To: Ministry for the Environment

Freshwater Submissions
Ministry for the Environment
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Submission on: The “Essential Freshwater Package”

From: Federated Farmers of New Zealand (Auckland Province) Incorporated

Date: 31 October 2019

Contact: Personal details
Senior Policy Advisor
INTRODUCTION

1.1 Federated Farmers of New Zealand (Auckland Province) Incorporated (“Auckland Federated Farmers”) thanks the Ministry for the Environment (“the Ministry”) for the opportunity to provide submissions on its proposals to make changes to the way in which freshwater is managed, as described in the Ministry’s Proposed “Essential Freshwater Package” (“the Package”), being the “Action for Healthy Waterways” discussion document (“the Discussion Document”), the Proposed National Environmental Standards for Freshwater (“Proposed NES-FW”), the Draft National Policy Statement on Freshwater Management (“Draft NPS-FM”), and the Draft Stock Exclusion Section 360 Regulations.

1.2 In regard to this submission, Auckland Federated Farmers has engaged in some limited consultation with a proportion of its members with interests in the Federated Farmers’ Auckland province.

1.3 Auckland Federated Farmers looks forward to such further consultation with the Ministry about the Package as may be appropriate.

1.4 Accordingly, Auckland Federated Farmers would appreciate the opportunity to discuss this submission in greater detail. Auckland Federated Farmers seeks the opportunity to participate in any relevant discussions, workshops or hearings that might be held.

SUMMARY OF RECOMMENDATIONS

2.1 Auckland Federated Farmers recommends:

General

That the “Essential Freshwater Package” not be proceeded with in its present form, at least not in the area administered by the Auckland Council;

Wetlands

That the wetlands provisions in the “Essential Freshwater Package” be applied only to wetlands that are mapped in the relevant regional plan;

That consideration be given to applying the wetlands provisions in the “Essential Freshwater Package” only to wetlands that are significant in terms of section 6(c) of the RMA;

That the setback from wetlands in the “Essential Freshwater Package” be left for regional councils to determine, based on the circumstances in their regions;

That the stock exclusion requirements applying to wetlands in the “Essential Freshwater Package” be left for regional councils to determine, based on the circumstances in their regions;
That the restriction on vegetation destruction be removed from the “Essential Freshwater Package”;

Freshwater Farm Plans

That Farm Environmental Plans, and in particular the Freshwater Farm Plans component of Farm Environmental Plans, not be made mandatory, other than in specified circumstances where a certified Farm Environment Plan is used to replace the need to obtain a resource consent for a specified activity;

Nitrogen management

That Option 1 (a cap in catchments where nitrate levels are high) be adopted, with control of nitrogen being managed on an inputs basis, other than as provided in the recommendation below;

That regional councils be given the ability to use Option 3 (a freshwater module in farm plans be required on a permitted activity basis, where there are high nitrate-nitrogen levels and the reduction of nitrogen leaching is considered urgent);

Further intensification

That the proposals in the “Essential Freshwater Package” which restrict further intensification not be proceeded with;

Livestock exclusion from waterways

That livestock exclusion from waterways be left for regional councils to address, in terms that are appropriate to the circumstances of their own particular region;

That, should it be determined that there should be national livestock exclusion provisions, the provisions be based on a stocking-rate approach, as opposed to a slope based criterion;

That, should it be determined that there should be national livestock exclusion provisions, the provisions also apply to land meeting a low-slope criterion of <5°, on an averaging basis;

That the proposal for an average 5m setback for fencing not be proceeded with, leaving the 1m minimum setback requirement;

That, should the 5m setback obligation be retained, then farmers who have already fenced their waterways, but who have established set-backs that do not meet the new obligations not be obliged to meet the new standards until such time as the need for the fence to be replaced arises.

3. GENERAL COMMENTS

3.1 The broad purpose of this submission is to endorse the submission that Federated Farmers of New Zealand has made on the Package but, in doing so, to draw the Ministry’s attention to some aspects of its proposals as they relate to water quality and water quality issues in Auckland.
3.2 The first point to make is that Auckland Federated Farmers supports the intentions behind what is proposed. Auckland Federated Farmers agrees that New Zealanders, including farmers in Auckland, value their freshwater, and agrees that the country’s freshwater resources, and how those resources are cared for and used, are a fundamental part of who New Zealanders are. As do other New Zealanders, Auckland’s farmers want, and want others, to be able to swim, fish, gather mahinga kai, and enjoy freshwater. As much as anybody, Auckland’s farmers need clean water to drink and for irrigation, to support a sustainable economy. Auckland Federated Farmers acknowledges that water, including water in Auckland, is suffering as a result of human activity – urban development, agriculture, horticulture, forestry, and other activities. It is also acknowledged that degraded water quality in itself imposes costs. Auckland’s farmers value freshwater quality, and are committed to (and are) playing their part in delivering on Auckland, and the country’s, freshwater aspirations. This has been demonstrated through farmers’ own investment in environmental spending and mitigation, as well as through Auckland Federated Farmers providing strong support for the Auckland Council’s spending to address water quality issues across Auckland generally, in both rural and urban areas. Auckland Federated Farmers supports the current freshwater swimming targets and endorses prioritized swimming sites.

