SOUTH WAIKATO DISTRICT COUNCIL

WRITTEN SUBMISSION TO THE MINISTER FOR THE ENVIRONMENT

In the matter of:

THE ESSENTIAL FRESHWATER PACKAGE – ACTION FOR HEALTHY WATERWAYS – DISCUSSION DOCUMENT

And

The draft National Policy Statement for Freshwater

And

The draft National Environmental Standard for Freshwater

And

The draft Stock Exclusion Section 360 Regulations

On behalf of the communities of the South Waikato District

Personal details removed
A. **INTRODUCTION**

1. The following is South Waikato District Council’s (Council) feedback on the government’s discussion document “Action for Healthy Waterways” (the Discussion Document) and the tranche of new Resource Management Act (RMA) documents as part of the Essential Freshwater and Three Waters review.

2. The RMA proposals include a completely re-written National Policy Statement for Freshwater Management (NPS FM), and introduces a National Environmental Standard for Freshwater (NES F) and a regulation under s.360 of the RMA relating to stock exclusion from particular waterways (the regulation). It is also signalled that further national policy guidance is likely through other work streams, including changes to the principal Act, for the purpose of enabling improvement in the management of freshwater.

3. Council is providing feedback on the proposals for the purpose of informing the Minister of the particular matters that are supported, that should be retained, have merit but require amendment, or are not appropriate and require deletion.

4. Council's preference is to have presented this information kanohi ke ti kanohi, face to face, so that the Government can see those whom are affected by these proposals and hear their stories; the South Waikato Story. This was an expectation of our community. Unfortunately, this opportunity has not been extended to stakeholder effected by the Essential Freshwater Package. Therefore, this submission is reluctantly presented in written form.
B. BACKGROUND AND SOUTH WAIKATO DISTRICT PROFILE

5. The South Waikato District Council (Council) recognises the critical role that the protection and use of freshwater plays in ensuring that our community and environment is healthy, safe, and sustainable. As such, we actively participate in processes where decisions on how freshwater is managed in order to help us achieve our three keystone areas in our LTP; namely Growth, Resilience, and Relationships. This involvement has included making submissions and giving evidence for Plan Change 1 (PC1) to the Waikato Regional Plan which 'gives effect' to Te Ture Whaimana for the Waikato and Waipa Rivers (Te Ture Whaimana).

6. Mayor Shattock points out in her evidence for PC1 the extensive consultation that Council undertook with a broad range of stakeholders in its district to get an idea of the scale of impact on Council’s community.\(^1\) Significant financial and staff resources are being allocated to engage with the PC1 process, both as a standalone party and with WARTA (Waikato Region Territorial Authorities).

7. Mayor Shattock also sets out the key statistics of the District. The evidence of her Worship is appended to this attached to this submission as Appendix A. However, it is prudent to start telling the South Waikato story by highlighting some of that key information:

   i. Between 2006 and 2013 the district experienced an **annual decline of 1%** of population;

   ii. The **unemployment rate** in the District is approximately **9.0%** as opposed to approximately 4.3% nationally;

   iii. **Agriculture and forestry employ 23% of the population** compared to the national average of 5.8%;

   iv. The total **dairy payout alone for the 17/18 season was approximately $402m with total GDP of around $1,050m (roughly 40%)** not including income generated from support services;

   v. Auckland University’s Index of Multiple Deprivation (IMD) shows the South Waikato District as having:

      a. the **4th highest** proportion of its population living in quintile 5 (the most deprived) in the North Island at **51%**.

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\(^1\) Evidence - Mayor Jenny Shattock, Plan Change 1 Paragraphs 12-15
b. the **highest level of deprivation in the Waikato Region** over 10% clear of the next district (Hauraki at 40%).

c. approximately **70%** of its population in quintile 5 for the employment measure, the next highest in the region being Hauraki at 35%.

vi. There are two main river catchments, the Waikato Awa (66% of land area) and the Te Waihou Awa (approximately 30% of land area);

vii. Approximately **88,000ha** of the district is in production forestry;

viii. The population of the district is approximately **23,000 people** and is comprised of three main urban centres being Tokoroa, Putāruru and Tīrau, and a range of small settlements and rural accommodation;

ix. There are **525 dairy farms** in the district.

8. While some population growth has occurred since 2013, this is both sporadic and fragile, and it is thought that this is perhaps more a side effect of the housing crisis rather than the result of any improvement in the economic fundamentals of the District.

9. As the large proportion of its GDP is related to export commodities, the district is vulnerable to international economic pressures. This applies particularly to dairy and wood products. There is increasing pressure on both of these industries from locally observed climate change with dry summers and extreme wet and or dry winters. The district is also facing an emerging vulnerability to regulatory pressures.

10. In October 2018, Councils rating valuers reported decreases in value for the South Waikato dairy land of -5% and pastoral of -9%. This equates to a significant $172,989,800 of capital value reduction to our district land. This was largely attributed to the adverse effects of regulation, in particular, the notification of PC1.

11. Council staff undertook further analysis through is geographic information systems and found that, when compared to 2015 valuations, and excluding forestry, all farming land in the Waikato catchment under PC1 fell 9.8%. This was then compared to the Te Waihou catchment area of our district, which is not captured by the proposed plan change, which fell 6.6%, the decreases in value of the aforementioned land is worse in the Waikato catchment by more than 33%.
With anecdotal evidence that the level of debt held by farmers in the district is disproportionately high at a national level, and that there is pressure from the government to tighten debt ratios even further, the story makes for stark reading.
C. **TE TURE WHAIMANA, PC1 AND IMPACTS ON THE DISTRICT**

13. Te Ture Whaimana for the Waikato and Waipa Catchments is the preeminent policy document for the management of freshwater for the catchments it relates to. Its development and implementation is a requirement of the various Treaty of Waitangi settlements and the legislation. We will not focus on the detail here. However, is important to recognise that it has the status of an NPS under the RMA and, in the event of conflict, takes precedence over the NPS FM.

14. Council wishes to be clear, we support the aspirations of our treaty partners, and further to that, we agree that improvements in water quality of both the Waikato and other significant awa of the district are required. Indeed, as noted in the evidence of Mayor Shattock\(^2\), Council is walking the talk when it comes to its contribution of resources to administer, fund and co-ordinate restoration projects for the enhancement of water quality. The contribution from a small Council is substantial. However, the potential costs to the district and Council arising from the implementation of PC1 alone may be crippling.

15. From a community wellbeing and economic context, we have already highlighted the impact of regulatory uncertainty on farm values in the District. PC1 will have a substantial impact on our most significant industries, particularly dairy. Not only is this impact on individual farmers, but it will also affect the numerous associated support services. This is highlighted by analysis done on the potential scenarios for PC1 as follows:

   "The WRPC1 is predicted to have significant detrimental impacts on value added and employment in the dairy sector but is predicted to lead to more jobs in forestry and wood and paper manufacturing, relative to the "business-as-usual" setting (Table 4). Indeed, 400, 284, 172, and 40 jobs are predicted to be lost in the dairy sector alone in Scenarios A, B, C, and D, respectively, relative to the "business-as-usual" case (Table 4). Additionally, 35, 25, 15, and 5 million dollars in value added is predicted to be lost in this sector in Scenarios A, B, C, and D, respectively, relative to the "business-as-usual" case."\(^3\)

16. In an operational context, a number of Council’s wastewater treatment plants require consent renewals. Again, we refer you again to the evidence of Mayor

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\(^2\) Evidence - Mayor Jenny Shattock, Plan Change 1 Paragraphs 30-34

\(^3\) Regional and national level economic impacts of Proposed Waikato Plan Change No.1 – Waikato and Waipa River Catchments, McDonald and Doole.
Shattock who outlines the costs associated with the required upgrades.\textsuperscript{4} Of particular note is paragraph 38 as follows:

"The [treatment] options were taken to the wider community and Option 1 has been selected. This allows Council to meet its obligations under plan change 1, fulfil our obligations to River Iwi, and be as prudent with rate payer funds as possible. However, a \textbf{22\% increase in rates and a $405 per ratepayer} increase over ten years places significant pressure on a disadvantaged and deprived community. This adds to the cumulative pressure on my community, and we may be hit again in another 10 years’ time [with another plan change] \textit{despite contributing less than 1\% of the nutrients} to the river catchment."

17. The practical implications go beyond increased rates burdens, there is also significant opportunity cost. Council may have to sacrifice at least some of infrastructure development to support the tentative growth that is occurring in the district in order to afford the increased treatment requirements to service its current residents. This effectively works to ensure that the South Waikato will stay at the wrong end of any statistical analysis for decades to come.

18. Council is concerned that the proposed amendments to the NPS FM as part of this package will require substantial 'rethinks' of the frameworks in PC1, or at least add more financial impacts over what has already been modelled and determined significantly adverse on the South Waikato's farming and wider community.

