resource Management Act 1991** 1 March 2017

- (i) the effects of climate change:
- (j) the benefits to be derived from the use and development of renewable energy.

8 The provisions of the NPS also fail to comply with RMA s6 in relation to wetlands, lakes and rivers.

Section 6 of the RMA, reproduced below, specifically requires that the natural character of wetlands, lakes and rivers and their margins be recognised and provided for. This does not limit such consideration to “large” lakes and rivers and their margins – yet the FWNPS attempts to do that, again in violation of the direction in s6.

6 Matters of national importance In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

(a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:

In our submission, it is not open to the Minister or local government to exclude from the application of the FWNPS those “not large” wetlands, lake and rivers and their margins, given the mandatory directive in s6(a) of the RMA.

9 ECO supports requirements to make Regional Councils accountable for the quality of water, but this must be enforceable and the time frames must be closer.

10 The over allocation of irrigation consents and zoning of known polluting activities as permitted uses is a major failing of the present situation. These issues must be addressed in the NPS.

11 Provision for enforcement independent of Ministers and of Regional Councils must be a part of the NPS. The dates for implementation should be staged to include the close future as well as the further out future.

12 **The human health and recreation attribute** table changes are unacceptable. They weaken the swimmability definition.

13 **Stock Exclusion** from wetlands and water bodies and their margins. We support the exclusion of stock from wetlands, water bodies and their margins, but note that the most damaging stock are cattle.

Given the heavy demand for fences and fencing, we suggest that the priority requirements be for exclusion of cattle and domesticated deer in particular. This would allow electric fences and electrically augmented post and four wire fences with two hot wires, to be installed. This would provide quicker and cheaper but just as effective cattle exclusion on both dairy and beef farms, than requiring that all fences be capable of excluding all stock. Fencing to exclude sheep is far more difficult and expensive in that an 8 or 9 wire fence, in many cases with battens,

will be needed. Especially in rough country, fencing to exclude sheep it is much more expensive (\$25-\$32/m) and thus much harder to achieve for sheep than for cattle. Sheep cause far fewer impacts than cattle by virtue of their lighter weight, shorter reach and less damaging behaviour. We agree that it is desirable to exclude sheep in some situations, but sheep control is a much lower order priority than exclusion of cattle.

14 **Riparian protection.** We support the requirement for riparian protections, and this is especially important where there is loss of riparian vegetation by virtue of “spray and pray” or intensive grazing such as break feeding. We suggest that there be controls on these activities and that there be both requirements for riparian setbacks and for vegetation cover in these riparian margins, with support where appropriate indigenous vegetation is either planted or protected and allowed to regenerate.

Where there are existing riparian fences and vegetation or plantings, we suggest that people be encouraged to gradually set them back further – it would seem unreasonable to require existing fences to be set back say, another 5-15m but farmers and others should be encouraged or required to do so as fences are replaced.

We have seen suggestions (e.g. from Ecologic) that planting be required as well as fencing. This is sensible in bare dairy farms or other bare pasture, but in some hill or high country, the native vegetation will recover and regenerate with fencing and that may be sufficient. Planting can anyway fail or be undesirable from a biodiversity point of view, if it is not native and is not locally sourced, or if the plants are not fostered post-planting.

15 **Habitat Quality Index:** We urge that an indigenous habitat quality index be developed and applied and that this include not only the wetlands and waterbodies but also their margins, which, despite the language of Section 6a of the RMA, seem to be omitted too often from the discussion.

16 **Te Mana o Te Wai.** ECO adopts the suggestion made by the Methodist Church that the FW NPS be redrafted to include the follow purpose Statement of Te Mana o Te Wai within the Purpose Statement of the NPS:
For the purposes of the NPS-FM, Te Mana o te Wai represents the innate relationship between te hauora o te wai (the health and mauri of water) and te hauora o te taiao (the health and mauri of the environment), and their ability to support each other, while sustaining te hauora o te tāngata (the health and mauri of the people).

ECO too supports the inherent values of integrated and holistic health of waterways outlined in Te Mana o te Wai. Concepts of Mauri (life force and vitality) and health (hauora o te wai) are articulated by Māori, and they also represent values for the health of water, environment and people for all of New Zealand.

Provision needs to be made for greater attention to the relationship of Iwi and Hapū with their waterways, (as provided for in the NPS) and for this to be fully provided for in policy (see Waitangi Tribunal Freshwater Claim and forthcoming Waitangi Tribunal Report). Wai 262 should also be part of this consideration.

For the ECO Executive Committee,

Cath Wallace
Vice-chair, Policy