30 October 2019

Freshwater submission
Ministry for the Environment
PO Box 10362
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Submission to: Action for healthy waterways proposals - Additional
General comments

1. Introduction

Water New Zealand welcomes the opportunity to make a submission on the Government’s Action for healthy waterways proposals. Water New Zealand is a not-for-profit organisation that promotes and represents water management professionals and organisations. It is the country’s largest water industry body, providing leadership in the water sector through advocacy, collaboration and professional development. Members include nearly 200 organisations and more than 2000 individuals drawn from all areas of the water management industry including regional councils and territorial authorities, consultants, suppliers, government agencies and scientists.

2. Context to these comments

Our submission has been made by responding to the questions in the Action for healthy waterways proposals on-line but this attachment makes some additional general observations and suggestions on the proposals.

Water New Zealand is supportive of the actions outlined in the Action for healthy waterways, discussion document on a national direction for freshwater. We support an evidence-led approach to freshwater policy which is underpinned by sound science. The National River Water Quality 10-year Trend Summary (2009-2018)\(^1\) prepared by Land Air and Water (LAWA) clearly indicates trends of degradation in New Zealand’s fresh water. Additionally, the Ministry for the Environment Report Environment Aotearoa 2019\(^2\) unequivocally identifies that farming activities contribute contaminants which have an adverse effect on fresh water and that urban waterways also have unacceptably high

\(^1\) https://www.lawa.org.nz/explore-data/river-quality/

\(^2\) https://www.mfe.govt.nz/publication-search?f%5B0%5D=field_section_topic%3A171
levels of contamination. Both reports present scientific research and data to inform the information they provide.

The Action for healthy waterways proposals set a direction which will need to be supported by detail in other documents. The intention of the proposals will only be realised if the supporting documents are workable and the organisations responsible for implementing them are effective.

Water New Zealand has been concerned about the rhetoric and unsubstantiated claims made by some in the farming sector. We acknowledge that many New Zealand farmers are taking considerable measures to reduce their impact on the environment, including freshwater quality and our view is that most farmers will not be significantly affected by the proposals.

However, evidence has shown that high intensity agriculture, particularly dairy farming, is contributing to the serious decline of water quality and the health of waterways. Those operations having the highest impact need to be required to reduce their disproportionate impact, while others should (as part of a meaningful regional planning process) be required and supported to make improvements to farm management and practice to meet appropriate rules and objectives. In some areas, high intensity farming cannot be undertaken in a manner that has acceptable impacts on freshwater quality. In those areas there may be a need for land use changes. However, the areas concerned should never have been used for dairy farming or dairy intensification and we note that during the 1990s and 2000s when land use changes occurred, there was opposition and clear indications that the resulting impacts would be adverse for freshwater quality. Indeed, the then Parliamentary Commissioner for the Environment, Dr Morgan Williams raised concerns about freshwater quality in 2004.3

When there is a crisis in, or because of an industry, that industry needs to change the way it does things. We have seen this with changes to Health and Safety legislation as a result of the Pike River tragedy. Similarly, the drinking water contamination event at Havelock North has initiated a considerable amount of change in the water industry. When these events occur, the industry affected must adapt to accommodate the necessary changes. Certainly, Water New Zealand and its members are at the centre of adapting to change in the water industry.

Farming in New Zealand has been built on innovation and adaptation. Water New Zealand considers that farmers will need to, and will be able to, adapt and adjust their industry to the new requirements necessary to protect freshwater quality. They have a responsibility to do so.

But we need to accept that New Zealand pastoral farming is not and cannot be a wholly sustainable activity. It relies on historic removal of bush cover and the subsequent extensive loss of natural habitat and biodiversity as occurred in New Zealand in the 18th and early 19th centuries. Not dissimilar to the activities currently resulting in the loss of Amazon rain forest in Brazil.

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In many places pastoral farming requires the addition of nutrient fertilisers to maintain soil productivity and in some places irrigation to support plant growth. The effluent produced by large numbers of animals in confined areas which are subject at times to intense rainfall, will always put waterways at risk of contamination as water seeks a path to aquifers, streams, rivers and ultimately the sea.

At the heart of the freshwater quality debate is a conflict between activities which utilise environment resources to generate economic wealth and the need to protect the environment for its own sake and for present and future generations.

