



AGENDA

Policy & Planning

Tuesday 31 August 2021, 10.30am

Policy and Planning Committee

31 August 2021 10:30 AM

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Purpose of Policy and Planning Committee meeting

This committee attends to all matters of resource management, biosecurity and related environment policy.

Responsibilities

Prepare and review regional policy statements, plans and strategies and convene as a Hearing Committee as and when required for the hearing of submissions.

Monitor plan and policy implementation.

Develop biosecurity policy.

Advocate, as appropriate, for the Taranaki region.

Other policy initiatives.

Endorse submissions prepared in response to the policy initiatives of organisations.

Membership of Policy and Planning Committee

Councillor C L Littlewood (Chairperson)	Councillor N W Walker (Deputy Chairperson)
Councillor M G Davey	Councillor M J McDonald
Councillor D H McIntyre	Councillor C S Williamson
Councillor E D Van Der Leden	Councillor D N MacLeod (ex officio)
Councillor M P Joyce (ex officio)	

Representative Members

Councillor C Young (STDC)	Councillor S Hitchcock (NPDC)
Councillor G Boyde (SDC)	Mr P Moeahu (Iwi Representative)
Ms B Bigham (Iwi Representative)	Ms L Tester (Iwi Representative)

Health and Safety Message

Emergency Procedure

In the event of an emergency, please exit through the emergency door in the committee room by the kitchen.

If you require assistance to exit please see a staff member.

Once you reach the bottom of the stairs make your way to the assembly point at the birdcage. Staff will guide you to an alternative route if necessary.

Earthquake

If there is an earthquake - drop, cover and hold where possible.

Please remain where you are until further instruction is given.



Date 31 August 2021

Subject: **Confirmation of Minutes - 20 July 2021**

Approved by: A D McLay, Director - Resource Management
S J Ruru, Chief Executive

Document: 2850579

Recommendations

That the Policy and Planning Committee of the Taranaki Regional Council:

- a) takes as read and confirms the minutes and resolutions of the Policy and Planning Committee of the Taranaki Regional Council held in the Taranaki Regional Council Chambers, 47 Cloten Road, Stratford on Tuesday 20 July 2021 at 10.30am
- b) notes the recommendations therein were adopted by the Taranaki Regional Council on Tuesday 10 August 2021.

Matters arising

Appendices/Attachments

Document 2825409: Minutes Policy and Planning - 20 July 2021



Date 20 July 2021, 10.30am
Venue: Taranaki Regional Council chambers, 47 Cloten Road, Stratford
Document: 2825409

Members	Councillor	C L Littlewood	Committee Chairperson
	Councillor	N W Walker	Committee Deputy Chairperson
	Councillor	M G Davey	
	Councillor	M J McDonald	
	Councillor	D H McIntyre	
	Councillor	C S Williamson	
	Councillor	E D Van Der Leden	(via zoom)
	Councillor	D N MacLeod	ex officio

Representative

Members	Councillor	G Boyde	Stratford District Council
	Councillor	S Hitchcock	New Plymouth District Council
	Councillor	C Young	South Taranaki District Council
	Ms	L Tester	Iwi Representative
	Mr	P Muir	Federated Farmers Representative

Attending	Councillor	D L Lean	
	Mr	S J Ruru	Chief Executive
	Mr	M J Nield	Director - Corporate Services
	Mr	A D McLay	Director - Resource Management
	Ms	A J Matthews	Director - Environment Quality
	Mr	D N Harrison	Director - Operations
	Mr	C Spurdle	Planning Manager
	Mr	R Phipps	Science Manager - Hydrology/Biology
	Ms	V McKay	Science Manager - Chemistry
	Mr	C Wadsworth	Strategy Lead
	Mr	P Ledingham	Communications Officer
	Miss	L Davidson	Committee Administrator
	One member of the media.		

Apologies Apologies were received from Councillor M P Joyce, Ms B Bigham, Iwi Representative and Mr P Moeahu, Iwi Representative.

Notification of Late Items Government's Farm Plan proposal.

1. Confirmation of Minutes – 8 June 2021

Resolved

That the Policy and Planning Committee of the Taranaki Regional Council:

- a) takes as read and confirms the minutes and resolutions of the Policy and Planning Committee of the Taranaki Regional Council held in the Taranaki Regional Council chambers, 47 Cloten Road, Stratford on 8 June 2021 at 10.30am
- b) notes the recommendations therein were adopted by the Taranaki Regional Council on 29 June 2021.
MacLeod/Hitchcock

Matters arising

There were no matters arising.

2. Freshwater Programme Update

- 2.1 Mr C Wadsworth, Strategy Lead, spoke to the memorandum providing an update on the freshwater implementation project.
- 2.2 Committee members raised concerns around the implementation of the Government's freshwater programme, particularly around the definition of a wetland. The sector also had concerns and these were being raised at multiple levels.
- 2.3 It was requested that any changes by the Government be included in the updated programme be reported with the implementation monitoring report.
- 2.4 A submissions on the Government's Farm Plan proposal will be brought to the next meeting.
- 2.5 A communications plan has been developed and covers different methods of communication and different types of messaging, for different communities.
- 2.6 Engagement with tangata whenua is strong and will continue through the consultation programme that includes iwi leaders and Wai Māori group.
- 2.7 Officers were congratulated for the work on this update.

Recommended

That the Taranaki Regional Council:

- a) receives the update on Freshwater implementation programme.
Young/Walker

3. Taranaki Catchments Communities

- 3.1 Mr D R Harrison, Director – Operations, spoke to the memorandum informing Members of the Taranaki Catchment Communities (TCC) Sustainable Land Use Project and the contribution the Taranaki Regional Council is making in meeting the objectives of TCC, and introduced Ms D Cram, Chairperson of TCC.
- 3.2 Ms D Cram spoke to the Committee regarding what the TCC has been working on and answered questions arising. The project included more than just environmental management, which complemented what the Council was doing, and includes economic and community elements.

Recommended

That the Taranaki Regional Council:

- a) receives this memorandum entitled *Taranaki Catchment Communities*
- b) acknowledges the central government funding provided to assist communities dealing with the major changes that they have initiated
- c) notes that objectives of the TCC align with and complements Council's environmental approaches.

McDonald/Boyde

4. Update on the Proposed Coastal Plan for Taranaki and Appeals to the Environment Court

- 4.1 Mr C Spurdle, Policy Manager, spoke to the memorandum updating Members on progress with Environment Court process for appeals to the *Proposed Coastal Plan for Taranaki* (the Proposed Plan). In particular, to inform Members that on 17 May 2021, the Taranaki Regional Council was advised that all matters relating to appeals on the Proposed Plan were resolved, excluding those matters related to oil and gas.
- 4.2 Officers were congratulated for the work undertaken to get to this important point and the input of Ms G Marcroft acknowledged.

Recommended

That the Taranaki Regional Council:

- a) receives this memorandum entitled *Update on the Proposed Coastal Plan for Taranaki and Appeals to the Environment Court*
- b) notes that the mediation process for resolving appeals to the Proposed Plan lodged with the Environment Court has largely been successful
- c) notes than a hearing will be required to resolve the three outstanding appeals
- d) notes that officers will prepare an interim version of the *Proposed Coastal Plan Council's Decisions Version*, which incorporates decision from the mediation process.

Walker/Williamson

5. Key Native Ecosystems Programme Update

- 5.1 Mr D R Harrison, Director - Operations, spoke to the memorandum presenting for Members' information an update on the identification of eighteen new Key Native Ecosystem (KNE) sites.

Recommended

That the Taranaki Regional Council:

- a) receives this memorandum and the attached inventory sheets for Moir Forest and Wetlands, Waiongana Flats Ltd, Waiongana Flats Ltd B, Ryan Forest Remnant, Monk Road Bush, Wells Cross Rd, Wellington Bush, Larcom's Homestead, The Ram Paddock (Larcom), Katikara (TPOL), PARGus & CarLoom Bush Blocks, Tersana, Cathie Native Bush, Makara Farms, Lark's Rest, Te Ngahere o Manu, Raurimu, Kintyre Bush.

- b) notes that the aforementioned sites have indigenous biodiversity values of regional significance and should be identified as Key Native Ecosystems.

Walker/Davey

6. Submissions to Ministry of Transport and Infrastructure Commission

6.1 Mr C Wadsworth, Strategy Lead, spoke to the memorandum informing the Committee of two submissions, to enable the Committee to provide feedback. The submissions had been previously circulated to members. The two submissions are:

- Transport Emissions – Pathways to Net Zero by 2050, which was submitted to Ministry of Transport on 26 June 2021
- Infrastructure for a Better Future, which was submitted to the Infrastructure Commission on 2 July 2021.

6.2 No additional feedback on the submissions was provided.

Recommended

That the Taranaki Regional Council:

- a) receives this memorandum
- b) adopts the submission on Transport Emissions – Pathways to Net Zero by 2050
- c) adopts the submission on Infrastructure for a Better Future
- d) determines that this decision be recognised as not significant in terms of section 76 of the *Local Government Act 2002*
- e) determines that it has complied with the decision-making provisions of the *Local Government Act 2002* to the extent necessary in relation to this decision; and in accordance with section 79 of the Act, determines that it does not require further information, further assessment of options or further analysis of costs and benefits, or advantages and disadvantages prior to making a decision on this matter.

MacLeod/Williamson

7. Natural and Built Environments Bill Exposure Draft - Key Themes for Consideration

7.1 Mr C Wadsworth, Strategy Lead, spoke to the memorandum and provided a presentation advising of the content of the Natural and Built Environments Bill Exposure Draft ("the Exposure Draft") and points of contention. This provided Members an opportunity to provide comment on issues which they would like to see addressed in a Council submission.

7.2 There was considerable lack of detail with the material provided by Government and it was very difficult to establish exactly what the proposal embodied. The devil was in the detail and there wasn't much detail provided to allow proper consideration. Members noted the proposal was moving at pace and that this wasn't prudent for a successful outcome.

7.3 It was noted that it would be beneficial for all Councils in the region to work together and agree on matters in support and of concern, given the transformational context of the proposal.

Recommended

That the Taranaki Regional Council:

- a) receives this Memorandum
- b) advises of the issues and comments that the Committee wish to see presented in a formal submission to the Government on the Exposure Draft
- c) determines that this decision be recognised as not significant in terms of section 76 of the *Local Government Act 2002*
- d) determines that it has complied with the decision-making provisions of the *Local Government Act 2002* to the extent necessary in relation to this decision; and in accordance with section 79 of the Act, determines that it does not require further information, further assessment of options or further analysis of costs and benefits, or advantages and disadvantages prior to making a decision on this matter.

Williamson/Boyde

There being no further business the Committee Chairman, Councillor C L Littlewood, declared the meeting of the Policy and Planning Committee closed at 11.47am. The meeting closed with a karakia.

Confirmed

Policy and Planning

Chairperson: _____

C L Littlewood

31 August 2021



Date 31 August 2021

Subject: **Freshwater Programme Update**

Approved by: A D McLay, Director - Resource Management
S J Ruru, Chief Executive

Document: 2853124

Purpose

1. The purpose of this memorandum is to provide the Committee with a Freshwater implementation project update.

Recommendation

That the Taranaki Regional Council:

- a) receives the update on Freshwater implementation programme.

Background

2. The Council has prepared an implementation programme for the Government's Freshwater programme. The purpose of this memorandum is to update Members on progress in implementing the project. The implementation programme has previously been presented to, and approved by, the Committee.

Financial considerations—LTP/Annual Plan

3. This memorandum and the associated recommendations are consistent with the Council's adopted Long-Term Plan and estimates. Any financial information included in this memorandum has been prepared in accordance with generally accepted accounting practice.

Policy considerations

4. This memorandum and the associated recommendations are consistent with the policy documents and positions adopted by this Council under various legislative frameworks including, but not restricted to, the *Local Government Act 2002*, the *Resource Management Act 1991* and the *Local Government Official Information and Meetings Act 1987*.

Iwi considerations

5. This memorandum and the associated recommendations are consistent with the Council's policy for the development of Māori capacity to contribute to decision-making processes (schedule 10 of the *Local Government Act 2002*) as outlined in the adopted long-term plan and/or annual plan. Similarly, iwi involvement in adopted work programmes has been recognised in the preparation of this memorandum.
6. Iwi are key parties in the Government's reform programme and are therefore an important part of the Council's implementation programme.

Community considerations

7. This memorandum and the associated recommendations have considered the views of the community, interested and affected parties and those views have been recognised in the preparation of this memorandum.

Legal considerations

8. This memorandum and the associated recommendations comply with the appropriate statutory requirements imposed upon the Council.


Appendices/Attachments








Document 2818822: Freshwater Implementation Project Report (July)



Freshwater Implementation Project Report to Policy & Planning Committee

31 AUGUST 2021

Executive Summary	
	<p>Current progress is tracking to schedule.</p> <p>Key activities at present are focusing on:</p> <ul style="list-style-type: none"> • establishing science baselines for input to plan and monitoring programmes • developing communications strategy and supporting material (both internal and external use) • beginning development of engagement strategy on key issues and areas needing feedback for plan development <p>Most significant issue of concern is around the capacity and required focus for engagement strategies. Also seeing some slippage in key timelines across core groups as implementation varies from the developed implementation plans.</p> <p>Concerns at central government inconsistencies remain.</p>
Project Programme	
<p>Key project achievements during the last reporting period</p> <ul style="list-style-type: none"> • Specific implementation activities: <ul style="list-style-type: none"> ○ Kicked off science work programme and baselines. ○ Communications strategy signed off by ELT. ○ Policy led discussion on developing Freshwater Management Units. ○ Identifying priority catchments for first tranche of hill country farm plan roll outs. ○ Work to establish scientific baseline monitoring programmes for characteristics required under NPS – including expanding the scope/locations for lake monitoring. ○ Identified potential solution to N-Cap recording that will take advantage of tools developed by the fertiliser companies – efficient, effective and already has some level of farmer buy-in. ○ Working to further clarify engagement needs to facilitate parameter development for input to plan. ○ Kicked off project to upgrade the Council’s customer relationship management (“CRM”) capacity, using the currently un-used modules in IRIS. 	
<p>Key upcoming activities and milestones in the next reporting period</p> <ul style="list-style-type: none"> • Continue role out of tangata whenua partnership model development. • Continue science services baselining and monitoring programmes – including analysing current data reliability. • Progress recruiting processes in teams with identified resource needs. • Continue engagement with sector and central government working groups. • Continue development of synthetic nitrogen recording structure with industry stakeholders – looking to implement workable solution. • Reset on previously developed Gantt charts – review original timelines against current activities and report on any significant variations/required rescheduling. • Continue CRM project roll out. 	
HSE Updates	
<p>Nothing significant to report</p>	

Workstream Status Summary		
Workstream	Tracking	Comments/Clarifications
Tangata whenau partnerships		<ul style="list-style-type: none"> • Agreement with Iwi Chairs to meet again post National iwi Chairs meeting (5/6 August) to continue to discuss a regional response to the issues and opportunities from the July meeting (Three waters, NPS.FM). • Scoping out structures and processes (including resourcing issues) to enable iwi environmental officers and TRC staff to collaborate on technical and policy issue development.
Policy and Planning		<ul style="list-style-type: none"> • New Policy Analyst started in mid-August. • Progress on plan drafting remains slower than desired. • Initial workshop held on Freshwater Management Unit definition – to be followed up by further workshops to define the nature and scope of each of the proposed FMU's. • Working with Operations to assess and prepare submissions on the Farm Plans and low slope mapping consultations.
Science Services		<ul style="list-style-type: none"> • Continuing to catch up on previous delays in baselining programmes. Using external consultants to review current data and/or modelled information and propose initial water quality baselines. Targeting completion by end of 2021. • Lake monitoring initial programme development hui held with Ngati Ruanui, Te Atiawa and Nga Rauru. • Commencing research on Taranaki climate change resilience – will also feed into science response to FW.
Consents		<ul style="list-style-type: none"> • No noticeable increase in consent applications related to FW Implementation. • Some team capacity concerns are on-going – however generalised, rather than FW specific.
Inspections		<ul style="list-style-type: none"> • Progress with stream infills ongoing. All historic incidents have been dealt with. On-going incident being dealt with as they occur. • Slow progress being made with updating inspection notices regarding the collection of information regarding feedpads during the next dairy round.
Operations		<ul style="list-style-type: none"> • Progressing recruiting key roles for expanded hill country programme – a number of the new hires started mid-August. • Continued work on roll out of hill country plans – including working with Communications to develop landowner communication tools.
Communications		<ul style="list-style-type: none"> • Overall Comms Strategy developed and signed off by ELT. Has been developed into a more detailed tactical level plan for the next three months. • Continuing developing subject based fact sheets for external stakeholder and a resource database for staff (eg., "speaking notes" for LMO's and Enforcement Officers). • Involved in project scope setting for customer engagement database upgrade project (to be led by Business Solutions).

