Waiau Fisheries and Wildlife Habitat Enhancement Trust – Submission on 2019 Freshwater Reforms.

The Waiau Fisheries and Wildlife Habitat Enhancement Trust (Waiau Trust) was established in 1996. In 1990 ECNZ (now Meridian Energy Ltd) began the process of renewing the Resource Consents for the Manapouri Power Scheme. Between 1990 and 1996 the power company and the Southland community (through the Waiau Working Party community consultative group) worked together to address the significant adverse effects of the Manapouri Power Scheme on the Waiau catchment, and in particular the Lower Waiau River. The establishment of the Waiau Trust was one of the negotiated outcomes of the Resource Consent renewal process.

The Waiau Trust is a registered Charitable Trust. The Objects and Purposes of the Trust are set out below:

1. **Objects of Trust**

1.1 The Settlor directs, and the Trustees declare, that the Trustees hold the Trust Fund upon the following trusts, (in this clause 4.1) and to be used to further the following charitable purposes and objects in 4.2(a) to (k).

The Trust Fund shall be expended on projects within the Waiau River catchment which, together with the minimum flow regimes in the conditions of consent for the Manapouri Power Scheme, will mitigate and remediate adverse effects by:

- Creating, enhancing, protecting and maintaining habitat for freshwater fish and wildlife;
- Maximising ecological connections and habitat sustainability within and between all water bodies;
- Enhancing the overall ecosystem health and biodiversity values of the Waiau River and its tributaries;
- Facilitating and enhancing public access to the Waiau River;
- Enhancing the recreational and amenity values of the catchment.

1.2 **Purposes of the Trust**

(a) To identify and evaluate habitats within the Waiau Catchment worthy of protection, restoration, improvement or creation as fisheries and wildlife habitat. This will include areas for possible procurement with potential for habitat enhancement.

(b) To negotiate the protection, improvement, creation or procurement of fisheries and wildlife habitat with landowners and ensure, where practicable, the best
possible public access to fisheries and wildlife resources and other recreational resources, is secured.

(c) To provide and maintain public accesses for recreation activities to the main stem of the Lower Waiau River and the major tributaries within the catchment.

(d) To provide for the creation of additional habitat for fish and wildlife, and in particular whitebait habitat, on land owned or administered by MEL, the Minister of Conservation or other public land, adjacent to the Waiau Lagoon.

(e) To provide for any rearrangement and ongoing maintenance of the rock weir immediately below the Duncraig Bridge identified in studies carried out by Electricity Corporation of New Zealand/MEL as necessary to enhance habitat for fish and the aesthetic sense of landscape values of the river between the weir and Manapouri Lake Control at minimum flows.

(f) To provide for studies of freshwater fish in Lakes Manapouri and Te Anau, to determine the state of the fisheries and trends over time, as necessary.

(g) To provide or assist with the provision of information or facilities to enhance the understanding of the public of the values for which the Trust was established.

(h) To provide for the development and maintenance of project databases, documenting:
   - The number and scale of all habitat enhancement and access projects;
   - The cumulative mitigation and remediation outcomes achieved.

(i) To provide for the monitoring of the ecological response of the enhanced habitats, to ensure habitat enhancement outcomes are achieved.

(j) To work with MEL to communicate and disseminate information about the quantity and quality of habitat and public access mitigation and remediation outcomes achieved, in the Waiau catchment by the Trust.

(k) To foster partnerships with other organisations in the community in order to achieve habitat enhancement and environmental outcomes and public access to resources in the Waiau catchment, in a cost effective manner.

(l) Such further or other measures which in the opinion of the Trustees will:
   (a) Assist with the implementation of the National Policy Statement for Freshwater (NPSFW) or any other relevant policy statement; and
(b) Provide for the matters set out in sections 5(2)(a), 5(2)(c), 6(a), 6(c), 6(d), 7(a), 7(aa), 7(d), 7(c), 7(f) and 7(h) of the RMA 1991

In the Waiau River catchment.

As set out in the Trust Objects and Purposes the Waiau Trust plays a major role in mitigating and remediing the adverse effects of the Manapouri Power Scheme in the Waiau catchment.

The Waiau Trust activities focus on the restoration, creation and protection of wetlands and their riparian margins and the protection of stream habitats and their riparian margins. A “head waters to confluence” and “sub-catchment by sub-catchment” approach is taken. Habitats protected and enhanced include head water gullies, streams, peatlands, riparian wetlands in sub-catchments as well as riparian wetlands and spring-fed streams associated with the major tributaries and the main stem of the Lower Waiau River. Grants are provided to landowners to fence stream and wetland habitats. Landowners are required to permanently remove stock, control pest plants, cease burning and drainage and maintain the fences.

The Waiau Trust has 211 habitat enhancement projects on its books, protecting 3209 ha of stream, wetland and riparian habitat within the Waiau Catchment. The benefits for fisheries and wildlife are notable, with flow on outcomes for water quality and ecosystem health.

