Essential Freshwater Policy Proposals

Submission from Marlborough District Council

Marlborough Context

The Marlborough region is in the fortunate position of having good water quality in the majority of our rivers and aquifers. This is no doubt in large part due to the nature of our farming activities, for the most part, being of a type that have a lesser impact on water quality. The Marlborough District Council (MDC) identifies that, given the current state of water quality, implementing the policy proposals could have a significant impact on resources in our region, with potentially little gain. It would be the Council’s wish that this be borne in mind by the panel considering the submissions on the package, and that wherever possible, sufficient flexibility is retained in the national direction to recognise the local context in each region.

Approach in Submission

The MDC has taken the approach of providing feedback where there are matters in the Essential Freshwater Policy Proposals that have particular impact in a Marlborough context, or where we consider our experience provides a particular perspective. The matters raised include policy and planning concerns, as well as more technical science and monitoring issues. Overall, in the Council’s view, the poor drafting of the three proposals, particularly the Proposed National Environmental Standards for Freshwater (NESFW) and the Draft Stock Exclusion Section 360 Regulations (Regulations), hampered our ability to fully understand the provisions, the implementation requirements, and the relationships between the three instruments proposed, and regional planning documents.

The Council does appreciate having this opportunity to provide feedback, and would welcome any opportunity to contribute to the final drafting of the documents. Council staff are available to answer questions in relation to any of the matters raised in this submission.

This submission is set out under topics, with all three pieces of national direction considered together, as that is how they will be implemented by regional councils.

Proposals in relation to wastewater and drinking water

At this early stage, prior to the release of drafted direction, the Council is choosing to contribute to infrastructure sector groups making submissions on the wastewater and drinking water high level proposals. MDC looks forward to having the opportunity to consider the drafted national direction when it becomes available, and will likely make a direct submission at that time.

RMA Amendment Bill

The Council has made the decision to submit directly on the RMA Amendment Bill regarding matters raised in the Essential Freshwater Policy Package, and will not be including feedback on the Bill in this submission.

Resourcing Issues

The Council identifies that there will be significant resourcing implications for regional councils in the implementation of this national direction (acknowledging there are also resource implications for farmers and rural industry). In the Council’s view, the submission prepared by LGNZ is extensive in this area, therefore we wish to limit our comments to providing local examples, as follows –
• Shorter timeframes for setting target attribute states will require additional resources (including expertise that may not even be available) as existing staff will not be sufficient to cover the condensed work programme required to achieve the notification of a plan change by 2023;

• The national direction contains significant increases in data and information gathering, for example in relation to wetlands and instream structures, and monitoring a greater number of attributes, this cannot be accommodated within existing resources;

• The increase in attributes will require greater expertise, equipment and potentially modelling, that will require greater resources; and

• Action plans, monitoring programmes, remediation programmes, inventories, and the like, will require additional staff, and likely improvements to data collection and storage.

The Role of a Long-term Vision

In addition to plan structures issues, discussed below, the Council questions the role of a long-term vision in setting target attribute states, and environmental flows and levels. There is no similar requirement to develop a long-term vision for the management of any other natural or physical resource under the RMA. The Council’s statutory role is to identify and respond to issues. Having to respond to both issues and a long-term vision creates confusion around process for plan drafters, resource users and the wider community. For these reasons, the Council is of the view that the requirement to develop a long-term vision should be removed from the Draft National Policy Statement for Freshwater Management (NPSFM).

**Recommendation**

That the requirement to develop and articulate a long-term vision in Part 3, Subpart 1, Clause 3.2(5)-(7) of the NPSFM is removed.

National Direction Framework vs. Regional Plan Framework

Notwithstanding the comments above regarding the place of a long-term vision in the proposed NPSFM, one of the Council’s concerns with this national direction is the introduction of new terms and requirements, and that it is unclear how these work in the hierarchy of the RMA and plans. The NPSFM deviates from the structure for plan content set out in the RMA (issues, objectives, policies and methods) by introducing a long-term vision and environmental outcomes, and amendments around establishing target attribute states. It is additionally unclear when considered in the context of the plan structure set out in the National Planning Standards.

