PRIMARY LAND USERS GROUP: WORKING TOGETHER FOR GROWTH

Freshwater Submissions
Ministry for the Environment
PO Box 10362
Wellington 6143

Consultation.freshwater@mfe.govt.nz

Submission: Action for healthy waterways; A discussion document on national direction for our essential freshwater.

This is a submission from:
Primary Land Users Group (PLUG)
Postal Address:
P.O. Box 200-173
Papatoetoe Central
Auckland
2156
info@plug4growth.co.nz

Thank you for the opportunity to make submissions in relation to freshwater. The proposed changes outlined in the discussion document have significant implications for New Zealand’s productive sector. We have chosen to make the following separate submissions rather than be constrained by the “online submission tool” and understand that our comments will not be discounted as a result.

About the Submitter:
PLUG is an incorporated society formed in response to and out of concern for Waikato Regional Council’s Proposed Plan Change 1 (PC1).

PLUG represents the views and interests of its members, drawn from a broad cross section of private productive land owning and land managing interests. PLUG’s membership includes extractive (quarrying), forestry, horticultural, and pastoral interests. In combination, PLUG’s membership encompasses a broad cross section of professional and practical expertise. PLUG’s members are those who make decisions to invest or not and who in combination will influence the direction and thinking of the communities’ directly affected by whatever changes are made in pursuit of improved water quality.

PLUG understands that a number of senior WRC staff may have been involved in the development of Proposed PC1 who were also involved in the development of “Action for Healthy Waterways”. We are disquieted that many of the concerns highlighted in relation to PC1 could be perpetuated nationally via this process.
We are concerned that freezing patterns of land use, even on an “interim” basis, serves to validate rather than correct the past failures of some in local government to manage water quality effectively. The proposals risk perpetuating existing institutional arrangements despite a record of overseeing declining water quality.

PLUG is concerned that some proposals could amount to a return to the ‘command and control’ economy of the 1970’s and a distortion of investment away from the customer and market-oriented drivers of NZ’s primary-sector export success. We are particularly concerned at the risk of stranded investment, impact on investors and land uses in inverse relationship to current impact on natural water quality and the differential regulation of productive land subject to Treaty settlement.

Submission: Proposed “Action for Healthy Waterways” documents reflect the views and aspirations of the regulatory community. They do not constitute a workable compromise between the legitimate social, economic and ecological aspirations of New Zealanders and will result in declining water quality and stagnating rural investment if implemented as proposed.

“Action for Healthy Waterways” (AHW) and the NPS and NES intended to give effect to it are predicated on the idea that current land use is unsustainable.

The desired end point proposed for all New Zealand water appears to equate to the theoretical water quality in the absence of all human use; theoretical because the quantification proposed (in terms of nitrate, sediment levels etc.) does not allow for or take into account, the natural geographic and temporal variability found throughout a catchment and the country.

AHW proposes a significant increase in the day-to-day regulatory control of New Zealand’s primary sector. The requirement for development and enforcement, property by property, of “Whole Farm Plan’s” (WFP) presumes that expanding the regulatory capacity of Regional Councils will result in a better outcome than has been achieved by those same Councils over the last 25 years.

Whether improvement will be achieved is impossible to judge in the absence of any clear extrapolation of the ‘single point’ criteria promulgated in the proposed NES and the practical controls needed to attain it, presumably in the form of a model WFP.

The proposal is for WFP’s achieving compliance with ‘single point’ criteria such as “Nitrogen Reference Point” or Seti-disc determined sediment number. There is no practicable interpretation of those numbers for the property in question. The implication is unreasonable investment uncertainty and greater regulatory oversight of day-to-day property management.

PLUG suggest the AHW proposals are fundamentally flawed. We are forced to conclude they are motivated at least in part by a desire to preserve existing regulatory institutions rather than the need to incentivise practicable environmental improvement and robust primary sector economics.

The proposed reforms are based on an unrealistic understanding of the drivers of investment in the rural or any economy, including that “....clean, clear streams and lakes, abundant aquatic life, and protected riparian areas....” equate to a measurable or any increase in the value of land valued for production. The suggestion that water quality management could be focused on enhanced biodiversity demonstrates an apparent preoccupation with enhancing public interest at private cost.

