25 October 2019

Freshwater Submissions
Ministry for the Environment
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Tēnā koe

Bay of Plenty Region Local Authorities
Joint Submission – Action for Healthy Waterways

Thank you for the opportunity to provide input to and submit on Government’s Action for Healthy Waterways policy proposals, including:

• Action for Healthy Waterways – A discussion document on national direction for our essential freshwater
• Draft National Policy Statement for Freshwater Management 2019 (NPSFM)
• Proposed National Environmental Standards for Freshwater 2019 (NESF)
• Draft Stock Exclusion Section 360 Regulation

This is a joint submission from the following local authorities of the Bay of Plenty Region; Bay of Plenty Regional Council, Tauranga City Council, Western Bay of Plenty Council, Whakatāne District Council, Rotorua Lakes Council, Ōpōtiki District Council and Kawerau District Council.

The Bay of Plenty local authorities’ joint submission strongly supports Government’s objectives to stop degradation of freshwater resources and reverse past damage in order to return freshwater resources and ecosystems to a healthy state. The joint submission raises some concerns and seeks clarification about a range matters including; implementation practicalities, potential compromising of iwi and hapū involvement and community engagement, and recognition of local environmental differences and that there must be different priorities between regions.

For matters relating to this submission, please contact Personal Manager Policy and Planning, by email Personal details removed or Personal details removed

Nāku noa, nā

Personal details removed

Personal
Chief Executive
Bay of Plenty Regional Council

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Personal
Chief Executive
Kawerau District Council

Personal details removed

Personal
Chief Executive
Western Bay of Plenty District Council
** Please note that Ōpōtiki District Council support only the contents of the letter having had insufficient time to review the table of detailed comments, or the regional sector submission and so are unable to offer support to these documents.
Joint submission from

Bay of Plenty Regional Council
Western Bay of Plenty District Council
Tauranga City Council
Rotorua Lakes Council
Whakatāne District Council
Ōpōtiki District Council
Kawerau District Council

on

Government’s Action for Healthy Waterways proposals

31 October 2019
Introduction
This is a joint submission from the following local authorities of the Bay of Plenty Region; Bay of Plenty Regional Council (BOPRC), Tauranga City Council (TCC), Western Bay of Plenty Council (WBOPDC), Whakatāne District Council (WDC), Rotorua Lakes Council (RLC), Ōpōtiki District Council (ODC) and Kawerau District Council (KDC).

We appreciate the opportunity to provide input to Government’s Action for Healthy Waterways policy proposals, including:

- Action for Healthy Waterways – A discussion document on national direction for our essential freshwater
- Draft National Policy Statement for Freshwater Management 2019 (NPSFM)
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This document provides a joint overarching statement on the proposals. The local authorities of Bay of Plenty Region have also lodged individual submissions on matters of detail particular to their functions and district/region.

References to ‘Local Authorities’ and in this submission refer to the Bay of Plenty regional, district and city councils listed on page 1.

Structure of the submission
Part 1 explains the Bay of Plenty context and the Local Authorities’ high level position
Part 2 identifies those parts of the policy proposals that the Local Authorities support
Part 3 identifies those parts of the policy proposals that are of particular concern for the Local Authorities.

Part 1 Toi Moana Bay of Plenty context
The Local Authorities provide some high level statements of position in this section, some of which are of particular relevance given the Bay of Plenty context also summarised below.

The Region
Relative to other regions, freshwater quality in Bay of Plenty is relatively good, due largely to the significant extent of native and exotic forestry in the region. However, there are water quality issues in some locations, and particularly in the Rotorua Lakes and in harbours and estuaries in the region, which are particularly sensitive receiving environments. These receiving environments are generally highly valued by iwi and hapū as well as local people for mahinga kai, amenity, recreation, cultural and spiritual values. Many are also key attractions for residents and tourism, particularly the Rotorua Lakes.

The region covers a total area of 1.2 million hectares. Nearly half of this area is covered in native bush (forest or scrub), mostly within protected areas, and nearly one-quarter is in exotic forestry. The next most common land uses are dairy, drystock and horticulture. There are a large proportion of small farms in the Bay of Plenty; most of these are dedicated to horticulture, being mainly kiwifruit and avocados. This is significant because many properties are smaller than size thresholds above which Farm Practice rules in the proposed NESF would apply (clause 26).
In 2016/17, agriculture (including horticulture) was the third largest direct contributor to the region’s GDP (7%), after rental/hiring/real estate and construction. Primary manufacturing was the sixth largest contributor (6%). Horticulture, and particularly kiwifruit, is the most valuable industry within the agriculture sector, accounting for the largest proportion of the agriculture GDP contribution described above. Kiwifruit growing is rapidly expanding into areas that were previously pasture, as is avocado growing to a lesser extent. The agriculture sector has a significant indirect (through other industries) and induced (through household income) impact on the regional economy. The primary sector is also a significant employer in the region.