To assist in articulating the Council’s concern, the following specific NPSFM content is highlighted –

• The requirement in Part 3, Subpart 1, Clause 3.2(5)-(7) for every regional council to develop a “long-term vision”. This vision has to be articulated in the Regional Policy Statement, and given regard to (Part 3, Subpart 2, Clause 3.9(6)(iii)) when setting target attribute states, which are objectives (p38 of Discussion Document).

• Later in Part 3, Subpart 2, Clause 3.7(2) the concept of “environmental outcomes” is introduced. These are objectives (Clause 3.7(5)), and must be given regard to (Part 3, Subpart 2, Clause 3.9(6)(iii)) when setting target attribute states, which are also objectives (p38 of Discussion Document).

• However, under Part 3, Subpart 2, Clause 3.9(1), councils have to “achieve” the environmental outcomes (objectives) when setting target attribute states (objectives).

• So, one set of objectives have to “achieve” another set of objectives, but elsewhere it, in essence, says one set of objectives only has to “have regard” to the other set of objectives.
Recommendation

Notwithstanding the Council’s preference for the long-term vision requirement to be removed from the NPSFM, that the use of the terms “long-term vision” and “environmental outcomes” are reconsidered, clarified and/or better defined, with a particular focus on how they integrate into the established planning hierarchy for both regional and unitary planning documents.

The apparent disconnect between the structures of the national direction, the RMA and regional plans is also highlighted in the NESFW, which contains rules on topics that traverse sections 9 to 15 of the RMA. For example, where the NESFW contains rules that trigger the need to obtain a resource consent, say to provide for a setback for wetland protection, it is not clear how that sits with regional plan rules that may also require a setback to a wetland but for different purposes, such as to protect amenity values (which may also be of a different rule status).

Recommendation

That the drafting of the NESFW is improved to provide clarity about the relationship of the NESFW to regional plan rules.

Consultation vs. Haste

The Council is concerned that there is insufficient time to develop a long-term vision as required and described in NPSFM, Part 3, Subpart 1, Clause 3.2(5)-(7), and then go through a process of setting target attribute states informed by that vision, in time to notify a plan change by 2023 (to meet the 31 December 2025 deadline for notifying decisions as required by Part 4, Clause 4.1(2). There appears to be a disconnect between the development of a long-term vision, which in its detail amounts to considerable consultation with tangata whenua and the community before any freshwater management framework is established, and the requirement to implement the NPSFM by 2025.

Recommendation

That consideration is given to the apparent conflict between meaningful consultation and the requirements on regional councils if they are to meet the deadline in the NPSFM, and amendments and/or clear guidance is provided on this matter.

NPSFM Implementation

The Council supports the inclusion of Part 4, Clause (4.1(3) in the NPSFM with regard to regional councils not being obliged to make changes to wording or terminology to regional policy statements and plans that already implement the objective and policies of the NPSFM, merely for consistency with it. This is important to retain to avoid duplication of effort and unnecessary costs.

Recommendation

Retain Part 4, Clause 4.1(3) of the NPSFM.

Values – Mahinga kai

The Ministry is seeking feedback through the discussion document on the elevation of mahinga kai to a compulsory value in the NPSFM. The Council supports the strengthening of protection for mahinga kai, however local experience indicates that the identification of these values in each waterbody is not
supported by all tangata whenua iwi. Some iwi with rohe in Marlborough do not wish to identify sites of value and make them publicly known, this has been the case even in the knowledge that protecting a site that is not identified has challenges and may place its values at risk.

**Recommendation**

That in considering whether to elevate mahinga kai to a compulsory value, that the implications for tangata whenua of the identification of these values for each relevant waterbody is fully explored with tangata whenua, and that consideration is given to the benefits of having flexibility if it is not a compulsory value.