The installation of water treatment wetlands or expanded areas of retired riparian pasture are examples where the stated purpose and value is a pretext for some other unstated and therefore
unconstrained public interest. PLUG accepts that water treatment devices including artificial wetlands and expanded riparian retirement can have unplanned benefits including biodiversity habitat and beautification. To the extent such benefits arise they are ancillary to the regulatory purpose motivating their installation. The proposed regulatory ability to retrospectively determine an artificially created wet area as having value beyond the purpose for its creation is in effect a “take”. Drains serve a useful primary purpose that cannot be subverted for biodiversity or some other public interest.

The inference in the AHW document is that benefits, such as biodiversity, are expected and will become an additional cost and obligation on the land owner where they occur. Making biodiversity an obligation in conflict with the primary purpose of lands management will discourage rather than encourage investments giving rise to it. If applied as proposed, the AHW reforms will perpetuate the growing distrust and avoidance behaviours by owners of productive rural land owners towards those seeking to regulate them.

Those reviewing the AHW proposals need to understand that “Tightly restrict(ing) any further intensification of land use ….until all regions have operative freshwater management plans” will discourage innovation and investment in improved water quality. The “interim” measures proposed are likely to contribute to declining water quality, where land owners are motivated to protect the financial value associated with flexible use of their property, by managing for maximum allowable discharges for their property. Land owners will avoid land use changes that reduce discharges, perhaps even where change made economic sense. Land within a band will have a market value proportional to its maximised use creating an economic disincentive to de-intensify and increasing the fiscal cost where land use change (eg afforestation) is funded by the Crown or rate payers. Individual financial benefits will logically override the public’s interest to the fullest extent allowed in regulation.

A number of other AHW proposals are inconsistent with and will undermine the goal of improved water quality expected from a ban on land use change. The proposed exemption for continued impactful water use provided for in relation to existing hydro schemes precludes the chance of affected water body’s ever returning to natural free-flowing conditions, notwithstanding all other constraints imposed on water users in the catchment. If it is possible to accept the benefits of existing hydro as justifying the impact of existing dams, it is equally possible to accept the unavoidable impacts of producing food, fibre and minerals.

The suggestion of an overarching purpose of water quality improvement from AHW proposals is at odds with the suggestion that the proposal “…would not impact the “…obligations in existing Treaty of Waitangi settlements” which include the capacity to intensify land use in some catchments. This conflict is not resolved or even discussed.

The ability of some catchments to attain the prescribed standards for entirely natural reasons including glacial outflow and naturally eroding catchments is acknowledged in the discussion document, indirectly highlighting the impracticality (and arguably irrationality) of the numeric targets promulgated in the NES.

Notwithstanding naturally ‘perturbed’ waters, there are many situations in NZ where the consequence and apparent irreversibility of human settlement of NZ provides the only achievable “bottom line” to water quality. This is accepted to be the case with existing hydro dams. The introduction to, and management of ducks, trout, salmon to many NZ waterways is additional evidence that numeric macro-invertebrate targets are problematic and impractical in many situations.
A similar argument applies where uncontrolled and uncontrollable pest species (plant and animal) make the goal of a return to some pre-settlement water quality fanciful rather than aspirational.

Submission: An alternative to the proposed Action for Healthy Waterways has been developed in detail in submissions on WRC’s Plan Change 1. PLUG recommends the management of rural productive land against a set of nationally prescribed “Best Practicable Option” land management requirements, developed to reflect sub-catchment differences in geology and climate. PLUG’s alternative “BPO” approach and the reasoning for it in preference to the AHW proposals is summarised below:

1) The RMA defines “sustainable management” of the environment as the optimal balance between social, economic and ecological outcomes. The RMA (correctly in our view) places humans within the ‘environment’, rather than assuming human use is a consideration only after protection and enhancement of natural water quality has been achieved.