19. Apart from the cost of the regulatory impact of PC1, it is understood that the Waikato Regional Council (WRC) has already spent a minimum of $20m so far on administering the project on behalf of the community. Significant change to the national policy framework after this level of investment and before the implementation of this framework will result in even more costs, exacerbate existing uncertainty and lacks fairness. This is not to say that Council is satisfied with PC1 as it stands.

20. Council acknowledges that both te awa o te Waikato and other awa of the district are degraded and need to be improved. However, the proposed framework for PC1 has a range of fundamental deficiencies. Council has developed five principles that an amended PC1 requires:

\begin{enumerate}
  \item \textbf{Effects-based provisions that accommodate changes in land use activity, provide for multiple land use opportunities, innovation}
\end{enumerate}

\textsuperscript{4} Evidence - Mayor Jenny Shattock, Plan Change 1 Paragraphs 35-39
and diversification, and can be supported by sustainable land management practices.

2. **A sub catchment approach** to managing the four contaminants.

3. **A sensible, practical, certain, fair and simple implementation regime** with realistic timeframes for reporting and deadlines for compliance needs to be provided.

4. Methods of implementation that are **affordable to land owners and communities and minimises the impacts on the social, economic and cultural well-being of communities**.

5. A framework that can satisfy the matters in section 32 RMA\(^5\) to inform decision-making that the Plan Change and or **alternative approaches are fit for purpose to promote sustainable management of natural and physical resources**.

21. While the government’s proposals will be discussed in more detail below, the principles appear just as relevant to them. Council’s view is that the proposals set out in the Discussion Document will:

A. Increase costs and uncertainty further and other negative social impacts on our community;

B. Not improve the management of freshwater;

C. Not achieve the outcomes sought for freshwater; and

D. Not reflect sustainable management.

\(^5\) Specifically meeting the purpose of the Act and efficiency and effectiveness measures in section 32(1).
D. ACTION FOR HEALTHY WATERWAYS – DISCUSSION DOCUMENT

22. Council’s view is that the proposals are clearly counterintuitive to sustainably achieving freshwater objectives. The package represents a fundamental disconnect between the desired environmental standards, the ability to achieve them, and the costs to communities already in poverty. It is seldom that good policy outcomes result from using poorer quality information in a compressed timetable. The package is somewhat myopic and focusses on punitive approaches to apparent causes of freshwater problems. Conversely, it does not appropriately and strategically identify or provide for real-world solutions.

23. Many practical and effective tools that assist in meeting those objectives are being unnecessarily constrained or taken from the toolbox of interventions and there is also substantial duplication of responsibilities between Regional and Territorial Authorities.

24. There is an inescapable and fundamental nexus between all four well-beings (social, cultural, economic and economic) which needs to occur to achieve sustainable management. These proposals fail to achieve that. It is clear the proposals in the Discussion Document do not meet Part 2 of the RMA, in particular section 5 - sustainable management.

4. Setting and clarifying policy direction

"Proposals to require a holistic view of managing land and water resource and enable faster planning”

- 4.2 Te Mana o te Wai

25. Te Mana o te Wai is a principle that was introduced into the NPS FM previously, but now firmly underpins the shape and effect of the draft NPS FM. However, the commentary on the concept in the draft NPS FM is vague and not complete. This is highlighted by a quote within the explanatory text as follows:

"As it applies to freshwater management, Te Mana o te Wai is a framework that has many features. These may be interpreted differently by different people."

26. The draft NPS FM then outlines 5 points on what implementing Te Mana o te Wai means when applied in a local context. These include:

a. The hierarchy of values in objective 1;

b. Involving iwi and hapu and identifying and reflecting their values and interests;

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6 Page 3 draft NPS FM 2019
c. Engaging tangata whenua and communities to identify freshwater issues of importance to them;

d. Enabling the application and use of other values systems such as maturanga maori to freshwater;

e. ki uta, ki tai, maintains to sea integrated management approaches.  

27. Council’s view is simply that, despite the ‘tag line’ in the Discussion Document, the proposals are clearly not holistic.

28. Where one element (the environment) is elevated and at the expense of other social, economic and cultural well-beings then the outcome will clearly be imbalanced. Mr Murray Kivell, repeatedly makes this point in his evidence on behalf of Council to the PC 1 hearings.  

This is best highlighted by the single objective in the draft NPS, as follows:

“The Objective of this National Policy Statement is to ensure that resources are managed in a way that prioritises:

a) first, the health and well-being of waterbodies and freshwater ecosystems; and

b) second, the essential health needs of people; and

c) third, the ability of people and communities to provide for their social, economic and cultural well-being, now and in the future.”

29. Policy 1 of the draft NPS FM supports this by requiring “Freshwater is managed in a way that gives effect to Te Mana o te Wai”. There is only 1 policy addressing economic wellbeing, Policy 13. This reinforces the sustainability of communities as ‘bottom of the pile’ as well-being is subject to the hierarchy in Objective 1.

30. Economic and social well-being appears to be conflated with wealth and profit. For our communities it means survival. Some media commentators have commented publically that dairy is only 3% of national GDP and that the economic impacts of the proposals in the Discussion Document will therefore be minor nationally. That is not the South Waikato Story, and contrasts with dairy alone contributing more than 40% of GDP within the South Waikato District.

31. Mayor Shattock’s evidence on PC1, including the District's economic profile was already stark without the impacts of PC1 being taken into account. The Discussion Document proposals as a package set an even higher bar in many areas. This can

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8 Evidence - Murray Kivell, Plan Change 1 – Block 1 - Paragraphs 4, 7, 23, 26, 44, 51, 62-68, 91 -109
only result in further pressure on the sustainability of the communities of the South Waikato, both individually and as a whole.

32. Given the precarious position of large numbers of the South Waikato community that live in high levels of deprivation, government policy that explicitly places their basic and fundamental needs at ‘the bottom of the pile’ is questionable at best. However, the message is clear; the economic wellbeing of communities is subservient to all other matters in the NPS.

33. The evidence of Mayor Shattock, former Councillor Baldwin and Planning Consultant Mr Kivell for Council to the PC1 hearings (attached) identify the impossibility and flaws of imposing a planning framework for freshwater that does not result in the practical application sustainable management; the purpose of the Resource Management Act 1991. This must include a suitably balanced collation of the four well-beings, including economic.

34. The proposed approach is in contrast with the Operative NPS FM which has four objectives for managing water quality, five for managing the quantity of water, one for the integrated management of water, the National Objectives framework, monitoring, freshwater accounting, te mana o te wai, and tangata whenua roles and interests.

35. The objectives of the Operative NPS FM do not set a priority of interests and each objective must be met. For example, Objective A1 seeks that the life supporting capacity of water and the health of people and communities are both safeguarded. Objective A4, added as part of the last review of the NPS FM, seeks that communities are enabled to provide for their economic well-being, within limits (of water quality).

36. In giving evidence to the Hearings Panel for PC1, Council identified that, without strong communities, the costs of moving towards better water quality cannot be met. Particularly where, as in the case of the Waikato catchment, significant on-farm investment in mitigation infrastructure (particularly for dairy farming) will need to be made in order to achieve water quality outcomes.

37. This is most clearly articulated by the evidence of former Councillor Gray Baldwin, a multigenerational farmer, businessman, and professional company director, which is also attached as Appendix B. Council encourages you to read Cr Baldwin's evidence in its entirety. The key themes from that evidence are:

- There are a range of options available to mitigate adverse effects on water quality, but the biggest gains require the largest investments;
- Not all mitigations work the same way for each land management system or given piece of land;
- There is a will and commitment to improve water quality through the stewardship of the land;
- A level of regulation will be required, but this must focus on effects, not just land use;
- Improved water quality cannot be achieved without flexibility in the use of land, particularly to enable the funding of highly effective mitigations.

38. While the proposed objective is admirable to a degree, the implications are far broader than currently understood for even PC1. Essentially, the baby (the community) appears to be thrown out with the (bath/fresh) water.

39. It is preferential that the objectives of the Operative NPS FM be retained as they are both more likely to get sustainable improvements in water quality using the four well beings, and better reflect 'real world' approaches to land use changes and/or investment to achieve better freshwater outcomes.

40. While we will touch on this further later, the proposals exempting particular hydro schemes from complying with certain bottom lines are in direct conflict with Objective 1. The actual and potential effects of hydroelectric schemes on biodiversity, river geomorphology, fish passage and flow regimes are well understood. It is difficult to make sense of a policy framework that has such contradictory provisions.

41. There is also particular concern regarding the hydro scheme exemption and Objective 2.1(b); the essential health needs of people. This is of relevance to the South Waikato as the Waikato Regional Council are already seeking to 'claw back' water allocation for the Waikato River. This is the river system where much of the South Waikato’s municipal water takes come from. Much of the water in that system is already allocated to the hydro electric scheme takes. Further exemptions to compliance will not only have ecological impacts, but could result in allocations of water for municipal supply further restricted. This would be yet another constraint on development and growth in the South Waikato District.

