Ministry for the Environment
Manatū Mō Te Taiao

PO Box 10362, Wellington 6143
Website: www.mfe.govt.nz
Freephone: 0800 499 700

20-D-00987

s 9(2)(a)

Dear s 9(2)(a)

Thank you for your email of 17 June 2020 requesting the following under the Official Information Act 1982 (the Act):

Please could I be provided with the following documents?

a) *"Essential Freshwater 82: Making freshwater farm plans enforceable"*
b) *"Proposals for 'Water Commission Unit': Developing recommendations for the future oversight...".*
c) *"Essential Freshwater 83: Policy decisions following consultation"*
d) *"Essential Freshwater 86: Progressing multiple initiatives...."*

As well as answers to the following questions:

Question 1: How was the difference between nitrogen toxicity and nitrogen for ecosystem health explained by officials to the Minister for the Environment (please quote directly from written material if available)?

Question 2: Has MfE been asked by any Minister or any other government agency to provide information on the costs/benefits/environmental impacts and value or cost of water storage/dams as a tool for climate change mitigation or resilience? If so, what information has been provided? Please provide the documents provided to Ministers or agencies.

On 26 June 2020, the Ministry for the Environment (the Ministry) clarified this request with you in regards to the scope and material. This clarification is attached below in Appendix 1.

The Ministry has identified 12 documents in scope of your request, as listed in the attached document schedule. Three documents are being released in full. Eight documents are, or will soon be, publicly available on the Ministry's website so these have been refused under section 18(d) of the Act: soon to be publicly available.

The remaining briefing "Proposals for 'Water Commission Unit': Developing recommendations for the future oversight..." has been withheld under section 9(2)(f)(iv) of the Act to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials.

In response to question 2, our search did not reveal any documents where the Ministry has been asked by any Minister or any other government agency to provide information on the costs/benefits/environmental impacts and value or cost of water storage/dams as a tool for climate change mitigation or resilience.

In terms of section 9(1) of the Act, I am satisfied that, in the circumstances, the withholding of this information is not outweighed by other considerations that render it desirable to make the information available in the public interest.

You have the right to seek an investigation and review by the Office of the Ombudsman of my decision to withhold information relating to this request, in accordance with section 28(3) of the Act. The relevant details can be found on their website at: www.ombudsman.parliament.nz.

Please note that due to the public interest in our work the Ministry publishes responses to requests for official information on our OIA responses page shortly after the response has been sent. If you have any queries about this, please feel free to contact our Executive Relations team: ministerials@mfe.govt.nz.

Yours sincerely

Hayden Johnston
Director, Water and Land Use Policy

Appendix 1: Clarification of your request

a. Question 1 clarified by the following questions (with your answers in bold):

   i. Please advise the start and end dates for the material – for example, is it the period between consultation finishing and now, which would be 1 November until now? **Yes, that period please. 1 November 2019 to 28 May 2020**

   ii. Please advise what written material you would like. Are you interested in formal documents such as briefings and Cabinet papers only, or would you also like emails to Minister Parker and his office staff? **Both please, formal documents that specifically refer to the difference between nitrate toxicity and DIN for ecosystem health and any emails from the Ministry that explain the difference between toxicity and DIN (ecosystem health) to the Minister and/or his staff.**

b. Question 2 was clarified by the following questions (with your answers in bold):

   i. Determining whether MfE has been asked to provide something would likely involve a very wide search. ***Yes! Fair enough!***

   ii. Please confirm if you are requesting the documents that have been provided by MfE to Ministers or other agencies? ***Yes, this is correct.***

   iii. Please advise the date range you are interested in. ***Jan 2018 to 20 June 2020***

   iv. Please confirm whether you are interested in any particular work programme or directorate within MfE? ***Climate and water directorate - this request applies to any specific storage/dam projects that these directorates may have been asked to provide information for as well as storage/dams generally.***

   v. Please advise the types of documents you are interested in. ***Formal documents - reports, cabinet papers, briefing documents or meeting minutes (not emails or text messages).***

   vi. Note that we can only provide information held by MfE and not by other agencies. ***Yes, understood.***

