

Submission by



to the

Ministry for the Environment

on the

**Action for healthy waterways – A discussion document on national
direction for our essential freshwater**

October 2019

**ACTION FOR HEALTHY WATERWAYS – A DISCUSSION DOCUMENT ON
NATIONAL DIRECTION FOR OUR ESSENTIAL FRESHWATER
SUBMISSION BY BUSINESSNZ¹**

1.0 INTRODUCTION

- 1.1 BusinessNZ welcomes the opportunity to comment on the Action for Healthy Waterways – A Discussion Document on National Direction for our Essential Freshwater (“the Discussion Document”).
- 1.2 The Government has outlined 3 objectives on p.8:
1. **Stop further degradation** of New Zealand’s freshwater resources and start making immediate improvements so that water quality is materially improving within five years.
 2. **Reverse past damage** to bring New Zealand’s freshwater resources, waterways and ecosystems to a healthy state within a generation.
 3. **Address water allocation issues** having regard to all interests including Māori and existing and potential new users.
- 1.3 The package of proposals addresses the first two objectives; the third objective, water allocation, continues to be worked on.
- 1.4 BusinessNZ notes the 2018 General Social Survey identified the state of rivers, lakes, streams, wetland and aquatic life as a concern for 80 percent of New Zealanders. Moreover, when it came to reasons for their freshwater concerns, there was little difference between the views of people in rural areas and those in urban areas.
- 1.5 BusinessNZ strongly supports the Government’s intent to improve water quality but would stress that how this will affect communities and what trade-offs will be needed will have to be well understood and clearly factored into the timeframe for any change in land use practices. Proposed changes must not unnecessarily interfere with current established property rights and if they do, either compensation must be paid, or adequate time provided for adjustments to be made.
- 1.6 Individual members will have a broad range of views on the merits or otherwise of detailed matters in the Discussion Document, and other supporting documents such as the draft National Policy Statement on Freshwater Management (NPS–FM), including the specific questions. With highly- targeted

¹ Background information on BusinessNZ is attached as Appendix 1.

approaches to particular sectors, individual sectors will provide detailed responses to proposals that will affect their respective members.

- 1.7 BusinessNZ's submission focuses largely on several high-level matters of fundamental importance if any changes made in respect to freshwater management are to be fair and lasting, while not unduly compromising further investment growth. BusinessNZ would emphasise that proposals should be coordinated, appropriate trade-offs made, and property rights of affected parties understood and upheld.
- 1.8 **Section 1** contains key high-level issues which policy makers need to consider include the following:
- **Freshwater use in the context of the wider economy**
 - **Impact on particular sectors**
 - **Reasonable internalisation of costs of water quality**
 - **Upholding property rights to encourage investment**
 - **Compensation for regulatory takings**
 - **Cross-cutting Issues with Proposed National Policy Statements (NPS)**
- 1.9 **Section 2** considers specific issues from the various discussion documents (and NPS-FM) outlined below.
- **Draft NPS for Freshwater Management (NPS-FM)**
Part 2: Objectives and policies (p.6)
 - **Action for healthy waterways - A Discussion Document**
4.3 Strengthening Maori values (p.30-33)
 - **Action for healthy waterways - A Discussion Document**
4.6 Exceptions for major hydro schemes to support renewable energy targets (p.34-35)
- 1.10 BusinessNZ would be happy to meet with MfE to discuss our submission in more detail should officials consider this helpful.

2.0 SECTION 1: HIGH-LEVEL ISSUES WHICH NEED TO BE CONSIDERED

Freshwater use in the context of the wider economy

- 2.1 Freshwater is essential to life and environmental sustainability and is relied on for export production, tourism, hydro-electricity generation and recreational activities. Water is a key input into numerous sectors of the NZ economy and, if used strategically, could considerably improve the country's future economic growth prospects.²
- 2.2 There are many ways of determining an economy's success. Clearly, a focus on improving economic growth is fundamental if in the future, New Zealanders are to have the sort of lifestyle and standard of living most aspire to. Water is a key natural resource for improving economic growth.
- 2.3 But a sole focus on economic growth is unlikely to be acceptable to the broader population, given the interest individuals have in the environmental, social and cultural issues associated with water use.
- 2.4 Water quality and use need to reflect the implications of resource use to encourage efficient investment decisions including, within reason, internalising the associated costs while taking account of water's scarcity value within allocation regimes.
- 2.5 It is important to set water quality standards at appropriate levels. If standards are too high, there could be wasteful over-investment in pollution control and a reduction of output and value from water use. Standards that are too low or non-existent might result in environmental damage and consequently cultural and recreational uses would suffer.