Population trends and the urban context are diverse. TCC is a ‘high-growth’ council. It is New Zealand’s fifth-largest city and is growing fast. Currently, over 135,000 people call Tauranga home. The city is projected to grow to almost 200,000 people by 2063. This growth comes with a number of key challenges and competing priorities. For example, significant urban development pressures, a lack of housing supply, natural hazard considerations and substantial transport issues to name a few. Such competing issues require careful consideration and balance throughout the planning process. Similar issues, but to a lesser extent are experienced by Western Bay of Plenty towns like Te Puke and Katikati. Rotorua and Whakatāne are significant urban centres. At the other extreme, populations are static or diminishing in several parts of the Region and deprivation indices are generally higher in these areas.

The biophysical landscape and waterways are heavily influenced by former volcanic activity, with deep volcanic tephra/pumice dominant geology throughout much of the region (excluding the Eastern Catchments and the lowland plains previously dominated by wetlands). Water (rainfall, groundwater and surface water) is relatively plentiful in the region compared with some other regions.

**Tangata whenua**

Toi Moana Bay of Plenty has arguably the richest, deepest and most diverse Māori people, culture and heritage of any region in the country. There are 37 iwi, more than 260 hapū and approximately 25% of the population identifies as Māori. About a third of land in the region is owned by Māori under various forms of tenure; the vast majority of this land is currently in exotic or native forestry land use.

Treaty settlements have, to date, established three co-governance entities in the region, the Rangitāiki River Forum, Te Maru o Kaituna, and the Rotorua Te Arawa Lakes Strategy Group, all with statutory functions for freshwater. Additionally, the Te Urewera Act 2014 established Te Urewera as an entity in itself, governed jointly (at this point in time) by the Department of Conservation and Ngāi Tūhoe. By 2025, we anticipate there may be eight co-governance bodies in the region. Local Authorities are on an ongoing journey of relationship building with tangata whenua to advance partnerships, responsibilities and obligations for natural resource management in the region. Iwi and hapū throughout the Bay of Plenty continue to express a desire for greater recognition of Māori rights and interests in freshwater, including expectations of greater involvement and partnership in freshwater management.

**Action for healthy waterways**

BOPRC has been implementing the NPSFM in stages across nine Water Management Areas (WMAs). Proposed Plan Change 9: Region Wide Water Quantity, and Proposed Plan Change 10: Lake Rotorua Nutrient Management, while both instigated prior to gazettal, substantially contribute to implementing parts of the NPSFM. These are both the subject of Environment Court appeals and have had significant involvement and investment from the local territorial authorities as well as community and tangata whenua engagement. BOPRC has been advancing science, modelling, community engagement and iwi/hapū engagement in Rangitāiki and Kaituna-Pongakawa-Waitahanui Water Management Areas, working towards plan changes that will fully implement the NPSFM for those areas. Scoping work is also underway for the Rotorua Lakes and Tauranga Harbour WMAs. These four WMAs were identified as the highest priority in terms of water quality and ecosystem health issues and risks.
The territorial local authorities have also been implementing programmes to improve water quality outcomes including:

- TCC has implemented a fish barrier removal programme, carries out an extensive monitoring programme for stormwater discharges, and implements a stream restoration project within its city.
- WBOPDC has for a number of years had District Plan Rules that incentivise riparian planting and wetland restoration through the ability to access additional subdivision rights and transferable development rights. They also have fencing and planting subsidies.
- RLC has implemented a Lake Water Quality Programme which has included establishing lakeside sewerage schemes in the Hamurana settlement of Lake Rotorua, Lake Okareka, Lake Rotoiti and Lake Rotoma. Work is also being carried out in relation to upgrading the district’s urban wastewater treatment plant.
- KDC has included in its current applications, and will include in all future stormwater consent applications, requirements for riparian planting in affected areas.

In addition to these significant planning programmes and projects, Local Authorities have invested for a long time in voluntary farmer action to protect biodiversity, fence and plant streams and wetland areas. BOPRC provided a comprehensive summary to the Ministry for the Environment in 2016 which included the following examples of initiatives undertaken by BOPRC with iwi and our communities to care for the region’s water:

- Initiatives to reduce bacteria and sediment levels by addressing point source discharges, and providing grants for riparian planting and fencing. Over 75% of our regional waterways have stock excluded.
- Water quality objectives have been set for the Lakes of the Rotorua district and, for some lakes, progress is being made using both regulatory and non-regulatory tools.
- The Ōhiwa Harbour Strategy aimed to substantially reduce sediment and engage iwi and the community in harbour protection. This strategy has largely been implemented.
- Tauranga Harbour Programme is a partnership between the Tauranga Harbour Iwi Collective, BOPRC, WBOPDC and TCC that aims to enhance and improve the harbour and its catchments currently using largely non-regulatory tools.
- The Kaituna/Ongotoro Maketū Estuary restoration programme will re-divert the Kaituna River through the estuary and create additional wetland areas to restore its natural character.