**Attributes**

**Attributes – General**

In Part 3, Subpart 2, Clause 3.9(6)(c) the NPSFM requires that when setting target attribute states the council must not delay making decisions because of uncertainty about the quality or quantity of the information. Having recently been through hearings to consider submissions on Marlborough’s proposed plan, which incorporates the Regional Policy Statement and Regional Plan, the Council is concerned about the ramifications of this approach for the first schedule process. In a hearing setting, in essence it comes down to decision makers considering the evidence presented by Council planners and experts, and the evidence presented by submitters and their experts. If target attribute states are to be set by councils in haste at the expensive of certainty about the quality or quantity of the information to support those targets, then councils will potentially be at a disadvantage when justifying those targets in hearing and decision making processes. It is acknowledged that the intention of the NPS drafters may have been that the alternate process for freshwater plans in the RMA Amendment Bill circumvents this issue.

It is further noted that the requirement to not delay making decisions because of uncertainty about the quality or quantity of the information available, may also be challenging in terms of the rigour that is required of the Council in an RMA Section 32 context.

**Recommendation**

No specific recommendation, however these concerns go to the wider issue of the short timeframes for setting target attribute states, the lack of any ability to delay setting targets for any reason and the potential disconnect between obligations in the RMA and within national direction.

**Attributes – Lake-related**

In regards to setting target attribute states, one area of particular concern to the Council is the attributes that pertain to lakes. The Council has no historic monitoring data to use as a basis for setting targets. While it is acknowledged that the NPSFM directs that Council’s should not delay making decisions because of uncertainty about the quality or quantity of the information, the situation in Marlborough is that we have no information. There is the potential that the Council would have to set completely arbitrary targets, and then have to prepare action plans to meet those targets. It would be preferable for the NPSFM, in these circumstances, to allow for monitoring of these attributes for a finite period, say 3 years, and then have a requirement to set the target attribute state. This would allow time to collect some data on the attribute on which to make an informed decision.

In addition to the above issue in relation to lakes, the Council has identified logistical barriers to monitoring in some locations. For example, Lake McRae, a high-country lake with no reasonable land access, would in all likelihood require a helicopter to facilitate monitoring. Marlborough also has several lakes that are not
adversely affected by land use activities, for example, Lake Chalice and Lake Alexander. Potentially high risk and highly expensive monitoring could be a consequence of the NPSFM, in essence only to tick a box that the Council is complying with its obligations.

**Recommendation**

That amendment is made to Part 3, Subpart 2, Clause 3.9 to recognise circumstances where no historical monitoring information is available, and allow for an additional monitoring period (e.g. 3 years) before setting target attribute states to provide time to undertake monitoring in those circumstances.

Consider amending the NPSFM to provide for an exception to setting target attribute states, and therefore monitoring, for lakes that are not impacted by land use activities.

**Attributes – Not monitored**

Similarly to the matter raised above in relation to monitoring information for lakes, the MDC does not have historical monitoring records for the attributes of fish, deposited fine sediment and dissolved oxygen. While it is acknowledged that the NPSFM directs that Council’s should not delay making decisions because of uncertainty about the quality or quantity of the information, the situation in Marlborough is that we have no information. There is the potential that the Council would have to set completely arbitrary targets, and then have to prepare action plans to meet those targets. It would be preferable for the NPSFM, in these circumstances, to allow for monitoring of these attributes for a finite period, say 3 years, and then have a requirement to set the target attribute state. This would allow time to collect some data on the attributes on which to make informed decisions.

**Recommendation**

That amendment is made to Part 3, Subpart 2, Clause 3.9 to recognise circumstances where no historical monitoring information is available, and allow for an additional monitoring period (e.g. 3 years) before setting target attribute states to provide time to undertake monitoring in those circumstances.