Impact on Particular Sectors

- 2.6 The impact of the suite of proposed changes outlined in the Discussion Document, particularly on land use, could be significant, given the very rapid timeframes in which change is required.

² A number of studies have documented the economic returns from various uses of water (e.g. irrigation on the Canterbury Plains). Some water is used for consumption purposes (e.g. irrigation) while other water is simply used as part of a process (non-consumption uses) and re-enters waterways (e.g. water used for hydro-electricity generation or cooling).

- 2.7 To ensure that change is manageable and reasonable timeframes for change are adopted, it will be important for policy makers to consider not only freshwater management reforms, but also several other issues impacting on particular sectors.
- 2.8 The National Policy Statements currently out for discussion or at various stages of development will potentially have a significant impact on the property rights of landowners.
- 2.9 The Reserve Bank is also currently reviewing its capital adequacy requirements for NZ banks, with significant implications for the availability and cost of credit.
- 2.10 The distributional and equity effects of the Reserve Bank's capital adequacy proposals will likely have an added impact on the NZ economy given households' relatively high net debt levels. Household debt is currently in excess of 160 percent of disposable income (compared with around 100 percent in 2000).
- 2.11 Meanwhile, agricultural debt has continued to ratchet up and is currently sitting at about \$63 billion (up from \$12 billion in 2000), with nearly two-thirds focused on the dairy sector.
- 2.12 Policy makers need to recognise the whole raft of factors affecting individual sectors, including livestock, horticulture, and forestry, since these in total will have a real effect on future economic growth. The trade-offs communities are prepared to make need to be understood and factored into decision-making and associated timeframes for change.

Reasonable internalisation of costs of water quality

- 2.13 As a general principle, individuals and companies should bear the full costs associated with their behaviour (i.e. costs should be internalised). Individuals will tend to over-consume resources if they can shift costs on to third parties. Management of water - and perhaps more importantly, water quality - is no different. If individuals are to make rational decisions about water use, they should ideally bear the costs (and benefits) associated with specific water use options.
- 2.14 Economic externality arguments are particularly prevalent to water quality after the water has been used, for example, degradation of lakes and rivers as a result of non-point source pollution (waste run-off).

- 2.15 BusinessNZ is broadly supportive of the action plan approach taken in the NPS-FM) (Part 3: Subpart 2, 3.10 (p.11) as opposed to the national prescription of compulsory limits which are often impractical when applied to catchment situations.
- 2.16 More use should be made of the action plan approach that enables regional councils to take a sensible approach to setting water quality goals and accounting for the wide range of biophysical characteristics of our diverse climate and hydrological conditions around the country. This will also be necessary as a response to adaptation to climate change.
- 2.17 This would not weaken the resolve to improve water quality but would lead to more targeted interventions with greater likelihood of success as the right water quality parameters are managed for the right reasons in a catchment context.
- 2.18 Ideally all activities should be regulated on the basis that they are expected to internalise effects and adopt continuous improvement or adaptive management, commensurate with the sustainable management of the environment.

Upholding property rights to encourage investment

- 2.19 A fundamental pillar of a market economy is that property rights are relatively clear and unambiguous and can be upheld in a court of law. Where property rights are removed or reduced by way of regulatory takings, compensation is generally paid.
- 2.20 Under Discussion Document proposals, there will be landowners faced with proving any move to more intensive land use will not increase nitrogen, phosphorus, sediment or microbial discharges from their property above an average of the discharges from 2013-18. This will affect the traditional flexibility land users have always relied on in reacting to economic change.
- 2.21 BusinessNZ supports measures to better internalise the costs of behaviour but the above proposal could simply lock in current land use regimes, minimising the ability to move to some other more highly valued use of land.