The Waiau Trust sees itself operating in perpetuity, as the effects of the Manapouri Power Scheme and land use changes in the wider catchment, are ongoing.

The above summary provides context for the Waiau Trust’s interest in the 2019 Freshwater Reforms.

Specific Submissions:

1. General Comment
The Waiau Trust submission is based on our analysis of:

The “Action for Healthy Waterways” (AHW) document,
The Draft National Policy Statement for Freshwater Management (NPS FW) and
The Proposed National Environmental Standards for Freshwater (NES FW).

Draft Stock Exclusion Section 360 Regulations

The Waiau Trust supports the overall general direction of Action for Healthy Waterways document, the Proposed National Environmental Standards for Freshwater, the Draft National Policy Statement for Freshwater Management and the Draft Stock Exclusion Section 360 Regulations.

The Outcomes sought by this reform package reflect and align with the work the Waiau Trust has been undertaking in the Waiau catchment over a 22 year time period. The proposed reforms add weight and credibility to the Waiau Trust’s work over that time period and into the future.

2. AHW - 4.5 Directing more integrated management of freshwater.
This concept has been part of the RMA since 1991 and previous freshwater reforms have attempted to strengthen integrated management of freshwater. It is a difficult concept to achieve.

The Waiau Trust strongly supports AHW 4.5 and the associated, Policy 3.4 - Integrated Management - of the draft NPSFW.
The integrated management concept reflects the “head waters to confluence” and “sub-catchment by sub catchment” approach the Waiau Trust has adopted in terms of protecting and enhancing streams, wetlands and their riparian margins.

3. AHW 11 – Aligning the RMA national direction

The Waiau Trust strongly supports this concept as it is critical to achieving integrated management. In particular we support the alignment intended with the upcoming updated NZ Biodiversity Strategy and new NPS for Indigenous Biodiversity (NPS 18).

To achieve the alignment and integrated management as intended we suggest that NPSFW Policy 3.4 (1) needs rewording to provide for alignment with the NZ BS and the NPS 18.

(1) Regional Councils must, consistent with te Mana o te Wai:

a) recognise the interactions ki uta ki tai between freshwater, land, waterbodies, freshwater ecosystems, other ecosystems, sensitive receiving environments (including the coastal environment) and the indigenous species and habitat which are part of these environments.

4. AHW 4.6 - Exceptions for major hydro schemes to support renewable energy targets and NPSFW 3.22 – Exceptions for large hydro schemes.

There is no doubt that the 6 listed hydro schemes are an important part of NZ infrastructure. The RMA already recognises this fact and provides for these 6, and other hydro power schemes, under S7 of the RMA.

NPSFW 3.22 sets out the basis for the exceptions. The Waiau Trust opposes exceptions being made for the 6 Hydro Power Schemes. All have significantly altered the natural freshwater environment of the river systems within which they are based. Of particular note is the 450+ m$^3$/s diverted (and lost to the Lower Waiau River) through the Manapouri Power Station and discharged to Deep Cove, Doubtful Sound.

As noted above, the establishment of the Waiau Trust was an outcome of the WWP consultation process around the renewal of the Resource Consents for the Manapouri Power Scheme. The Trust Deed - Purpose and Objectives- clearly state that the work of the Waiau Trust is to carry out mitigation and remediation of some of the significant adverse effects of the Manapouri Power Scheme in the Waiau catchment. It should be noted that the adverse effects of the scheme are permanent and ongoing. The Waiau Trust sees itself operating in perpetuity for this very reason.

It is now 23 years since the renewal of the Resource Consent for the Manapouri Power Scheme in 1996. At the time it was acknowledged that the agreement reached was a “starting point” for improving the ecosystem health of the Lower Waiau River. Since that time there have been changes of land use, intensification of land use in the catchment, the introduction of Didymo, as well as further reduction in flows down the Lower Waiau River, through changes to the Power Scheme Resource Consents. The state and trend of some contaminants and other ecosystem health indicators show deterioration or at least no improvement, over that time frame.

Given the unresolved and ongoing ecosystem health issues, the further reduction in flows down the Lower Waiau River and the volume of habitat enhancement work remaining to be done, it is illogical to make an exception of the Manapouri Power scheme from the limit-setting process. It would be a backward step in terms of achieving sustainable management of the water resource.
In addition the Waiau Trust is of the view that if exceptions are made for the Manapouri Power Scheme, in terms of contaminants and other ecosystem health indicators then the Resource Consent renewal process for the Manapouri Power Scheme in 2031, will result in a further cementing in of the “existing environment” in terms of flows and water usage and will result in diminishing support for, and importance of, the environmental enhancement work carried out by the Waiau Trust and other groups in the community. The exception could mean that the post-limit setting RC process will provide little opportunity for a more ecologically sustainable flow regime for the Lower Waiau River and could in reality mean the gains achieved in 1996 in terms of the minimum flow regime and the flushing flow regime, post MTAD, could be reduced or extinguished. The exception will mean there will be no incentive for power companies to play their part in maintaining and improving ecosystem health of the freshwater systems they utilise.