Within this context and a prevailing anthropocentric view of the natural world, the best that we can hope for is to make farming less unsustainable than it currently is. And that is what the *Action for healthy waterways* proposals need to achieve. They will only do that if the proposals remain largely unaltered and are not diluted in response to sensational and unsupported claims made by those who seek to continue their current activities without taking responsibility for the external environmental costs those activities impose. We commend the Government to stand strong to defend the proposals.

3. General comments on the *Action for healthy waterways* proposals

*Water New Zealand* generally supports the *Action for healthy waterways* proposals and the proposed changes to the National Policy Statement for Fresh Water Management (NPS-FM), National Environmental Standards (NES) for Freshwater, Sources of Drinking Water, and the proposed Wastewater NES and Section 360 regulations. Comment on the detail is made later in this submission.

We have some concerns about the draft NPS-FM and consider that some changes are required to make it more workable and to reduce the risk of litigation. We consider that updating and modifying the current NPS-FM (2017) is required rather than rewriting it. We have outlined out concerns in an appendix to this submission.

Government objectives intended to improve outcomes for people or the environment, are dependent on the effective performance of departments or organisations charged with giving effect to the objectives and effectively performing the functions they are tasked with.

While *Water New Zealand* recognises that regional councils perform a range of important functions very well, including environmental regulation, we have considerable concerns about the implementation by regional councils of the requirements set out in these documents. Many regional councils have a poor record of enforcing the requirements of the Resource Management Act and conditions set in resource consents. There is no clear indication that any new regional council functions that result from the *Action for healthy waterways*, and which might be contained in the NPS-FM or any other NES would be better performed than any current functions under similar
policies. In fact, there are clear examples where regional councils have failed to implement, in a nationally consistent manner, the requirements of NESs.

In 2007 the Ministry for the Environment released a NES for sources of Human Drinking Water. The Report of the Havelock North Drinking Water Inquiry: Stage 1 found that:

\[\ldots the \ regional \ council \ failed \ to \ embrace \ the \ principles \ and \ philosophies \ behind \ the \ NES \ Regulations \ by \ continuing \ldots with \ the \ view \ that \ it \ had \ no \ legal \ or \ other \ responsibility \ for \ drinking \ water \ and \ no \ perceived \ accountability \ in \ that \ area.\]  

The failure by Hawkes Bay Regional Council to recognise that it had accountability for this NES and its failure to implement the NES, regulations made under the Resource Management Act was in our view widespread across regional councils in 2016 when the Havelock North event occurred.

Since 2008 and annually, Water New Zealand undertakes a National Performance Review (NPR), an annual performance comparison of drinking water, wastewater and stormwater service provision by local authorities in New Zealand.

The NPR shows variation in consenting practices and a low level of consent enforcement for wastewater and stormwater practices, which suggests the current regulatory environment is not achieving its desired purpose, which is protection of the environment and public health.

Of the 247 wastewater treatment plants included in the 2018/19 NPR, 26 wastewater treatment plants were operating on expired effluent discharge consents.\(^5\) In 2017/18, only six consent abatement notices, two infringement notices and one successful prosecution were reported to the NPR. There were no consent enforcement orders. This continues a trend seen in previous years. In our 2016/17 report we noted;

\[In \ a \ year \ of \ wet \ weather, \ with \ stories \ of \ beach \ closures \ and \ flooded \ homes \ dominating \ news \ reports, \ no \ stormwater \ consent \ non-compliances \ were \ reported \ to \ the \ National \ Performance \ Review. \ Wastewater \ treatment \ consent \ breaches \ were \ also \ low, \ with \ only \ seven \ infringement \ notices \ and \ one \ enforcement \ order \ issued \ across \ all \ 42 \ wastewater \ operators.\]

A minority of participants (eight of 38 providing data in 2018/19) had all stormwater discharges covered by resource consents. A further 24 had consents for some stormwater discharges however the nature and extent of these varied greatly.\(^6\) The result is that stormwater quality management practices are often not implemented by stormwater operators, with stormwater networks being managed with flooding as the sole focus. In our 2017/18 NPR we reported:

\[Slightly \ under \ half \ the \ NPR’s \ participants \ have \ implemented \ stormwater \ quality \ monitoring \ or \ catchment \ management \ plans \ (23 \ and \ 22 \ respectively) \ldots The \ variation \ in \ management\]

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practices is likely a reflection of the different consenting approaches for stormwater discharge.