42. Council’s view is that the government will miss an opportunity to set priority access for freshwater for community health and wellbeing with the proposed Objective as it stands.

43. The requirement to develop a long term vision to give effect to Te Mana o te Wai in Regional Policy Statements also creates uncertainty and will increase costs. The
Waikato Regional Council (WRC) has already undertaken considerable background work in this area with its 'Lets talk water' programme, feeding into the Waikato Freshwater Strategy. Those documents will now need to be reviewed for alignment with the final amendments to the freshwater policy package. It would be unfortunate if the change in national policy resulted in the investment of this work being made redundant.

44. There are a range of directions in 3.2 of the draft NPS FM regarding the development of the long term visions, particularly regarding engagement with 'communities' and tangata whenua. For the Waikato and Waipa awa catchments this is already completed by Te Ture Whaimana developed by the Waikato River Authority and the collaborative process to develop PC1. This lends further weight to the argument that the existing process undertaken as part of PC1 should not be affected by the amended provisions of the NPS. It could be argued that, as Te Ture Whaimana has priority over the NPS for those catchments and the obvious potential to undermine the years of work and investment by Council's, Iwi, communities and other stakeholders, the amended NPS FM should not apply.

45. The introduction of the concept of 'ki uta, ki tai' - from the mountain to the sea 'whole of catchment' approach, including the receiving environment (i.e harbours, estuaries swamps ect) is generally supported. However, Policy 4 of the draft NPS FM should be clarified to incorporate or provide for Council's preference for 'sub-catchment' level management set out in PC1.

46. The catchment for the Waikato awa is perhaps the most extensive in New Zealand in terms of land area, with significant variations in geomorphology (topography, soil, geology, climate, current water quality), and other land use factors. A 'whole of catchment' approach needs to consider and provide for the spatial variations in those factors including targeted and specific interventions tailored to meet those management needs.

47. Council notes that PC1 utilises Freshwater Management Units (FMU's) below catchment level to achieve this. However, Council's view is that they are not fine grained enough for effective and efficient management for water quality purposes.

48. A whole of catchment policy is essential to achieve integrated management of water quality, but so are targeted and appropriately selected management interventions within spatial variations in the environment within those catchments. It is recommended that either the policy is amended, or a new policy drafted that enables specific sub-catchment management interventions required.
4.3 Strengthening Māori values

49. Despite the note to the contrary on page 32 of the Discussion Document, the two proposals to include mahinga kai as a compulsory value and strengthening priority to tangata whenua freshwater values clearly carry some weight in the draft NPS FM. In particular, Policy 5 has been drafted to bring more Māori freshwater values into the management of, and decisions relating to, freshwater. However, the key word of concern in this policy is 'interests'.

50. The Waitangi Tribunal's Stage 1 decision on WAI 2358 regarding rights and interests in water explicitly states that there are (amongst others) unresolved ownership interests in water for Iwi/hapu. The exact implications are unknown at this stage, but could be wide reaching. In the NPS FM context, each catchment process may be required to determine how these outstanding interests are affected and resolved by RMA provisions when allocating water quality and quantity.

51. The RMA does not and cannot allocate 'ownership', its purpose is to manage the effects of the use and development and protection of natural and physical resources. Further, the complexity of determining what interests are applicable in an RMA sense will certainly delay positive action towards good freshwater outcomes.

52. While certain rights and interests should be determined locally, the RMA plan making process or consenting regime is not an appropriate way at this point in time to settle outstanding ownership grievances in relation to Te Tiriti o te Waitangi. This should be resolved by the Crown and affected Iwi/hapu and be specific, rather than the general statement in the policy and left for regional council's to interpret and resolve. Council recommends that some clarification be provided over the matters that are intended to be covered by the term 'interests' in policy 5.

53. The inclusion and use of mahinga kai as a compulsory value and the use of maturanga Māori generally is supported, but there is currently a lack of information as to what that might mean in practice. This is exacerbated by the compressed timetable (2025) for the implementation of plan changes to give effect to the NPS FM. This amplifies the complexity of appropriately engaging a multitude of iwi/hapu, the time and cost to appropriately engage to determine the values for each group, and the varying capacity between each Iwi/hapu to participate in any process.
4.4 Freshwater Planning Process

54. Council is deeply concerned over the change in implementation timetable to require plan change decisions on freshwater frameworks for all of New Zealand by 31 December 2025. The extensive consultation, research and simply processes involved are just impossible to undertake with any level of quality in this timeframe.

55. The Government’s approach is three pronged:
   a. Tighter timeframes (all decisions on freshwater implementation by 2025),
   b. Lower information requirements,
   c. Fast track hearing process with limited appeal rights.

56. Council’s five principles set out above represent its difficulty Council has with the PC1 process and outcomes after nearly 5 years of policy development and even more undertaking research by WRC. Council is simply seeking that PC1 meets the sustainable management purpose of the RMA.

57. The experience with PC1 demonstrates that a 'good process' is often a long one, particularly regarding the development of quality science and community engagement. Bringing implementation dates forward will have both cost and quality implications for both developing frameworks, and in terms of implementation, to Council’s, communities and ultimately the environment. This must be of great concern given the experience that both WRC and Council have had regarding PC1 and that engagement for the Te Waihou catchment in the near future, and for WRC there are several others.

58. Council is also concerned that the Government’s response to facilitate the 2025 timetable is to attempt to reduce the information requirements as set out in 3.9(6)(b) and (c) of the draft NPS FM. It is difficult to see how lowering the information threshold for setting target attribute states will meet other regulatory requirements of the RMA or provide quality management frameworks.

59. Ultimately a resource management 'problem' or issue will need to be adequately defined/understood, so that it can be managed by the appropriate objectives, policies and methods will need to achieve it. The tests set out in section 32 of the RMA for appropriateness, to achieve Part 2 of the Act and for provisions to meet any objectives, and the efficiency and effectiveness of provisions to meet objectives will be required to consider the level of information available. How can efficiency and effectiveness be determined with deficient information, or in some instances its absence?
Further to this, a process that imposes obligations on persons without sufficient justification lacks fairness and certainty. Indeed, the farming sector in the South Waikato is already becoming increasingly marginal without additional unjustified regulatory interventions.

It is understood that the Government will look to create a specific freshwater decision making pathway through amendments to the principal Act, similar to that used for the Auckland Unitary Plan. This will be used to ‘fast track’ hearing processes and decision making, and reduce appeal rights.

Given the sheer number of catchments nationwide, it is difficult to see how sufficient expertise exists to represent council’s, communities, stakeholders or have decision making functions in such a compressed timeframe in all relevant areas.

Put together, the three pronged approach together is clearly not a recipe for quality solutions to freshwater issues, good public engagement, or selecting/making appropriate management interventions.

- 4.5 Directing integrated management of freshwater

Much of the section on integrated management is reflected in the Operative NPS FM. This is where the 'mountains to sea' approach is implemented. Co-operation between local authorities is now encouraged and is supported by Council. The two major river systems within the South Waikato District, the Waikato and Te Waihou, pass through multiple TA jurisdictions and the need to work together to find solutions is obvious.

A new direction in 3.4 of the draft NPS FM requires regional council’s RPS documents to direct TA’s, including SWDC, to include objectives, policies and methods to avoid, remedy, or mitigate the cumulative effects of land use of freshwater bodies and other matters from urban development. This is a very broad and general direction that is confusing as this is not a function that TA’s have in the RMA, especially as regional councils are able to manage land use and development as directed in 3.4(1)b of the draft NPS FM.

The functions set out in section 30 of the RMA (Functions of regional councils) already provide a matrix of pathways to effectively manage land use and infrastructure impacts on freshwater, including the following:

"(a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region:"
(b) the preparation of objectives and policies in relation to any actual or potential effects of the use, development, or protection of land which are of regional significance:

(c) the control of the use of land for the purpose of—

(i) soil conservation:

(ii) the maintenance and enhancement of the quality of water in water bodies and coastal water:

(iii) the maintenance of the quantity of water in water bodies and coastal water:

(iiiia) the maintenance and enhancement of ecosystems in water bodies and coastal water:

(f) the control of discharges of contaminants into or onto land, air, or water and discharges of water into water:

(g) in relation to any bed of a water body, the control of the introduction or planting of any plant in, on, or under that land, for the purpose of—

(i) soil conservation:

(ii) the maintenance and enhancement of the quality of water in that water body:

(iii) the maintenance of the quantity of water in that water body:

(ga) the establishment, implementation, and review of objectives, policies, and methods for maintaining indigenous biological diversity:

(gb) the strategic integration of infrastructure with land use through objectives, policies, and methods"

67. In particular, the functions relating to integrated management, the control of the use of land for the maintenance and enhancement of the quality of water, and the strategic integration of infrastructure with land use are clearly aligned with regional councils and are the most appropriate ways to manage regional water issues. As proposed, the approach is an unnecessary duplication of functions.

