Regional Sector Commentary on Essential Freshwater Proposals He Pito Kōrero e pa ana ki Ngā Tūtohu Mō te Waimāori

Prepared by the Regional Sector Water Subgroup

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Introduction Kupu whakataki

< The Regional Sector Water Subgroup (RSWS) shares the aspirations of the Government, Māori, and communities to improve freshwater quality and ecosystem health across New Zealand. We recognise that we as a nation must do more to help our vulnerable waterways. >

The RSWS appreciates the opportunity it has had to participate in the Essential Freshwater (EFW) reform process to find ways that, as a nation, we can do better. That reform process is both necessary and welcome.

We strongly support the reform objectives and the desire to improve water quality and ecosystem health. In principle, we support building on the Te Mana o te Wai framework, strengthening requirements for holistic reporting and management of freshwater ecosystem health, and national regulation to manage contaminant losses from high risk rural land use practices.

This report does not restate the RSWS's earlier advice on specific proposals as we currently understand them[1]. Rather, it takes the opportunity to stand back and provide a high-level assessment of how we, as New Zealand's primary water managers, see the challenges ahead and what principles we believe need to be considered when finalising the design and implementation of the reform proposals.

Context Horopaki

In the early days of the Resource Management Act (1991), New Zealand's water quality management was strongly focused on point source discharges. By improving technology and resource consent conditions (and consent holders making major investments), point source discharges have improved considerably. For example, 60 years ago the Hamilton section of the Waikato River had 100 times the bacteria contamination it has today. This demonstrates that the current resource management system can work. However, the gains made by improving point source discharges have been largely overshadowed in more recent years by land use intensification and the increased diffuse source contamination that has occurred, to variable degrees, across the country.

The regional sector[2] is responding to the challenge of land use intensification but accepts that responses to date have not always been effective or timely enough in the face of rapid change, complex science challenges and lengthy legal and planning processes. In many cases, it is simply too early for the results of recent regional responses to be seen in water quality outcomes or trends. It is also important to recall that successive governments (including recent governments), industry and the economic system in general, encouraged land development and intensification. Through the mid 20th century, in particular, that encouragement included subsidising large-scale land clearance and wetland drainage. We continue to live with the legacy of those changes. This legacy includes accelerated and ongoing contaminant loss (particularly sediment) and less resilience in our hydrological systems generally.

< Over time, our freshwater quality and ecosystems have become more vulnerable to degradation in the face of contemporary land use intensification due, in particular, to the historic loss of wetland function and riparian vegetation. >

1 As detailed in our letter to Ministers Parker and O'Connor dated 26 March.

2 The regional sector comprises 16 regional and unitary councils.

Commitments to halt decline and secure improvements in water quality and ecosystem health are reflected in the work programmes (and in many cases operative statutory plans) across the regional sector.

Major progress is being made to improve catchment management and tighten regional environmental regulations in different parts of the country.

Despite this progress, improvements based on current and planned responses will take considerable time. In many instances we are trying to turn around the impacts of decades of land use change and intensification.

The desire of the Government to make more rapid progress is understood and accepted. The RSWS supports the Government's reform objectives and regards itself as uniquely positioned to help characterise the problem(s) that need addressing, the challenges in formulating enduring policy responses, and delivery of those responses through timely cost-effective implementation.

There is no doubt that central government is best placed to resolve many of the outstanding freshwater issues and challenges. The Government has a vital role in providing or improving the management tools and science, reducing existing policy uncertainty, removing unnecessary duplication, and in providing the statutory flexibility that will enable the sector to respond more assertively and quickly as circumstances demand.

In responding to reform proposals we are also conscious of the regional sector's statutory role and function (in addition to sustainably managing land and water under the RMA) to represent regional communities, and to promote their social, economic, environmental, and cultural well-being. Those four 'well-beings' are inextricably linked. The design and evaluation of policy options must have regard to all of them. The future of freshwater ecosystems and the health and resilience of communities across New Zealand relies on us getting this reform package right.