The failure to implement policy can also be found within government departments. In 2007 the Health (Drinking Water) Amendment Act set out duties for water suppliers and regulatory functions for Drinking Water Assessors. The Ministry of Health was responsible for implementing this legislation and policy. The Report of the Havelock North Drinking Water Inquiry: Stage 2 found that:

- **the Ministry of Health failed in its responsibility to promulgate an effective and useful enforcement policy from 2007 to 2017.**

Further failures of regulation by the Ministry of Health were clearly outlined by the reports of the Havelock North Drinking Water Inquiry.

The above examples indicate that good policy is never enough on its own to achieve a desired outcome. Good policy needs to be effectively implemented and that implementation needs to be measured, monitored and reported on.

Water New Zealand considers that one of the main reasons for the implementation failures outlined above is that the organisations tasked with enforcement are not specifically regulatory organisations. Regional councils have a range of planning functions and relationships with some of the organisations they are required to regulate which discourages them from taking regulatory action. When undertaking NPR audits of stormwater and wastewater consent abatement, infringement and enforcement orders, the auditor of our report commented:

- **The impression is that regional councils prefer to work quite closely with organisations to ensure improvements are made and it is only if there was repeat non-compliance would the regional councils get heavy-handed.**

Though there are constraints on introducing any further legal reporting measures on regional councils (we note that a comprehensive review of the Resource Management Act has recently been announced) Water New Zealand considers there is a need for further measurement, monitoring and reporting on the performance of regional council’s freshwater policy implementation.

Water New Zealand recommends the introduction of some further measures to assess the performance of regional councils with respect to their functions under the National Policy Statement for Fresh Water Management and National Environmental Standards for Freshwater, Sources of Drinking Water, and Wastewater.

### 4.1 Monitoring regional council healthy waterways performance

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Water New Zealand recommends that an annual report is prepared on the implementation by regional councils of the proposals in the *Action for Healthy Waterways* document. Specifically, the report could compare the performance of regional councils’ implementation of the National Policy Statement for Fresh Water Management and National Environmental Standards for Freshwater, Sources of Drinking Water, and Wastewater.

The report could be similar in nature to the National Performance Review which Water New Zealand currently prepares to compare the performance of District Councils three waters services. It could also build on and use some of the parameters in the 2017 NPS-FM Implementation Review¹ carried out by the Ministry for the Environment.

On July 31, a Cabinet Paper (CAB-19-MIN-0332) was released which will require wastewater and stormwater operators to report annually on a set of nationally prescribed environmental performance metrics, and for that information to be collected, validated, analysed, and published by a central regulatory agency. Our understanding is that the central regulatory agency will be the new drinking water regulatory agency and it will have responsibility for oversight, in the manner outlined above, of the performance of wastewater and stormwater utilities. We understand that these functions will be set out in the new Water Services Act.

We recommend that the Water Services Bill is extended to include a requirement that:

- regional councils report annually on a set of nationally prescribed performance metrics related to the National Policy Statement for Fresh Water Management and National Environmental Standards for Freshwater, Sources of Drinking Water, and Wastewater, and for that information to be collected, validated, analysed, and published annually by a central regulatory agency.

We suggest that it would be appropriate for this function to be added to the wastewater and stormwater oversight functions that the new drinking water regulatory agency will be tasked with.

### 4.2 Longer term regulation of drinking water, wastewater, stormwater and freshwater.

Water New Zealand considers that the problems related to regulation of wastewater, stormwater and freshwater are deep seated and embedded in the regional structure of regional councils. The delegation of water regulation promotes inconsistency of approach across New Zealand. Additionally, the functions of regional councils include both planning and regulation. This results in regional councils having complex relationships with those they regulate, particularly District and City Councils, which causes them to be reticent about enforcement of Government policy. Regulation works best when it is the sole function of an organisation and all the organisation’s resources are devoted to that task.

Water New Zealand considers that New Zealand would benefit from having a central regulator for drinking water, wastewater, stormwater and freshwater, similar to the approach taken in Scandinavian countries. We accept that this would require considerable reform of the Resource Management Act and that a review of this legislation has commenced. But with appropriate changes to the Resource Management Act, the new drinking water regulator could progressively take on the role of national wastewater regulator, national stormwater regulator and national freshwater regulator. Several organisations have recently promoted the idea of a Water Commission, which Water New Zealand supports.

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