68. Regional Councils are the authority that manages discharges, including stormwater and waste water, and most also manage earthworks (sediment impacts), including WRC. This is therefore an unnecessary duplication of powers and process. The examples of potential management interventions given in the consultation draft fall squarely in the realm of regional council RPS and Regional Plan content.
It is also not clear if the provision shifts a level of accountability onto TA’s regarding the achievement, or otherwise, of water quality standards or objectives.

The approach may inadvertently undermine the whole of catchment management (ki uta, ki tai) set out in Policy 4. Given the comprehensive nature of the interventions used in PC1, additional responsibilities be given to individual TA’s could result in a patchwork of interventions that are unnecessary disjointed.

In the Waikato/Waipa catchment example, extensive modelling of interventions has been undertaken in order to attempt to resolve the matters set out in Te Ture Whaimana in developing PC1. This is a significant investment in a coherent integrated planning framework for a huge catchment. The TA’s that administer land within the PC1 catchment are as follows:

- South Waikato District
- Waikato District
- Otorahanga District
- Waipa District
- Matamata- Piako District
- Hamilton City
- Waitomo District
- Taupo District
- Rotorua District

If each were required to develop their own framework over and above that which is finally settled on for PC1, then there is potential for numerous complications including unnecessary:

a. Increased costs on communities from additional interventions and duplicate plan change process.

b. Increased complexity of planning frameworks.

c. Uncertainty in terms of compliance.

d. Undermining of already comprehensive and coherent regional freshwater frameworks.

e. Spatial variation in regulation.

While Council supports fine grained management of freshwater management issues, in particular sub-catchment management approaches, this should be part of a coherent regional/catchment wide framework.

It should also be noted a number of Councils in the Waikato Region, including SWDC have adopted the Regional Infrastructure Technical Specification (RITS), a document that manages infrastructure performance and design. One of the key
aspects of the document is the introduction of the treatment of stormwater to many Council's infrastructure design requirements.

75. Council's understanding is that the base document was Hamilton City Council's development engineering requirements. Hamilton has experienced massive growth and expansion over the past decade. This has put pressure on both infrastructure capacity and the quality of the receiving environment for stormwater, in particular. Through the renewal of its comprehensive stormwater consents from WRC, it was identified that improved discharge quality was required, requiring treatment prior to disposal.

76. A district plan may incorporate requirements in terms of its infrastructure network to meet its regional resource consent obligations such as its effluent and stormwater consents. However, the wholesale duties as imposed by the proposal are unnecessary, are not specific enough in scope, duplicate regional functions and may pass on accountability for managing freshwater resources TA’s without the necessary tools/functions or being the decision making authority responsible for the majority of the key frameworks.

77. Council acknowledges that subdivision is a valid tool to manage landuse related water quality, and also that it is not a function in the tool box administered by regional councils. It is understood that subdivision provisions in the Hamurana area of the Rotorua Lakes District has been developed in part to mitigate/manage nutrient inflows into the Rotorua/Rotoiti lakes. However, this is specific solution to a particular problem in a specific part of a catchment and requires a considered approach directed at the regional level. It is not appropriate that TA’s are required to come up with these solutions in isolation, particularly without expertise in water quality management.

78. Council would support the direction to include policies that take into account directions set out in regional freshwater planning frameworks. This policy direction should be specific and come out of sub-catchment approaches. Suitable direction can be given to spatially distinct areas to encourage subdivision/change land use in regional planning documents for strategic purposes, such as enabling/incentivising land use change for water quality purposes.
4.6 Hydro scheme exemptions

79. As noted above, the proposed hydro scheme exemptions set out in 3.22 of the draft NPS FM provide council with significant concerns. The meaning and effect of the exemption option for compliance of waterbodies affected by hydro schemes is unclear. In particular:

1. The physical extent of the exemptions (i.e adjoining structures? Length of impacted water or whole of scheme?)
2. How this relates to the requirement to give effect to Te Ture Whaimana
3. Whether this has the ability to subsume the priority values, particularly human health, as set out in Objective 1 of this proposal

80. The exemption is too broadly defined and needs more specific description, ideally to limit the scope of the exemption and also to ensure that it at least reflects Objective 1 of the draft NPS.

5. Ecosystem health

"Proposals to strengthen the focus on ecosystem health, set more stringent bottom lines, and stop further loss of wetlands and streams"

81. Council acknowledges the expanded approach to setting and measuring ecosystem health. However, the proposals increase the complexity of the management framework with additional compulsory attributes and attributes that Regional Council’s must have an action plan for (and those that don't).

- 5.2 Focus on holistic ecosystem health

82. Council supports the proposal to develop a simple ‘report card’ to help communities understand the current state and progress of key waterways.

- 5.3 New attributes and management approach

83. Council supports, in principle, the idea of adaptive management and detailed investigation into freshwater deterioration. However, the regulatory ‘goal posts’ cannot continue to be shifted between the ten year planning cycles. A certain and stable regulatory regime is necessary for the community to:

a. continue to operate;
b. enable planning for the significant capital expenditure to change production models, or;
c. develop mitigations that will be required in any event moving forward.

The non-regulatory approach to interventions, including catchment plans, for the management of the six ecological health attributes is supported. This provides the
affected communities to engage with the relevant issues of their (sub)catchment and develop grass roots solutions with their buy in.

- 5.4 Aquatic life and indigenous species

84. Council supports the inclusion of indigenous species as a general indicator of ecological health. However, the proposals appear to make regional councils the body responsible for managing threatened indigenous freshwater species. This is despite responsibility for indigenous freshwater fish being allocated to the Department of Conservation under the Conservation Act.

85. It is unclear if the provisions will require regional councils themselves to undertake activities to restore and enhance populations of indigenous fish if the bottom line is not being met. Fish populations are sensitive to matters that Local Authorities are not in a position to completely control, or related to the quality or quantity of water. Council supports the development of a threatened species objective in regional plans but only to the extent that it relates to the quantity and quality of water and other matters that it has reasonable control over.

- 5.5 Aquatic life – fish passage

86. Council supports the standardisation of information for fish passage set out in subpart 3 of the draft NES F. However, the draft regulations are unnecessarily complex, are not stand alone regulations and require reference back to regional plans. Standard forms and explanatory information should be made available by MfE through the Department of Conservation to support its implementation.

87. It is unclear if there is enough information available for regional councils to fulfil their new responsibilities as set out in 3.17 of the draft NPS FM. Council understands that, despite its statutory role, the lead agency for the management and protection of freshwater fish (DOC), does not have complete information for New Zealand fish populations. Many of New Zealand’s streams have not been surveyed for indigenous fish species, or at least not within the recent past. This will require significant time and resources to achieve.

88. Council supports the development of a work programme to improve passage over time and the prioritisation of restoration of fish passage. This prioritisation should take into account existing populations of indigenous fish species, the New Zealand Threat Classification, and the cost and complexity of any restoration.

89. Council notes here that these provisions only relate to structures less than four meters in height. This appears to relate to the hydro exemption. Again, this contradicts with Objective 1. The impact of large scale hydro systems on matters
such as flow regime and fish passage are well understood. They are most likely the largest single factor affecting fish passage in the region.

90. The benefits of the exclusion of exotic freshwater fish from certain waterbodies in 3.17(2) of the draft NPS FM is tentatively supported. While not a high profile trout fishing area, the District is home to several recognised sports fishing streams, including Te Waihou Awa, Waimakariri, Pokaiwhenua and Oraka Streams. Council wishes to ensure that any decision to exclude exotic freshwater sport fish from waterways is required to be consulted on with its community and other stakeholders.

- 5.6 Habitat/wetlands

91. Council acknowledges the management wetlands has been a key feature of the NPS FM in its previous iterations. However, their management in the draft NPS FM and NES F appear to include wider ranging and duplicated controls. While acknowledging ki uta, ki tai and the interconnectedness of waterbodies, the inclusion of such broad responsibilities threatens to detract from achieving improved freshwater quality and management of quantity.

92. It is understood that it was the preference of the Ministry to consolidate what could have been a number of additional policy documents. However, wetland management is now clearly already unnecessarily bloated, confusing, and complex. Council's key concern is the emerging lack of clarity over the jurisdiction for wetland management as a whole under the RMA and there is further duplication of the management framework proposed.