3.3 Auckland Federated Farmers welcomes the acknowledgement in the Discussion Document that many people, including farmers and growers, are already taking action to reduce their impact on freshwater. The acknowledgement of the positive efforts and good examples that those many people are making is welcomed. It is agreed that, wherever possible, everybody should contribute to improving water quality.

3.4 In this context, it is worth noting that some 30% of waterways in Auckland are bounded by lifestyle blocks which are less than 20 ha in size. As the proposals in the Package stand at present, owners of these blocks will not be required to have a freshwater farm plan in place by 2025, in contrast to the requirements on other landowners. Yet, given their numbers, activities on land which is lifestyle blocks have the potential to make a significant contribution to water quality issues in Auckland. For this, and for a number of other reasons, Auckland Federated Farmers considers that Farm Environmental Plans should not be mandatory, in Auckland at least.

3.5 However, while supporting the intentions of the Package, Auckland Federated Farmers has been shocked by some of the proposals in the Package, in the light of the commitment that the Federation, and Auckland’s farmers, have already made to addressing water quality issues in Auckland. Auckland Federated Farmers engaged closely with the Auckland Council in the development of the Auckland Unitary Plan, the mechanism by which water issues are managed in Auckland. Amongst other things, provisions that addressed livestock access to waterways were agreed, in conjunction with both the Council as well as some environmental NGOs, including the Environmental Defence Society and the Royal Forest and Bird Protection Society of New Zealand. These provisions were drawn up specifically to address livestock access to water issues as they exist in Auckland.

3.6 Developing the Auckland Unitary Plan process took up a significant amount of time, money and effort, and is considered, together with other initiatives, to be delivering significant improvements in water quality across the Auckland region. Auckland Federated Farmers considers that the Unitary Plan should not be overridden by the proposed national provisions. Amongst the successful initiatives are the various catchment groups that exist in Auckland, and Auckland Federated Farmers wishes to highlight the important and positive roles catchment groups and other similar organisations are playing in respect to water quality. Further, Auckland Federated Farmers was pleased to support the Auckland Council’s proposal for an additional $452
million to be spent on water quality issues in its 2018 10-year budget, with a fair proportion of that funding to be spent in Auckland’s rural areas. The value of that funding has been demonstrated in the Hōteo River, where scientific studies were undertaken which found that more than 70% of sediment in the River originates from streambank erosion, demonstrating that mitigation should be focussed on river engineering, including riparian planting, backed up by appropriate livestock exclusion measures, in appropriate locations.

3.7 The Hōteo River example serves to illustrate one of the fundamental problems that Auckland Federated Farmers has with many of the proposals in the Package – its overriding of the underlying subsidiarity focus of the Resource Management Act (“RMA”), and the emphasis in that legislation for resource management issues to be addressed locally. Livestock access to waterways is not generally an issue in Auckland because of the soft-bottomed nature of many of the rivers and streams in the areas of Auckland that are used for rural production. Some waterways rely on their being grazed by livestock to the water’s edge, to protect the capacity of the waterway to carry water away in times of flood, while other waterways need the exclusion of all livestock to protect their banks from erosion in those same floods.

3.8 Auckland Federated Farmers is also concerned about the process by which the Minister for the Environment, and the Ministry, is engaging with the public on the matters addressed in the Package. The Package has significant implications for farmers and farming generally, as well as for rural communities and indeed the national economy as a whole. The significance is such that the “national directions” that are proposed by way of the Proposed NES-FW and the Draft NPS-FM would most properly have been prepared by way of a Board of Inquiry process, as provided for by way of section 46A(3)(a) of the RMA, rather than by the streamlined process in section 46A(3)(b) and section 46A(4). The approach that has been adopted does not properly reflect the significance of what is proposed, given the complexity and prescriptive nature of the proposals in the Package, and given also that there are several discrete components to what is proposed. Further, the process that has been established provides no opportunity for hearings, and therefore no opportunity for those preparing reports and recommendations, and those making decisions, to test their thinking with those who have made submissions, and no opportunity for submitters to elaborate on their submissions, including elaborating on the parts of their submissions that might be contentious, in the light of other submissions. All in all, the process that has been adopted is not in keeping with the public participation ethic that underlies all RMA processes.