**Attribute – Periphyton**

The requirement is very site specific as results depend, not only on nutrient concentrations, but a number of additional factors. For example, differences in stream shading cause Chl-a results in different bands for the same nutrient concentrations. Also, only smaller streams can be sampled consistently, wading across half of a large river provides inconsistent results, as the portion of the riverbed sampled will vary with sampler (person height) and flow (depth of the river). Chl-a content of different algae species is very variable. Based on MDC monitoring data, 80% filamentous algae cover at one site results in Chl-a levels within the A-Band, while at another site, as little as 20% filamentous algae cover have resulted in a Chl-a level within the D-Band.

**Recommendation**

Reconsider the use of this attribute given the site specific nature of the attribute relative to other attributes. It would not be a representative measure of the state of an FMU.

**Attribute – Macroinvertebrates**

With regards to the first macroinvertebrate attribute (Table 13) – macroinvertebrate scores are quite variable, the species composition will change over time following flood events. Samples taken from the same site at different times following a flood event, for example after 2 weeks, then again 2 weeks later,
will have different species compositions. Reasons for this include, changes in water temperature and algae growth/dissolved oxygen. It is questioned whether the requirement to count 200 individuals, rather than the common abundance coding, actually provides better management information.

With regards to the second macroinvertebrate attribute (Table 14) – the Council is concerned that having two separate attributes for the same data set (macroinvertebrates) will be confusion for the public and difficult to effectively report on, particularly if the attributes result in different states. If the individual scores used in Table 13 are considered to be insufficient on their own, one combined score as in this attribute would be the preferred option.

**Recommendation**

Reconsider the use of two separate attributes for macroinvertebrates. A single attribute would sufficient and clearer for the public. The Council’s preference would be for Table 14.

**Primary contact sites**

The Council is concerned that the approach in the NPSFM (Part 3, Subpart 3, Clause 3.18) of monitoring primary contact sites on a weekly basis does not provide the public with a good indicator of whether it is safe to swim or not over the following seven days. For example, monitoring could be carried out and then a rainfall event occur the next day that results in elevated E.coli levels in a river between the event and the next scheduled sample being taken five or six days later.

The Council does support weekly sampling as being a measure for the state of water quality. This is quite a different objective than providing short-term advice to the public on the swimmability of a contact site, as it provides a picture of the long-term state of a waterbody. This will assist the Council in developing any catchment action plans that may be necessary to address long-term water quality issues, such as those which may be a product of ongoing land use activities.

**Recommendation**

Reconsider whether the requirement for weekly sampling in Part 3, Subpart 3, Clause 3.18(3)(a) is effective in providing the public with reliable advice as to whether it is safe to swim at a primary contact site.

The Council supports the retention of weekly sampling when used as a measure of the long-term state of water quality in a waterbody, as it is a valuable tool in catchment management.

**Action Plans**

It is noted in Part 3, Subpart 2, Clause 3.10(6) that action plans may be published either by including them in a regional plan, or by being published separately. Clarity is sought as to the status of action plans and the process around publication when they are published separately from a regional plan. Clearly if they are included in a regional plan, the action plans will be subject the first schedule process and all that goes with it, however on the face of it this Clause reads as though the alternative is just a straight publication of information bereft of any process and public participation.

**Recommendation**

No specific recommendation, however clarification is sought as to the intention, status and process behind the publication of the action plans so as to understand the Council’s obligations.
Wetlands

As part of the review of Marlborough’s planning documents and the drafting of the proposed Marlborough Environment Plan (MEP), MDC went through a very extensive process to identify the Significant Wetlands in our region. This included mapping wetlands through aerial photography and expert knowledge, consulting with landowners over the wetlands that had been identified, conducting site visits to ground truth wetlands when requested, and building a planning framework to protect wetland values. The identification of the Significant Wetlands was based on specific criteria, which are included in the MEP. The mapped wetlands are also identified in the plan.