Project Risk/Opportunity Management

Description	Effect	Mitigation Strategy	Risk Rating (unmitigated)	Actions currently being taken
<p>Lack of a clear strategy and timeline for engagement on key strategic issues.</p>	<p>Engagement in this sense is the two way discussions needed to obtain external stakeholder input on key FW programme and FW Plan elements.</p> <p>Engagement requirements for FW are significantly higher than previous TRC experience (due to NPS-FW requirements). Experience from other RC's is that the process can be long and involved.</p> <p>Lack of dedicated engagement (as opposed to comms) resources to manage this process.</p>	<p>Build greater alignment around the nature and timing of the engagement that is needed.</p> <p>Develop specific strategies and plans to undertake the focused engagement.</p> <p>Consider ways to address Council's current gaps in capacity and capability to lead engagement processes.</p>	<p>High</p>	<p>Engagement with Iwi Chairs (see July update) has potential to be a powerful contribution to this workstream.</p> <p>Internal discussions on resourcing and equipping the team to focus on engagement. (Will have benefits beyond FW Implementation.)</p> <p>Looking to build greater alignment and focus within FW Implementation Project Team that can be developed into a community/stakeholder engagement plan.</p>
<p>Loss of key staff</p>	<p>High staff demand across the country puts TRC at risk of key people being "poached".</p> <p>General risks associated with staff moving on.</p>	<p>Strategies and programmes flowing from "Future TRC" (formerly "Organisational Reset") – including associated policy reviews - will strengthen TRC appeal as a place to work.</p>	<p>Medium -High</p>	<p>Future TRC being kicked off at present.</p>

Policy and Planning Committee - Update on Fresh Water Progress

Description	Effect	Mitigation Strategy	Risk Rating (unmitigated)	Actions currently being taken
Effective interaction with tangata whenua	<p>Demands from increased consultation on a number of fronts are placing limits on iwi ability to engage with TRC.</p> <p>Variable levels of understanding and familiarity with Essential Freshwater needs across iwi.</p>	<p>Maximise opportunities for both formal and informal iwi engagement.</p>	High	<p>Awaiting response from Iwi Chairs from July meeting.</p> <p>Matauranga Maori Specialist due to commence work 23 August – date currently revised due to level 4 restrictions.</p>
Lack of clarity and guidance due to gaps in key Government advice or changes in the policy/legal framework	<p>Some FW Implementation elements need to be developed without clear guidance – which may result in changes later if Government position changes.</p>	<p>Recognise that some level of risk is unavoidable.</p> <p>Maintain strong presence on Government (especially MfE) and sector working groups.</p> <p>Maintain contacts with other regional council <i>Essential Freshwater</i> teams.</p> <p>Develop tools and processes that based on established or determined best practice.</p>	High	<p>Risk is expected to remain high for the duration of the project.</p>



Date: 31 August 2021

Subject: **Plan Alignment with the Essential Freshwater Package**

Approved by: A D McLay, Director - Resource Management
S J Ruru, Chief Executive

Document: 2826975

Purpose

1. The purpose of this memorandum is to inform Members that consequential amendments have been made to the *Regional Freshwater Plan for Taranaki* (Fresh Water Plan) and *Regional Soil Plan for Taranaki* (Soil Plan) for provisions pursuant to section 44A of the *Resource Management Act 1991* (RMA). The amendments relate to the inclusion of new policies from the *National Policy Statement for Freshwater Management* (NPS-FM) and to the identification of plan provisions that could duplicate or conflict with the *National Environmental Standards for Freshwater* (NES-F).

Executive summary

2. The *Essential Freshwater* package was released on 5 August 2020 with it taking effect from 3 September 2020. The package included a new NPS-FM and NES-F that sets out national requirements relating to fresh water.
3. The NPS-FM and NES-F requires the Taranaki Regional Council (the Council) to, as soon as practicable, review its existing regional plans and immediately amend them to comply with relevant provisions from the package.
4. In relation to the NPS-FM, three transitional policies must be inserted into relevant RMA plans. These policies relate to natural inland wetlands, river loss and fish passage.
5. In relation to the NES-F, and in accordance with Section 44A of the RMA, Councils must amend relevant RMA plans to align them with the standards by removing any duplication or conflict with NES-F regulations.
6. Officers have subsequently reviewed the Council's RMA plans and made the necessary amendments. The three new policies in the NPS-FM have been inserted in the Fresh Water Plan. Both the Soil Plan and Fresh Water Plan have also been amended to include advisory notes (and other consequential amendments) that identify rules that, either in full or in part, duplicate or conflict with NES-F regulations.
7. The RMA requires the Council to make such changes without using the public process associated with Schedule 1 of the RMA. However, public notification of plan

amendments in relation to the three transitional policies is required. Accordingly, on 1 August the Council publicly notified that the Freshwater Plan has been amended to include three new transitional policies. A copy of the public notice has been appended to this item.

8. New copies of the amended Soil Plan and Fresh Water Plan with the amendments have been printed and are in use. The Council website has also been updated with the amended Plans and can be accessed [here](#).

Recommendations

That the Taranaki Regional Council:

- a) receives this memorandum entitled *Plan alignment with the Essential Freshwater Package*
- b) notes NES-F and NPS-FM requirements for Council to review and amend any regional rules and policies that duplicate or conflict with the NES-F and NPS-FM as soon as practicable after 3 September 2020
- c) notes amendments to the Fresh Water Plan and Soil Plan have been made to remove the duplication or conflict with the NES-F without using the Schedule 1 RMA process
- d) notes the amendments to the Fresh Water Plan to include transitional policies from the NPS-FM without using the Schedule 1 RMA process
- e) notes that a public notice was published on 1 August 2021 notifying the amendments to the Fresh Water Plan.

Background

9. National policy statements (NPS) are promulgated under the RMA and set objectives and policies for matters of national significance relevant to sustainable management. Local authorities must give effect to NPS through regional and district plans.
10. National Environmental Standards (NES) are regulations made under the RMA that set out technical standards, methods or requirements relating to matters of national importance under that Act. NES provide consistent rules across the country by setting planning requirements for specified activities. NES will prevail over district or regional plan rules except where an NES may allow for more stringent rules in regional or district plans.
11. As Members are aware, the *Essential Freshwater* package (the Package) was released on 5 August 2020 with it taking effect from 3 September. The new regulatory instruments impose a range of new obligations that the Council must give effect to through its regional plans.
12. New rules and regulations of the Package aim to:
 - stop further degradation of New Zealand’s freshwater resources and improve water quality within five years
 - reverse past damage and bring New Zealand’s freshwater resources, waterways and ecosystems to a healthy state within a generation.
13. Members may recall the agenda that went to Council on 24 November 2020 that briefed members on the implications and implementation of the Package. The amendment of Council plans to align with NES-F and NPS-FM was noted as an immediate action to be undertaken by officers.

14. The NPS-FM and NES-F requires the Council to, as soon as practicable, review its existing regional plans and immediately amend them to comply with relevant provisions. In relation to the NPS-FM, transitional policies from the NPS-FM must be inserted into relevant RMA plans. In relation to the NES-F, there is a need to align RMA plans by removing any duplication or conflict with NES-F provisions. Plan alignment as set out below fulfils this obligation.

Transitional policies

15. Transitional policies are included in the NPS-FM and must be inserted into relevant RMA plans. Section 55(2) of the RMA sets out how councils must amend a document (i.e. regional plan) if a national policy statement directs so. These amendments are to be made by the local authority without using the Schedule 1 RMA process (preparation, change and review of policy statements and plans).
16. The Council has four operative RMA plans covering freshwater, coastal, air and land resources in the Taranaki region. Officers have undertaken a review of these plans and identified the Fresh Water Plan as requiring amendment to include the new NPS-FM transitional policies.
17. The NPS-FM requires three new transitional policies to be included in the Fresh Water Plan which include the following (please see the appendix for further information on these policies):
 - clause 3.22(1) natural inland wetlands;
 - clause 3.24(1) river loss; and
 - clause 3.26(1) fish passage.
18. Section 5A of the Fresh Water Plan includes Transitional Policies from the NPS-FM 2014 and 2017. These policies continue to have effect. The three new transitional policies have now been included into this section of the Fresh Water Plan.
19. Background information on the NPS-FM has also been updated in section 1.7 of the Fresh Water Plan. This section summarises the NPS-FM and gives a brief overview of the Councils requirements under the regulation. Other consequential changes were also made to the Plan.

NES-F plan alignment process

20. Sections 43B and 44A of the RMA further requires Council to recognise the NES-F by assessing and identifying:
 - any rules that duplicate or conflict with the NES-F and recommendations to remove the duplication or conflict (as required by section 44A(3)-(5) of the RMA); and
 - any stringency rules, i.e. rules that potentially cover freshwater activities and which are allowed by Regulation 6 to be more stringent than the NES-F (section 43B(1)-(2) of the RMA).
21. The Council has undergone a comprehensive review of its regional plans and has identified the Fresh Water Plan and Soil Plan as containing rules managing activities also covered by the NES-F.
22. Individual rules of the Soil Plan and Fresh Water Plan were then assessed in terms of whether the rules duplicate, conflict or are more stringent than NES-F regulations. The assessment considered the following:

- a rule conflicts with the NES-F if it is more stringent than the standard and the standard does not expressly provide for a rule to be more stringent (did not apply in this case);
 - a rule conflicts with the NES-F if it is more lenient;
 - a rule duplicates NES-F provisions if it addresses activities regulated by the standard and is not more stringent or lenient; and
 - a rule is more stringent than a standard if it prohibits or restricts an activity that the standard permits or authorises, e.g. rules may be more stringent if they hold a stricter activity status or contain conditions that the NES-F regulations do not cover, or both.
23. Each of the rules were assessed from both the Fresh Water Plan and Soil Plan to identify which of the NES-F regulations may prevail over the plan rule supported with commentary to explain the decision. In almost all cases, the plan rule had some duplication or conflict with the NES-F.
24. The task of identifying rules and making a determination on whether they are duplicating or are more stringent than NES-F regulations (or not) is extremely complex. In most cases of conflict and duplication, both the rule and regulation will need to be assessed together as the rule or regulation may impose additional conditions that the other does not. Scenarios should be assessed on a case-by-case basis.

NES-F and consequential amendments to the Plans

25. Amendments to the Fresh Water Plan and Soil Plan arising from the NES-F plan alignment process (and other consequential changes) are as follows:
- Amendment to section 1.7 of the Fresh Water Plan and section 2.3 of the Soil Plan to include background information on the NES-F and summarise the requirements for the Council under these regulations;
 - Amendment to the readers guide in section 7 of the Fresh Water Plan and section 5 of the Soil Plan to note the relationship with NESs, including an explanation of the advisory notes in the rules; and
 - Amendment to the rule tables in section 7.3 of the Fresh Water Plan and section 5 of the Soil Plan to include advisory notes within the rules table which will give guidance for the Plan reader as to whether the NES-F may prevail over specific plan rules.
26. Advisory notes are only included in the rules table when a rule has been identified as duplicating or conflicting with the NES-F regulations. The note in the rules table states, "*NES-F regulations may prevail over the Plan rule*" signalling that the Plan user needs to look at the NES-F regulations alongside the Plan. In most situations the determination of whether the NES-F or Plan will prevail will need to be assessed on an individual basis.
27. In addition to the aforementioned amendments, officers made other minor and inconsequential changes to the regional plans for readability purposes.

Actions

28. Section 55(2A) directs that local authorities must give public notice when amendments are made to a document to recognise national policy statements, i.e. the inclusion of the three NPS-FM transitional policies. Accordingly, a public notice was published in the

Daily News on the 1 August to notify that amendments had been made to the Fresh Water Plan with the inclusion of the three new transitional policies.

29. The amended plans are now available on the Taranaki Regional Council website and copies are available on site for the public. Copies of the amended Fresh Water Plan and Soil Plan have also been distributed to Council staff, including for consent staff to reference in processing resource consent applications. The plans are also available to the public upon request.

Financial considerations—LTP/Annual Plan

30. This memorandum and the associated recommendations are consistent with the Council's adopted Long-Term Plan and estimates. Any financial information included in this memorandum has been prepared in accordance with generally accepted accounting practice.

Policy considerations

31. This memorandum and the associated recommendations are consistent with the policy documents and positions adopted by this Council under various legislative frameworks including, but not restricted to, the *Local Government Act 2002*, the *Resource Management Act 1991* and the *Local Government Official Information and Meetings Act 1987*.

Iwi considerations

32. This memorandum and the associated recommendations are consistent with the Council's policy for the development of Māori capacity to contribute to decision-making processes (schedule 10 of the *Local Government Act 2002*) as outlined in the adopted long-term plan and/or annual plan. Similarly, iwi involvement in adopted work programmes has been recognised in the preparation of this memorandum.
33. The plan amendment process has not involved iwi, because a schedule 1 RMA process that includes iwi, was not required. As noted above the plan amendments made essentially represent administratively combining national and regional policies.

Community considerations

34. This memorandum and the associated recommendations have considered the views of the community, interested and affected parties and those views have been recognised in the preparation of this memorandum.

Legal considerations

35. This memorandum and the associated recommendations comply with the appropriate statutory requirements imposed upon the Council.

Appendices/Attachments

Document 2842096: Transitional policies public notice

Document 2830797: National Policy Statement for Freshwater Management transitional policies.



Plan Amendments

Amendments to Regional Freshwater Plan for Taranaki

The Taranaki Regional Council gives public notice that the Regional Freshwater Plan for Taranaki is amended to insert new policies for freshwater management, as required under clause 1.7 of the National Policy Statement for Freshwater Management 2020 (NPS-FM), which directs that the amendments are made without using the public submission process under the Resource Management Act 1991.

The new policies are as set out in clause 3.22(1) Natural wetlands, 3.24(1) Rivers and 3.26(1) Fish passage of the NPS-FM. Copies of the amended version of the Regional Fresh Water Plan can be obtained from the Taranaki Regional Council premises 47 Cloten Road, Stratford, 4352 or can be found on the Taranaki Regional Council website.


<https://www.trc.govt.nz/regional-fresh-water-plan/>

If you have any questions, please contact the Council at info@trc.govt.nz or by phoning 0800 736 222.

Steve Ruru
Chief Executive

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2021


Plan: TCD010050	Size: 10x3	Format: Mono	<p>PLEASE NOTE: that we have prepared this advertisement proof based on our understanding of the instructions received. In approving the advertisement, it is the client's responsibility to check the accuracy of both the advertisement, the media and position nominated.</p> <p>Cancellation of adverts booked with media will incur a media cancellation fee of \$50.</p>
Publication Taranaki Daily News	Run Date Wednesday 28 July	Position PN	
<p>your contact: Giselle</p>			

Appendix II

3.22 Natural inland wetlands

- (1) Every regional council must include the following policy (or words to the same effect) in its regional plan(s):

“The loss of extent of natural inland wetlands is avoided, their values are protected, and their restoration is promoted, except where:

 - (a) the loss of extent or values arises from any of the following:
 - i. the customary harvest of food or resources undertaken in accordance with tikanga Māori
 - ii. restoration activities
 - iii. scientific research
 - iv. the sustainable harvest of sphagnum moss
 - v. the construction or maintenance of wetland utility structures (as defined in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020)
 - vi. the maintenance or operation of specified infrastructure, or other infrastructure (as defined in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020)
 - vii. natural hazard works (as defined in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020); or
 - (b) the regional council is satisfied that:
 - i. the activity is necessary for the construction or upgrade of specified infrastructure; and
 - ii. the specified infrastructure will provide significant national or regional benefits; and
 - iii. there is a functional need for the specified infrastructure in that location; and
 - iv. the effects of the activity are managed through applying the effects management hierarchy.”
- (2) Subclause (3) applies to an application for a consent for an activity:
 - (a) that falls within any exception referred to in paragraph (a)(ii) to (vii) or (b) of the policy in subclause (1); and
 - (b) would result (directly or indirectly) in the loss of extent or values of a natural inland wetland.
- (3) Every regional council must make or change its regional plan(s) to ensure that an application referred to in subclause (2) is not granted unless:
 - (a) the council is satisfied that the applicant has demonstrated how each step of the effects management hierarchy will be applied to any loss of extent or values of the wetland (including cumulative effects and loss of potential value), particularly (without limitation) in relation to the values of: ecosystem health, indigenous biodiversity, hydrological functioning, Māori freshwater values, and amenity value; and
 - (b) any consent is granted subject to:
 - i. conditions that apply the effects management hierarchy; and
 - ii. a condition requiring monitoring of the wetland at a scale commensurate with the risk of the loss of extent or values of the wetland.

- (4) Every regional council must make or change its regional plan(s) to include objectives, policies, and methods that provide for and promote the restoration of natural inland wetlands in its region, with a particular focus on restoring the values of ecosystem health, indigenous biodiversity, hydrological functioning, Māori freshwater values, and amenity value.