3.9 Overall, Auckland Federated Farmers considers that the proposals in the Package do not appropriately address water quality issues, as those issues manifest themselves in Auckland. There is inadequate integration across the various limbs of the Package, and the proposals in the Package do not strike an appropriate balance between regulatory and non-regulatory methods of addressing water quality issues. The effect of what is proposed on some of the collaborative approaches to water issues that exist in Auckland has not been properly taken into account, and the implementation timeframes which are proposed are impractical. Auckland Federated Farmers considers that there is a real risk that the proposals in the Package, if implemented, will undermine the good works that Auckland farmers and the Auckland community as a whole, working together with the Auckland Council, are carrying out to improve water quality across the whole of Auckland.
3.10 Auckland Federated Farmers strongly recommends that the Package not be proceeded with in its present form, at least not in the area administered by the Auckland Council.

3.11 Auckland Federated Farmers wishes to comment in some more detail on specific aspects of the Package. The submissions should be read in conjunction with the submissions made by Federated Farmers of New Zealand, and are not intended to detract from those submissions, rather they discuss the points in question, from an Auckland perspective.

3.12 Recommendation: That the “Essential Freshwater Package” not be proceeded with in its present form, at least not in the area administered by the Auckland Council.

4. COMMENTS ON SPECIFIC ASPECTS OF THE PACKAGE

4.1 Wetlands

4.1.1 Auckland Federated Farmers considers it to be essential that the proposals in the Package be applied to wetlands that are mapped, and only to wetlands that are mapped, in the relevant regional plan, and then probably only to wetlands that are mapped as being significant in terms of section 6(c) of the RMA. The majority of soils in Auckland are heavy and, particularly where the land is flatter, can easily become waterlogged in winter, and so can readily be mistaken as being wetlands. There is often a need for extensive drainage of these lands, and the drains can be located quite close to wetlands, without affecting those wetlands. In this context, the proposed 100m setback for drains from wetlands is grossly excessive.

4.1.2 Further, providing such a setback will result in the loss of a considerable amount of productive land, as the land between the wetland and the drain will become unusable and will revert to wetland, meaning further drainage will need to be set back even further.

4.1.3 Another point that the wetland proposals in the Package do not properly take into account is that many wetland on heavier soils dry out over the summer, which means two things: firstly that livestock exclusion will generally be inappropriate, as it will be appropriate to graze those areas (unless they are protected by way of covenant), and secondly, it demonstrates that the wetland will not be affected by adjacent drainage.

4.1.4 Auckland Federated Farmers considers that the restriction on vegetation destruction within 10m of a wetland is unnecessary, in that the definition of wetland already includes reference to the margins between wetlands, meaning that this buffer area will be mapped as being part of the wetland.

4.1.5 Recommendation: That the wetlands provisions in the “Essential Freshwater Package” be applied only to wetlands that are mapped in the relevant regional plan.

Recommendation: That consideration be given to applying the wetlands provisions in the “Essential Freshwater Package” only to wetlands that are significant in terms of section 6(c) of the RMA.

Recommendation: That the setback from wetlands in the “Essential Freshwater Package” be left for regional councils to determine, based on the circumstances in their regions.
**Recommendation:** That the stock exclusion requirements applying to wetlands in the “Essential Freshwater Package” be left for regional councils to determine, based on the circumstances in their regions.

**Recommendation:** That the restriction on vegetation destruction be removed from the “Essential Freshwater Package”.

### 4.2 Freshwater Farm Plans

4.2.1 With reference to the Auckland context, Auckland Federated Farmers does not support the proposal in the Package to make Freshwater Farm Plans, indeed Farm Environmental Plans generally, compulsory. Auckland Federated Farmers considers that, if a council wants to regulate a particular matter, then it should do so by way of a rule in the appropriate plan, rather than by way of a requirement for a farm plan. There is a possible exception to this, in that the Council can prescribe a template farm plan itself, setting out a suite of requirements for a particular high-risk activity and then certifying those completed plans, thereby enabling a particular activity to be carried out as a permitted activity, rather than as a controlled activity. This approach has been adopted, seemingly successfully, in the case of the Gisborne Freshwater Plan.

