Submission

To: **Ministry for the Environment**
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By: **Kaipara District Council**
On: **Action for healthy waterways (October 2019)**

Introduction

Kaipara District Council (KDC) is grateful for the opportunity to comment on the *Essential Freshwater Reform* package as set out in the discussion document *Action for Healthy Waterways* and the accompanying Draft National Policy Statement for Freshwater Management (NPS-FM), Draft Stock Exclusion section 360 Regulations (Draft SER), and the Proposed National Environmental Standards for Freshwater (NES-FM) (the Essential Freshwater Proposals). KDC submits our feedback in the interest of promoting the sustainable management of our District's natural and physical resources and the social, economic, and cultural wellbeing of our people and communities.

Executive summary/Whakarāpopototanga

Kaipara District spans two coastlines; it incorporates the largest enclosed harbor in the southern hemisphere,[1] the longest river in Northland,[2] a pristine series of dune lakes as well as three of the seven major freshwater catchments in Northland.[3] We have an estimated 1500 farm landowners across the Kaipara catchment, most of which have highly erodible land (80,910ha). Many of our resident's lives' revolve around their access to water, so we understand the importance of sustainably and the complexities that water (both fresh and coastal) management present.

We support the Government's proposed objectives to (1) stop further degradation of New Zealand's freshwater resources, and; (2) reverse past damage to bring New Zealand's freshwater resources, waterways, and ecosystems to a healthy state within a generation. However, we are also concerned that without sufficient financial support from the Government to assist our residents with the proposed requirements, especially within our primary sector, that the proposed directives will have a crippling effect on the financial wellbeing of our residents.

Failure by the Minister for the Environment to prepare or publish an evaluation report of the proposals as per the requirement of section 32 of the Resource Management Act 1991 (RMA) has led to the disappointing quality of the draft proposals. There are examples of incompatibility between the Draft NPS-FM, the Draft SER, and the proposed NES-FM, from apparent contradictions between the Essential Freshwater proposals, through to their ambiguous terminology and over-complicated directives.

The inadequate attention to the social and economic costs through the Regulatory Impact Analysis is of real concern, as this should have alerted the Ministry for the Environment to their legal obligation of completing a section 32 (RMA) analysis. KDC is concerned about the effects that the proposed Essential Freshwaters Reform package will have on our residents' environmental, economic, social, and cultural wellbeing.

We highly urge the Minister to consider conducting a section 32 report on the draft Essential Waters proposals package before proceeding further. Please find KDC feedback on the Essential Waters proposal packages below.

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[1] Kaipara Harbour.
[2] Northern Wairoa River
[3] https://www.nrc.govt.nz/for-schools/school-information-packs/rivers-and-streams/#Major%20catchments%20in%20Northland

Draft National Policy Statement for Freshwater Management

Clause 1.5 & 2.1

The concept of Te Mana o te Wai as set out in the draft NPS-FM appears to be at odds with the purpose of the RMA (section 5). Section 45(1) of the RMA states that "[t]he purpose of national policy statements is to state objectives and policies for matters of national significance that are relevant to achieving the purpose of the Act."

There is no reference to Te Mana o te Wai in the Act. Of concern is that the hierarchy of priorities in Te Mana o te Wai may be inconsistent with the purpose of the Act. The RMA is concerned with the effects of an activity inside a set parameter, compared to Te Mana o te Wai where its holistic nature pushes the focus outside of, or in connection with, the area and proposed activity. "From mountain to sea".

At 1.5 Te Mana o te Wai is described as a 'concept'; however, it later transforms into a "framework" that dictates how Regional and Territorial authorities must consult with Māori to determine their values and interests in any Regional Policy Statements for Freshwater management. At clause 2.1, the proposed NPS-FM embeds the priorities of Te Mana o te Wai concept/framework as an objective.

This may cause ambiguity for Regional Councils who must interpret and then deliver the Regional policy statements for territorial authorities to implement through the District Plan.

The fact that the proposed NPS-FM will not require Regional Council to undergo the process set out in schedule 1 of the RMA sets (in our view) a bad precedent. The proposed Essential freshwater package will have a significant impact on the public's environmental, economic, cultural, and social wellbeing. Transparency of the process, and to avoid or mitigate any potential litigation, (regarding resource consent challenges), Māori must be able to provide evidence that can withstand legal scrutiny in order for their values to form part of any NPS, NES, RPS, and District Plan objectives.