**High level position**

The Local Authorities strongly support Government’s objectives to stop degradation of freshwater resources and reverse past damage in order to return freshwater resources and ecosystems to a healthy state. The greater focus on ecological health, Te Mana o Te Wai and the hierarchy of obligations are also supported in principle. The Local Authorities share Government’s sense of urgency where degradation is occurring and acknowledge that achieving the objectives will require changes and costs that will affect communities.

However, the Local Authorities are concerned that Government’s desire for speed must not be at the expense of:

1. Well-crafted and targeted policy that is consistent with the RMA and with national level direction under the RMA, can be implemented, will achieve the changes sought, and will not have large unanticipated consequences;
2. A sound, reliable, technical evidence base for decision making that builds on existing local and regional knowledge and practice including Matauranga Māori;
3. Realistic timeframes / pace of change and prioritisation for transition, that the nation, regions and districts can afford, and that reflect the complex interactions and responses of land and freshwater systems;
4. Robust economic and social analysis, providing a sound understanding of who will be affected, how, and how social, cultural and economic wellbeing can be best supported through the process of change. This must include integrate consideration of several government policy packages progressing at once;
5. Focusing effort and limited resources on real problems to achieve real results, based on a realistic and practical understanding of pressure, state and likely response to management actions, including recognition that there must be different priorities between regions;
6. Addressing fundamental issues that are critical for successful implementation, such as addressing Māori rights and interests in freshwater, and nutrient and water allocation approaches;
7. Resourcing availability to achieve the outcomes sought, especially to enable determination of local understanding of Te Mana o Te Wai with communities and tangata whenua;
8. Due process, including meaningful engagement with and hearing from the affected public. The truncated public engagement process, panel review period and government decision making processes raise risks that the above will not be achieved.

Part 2 Proposals supported by the Local Authorities of the Bay of Plenty region

For the avoidance of doubt, the Local Authorities support the following aspects of the proposals and seek to see them advanced, subject to suggested amendments and changes detailed in the separate submissions made by the Local Authorities of the Bay of Plenty.

<table>
<thead>
<tr>
<th>Proposal supported</th>
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<td>Subject to addressing particular matters as outlined in more detail the individual submissions from the Local Authorities of the Bay of Plenty region</td>
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**RMA Amendments**

1. RMA changes to introduce a streamlined plan hearing process for freshwater plan changes.

**Discussion Document**

2. Intention to halt declining water quality and ecosystem health, and start to turn it around with urgency.

**National Policy Statement for Freshwater Management**

3. Te Mana o te Wai as an integrating concept and framework. The hierarchy of obligations is supported in principle subject to legal advice on consistency with the RMA s.5, and some other specific concerns about retaining flexibility to set objectives to maintain or improve ecosystem health and essential human health needs during the National Objectives Framework process.
4. The ability for regional councils to set the timeframes for achieving objectives and target attribute states, as is the case under the operative NPSFM.
5. Reducing the evidential burden required to deliver plan changes, applying a fit for purpose and precautionary approach.
6. Strengthening expectations that Māori values must be accommodated meaningfully in to freshwater planning, noting these must be resourced to achieve the desired outcomes in the timeframes set in NPSFM.
7. Stronger direction to safeguard ecosystem health, and greater protection of threatened indigenous aquatic species, rivers and wetlands.
8. An effects management hierarchy for addressing loss of rivers and wetlands, and managing other effects on them.
9. Timeframe exceptions for existing plan provisions that meet the new requirements. We also seek extension of timeframes for existing and proposed plan provisions that have been notified within the last 5 year and set water quality limits and allocation regimes within the catchment, but do not necessarily match the requirements.

**National Environmental Standards for Freshwater**

10. Targeting national regulation to those farm practices with highest risk of contaminant generation, and risk to freshwater bodies.
11. National controls on feedlots, stock holding areas and intensive winter grazing on forage crops.
12. Interim controls on land use intensification.
13. A cap on nitrogen losses in nitrogen impacted catchments.
14. Requiring farmers and growers to have Farm Environment Plans with a freshwater module.

15. Enabling regional councils to recoup costs of monitoring and compliance for Permitted Activities.

**s.360 Stock Exclusion**

16. Requiring stock to be excluded from waterways.

**s.360 Telemetry**

17. Requiring automated telemetry for water use data.

**3 Waters**

18. Greater detail is needed to ensure the integration of wastewater, stormwater and drinking water management with NPSFM direction.