Under the existing planning documents, the Council undertook multiple prosecutions, and other enforcement actions, with respect to unlawful activities in and around wetlands. A common theme in those proceedings was uncertainty regarding what features were, and were not, a wetland (given the RMA’s definition of wetland). So, one of the key aspects of the approach taken when reviewing those plans and drafting the MEP was to provided certainty, both to landowners and the Council, as to what features were wetlands for the purposes of regulation. The Council is concerned that the proposed new NPSFM has the potential to undermine much of the work the Council has done and to remove the certainty achieved, and in our view possibly not for any significant environmental gain. The proposal is likely to result in the Council having to identify and map a lot more wetlands, and ones that are not considered have to significant values under the MEP assessment criteria. It appears that the NPSFM is more focused on the quantity of wetlands, than whether a wetland has values that warrant restrictions being imposed on landowners. Having said that, it is acknowledged that there is a greater focus on the potential for a wetland to be enhanced, which may lead to increases in wetland numbers and extents into the future. However, that focus could be addressed through permissive regimes for enhancement, with perhaps future protection through mapping where values were established over time. It is also noted that the restrictions on activities in, and around, wetlands are not limited to those mapped in plans, but all wetlands that fit the definitions in the NPSFM. This again erodes the certainty the Council’s approach has established.

The MDC consider that the approach that has been taken in the MEP of mapping wetlands with significant values, and only regulating mapped wetlands, benefits the environment, landowners and regulators. With the addition of stronger regulatory and non-regulatory incentives for wetland enhancement activities, in the Council’s view the intent of Policy 8 of the NPSFM, for no further loss or degradation of wetlands would be achieved.

**Recommendation**

The Council has identified that there are a considerable number of drafting issues with Part 2, Subpart 3, Clause 3.15 of the NPSFM, and this makes it challenging to make recommendations for specific amendments. Overall, the Council is seeking for the provisions in Clause 3.15 to be amended to require the mapping of wetlands with significant values (not just wetlands that meet a size threshold), and that any rules apply only to the mapped wetlands.

Under NPSFM Part 2, Subpart 3, Clause 3.15(9) every regional council must develop and undertake a plan to monitor the condition of its region’s natural inland wetlands. It is not clear if this requirement only relates to the Standard Wetland Monitoring Obligation in Clause 5 of the NESFW, and therefore only relate to consented activities subject to this requirement, if it is only wetlands mapped and inventoried under Clause 3.15(5) of the NPSFM, or all wetlands. The extent to which Clause 3.15(9) applies has significant implications on Council resources.
The Council seeks clarification around the monitoring of wetlands pursuant to Part 2, Subpart 3, Clause 3.15(9) of the NPSFM, and would support limiting the application of this requirement to only wetlands subject to Clause 5 of the NESFW and/or Clause 3.15(5) of the NPSFM.

The Council found the drafting of the NESFW around wetlands to be poor and, for a tool that Councils are to use to implement the NPSFM, there are inconsistencies between the two instruments. For example, the NPSFM focuses on “inland wetlands”, however the NESFW does not mention “inland wetlands” at all.

There are a number of different definitions relating to different types of wetlands, and the defined terms are then used in varied ways in the national direction. As drafted, this provides confusion in many ways, for example, the NPSFM defines “natural wetland” and “inland wetland” (which of course mean different things) but then the provisions in the NPSFM consistently use the phrase “natural inland wetland”, which is not defined.

Recommendation

The Council would welcome any opportunity to engage directly with Ministry staff around specific drafting matters, including consistency issues, in the NPSFM, NESFW and Regulations to ensure the workability of the national direction.

Streams/Rivers

NPSFM Part 2, Subpart 3, Clause 3.16 relates to the loss of streams (Policy 9), the MDC supports the inclusion of these provisions, subject to a review of the drafting from workability and consistency perspectives. The Council notes that NESFW is a tool that Councils are to use to implement the NPSFM, however there are inconsistencies between the two instruments. For example, the NPSFM uses the term “streams” but the NESFW uses the term “rivers”.

Recommendation

Retain Part 2, Subpart 3, Clause 3.16 of the NPSFM, subject to a review of the drafting to improve workability and consistency with the NESFW.