3.24 Rivers

- (1) Every regional council must include the following policy (or words to the same effect) in its regional plan(s):
“The loss of river extent and values is avoided, unless the council is satisfied that there is a functional need for the activity in that location; and the effects of the activity are managed by applying the effects management hierarchy.”
- (2) Subclause (3) applies to an application for a consent for an activity:
 - (a) that falls within the exception to the policy described in subclause (1); and
 - (b) would result (directly or indirectly) in the loss of extent or values of a river.
- (3) Every regional council must make or change its regional plan(s) to ensure that an application referred to in subclause (2) is not granted unless:
 - (a) the council is satisfied that the applicant has demonstrated how each step in the effects management hierarchy will be applied to any loss of extent or values of the river (including cumulative effects and loss of potential value), particularly (without limitation) in relation to the values of: ecosystem health, indigenous biodiversity, hydrological functioning, Māori freshwater values, and amenity; and
 - (b) any consent granted is subject to conditions that apply the effects management hierarchy.
- (4) Every regional council must:
 - (a) develop and undertake a monitoring plan that:
 - i. monitors the condition of its rivers; and
 - ii. contains sufficient information to enable the council to assess whether its policies, rules, and methods are ensuring no loss of extent or values of the rivers; and
 - (b) have methods to respond if loss of extent or values is detected.

3.26 Fish Passage

- (1) Every regional council must include the following fish passage objective (or words to the same effect) in its regional plan(s):
“The passage of fish is maintained, or is improved, by instream structures, except where it is desirable to prevent the passage of some fish species in order to protect desired fish species, their life stages, or their habitats.”
- (2) Every regional council must make or change its regional plan(s) to include policies that:
 - (a) identify the desired fish species, and their relevant life stages, for which instream structures must provide passage; and
 - (b) identify the undesirable fish species whose passage can or should be prevented; and
 - (c) identify rivers and receiving environments where desired fish species have been identified; and
 - (d) identify rivers and receiving environments where fish passage for undesirable fish species is to be impeded in order to manage their adverse effects on fish populations upstream or downstream of any barrier.

- (3) When developing the policies required by subclause (2) a regional council must:
 - (a) take into account any Freshwater Fisheries Management Plans and Sports Fish and Game Management Plans approved by the Minister of Conservation under the Conservation Act 1987; and
 - (b) seek advice from the Department of Conservation and statutory fisheries managers regarding fish habitat and population management.
- (4) Every regional council must make or change its regional plan(s) to require that regard is had to at least the following when considering an application for a consent relating to an instream structure:
 - (a) the extent to which it provides, and will continue to provide for the foreseeable life of the structure, for the fish passage objective in subclause (1)
 - (b) the extent to which it does not cause a greater impediment to fish movements than occurs in adjoining river reaches and receiving environments
 - (c) the extent to which it provides efficient and safe passage for fish, other than undesirable fish species, at all their life stages
 - (d) the extent to which it provides the physical and hydraulic conditions necessary for the passage of fish
 - (e) any proposed monitoring and maintenance plan for ensuring that the structure meets the fish passage objective in subclause (1) for fish now and in the future.
- (5) Every regional council must make or change its regional plan(s) to promote the remediation of existing structures and the provision of fish passage (other than for undesirable fish species) where practicable.
- (6) Every regional council must prepare an action plan to support the achievement of the fish passage objective in subclause (1), and the action plan must, at a minimum:
 - (a) set out a work programme to improve the extent to which existing instream structures achieve the fish passage objective; and
 - (b) set targets for remediation of existing instream structures; and
 - (c) achieve any environmental outcomes and target attribute states relating to the abundance and diversity of fish.
- (7) The work programme in an action plan must, at a minimum:
 - (a) identify instream structures in the region by recording, for each structure:
 - i. all the information in Part 1 of Appendix 4; and
 - ii. any other information about the structure, such as the information in Part 2 of Appendix 4; and
 - (b) evaluate the risks that instream structures present as an undesirable barrier to fish passage; and
 - (c) prioritise structures for remediation, applying the ecological criteria described in table 5.1, of the New Zealand Fish Passage Guidelines (see clause 1.8); and
 - (d) document the structures or locations that have been prioritised, the remediation that is required to achieve the desired outcome, and how and when this will be achieved; and
 - (e) identify the structures that have been remediated since the commencement date; and
 - (f) specify how the ongoing performance of remediated structures will be monitored and evaluated, including the effects of the structure on the abundance and diversity of desired fish species.

- (8) An action plan for fish passage may be part of, or separate from, an action plan prepared for any purpose under this Part, but clause 3.15, about preparing action plans, applies in either case.



Date: 31 August 2021

Subject: **Freshwater farm plan regulations discussion document**

Approved by: A D McLay, Director - Resource Management
S J Ruru, Chief Executive

Document: 2842159

Purpose

1. The purpose of this memorandum is to advise Members of the content of the *Freshwater farm plan regulations discussion document*, and to provide Members an opportunity to provide comment on issues which they would like to see addressed in a Council submission.

Executive summary

2. As part of the Government's *Essential Freshwater* package, amendments were made to the *Resource Management Act 1991* (the RMA) to require the implementation of freshwater farm plans (FW-FP).
3. The Government views certified FW-FPs as an integral part of New Zealand's efforts to enhance the protection and restoration of its waterways. They are therefore seeking to establish regulations to give effect to Part 9A of the RMA before rolling out FW-FP requirements throughout the country (starting in the first half of 2022).
4. The main elements of FW-FPs are laid out in Part 9A of the RMA and, at a property level, identify measures and actions for managing any adverse effects of farm activities on the freshwater and freshwater ecosystems.
5. In July 2021, the Government released its discussion document for consultation on FW-FPs.
6. Officers have undertaken a preliminary analysis of the discussion document and are generally supportive of the FW-FP proposals but recommend making a submission covering the following themes:
 - the integration of existing and new farm plans;
 - required expertise for the development, certification and auditing of FW-FPs;
 - transitional implementation of the FW-FP system;
 - FW-FP content;

- review and re-certification of FW-FPs;
 - accreditation and role of certifiers;
 - maintaining high-quality audits; and
 - FW-FP enforcement by regional councils.
7. The deadline for feedback on the discussion document is 12 September 2021. Once submissions are considered, Government will consider a proposal for Ministers to approve.
 8. Councils have been advised that elements of the freshwater farm plan system will be field tested before regulations are finalised and published in the New Zealand Gazette in the first half of 2022.

Recommendations

That the Taranaki Regional Council:

- a) receives the memorandum *Freshwater farm plan regulations, discussion document*;
- b) advises of the issues and comments that the Committee wish to see presented in a formal submission to the Government on the discussion document;
- c) determines that this decision be recognised as not significant in terms of section 76 of the *Local Government Act 2002*; and
- d) determines that it has complied with the decision-making provisions of the *Local Government Act 2002* to the extent necessary in relation to this decision; and in accordance with section 79 of the Act, determines that it does not require further information, further assessment of options or further analysis of costs and benefits, or advantages and disadvantages prior to making a decision on this matter.

Background

9. As Members are aware, the Government released its *Essential Freshwater* package (the Package) on 5 August 2020 with it taking effect from 3 September. The package contains several elements, one of these being the implementation of FW-FP under Part 9A of the RMA.
10. The Government views certified FW-FP as an integral part of New Zealand's efforts to enhance the protection and restoration of its waterways. They are therefore seeking to establish regulations to give effect to Part 9A of the RMA before rolling out FW-FP requirements throughout the country (starting in the first half of 2022).
11. FW-FPs are intended to work with existing farm planning initiatives, and to allow development of solutions tailored to each farm and its surrounding area. Government estimates 75% of farmers and growers already have some sort of an environmental plan in place.
12. The main elements of FW-FPs are laid out in Part 9A of the RMA. The RMA requires that FW-FPs, at a property level:
 - identify any adverse effects of farm activities on the freshwater and freshwater ecosystems;
 - specify clear and measureable requirements to avoid, remedy and mitigate the adverse effects of those activities;

- demonstrate how outcomes prescribed in regulations are to be achieved; and
 - comply with the most stringent rule and requirements in effect. If a council plan or rule, a resource consent or a national regulation is more stringent than what would otherwise be in a freshwater farm plan, then the more stringent provision applies. If a freshwater farm plan is more stringent, then it will remain applicable.
13. The RMA is set for reform, which will impact the freshwater regulatory context. The FW-FPs process will likely be incorporated into the new *Natural and Built Environments Act*.
 14. Underpinning the FW-FP system will be a system of approved certifiers and auditors that will ensure the design and accurate implementation of robust farm plans embodying the goals of the relevant regional freshwater plan as developed by regional councils.
 15. The aforementioned concepts and approaches are being considered and will be finalised by the Government following public consultation on its discussion document entitled *Freshwater farm plan regulations discussion document* (click [here](#)). The FW-FP discussion document was released by the Ministry for the Environment (MfE) for consultation on July 2021 with the deadline for feedback being 12 September 2021.

Proposed submission on the discussion document

16. The discussion document contains seven sections with 52 questions covering the component parts for developing, implementing, monitoring and enforcing FW-FP. The discussion document sets out 'base information' for the content of farm plans.
17. Officers have undertaken a preliminary analysis of the discussion document and are generally supportive of the FW-FP proposals subject to minor issues and concerns of a technical nature.
18. Set out below are general themes and issues that officers recommend be incorporated into a Council submission.

The integration of existing and new farm plans

19. FW-FPs will require farmers to identify measurable actions to mitigate the impacts and risks associated with their farming activity. It is noted that Council has significant farm planning frameworks associated with riparian management and hill country planning and will be seeking that these can be easily incorporated into the new framework. In particular, Council will be seeking that the new FW-FP planning system be adaptive enough to incorporate or accommodate pre-existing farm plan initiatives run by regional councils and the primary sector.
20. Officers have previously raised concerns in other consultative processes that the merging of farm plans may distract from the Council's objectives regarding sediment. Officers recommend that Council seek that soil conservation plans remain specialised in the region to ensure sediment issues, stock exclusion, and wetland protection remain targeted.

Required expertise for the development, certification and auditing of FW-FPs

21. Officers note that the success of FW-FPs across New Zealand will be dependent upon the system having enough planners, certifiers and auditors with the appropriate experience and expertise. Officers question whether the new farm planners and certifiers

can have the same level of advisory skill as Council's land management officers. This has been communicated to and acknowledged by MfE in other engagement processes. However, it is recommended that the point be repeated in the Council's submission. FW-FP certifiers will also need to consult with experts such as land management officers to utilise their local knowledge of land use capacity and soil erosion.

22. Officers further note FW-FPs will need local information on cultural sites of significance to tangata whenua, including mahinga kai and taonga species that need to be protected from the adverse effects of farm activities. Council has commenced the mapping of sites of significance to tangata whenua but considerable work needs to be done and Government must recognise the demands not just on councils but also iwi and hapū.

Transitional implementation of the FW-FP System

23. The Government recommends a transitional approach towards the implementation of the FW-FP system. Council officers support this.
24. While FW-FP's are in development and under certification over the next 1-5 years, work on existing farm plans can continue. Council has the opportunity to capture the remaining 33% of hill country farms into its voluntary sustainable land management programmes before needing to resort to Council rules or FW-FP regulations.
25. A transitional approach will further allow time to properly develop the training frameworks and certification mechanisms for FW-FP planners and certifiers.

FW-FP content

26. The discussion document sets out prescribed minimum content (base information) for FW-FPs. It outlines proposals for base information, including maps of the farm clearly showing specified man-made and natural features. In addition to the matters identified in The discussion document, officers recommend the inclusion of:
 - mapped culverts and their suitability for fish habitats.
27. Officers question the Government estimations of the costs of collating base information for FW-FPs. Such costs are likely to far exceed Government estimations.
28. The Government proposes a partially regulatory approach and a partially discretionary approach to identifying mitigating actions in FW-FPs. Higher risk activities and those which the Government seeks to maintain a direct level of control will require a more prescribed methodology to identify actions to be taken. Lower risk activities or those that require a great deal of on-farm tailoring will be left to the professional judgment of the certifier. Officers suggest that actions recommended by Council land management officers need to be incorporated during this process, for example, through our *Natural Resource Plan*.

FW-FP review and re-certification

29. FW-FPs will need regular review and re-certification. Officers support discussion document proposals for FW-FP re-certification every three years to ensure they incorporate new knowledge and technology. However, officers recommend that some exceptions may require appropriate flexibility to extend review periods to five years in limited circumstances. Conversely, an earlier review may be appropriate in other examples. For example, changes to farm ownership, farm management, significant changes to land use, or major natural events could trigger the need for new or updated farm plans.

Accreditation and role of certifiers

30. As previously noted, the new FW-FP system relies heavily on certification and the professional expertise of certifiers. Officers support the establishment of a new accreditation body to ensure certifier professionalism and competency throughout the country.
31. Notwithstanding the above support, officers seek that regional councils be responsible for appointing any accredited certifier to operate in their region to ensure local knowledge and understanding of regional rules and catchment context settings are fit for operation.
32. Officers further question whether the national body should be responsible for a complaints review process. Officers suggest some issues could be easily resolved at a local level by regional councils – an approach not currently considered by the Government.
33. Officers also note that the exact role of certifiers is not yet finalised. Firstly, under option one, a certifier may certify a FW-FP and be involved in its development. Alternatively, under option two, certifiers would play no part in FW-FP development. Officers strongly support option one as being the most efficient and cost-effective. While developing a FW-FP, a certifier will need to do a walk-over of the farm plus consult with other experts such as land management officers and integrate other farm plans.
34. The Government has proposed a limit on the number of times a certifier can re-certify a FW-FP to limit the risk of client capture. Officers disagree with this proposal. There is a practical need for certifiers to build a client base. It is the role of the regulator to ensure the stringency of each plan.
35. Officers question whether certifiers could also act as auditors in certain situations. It is recommended that certifiers may also work as auditor for FW-FP's, excluding those which they have prepared or certified themselves, a worthy consideration not addressed by within the discussion document.

Maintaining high-quality audits

36. After a FW-FP is developed and certified, their implementation will be audited to ensure a farmer's compliance with their certified plan (that they must pay for). The Government will establish a national set of key competencies for auditors with regional councils overseeing the selection of regionally accredited auditors.
37. The Government does not propose that auditors assess FW-FP content. However, officers believe the system should allow auditors to monitor the robustness of FW-FP designs and ensure they are fit for purpose (and if not auditors, regulators, or councils may need to fill this need). Officers have previously raised concerns regarding the limitation of expertise in Taranaki to act as dry stock auditors.
38. The Government proposes a risk-based approach to audit frequency. Initially, all farms will be 'high risk' receiving an audit within 18 months of their FW-FP certification. If passed, a farm will receive its next audit within three years. However, officers believe that aspects of FW-FP could be audited up to 5 years if monitoring is already occurring through existing Council advisory and extension programmes.
39. Officers support the discussion document's recommendation that regional councils should be capable of triggering an assessment.

Regional council to administer enforcement

40. FW-FPs will be enforced by regional councils with the focus on any significant and serious non-compliance. However, clarification is required on what is 'significant' and 'serious' non-compliance. Officers suggest levels of non-compliance could be identified during the risk assessment process and subsequent prioritisation of actions when designing FW-FPs.
41. The Government has listed some proposed fees for non-compliance, with most sitting between \$1000-\$1500. Officers note that in some circumstances farmers may prefer paying the fee for non-compliance and believe increasing the fee range to \$10,000 will serve as a better deterrence.
42. As previously noted, implementation of the FW-FP system will require a phased rollout with two potential options, one being a collective catchment by catchment approach and the other an individual farm by farm approach, in which those farms posing the highest risk are targeted first. Officers recommend system agility whereby FW-FP implementation can adopt any or both roll out options. For example, ring plain farms support a collective approach given catchments traversing through the area largely share the same freshwater issues that can be mitigated through collaborative action. Conversely hill country farms may require an individual approach. Similar sediment issues occur consistently throughout the entire area. However, the worst sources of sediment discharges could be targeted on a per farm basis.

Process from here

43. As previously noted, the deadline for feedback on the discussion document is 12 September 2021. Once submissions are considered, Government will consider a proposal for Ministers to approve.
44. Councils have been advised that elements of the FW-FP system will be field tested before regulations are finalised and published in the New Zealand Gazette in the first half of 2022.
45. Once the regulatory framework is in place, a phased implementation is set to begin in the first half of 2022. A rollout of FW-FPs throughout the country will take time and the phased timeframe is expected to support the adaptation of existing council and industry farm plans into the new system.
46. The Government expects regional freshwater plans, currently in development by regional councils, will provide catchment context to farmers and growers when developing FW-FPs.

Financial considerations—LTP/Annual Plan

47. This memorandum and the associated recommendations are consistent with the Council's adopted Long-Term Plan and estimates. Any financial information included in this memorandum has been prepared in accordance with generally accepted accounting practice.

Policy considerations

48. This memorandum and the associated recommendations are consistent with the policy documents and positions adopted by this Council under various legislative frameworks

including, but not restricted to, the *Local Government Act 2002*, the *Resource Management Act 1991* and the *Local Government Official Information and Meetings Act 1987*.