4.2.2 Auckland Federated Farmers acknowledges that farm plans are required in certain regions, for example Hawkes Bay and Canterbury. It is understood that these plans have arisen because of the particular circumstances that apply in those regions, and generally with the agreement of the farmers in those regions. It should not be assumed that the circumstances that apply in regions where farm plans are mandatory, in some cases or in all cases, means that farm plans are appropriate across the country as a whole. Likewise, it does not seem appropriate for there to be a national requirement regarding farm plans in place of local requirements, where these already exist.

4.2.3 Further, the proposed national requirement will create a new bureaucracy of certifiers and auditors, and come at great cost, not only to farmers, but also to the councils involved and the ratepayers of those councils.

4.2.4 That said, Auckland Federated Farmers does support the use of farm plans, but on a voluntary basis. This approach has enabled, and continues to enable, farm plans to evolve through the activities of the relevant industry levy-payer groups, particularly DairyNZ, Beef + Lamb and Horticulture NZ. Such farm plans can set out how farmers individually intend to meet whatever environmental limits apply in a given location, over time.

4.2.5 **Recommendation:** That Farm Environmental Plans, and in particular the Freshwater Farm Plans component of Farm Environmental Plans, not be made mandatory, other than in specified circumstances where a certified Farm Environment Plan is used to replace the need to obtain a resource consent for a specified activity.

### 4.3 Nitrogen management

4.3.1 The Discussion Document proposes three options for managing excessive nitrogen loss. Option 1 proposes a cap in catchments where there are high nitrate levels, Option 2 proposes a national nitrogen cap and Option 3 proposes that farmers and growers in catchments with high nitrate-nitrogen levels be required to show, in the freshwater
module in their farm plan, how they will rapidly reduce nitrogen leaching, and to audit their progress.

4.3.2 While Auckland Federated Farmers acknowledges the need to reduce nitrogen leaching in those areas where it is a problem, generally across Auckland as a whole (but with the notable exceptions of certain areas including parts of the Whangamaire and Waitangi catchments in the Franklin area of Auckland) nitrogen leaching is not much of an issue. In those places where nitrogen leaching is an issue, Auckland Federated Farmers considers that it should be addressed within the particular catchment (or, preferably, sub-catchment) where it is an issue. For this reason, Auckland Federated Farmers generally supports Option 1, but on an “inputs" basis, to eliminate the need to rely on Overseer. In essence, this is the nitrogen management regime that is used in Auckland at present.

4.3.3 Option 3 relies on mandatory Farm Environmental Plans, so is generally opposed by Auckland Federated Farmers, for the reasons discussed above. However, Auckland Federated Farmers acknowledges that it is appropriate for mandatory Farm Environmental Plans to be required in certain specific circumstances, so suggests that provision be made in the Package for regional councils, or at least the Auckland Council, to require a farm water module component of Farm Environmental Plans to be prepared, certified and implemented in catchments or sub-catchments where the reduction of nitrogen leaching is considered urgent.

4.3.4 **Recommendation:** That Option 1 (a cap in catchments where nitrate levels are high) be adopted, with control of nitrogen being managed on an inputs basis, other than as provided in the recommendation below.

**Recommendation:** That regional councils be given the ability to use Option 3 (a freshwater module in farm plans be required on a permitted activity basis), where there are high nitrate-nitrogen levels and the reduction of nitrogen leaching is considered urgent.

4.4 Further Intensification

4.4.1 Auckland Federated Farmers does not support the proposals in the Package to restrict further intensification of rural land use as a means by which contaminants entering waterways might be reduced. The proposal is seen as being a severe kneejerk response, which is intended to apply to all catchments across the whole country and for all 4 contaminants, whether or not there is an issue with a particular contaminant in any particular catchment. Most catchments in which intensive agriculture takes place already have plans in place or are engaged in a planning process to address the relevant issues.

4.4.2 Auckland Federated Farmers considers that the proposed restrictions will unfairly impact the expansion of farming operations that are low-risk activities, or take place in low-risk catchments, or where good management practices are already occurring. Farming operations that are already highly efficient in terms of their discharges will find their ability to expand is severely curtailed, even if that expansion was shown to have little additional impact on the environment, and less efficient operators will be disincentivised from reducing their discharges below the artificial thresholds proposed. The proposed restrictions will disincentivise innovation and will take away the flexibility that farmers have always relied on to react to economic, regulatory, market or environmental changes. As a general proposition, Auckland Federated Farmers opposes the “grandparenting" of discharge rights, and the potential "gold rush" that
brings about. In essence, the restrictions on further intensification amount to a form of grandparenting.