Earth Disturbance and Water Take Activities

Part 2, Clauses 11-17 of the NESFW relate to earth disturbance and water take activities in and around wetlands and rivers. The Council has concerns around the workability of these provisions, including the status of activities, triggers for requiring a consent and the relationship between NESFW rules and regional plan rules for the same activities but established for different purposes.

Recommendation

The Council would welcome any opportunity to engage directly with Ministry staff around specific drafting matters, including consistency issues, in the NPSFM, NESFW and Regulations to ensure the workability of the national direction.

Fish Passage

NPSFM Part 2, Subpart 3, Clause 3.17 and NESFW Part 2, Subpart 3, Clauses 19-24 relate to fish passage, the MDC supports the intention to protect fish passage but has concerns about the interconnections
between these directions and the responsibilities of other agencies. Between these clauses, the addition of attributes for fish and submerged plants and the proposed content of national direction yet to come (e.g. the NPS for Indigenous Biodiversity), the Council is concerned that the statutory role of protecting habitats is blurring into species management, which is the responsibility of the Department of Conservation under the Conservation Act.

**Recommendation**

That the fish passage provisions are reviewed to provide clearer delineation between the roles of different agencies to ensure there is no unnecessary duplication.

We have identified a wide number of drafting matters of concern, from interpretation to definition to the effectiveness of the requirements. For example, NPSFM Part 2, Subpart 3, Clause 3.17(2) is quite detailed, and potentially covers quite disparate perspectives, for fitting into an objective. Perhaps, Clause 3.17(1) could be reflected in a plan objective, and Clause 3.17(2) could be used as the basis for developing policies and methods specific to relevant waterbodies to give effect to the objective. Clarification that the identification of valued and undesirable species under Clause 3.17(2)(a) and (b) links back to the identification of values with the community and tangata whenua under NPSFM, Part 3, Subpart 2, Clause 3.7 would also be useful. Or if this is not the case, then on what basis these identifications are made.

The NESFW in Part 2, Subpart 3, Clauses 19-24 also includes several drafting matters that require clarification or that are inconsistent with the NPSFM. For example, it does not make sense to enable the installation of a weir, which by its nature will change fish passage, then have a condition requiring that the same fish passage be provided for as exists naturally. And, the NPSFM (Subpart 3, Clause 3.17) references “instream structures” but the NESFW only talks about “dams” (Clause 24), which while the intention may seem obvious, could be interpreted as requiring fish passage for off-stream dams too.

**Recommendation**

That clarification is provided around the identification of valued and undesirable species under NPSFM Part 2, Subpart 3, Clause 3.17(2)(a) and (b), and that consideration is given to Clause 3.17(1) being developed as a plan objective, and the matters covered in Clause 3.17(2) being a basis for developing policies and methods specific to relevant waterbodies to give effect to the overall objective.

The Council would welcome any opportunity to engage directly with Ministry staff around specific drafting matters, including consistency issues, in the NPSFM and NESFW around fish passage to ensure the workability of the national direction.

In Part 2, Subpart 3, Clause 3.17(4) and (5) the focus is on existing structures and the Council establishing a work programme in relation to fish passage. In the first instance, the Council has concerns around the requirement to identify existing instream structures. Where these have been authorised through a resource consenting process, collating the data may take resources but it is achievable, however many structures in the bed of a river will have been installed over a long period of time under permitted activity rules and general authorisations. This latter scenario presents a challenge to the Council in terms of creating the inventory required. It has been suggested that perhaps these existing structures are intended to be identified through the Farm Environment Plans, if this is the case then perhaps this could be confirmed/clarified. There is also a concern around the scale of the potential task if it was, say, to include all culverts within road and rail corridors.

Building on this is parts (b) and (c) of Clause 3.17(5), which require the prioritisation of structures for remediation, the remediation required, and how and when this will be achieved. It is not clear to the Council what process would enable staff to enter private property, make an evaluation of a structure and impose remediation requirements on the party responsible for the structure. We further note the
potential for significant resources to be required to meet these obligations, including on an ongoing basis
given the monitoring requirement, both in terms of financial costs and the technical expertise that will be
necessary.