Improving Water Quality: A partnership opportunity
Te Whakapainga Ake o te Kounga Wai: Kei te wātea mai he huarahi hei mahi ngātahi

How land is used, whether for urban development, agriculture, horticulture, forestry, or native bush has a direct influence on water quality. Improving water quality therefore requires on the ground investments, whether to the quality of a discharge from a pipe, fencing and planting a stream or an erosion prone hillside, or removing animal pests from an area of native bush. While regulation certainly helps it can only get us part of the way to improved water quality – and getting effective regulation in place is slow.

What changes behaviour much quicker are support and incentives for landowners and resource users to change their behaviour, to make on the ground investments to improve water quality. The greater and better designed the support and incentives, the faster voluntary action will be to improve water quality. In this regard a real partnership opportunity exists between central government, local government, and resource users.

Regional councils are already highly active in working with landowners, tangata whenua and community groups to get action on the ground. In the Waikato for example, in the last year alone 720,000 native plants have gone into the ground and 950ha of land has been retired. Fencing has now reached a rate of 230km per year (a 360 percent increase on five years ago).

In Taranaki, the long-standing programme to fence and plant all streams on the ring plain is on target to be largely complete by the end of this decade. The programme is a partnership between the Regional Council and landowners where the Council funds riparian management plans and contracts nurseries to provide plants to landowners at cost. Thus far it has seen 5.6 million plants planted and thousands of kilometres of fences installed. A recent independent study by NIWA found strong improvements in ecological health and reduced E.coli in ring plain water ways.

While those efforts are notable, more could be done (and improvement in water quality achieved more quickly) should the Government be a more active and regular partner in these type practical initiatives around the country. The recent announcement that the Government will provide funding to several groups working in the catchments of in the Kaipara Harbour is a very welcome initiative in that regard.

Declining water quality and ecosystem health – a complex problem Te Hekenga o te Kounga Wai, o te Oranga Pūnaha rauropi hoki – He raru matatini

a. Freshwater is critical to economic, environmental, cultural and social well-being but these outcomes often conflict with each other. In that regard, Te Mana o te Wai is an important framework to guide management and require that the health and well-being of freshwater is at the forefront of all discussions and decisions about freshwater. The health and well-being of water-bodies must come first.

b. Declining water quality is a wicked problem because:

- It is complex, poorly understood and resists clear definition.
- There is considerable variability in environmental conditions throughout the country (and locally between catchments) and accordingly, variable pressures, risks, challenges and required responses exist.
- It has many causes (including both legacy issues and contemporary threats) meaning there is no single solution but rather multiple types of intervention are required.
- It probably cannot be solved by existing means - new technological and policy tools are required.
- The science is often complex and scientific understanding of cause and effect and effectiveness of response is incomplete at national and regional scales.
- It is challenging because it requires changes in practices across a range of agencies, industries and individuals.
- Some interventions (regulatory or non-regulatory) can cause perverse or unwanted outcomes. An example would be the displacement of an activity or practice from one area or catchment to another resulting in a transfer, rather than elimination, of a water quality risk.
- Unwanted actions or practices by individuals are often a result of economically rational decision-making because the costs are not born solely by the individual undertaking the action.
- Reliance on the availability of freshwater for a range of services is pervasive across the economy and communities. Water, and the services it provides, is generally non substitutable.
- It raises issues associated with unresolved Māori rights and interests in water and water governance which can increase the complexity of decision-making and engagement processes.
- It involves many stakeholders across the public and private sector, communities and individuals often with very different priorities and values.

c. *The four well-beings are inextricably linked*. Improvements in water quality and ecosystem health will have impacts on social, cultural and economic well-being. Sustainability demands that all four well-beings are considered in the design and implementation of any policy and regulatory framework.