Iwi considerations

49. This memorandum and the associated recommendations are consistent with the Council's policy for the development of Māori capacity to contribute to decision-making processes (schedule 10 of the *Local Government Act 2002*) as outlined in the adopted long-term plan and/or annual plan. Similarly, iwi involvement in adopted work programmes has been recognised in the preparation of this memorandum.
50. FW-FPs will draw from the objectives and freshwater values of the relevant regional freshwater plan. As regional freshwater plans must give effect to the principles of Te Mana O te Wai, so to must freshwater farm plans.
51. Council must engage with tangata whenua on how this might be best achieved at a system level. This responsibility sits with the regional council rather than farmers or individual growers

Community considerations

52. This memorandum and the associated recommendations have considered the views of the community, interested and affected parties and those views have been recognised in the preparation of this memorandum.

Legal considerations

53. This memorandum and the associated recommendations comply with the appropriate statutory requirements imposed upon the Council.



Date: 31 August 2021

Subject: **Stock exclusion regulations: Proposed changes to the low slope map**

Approved by: A D McLay, Director - Resource Management
S J Ruru, Chief Executive

Document: 2844388

Purpose

1. The purpose of this memorandum is to advise Members of the content of the *Stock exclusion regulations: Proposed changes to the low slope map discussion document*, and to provide Members an opportunity to provide comment on issues with they would like to see addressed in a Council submission.

Executive summary

2. The *Resource Management (Stock Exclusion) Regulations 2020* (Stock Exclusion Regulations) includes requirements for additional stock exclusion from land deemed to be low slope over land deemed to be high slope (over 10 degrees).
3. The Low Slope Map referenced in the Stock Exclusion Regulations is used to identify low and high slope land. However, the current mapping includes many inaccuracies that the Government has been working to address.
4. The Ministry for the Environment (MfE) is now seeking feedback on a discussion document in relation to changes to the Low Slope Map.
5. In brief, proposed changes include a mapping approach based on local terrain, and the introduction of an altitude threshold of 500 metres. The Government is proposing that freshwater farm plans are used to address the risks of stock access to waterways in areas outside the low slope map. In areas between 5 and 10 degrees slope there will be a presumption that stock will be excluded from access to waterways through freshwater farm plans, rather than through the application of mandatory regulatory requirements.
6. It is hoped that the new approach along with the improved mapping methodology will address the inaccuracy issues and provide greater flexibility and discretion to farmers where appropriate.
7. Officers have undertaken a preliminary analysis of the discussion document and are generally supportive of the changes to the low slope map and the local terrain averaging mapping methodology. However, only anecdotal evidence supports the efficacy of the new mapping regime. The map has yet to be tested in Taranaki and out in the field.

8. Feedback on the discussion document is required by 12 September 2021.

Recommendations

That the Taranaki Regional Council:

- a) receives the memorandum *Stock exclusion regulations: Proposed changes to the low slope map*
- b) notes that Officers are preparing a submission that is due 12 September 2021
- c) determines that this decision be recognised as not significant in terms of section 76 of the *Local Government Act 2002*
- d) determines that it has complied with the decision-making provisions of the *Local Government Act 2002* to the extent necessary in relation to this decision; and in accordance with section 79 of the Act, determines that it does not require further information, further assessment of options or further analysis of costs and benefits, or advantages and disadvantages prior to making a decision on this matter.

Background

9. As Members are aware, the Government released its *Essential Freshwater* package (the Package) on 5 August 2020 with it taking effect from 3 September. The package contains several elements, one of these being the Stock Exclusion Regulations.
10. The Stock Exclusion Regulations require the exclusion of beef and deer cattle from lakes and wide rivers on low slope land, and all stock on low slope land from any natural wetland.
11. As additional context, the Stock Exclusion Regulations stipulate pigs, dairy cattle, dairy support cattle, intensively grazed beef and intensively grazed deer on any terrain must be excluded from lakes and wide rivers, unless crossing provisions apply. All stock are excluded from natural wetlands on any terrain if the wetland is identified in a regional or district plan, or if the wetland supports threatened species described in the *National Policy Statement for Freshwater Management 2020*.
12. Stock that are required by the Stock Exclusion Regulations to be excluded from a waterbody must not be allowed closer than 3 meters to the edge of the bed of a lake or wide river.
13. Members may be aware that the Stock Exclusion Regulations are supported by mapping developed by the Government that purportedly identifies low slope land across New Zealand. However, the regional sector has long argued that current low slope mapping is inaccurate and therefore misleading and requires improvement. The Government is now proposing a new mapping approach.

What is the issue?

14. The Intention of the Stock Exclusion is to provide a national standard for stock exclusion from freshwater. However, the inflexibilities inherent in these Regulations has been problematic for regional councils responsible for their implementation. The inaccurate mapping methodology of the current low slope map has made this inflexibility more apparent.
15. The Government now recognises changes are required that ensure an appropriate balance between nationwide regulatory requirements and on-farm tailored responses provided through freshwater farm plans. The Government's low slope mapping must be

accurate if the adjacent stock exclusion regulations are to be fit for purpose for farm planning purposes.

16. Currently, 11.5% of land captured by the low slope map has a slope greater than 10 degrees. The current map also fails to capture some areas of low-slope land. Due to these inaccuracies, the Stock Exclusion Regulations fail to achieve their full environmental purpose by often capturing the wrong land.
17. Another concern is that the map captures extensive farming operations in the high country. Stocked at lower rates, the high cost of stock exclusion management in these areas is inefficient.

Discussion document – proposed changes

18. The discussion document for Stock Exclusion Regulations and the proposed changes to the low slope map ([click here](#)) was released last month in July 2021. Consultation on the discussion document will close on 12 September 2021. The consultation is being undertaken in conjunction with wider consultation on a separate discussion document on freshwater farm plans (see separate agenda item).
19. The discussion document contains nine sections. In brief, proposed changes include a mapping approach based on local terrain, and the introduction of an altitude threshold of 500 metres. The Government is proposing that freshwater farm plans are used to address the risks of stock access to waterways in areas outside the low slope map. In areas between 5 and 10 degrees slope there will be a presumption that stock will be excluded from access to waterways through freshwater farm plans, rather than through the application of mandatory regulatory requirements.
20. Changes to the low slope mapping includes:
 - New map using advanced mapping methodology called 'local terrain averaging' to identify low slope land with an average slope of up to 5 degrees.
 - a. Instead of averaging slope across land parcels, the 'local terrain averaging' method calculates the average slope of an aggregated 4.5-hectare area comprising 15 metre by 15 metre cells. Each cell with an average of 5 degrees or less is selected. The edges of the resulting layer are smoothed to give the map its boundary.
 - b. In addition, the following areas will be excluded from the map to further reduce the capture of high slope land:
 - i. Land with an average slope of 5-10 degrees
 - ii. The land above 500 metres in altitude
 - iii. Depleted grassland and tall tussock areas
 - c. The proposed map captures an area of 5.2 million hectares. The current map captures an area of 8.2 million hectares. The total area with a slope greater than 10 degrees will decrease to an estimated 0.07 percent in the proposed map.
 - d. Any stock exclusion requirements on land not captured by the proposed map will be managed by freshwater farm plans, which are risk-based and allow for more discretion.

Proposed submission

21. Officers have undertaken a preliminary analysis of the discussion document and are generally supportive of the changes to the low slope map and the local terrain averaging mapping methodology. However, only anecdotal evidence supports the efficacy of the new mapping regime. The map has yet to be tested in Taranaki and out in the field therefore the realities of its use are not yet confirmed.
22. Changes to the current approach and mapping are absolutely essential for the Stock Exclusion Regulations to work. Therefore, officers recommend Council prepare a submission in support subject to the aforementioned qualifiers and subject to any other issues or improvements sought by Members or officers following a more detailed analysis.

Financial considerations—LTP/Annual Plan

23. This memorandum and the associated recommendations are consistent with the Council's adopted Long-Term Plan and estimates. Any financial information included in this memorandum has been prepared in accordance with generally accepted accounting practice.

Policy considerations

24. This memorandum and the associated recommendations are consistent with the policy documents and positions adopted by this Council under various legislative frameworks including, but not restricted to, the *Local Government Act 2002*, the *Resource Management Act 1991* and the *Local Government Official Information and Meetings Act 1987*.

Iwi considerations

25. This memorandum and the associated recommendations are consistent with the Council's policy for the development of Māori capacity to contribute to decision-making processes (schedule 10 of the *Local Government Act 2002*) as outlined in the adopted long-term plan and/or annual plan. Similarly, iwi involvement in adopted work programmes has been recognised in the preparation of this memorandum.

Community considerations

26. This memorandum and the associated recommendations have considered the views of the community, interested and affected parties and those views have been recognised in the preparation of this memorandum.

Legal considerations

27. This memorandum and the associated recommendations comply with the appropriate statutory requirements imposed upon the Council.



Date 31 August 2021

Subject: **Submission on MARPOL Annex VI**

Approved by: A D McLay, Director - Resource Management
S J Ruru, Chief Executive

Document: 2852117

Purpose

1. The purpose of this memorandum is to inform the Committee of the submission on the proposed *Introduction of Marine Protection Rules Proposed Part 199: Prevention of Air Pollution from Ships and proposed amendments to Schedule 1 of the Marine Protection (Offences) Regulations 1998* ("the Proposed Rules").

Executive summary

2. This item was prepared to inform members of the submission presented in the Council's name on the Proposed Rules. The Proposed Rules give effect to changes in the International Convention for the Prevention of Pollution from Ships – commonly known as MARPOL – Annex VI. Annex VI, which deals with various air pollutants emitted by ships, came into force in 1997, but was not ratified by New Zealand when it signed on to MARPOL in 1998.
3. The Proposed Rules reflect a government decision in early 2021 that New Zealand would sign on to Annex VI. Officers supported the Proposed Rules, such that most of the submission focused on addressing technical/scientific details. There were no points of fundamental concern. The closing date for submissions was 4 August, which prevented the draft being presented to the Committee for consideration and adoption in the usual way.

Recommendations

That the Taranaki Regional Council:

- a) receives this memorandum
- b) adopts (alternatively amends) the submission on the Proposed Rules
- c) determines that this decision be recognised as significant or not significant in terms of section 76 of the *Local Government Act 2002*
- d) determines that it has complied with the decision-making provisions of the *Local Government Act 2002* to the extent necessary in relation to this decision; and in

accordance with section 79 of the Act, determines that it does not require further information, further assessment of options or further analysis of costs and benefits, or advantages and disadvantages prior to making a decision on this matter.

Background

4. The International Convention for the Prevention of Pollution from Ships (“MARPOL”) was signed in 1973 to establish a framework for reducing the environmental and human health impacts of marine shipping. It came into effect in 1978 when the minimum number of ratifying countries was reached. New Zealand signed on to four of the six MARPOL Annexes in 1998. Annex VI was one of the two annexes not signed on to at this time.
5. (NOTE: Annex IV – discharge of sewage from vessels - is the other annex New Zealand has not signed on to.)
6. After consultation in 2018–19, the Government announced that New Zealand would sign up to Annex VI from late 2021. This timeline was set taking into account for the time required to align domestic legislation with obligations under Annex VI. The Proposed Rules will give effect to the requirements of Annex VI.
7. Implementation of the changes needed to give effect to Annex VI is being jointly shared by Maritime NZ (who are consulting on the Proposed Rules), Ministry of Transport (who are preparing the necessary legislation) and Ministry for the Environment.

Discussion

8. The legal obligations which will be imposed on New Zealand by Annex VI include:
 - 8.1. Limit of 0.5% sulphur fuels on all ships, or alternative measures such as installation of engine exhaust scrubbers to filter sulphur dioxide emissions.
 - 8.2. Nitrogen oxide (NOx) controls for marine diesel engines with a power output of 130 KW or more, on vessels built on or after 1 January 2000, or vessels which have undergone significant conversions since that date.
 - 8.3. Energy efficiency requirements, including the Ship Energy Efficiency Management Plan (SEEMP) and the Energy Efficiency Design index (EEDI). More specific energy efficiency requirements aimed at a phased reduction of carbon emissions will be adopted by 2023.
 - 8.4. Controls on emissions of ozone-depleting substances (e.g. refrigerants, firefighting systems).
 - 8.5. Controls on the emission of volatile organic compounds from cargo (e.g. oil vapour).
 - 8.6. Requirements for shipboard incinerators installed on or after 1 January 2000 to meet specified performance standards and be operated by trained personnel. In addition, the incineration of certain materials is prohibited.
 - 8.7. Controls on fuel composition and quality.
 - 8.8. Requirements for port reception facilities for wastes from ships related to emissions covered by Annex VI.
 - 8.9. A requirement for New Zealand to enforce compliance with the obligations and implement survey and certification procedures.

9. The Proposed Rules translate, without any apparent changes, the Annex VI requirements directly into New Zealand's existing marine pollution rules.
10. Officers reviewed the Proposed Rules from a scientific and practical point of view – as well as in our capacity as owner of Port Taranaki Limited. We also consulted directly with the Port company and with iwi whose rohe could be impacted (most particularly those adjoining the port). All feedback received from these groups was supportive of the Council's submission.
11. That review was largely supportive of the changes, with most suggested changes being only minor points relating to applicability of technologies and options. Officers also noted that the Director of Maritime NZ had the ability under the Proposed Rules to grant exemptions from some of the recording requirements described under 7.3, above. Although the discussion document mentioned an intention to do this, there were as yet no indications that they would do so. The submission encouraged this step to be taken.
12. The submission, which is attached to this Memorandum, was presented on 4 August, in line with the required timelines.

Financial considerations—LTP/Annual Plan

13. This memorandum and the associated recommendations are consistent with the Council's adopted Long-Term Plan and estimates. Any financial information included in this memorandum has been prepared in accordance with generally accepted accounting practice.

Policy considerations

14. This memorandum and the associated recommendations are consistent with the policy documents and positions adopted by this Council under various legislative frameworks including, but not restricted to, the *Local Government Act 2002*, the *Resource Management Act 1991* and the *Local Government Official Information and Meetings Act 1987*.

Iwi considerations

15. This memorandum and the associated recommendations are consistent with the Council's policy for the development of Māori capacity to contribute to decision-making processes (schedule 10 of the *Local Government Act 2002*) as outlined in the adopted long-term plan and/or annual plan. Similarly, iwi involvement in adopted work programmes has been recognised in the preparation of this memorandum.

Community considerations

16. This memorandum and the associated recommendations have considered the views of the community, interested and affected parties and those views have been recognised in the preparation of this memorandum.

Legal considerations

17. This memorandum and the associated recommendations comply with the appropriate statutory requirements imposed upon the Council.

Appendices/Attachments

Document 2831079: Revised Council Submission MARPOL Annex VI Air Pollution

What do we need to hear from you about?

General comments and concerns:

The Taranaki Regional Council (the Council) thanks Maritime New Zealand for the opportunity to provide feedback on the *Introduction of Marine Protection Rules Proposed Part 199: Prevention of Air Pollution from Ships and proposed amendments to Schedule 1 of the Marine Protection (Offences) Regulations 1998* (the 'proposals', including 'draft rules' or 'rules').

The Council provides this feedback in recognition of its:

- functions and responsibilities under the *Local Government Act 2002* and the *Resource Management Act 1991* (RMA) for managing, regulating and monitoring air quality and coastal marine water quality and ecosystem health;
- harbour master responsibilities at and around Port Taranaki;
- 100% ownership of Port Taranaki;
- regional waste management experience;
- experience and expertise in managing adverse effects associated with port and shipping facilities and development in the Taranaki region; and
- regional advocacy responsibilities whereby the Council represents the Taranaki region on matters of regional significance or concern, and in particular the importance of the maritime transport services, offshore hydrocarbon production, and fisheries for the region, its communities, and its industries, and more indirectly but no less strategically for New Zealand.

The Council is available to provide further comment or to discuss further any of the matters raised below, if desired. In the first instance, please contact Gary Bedford, Science Advisor (gary.bedford@trc.govt.nz).

The Council is generally supportive of the approach, provisions, and proposed rules as set out in the proposals. The Council notes the intention of the proposals to protect existing and improve air and marine water quality; reduce emissions of greenhouse gases through requiring demonstrable improved efficiency of fossil-fuelled engines; reduce the emission of ozone-depleting substances; deliver consistent enforcement at national level; and bring New Zealand into line with international requirements. The Council considers that overall the rules will deliver these intended outcomes.

The main thrust of the Council's submission is towards identifying practical issues that may arise in their implementation; some questions over the intended enforcement regime; and the importance of continuing engagement by Maritime New Zealand with regional councils and Port companies when considering provision and location of portside reception facilities and services for collection and disposal of scrubber residues and other waste types.