**Recommendation**
That clarification is provided around expectations relating to the identification of existing structures in
the beds of rivers, particularly what legislative processes are available to the Council for meeting the
obligations as set out.

**Freshwater Accounting**

The Council is supportive of requirements around accounting systems (Part 2, Subpart 3, Clause 3.20) and
the intention to amend the water metering regulations to require telemetry on all water meters. Given all
the data requirements in regards to freshwater accounting, and in many aspects of the national direction,
the Council is of the view that a national database would be the most effective and efficient mechanism to
manage all the data requirements.

**Recommendation**
That the implementation of the national direction in the Essential Freshwater package is assisted by the
development of a national database for the collection of data related to the policy proposals. In
addition to data collection and storage efficiencies, this would provide a basis for consistency of data
gathering and recording across the country.

**Interconnection between NESFW and NESPf**

The Council seeks clarification in regards to stringency and the prevailing of rules in relation to the NESFW,
National Environmental Standards for Planation Forestry (NESPf) and regional plans. The Council has
exercised greater stringency than the NESPf with regards to significant wetlands (SNAs under the NESPf),
however they may not be as stringent as the NESFW. In this circumstance, would the NESFW prevail as it is
more stringent? In general, the NESPf allows for plans to be more stringent to give effect to the NPSFM,
which is the purpose of the NESFW, so it is confusing that the NESFW would potentially state that the
NESPf would prevail (Part 1, Clause2(3)).

**Recommendation**
That the relationships between different pieces of national direction are reviewed to ensure workability
for regional councils in implementing all that is required, and ensuring that the relationships with
regional plans are also considered in terms of the ramifications if they are more stringent. This matter
should also be well covered in any guidance material provided at the time of commencement of any
national direction.

**Farming**

Subject to some drafting concerns, the Council supports the intention of the provisions in NESFW Part 3 –
Farming, however do wish to note that an unintended consequence of Clause 34 (Irrigated Farming) may
be to limit development where land use change is to a use that has less impact on water quality. For
example, in Marlborough the predominant irrigated land use is viticulture, a change in farming type from
pastoral farming to viticulture is likely to reduce the potential effects of farming that particular land on
water quality. Counter to this, in the following Clause 35 (High-risk Land Use Changes) it appears conversion from viticulture (horticulture under the NESFW) to dairy farming is not being regulated.

**Recommendation**

No particular recommendation, however the Council would encourage a review of NESFW, Part 3, Clauses 34 and 35 to ensure there are not unintended consequences of these provisions, which could unnecessarily restrict development (Clause 34), or adversely impact the environment (Clause 35).

It is the Council’s understanding that with the exception of where FW-FPs are required as a condition of consent, the Council is little more than a receptacle for information with regards to the FW-FPs required by the NESFW. On this basis, MDC does not offer any feedback on Subpart 3 of the NESFW, except with regards to one matter. The Council is concerned about the relationship between the action plans councils may, or must, do under Clause 3.10 of the NPSFM, and the FW-FPs. The Council considers there would be benefit in the FW-FPs being required to acknowledge and implement any action plans, to the extent that they are relevant to the location of the farm. This may sit well in within Clause 38 of the Subpart 3 of the NESFW.

**Recommendation**

That NESFW, Subpart 3, Clause 38 is amended to require FW-FPs to acknowledge and implement any regional council action plans, to the extent that they are relevant to the location of the farm.

### Stock Exclusion Regulations (Regulations)

As the Regulations are yet to be fully drafted, the workability issues noted are likely to be resolved through that process, the Council would welcome any opportunity to consider a fully drafted version of the Regulations. To the degree to which the Council can consider the content as provided, there are four matters in particular that we wish to raise — stock crossing versus stock exclusion, the stock crossing exception, definitions/deficiencies and stringency.