Document schedule

Document no.	Document date	Content	Decisions	OIA sections applied
Specific documents requested				
1	2 March 2020	Briefing 20-B-06462 Essential Freshwater 82: Making Freshwater Farm Plans enforceable	Refused	S 18(d) – soon to be publicly available
2	6 March 2020	"Proposals for 'Water Commission Unit': Developing recommendations for the future oversight..."	Refused	S (9)(2)(f)(iv) – to maintain the confidentiality of advice tendered
3	6 March 2020	Briefing 20-B-06431 Essential Freshwater 83, Policy decisions following consultation	Refused	S 18(d) – soon to be publicly available
4	1 April 2020	20-B-06609 Essential Freshwater 86 Progressing multiple initiatives to address excessive nitrogen quickly	Refused	S 18(d) – soon to be publicly available
Question 1				
5	27 May 2020	Email RE: animal protection/species protection	Released in full	N/A
6	27 May 2020	Email RE: Latest PR draft refinement on nitrate toxicity	Released in full	N/A
7	28 May 2020	Email thread RE: DIN/nitrate	Released in full	N/A
8	May 2020	Report: Action for healthy waterways Part II Detailed Regulatory Impact Analysis	Refused	S 18(d) – publicly available
9	May 2020	Cabinet Paper: Action for healthy waterways – Decisions on national direction and regulations for freshwater management	Refused	S 18(d) –publicly available
10	May 2020	Infosheet: Action for healthy waterways information about attributes in NPS	Refused	S 18(d) –publicly available

		freshwater management		
11	May 2020	Infosheet: Action for healthy waterways information for dairy farmers	Refused	S 18(d) – publicly available
12	May 2020	Infosheet: Action for healthy waterways information for horticulture growers	Refused	S 18(d) – publicly available

From: Jennifer Price
To: Hayden Johnston (Parliament)
Subject: RE: latest PR draft - water - refinement on nitrate toxicity
Date: Wednesday, 27 May 2020 5:01:00 pm

Hi Hayden,
That new wording is fine, I agree it is more explicit than the previous version where it was more implied that the protection was from the effects of nitrate toxicity.
Cheers
Jen

From: Hayden Johnston <Hayden.Johnston@parliament.govt.nz>
Sent: Wednesday, 27 May 2020 4:52 PM
To: Jennifer Price <Jennifer.Price@mfe.govt.nz>
Subject: FW: latest PR draft - water - refinement on nitrate toxicity
Importance: High

We have said in the slides:

- New bottom lines for some of these attributes specify minimum standards, including a strengthened bottom line for nitrate toxicity, to protect 95% of species from toxic effects (up from 80%), and a new bottom line for *E. coli* at swimming sites during the bathing season

See John's comments below.

From: John Blincoe
Sent: Wednesday, 27 May 2020 4:45 PM
To: Hayden Johnston <Hayden.Johnston@parliament.govt.nz>; Vernon Small <Vernon.Small@parliament.govt.nz>
Subject: FW: latest PR draft - water - refinement on nitrate toxicity
Importance: High

Hayden and Vernon

Re nitrate toxicity, the attached PR currently says:

"There will be stricter limits on nitrogen toxicity that will protect 95 per cent of freshwater species, up from 80 per cent under the previous national policy statement."

Following a discussion that the Minister had with ENGOs today, I suggest this could be more precisely (and less ambitiously) stated.

"There will be stricter limits to provide protection from nitrogen toxicity for 95 per cent of freshwater species, up from 80 per cent under the previous national policy statement."

The rationale for the refinement is that stresses on ecosystem health can occur well below the new threshold (2.4), depending on the interaction of N with other variables such as light, temperature, oxygen and sediment.