Guiding principles to apply to the reform Ngā mātāpono mō te whakahoutanga

We consider that ten inter-related and interdependent principles apply when assessing the design of any resource (including water) management system.

a. **Subsidiarity**. The principle that decisions are best made closest to community of interest remains critical to effective and responsive resource management.

b. **Values-based decision-making**. Difficult values-based choices in policy design and implementation are best made within a democratic governance structure where decision-makers are accountable to the electorate.

c. **Evidence-based policy**. The design of policy and regulatory interventions must be evidence-based (accepting there will always be some uncertainty). The problems to be addressed and the effectiveness of solutions proposed must be understood and assessed with reference to reliable and robust data.

d. **Tailored solutions**. 'One size fits all' policy solutions will often not be appropriate as what may be applicable in one catchment will not necessarily be effective or necessary in another. Catchments differ from each other in many ways - in soils, climate, hydrology and land use, meaning the risks faced and appropriate responses will be highly variable. Policy responses accordingly need to be flexible and able to be tailored to local circumstances.

e. **Leadership**. Although a 'one size fits all' will often not be appropriate for reasons explained in this report, there are issues where a single decisive national intervention is required to avoid the 'reinventing of wheels' and to reduce exposing communities to costs associated with region by region litigation.

f. **Social durability**. Policy solutions to wicked or complex problems must be socially durable - meaning they must be capable of community support over a sustained period. The burdens imposed must be fair and proportionate and the pace of change demanded must reflect the scale of the task and the (at times) intergenerational origins of the problems to be addressed.

g. **Effective intervention options**. Both regulatory and non-regulatory options to address issues should be seen to be objectively considered. Choice of intervention must be based on an assessment of what will most effectively achieve sustainable practice change (along with questions of public and private affordability). We should learn from international experience where that helps to identify effective and ineffective policy direction. Management tools need to be proven fit for purpose. Science should underpin decision-making wherever possible.

h. **Adaptive management**. There will always be an element of uncertainty, in our understanding of the problem(s), the effectiveness of policy interventions and in the future pressures on resources that may arise. Adaptive management and the ability of management agencies to respond rapidly to new evidence and in the face of unanticipated events is critical (although it must be balanced against the need to provide a reasonable level of certainty for resource users).

i. **Outcomes focus**. Because there is great complexity and variability in water quality, and because there is often uncertainty about cause and effect relationships, management responses need to keep a focus on outcomes and trends. Key questions will be "are we seeing what we want in our water bodies? Are we heading in the right direction?"

j. **A systems approach**. Because of the wicked or complex nature of the problem we need to take a systems approach. That means that, when we think about the policy interventions, we need to also think about the changes needed to support the intervention and make it work in practice. This includes education and training and skills, IT and information management systems, science and technology, institutional structures and capacity. A systems approach necessitates a whole of government approach to policy implementation.

The RSWS regards these ten principles as some of the key considerations for *effective and efficient* solutions under the RMA. The above principles are relevant to determining whether the proposals are likely to be the least costly way to meet objectives and whether policy proposals will do what they are designed to do, not just in theory, but in practice.

Implementation: key messages
Whakatinanatanga: Ngā karere matua

RSWS is conscious that the success or failure of the reform package will ultimately depend on its implementation. The regional sector is absolutely committed to taking a lead role in that implementation. As discussed earlier, we would welcome working in partnership with the Government on various aspects of implementation.

In that regard we offer the following observations.

a. **Implementation of the reform package needs to be understood as involving two distinct phases** from a regional sector perspective. First, developing and getting statutory plans in place. Second, turning those plans into action and making them 'work' in practice (including putting in place all the systems and processes, decision support tools and non-regulatory measures). Both are hugely time-consuming but the time and resource requirements of the second stage are most frequently underestimated.

b. **Non regulatory programmes will continue to be critical** even in the more regulated environment the reform package signals. The scale of necessary non regulatory programmes can, however, be daunting. Partnerships with central government would provide an opportunity secure progress at scale, more quickly than could be achieved by regional councils working alone.

c. **Based on our experience of past reforms, we are mindful of the need to avoid**:

- **under-estimating the disruptive impacts of change on the implementation** of existing effective programmes and plans. Reforms that require councils to re-prioritise investment to fund new mandatory work or to review recently developed plans could lead to perverse consequences (and significant cost for little added benefit);
- **over-estimating the ability of existing public and private institutions to implement change** given existing levels of resourcing and capability and/or the absence of the necessary technical and practical tools to implement reform proposals efficiently.

d. **We emphasise the need for the reforms to minimise disruption** and recommend:

- a **detailed examination of the pace of change** by considering existing capacity and public and private sector affordability, and impacts on other investment priorities; and
- that the reform proposals be subject to a **robust implementation audit** and, when finalised, be accompanied by a detailed implementation plan.

e. **Prioritisation will be critical** to getting the maximum return on society's investment. Prioritisation will be important because:

- There are **limited human and financial resources** available and able to be deployed at short notice; and
- The **severity and degree of urgency varies** across regions and catchments.