In the Council’s view the Regulations are not clear with regards to stock crossings versus stock exclusion. Does stock exclusion equate to stock not being able to cross a river or wetland, or because of Clause (a) stock crossing a waterbody is a separate activity? By way of example, if it is the latter, then deer are excluded (as per the low-slope table) but can cross waterways at will without restriction as deer are not specified in (a). If it is the former, the dairy/beef cattle and pigs are given the ability to cross twice a month but deer can never cross as they are not included in the exception but are excluded in the table. So can deer cross anytime, or never?

Clause (a) provides for dairy and beef cattle, and pigs, to cross a waterbody twice a month without restriction. We have several concerns around this, particularly the potential adverse effects on water quality. While the Council would consider that even two herd crossings a month was perhaps too many, the potential extrapolation of that out in catchments where there are multiple pastoral farmers could result in a single waterway being subject to stock crossings many more days of the month, potentially every day. This could be exacerbated by stock crossing multiple rivers that feed into a single larger river. In a Marlborough Sounds context, it is noted that there are a very high number of holiday homes that may often only be occupied twice a month, however it is not acceptable for them to pollute a waterway without restriction solely because of the low frequency of their activity. In the context of other provisions in the policy proposals, this exception appears to be quite at odds with the requirements to protect and monitor water quality for human contact, and quite likely impossible to manage from a compliance perspective.

Some examples of the concerns the Council has in terms of definitions and deficiencies are –
• the definitions are inconsistent with other definitions they reference, for example, Clause (d)(ii)(3) excludes dairy support, however the definition of dairy support in (d)(iii) is the same as the text in (d)(iii)(2) so in effect the definition of “dairy cattle” both includes and excludes dairy support;

• the definition of low slope land based on land parcels will result in patchy fencing in river valleys as some parcels extend into the hilly sides of the valley which means that, when slope is averaged across a parcel, an area of land alongside a water way may not need to be fenced. In contrast the neighboughing property, where perhaps because the hilly area is in a separate parcel to the flatter valley floor area, fencing may be required along the flatter land on one side of the river. Another area along further may average a lower slope across both sides of the river and have to fence both sides. The outcome is likely to be that some rivers along their length may have areas fenced on one side, both sides or no sides. As well as being a questionable approach from the perspective of protecting water quality, there is also an equity imbalance created here between neighbours along the same river. The following map of Are Are Creek in Marlborough is extracted from the maps provided on the Ministry for the Environment website, and highlights the parcels that would, and would not, require stock exclusion based the approach of averaging slope across parcels. Stock access has been identified as a water quality issue in Are Are Creek.
• the Council has also identified that the definition of low slope land, as identified on the maps provided on the Ministry for the Environment website, in some areas appears to not pick up land that would fit the criteria. In the examples below on the Wairau Plains, there are large areas of land that have not been identified, and would be low slope, and there is no methodology or reasoning to explain why they are not mapped. Again, this potentially creates both environmental and equity issues.

• there is a lack detail around processes for applying for, or for the processing of, exemptions and extensions (Clause (c) of the Regulations);

• the matter of stringency relative to regional plan rules is not clear. The Council anticipates that there may be circumstances where it may wish to be more stringent than the Regulations, however under the RMA the ability to do that needs to be explicitly provided for within the Regulations; and

• the use of an average setback from wetlands and rivers is unnecessarily complicated and likely to be difficult to both comply with and enforce.

**Recommendation**

The Council would welcome any opportunity to engage directly with Ministry staff to consider a fully drafted iteration of these Regulations.

In addition to clarifications around the meanings of words and implementation processes relative to the Regulations, the Council recommends the addition of an explicit provision stating that a regional plan can be more stringent (similar to NESFW, Part 1, Clause 2(1) and (2)).

**Summary**

The Council appreciates this opportunity to provide feedback on the Essential Freshwater Policy Proposals, and welcome contact from the Ministry if we can be of any further assistance.