There is a particular point of emphasis that the Council, wishes to make, related to all rules. The Council expresses its concern that there is no reference to cultural impacts or recognition of the cultural and spiritual significance of the marine environment anywhere within the proposals. Themes that are known to be relevant to iwi and hapu include the scope and risk assessment areas of interest including kaitiakitanga, Mātauranga Māori, taniwha, water, air, kaimoana/fisheries, and climate change. The Council cannot speak for

and is not speaking for iwi in this matter, but given the widely acknowledged intrinsic linkages of iwi with the foreshore and nearshore marine environment, their recognition as mana whenua, and the mauri of the sea as taonga, the Council considers that cultural and spiritual impacts of pollution and non-compliance should be explicitly recognised and actionable within the context of any assessment of adverse environmental effects. The Council has found that cultural impact assessments have proven invaluable to the Environment Court in prosecutions of environmental incidents, and urges Maritime NZ to co-develop protocols in conjunction with iwi authorities, as part of its adoption of Annex VI.

Council responses to specific questions

Proposal 2.1: The rules will enable the Director to approve equivalent means, such as exhaust gas cleaning systems or other technologies, to meet the Annex VI emission limits

53. Our proposed approach is broadly consistent with international practice and allows current settings to continue in New Zealand. Also, allowing all ships to have the opportunity to use approved equivalent compliance measures to meet the SO_x limits will create incentives for the market to invest in developing more technologies that can reduce overall emissions from ship engines.

Question: Do you agree with this proposal? If not, why not?

Council response: The Council supports both the proposals to set specifications on acceptable fuel (ie sulphur limits), and the ability of the Director to approve equivalent means to attaining the same emission outcomes (emission abatement technology). The Council considers this to be an efficient approach to achieving air quality outcomes at lowest practical cost for operators and for the country as a whole. New technologies may well be transferrable to other pollutants and other settings eg land transport, thus adding extra benefits.

However, the Council notes that abatement technologies must be carefully evaluated from a 'whole of environment' perspective, in order to avoid unintended consequences. For example, high combustion temperatures reduce fine particulate and volatile organic compound residues, but simultaneously increase nitrogen oxide emissions. Scrubbing systems create solid or liquid residues requiring treatment and/or disposal. Catalytic converters release toxic heavy metals and have end-of-life disposal issues. The Council therefore requests that the Director commits to consultation with the Ministry for the Environment, appropriate expert input, and the regional council sector, prior to any approval of '*or equivalent compliance measures*'.

Proposal 2.2: Ships at or over 400 GT must comply with the requirements to obtain fuel samples and bunker delivery notes

54. This approach avoids unnecessary administrative burden on small vessel operators. It also recognises the purpose of this requirement, which is Port State Control. New Zealand would not be able to enforce the requirements on foreign-flagged vessels under 400 GT where their Flag State had not applied them to smaller vessels.

55. It is practical to use the threshold of 400 GT from Annex VI rather than set a lower threshold which would be necessary to avoid imposing the requirements on, for example, very small

recreational boats.

Question: Do you agree with this proposal? If not, why not?

Council response: The Council notes that a number of the rules apply to vessels over 400 tonnes. The reason for this threshold is to maintain consistency with a threshold within MARPOL Annex VI. The Council also speculates that as vessels increase in size, they are more likely to be fuelled by heavy fuel oil, which has a higher sulphur content than alternatives such as petrol or diesel.

In respect of the proposal for vessel above this size to obtain (and retain??) fuel samples and bunker delivery notes, the Council supports this proposal. Sample preservation protocols would need to be specified, to ensure integrity and security. The Council further notes that such fuel samples prove invaluable when the Council is seeking to fingerprint hydrocarbon fuel or ballast or bilge water spills and thereby trace sources. The Council therefore seeks that samples collected for proof of sulphur content must be made available by law, if required by authorities other than Maritime NZ for broader regulatory and enforcement purposes. In any case, a minimum period of retention should be specified in the regulations eg for a month after departure from a New Zealand port, or for three months after any subsequent re-bunkering. The Council notes that with some air quality monitoring devices being checked monthly, this minimum sample retention period would allow time for investigation and correlation of any unusual ambient sulphur concentrations.

Proposal 3.1: Domestic travelling ships must comply with the NO_x emission limits if they were constructed on or after 19 May 2005

83. Annex VI allows for Administrations to exclude ships constructed before 19 May 2005 from the NO_x emission limits if they are only undertaking domestic voyages. We consider that bringing forward the required compliance date to later than 19 May 2005 for domestic travelling ships would not be consistent with the objective and purpose of Annex VI.

Question: Do you agree with this proposal? If not, why not?

Council response: The Council accepts this reference date as consistent with international obligations. In doing so, the Council notes that its monitoring shows that ambient NO_x concentrations in the vicinity of Port Taranaki remain very low by comparison with national standards, and the additional benefit for air quality and human health obtained by also requiring older vessels to meet NO_x emission limits would be less than negligible. However, the Council notes that other port localities experience higher ambient NO_x concentrations and may justifiably seek compliance from older vessels as well.

Proposal 3.2: Unless proposal 3.3 applies, domestic travelling ships, constructed after 19 May 2005, that have an engine over 130 kW and are subject to a survey schedule must be issued with the EIAPP certificate at the next intermediate or renewal survey after the rules come into effect, but no later than three years after the commencement date. Those ships that do not have a survey schedule should have an EIAPP certificate on board by three years after the commencement date

84. This period of time to achieve compliance is consistent with the dates in Annex VI requirements. It also has the benefit of providing some ship operators an extra period of time to achieve compliance.

85. Ships that are not subject to a survey schedule will need to present the EIAPP certificate on

request from authorities.

Question: Do you agree with this proposal? If not, why not?

Council response: The Council notes that retail outboard motors are available up to 250 hp (190kW). This rule would potentially mean a relatively small number of registered vessels having to be tested and certified, with attendant administrative burden of cost, time, record-keeping and compliance monitoring, and practical constraints upon available abatement equipment, engineers, and surveyors in the current covid-restricted environment to meet the deadline, while hundreds or indeed thousands of private recreational craft are exempt. On this basis of inequity, the Council opposes the threshold limit in the rule (while noting it maintains consistency with MARPOL thresholds), and suggests an alternative threshold of 190 kW on the basis of practicality and administrative simplicity. Other than for the matter of the threshold, the Council supports the rule.

Proposal 3.3: Domestic travelling ships constructed after 19 May 2005, that have non-marine (automotive/land-based) engines over 130 kW output power may, instead of holding an EIAPP certificate, use evidence of compliance with an alternative engine emission standard approved by the Director

86. The current European Emission Standards, and other emissions regulations in countries such as the United States and Japan, are more stringent than the Annex VI emission standards.

87. This approach also has the potential to allow land-based engines to remain on the ship instead of ship operators having to replace functioning engines with marine engines that can be EIAPP certified.

Question: Do you agree with this proposal? If not, why not?

Council response: The proposal will require every post-2005 ship (excluding private recreational and pleasure craft ie non-registered boats) powered by a non-marine engine of more than 130 kW to be certified. On this reading, many hundreds or indeed thousands of recreational jet boats, which typically use high-power V8 vehicle engines to power their water jet propulsion units, would be exempt from requirements to be tested and certified for air emission performance, while at the same time a relatively small number of registered vessels would have to be tested and certified with attendant administrative burden of cost, time, record-keeping and compliance monitoring, and practical constraints upon available abatement equipment, engineers, and surveyors in the current covid-restricted environment. The benefits for local air quality would be marginal at best. On this basis of inequity, the Council opposes the threshold limit in the rule, and suggests an alternative higher threshold for flagged vessels on the basis of equity, practicality and administrative simplicity. Other than for the matter of the threshold, the Council supports the rule and its rationale.

Secondly, the Proposals state that domestic travelling ships built after May 2005 and that have an engine over 130 kW must get an EIAPP certificate within a certain time frame; except that if their engine is a non-marine engine, then instead of having to get EIAPP certification, they may instead use evidence of compliance with an alternative standard that has been approved by the Director. This reads as allowing the ship owner to apply for an exemption from EIAPP if they have a non-marine engine and have an alternative certification of emission performance and compliance that is linked to some overseas vehicle standard, that the Director can approve, rather than the Director being pro-active and publishing lists of acceptable alternative standards. The Council would support this intent. It is noted that anyone who installs a non-marine engine into a ship may well modify it (eg

exhaust systems on vehicles are normally an intrinsic part of the pollution abatement technology). So it is not only a matter of MNZ being asked to approve/publish the vehicle standard, but also being able to audit the individual performance certification (and being able to decline certification if the engine is found to no longer meet the automotive standard).

Rule 199.22 provides a generic ability for the Director to make such approvals ('other procedures...or compliance rules'); and in 199 Subpart B there are rules pertaining to NZ-registered ships on foreign travel; and then 199 Subpart C pertains to NZ ships on domestic travel. However, subpart C contains no specific rules pertaining to non-marine engines. It refers to marine diesel engines only. So there is silence in the rules around the status of and a lack of provision of a mechanism for recognition of non-marine engines. The Rules around documentation for EIAPP are quite specific and prescriptive; by comparison there is an absence of what is needed to support an application for an exemption from these requirements. Therefore the Council seeks clarification as to whether this lack is an unintended oversight, or whether the intention of MNZ is that Rule 199.22 is to be used, for example on a case by case basis and following a specific request for exemption.

Proposal 3.4: NO_x emissions limits and certification requirements will apply to any ship registered in New Zealand on or after commencement date that has an engine over 130 kW output power, regardless of its date of construction

88. Maritime NZ has proposed this provision to ensure that older ships (with engines that are not compliant with NO_x emission limits) are not imported into New Zealand once the proposed rules come into effect.

Question: Do you agree with this proposal? If not, why not?

Council response: supported, as supporting good environmental outcomes.

Proposal 4.1: New Zealand will apply all chapter 4 energy efficiency requirements to domestic travelling ships

121. Maritime NZ considers the best way to ensure domestic travelling ships act in a manner consistent with Chapter 4 requirements is to apply the requirements for internationally travelling ships as closely as possible to domestic travelling ships.

Question: Do you agree with this proposal? If not, why not?

Council response: supported, for consistency and international credibility of New Zealand's environmental reputation.

Proposal 4.2: New Zealand-flagged ships at or over 400 GT must comply with the EEDI at next intermediate or renewal survey if they were constructed on or after 1 January 2017

122. Maritime NZ considered that it would be onerous for some ships to be required to meet the EEDI requirements if they were newly constructed after 2013. Instead, Maritime NZ has proposed to use the waiver provided by Annex VI to exclude ships built between 2013 and 2017 from the EEDI requirements.

Question: Do you agree with this proposal? If not, why not?

Council response: no comment

Proposal 4.3: Any ship at or over 400 GT registered in New Zealand on or after commencement date that was constructed on or after 1 January 2013 must have an EEDI

123. This will ensure that non-EEDI compliant ships are not imported into New Zealand after the proposed rules come into effect.

Question: Do you agree with this proposal? If not, why not?

Council response: supported, for consistency and international credibility of New Zealand's environmental reputation.

Proposal 4.4: New Zealand-flagged ships at or over 400 GT must comply with the EEXI at next intermediate or renewal survey if they were constructed before 1 January 2017

124. Maritime NZ proposes the EEXI be required for all domestic travelling ships at or over 400 GT constructed before 1 January 2017. This approach ensures coverage of all applicable ships in the New Zealand fleet.

Question: Do you agree with this proposal? If not, why not?

Council response: supported, for consistency and international credibility of New Zealand's environmental reputation.

Proposal 5.1: Ships at or over 400 GT that have rechargeable systems that contain ozone depleting substances (ODS) must maintain a list of equipment containing ODS and an ODS Record Book

150. Maritime NZ considers it would be beneficial to manage the air pollution risk posed by the recharge, repair and removal of rechargeable systems that contain ODS by applying the ODS record keeping requirements to all ships at or over 400 GT that have any rechargeable systems that contain ODS.

Question: Do you agree with this proposal? If not, why not?

Council response: supported, as good environmental stewardship and for the international credibility of New Zealand's environmental reputation. Capture of ODS is standard practice for shore-based management of refrigeration systems.

Proposal 5.2: All ships constructed since 1 January 2000 or with shipboard incinerators installed since 1 January 2000 must meet the Annex VI incinerator specification and certification requirements

151. Maritime NZ proposes to apply the shipboard incineration requirements to incinerators installed after 1 January 2000 for all ships that have these installations, rather than applying the later date 19 May 2005. In our initial engagement with stakeholders, no material concerns were voiced about opting for the earlier date. This approach helps New Zealand to achieve the environmental standards Annex VI aims to achieve.

Question: Do you agree with this proposal? If not, why not?

Council response: supported, as good environmental stewardship, for consistency with overseas regulatory regimes, and for the international credibility of New Zealand's environmental reputation.

Proposal 5.3: Shipboard incinerator operation requirements will apply where a ship is registered in New Zealand on or after commencement date, regardless of its date of construction

152. Maritime NZ has proposed this provision to ensure that older ships (with potentially less efficient incinerators) are not imported into New Zealand once the proposed rules come into effect.

Question: Do you agree with this proposal? If not, why not?

Council response: supported, as good environmental stewardship, for consistency with overseas regulatory regimes, and for the international credibility of New Zealand's environmental reputation.

Proposal 6.1: Domestic travelling ships at or over 400 GT that are compliant with Chapter 3 requirements will be certified with the New Zealand Air Pollution Prevention certificate (NZAPP); and those that are compliant with Chapter 4 requirements will be certified with the New Zealand Energy Efficiency (NZEE) certificate

173. Maritime NZ proposes to create New Zealand applicable versions of the Annex VI certificates to apply specifically to ships that do not travel internationally. This approach ensures all ships at or over 400 GT have appropriate certification regardless of whether the ship travels internationally.

Question: Do you agree with this proposal? If not, why not?

Council response: supported, as good environmental stewardship, for consistency with overseas regulatory regimes, and for the international credibility of New Zealand's environmental reputation.

Proposal 6.2: Domestic travelling ships at or over 400GT will be issued with the NZAPP and NZEE certificates at the same times prescribed by Annex VI for the IAPP certificate and the IEE certificate. These certificates will have the same length of validity as the IAPP and IEE certificates

174. As much as possible, Maritime is ensuring ships operators have Annex VI compliance assessed within the existing survey schedules for large ships. For ships that are not subject to a regular regime of surveys, windows of time where compliance must be achieved have been factored into the proposals.

175. The validity of the New Zealand version of the certificates will match that of the Annex VI certificates so that ship operators can use their existing survey schedule to be issued the certificates for Annex VI compliance. This approach may reduce compliance costs for some ship operators.

Question: Do you agree with this proposal? If not, why not?

Council response: supported, as good environmental stewardship, for consistency with overseas regulatory regimes, and for the international credibility of New Zealand's environmental reputation.

Proposal 7.1: One or more ports will be directed to provide port reception facilities for ODS disposal

192. Following engagement with ports, regional councils and waste management companies, Maritime NZ proposes to direct one or more ports to provide port reception facilities for ODS waste from ships.

Question: Do you agree with this proposal? If not, why not?

Council response: supported, if developed following genuine engagement and co-exploration of the best (most cost-effective) alternatives for New Zealand as a whole and with proper consideration of funding provision.

Proposal 7.2: One or more ports will be directed to provide port reception facilities for scrubber waste disposal

193. Following engagement with ports, regional councils and waste management companies, Maritime NZ proposes to direct one or more ports to provide port reception facilities for scrubber waste from ships.

Question: Do you agree with this proposal? If not, why not?

Council response: supported, if developed following genuine engagement and co-exploration of the best (most cost-effective) alternatives for New Zealand as a whole and with proper consideration of funding provision. The Council again notes that there would be little benefit for Port Taranaki and the city of New Plymouth in the move to better abatement of air emissions from shipping, and that there is more potential at other ports for enhancements in the state of the air environment. For example, transparent criteria based on gross annual tonnage of shipping, existing air quality, weightings around vessel sizes and emission controls (annual mass air pollution load), access to shore-supplied service umbilicals (electricity) as an alternative to running on-board generation, and total number of shipping movements per year, could be developed for each port as a basis for decision-making.

The Council notes the statement in the Proposal that '*The Ministry for the Environment (MfE) has issued non-statutory guidance on the use of scrubbers. This guidance will be updated when MfE formalises its position on the use of scrubbers in New Zealand's territorial waters*'. The Council welcomes this MfE work programme, but notes that all too often MfE guidance has been issued many months or years after the promulgation of the rules etc to which they apply. The Council urges timely action by MfE on this matter.

Proposal 8.1: Amendments to the Marine Protection (Offences) Regulations 1998 are proposed to add offences and penalties for non-compliance with the Marine Protection Rules Part 199

Question: Do you agree with the proposed offences and penalties? If not, why not?

Council response: supported in part, and opposed in part.

The Council notes the detail of the proposals is as follows:- *The MTA provides for the following ranges of penalties for breaches of the marine protection rules:*

- *for prosecuted offences: in the case of an individual, a fine not exceeding \$10,000;*

or in the case of any other person, a fine not exceeding \$50,000

• for infringement offences, in the case of an individual, an infringement fee not exceeding \$2,000; or in the case of any other person, an infringement fee not exceeding \$12,000.