4.4.3 Further, the proposals regarding further intensification in the proposed National Environment Standard are overly complex and unduly prescriptive, and will place an unreasonable consenting and administrative burden on both landowners and on councils. The benchmarking requirements in the proposed National Environment Standard are also impractical as there no public records have been kept of loads at paddock or farm scale for sediment and e-coli. In the case of nitrogen and phosphorous, Auckland Federated farmers considers that Overseer should not be used as a regulatory tool and to derive benchmarks.

4.4.4 **Recommendation:** That the proposals in the “Essential Freshwater Package” which restrict further intensification not be proceeded with.

4.5 **Livestock exclusion from waterways**

4.5.1 Auckland Federated Farmers supports there being provisions made in regional plans to exclude livestock from waterways, in appropriate circumstances. In these appropriate circumstances, the exclusion of livestock from waterways is seen as being a simple and effective way of improving water quality.

4.5.2 However, it is not always appropriate to exclude livestock from waterways. A discussion of the benefits, in some circumstances, of grazing streambanks is considered in the general section of this submission. As a general proposition, Auckland Federated Farmers considers that the matter of livestock exclusion should be left to regional councils to address, in terms that are appropriate to the circumstances of their own particular region.

4.5.3 Also as discussed earlier, Auckland Federated Farmers was actively involved in the development of the provisions in the Auckland Unitary Plan that address livestock access to waterways, provisions which were agreed in conjunction with the Council and some environmental NGOs, and which were drawn up specifically to address issues about livestock access to water, as they arise in Auckland. Some of the provisions are in force now, others will come into force over the 10 years from 2021, and be fully in place at the end of those 10 years. The provisions use a stocking-rate approach, as opposed to a slope based criterion. Auckland Federated Farmers considers that the provisions adequately address livestock access to water issues as they arise in Auckland, and that they do not need further embellishment, at least not at the present time.

4.5.4 Auckland Federated Farmers considers that the mapping of slope based on land parcel average is flawed because it is not based on the risk to the water body from the land that actually drains into the water body.

4.5.5 Nevertheless, Auckland Federated Farmers acknowledges that the proposed low-slope criterion of <5° would apply to the land that could reasonably be expected to produce the highest contaminant loading, and would address the situation on land where the risk of livestock access to water bodies can reasonably be expected to be higher. Provided protection is offered to farmers where only a small proportion of their land is in this category, as is proposed in the Package by way of the averaging proposal, then Auckland Federated Farmers accepts that the addition of the low slope criterion of <5° to the stocking rate approach could be useful in addressing livestock access to water issues in Auckland.
4.5.6 Auckland Federated Farmers considers that there is no need for a setback from waterways to prevent livestock exclusion that is any greater than 1m, and that an average setback requirement is also inappropriate.

4.5.7 Should the 5m average setback obligation be retained, then Auckland Federated Farmers takes the position that farmers who have already fenced their waterways, but who have established set-backs that do not meet the new obligations should not be obliged to meet the new standards until such time as the need for the fence to be replaced arises.

4.5.8 Recommendation: That livestock exclusion from waterways be left for regional councils to address, in terms that are appropriate to the circumstances of their own particular region.

Recommendation: That, should it be determined that there should be national livestock exclusion provisions, the provisions be based on a stocking-rate approach, as opposed to a slope based criterion.

Recommendation: That, should it be determined that there should be national livestock exclusion provisions, the provisions also apply to land meeting a low-slope criterion of $<5^\circ$, on an averaging basis.

Recommendation: That the proposal for an average 5m setback for fencing not be proceeded with, leaving the 1m minimum setback requirement.

Recommendation: That, should the 5m setback obligation be retained, then farmers who have already fenced their waterways, but who have established set-backs that do not meet the new obligations not be obliged to meet the new standards until such time as the need for the fence to be replaced arises.

5. ABOUT FEDERATED FARMERS and AUCKLAND FEDERATED FARMERS

5.1 Federated Farmers of New Zealand is a primary sector organisation that represents farming and other rural businesses. Federated Farmers of New Zealand (Auckland Province) Incorporated operates as an independent “branch” of Federated Farmers of New Zealand. At all levels, Federated Farmers has a long and proud history of representing the needs and interests of New Zealand farmers.

5.2 Federated Farmers of New Zealand and Federated Farmers of New Zealand (Auckland Province) Incorporated aim to add value to its members’ farming business. Our key strategic outcomes include the need for New Zealand to provide an economic and social environment within which:

- Our members may operate their business in a fair and flexible commercial environment;

- Our members’ families and their staff have access to services essential to the needs of the rural community; and

- Our members adopt responsible management and environmental practices.

31 October 2019
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