Compensation for regulatory takings

- 2.22 Based on the above, BusinessNZ believes the NPS should provide for the payment of compensation for loss of property rights and for regulatory takings. That would ensure local and central government must take greater account of the effects of unnecessarily restricting land use.
- 2.23 Apart from the Public Works Act, no allowance is currently made, other than in one or two specific instances, for the payment of compensation for regulatory takings (that is, a reduction in private property rights in the public interest).
- 2.24 Regulatory takings should not be legislatively condoned and an acknowledgment of the right to compensation is at the core of the property rights issue. It is generally presumed property rights should not be diminished without compensation. That is a long-held view. The presumption of compensation is a vital check and balance on the economic system.
- 2.25 BusinessNZ recognises that in some cases, the transaction costs of determining winners and losers in a regulatory taking situation might be disproportionately high, making the payment of compensation impractical. This possibility reinforces the importance of having both a sound process (including robust decision-making requirements) and appeal rights.

Cross-cutting Issues with the Proposed National Policy Statements

- 2.26 As an organisation with a view across the economy and the breadth of public policy development, BusinessNZ is concerned about some of the issues emerging from the NPS development process, not only in respect to freshwater, but in respect to other NPS either out for consultation or still in development.
- 2.27 BusinessNZ understands and welcomes the willingness to improve policy outcomes for the areas in question but is concerned that some NPS have the potential to cut across current work streams and to have an unintended impact on matters such as housing affordability, business growth, and land-owners' property rights.
- 2.28 The proposal for interim controls effectively prohibiting any productive land use change for at least the next five years is of great concern. Landowners will have to prove any move to more intensive land use will not increase nitrogen, phosphorus, sediment or microbial discharges from their property above an

average of the discharges from 2013-18, affecting the traditional flexibility farmers have always relied on in reacting to economic change.

- 2.29 Looking across the broad range of NPS proposals, either currently out for public consultation or in the pipeline, businesses are increasingly concerned that while well-intentioned, collectively these will create a greater degree of uncertainty and investment risk which will be reflected in reduced land prices and investment disincentives. Perhaps even more importantly, the proposal will likely lock-in current land use by failing to recognise the desirability of providing for a wide range of land use changes over time as population and other pressures require.

3.0 SECTION 2: SPECIFIC COMMENTS ON THE DOCUMENTS

Draft NPS for Freshwater Management (NPS – FM)

Part 2: Objectives and policies (p.6)

- 3.1 Turning specifically to the NPS-FM, BusinessNZ has significant concerns with **2.1 Objective**, which currently states:

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

- a) First the health and wellbeing 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 wellbeing, now and in the future"*

- 3.2 The above objective could be interpreted as suggesting that (b)...essential health needs of people is subservient to (a)...health and well-being of waterbodies... while (c).... ability of communities to provide... is subservient to both (a) and (b).
- 3.3 If this is indeed the case, then it is likely much economic activity that is currently taken for granted will be seriously compromised, with flow-on impacts in terms of both employment and community health and wellbeing, both of which are dependent on sustainable economic activity.
- 3.4 Perhaps even more importantly, it may well upend all previous case law about making a reasonable judgement and balancing values as per Part 2 of the Resource Management Act (RMA).

- 3.5 It is significant that the NPS–FM still needs to be interpreted within the construct of sustainable management (Part 5 of the RMA) to enable regional councils to appropriately consider the level of protection, use and development i.e. not development everywhere and not protection everywhere.
- 3.6 As currently framed, the NPS-FM would be a massive challenge for communities to prioritise environmental quality above all else, in every situation, everywhere. It would appear to completely miss the point that we are not starting from a blank sheet of paper, and that the environment and landscape have changed massively over the last century or so.
- 3.7 Appendix 1A (Compulsory values – 1 Ecosystem health – last para p.24) states: *"In a healthy freshwater ecosystem, water quality, quality, habitat and processes are suitable to sustain appropriate indigenous aquatic life as would be found in a minimally disturbed condition (before providing for other values)."* Given the current environment, and the changes made over many decades, this statement appears completely unrealistic as a goal for many parts of NZ. While the general consensus is for improved water quality, it must reflect the state of the current environment to some degree, not a hypothetical return to the environment (including low population) we had two centuries ago.

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4.3 Strengthening Maori values (p.30-33)

- 3.8 The Discussion Document notes that *"All [the advisory groups] support Te Mana o te Wai as the overall framework for managing water resources. It is a concept that resonates across cultures."* (p.17).
- 3.9 While the above concept has been supported in previous work on freshwater management reform, including through the Land and Water Forum process, under 4.3 there are proposals to strengthen Māori values further, by:
1. Elevating the status of mahinga kai to a compulsory value, and
 2. Strengthening the priority given to tangata whenua freshwater values.
- 3.10 The Discussion Document states that the two proposals are not mutually exclusive and could work together.
- 3.11 While BusinessNZ has no specific comments on Proposal 1, it considers Proposal 2 - which would create a new 'tanaga whenua freshwater values' category in the NPS-FM, giving them the same priority as ecosystem health and human health for recreation - raises issues which need to be considered.

