29th October 2019

Personal details removed
Chair
Independent Advisory Panel

c.c. Hon David Parker
Minister for the Environment

Hon Damien O’Connor
Minister of Primary Industries

FRESHWATER LEADERS GROUP: ASSESSMENT OF ‘ACTION FOR HEALTHY WATERWAYS’ PROPOSALS

The Freshwater Leaders Group (FLG) was established by the Government to provide advice on freshwater policy as it was being developed. The FLG brings together expertise and input from leaders across the primary sector and agribusiness, environmental non-government organisations, and other voices from the community. It has acted as a sounding board for proposals and challenged analysis put to it by officials.

The purpose of this letter is to set out how the September 2019 discussion document “Action for healthy waterways” meets the views set out by the FLG in its report to joint Ministers. Our intention is to help the Independent Advisory Panel and Ministers arrive at a durable and effective set of policies. We have done this by comparing our recommendations with the proposals in “Action for healthy waterways”, and the associated draft regulatory instruments (the draft National Policy Statement-Freshwater Management (NPS-FM), proposed National Environmental Standards for Freshwater (NES), and the draft Stock Exclusion requirements to be made under section 360 of the Resource Management Act (RMA)).

The main areas that the FLG wants to highlight are:

**In the draft NPS-FM:**

- We support the requirement set out in the draft NPS-FM for regional councils to have **new plans in place and operative by 2025**. We also proposed that regional councils be required to show, up to 2035, that they are making demonstrable progress towards meeting water quality limits in their plan. The draft NPS-FM contains some enhanced reporting requirements.

- We support the use of *Te Mana o te Wai* in the NPS-FM, and the objective in **Part 2 of the draft that establishes priorities for freshwater** based on the health of the waterbody, then the essential health needs of people, then the ability of people and communities to provide for their social, economic, and cultural wellbeing, now and in the future.

- We support the following **changes to the National Objectives Framework (NOF):**
  - the inclusion of Dissolved Inorganic Nitrogen being defined as an attribute,
  - Dissolved Reactive Phosphorous being defined as an attribute,
  - Dissolved Oxygen measures for all rivers and lakes,
Several biotic indicators being included in the NOF, including a fish index of biotic integrity, periphyton, and macroinvertebrates. Turbidity/suspended sediment being defined as an attribute in the National Objectives Framework.

In our report, we supported the inclusion of an attribute for deposited sediment in the NOF. This is not the approach taken by the draft NPS-FM where measures of deposited sediment are not included as attributes, rather as a trigger for an adaptive management approach.

The proposals for managing water microbial contaminant levels are only partial. A review of *E. coli* and cyanobacteria attributes for lakes and rivers has not been carried out, or integrated with a review of human health attributes across other relevant programmes of work. The proposal in the discussion document focuses on areas in which people swim but ignores our recommendation that areas used for the gathering of mahinga kai, or recreational use such as fishing, should also be included.

We support making mahinga kai a compulsory national value. We also recommended that fishing/food gathering should also be a national value, which the draft does not provide for.

We recommended that the NPS-FM should require regional councils to propose to the Minister for the Environment the date(s) by when the limits set in their regional plans will be achieved. We recommended that each of these dates should need Ministerial approval. This is not contained in the draft NPS-FM.

Although not explicitly included in the FLG’s recommendations, we oppose the proposed exemption provided to large hydro schemes.

In the draft National Environmental Standard:

- We recommended that there should be a complete halt to the further loss of wetland due to land use change and neglect. The draft NES goes some way towards doing that but provides for a series of exemptions in certain circumstances (for example, for existing hydro schemes, nationally significant infrastructure, and public flood control or drainage).

- There are three options in the discussion document for reducing excessive N losses in the period until new regional plans become operative in 2025. The discussion document proposes applying two of these options (Options 1 and 3) to a limited number of catchments, and excluding any catchments that have rules or proposed rules to reduce nitrogen leaching through an allocation regime or a good management practice-based cap.

- We support immediate action being taken to control excessive N losses yet two of the options will take time. Option 3 is contingent on completed farm plans and would not start until mid-2022. Option 2 requires further work to develop the N thresholds or caps for ‘higher nitrogen-demanding crops and land uses’. It is not clear how long this would take.

- It is also not clear from the proposal as to whether or how this would apply to non-pastoral land uses such as vegetable growing. Option 1 appears to only apply to some pastoral land use, Option 2 to farming and horticulture, and Option 3 to ‘farmers’. The FLG supported the use of OVERSEER and regional data sets but recognised the unsuitability of OVERSEER for vegetable growers. We did not want to see special treatment for vegetable growers, and
recommended that a way of addressing the sector’s issues should be developed that is equitable with other sectors.

- With respect to the options, some in FLG thought that a single number national approach should be used, while others suggested a regional approach to set an upper quartile for each FMU or region.

- Finally, any approach will need to avoid grandparenting high N losses. Our recommendation was that any policy chosen will need to be integrated with the outcome of a policy for a fair allocation system. The discussion document does not mention this at all.

- The majority of the FLG wanted controls included in the NES on the following high-risk land use practices:
  - Feedlots
  - Intensive stock holding areas
  - Intensive winter grazing of forage crops
  - Irrigation on vulnerable soils
  - Winter forage crops grazed in situ on highly permeable soils or mole and tile drained soils

- The discussion document does not contain any controls on the last two land use practices.

- Two members believed that these controls were not needed, and favoured focusing on those activities that involved inappropriate land use close to waterways (stock exclusion and preventing excessive N loss).