In the case of prosecutions, the maximum MTA fines would be an order of magnitude lower than those available under the Resource Management Act 1991; in the case of the infringement fees, the maximum penalties are an order of magnitude higher than those available under the RMA. There is therefore a very significant disjunction between the two regulatory frameworks, which is without any rationale. The Council notes that in the case of penalties under the RMA, the courts routinely award penalties much higher than those provided for under the MTA, and that Parliament and the courts moved to lift the maximum scale of RMA fines some years ago in order to provide a more effective deterrent. With increasing public awareness of the vulnerability and importance of the sea/moana, it is inappropriate to retain a scale of punishment for events causing environmental harm that does not reflect current community perspectives. The last position anyone would desire, is one where it is cheaper to pay fines than to properly install, operate, and certify on-board systems for protection of air and sea quality and health. The Council submits that the two regulatory frameworks should instead be closely aligned. This would give meaningful effect to the proposal's statement that *the penalty is at a level consistent with other similar offences across the whole body of marine protection rules.*

The Council endorses the proposed two-tier approach, whereby administrative non-compliance (*'system harm'*) is punished less severely than non-compliance that results in environmental harm (to the biophysical or human environment) (*'environmental, health, or safety harm'*). It is agreed that infringement offences can best address the former, and prosecution offences the latter. The Council notes that the MTA maximum infringement fee for a person other than an individual (ie for a company) is \$12,000; this is considered more realistic as a disincentive than the RMA maximum infringement fee of (variously) \$300-\$1,000, and should be retained rather than reduced to the RMA infringement fee schedule (given that for a non-compliance with an RMA resource consent, a council has additional options for recovering associated costs).



Date: 31 August 2021

Subject: **Natural and Built Environments Bill Exposure Draft Submission**

Approved by: A D McLay, Director - Resource Management
S J Ruru, Chief Executive

Document: 2851713

Purpose

1. The purpose of this memorandum is to provide the Committee with an opportunity to review the Councils' submission on the Natural and Built Environments Bill Exposure Draft ("the NBA" and "the Exposure Draft") and the submission on the Exposure Draft that was made in the name of the Mayoral Forum.

Recommendation

That the Taranaki Regional Council:

- a) receives this memorandum
- b) receives the attached submissions
- c) determines that this decision be recognised as not significant in terms of section 76 of the *Local Government Act 2002*
- d) determines that it has complied with the decision-making provisions of the *Local Government Act 2002* to the extent necessary in relation to this decision; and in accordance with section 79 of the Act, determines that it does not require further information, further assessment of options or further analysis of costs and benefits, or advantages and disadvantages prior to making a decision on this matter.

Background

2. The Government announced an intention to reform the Resource Management Act ("RMA") in February 2021. The first major step in that review process was the release of the Exposure Draft for submissions on June 29. Submissions closed on 4 August.
3. A detailed summary of Officers' assessment of the Exposure draft was presented to this Committee at its July meeting (see Agenda item 7 from that meeting). The Committee endorsed Officers' recommendations and instructed them to prepare a submission on the basis of the limited information available to the Council at that time.

4. The Committee also endorsed Officers suggestion of working with the three territorial authorities to prepare a joint submission.
5. The two submissions were prepared and submitted to the Environment Select Committee by 4 August. Both submissions followed closely the findings, recommendations and comments contained in the Agenda Memorandum from that July Committee meeting.
6. Of the three Taranaki territorial authorities, only New Plymouth District Council elected to make a submission at this time. The other two Councils did however indicate that they would look to take a greater role at later stages of the Bill's passage.
7. The two submissions discussed here, plus New Plymouth District Council's submission, will form the basis of that on-going collaboration between officers at the four Taranaki councils as the government works towards the tabling of the full Bill later in the year.

Financial considerations—LTP/Annual Plan

8. This memorandum and the associated recommendations are consistent with the Council's adopted Long-Term Plan and estimates. Any financial information included in this memorandum has been prepared in accordance with generally accepted accounting practice.

Policy considerations

9. This memorandum and the associated recommendations are consistent with the policy documents and positions adopted by this Council under various legislative frameworks including, but not restricted to, the *Local Government Act 2002*, the *Resource Management Act 1991* and the *Local Government Official Information and Meetings Act 1987*.

Iwi considerations

10. This memorandum and the associated recommendations are consistent with the Council's policy for the development of Māori capacity to contribute to decision-making processes (schedule 10 of the *Local Government Act 2002*) as outlined in the adopted long-term plan and/or annual plan. Similarly, iwi involvement in adopted work programmes has been recognised in the preparation of this memorandum.
11. Iwi are key parties in the Government's reform programme and are therefore an important part of the Council's implementation programme.

Community considerations

12. This memorandum and the associated recommendations have considered the views of the community, interested and affected parties and those views have been recognised in the preparation of this memorandum.

Legal considerations

13. This memorandum and the associated recommendations comply with the appropriate statutory requirements imposed upon the Council.

Appendices/Attachments

Document 2837954 – Submission on the Natural and Built Environments Bill Inquiry Exposure Draft

Document 2839569 – Combined Taranaki Councils’ Submission on the Natural and Built Environments Bill Inquiry Exposure Draft



3 August 2021
Document: 2837249

Committee Secretariat
Environment Select Committee
Parliament Buildings
Wellington

Dear Sir/Madam

Submission on the Natural and Built Environment Bill Inquiry Exposure Draft

Taranaki Regional Council ("TRC") thanks the Committee for the opportunity to comment on the Natural and Built Environment Bill Inquiry Exposure Draft ("the Bill" or "the Exposure Draft", as context requires).

As a regulator who has worked under the Resource Management Act ("RMA") regime for the last 30 years, TRC are well aware of the strengths and weaknesses of that legislation. We recognise that all systems need periodic review and revision to ensure that they remain up to date and continue to efficiently and effectively deliver the outcomes that users require. In that regard, TRC supports the intention of the current review of the RMA.

However, at the same time, TRC has a number of concerns with both the process being followed and the structure of the proposed Bill. This submission seeks to balance that support and those concerns in a way that supports constructive debate on and analysis of what is proposed and to ensure that all viable options are fully and critically considered. Our goal is to ensure that, whatever form the resulting legislation finally takes, the outcome is a stronger and better regime than what we have today.

Structure of Submission

1. The attached submission comprises three parts; namely:
 - 1.1. A discussion of general resource management reform issues which are beyond the immediate Exposure Draft scope;
 - 1.2. A discussion of issues and concerns in the Exposure Draft; and
 - 1.3. An appendix containing clause specific comments and suggested amendments.All three parts of this submission are intended to be read together to give TRC's overall position on the Bill and the supporting documents.

Resource Management Reform General Issues

General support for other submissions

2. As the Committee will have seen, the Taranaki mayors have made a joint submission on the Exposure Draft. TRC supports that submission and fully endorses the points made there.
3. We have also had the opportunity to review the submission made by New Plymouth District Council (“NPDC”). We would draw the Committee’s attention to the numerous points of alignment between NPDC’s submission and the TRC submission. We support the general tone and approach of the remainder of the NPDC submission.
4. TRC has reviewed Taituarā’s submission on the Exposure Draft and note the following common points in our submissions:
 - 4.1. Concern at the Bill’s lack of completeness;
 - 4.2. Needing greater clarity on the roles of planning committees and NBA Plans;
 - 4.3. Support for using the Essential Freshwater plan drafting and approval model; and
 - 4.4. The need for greater clarity of hierarchies amongst environmental outcomes.
5. TRC also support Taituarā’s points on:
 - 5.1. The need for greater alignment and greater engagement with local government – including ensuring that the RMA reform process aligns with the other significant reforms that the sector is currently facing and is mindful of the capacity challenges that the current large number of reforms is creating; and
 - 5.2. Supporting the commitment to a greater role for tangata whenua in the new regime – and for government to have a lead role in ensuring that tangata whenua have the resources and the capacity to be able to meet their, the community’s and government’s expectations of that role;
6. Like Taituarā, TRC are concerned about some of the enablers needed to underpin a successful regime (eg., the mechanics of limit setting). While are not raising those specific issues here, we reserve our position to comment fully on them either during the formal Select Committee hearing or as part of implementation of the Act.

Concern that the apparent pace of change is not consistent with the complexity of the task at hand

7. TRC are particularly concerned that the RMA replacement process is being approached with haste and an apparent lack of detailed consideration of key issues. In some instances, it seems that the drafting process is simply taking a “cut and paste” of issues and comments from the Randerson Report, without due consideration of any alternative views (such as those raised by the Parliamentary Commissioner for the Environment), experience with other related regimes, or even issues for consideration that were raised by the Panel itself.
8. An example of this lack of consideration is the proposal for centralised limits. Experience with *Essential Freshwater* is that centralised limits have proven to be less effective than intended and do not recognise the natural environmental variations that exist between regions. Yet the current process seems to take no regard of those lessons.

9. Those who were active in the sector when the RMA was drafted know the complexity of the process that led to that piece of legislation and the time that was taken to consider options, review and revise drafts and engage before the final form of the Bill (and then Act) was realised. If that process has led to a piece of legislation which is considered to be less than ideal, what are the risks with a rushed process such as is being followed here? What potential unintended or negative consequences could that haste lead to?
10. TRC therefore strongly urge a more considered and less time bound process is followed for such a crucial piece of legislation that will, regardless of its form, have a significant impact on the economic, social, cultural and environmental well-being of New Zealanders.

Support for Port Taranaki Limited (“PTL”) Submission on Coastal Licences

11. TRC, in its capacity as both a regulator and the owner of PTL, supports PTL’s submission calling for the roll over of RMA s 384A regarding ports’ licence to occupy the Coastal Marine Area. New Zealand’s ports are important transport infrastructure that have been noted to be potentially important in the transition from the current road focused freight system to a lower carbon future system. As such, there is a need to support these important infrastructural assets and their efficiency of being able to conduct business.

Exposure Draft – General Issues

There are significant gaps in the Exposure Draft

12. As was signalled by Government, the Exposure Draft is an incomplete rendition of the proposed Bill. There are however, significant gaps that make providing substantive and informed comment very difficult.
13. Placeholder provisions mark some of those gaps. While placeholders can fairly be expected on secondary points, they are used for core provisions such as the composition of the Planning Committees who will oversee plan drafting, the planning and National Planning Framework processes and the overall “implementation principles” (cl 18).
14. For other key processes there is simply no indication – in either the draft bill or the discussion paper – of government’s thinking on the topic. For example, what is the intention regarding consenting processes? How do they intend to roll up and roll over the various NPS and NES documents (referred to as a goal of the process)?
15. With so much yet to be determined, it is difficult (and somewhat risky) for any submitter to form a concrete position on much of the Exposure Draft. It is entirely feasible that any stated position, whether for or against a proposal, could change when the full context is known.
16. The points made in paragraphs 8 to 11 about haste and lack of consideration in this process are repeated here.
17. **SUBMISSION:**
 - 17.1. *TRC are concerned at the significant gaps in both policy direction and drafting within the Exposure Draft and Bill. We believe that those gaps undermine the effectiveness of this consultation and point to a very rushed process. They also mean that any submission*

made here is made on the basis that we reserve the right to alter a position once greater detail is available.

We encourage the Committee to send a strong note of caution to the Minister and to encourage a more considered and less apparently time bound process throughout the rest of this legislative process.

We would also make the offer that, echoing our comments above, we are prepared to work proactively with the Committee and officials over the remainder of the period before the Bill is introduced to develop a fit for purpose, achievable implementation process.

A move to the centre – at the expense of local governance

18. The NBA continues the recent government trend of centralising many elements of the resource management regime. That centralisation reflects most in the establishment of a National Planning Framework (“NPF”) that will set policy on matters of national significance, matters where national consistency is “desirable” and matters where “sub-national guidance is desirable”. All of those matters will be addressed by specifying limits (and potentially rules – see comments on NBA Plans, below) that NBA Plans must align with.
19. The placeholder for cl 18(c) appears to explicitly limit public participation in NPF processes to “the extent that it is important for good governance and proportionate to (the issue)”. Limiting participation of any local groups in a centralised process to set the rules for that locality is concerning.
20. By contrast, the placeholder for cl 18(d), requires promoting effective participation by iwi and hapu. While effective iwi and hapu participation is supported, there is a concern that, if cl 18(c) was used to curtail general local input, iwi and hapu could become the de facto local voice for a region – whether they wanted that role or not. Doing so could be negative for local governance overall – both by diluting iwi and hapu ability to promote their positions and if less local voices are heard.
21. An uncertain issue at present is the impact of the proposed increased role for the Minister of Conservation as government’s representative in NPF and plan drafting processes. While details of that role are largely covered by placeholder provisions, there is a clear proposal to extend the breadth of the Minister’s scope from their current role in the Coastal Marine Area to now cover all NBA plans.
22. The combined effect of these measures is a strong and significant step towards centralisation of environmental management processes, which could have a negative impact on local governance.
23. Local governance is important because it gives local communities a voice in the issues that impact their communities and their local environment. Increasing their level of engagement and, in some instances, self-determination, has a range of benefits – including greater buy in to decisions, better outcomes (through engaging with those at the “coal face” of the issue) and possibly even more innovative solutions than a more traditional, centralised approach can deliver.
24. Examples of the success of increased local governance within Taranaki include:
 - 24.1. The community led environmental programmes at Parihaka that developed from the community’s existing agreement with the Crown, following the 2017

signing of the Deed of Reconciliation. Parihaka community members worked with TRC, NPDC and South Taranaki District Council to identify development and revitalisation priorities. Examples of priorities were sources of water supply from groundwater, developing a biodiversity plan and a wetlands assessment, an understanding of the resource consent process to assist with various projects and a recent site assessment of Te Rangikapua at Parihaka.

- 24.2. The recently established Taranaki Catchment Communities. These farmer led groups differ from other similar initiatives across the country for focusing on well-being, economy/efficiency and farming practice, as well as the environment. At both the TCC launch and a recent presentation to TRC, the group's lead highlighted the importance of both the community led nature of the groups and the close, trust based relationships with local government.
- 24.3. The Waitara River Committee, which is comprised of iwi and TRC representatives, is tasked with developing and implementing projects and programmes that will improve environmental quality in the Waitara River catchment, or, if the Committee decides, the wider Taranaki region. The legislation is broad and enabling; deliberately seeking to leave as much discretion and determination to the impacted communities to develop programmes and projects that meet their priority concerns.
25. With a push to greater centralisation of resource management regulatory and policy matters, there is a strong concern that these types of highly successful locally led initiatives could struggle to establish, let alone survive.
26. *SUBMISSION*
 - 26.1. *Moves to centralisation – as opposed to providing greater consistency in guidance, process and advice – are generally not favoured by TRC.*
 - 26.2. *That the new legislation must continue to recognise both local communities and local government as representative leaders within their regions. Accordingly, it is essential to enable and support local communities' input to resource management both under legislative regimes and more broadly, including through local community planning processes.*
 - 26.3. *Any moves towards greater centralisation must only be made if they are in service of local communities and the furtherance of local governance.*
 - 26.4. *That the role of the Minister of Conservation under the NBA should not be extended from the current position under the RMA – and should be limited to the coastal marine area, reserves and the conservation estate.*

Potential for administrative law challenges of NPF and NBA plans

27. Under the proposed Bill, both the NPF and NBA plans would be regulations – so would be subject to the general provisions of administrative law.
28. One provision that could give rise to grounds for challenge is cl 15, which effectively lets Cabinet use the NPF to amend NBA Plans during their term. Reasonableness challenges could easily be levied by any stakeholder disagreeing with either the process or the outcome of any change.
29. For both the NPF and Plans, another concern area is the ability for some of the environmental limits to be qualitative (as noted in the discussion document para 111).

There is an established body of law that has challenged “uncertain” regulatory authority. Additionally, Treasury’s “Best Practice Regulation Model” recommends that regulatory authorities are given predictable guidance in regulations. Qualitative limits may not satisfy either criterion.

30. The net result of all of these provisions is to heighten the risk of challenges to plans and council decision making – both of which could reduce certainty, add delays, inefficiencies and increase cost for resource users (and for councils).

31. *SUBMISSION:*

31.1. *Remove the ability for qualitative environmental limits to be specified, on the grounds of providing greater certainty to councils and other stakeholders.*

31.2. *Make the specific changes to cl 15 that are noted in the detailed comments in Part 3.*

Environmental Limit Setting

32. While specifying environmental limits in both the NPF and NBA Plans is, in principle, supported as providing certainty and as a means of supporting positive environmental outcomes, TRC have some specific concerns with the proposal in the Bill.

33. Specifically, those concerns include:

- 33.1. The transition from the current effects based regime to one that is based on limits has the potential to create conflicts over existing resource uses that may need to be “unpacked”. For example, if a water take limit is imposed under the NPF that means that existing allocations end up in breach of that limit, how do councils and consent holders bring the situation into compliance? In some instances, grandfathering existing consents for the remainder of their term may work, but in other situations a more rapid transition may be called for.