- 3.12 It is not clear what would be incorporated into a 'Tangata Whenua Value' in Appendix 1A (Section 4 p.25) of the NPS-FM as opposed to regional councils giving local effect to Te Mana o Te Wai through discussions with Tangata Whenua and the community in Section 3.2(4) – p.7.
- 3.13 The ability of the community to have those conversations are likely to be relatively constrained due to the timetable to meet the target of notifying regional plans by 2023.

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4.6 Exceptions for major hydro schemes to support renewable energy targets (p.34-35)

- 3.14 Given the existence of significant infrastructure, notably electricity generation assets, it is important that in formulating national water quality limits the potential for specific impacts on such assets is clearly understood.
- 3.15 Generation assets currently operate within a resource consent system. Operational issues depend on consent conditions specific to each river and catchment.
- 3.16 The National Policy Statement must not, therefore, undermine the current operational regime and the consents which apply to generation assets. That would be a significant form of regulatory taking, triggering the need for compensation.
- 3.17 As outlined on p.34 of the Action for Healthy Waterways Discussion Document: *"Hydro-electric generation currently provides the majority of our electricity and has a critical role in the wider electricity system due to its size, flexibility and the potential of some schemes to store large amounts of energy"*
- 3.18 It is of fundamental importance that the contribution that the electricity sector makes to the NZ economy is recognised, and electricity generation output and operational flexibility are not compromised in achieving not only the objective of achieving a secure source of energy but that in doing so it meets the Government's clear climate change objectives.
- 3.19 In this respect, it is important to recognise the foreseeable impacts of climate change and the importance of climate change mitigation, including the avoidance, reduction or displacement of greenhouse gas emissions.

- 3.20 Certainty around the exceptions regime is crucial for the continued efficient operation of nationally significant infrastructure. In this respect BusinessNZ understands the rationale for the pragmatic exemption for the six largest hydro-electricity schemes in the new NPS-FM (effectively grandparenting current rights to some degree).
- 3.21 Notwithstanding the above, there are strong arguments that smaller hydro-schemes should also receive an exception as well.
- 3.22 The exceptions, as proposed in the Discussion Document appear to be arbitrary and put a potentially added risk on smaller players in the hydro-generation market. It is understood that around 10 percent of hydro generation assets will not receive exceptions to the proposed water quality rules outlined in the Discussion Document.
- 3.23 Making the exception available to all hydro generation schemes would reduce the risk of market-distorting effects and ensure a consistent approach to all hydro generation capacity. Given that all generators are effectively operating in the same market, having a two-tiered approach as proposed could create significant impediments to the ability of smaller generators to compete in the market.
- 3.24 Unless there is a strong and valid reason for treating hydro generators differently from each other - which BusinessNZ is unaware of - then the same rules should generally apply. In this case, exceptions should be available for all hydro schemes, regardless of size.

Appendix One - Background information on BusinessNZ



GROWING PROSPERITY AND POTENTIAL

[BusinessNZ](#) is New Zealand's largest business advocacy body, representing:

- Regional business groups [EMA](#), [Business Central](#), [Canterbury Employers' Chamber of Commerce](#), and [Employers Otago Southland](#)
- [Major Companies Group](#) of New Zealand's largest businesses
- [Gold Group](#) of medium sized businesses
- [Affiliated Industries Group](#) of national industry associations
- [ExportNZ](#) representing New Zealand exporting enterprises
- [ManufacturingNZ](#) representing New Zealand manufacturing enterprises
- [Sustainable Business Council](#) of enterprises leading sustainable business practice
- [BusinessNZ Energy Council](#) of enterprises leading sustainable energy production and use
- [Buy NZ Made](#) representing producers, retailers and consumers of New Zealand-made goods

BusinessNZ is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy and services for enterprise, BusinessNZ contributes to Government, tripartite working parties and international bodies including the International Labour Organisation ([ILO](#)), the International Organisation of Employers ([IOE](#)) and the Business and Industry Advisory Council ([BIAC](#)) to the Organisation for Economic Cooperation and Development ([OECD](#)).