93. South Waikato District Council’s primary function in this line of policy is controlling the effects of the use, development and protection of land for the maintenance of indigenous biodiversity as set out in Section 31(1)(b)(iii) of the RMA. The management framework in the South Waikato District Plan to achieve that function, the matters in Section 6(c) (SNA’s) of the RMA, and to give effect to the Waikato RPS (WRPS) was more or less set in 2012 when it was notified. For wetlands in the South Waikato District, the proposed statutory planning framework for wetlands will now potentially include the following:

- NPS Freshwater Management (Operative and draft)
- NES Freshwater (draft)
- NES Production Forestry
- Stock Exclusion Regulations (draft)
- NPS Indigenous Biodiversity (draft)
- RPS (WRPS for SWDC)
- Regional Plan(s) (Waikato Regional Plan for SWDC incl. PC1)
- District Plan(s) (South Waikato District Plan as SNA's)
- Local Indigenous Biodiversity Strategies (in drafting)

94. Council must give effect to, not be inconsistent with, and/or implement the various documents above, or parts thereof, through the District Plan, resource consenting, monitoring, subsiding, engagement and enforcement functions.

95. Just as concerning is that not all of these documents are consistent with each other. In particular, Council notes criteria 8 for identifying SNA's in 11A of the WRPS:

"8. It is aquatic habitat (excluding artificial water bodies, except for those created for the maintenance and enhancement of biodiversity or as mitigation as part of a consented activity) that is within a stream, river, lake, groundwater system, wetland, intertidal mudflat or estuary, or any other part of the coastal marine area and their margins, that is critical to the self sustainability of an indigenous species within a catchment of the Waikato region, or within the coastal marine area. In this context "critical" means essential for a specific component of the life cycle and includes breeding and spawning grounds, juvenile nursery areas, important feeding areas and migratory and dispersal pathways of an indigenous species. This includes areas that maintain connectivity between habitats."

96. Council highlights that all wetlands are identified as SNA's in the above criteria which conflicts with the freshwater proposals which focus on the management of 'natural wetlands'. This is further underlined by Criteria 11 of WRPS which includes artificial wetlands, or wetlands created for mitigations or other purposes as follows:

"11. It is an area of indigenous vegetation or habitat for indigenous species (which habitat is either naturally occurring or has been established as a mitigation measure) that forms, either on its own or in combination with other similar areas, an ecological buffer, linkage or corridor and which is necessary to protect any site identified as significant under criteria 1-10 from external adverse effects."
97. This is not only an administrative headache, it is a significant disincentive to implementing key water quality mitigations that may also have significant biodiversity and cultural benefits. Council also refers you to the evidence of Cr Baldwin to PC1 attached in Appendix B. He outlines the wetland project on his farm being undertaken in partnership with DairyNZ, WRC, Hill Laboratories and NIWA. The purpose of the project was to quantify the effects of the use of wetlands as a suitable mitigation measure to address the four contaminants of concern for PC1 (N, P, E.coli, and sediment) to enable its ease of use by other farmers.

98. Another example is the use of wetlands in the redevelopment of the South Waikato District’s effluent treatment systems. This use of wetland treatment prior to disposal to water was a key matter in meeting the needs and values of our treaty partners.

99. Council’s preference is that management of wetlands generally are aligned with the national freshwater proposal of ‘natural wetlands’ only. Ensuring better alignment of the management framework for wetlands would facilitate the use of the mitigation tool and the broad range of associated benefits they provide.

100. There are also critical failures and inconsistencies within the framework proposed. As noted in the evidence of Mayor Shattock, Council invests significant amounts of money in projects to restore water quality and biodiversity values. Council supports this work being enabled as set out in 3.15 (7) of the draft NPS FM. However, the tools provided in the NES F clearly work against wetland enhancement and restoration.

101. Council is concerned that resource consents will be required for all aspects of wetland restoration. This is an unnecessary barrier to restoring biodiversity and a step backwards in terms of the protection and enhancement of wetlands. Money designed for restoration purposes will not be spent on gaining resource consents. This money is better spent getting results on the ground. The provisions therefore have the perverse effect of disincentivising restoration, particularly for smaller wetlands. Council will instead focus its investment on riparian margins or terrestrial biodiversity.

102. It is also not clear which part of the RMA is being applied in Part 3 of the NES F, and therefore who has that responsibility in section 30 or 31 of the Act with regard to vegetation destruction and earth disturbance. It is assumed that this is

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9 Evidence – Councillor Gray Baldwin, Plan Change 1 Paragraphs 64-71
10 Evidence - Mayor Jenny Shattock, Plan Change 1 Paragraphs 30-34
a function for Regional Councils. However, there will be clear overlaps and
duplications with District Plan matters for indigenous biodiversity, particularly the
management of SNA’s.

103. Council would support an amendment that provides for the removal of invasive
and or pest plants and eco-sourced material replanting (and associated ground
disturbance) as a permitted activity.

104. It is noted that the provisions in the NES F also mean that DOC is also required to
apply for resource consent for wetland restoration work in respect of weed control
and replanting, including on Public Conservation Land, as the rule is a regional
rule and the exemption in s4(3)(a) in the RMA will not apply.

105. There is also concern regarding the critical lack of expertise nationally to support
the implementation of the draft regulations in the NES F, particularly for wetland
hydrologists. It is also not clear what qualifications, experience and expertise
would be required to be deemed a wetland hydrologist.

106. Regarding takes of water from wetlands, the proposed provisions do not provide
for the permitted takes in section 14(3)(b) of the RMA. Specifically, an
individual's domestic needs and the reasonable needs of a person's animals for
drinking water. This should be amended.

107. Council is also unsure as to why ‘offsetting’ is not encouraged for wetlands in
Policy 8, but is in Policy 9 regarding the loss of streams. It is acknowledged that
the focus on ‘natural wetlands’ may have been the reason. However, there is a
clear distinction between wetlands established for mitigations (nutrient or cultural
mitigation) and the offset of key natural values. Where this relates to offsets for
wetland enhancement that wetland should be considered a ‘natural wetland’.

5.7 Stream loss

108. Additional clarity is required for these provisions. The language used in regulation
18 of the draft NES F and 3.16 of the draft NPS FM section conflicts with others
used in the package. It is assumed that 'culverting' and 'infilling' relates to the
matters described in Sections 13 and 14 of the RMA. The language in the
frameworks should be consistent with the RMA to improve clarity.

109. It is assumed that temporary diversions are not intended to be included, nor
permanent diversions where the nature of the stream ecology does not change.
This should be further clarified in the language of the NES F.
5.8 Water quality - nutrients

110. Council has no comments on this approach, other than such standards should be set according to the geophysical and associated water chemistry and habitat requirements of a particular waterbody. However, this approach supports the use of nutrient offsets, discussed later in Council's feedback.

5.9 Water quality – reducing sediment

111. Reducing sediment loads is supported generally, but for reasons in addition to ecological health. The district has experienced significant deforestation in the past decade. This has had a significant effect on the hydraulic regimes of streams and rivers. In particular, the velocity of rainwater has increased as the natural detention effect by forests have been reduced. This has increased flows, in particular peak flows, and has resulted in debris entering waterways, stream bank erosion and sediment/soils damaging infrastructure like culverts, bridges and water intakes. This has a significant financial cost to Council and other regionally significant industries. Measures to reduce the mobilisation of bulk sediment as a result of these events is supported.

5.10 Water quality - swimming E.coli

112. Council generally supports improvements for primary contact recreation sites, in particular the specific attribute table for contact recreation. However, for the South Waikato District many of these sites are located in the hydro lakes which may be exempted from compliance with attribute states, but also have difficulty with compliance given the combination of large waterfowl populations and long residence time for water within those lakes.

113. The National Bottom Line is now the 95th percentile of 540 E.coli per 100ml of water for contact recreation sites. This is the 'A' band of the attribute table for all other sites. Except where existing pathogen levels are currently lower, PC1 has set targets to align with the 'A' band of the NPS FM, taking into account the requirement in Te Ture Whaimana that the river should be 'swimmable' for its entire length. The proposed amendments to the national framework are considerably more stringent. Council's understanding of the modelling for PC1 is that the target can simply not be achieved with current knowledge and technology.

114. Council supports managing improvements in contact recreation sites with 'action plans', and the retention of the messaging in policy 6 to achieve the national target and the testing regime outlined in 3.18 in the draft NPS FM.
115. Council agrees that more guidance is required in order to set freshwater body flow regimes. However, the policy mix in the Discussion Document is inadequate. The provisions underestimate the complexity of setting minimum and environmental flows and seeks to implement an approach immediately. However, there is significant research required to determine the characteristics of a flow (low flows, high flows, freshes and floods) and correlate those characteristics with ecological outcomes. This is often waterbody specific with any given geomorphology, freshwater species make up, and climate. Further to this, there is no universal agreement in science regarding methodology.

116. Council also reiterates its points regarding both the ‘environment first’ and potential for the exemptions for some hydro schemes above. A flow regime must consider allocation and, within allocation, priority. Takes for domestic uses and stock water are provided for in the RMA but have not been recognised. Municipal water is also critical for basic human health and also not recognised, nor prioritised. This is problematic to the South Waikato for the reasons outlined above. These are critical failings in the framework and, without additional guidance for allocation, will result in planning paralysis.