Reiterating the Waiau Trust position then, the Waiau Trust opposes AHW 4.6 - Exceptions for major hydro schemes to support renewable energy targets and NPSFW 3.22 – Exceptions for large hydro schemes. These sections of the AHW and NPS FW should be deleted.

5. AHW Section 5 - Raising the bar on ecosystem health.
   a). General Comments:
   This section addresses ecosystem health, habitat protection, wetland and stream protection, fish passage, water quality and water quantity issues.

   The Waiau Trust strongly supports these concepts, the NPS for FW including Appendices 1-3 and updated attribute tables and the prescribed limits and the NES FW.

   These concepts - important as they are for freshwater resources, are equally important for the protection of indigenous biodiversity.

   b). AHW S 5.6 - Wetlands:
   The concept of no further loss of wetlands is strongly supported.

   a). The proposed NPS FW provides clear direction to Regional Councils around what needs to be in Regional Policy Statements and Regional Plans to protect wetlands. This is positive and acknowledges all remaining wetlands are important.

   There is however a lack of direction for Territorial Authorities around wetlands. This has been a problem in the past with wetland protection/management responsibility falling between the cracks of Regional and Territorial Government, with neither taking full responsibility. The outcome has been further loss of wetlands throughout NZ, including wetland indigenous flora and fauna.

   The Waiau Trust submits that wetlands (including issues relating to their vegetation management) should be solely under the jurisdiction of Regional Councils. The NPS and NES should make this perfectly clear that the jurisdiction around wetland management lies with Regional Councils and reworded so that Territorial Authorities must defer to Regional Councils when land management issues, under their jurisdiction, involve wetlands.

   b). The RMA definition of effects includes positive effects. 90% of NZ’s wetlands have been lost and this progressive loss has continued under the RMA. The NPS FW provides guidance to Regional
Council’s that restoration of wetlands should be seen as a positive effect on the environment (3.15 (7)). This is strongly supported. Such a provision could be further expanded to ensure that restoration of natural wetlands should be a permitted activity, with standards. After all most of NZ wetlands have been drained without consent, so it makes little sense that Resource Consent is required to put them back.

In many cases restoration of degraded natural wetlands involves infilling of drainage ditches at one or more very localised sites to the original ground level. Usually the nearby original excavated material is used to create a minor dam in the bed of the ditch. Standards attached to the permitted status could include:
- the height of the infill dam, in relation to the original ground level, (the original ground level +0.5m of freeboard would be a good starting point)
- provision of fish passage where open water is being created.
- the restoration work has no effect beyond the property boundary, unless written agreement with the neighbouring landowner is provided.
- compliance with rules, relating to dam structures, in Regional Plans

The Waiau Trust submits the restoration of degraded wetland should be a permitted activity with appropriate standards.

C) AHW S 5.7 Habitat – Streams

The Waiau Trust strongly supports the concept of no further loss of streams.

Much of the Waiau Trust protection and enhancement work involves the protection, through fencing and stock removal, of small streams and their riparian margins. The effects of these actions on small stream ecosystems is positive, with a reduction in pollution tolerant macroinvertebrate species over time and improvements in water quality and macrophyte species diversity. These small streams are the headwaters of river systems and provide important habitat for native fish species, particularly the non-migratory galaxiid species.

d) NES FW – 30 Intensive winter grazing.

The Waiau Trust submits the proposed standard and activity status is a step in the right direction, but are of the view future refinement will be required, particularly where the activity is in hill country, where overland flow is a greater risk.

Based on Waiau Trust experience and observations over a long period of time, the problem with sediment and other contaminant runoff from land used for winter forage crops is that it is a 12 month effect issue – not an issue limited to the winter months when animals are present. In terms of fine sediment runoff, the effect is a “bare soil” issue. The timing is as follows:
- Paddocks are cultivated and sown in fodder crops in November/December. Bare soil and risk of fine sediment runoff exists until canopy closure – 1-2+ months, depending on the crop.
- Animals are present May to August – up to a maximum of 5 months, when bare soil is created and the risk of overland flow is high.
- Paddocks are re-sown (2nd rotation fodder crops or grass) November/December depending on weather and soil temperatures – another 3-4 months of bare soil, from
September to Nov/Dec.
- Finally an additional 1-2 months of exposed soil occurs until canopy closure.

The Waiau Trust submits future refinement of the runoff risk of this activity will need to focus on the size, frequency and duration of storm events that produce overland flow. Such an analysis can be used to better define the risk and further influence paddock selection with a view to mitigating risk. This could be done at a regional level.

At this stage we do not have any submissions, re changes to “30 - Intensive winter grazing”, but respectively suggest the analysis of overland flow in relation to storm events would be a worthwhile area for research.