2) The ‘social and economic’ considerations of the Act recognise that New Zealanders have a requirement to provide for their needs for food, fibre and minerals, reasonably extended to the point of a moral obligation to internalise the unacceptable environmental costs of ‘consumption’ to the product and therefore consumer.

3) An implication of the AHW proposals prohibition on intensification and progressive restoration to some pre-settlement water quality is to assume that environmental costs of NZ’s consumption deemed unacceptable by New Zealanders will be imposed on peoples from whom we import the requirements of our ‘first world’ and expanding economy. Even an assumption that the environmental costs of imported production are the same as NZ produced goods is to promote an unnecessary and avoidable greenhouse gas emission cost arising from transportation.

4) The RMA envisages and expressly provides for different levels of impact, where the goods or service is valued and the elimination of all adverse effects physically or economically impossible. Acceptable noise levels in heavy industry zones in the built environment are greater than in other areas. The pre-eminent elevation of ecological over social and economic considerations in every situation is illogical and is therefore opposed.

5) Point source discharges to natural water at less than pristine quality are reasonably determined acceptable for the duration of the Consent provided the ‘Best Practicable Options’ have been determined and applied. A review of and where practicable upgrade to treatment options is made on review at the expiry of the Consent period.

6) The nature of BPO discharges of treated waste water from existing municipal sewerage treatment plants rivals that of hydro dams in terms of value to the community and serves to reinforce the argument that humans and human endeavour is a part of the environment rather than an additional and discretionary option.

7) We suggest Section 5 of the RMA and other provisions in that Act provides a more useful framework for the determination of water quality goals than the AHW documents. The ‘Best Practicable Option’ (BPO) test applied to ‘point source’ abstraction from and discharge to water provides an efficient model for the management of diffuse discharges on a “permitted”
basis. National prescription of “Best Practicable Option” management of predominant rural land uses would serve as the presumption in terms of productive property, be that a farm, forest, orchard or quarry.

8) There are currently a myriad of different standards and practices for some common rural land uses. A “Permitted” BPO standard could presumably be drafted to require that those operating currently at unsustainable intensity had every incentive to adopt the BPO in short order (e.g. 2 years?) A motivation for poor performers to improve would be the risk of prosecution and or the incentive of knowing the investment made in improved water quality would be secured by the permitted right to operate for a defined period (e.g. 10 years?). All those considering land use change in response to changing demand for goods and services would be able to make their investment decision based on a clear understanding of the cost.

9) Of most critical importance, the defined duration of BPO prescriptions would remove the incentive to secure the capital value of land by seeking to ‘grandfather’ current levels of ‘pollution’ as a right.

PLUG understands and accepts that the acceptable and ideal water quality varies, between catchments and on a sub-catchment basis. We would support a sophisticated approach being taken in terms of the prescribed Permitted BPO standards to reflect sub-catchment differences, provided the prescription:

- Was presented in the form of practicable requirements. (We are opposed to regulatory obligations being imposed in subjective or complex terms such that external expertise is required to ensure compliance. We are opposed to the imposition of scientific reviews and monitoring as regulatory obligations on the assumption that water quality will improve through practical management changes rather than knowledge of macro invertebrate numbers in one location and on the day of measurement.

- Reflected actual sub-catchment reality. (Imposition of BPO’s in a catchment where water quality is determined by the presence of introduced pest species should be targeted at curtailing the impact of such species to the extent that it is reasonable and practicable to do so.)

- Imposed the most exacting requirements only in catchments with iconic water body status. (PLUG was advised during consultation that the payment of compensation for costly constraint on land use in the Taupo catchment reflected the iconic status of the lake. The implication of such a distinction is that other water bodies managed without financial assistance from tax and rate payer are less than iconic, a status that would logically be carried through in terms of the applicable BPO sub-catchment prescription.)
PLUG and others have advocated for permitted BPO management of productive rural land as an alternative to WRC’s Plan Change 1. Submissions and evidence prepared in relation to PC1 are available for review if a more detailed consideration of the alternative advocated for by PLUG is of interest as a national approach.

Personal details removed
Co-Chairs of PLUG
Via E-Mail