117. Council supports the promotion of standardised measurement devices and standard telemetry (data) performance, particularly for municipal water takes. This will make decisions for infrastructure design and funding much more straightforward. A progressive rollout is also supported.

6. Drinking water

118. Generally, Council supports additional measures to protect drinking water sources (and manage contaminants in areas of risk) that are affordable to the community. However, regional councils are best placed to both manage discharges of contaminants and identify spatially where these areas of risk are in their regional plans. TA’s cannot extinguish existing use rights to existing and consented land uses that may affect drinking water risk management areas and duplication of these functions is not desirable. However, a supporting identification of any area as a reference tool to regional requirements is supported.

119. Council does have some concern that, if all of the reasonable uses within a risk management area are extinguished then Council, as the infrastructure provider, may be obliged to purchase large areas of those surface and ground water catchments in order to compensate for the loss of that use value. That may be
affordable for some communities, but would represent yet another South Waikato ratepayer borne cost arising from the proposals in the Discussion Document.

120. Council supports being identified as an affected party, as a supplier of water, for consenting of non-infrastructure related activities in risk management areas. Full public notification need not be mandatory for all activities.

7. **Stormwater and wastewater**

“Proposals to require wastewater and stormwater operations to meet new standards and improve practices”

121. Reticulated networks are sunk legacy systems, which makes their management and enhancement expensive. The lead time to achieve change is long, and the financial planning complex. Council’s role is to manage and operate these networks for our communities so that they perform appropriately in terms of level of service, effects on the environment and are cost effective.

122. The proposals do not appear to address climate change in a way that would otherwise be expected. Councils are currently developing an understanding on the level of investment required to provide for climate change. While the South Waikato has no coastline, changes in rainfall frequency and intensity are already affecting us. There is potential for a reduction of the level of service from stormwater services without further investment, in particular. While Council has already begun its journey, the outcome is further cost just to retain the current level of service, let alone the increase in treatment requirements for both wastewater and stormwater. Cumulatively, the financial burden is becoming increasingly unsustainable.

123. It should be noted that, while land uses are beginning to think about their impact on freshwater, municipal point source discharge standards have seen progressive improvements since the inception of the Resource Management Act in 1991. This nearly 30-year journey has seen a number of upgrades to wastewater plants, in particular. However, even with improvements in technology, the effectiveness of upgrades on a dollar for dollar basis is decreasing.

124. The most recent proposed upgrades to Council’s systems can be characterised as being towards the higher end of performance and expenditure.
125. The diagram 1 below generally demonstrates the results of continued investments in our wastewater treatment plants.

Diagram 1 – Investment vs reward in municipal wastewater treatment

126. What concerns Council is that continuing down this path is neither financially prudent, nor effective or efficient in making substantive changes to freshwater quality, in particular. Essentially, the community and freshwater is not getting much ‘bang for its buck’ with continual investment in wastewater treatment plans. While it is accepted that there will be some locally specific matters that may require marginal improvement, Council is of the view that nutrient/contaminant offsetting can provide a substantial tangible increase in quality, without compromising environmental standards and while being more affordable to communities. It is important to note that offsetting is not intended to resolve all the matters of a discharge, for example cultural effects. However, in some circumstances, greater environmental gains can be achieved for particular contaminants from other more cost effective mitigations than municipal treatment alone. This is a ‘win win’ proposition that can result in great strides in water quality improvement, and in affordability to communities.

127. This is yet another example of what a more balanced set of values can achieve. Given the complexity of the matter, this should be considered as a matter of urgency. It is an area that has not had sufficient focus in the Discussion Document. The Government must take a broader and more holistic approach to achieving freshwater goals. The approaches set out in the Discussion Document are somewhat myopic and appear to focus on punitive approaches to apparent causes of decline in the values of freshwater, but does not appropriately and strategically identify or provide for solutions.
128. In principle, Council agrees with the concept that some standardisation of the matters covered in consent conditions for municipal discharge consents is appropriate. However, the standards should not be overly prescriptive, and take into account the receiving waters and other relevant local conditions, such as climate, water chemistry, and the potential for extreme weather events. No two systems are made up of the same matrix of factors. A universal 'end of pipe' standard will not necessarily reflect the needs of the waterway and may result in expensive solutions to water quality problems that may not exist for a particular waterway. We request that a standard focus on the matters to be considered and not the achievement of arbitrary environmental standards that will not improve the life supporting capacity of the relevant waterway/s.

129. Any standards should recognise that BPO is still a necessary consideration, and that reasonable mixing is still required to achieve appropriate standards.

- 7.2 NES WW Overflows and discharges

130. As noted above, Council generally supports more standardisation in consenting for wastewater discharges. Council would caution against specifying the adoption of cultural mitigation options. This is a matter that is best decided between the affected iwi/hapu and Council in terms of what is appropriate. The process cannot be seen as a simple tick the box exercise. In our example, there are a number of Joint Management Agreements (JMA’s) that specify a system and process for decision making and engagement, as well as our requirements under the Local Government Act. As a result, council has successfully negotiated with several Waikato River Iwi regarding its wastewater plant renewals.

131. In the process of consulting not only has the matter of wastewater treatment been addressed, but also the relationship between Council and those River Iwi. A ‘go to’ toolbox may not appropriately recognise mana whenua, and diminish opportunities to grow relationships with our treaty partners.

- 7.3 Stormwater

132. Council tentatively supports more national guidance regarding the implementation of ‘green infrastructure’. However, asset managers still need to be able to select the most appropriate tool for the context. A set of non-mandatory guidelines is the most appropriate mechanism to provide this. Although, it is noted that there are a range of existing guidelines type documents in existence that Council’s already draw from. While the concern is that Council’s will be ‘forced’ to ‘reinvent’ the wheel, the reality is that local government entities
at the regional level share a large amount of information, which is often rolled out as more situation specific guidelines.

8. Farms

"Proposals to restrict further intensification, set new standards for high risk activities, and introduce freshwater modules in farm plans”

133. This is perhaps the most counterintuitive part of the Discussion Documents and highlights that the Government’s generic approach will fail to achieve improvements in freshwater, while placing unnecessary burdens on communities. A significant risk behind poorly conceived approaches is a lack of community ‘buy in’. This will affect people’s approach to compliance, and make enforcement difficult. The ultimate loser in this situation will be freshwater values.

134. These proposals appear to be moving away from managing adverse effects on the environment to arbitrarily criminalising legitimate and desirable land uses. Critical and effective mitigations are not only dis-incentivised, they are made harder to implement. The Government should not be simultaneously increasing the environmental standards required and also placing additional barriers to achieving them.

- 8.2 Restricting further intensification of rural land use

135. Land use change has been a contentious issue in freshwater management frameworks. Council has considered its position on blanket land use change rules quite extensively through PC1, which was notified with similar provisions to those proposed in regulation 35 of the NES F. The government’s approach to land use change is somewhat confusing as it is the discharges of contaminants that affects freshwater quality, not the use itself. Council supports the use of discharge provisions in relations to section 15 of the RMA in relation to the particular contaminants of concern in any particular contaminant, and managed with a suitable FEP. While there is ‘fat’ provided in terms of the amount of land use change that can still occur, the instrument proposed is blunt and not output/effects based.

136. Council prefers approaches that are:

i. effects based and outcome focussed provisions that meet the needs of the relevant sub-catchment,

ii. encouraging flexibility for land uses

iii. led by FEP’s which demonstrate no net increase in discharges of any particular contaminant of concern tailored to a particular sub catchment.
137. Flexibility in land use makes larger strides more possible and affordable to farmers and therefore the community. As noted in the evidence of Cr Baldwin in Appendix B, the mitigations available for the different farming systems are extensive, expensive and intensive. And these mitigations need to be paid for. There is an essential ‘quid pro quo’ in terms of land use flexibility required in order to sustainably pay for infrastructure to mitigate contaminants, within limits, to achieve freshwater quality objectives. Again, limiting land use change can actually be counterintuitive.

138. Council's view is that flexibility should be enabled through robust Farm Environment Plans (FEPs) where overall reductions in effects from the particular contaminants of concern for that (sub) catchment are achieved. Supporting this should be an enabling consenting pathway for those who are achieving the desired outcomes. Council's view is that this should be a 'permitted activity', or at worst a restricted discretionary activity, with discretion restricted to meeting water quality outcomes.

139. Council does support the exemption in regulation 31(2)(a) of the draft NES F for existing freshwater frameworks implementing the operative NPS FM. However, Council does seek clarity that, with regard to PC1, 'full implementation' means a notified plan change, or at least a plan change that is at 'decisions' stage as opposed to being 'operative'.