< There is a risk that without effective prioritisation resources will be spread too thinly and/or spent in locations (or on issues) that yield low water quality and ecosystem health benefits. The priority catchment work is important in that regard. >

f. **A Government implementation support package will be critical**. Regional councils have had experience, including with the introduction of the RMA itself, of new national policy being introduced without an implementation package that corresponds to the scale and complexity of the implementation task. The implementation package needs to be broad-based and include a commitment to align science funding to assist councils to, for example, set robust freshwater limits and targets. It should also include clear policy guidance on difficult and contentious matters such as limit setting and/or allocation methodologies.

g. **The roles and responsibilities of various parties in the implementation of freshwater policy need to be clear**, certain and well understood. In particular, defining a clear role for government agencies in resolving on-going implementation issues (in respect of issues such as national accreditation schemes and building national capability in skills and science) will be critical.

h. **Most importantly of all, implementation will take time**. The most obvious ways to speed up the first phase of implementation (the process of getting plans to pre-notification stage) involve either:

- reducing engagement with iwi, communities and other affected stakeholders; and/or
- reducing the evidential basis (i.e. the technical, policy and impact assessment) underpinning regional plan proposals.

The regional sector will be reluctant to take either of those steps without clear direction to do so. Consequently, **the pace of change required by the reform proposals will need to reflect those engagement and evidence requirements**. Alternatively, there may be opportunities to revisit the nature and scale of those obligations. That would be a matter on which the regional sector would welcome further discussion.

Regional sector work to inform the analysis Ngā mahi a te rāngai kaunihera ā-rohe hei ārahi i ngā tātaritanga

To assist with the application of the above principles and considerations the RSWS has initiated two work-streams.

Economic impact

The first work-stream relates to the economic impact of a selection of the EFW proposals as we currently understand them. This is based on the premise that economic impacts will have flow-on impacts for communities. This work-stream has already delivered a preliminary report[3] (the Initial Economic Advisory Report) that accompanies, and should be read together with, this report.

We are currently considering a wider range of case studies from across the regional sector to provide a fuller picture. The work is yet to be completed but will be made available to government to support on-going impact assessment. The purpose of the work is to gain a robust understanding of the what the package might mean in terms of all four 'well-beings'.

Implementation

The second work stream will consider the implications of the package for regional councils' implementation. That work has not yet been completed. Again, that will be made available to government agencies when it is complete.

It is hoped this work will assist the government to refine its reform proposals and ensure we get the most benefit for the investment made (and in the shortest possible time-frames).

3 Initial Economic Advisory Report on the Essential Freshwater Package, E Moran and B Keenan, August 2019.

Conclusion Kupu whakatepe

The RSWS strongly supports the Government's intent to improve water quality and ecosystem health. However, we seek to ensure that the likely impacts (positive and negative) of the new proposals on communities are well understood and factored into the pace of change. We believe it will be important to take landowners and communities with us. In the end, water quality will only be improved through enlisting people and communities to do the right things (including making investments on the ground) and having landowners accept that some current practices need to stop. Coercive measures will be important but success will ultimately depend on that message being embraced throughout communities. Fair treatment and reasonable transitions will be critical.

It is also essential that the new proposals can be practically implemented in the stated time-frames, noting that significant capacity and capability issues exist across all sectors. An implementation audit and whole of government implementation plan is highly advisable and the RSWS would welcome the opportunity to work with the Government on these steps.

The ten principles identified in this report, along with the further information that the RSWS is currently gathering, aim to support the Government to refine its proposals. These principles and the further information will be applied by the regional sector as it assesses the reform proposals through the submission process.

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