TRC are therefore concerned to ensure that there is strong consideration given to how to transition from effects to limits based management and specifically to ensure that there is clear guidance for all affected parties included in the legislation.

- 33.2. The drafting in cl 7 refers to limits being used to “protect” elements of the natural environment and human health. It also requires compliance with those limits for anyone “using, protecting and enhancing” the environment – which implies, by necessary extension, that limits will support those three actions as well.

The extent and scope of those key terms is not defined, which creates a considerable uncertainty as to how limits are likely to be developed, specified and, ultimately, used. At one end of the definition, in a situation akin to the current issues with Significant Natural Areas, they could become instruments to lock up portions of the environment and prevent any resource use, to the detriment of the broader well-beings that the Bill seeks to promote.

- 33.3. The proposal to use qualitative limits is different to the current position of considering qualitative elements (such as the now removed “amenity values”). As such, they could be especially problematic for consent authorities who seek to make decisions that are based on either the limits themselves or rules/policies that give effect to those limits. As well as the issues raised in paragraph 29, the

lack of certainty could extend process timelines and give greater grounds for disputes.

- 33.4. Specific comments and requested changes to cl 5(1)(b) and cl 13(1)(b), as each relates to environmental limits, are discussed in Part 3, below.

34. **SUBMISSION:**

- 34.1. *Work with local government to identify and develop effective transition processes that will both provide guidance and surety for consent authorities and current consent holders.*
- 34.2. *Provide greater guidance as to the intent and extent of the standards set in cl 7(1) and cl 7(6).*
- 34.3. *Critically review the suggested use of qualitative limits to ensure that, if they are still proposed they do not give grounds for uncertainty, delay and potential legal challenge.*

NBA Plans

35. TRC are concerned at the significant number of “placeholder provisions” applying to NBA Plans. For so many provisions to be missing on key instruments in the proposed regime in such a key consultation document points to a rushed process. It fails to meet the stated intention of providing stakeholders with insight on key provisions and policy directions.

36. For some of the proposed provisions that are known, comments and issues include:

- 36.1. NBA Plans must promote the list of environmental outcomes contained in cl 8. That list, which mirrors Randerson’s recommendations, is supported. In particular, the fact that many of the items on this list are left fully to the discretion of councils (as opposed to being specified in the NPF),

Cl 8 is also supported as a step forward from RMA Part 2. Bringing all of the matters in to a single section reduces some of the complexity that the RMA structure created.

- 36.2. There is some inconsistency in the required standards for each outcome in cl8. These standards range from “protection and sustainable use” to “development is pursued” and features are “protected, restored or improved”. A thorough review of all of the standards is recommended to ensure that they don’t undo the reduced complexity that is discussed in 36.1, above
- 36.3. It is unclear if the cl 8 standards are intended to create a hierarchy of importance, as there is no guidance to that effect in the discussion document and Randerson never specified standards. Guidance from legislators or the Courts could be the opportunity for the NBA’s “King Salmon moment”. TRC would strongly urge legislators to give as much guidance in this regard as possible up front, to reduce potential early stage uncertainty.
- 36.4. As noted in paragraph 28, above, cl 15 gives Cabinet the ability to use amendments to the NPF to direct changes in NBA Plans. TRC are strongly opposed to the possibility of the NPF being used in this manner. Any amendment of this type would mean that government would be undermining the authority and autonomy of local government. There is also a very significant concern that such matters may lead to worse environmental outcomes than can

be provided for in NBA Plans, especially if any changes were made without full and detailed consultation with local authorities and local planning committees.

- 36.5. Cl 24(4) prevents Planning Committees from referring back to the NBA when deciding how to provide for the NPF in plans (discussion document para 215). That guidance is stated to be based on the ruling in the *King Salmon* case.

While the Supreme Court was strong in indicating that the NZCPS (as it was in that case), rather than Part 2, should be councils' reference, it did note the following situations where Part 2 should be referenced if:

- 36.5.1. There was a claim of invalidity
- 36.5.2. There were gaps in the (NPF, in this case)
- 36.5.3. The provision in the (NPF) were uncertain.

All of those situations could still very feasibly apply to the NBA, such that the limitation in cl 24(4) therefore effectively reverses the intent of the *King Salmon* dictum; turning it from enabling to restrictive.

37. Other specific drafting concerns with provisions on NBA Plans are discussed in Part 3, below.

38. **SUBMISSION:**

- 38.1. *Support the requirement in cl 22(1) to promote the extensive list of outcomes to be managed contained in cl 8- including the fact that, in being broader than the matters to provide for in the NPF it leaves considerable ability for councils to find local solutions to local issues.*
- 38.2. *However there are concerns with potential uncertainties and inconsistencies in cl 8 and cl 22; discussed here and in Part 3.*
- 38.3. *A recommendation to provide early guidance on the nature of the standards in cl 8 and any hierarchy amongst them - effectively looking to provide a similar level of guidance and support for councils and resource users to what was achieved for the RMA by the King Salmon judgement.*
- 38.4. *Strongly oppose the wording and intent of cl 15 and support either the outright deletion of that clause or the restriction in the ability to direct NBA Plan changes as per the detailed submission on cl 15 and cl 22 in Part 3.*
- 38.5. *The interpretation of the King Salmon principles as being restrictive and the removal of the three reserved grounds for review of policy statements are not supported.*

Planning Committees

- 39. Like the provisions on NBA Plans, the provisions on Planning Committees are also sparse and lacking key details. Similar concerns are expressed here, given the pivotal role of those bodies in the overall resource management regime proposed in the Bill.
- 40. Planning Committees have the potential to be powerful agents for local representation in the NBA regime. However, as currently proposed, that role may not be realised. Of particular concern is the fact that the Committees role is squashed into a potentially small space between the secretariats that they are required to establish and the hearings panels.

41. Under the proposal in Schedule 3, secretariats will undertake drafting and all of the associated functions with that process. Although hearings panels are only mentioned briefly in cl 23(2)(b) and their functions are not defined, TRC assume that their role will mirror that of Freshwater Commissioners under the *Essential Freshwater* reforms.

The major difference compared to *Essential Freshwater* appears to be that hearings panels will be centrally appointed and will operate nationally (as best can be interpreted from the limited detail in the Bill).

TRC are concerned at this proposal, as it gives final say on a key, locally focused resource management instrument to a centralised body that will, by definition, lack local knowledge – and likely lack local representation. Any move to address that lack of local knowledge with local membership would overly bureaucratise the process by effectively duplicating Planning Committees’ functions.

42. On that basis, Planning Committees’ role will be narrow and essentially administrative – as opposed to representative or substantive role – as NBA Plans move from the drafters to the final reviewers. If this is the case, TRC believe that a significant opportunity for local voices, effective participation, partnership with tangata whenua and setting of strong, locally focused plans is being missed.
43. TRC also note the lack of detail in the Draft Bill on the structure and appointment of Planning Committee members. We would therefore offer the following suggestions to the Select Committee as it considers Schedule 3:
 - 43.1. That Planning Committees comprise a set number of locally nominated representatives and a Commissioner. TRC would propose a total membership of five, unless a region is particularly large and greater representation was required to ensure local democracy. This structure would largely mirror the current legislative provisions for freshwater planning.
 - 43.2. That the Commissioner role and appointment should broadly mirror the equivalent factors for Freshwater Commissioners under the current RMA legislation. Accreditation standards and requirements of both knowledge and representativeness such as appear in the RMA should also be used in the NBA.
 - 43.3. That nominations for local representatives and decisions on Planning Committee size should rest with Regional Leadership Forums. As representatives of both the communities and local authorities in a region, these groups are well suited to ensuring that the Planning Committees are both suitably
 - 43.4. That the Planning Committees, constituted as recommended here, with a nationally accredited Commissioner, should be the final arbiter on NBA Plans. The proposed Hearings Committees should not be used.
44. *SUBMISSION:*
 - 44.1. *Including the Planning Committee role (with similar composition as currently proposed) as part of the final hearings panel process. This process should mirror the local representation proposed under Essential Freshwater.*
 - 44.2. *Use the matters contained in para 44.1 – 44.4, above, to guide the appointment of members, composition and function of Planning Committees.*

Conclusions

The RMA is a key piece of legislation that shapes the environmental, cultural, economic and social well-being of New Zealand. While, like any Act, there are acknowledged flaws in its design and drafting and issues with its implementation, TRC believes that, even today, there is general support for its intention and the outcomes it targets. The RMA benefited from bi-partisan champions in the House and a community mood that, while not universally supportive, was at least ready for concepts such as “sustainable management” and effects based planning.

The current review should seek to address the gaps and flaws by building on the positive results that the RMA has helped communities and councils achieve over its 30 year history. While the government clearly has the intention of doing that, TRC is concerned that some of the elements of the approach being taken are not supporting of generating better, more inclusive, more efficient and more effective processes and outcomes.

However TRC believes that those results can be achieved if the drafting process is considered, critical and consultative.

TRC’s submission is offered in a spirit of contributing to creating a strong and effective drafting process; seeking as it does to both highlight our concerns and to suggest options and improvements to the Committee. We look forward to further supporting the review by working closely with government and the Committee throughout the rest of the legislative process.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'S J Ruru', with a long horizontal flourish extending to the right.

S J Ruru
Chief Executive

Appendix - Clause specific comments and suggested amendments

Reference	Provision Title	Specific comments	Recommendations and relief sought
Part 1 - Preliminary Provisions			
Clause 3	Interpretation		
	Ecological integrity	<p>The concept of ecological integrity is supported.</p> <p>However, the requirement to consider resilience in (d) fails to appropriately recognise the natural variations that exist between different types of ecosystems and, as drafted, would be very difficult to quantify. For example, in Taranaki, the hill country ecosystems are much less resilient to rainfall and sediment loss than the ring plain ecosystems due to their natural geographic composition.</p> <p>The provisions in (a) to (c) are sufficiently comprehensive to ensure that ecological integrity and resilience is preserved without the need for the additional measure in (d).</p>	Delete part (d) of this definition.
	Mitigate	Including the ability to provide compensation as a means of mitigation could be read as allowing “pay to pollute”, which is inconsistent with an outcomes focus. It also contradicts the commonly understood definition of mitigation actions.	Remove the reference to “provide compensation” from the definition.

Reference	Provision Title	Specific comments	Recommendations and relief sought
	Natural environment	By referring to “living organisms” broadly, this definition necessarily includes humans within the natural environment. Given other references to the human centred parts of the environment, it is unclear if this scope was intended.	Either: <ul style="list-style-type: none"> • Redraft the definition so that humans are not part of the “natural environment”; or • Make the definition more specific so that the extent to which humans are intended to be a part of the natural environment and the nature of that inclusion are clear.
	Precautionary approach	<p>The Bill narrowly defines this term. As such, it misses out potentially significant and useful factors that can not only improve the quality of decision making, but can also improve the environmental outcomes that are achieved.</p> <p>The fuller definitions that are more commonly used (eg., by the EU) include elements of:</p> <ul style="list-style-type: none"> • Consideration of the current state of knowledge relative to potential risks • Communication and engagement with stakeholders – including being open to their suggestions on risk responses • Consideration of alternative response options – including being open to innovation. 	Expand the definition of precautionary approach to align with the broader definition discussed here.
	River	The definition of river is a redraft of the definition used in the RMA. However, in redrafting, the definition is made less clear and more cumbersome.	Replace the definition with the version from the RMA.

Reference	Provision Title	Specific comments	Recommendations and relief sought
	Well-being	<p>By including the term “health and safety” as it stands, the common definition of that term would apply.</p> <p>Accordingly, councils (and other bodies exercising powers under the NBA) would become responsible for the sort of workplace safety activities that are normally associated with the Health and Safety at Work Act 2015.</p> <p>This extension of scope is concerning as it goes far beyond the apparent intent of the act and beyond the capacity of most bodies working under it.</p>	<p>Remove the reference to “health and safety” from the definition.</p>

Reference	Provision Title	Specific comments	Recommendations and relief sought
Part 2 - Purpose and related provisions			
Clause 5	Purpose of this Act	<p>The reference in cl (1)(b) to not compromising the well-being of future generations effectively prohibits any resource use (renewable or non-renewable) by current generations.</p> <p>For example, once land is allocated to a particular purpose, future generations' well-being is (at least potentially) compromised as they can't use that land of any alternate purpose. Similarly, allocating water or permitting an air discharge take prevents future generations from using that water or undertaking any activity that discharges to air.</p> <p>Further, the simple reference to future generations' well-beings is not workable - as those needs will be shaped by a range of social, cultural, economic, technical and environmental factors that are not (and cannot be) known today.</p> <p>The issue of how to manage inter-generational resource allocation is at the core of definitions of sustainability - and is generally well managed by adhering to those concepts. Care must be taken if the NBA is to move to a more focused "protect and enhance" and outcomes approach not to lose the flexibility positive inter-generational effect of sustainability.</p>	<p>Amend cl (1)(b) to include a reasonable foreseeability standard to the factors that shape future generations' well-beings.</p> <p>Amend cl (1)(b) to:</p> <ul style="list-style-type: none"> • Add a standard that the future well-beings are not unreasonably compromised; or • Specifically includes a sustainable management standard as a part of the purpose in cl 5(1).

Reference	Provision Title	Specific comments	Recommendations and relief sought
Clause 5	Purpose of this Act	<p>The concept of Te Oranga o te Taiao is a positive concept and one that, broadly, is supported.</p> <p>There is however an opportunity to make the concept even stronger and more inclusive by recognising the intrinsic relationship of all communities – not just iwi and hapu – with the environment. While these relationships may differ from the relationship that tangata whenua have with te taiao, they are no less strong and specifically including them could further support the promotion of the intent of the NBA.</p> <p>In making this submission, we note that it may require a change from the use of Te Oranga as a defined term – although it should be consistent with the overall concept.</p>	<p>Redraft the terms of cl (3) to add a further sub-clause that it recognises the intrinsic relationship of all communities with their environment.</p>
Clause 8	Environmental outcomes	<p>The terms of cl (l) focus on issues that are well outside of the scope of councils to influence either through plans or consenting processes. In particular, the issue of choice in housing stock is a market issue and is determined by everything from self-builders’ choices to developers’ intentions. Similarly, housing needs are primarily either design related or Building Act related.</p> <p>Cl (p)(i) focuses the outcome on issues of natural process that are, realistically, not manageable by councils and other agencies. For example, in Taranaki, there is a significant potential volcanic hazard. With the best will in the world, there is limited scope to manage the risks associated with that hazard given the nature of volcanoes and the surrounding geography of the Taranaki region.</p>	<p>Either delete cl (l) or redraft it so that it only relates to “plan related” outcomes (not market and building quality issues).</p> <p>Amend cl (p)(i) to read “... risks of both are effectively managed to the extent possible (given the causes and nature of the hazards)”.</p>

Reference	Provision Title	Specific comments	Recommendations and relief sought
Part 3 - National Planning Framework			
Clause 10	Purpose of national planning framework	<p>Cl (c) talks of providing “integrated direction” on sub-national issues. An ordinary interpretation of that clause is that the NPF will direct councils on regional and district issues that are deemed by central government to need that direction.</p> <p>This approach is strongly opposed for a number of reasons, including:</p> <ul style="list-style-type: none"> • It is contrary to the principles of supporting and encouraging local governance (as discussed in the general issues section of this submission). • The only way that a central agency could get sufficient understanding to develop effective and workable “direction” on regional and district issues is to consult extensively with the relevant local authorities and communities – which begs the question, why not let those groups develop the solutions themselves? • Experience under other programmes (most especially Essential Freshwater) is that this type of approach effectively leads to “one size fits all” solutions, not the level of regional and district focus that is sought. 	<p>Either:</p> <ul style="list-style-type: none"> • Delete cl (c) and limit the scope of the NPF to national level issues; or • Amend cl (c) to focus on providing guidance (but not direction) to regional and district level planning committees on issues that are seen as important in their regions (but leaving discretion to respond to the planning committees).
Clause 11	National planning framework to be made as regulations	<p>Cl (2) lets central government become local planners. As such, it completely undermines local governance.</p> <p>Concerns about central government’s knowledge and ability to plan locally that are raised above also apply here.</p>	Delete cl (2) and, as noted above, focus the NPF solely on national level issues.