- **8.3 Improving farm practices through farm planning**

140. Council strongly supports the use of FEP's in conjunction with Good Farming Practice (GFP)\(^{11}\) as the key tool for planning and managing contaminants on-farm. As noted above, a lower regulatory intervention should apply when these actions will meet freshwater objectives.

141. Regulation 38 (5) is not supported as it introduces ‘best’ practice as opposed to GFP.

142. The standardisation of these requirements is helpful. However, Council does encourage communication with sector groups to ensure scope of matters that are currently included ‘covers the field’. The FEP templates should recognise and provide for the time that is needed to plan and fund large scale mitigations.

143. It would be useful to the Government to review the ‘risk based’ compliance and audit requirements proposed in evidence for PC1. While the proposals in the NES

\(^{11}\) Good Farming Practice: Action Plan for Water Quality 2018.
F generally reflect a risk management approach, the proposals could do with further refinement and benefit from clearer and consistent language.

144. Council is concerned that farmers in the Waihou/Piako catchments have their compliance time to require FEP’s reduced to two years from the date of the NES F coming into effect. There are already concerns over the availability of qualified persons to undertake the work in the Waikato/Waipa catchment for PC1. Additional demand in the Waikato may not be practical and potentially result in poor quality FEP’s.

- 8.4 Immediate action to reduce nitrogen loss

145. It is not consistently clear between the Discussion Document and the proposed NES whether the nitrogen cap applies to all waterways, only scheduled waterways, or all waterways except those specifically excluded. While Council is pleased that it does appear that the area covered by PC1 is intended to be excluded from the nitrogen loss provisions, five years may not be a suitable trial period to make meaningful changes in measured freshwater quality for N taking into account the known ‘load to come’ for N already banked into ground water. In some areas N may increase regardless of interventions for a considerable period of time. Therefore, the threat of further intervention is unfair, particularly where frameworks have been implemented that recognise load to come and/or go beyond just N.

146. Capping N is not an effects based approach and assumes a homogeneity between all waterbodies and all parts of a particular waterbody. Provisions reducing N should relate to the specific water quality needs of a waterbody, preferably on a sub-catchment level. The actual scale and scope of the gap between current state and the desired state of a freshwater body needs to be understood for fair and reasonable interventions. Reductions of N may not be required, and it may be more efficient and effective to focus mitigations on other contaminants.

147. Where large scale reductions of the discharges of contaminants (including N) have been appropriately identified, and on-farm reductions of discharges required, Council believe GFP implemented through FEP’s should identify the specific contaminants required to be managed the relevant mitigation/s required. Where the gaps are large more capital intensive mitigations will be required.

148. The provisions proposed in subpart 4 appear to heavily rely on the use of OVERSEER™. The PC1 process has highlighted that the tool is not currently fit for

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12 Identified in Schedule 1 of the draft NES F
13 Canterbury, Otago, Tukituki, Manawatu and Waikato/Waipa.
purpose when determining regulatory compliance. Council has no expertise in this area, but it is expected that a number of sector groups will appropriately highlight the deficiencies of OVERSEEER™.

149. The controls for this proposal are located in the draft NES F. These relate to ‘priority catchments’ and includes the Te Waihou and Piako catchments, both of which are partially located in the South Waikato District. A blanket approach will no doubt have additional and cumulative economic and social impacts over and above that for PC1 on one of the most deprived districts in New Zealand.

150. Council’s view is that the inclusion of those catchments is unnecessary given the timing of the Hauraki Collective settlement negotiations. Further direction from the completion of that settlement will be the most appropriate time and means of addressing which contaminants are managed and the best way to do that.

- 8.5 Excluding stock from waterways

151. Council has several concerns regarding the implementation of the draft Stock Exclusion Regulation. While well intentioned and attempting to provide certainty, the proposal may not be effects based and may work against other tools in the package. In particular, that it is unnecessarily rigid in terms of setting specific setback standards and the short timeframes to achieve compliance. We prefer to allow the PC1 process, which addresses stock exclusion, to proceed to its conclusion. Our view is that the FEP should be the key document that sets out the specific requirements for stock exclusion, including;

- management objectives
- location (including distance from waterways critical source areas)
- design/construction
- extent
- purpose (i.e. particular mitigation function that needs to be performed)

152. Council's view is that FEP's are best placed to identify appropriate setbacks, identify timing and allow farmers to plan for that investment. This highlights the potential problems with timing and duplication of efforts with the draft regulation. For example, FEP's may recommend larger or narrower setbacks that would achieve the specific freshwater objectives relevant to the catchment that a property is located in. This may require the movement of fences that were put in place to meet the draft regulation and require additional associated costs. The PC1 hearings process has also identified the difficulty in implementing the roll out
of farm plans across the Waikato and Waipa catchments in terms of qualified persons.

153. While Council does not wish to see further delay in actions to improve water quality, the practical reality is that it will take time to both establish robust FEP’s and farmers should be given the opportunity to plan financially. The most practical solutions are that:

A. Those catchments that have already, or are in the process of, giving effect to the NPS FM, are exempted from compliance where stock exclusion provisions are included in their frameworks; AND/OR,

B. The NPS FM specifies that stock exclusion provisions must be included in proposed frameworks (Plans) to the extent necessary to achieve a catchments freshwater objectives when giving effect to it;

154. Council’s view is that this is a more pragmatic approach that doesn’t undermine current or previous processes, allows for more specific and effective exclusion provisions, allows time to financially plan, but ensures that stock exclusion is a key requirement moving forward.

155. Council supports the flexibility implied by using the term 'stock exclusion' as opposed to fencing. However, some guidance as to how compliance can be determined would be helpful if the regulation remains.

156. The proposal does not identify which part of the Act the regulation applies to. It is recommended that the authors refer to the VTA regulation which is much clearer in terms of what duty in the RMA the matter applies to. Given the amendments proposed for District Plans to include water quality matters this is vital to clarify as TA's may be responsible for implementation. Who is responsible for monitoring and compliance, including it's cost, is unclear, as is the implications for non-compliance. Council is of the view that this adds weight for it to be absorbed into the requirements for FEP’s to that it is clear that regional councils have this responsibility.

157. Wetlands can be challenging to fence, particularly when degraded. There are examples in Northland of what has been termed 'wetland creep'. This appears to occur when wetland vegetation and water has been under stress by grazing and water abstraction is protected by fencing and those stressors come off. The result is often expanded 'wet areas' as a more natural hydrological regime returns, and an associated increase in wetland vegetation. This often appears to extend beyond the newly fenced boundaries. This is further aggravated by the seasonality of wetlands. Council would prefer that there is flexibility in how stock
is excluded from wetlands to progressively allow the natural characteristics to return over time rather than invest initially in permanent fencing initially and then be require to move it as the natural extent of vegetation returns.

- **8.6 Controlling intensive winter grazing**

 Council supports the exclusion of the PC1 area for these regulations. However, the transition period may need to be extended by at least another year as farmers may need time for planning and investment to amend some farming systems in accordance with industry standards. Ideally substantial changes would be guided by an FEP.

- **8.7 Restricting feedlots**

 Council is of the view that how feedlots are defined is critical. The concern is that the proposal’s may inadvertently capture low impact uses such dairy goats farming in a 'cut and carry' production model. The South Waikato has a small, but steadily growing dairy goat farming industry. Given the animal health requirements for dairy goats, they are not permitted to be on pasture, but are permanently held in enclosures (loafing barns). Given this, inputs on pasture regarding N and E.coli in particular are extremely low. As such, they are increasingly being seen as an alternative to dairy farming. Dairy goat farming systems also require careful management of animal wastes. As the waste is confined (largely to bedding), it gives a high element of control over the treatment and disposal of such wastes.

 Council's view is that covered 'cut and carry' farm systems should be excluded from regulation 27 of the draft NES F, and if there is any regulation it should be effects based and relate to discharges of contaminants, and further, that this could and should be able to be managed through FEP's within catchment limits. Council supports the retention of options that may help transition land uses to result in lower impacts on water quality. Barriers to this change should not be used.

- **8.8 Reducing pollution from stock holding areas**

 Council is also seeing an increase in the use of feed pads/stand-off pads, both uncovered and covered. These are critical tools that enable the improvement of both effluent and pasture management. South Waikato's experience is that, when soils are saturated, these are used to limit pugging and reduce the ability of contaminants entering waterways by way of overland flow. They are mitigations with positive effects. Introducing a consenting requirement in regulation 29 of the draft NES F, is counterintuitive to achieving an improvement in water quality.
162. Council’s view is that the use of mitigations, including the use of feedpads, should be managed through FEP’s and enabled where freshwater quality objectives are met. While excluded from compliance, PC1 has set management goals regarding N, P, Sediment and E.coli, and provides FEP’s the mandate to guide the implementation of appropriate mitigations. Feedlots and feed pads will be critical to achieving those management goals in both the PC1 and Piako/Te Waihou. Farmers will have to demonstrate through the FEP’s that those goals can be met. Therefore, it is unclear why a resource consent is required at all if there is an FEP in place demonstrating reductions in the relevant contaminants.