Recommendation:

Clarify the relationship between Te Mana o te Wai and the purpose and principles of the RMA and undertake a thorough RMA s32 analysis of the costs and benefits of the proposal.

Make the evaluation report available to people so that they can provide feedback to the Minister for his consideration prior to a recommendation under section 52 of the Act.

Write in the requirement to ensure some form of evidence is used to assist Regional and Territorial authorities to justify the application of Te Mana o te Wai priorities as set out in 2.1.

Clause 2.2

There appears to be an inherent tension between Policy 13 and the objective of the draft NPS and Policy 1. Policy 13 states that "[c]ommunities are [to] be enabled to provide for their economic wellbeing while managing freshwater in a manner consistent with Te Mana o te Wai as required the national objectives framework and other requirements of

this National Policy Statement." It may be challenging to enable some communities to provide for their economic wellbeing if their economic (and social and cultural wellbeing) is a lower priority than the health and wellbeing of freshwater ecosystems in certain areas.

These situations could potentially lead to an increase in litigation at both Regional and Territorial authority level due to declined resource consent applications that cannot guarantee that the activity for which consent is sought will not cause any degradation beyond the fresh water unit's current state.

Recommendation: Undertake a robust RMA s32 analysis of the costs and benefits of Policy 13 and make the evaluation report available to people so that they can provide feedback to the Minister for his consideration prior to a recommendation under section 52 of the Act.

Clause 3.4 Clause 3.4(4) states that "local authorities that share jurisdiction over a catchment should co-operate in the integrated management of the effects of land use and development." It is unclear who is ultimately responsible for managing the effects on freshwater. Are territorial authorities responsible for activities requiring resource consents, or are they responsible for enforcement? Each is adding the extra financial burden onto our ratepayers.

Integrated management needs to incorporate other large landowners. For example, in Northland, the Department of Conservation administers a substantial proportion of high-value waterbodies and wetlands.

Recommendation: Providing clear direction on whether Regional councils or Territorial authorities are responsible for managing the effects of land use on freshwater bodies, freshwater ecosystems, and sensitive receiving environments resulting from urban development.

Include others like the Department of Conservation into the integrated management and determine where responsibilities are to be assigned.

Proposed National Environmental Standards for Freshwater

Note: It is not clear what RMA restrictions several of the standards apply to. For example, is standard 10(2) a section 9 rule (restrictions on the use of land) or section 14 rule, or both? Clarification and consistency of terminology are required to remove any ambiguity from the document. If Regional Councils are unable to determine terminology, this uncertainty will ultimately filter down into District Plans and consent applications. It will lead to unnecessary costs and time-wasting, without it achieving the objectives of the proposed NES-FM.

Clause 4 A constructed wetland is defined as "…a wetland constructed by artificial means that: (a) supports an ecosystem of plants that are suited to wet conditions; and (b) is constructed for a specific purpose in a place where a natural wetland does not already exist." Wetlands often form

unintentionally as a result of human activities (e.g., construction of roads, railway bunds, drains, etc.). That is, they were not constructed for a specific purpose and therefore, would be deemed natural wetlands.

The proposed NES states that a natural wetland means a wetland as defined in the RMA, with some exceptions. We consider that the definition should be amended by being more specific about what a natural wetland is and is not. For example, stream and river margins and lakes are, by definition, natural wetlands.

Lack of aligned or correct definitions will lead to uncertainty, inconsistent interpretation, and application, which in turn could lead to litigation and associated costs regarding resource consent applications. An example is "Vegetation destruction" although defined in the proposed NES-FM as "destroying any significant indigenous vegetation," the term "significant indigenous vegetation" is not defined in the proposed NES-FM or the RMA. This will need to be addressed.

Recommendation: Clarifying the status of wetlands created unintentionally by human activities (e.g., construction of roads, railway bunds, and drains);

Clarifying if the land water margins of streams, rivers, and lakes that support a natural ecosystem of plants and animals are natural wetlands;

Clause 9 The definition of earth disturbance in clause 9(b) should be amended by excluding earthworks associated with fencing (e.g., benching and tracking). Such activities should not be subject to consenting processes because they will be a disincentive to positive action.

By not excluding the above it will prove to be a waste of resources, and add unnecessary pressure to Regional and Territorial authorities who will have to process resource consents for these activities.