Hayden: you are to check this new wording with MfE.

Nga mihi, John

John Blincoe | **Senior Ministerial Advisor**
DDI +64 4 817 8206 |Mobile: +64 21 840 300 I Email john.blincoe@parliament.govt.nz

Office of Hon David Parker MP | Attorney-General | Minister for the Environment | Minister for Trade and Export Growth | Associate Minister of Finance

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From: Hayden Johnston
Sent: Wednesday, 27 May 2020 10:31 AM
To: John Blincoe <John.Blincoe@parliament.govt.nz>
Subject: FW: latest PR draft - water

From: Vernon Small
Sent: Wednesday, 27 May 2020 10:16 AM
To: Nikki Prendergast <Nikki.Prendergast@parliament.govt.nz>; Hayden Johnston <Hayden.Johnston@parliament.govt.nz>
Subject: latest PR draft - water

Vernon Small | **Senior Press Secretary**
Office of Hon David Parker
Parliament Buildings | Wellington | New Zealand
DDI: (04) 817 8282 | Mobile: 021 849 517
Email: vernon.small@parliament.govt.nz

Polly Brownlee

From: Jennifer Price <Jennifer.Price@mfe.govt.nz>
Sent: Thursday, 28 May 2020 4:39 pm
To: Hayden Johnston (Parliament)
Cc: Jo Burton
Subject: Re: DIN/nitrate

All good. I forgot to mention periphyton/slime, have added that isn't.
Sorry, forgot to CC Jo.

From: Hayden Johnston <Hayden.Johnston@parliament.govt.nz>
Sent: Thursday, 28 May 2020, 16:37
To: Jennifer Price
Subject: RE: DIN/nitrate

Thanks Jennifer.
We have edited it down a bit, and will use the following:

DIN includes the different types of nitrogen: nitrate, nitrite and ammonia. In most waterways DIN is mostly made up of nitrate.

The DIN attribute is about the nutrient effects of nitrogen in rivers. It was developed by combining relationships between DIN and many different parts of the ecosystem, such as fish, macroinvertebrates, and periphyton.

Nutrients such as DIN can fuel growth of nuisance plants, periphyton (slime) and bacteria that have negative follow on effects for other parts of the ecosystem. This happens at lower concentrations than toxic effects.

The nitrate toxicity attribute was already in the NPS-FM. The toxicity attribute was developed using toxicity information for several different species. By moving the bottom line we are protecting more species from nitrate toxicity effects.

From: Jennifer Price [mailto:Jennifer.Price@mfe.govt.nz]
Sent: Thursday, 28 May 2020 4:07 PM
To: Hayden Johnston <Hayden.Johnston@parliament.govt.nz>
Subject: DIN/nitrate

Hi,

DIN includes the different types of nitrogen: nitrate, nitrite and ammonia. In most waterways DIN is mostly made up of nitrate.

The DIN attribute is about the nutrient effects of nitrogen in rivers. It was developed by combining relationships between DIN and many different parts of the ecosystem, such as fish, macroinvertebrates, and periphyton. The attribute was aimed at providing a healthy, functioning ecosystem. This is because nutrients

such as DIN can fuel growth of nuisance plants and bacteria that have negative follow on effects for other parts of the ecosystem. This happens at lower concentrations than toxic effects. STAG members did not all agree on the methodology used to do this.

The nitrate toxicity attribute was already in the NPS-FM. The toxicity attribute was developed using toxicity information for several different species. The previous bottom line of 6.9 had been set higher than scientists had recommended at the time. By moving the bottom line to 2.4 we are protecting more species from nitrate toxicity effects and bringing the nitrate toxicity standard closer to what is required for a healthy ecosystem.

There is also a new policy in the NPS-FM requiring councils to manage DIN to provide for other ecosystem health attributes. For example, if DIN levels are contributing to poor macroinvertebrate scores, councils must set DIN concentrations to achieve the macroinvertebrate bottom line.

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