Reference	Provision Title	Specific comments	Recommendations and relief sought
Clause 12	Environmental limits	<p>Cl (1)(b) can be read as indicating that the NPF may, rather than simply specifying limits to be adhered to, also specify processes and factors to be considered when limits are set in NBA Plans.</p> <p>The latter approach is very much preferred, as a means of both ensuring a level of consistency and quality in limit setting in plans, while giving the necessary scope to bring local knowledge and expertise to bear on issues.</p> <p>We would go further and suggest that the limit setting provisions should give planning committees an ability to vary their limits from national levels where there are local reasons to do so, provided a clear and transparent limit setting process (to be specified in the NPF is followed). Such a provision would be consistent with the terms of cl 22(1)(e).</p>	<p>Support clarification that cl 1(b) allows NPF to provide guidance on processes for limit setting in NBA Plans.</p> <p>Further specifically include an ability for planning committees to vary from limits when exercising their functions related to cl 22(1)(e), so long as the limit setting process guidance contained in the NPF is followed.</p>
Clause 14	Strategic directions to be included	<p>The matters contained in cl 14 seem to be more appropriately matters that should be contained in Regional Spatial Strategies under the Strategic Planning Act.</p>	<p>Delete cl 14 – as these matters will be provided for under SPA.</p>
Clause 15	Implementation of national planning framework	<p>Cl (2) gives the Minister a blanket and unfettered power to direct planning committees to change plans. This provision is inconsistent with:</p> <ul style="list-style-type: none"> • Local governance; • Providing for local issues under cl 22(1)(e); and • Hearing commissioners’ expected roles as approvers of NBA Plans. <p>(NOTE: This comment is made subject to paragraphs 39 to 44, above.)</p>	<p>Either:</p> <ul style="list-style-type: none"> • Delete cl (2); or • Clarify and focus the scope of the ability to direct plan changes to those situations where (for example) hearing commissioners have identified issues, or to only apply to situations where there has been a change in the then currently operative NPF.

Reference	Provision Title	Specific comments	Recommendations and relief sought
Clause 16	Application of precautionary approach	Given the reference to precautionary approach in cl 18(g), this clause is redundant.	Delete cl 16.
Clause 18	[Placeholder for implementation principles. The drafting of this clause is at the indicative stage; the precise form of the principles and of the statutory functions they apply to are still to be determined. In paras (b) and (e), the terms in square brackets need to be clarified as to the scope of their meaning in this clause.]	<p>Cl (c) gives government an extensive and unfettered discretion to exclude any or all stakeholders from any part of the drafting and implementation of the NPF – on the basis of (otherwise undefined) bases of “good governance” and “significance”.</p> <p>As proposed, the clause has the potential to greatly complicate and to slow down the NPF process, as such an unfettered discretion will almost certainly be rich grounds for administrative law challenges by any stakeholder who feels unreasonably excluded from an NPF process.</p> <p>The proposed drafting is also contrary to principles of local governance and effective participation.</p>	<p>Either:</p> <ul style="list-style-type: none"> • Delete cl (c) as an element of policy direction; or • Provide clear and appropriately defined grounds on which the government can make decisions about public participation that are consistent with good practice as defined by administrative law.

Reference	Provision Title	Specific comments	Recommendations and relief sought
Part 4 - Natural and built environments plans			
Clause 22	Contents of plans	<p>Clarification is needed as to any level of hierarchy that may be intended for the matters in cl (1). In particular, guidance is needed on the relationship between cl (1)(b) - (c) and (e). Each of these matters are identified as compulsory for NBA Plans. It is perfectly conceivable that regionally significant matters could be inconsistent with NPF and, thanks to naturally occurring local processes, particular outcomes.</p> <p>If the sorts of provisions that this submission suggests for providing guidance and process direction (rather than purely defining limits) are adopted, some of this issue of potential inconsistency and need for a hierarchy is removed.</p> <p>The issue is further lessened if it is clear that “promoting” environmental outcomes may mean that there are situations where, due to local circumstances or different, locally appropriate standards are pursued.</p> <p>Cl (2)(a) makes a number of factors, including rules optional in NBA Plans. While councils do note that some plans under the Water and Soil Conservation Act didn’t use rules, general practice is that rules provide greater certainty for all plan users and better environmental outcomes. Objectives, policies and methods could all conceivably be optional - if they are provided for in the applicable RSS.</p>	<p>Clarify any intention of a hierarchy in the matters to be provided for in cl (1).</p> <p>Clarify the definition of “promote” in cl (c), in particular making it clear that it allows differing outcomes and standards if regionally specific factors dictate (with appropriate transparency requirements on the reasons for that variation)</p> <p>Provide clarification of the extent to which regionally significant matters can be inconsistent with any national guidance.</p> <p>Make the matters currently specified in cl (2)(a) mandatory, unless those matters are already specifically provided for in an operative RSS (and referenced appropriately in the NBA Plan).</p>

Reference	Provision Title	Specific comments	Recommendations and relief sought
Clause 24	<p>Considerations relevant to planning committee decisions</p>	<p>Cl (2)(c) seems to be a negatively framed way of requiring the planning committee to ensure that plans meet the stated environmental outcomes in the NBA. In fact, by drafting the provisions as it is, the focus becomes narrower than promoting the outcomes – and could in fact allow a plan to be drafted that doesn't meet those outcomes.</p> <p>Cl (4) purports to codify principles from the <i>King Salmon</i> judgement. However, the currently drafted prohibition on assessing an NPF against the proposed act both restricts the dictum from that case and effectively reverses its effect.</p> <p>As the drafters of the NBA will be aware, <i>King Salmon</i> allowed councils to assume that policy statements were consistent with the purpose provisions of the RMA – but also reserved a discretion for them to question and investigate further if one of three criteria were met. The current drafting of cl (4) does not say that.</p>	<p>Redraft cl (2)(c) to put one of the matters that planning committees must have regard to as how well NBA Plans provide for promoting and enhancing the cl 8 outcomes.</p> <p>Redraft cl 4 so that it correctly encapsulates the <i>King Salmon</i> dictum, including the three exceptions provided for in that case.</p>



4 August 2021

Committee Secretariat
Environment Select Committee
Parliament Buildings
Wellington

Dear Sir/Madam

Combined Taranaki Councils' Submission on the Natural and Built Environment Bill Inquiry Exposure Draft

We thank the Committee for the opportunity to comment on the Natural and Built Environment Bill Inquiry Exposure Draft

As the three territorial authorities and the regional council with responsibility for implementing the current resource management regime in Taranaki ("the Councils"), we have particular interest in the proposed reforms.

The Councils are working to align our views on the Resource Management Act reforms. We have prepared a combined submission on some high level points for the Exposure Draft. This aligned view allows us to speak with a single "Taranaki Voice" that we feel better represents and promotes the interests of the communities and the region who we serve. We trust that the Committee also recognises the strength of this unity.

The Committee should note that NPDC and TRC have also submitted an individual submission on more detailed matters of concern to each council. While we are collectively not signatories to those documents, we support their intent in making their submissions.

We wish to emphasise the following key points:

- Concern at the Bill's lack of completeness.
- General support for an outcomes approach
- Concerns about increased national direction
- Needing greater clarity on the roles of planning committees and NBA Plans.
- The need for greater clarity of hierarchies amongst environmental outcomes.

The Councils also support Taituara's points on:

- The need for greater alignment and greater engagement with local government – including ensuring that the RMA reform process aligns with the other significant reforms that the sector is currently facing and is mindful of the capacity challenges that the current barrage of reform is creating.
- Supporting the commitment to a greater role for tangata whenua in the new regime – and for government to have a lead role in ensuring that tangata whenua have the resources and the capacity to be able to meet their, the community's and government's expectations of that role.

There are significant gaps in the Exposure Draft.

- As was always signalled, the Exposure Draft is an incomplete rendition of the proposed Bill. With the significant gaps in the Bill and the absence of key clauses it is not known whether systems and processes are going to be more efficient and less complex than the current system.
- For example there are placeholders for core provisions such as the composition of Planning Committees who will oversee plan drafting, the planning and National Planning Framework processes and the overall implementation principals. On this basis the Councils reserves the right to change and refine its views as more information becomes available.

The Councils are available to assist and discuss any aspects of its submission through the enquiry process and is open to testing and commenting on provisions as they are developed. In general the councils comments are:

Support outcomes based focus:

The Councils cautiously support the intent to shift from a sustainable management focus towards an outcomes based approach as proposed through clause 5. However the Bill needs to more clearly identify its priorities between environmental outcomes to assist with seamless implementation and to prevent re-litigation of the Acts purpose.

Concerns about increased National Direction:

The NBA looks to further centralise many elements of the resource management regime. That centralisation is reflected mostly in the establishment of a National Planning Framework ("NPF") that will set policy on matters of national significance, where national consistency is "desirable" and where "sub-national guidance is desirable".

It is essential that any plans produced and decisions made in accordance with the Bill appropriately provide for the local conditions, characteristics and specific needs of the Taranaki region.

Environmental Limit Setting:

While the concept of specifying environmental limits in both an NPF and NBA Plans are, in principle, supported as providing certainty and as a means of supporting positive environmental outcomes,

there are some specific concerns with the proposal in the Draft Bill. The transition from the current effects-based regime to one that is based on limits has the potential to create conflicts over existing resource uses that may need to be “unpacked”. There will be short term implementation and transition issues so that the provisions work on the ground.

NBA Plans and Planning Committees

The Councils support the concept of combining plans to get better integrated management approaches and plan making efficiencies. The Councils have had great success working on aligned issues such as through Tapuae Roa (Regional Economic Development Strategy) and the Regional Recovery Plan. However, there are a number of placeholder provisions that make meaningful comment on the content of these plans challenging.

However, the NBA, and/or Strategic Spatial Plans under the yet to be seen Strategic Planning Act need to have a clear line of site back to local decision making. Planning Committees need to be powerful agents for local decision making with clear connections back to local councils and iwi organisations.

Transitioning to a new system:

In closing the Councils request that a transition system be put in place that recognises the significant best practise planning work that has been undertaken in the region. To require the redrafting of Plans from ‘scratch’ will be inefficient and has the potential to disengage communities from planning.

Transitioning to new environmental limits regime will be a significant issue for this region, so realistic regional approaches will need to be adopted with support packages from central government.

Taranaki Councils welcome working with central government, our Taranaki Iwi partners to develop a transition programme that is achievable and fit for purpose for Taranaki. In doing so, the Councils will continue to broaden and strengthen our efforts to speak with our single “Taranaki Voice” as we advocate for the cultural, social, environmental and economic well-being of our region.

Yours sincerely,



Mayor Phil Nixon
South Taranaki District Council



Mayor Neil Volzke
Stratford District Council



Mayor Neil Holdom
New Plymouth District Council



David MacLeod
Taranaki Regional Council Chair



Date 31 August 2021

Subject: **Submission on Ngāti Maru (Taranaki) Claims Settlement Bill**

Approved by: A D McLay, Director - Resource Management
S J Ruru, Chief Executive

Document: 2852208

Purpose

1. The purpose of this memorandum is to inform the Committee of the submission on the Ngāti Maru (Taranaki) Claims Settlement Bill ("the Bill).

Executive summary

2. This item was prepared to inform members of the submission presented in the Council's name on the Bill. The Bill gives effect to the terms of the deed of settlement agreed between Ngāti Maru and the Crown earlier this year. The Council's submission was supportive of the Bill's introduction. The closing date for submissions was 18 August, which prevented the draft being presented to the Committee for consideration and adoption in the usual way.

Recommendations

That the Taranaki Regional Council:

- a) receives this Memorandum
- b) approves the attached submission
- c) determines that this decision be recognised as significant or not significant in terms of section 76 of the *Local Government Act 2002*
- d) determines that it has complied with the decision-making provisions of the *Local Government Act 2002* to the extent necessary in relation to this decision; and in accordance with section 79 of the Act, determines that it does not require further information, further assessment of options or further analysis of costs and benefits, or advantages and disadvantages prior to making a decision on this matter.

Discussion

3. Ngāti Maru and the Crown signed a deed of settlement for historical claims in February of 2021. The Bill is the legislation by which that deed will be brought into effect. It was tabled for a First Reading in July 2021, with submissions called for up until 18 August.
4. As well as providing for financial and commercial redress, the Bill includes provisions creating a Joint Management Agreement ("JMA") between Ngāti Maru and the Council. The JMA seeks to:
 - 4.1. Support restoring and maintaining the quality and integrity of of the Waitara River catchment for present and future generations, including recognising the river's value as a taonga;
 - 4.2. Respect the mana of Ngāti Maru;
 - 4.3. Recognise and respect the Council's roles, functions and duties in working for the well-being of the Taranaki community;
 - 4.4. Reflect a shared commitment to work together in good faith and to use best endeavours to ensure that the purpose of the JMA is achieved in an enduring manner; and
 - 4.5. Ensure that the parties to the JMA operate within the statutory frameworks and the to meet statutory timeframes and minimise delays and costs.
5. Giving effect to the JMA is intended to:
 - 5.1. Enhance the relationship between the Council and Ngāti Maru;
 - 5.2. Enable the establishment of the Waitara River Committee and provide the opportunities to enhance and protect the Waitara River Catchment
 - 5.3. Ensure Ngāti Maru are notified of any resource consent applications and environmental issues with abandoned oil wells within their rohe. (Council will also be required to encourage consent applicants to engage wwith Ngāti Maru before lodging an application.)
 - 5.4. Ensure the discussion and agreement on monitoring priorities, review of planning documents and enforcement matters.
6. Officers prepared a submission in support of the Bill, noting that Ngāti Maru are the last of the eight iwi of Taranaki to reach a settlement with the Crown. Officers were also particularly supportive of the provisions relating to the JMA and the Waitara River Act, which they felt provided further recognition of Ngāti Maru being able to take a greater role in Council processes.
7. The submission was presented by the deadline of 18 August.

Financial considerations—LTP/Annual Plan

8. This memorandum and the associated recommendations are consistent with the Council's adopted Long-Term Plan and estimates. Any financial information included in this memorandum has been prepared in accordance with generally accepted accounting practice.

Policy considerations

9. This memorandum and the associated recommendations are consistent with the policy documents and positions adopted by this Council under various legislative frameworks

including, but not restricted to, the *Local Government Act 2002*, the *Resource Management Act 1991* and the *Local Government Official Information and Meetings Act 1987*.

Iwi considerations

10. This memorandum and the associated recommendations are consistent with the Council's policy for the development of Māori capacity to contribute to decision-making processes (schedule 10 of the *Local Government Act 2002*) as outlined in the adopted long-term plan and/or annual plan. Similarly, iwi involvement in adopted work programmes has been recognised in the preparation of this memorandum.

Community considerations

11. This memorandum and the associated recommendations have considered the views of the community, interested and affected parties and those views have been recognised in the preparation of this memorandum.

Legal considerations

12. This memorandum and the associated recommendations comply with the appropriate statutory requirements imposed upon the Council.

Appendices/Attachments

Document 2849329: Submission on Ngāti Maru (Taranaki) Claims Settlement Bill



18 August 2021
Document: 2849329

Committee Secretariat
Māori Affairs Committee
Parliament Buildings
Wellington

Dear Sir/Madam

Submission on Ngāti Maru (Taranaki) Claims Settlement Bill

The Taranaki Regional Council (“the Council”) wishes to signal our support for the Ngāti Maru (Taranaki) Claims Settlement Bill going forward to a third reading and enactment by Parliament.

Furthermore, we wish to acknowledge and congratulate Ngāti Maru for reaching agreement with the Crown on its Treaty of Waitangi settlement claim.

We would like to note that Ngāti Maru is the last of the eight Taranaki Iwi to achieve a settlement agreement with the Crown and as such this agreement will:

- Provide Ngāti Maru an opportunity to enhance their relationships with the Council through the development of a joint management agreement (JMA).
- Enable and trigger the establishment of the Waitara River Committee under the New Plymouth District Council (Waitara Lands) Act 2018. That committee will give tāngata whenua and the Council numerous opportunities to enhance and protect the Waitara River and its catchments.
- Signal the recognition of Ngāti Maru as an active participant in key council processes, such as being able to nominate iwi representatives to the Policy and Planning and the Consents and Regulatory standing committees, as well as taking a role in deciding resource consent applications in the Ngāti Maru rohe.

Yours faithfully

S J Ruru
Chief Executive

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Please quote our document number in your reply

Working with people | caring for Taranaki



Whakataka te hau

Karakia to open and close meetings

Whakataka te hau ki te uru	Cease the winds from the west
Whakataka te hau ki tonga	Cease the winds from the south
Kia mākinakina ki uta	Let the breeze blow over the land
Kia mātaratara ki tai	Let the breeze blow over the ocean
Kia hī ake ana te atakura	Let the red-tipped dawn come with a sharpened air
He tio, he huka, he hauhu	A touch of frost, a promise of glorious day
Tūturu o whiti whakamaua kia tina.	Let there be certainty
Tina!	Secure it!
Hui ē! Tāiki ē!	Draw together! Affirm!

Nau mai e ngā hua

Karakia for kai

Nau mai e ngā hua	Welcome the gifts of food
o te wao	from the sacred forests
o te ngakina	from the cultivated gardens
o te wai tai	from the sea
o te wai Māori	from the fresh waters
Nā Tāne	The food of Tāne
Nā Rongo	of Rongo
Nā Tangaroa	of Tangaroa
Nā Maru	of Maru
Ko Ranginui e tū iho nei	I acknowledge Ranginui above and
Ko Papatūānuku e takoto ake nei	Papatūānuku below
Tūturu o whiti whakamaua kia	Let there be certainty
tina	Secure it!
Tina! Hui e! Taiki e!	Draw together! Affirm!