Recommendation: Amend the definition of earth disturbance by excluding earthworks associated with fencing (e.g., benching, signage, and tracking).

Clause 10 There are inconsistencies of directives between 3.15(7) of the proposed NPS-FM and clauses 7 and 10 of the NES, which may discourage individuals from restoring or maintaining wetlands on their properties due to the added costs of obtaining a resource consent to fence these areas off.

This requirement will also become an obstacle to implementing stock exclusion regulations.

Recommendation: Amend either the proposed NPS-FM or the clauses in the NES to provide consistency and certainty about the directives.

Clause 18 The Proposed NES does not contain a definition for river bed infilling.

Recommendation: Provide a definition of river bed infilling.

Subpart 1	Many of the clauses in this subpart are poorly drafted to the extent where they will be extremely difficult to interpret, especially when reading together. This will lead to inconsistency and ambiguity for not only the regulators but also farmers. This, in turn, will lead to a further waste of resources (money and time).
Recommendation:	Review the whole section. Clauses should be simplified for clarity and certainty.
Clause 37	KDC considers that the requirement for farms to have a certified farm plan on highly erodible land within the Kaipara catchment, in two years is entirely unrealistic. We would recommend that this timeframe be extended to reflect the capacity and capabilities of not only the Regional Council, but also our farmers within the Kaipara catchment. Without significant government support to assist with the development of a farm plan for all pastoral farms the objective set in clause 37 has already set our Kaipara farmers up to fail.
Recommendation:	Review proposed timeframes for the farming sector within the Kaipara Catchment. The timeframes should take into account the capacity of both Regional Council and those farmers to develop and implement farm plans. Provide significant financial assistance to ensure that the development and implementation process is just and accomplished.
Clause 38	This clause is confusing in the draft NES-FM. Clause 38(1)(j) implies that only farms in Schedule 1 catchments have to develop a nitrogen loss reduction action plan, in accordance with sub clause 38 (5). However, clause 38(5) reads as a universal obligation.
Recommendation:	Reassess clauses to provide clarity and consistency across the proposed draft NES-FM

Draft Stock Exclusion Section 360 Regulations

Note 1	Clarification is needed to determine whether it is the intent of the regulation to only exclude stock from parts of the river or from the whole river. Providing a definition for ephemeral, and stating how and where you measure the river width. Consideration should also be given to the different widths due to seasonal changes (flooding, king tides), especially in the Kaipara catchment.
Recommendation:	Provide clarity of terminology, and regulations.
Note 4:	There is no process for applying for the exemption, or is the intention of the Ministry that this will also go through the resource consenting process? If so will it then be the responsibility of Territorial authorities to check for compliance or will this remain with Regional Councils? This is unclear due to the integrated management of catchments set out in clause 3.4 of the proposed NPS-FM.
Recommendation:	Provide clarity by determining responsibility and including the process.

Requirements of Stock Exclusion

In general: All requirements demand significant financial and land contributions from KDC farmers. 5 meters from a waterway does not take into consideration the cleaning of waterways nor secure access to waterways in the future. All requirements will need governmental financial investment to incentivise farmers within our District and gain public support. It is not clear who will be responsible for monitoring and enforcing compliance with the national regulations, including recovery of costs associated with doing so. This must be addressed.

Conclusion:

KDC supports the objectives of the proposed Essential Freshwater Reform package in principle, however we recommend that:

- the Minister considers initiate a section 32 (RMA) report on the proposed Essential Freshwater Package, and release for public feedback.
- the Government reassess the proposed Essential Freshwater Reform package in its entirety to ensure consistency across the proposed NPS-FM, draft NES-FM, and draft SER documents.
- the Ministry for the Environment ensures there is no ambiguous terminology and that policy directions are not complex.
- the Minister develop a financial package to assist with any transition, and implementation costs, both at the gate and at local authority level.
- the Ministry determine and provide processes where needed.
- the Ministry address the inconsistencies of rules across the different sectors of our society, to ensure a fair and just system. If it is the intention to deliver an Essential Freshwater package then, for example, the 5 metres stock exclusion regulation should also apply to all landowners with waterways that are within or connected to the boundary of their properties. As it is now it does not achieve the fundamental concept of Te Mana o te Wai, “from mountain to sea.”
- the Minister also assess the capacity and capabilities at local levels to determine whether each has the resources and professional planners required to meet the extra workload that the Essential Freshwater package will demand, within the proposed timeframes.