163. As noted in the evidence of Cr Baldwin, without taking into account the level of debt currently being serviced by farmers in the South Waikato, these mitigations are an effective and viable option for sustainable improvements in water quality for the South Waikato community. Council’s view should be that this should be enabled through robust Farm Environment Plans (FEPs) where overall reductions in effects from the particular contaminants of concern are achieved. Supporting this should be an enabling consenting pathway for those who are achieving the desired outcomes. Council’s view is that this should be a 'permitted activity', or at worst a restricted discretionary activity, with discretion restricted to meeting water quality outcomes.

164. Council supports the permitted activity status for sacrifice paddocks. However, the application of the provision does rely on identifying 'critical source areas'. It is probable that these are intended to be identified through the FEP process.

165. Irrigated farming is not a significant factor in the South Waikato. However, Council supports the specific exclusion of irrigation of effluent in regulation 34.
E. NATIONAL POLICY STATEMENT FRESHWATER MANAGEMENT (2019)

166. We note that this is the fourth iteration of the NPS FM since 2011. It is unacceptable that policy at a national level continues to make itself redundant at such regular intervals. Each time the goalposts move, or additional matters are included it introduces new costs, additional research, and further delays. It is Council’s view that this is partially responsible for the delay in completing freshwater planning processes nationally.

167. In terms of drafting quality, the proposal is poor. The previous NPS FM was written more clearly and balanced values, including the wellbeing of communities, far better. There appears to be a greater focus on water quality as opposed to the quantity of water. This doesn’t reflect that there are interconnected relationships between both the quality and quantity of freshwater.

168. Wholesale amendments such as those proposed, along with the complexities of also giving effect to the Te Ture Whaimana, are an unfair burden on the wider South Waikato community who are grappling with the expense and already high levels of uncertainty and anxiety as arising from PC1.

169. Council is concerned that amendments to the PC1 framework required by the draft NPS FM may result in a disjointed policy framework that won’t fully have taken account the costs and benefits of any such amendments. The Healthy Rivers Project has been discussed with the stakeholders for nearly half a decade. Introducing new and poorly conceived approaches into an already complex policy setting lacks fairness and undermines the community’s involvement in developing sustainable local freshwater solutions. There is one certainty, the additional burden of yet more submissions, evidence and hearings will take a toll on the South Waikato community.

170. Council generally supports the retention of the National Objectives Framework (NOF) in principle. However, the matters set out in CA2(f) - how to enable communities to provide for their economic well-being should be retained from the Operative NPS FM. As discussed above, Council’s view is that water quality is more likely to be achieved when the four wellbeings are balanced and mitigations are affordable.

171. The NPS FM continues to include provisions for ‘outstanding waterbodies’. This has proved problematic nationally in terms of practical implementation. In a local context, there are several waterbodies that may be considered 'outstanding'. Council seeks more guidance as to what determines 'outstandingness'.
172. Council supports the provision of the public reporting of freshwater data to the affected communities as set out in Policy 12.

173. Council supports recognition of natural variability in quality and quantity when identifying current attribute states as set out in 3.8(2). This should be more explicit and identify that it includes a range biophysical elements such as soils, climate, topography, seasonality and other relevant factors. This is necessary to achieve water quality outcomes using efficient and effective (targeted) interventions, preferably at sub-catchment level in line with that variability.

174. Council supports some of the improvements when setting targets in 3.9, including the explicit endorsement of the use of interim targets towards achieving water quality outcomes. The timeframe to achieve the identified quality targets sought in Te Ture Whaimana as set out in PC1 is 80 years. This represents multi-generational interventions and actions. Interim targets are supported and is essential for communities, such as the South Waikato, to sustainably implement interventions required.

175. However, this highlights one of Council's fundamental difficulties with this package. We would prefer a more explicit recognition that timeframes to achieve targets should be set in an integrated and sustainable way. This includes the consideration of a target's practical achievability (current methods/ tools/mitigations), its affordability to a community, and what affordability would look like over time.

176. As noted above, the approach taken in Objective 1 clearly favours environmental outcomes over social, economic and other outcomes. While there can be some sympathy given to this approach when setting water quality targets and limits, a more balanced approach needs to be considered when choosing methods and timeframes to achieve it. Indeed, the timeframe should reflect the scale and scope of change/cost required to achieve a target. This allows communities to plan and fund investment in mitigations and adapt, if required.
F. **RECOMMENDATIONS**

1. The Minister receives Council’s ‘feedback’ and assimilates it into the policy framework accordingly;

2. That the Minister actively investigates this submission and recommendations, including through ‘kanohi ki te kanohi’ engagement with our community’s representatives;

3. Limit the continual revision of the NPS FM and allow its implementation to ‘bed in’;

4. Limit or eliminate the effect of the proposals on frameworks that have already given effect to the operative NPS FM;

5. Retain the objectives of the current NPS FM, or redraft the objective in the draft NPS FM to reflect the achievement of all of the four well-beings;

6. Identify takes for municipal water purposes as a priority value;

7. Support existing regional ‘visions’ for the management of freshwater;

8. Retain ki uta ki tai ‘all of catchment’ approaches, but promote the use of targeted ‘sub-catchment’ interventions to manage particular contaminants of concern;

9. Recognise outstanding Treaty of Waitangi grievances as they relate to freshwater, but resolve these at Crown level and not through regional planning processes;

10. Retain the 2030 timetable for completion of freshwater planning processes;

11. Do not reduce the information requirements for setting target attribute states;

12. Retain the explicit provision of ‘interim targets’;

13. Do not require the inclusion of generic objectives, policies and rules to improve freshwater in District Plans;

14. Enable direction from the explicit needs of a regional freshwater planning process to direct specific and necessary implementation methods in District Plans such as the use of subdivision or catchment planning for stormwater management;

15. Retain adaptive management non-regulatory approaches through catchment plans, but more specifically require engagement with the affected communities;

16. Do not completely exempt hydro schemes from compliance with freshwater management frameworks, encourage compliance;

17. Retain the proposal for ‘report card’ system for freshwater health;

18. Retain indigenous freshwater fish as an ‘indicator’ of the life-supporting capacity of freshwater only;

19. Reduce existing and proposed duplication and complexity of the management framework for wetlands;

20. Retain the exclusion of ‘wetlands for other purposes’ from management requirements of the NPS FM and NES F and from other RMA policy;

21. Provide for weed removal and eco-sourced replanting as permitted activities in wetlands;
22. Provide for ‘offsetting’ the values of wetlands;
23. Recognise the permitted water takes set out in 14(3)(b) of the RMA;
24. Be clear which part of the RMA the regulations in the NES F is intended to relate to for each subpart;
25. Provide for temporary diversions of streams or minor permanent diversions;
26. Retain the recognition of the natural variability of waterbodies;
27. Include balanced policy guidance on establishing minimum flows by providing for all values;
28. Identify the provision of stockwater in allocations;
29. Retain the provision to standardise water take telemetry;
30. Retain the provisions for the protection of water sources, including the management of land uses;
31. Retain the standardisation of the matters that need to be addressed for both wastewater and stormwater discharges, but allow standards and conditions to reflect the specific needs of receiving water.
32. Recognise the diminishing returns from wastewater and stormwater upgrades and provide for nutrient/contaminant offsets that result in substantially larger gains;
33. Retain the requirement that drinking water providers are identified as affected persons for resource consents for activities that may affect water in drinking water risk management areas;
34. Require regional plans to identify drinking water risk management areas;
35. Ensure that drinking water providers are not required to obtain land identified as risk management areas;
36. Do not standardise mandatory culturally appropriate discharge methods, allow this to be determined locally and/or provide non-regulatory guidance only;
37. Do not restrict land use change as a primary generic method, focus management on adverse effects;
38. Retain the use of FEP’s as the primary tool to co-ordinate on-farm responses to sub-catchment freshwater issues;
39. Provide a more practical and reasonable timeframe to establish FEP’s in order to support quality outcomes;
40. Enable flexibility of farming systems/land uses through FEP’s in order to plan and establish effective high cost mitigations;
41. Retain the use of GFP as opposed to best practice farming processes;
42. Manage and monitor the effectiveness of FEP’s using a risk based approach;
43. Retain ‘stock exclusion’ as opposed to ‘fencing’ requirements, and provide guidance on how compliance is measured with the proposed regulation:
44. Provide an extended timeframe of an additional 1-2 years to comply with the intensive winter grazing requirements;

45. Clarify the definitions of feed lots and feed pads;

46. Do not arbitrarily control the use of feedlots and feedpads where they are a viable and necessary mitigation option.
Appendix 1 - Evidence Mayor Jenny Shattock - PC1 Hearings
Appendix 3 - Evidence Murray Kivell - PC1 Hearings