- Most members believed that the controls should be applied nationally, while others stated that they should only apply to those regions that do have NPS-FM-consistent plans in place.

- The FLG supports restricting land use change and intensification in the period to 2025 when new regional plans will have been prepared. We provided two options to the Government – a moratorium, or using a non-complying activity consent. There were also different views in FLG as to whether these approaches should be applied nationally or only to over-allocated or ‘at risk’ catchments.

- The discussion document proposes using a discretionary activity consent, which does not provide the level of protection to water quality in comparison to either of our options. The draft also applies the restrictions only in freshwater management units where national policy statements for freshwater management have not been fully implemented. This coverage may be different from the over-allocated or risk approach that we recommended.

- We agreed that deforestation to extensive pastoral land should be permitted but the draft NES would not allow this without consent.

- In a similar vein to our concerns over the use of the N cap, this proposal needs to be assessed for its allocation policy implications. This has not been done.

- The majority of the FLG did not support Land Environment Plans (or farm plans in the draft NES) as a quasi-regulatory tool, and saw significant risks from a regulatory regime that used them. These risks included:
- It will be a resource-intensive regulatory framework and slow to implement given current capacity and capability constraints meaning measures to stop decline would be compromised
- It is unproven and involves the possibly inappropriate devolvement of enforcement and natural resource management to commercial entities
- The risk of a ‘black box’ effect where transparency for the public is restricted due to commercial sensitivity
- Confusion and dilution of lines of responsibility where the regime has multiple levels of auditing leading to inconsistent and/or limited application/enforcement of rules
- Farmers and land owners could be audited against on-farm actions that are not clearly related to environmental outcomes
- A blurring of the role of farm planner – support person or enforcer/regulator

• Some FLG members support farm plans/LEPs being mandatory and used at least in part as a regulatory tool. Reasons include

  - Requiring everyone to have a plan is simple and unambiguous
  - Councils will retain accountability and can use industry capacity and capability to drive change
  - There is significant momentum at ground level to develop environmental plans with strong support from industries and leaders. It would be counter-productive to change the messaging about farm plans at this stage
  - Significant shifts in behaviour are occurring but making plans mandatory will be needed to shift slow movers

**In the draft Stock Exclusion s360 Regulations**

• The FLG supports **stock exclusion and riparian management**. Our report recommended that;

  - the Dairying and Clean Streams Accord definition of a waterway was not adequate – smaller headwater streams and drains play an important role in reducing downstream pollution
  - wetlands must be protected
  - more intensive farms should have more stringent rules, and mitigations on less intensive farms should be planned and monitored using Land Environment Plans.
  - Where an area is temporarily intensive there should be a riparian buffer
  - The riparian margin and sticking rate used to define intensive farming must be soundly based.
  - Some members wanted a transition period for those farmers that had, in good faith, already planted and fenced, but to the margin specified. Others wanted no exemptions.

• The draft regulations continue to exempt waterbodies less than 1 metre wide. We have not seen any scientific justification for this.

• The draft regulations also allow for exemptions from the requirement to exclude stock, or to get extra time, but no criteria are set.
• We have still not seen any justification for the requirement for exclusion to be 5 metres on average across a property (with a minimum width of 1m), or for the base carrying capacity requirements in the draft regulations.

Other issues raised in the discussion document

There was one issue on which we made recommendations that was raised in the discussion document but is not in the 3 draft regulatory instruments.

We are concerned at the lack of progress on at-risk catchments. The discussion document notes that information is being collected that will enable a risk-based approach to prioritising the protection of higher-risk catchments. The discussion document does not set out a strategy or framework for using that information to help protect those catchments.

Other significant issues

Our report raised some other significant issues that are not addressed in the discussion document or the three draft regulatory instruments, or in any government announcements. This letter briefly touches on them as they collectively provide a context for the set of regulatory changes we proposed, and a link to some key implementation issues. The issues are:

• The faster planning for freshwater management proposed to be introduced by the Resource Management Amendment Bill is supported. A number of implementation issues need to also be progressed by the Government:
  - Address the interests of underrepresented parties during the planning process.
  - Develop an efficient way of resolving disputes about science during the proposed planning process.
  - Ensure that the control of and access to important data and models is available to all interested parties, as failure to do so can skew the planning process.
  - A careful timely and efficient transition from current plan-making that is underway to the new process.

• Resolving the apparent disconnect between regional plans (which must ‘give effect’ to national instruments) and consents (which must ‘have regard’ to regional plans).

• We recommended that a new central government agency, a Freshwater Commission, should be established, and recommended a set of functions.

• The standard of governance in regional councils needs to improve, and we made some suggestions for doing this.

• While there has been a Budget announcement about increasing OVERSEER funding, there has been no action on addressing OVERSEER ownership and data availability issues.

• The discussion paper does not set whether or out how essential research directions will progress – an understanding of attenuation of nutrients, including in relation to all soil types and different farm systems, and other models of interaction between land practices and freshwater quality attributes (e.g. the management of sediment).
- Beyond noting that further work is being done, there is no mention of new allocation systems. Our report to the government set out a set of principles that should be used.

- We observed that the treatment by officials of indigenous fish and trout and salmon was inconsistent with the Cabinet minute establishing the freshwater reforms. This narrow focus is reflected, for example, in the discussion document where aquatic life is addressed. This discusses only indigenous species.

The FLG would be happy to meet with you to discuss any of these matters.

Yours sincerely

Chair

Freshwater Leaders Group