19. Improved nationally consistent measures for Wastewater and Stormwater are supported, however the mechanism used for this could be revised. One suggestion is that the mandatory non-financial performance measures set by the Secretary for Local Government (Local Government Act s261B) be amended to address any new measures proposed, rather than an additional legislative response.

20. Support for national guidance on incorporating water sensitive design and green infrastructure into stormwater planning and management.

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**Part 3: Bay of Plenty specific concerns**

Some matters of particular concern for the Local Authorities are listed below.

### Key concerns

Amendments sought are outlined in more detail in individual submissions from the Local Authorities.

**Discussion Document**

1. Lack of national direction on Māori rights and interests while requiring local determination of understandings. We request that government clearly sets out a process and timeframe for addressing Māori rights and interests in freshwater.

2. Include further definition, clarification and interpretation of Te Mana o Te Wai and the application of the hierarchy of obligations.

3. While this concept is supported in principle, there is interpretation has the potential to result in significant effects on local authorities and their obligations under the RMA and LGA. In particular, if the hierarchy is applied literally at all times, there may be consequences that have not been fully explored. For example, in times of drought, when a river falls to minimum flows, must water supply to residents (for their essential human health needs) be stopped entirely so that ecosystem health is maintained? There may be other scenarios where the hierarchy may result in disproportionate adverse effects on communities and residents that may not be covered through s330 Emergency Works.

4. Delayed national direction on allocation which limits the ability to comment in a meaningful and constructive way on these documents. Implementation of the NPSFM will require Councils to set allocation regimes for nutrients and water quality in catchments across the region. If government intends to provide direction on national allocation policies these will need to be finalised before requiring regional councils to advance any more limit setting and allocation under the NPSFM.

**National Policy Statement for Freshwater Management**

5. Short time frames may compromise iwi and hapū involvement processes – relationship building, process agreements, and delivery take time. It will also result in compressed community engagement.

6. The Dissolved Inorganic Nitrogen and Dissolved Reactive Phosphorus tables are inappropriate for this region. The BOPRC detailed submission agrees with the Regional Sector/LGNZ submission offering an alternative policy approach for nutrient management.

7. National direction should specifically address how strategic growth areas are to be provided for, and directly promote
8. Inconsistent definitions (between documents, and with the RMA) detract from certainty and clarity.

9. The new *E. coli* attribute need to be reconsidered. Most failures to meet national bottom lines in the Bay of Plenty region are due to high rainfall events. It seems inappropriate to be required to address these ahead of other water quality priorities. Urgent review of the microbial guidelines they rely upon is needed.

10. Ensure that regional councils retain ability to prioritise action planning and delivery across the region, as many action plans will be triggered by the new NPSFM.

**National Environmental Standards for Freshwater**

11. Lack of consistency across the documents. Redrafting is required to improve clarity and certainty in relation to the RMA, National Planning Standards.

12. The regulations may inadvertently create barriers to, activities that will have a beneficial outcome for freshwater, rivers, wetlands (and carbon reduction and biodiversity).

13. The intensification regulation inappropriately captures conversions to irrigated horticulture (e.g. kiwifruit and avocado) which would generally be expected to improve environmental and economic outcomes under good management practice.

14. Part 2 should specifically recognise and provide for strategic growth areas, as it does for significant infrastructure.

15. Clarification is needed relating to “no net loss” for rivers and wetlands, including direction on how effects management hierarchy is applied.

16. Nitrogen impacted catchments: The method for selecting Nitrogen impacted catchments does not identify Bay of Plenty’s most impacted catchments, and the cap and reduction methodology does not target poor practice which is the stated purpose of the regulation. The BOPRC submission seeks an appropriate and implementable interim regulation.

17. Extend timeframes for farm planning requirements to align with anticipated farm planner and auditor capacity, and to enable reasonable transition from existing farm plans. Provide greater clarity on regional council roles in recording, approval, auditing and enforcement of the farm plans.

**s.360 Stock Exclusion**

18. Farmers who have already excluded stock should not be penalised. Where stock exclusion with permanent fencing is already in place, farmers should not be required to meet proposed setback widths until the fence needs replacing (20-25 years or when the fence is replaced, whichever is earlier).

**s.360 Telemetry**

19. Add a daily volume threshold as well as the proposed rate threshold (i.e. <5 L/s) for compulsory telemetry. Telemetry will result in much higher water use data quality and timely information for accounting and management of freshwater, for reasonable cost.

**3 Waters**

20. The requirement for Risk Management Plans (for wastewater network operators) should removed or amended so that it doesn’t apply if it duplicates what is currently required through Asset Management Plans and Resource Consents

21. Lack of detail about proposals for three waters integrated management and their relationship with the NPSFM and NESF may impact on development of a coherent integrated framework.