

## Office of the Minister for the Environment

### Chair

### Cabinet Economic Growth and Infrastructure Committee

### Assistance Fund for Freshwater Clean-ups

#### Proposal

1. To set up a freshwater clean-up assistance fund to address the legacy of historical contamination of lakes, rivers and streams and to enable clean-ups to be advanced.

#### Executive summary

2. Freshwater is a key strategic and productive asset for New Zealand. New Zealand has the opportunity to capitalise on this asset, but to do so we need to improve the way water is managed. This will include restoring the quality of some freshwater bodies that have been contaminated during periods of settlement and growth.
3. I expect that the government's response to the Land and Water Forum's report will be made up of a mix of short-term initiatives to promote better regulation, improved environmental outcomes and continued economic growth, set within a longer-term Fresh Start for Freshwater policy package. The response will include the immediate initiatives of the National Policy Statement for Freshwater Management, the community irrigation and capital fund and the clean-up assistance fund.
4. There are currently barriers to the clean-up of contaminated waterways which include an understanding of the cause and effect of current and past practices, a lack of sufficient funding, a lack of technical capability to undertake novel and experimental interventions and a lack of awareness from those causing contamination.
5. I expect there to be an increase in the number of requests for clean-up funding as an outcome of the government's wider water policy reform and the ongoing Treaty settlement process.
6. I propose setting up an assistance fund to be called the Fresh Start for Fresh Water Fund to address the barriers to clean-up and to provide a consistent framework to assess requests for funding. The purpose of the fund is to provide assistance to ratepayers to meet the costs they couldn't otherwise bear. The fund will contribute towards clean-up and will require contributions from other parties. The fund is also an incentive, leveraging local authorities to embed the freshwater management reforms.
7. Any agreed clean-up funds negotiated as part of, or in parallel with, Treaty settlements will be additional to the base funding sought in this package and will not be part of the competitive process. The base fund would be topped up by the

amounts agreed by Cabinet arising from Treaty settlements. I propose to have discussions with the Minister for Treaty of Waitangi Negotiations to align criteria used to assess requests for clean-up funding arising from Treaty negotiations with those that would apply to other requests.

8. Cabinet should note that I will be amending the name of the government's freshwater policy package – New Start for Fresh Water to Fresh Start for Fresh Water. The revised name will align with the Land and Water Forum's report entitled 'A Fresh Start for Fresh Water'. At the time Cabinet agreed to a new direction for freshwater management I was intending to call the package a Fresh Start for Fresh Water; however it was agreed that this could create some confusion with the Fresh Start for Young Offenders programme announced at the time by the Minister of Social Development. I have since discussed the renaming of the package with the Minister of Social Development, who has agreed to the name change for the freshwater policy package.

## **Background**

### *Fresh Start for Fresh Water*

9. In June 2009, Cabinet set a new direction for freshwater management [CAB Min (09)20/12], agreeing to stronger leadership and national direction; and a process for developing management measures to set limits to manage quality and quantity issues, to get the most value from finite water resources, to address the impacts of land use intensification on water quality, and to improve the management of water demand. Cabinet agreed that the scoping of policy options should proceed on the assumption that resource limits will be set, resulting in most water bodies providing for both public values and some level of use, which may impose constraints on economic development and land use.

### *The Land and Water Forum*

10. The Minister for the Environment and the Minister of Agriculture and Forestry asked the Land and Water Forum to advise on how water should be managed in New Zealand. The Forum produced the Fresh Start for Freshwater report in September 2010 and one of the recommendations specifically referred to setting up a fund to enable the clean-up of contaminated waterbodies:

*“While polluter pays is a general and well understood principle, publicly funded clean-up efforts can be justified where historic behaviour has made a major contribution to the problem, or land retirement or habitat restoration is part of the proposed solution”*

and

*“A fund should be established that would ... enable clean-up of contaminated waterbodies to occur”*

### *Existing clean-up activities*

11. There has been a number of initiatives to address freshwater clean-ups in recent years in response to concerns about dealing with water quality and as part of Treaty Settlements but there is a recognised need to provide a more consistent framework. The government, with Environment Waikato and Taupo District Council, committed almost \$82 million over 15 years to reduce nitrogen inputs to

the lake, with the aim of protecting water quality and clarity. Ngati Tuwharetoa, as kaitiaki of the lake are also partners in the project. As at December 2010 the Lake Taupo Protection Trust had agreements in place for the reduction of 84 tonnes of nitrogen entering Lake Taupo against a target of 153 tonnes nitrogen reduction by 2018.

12. Central government committed \$72.1 million over ten years to see the Rotorua Lakes Protection and Restoration Programme implemented – 50 per cent of the total cost of \$144.2 million (the remainder being met by Environment Bay of Plenty and Rotorua District Council). The programme includes measures to address the different sources of nutrients entering four priority lakes. The Ministry for the Environment administers central government's role in the funding commitment. As at December 2010, it is estimated that nitrogen has been reduced in Lake Okareka by 3.58 tonnes compared to a target of 3.6 tonnes; and in Lake Rotoiti by 150 tonnes by construction of the Ohau diversion wall, achieving its target.
13. Even though this funding is significant, the clean-up programmes were initiated by local authorities leading to stronger regulatory regimes to ensure water quality is protected for future generations. This is a model that I would like to encourage.
14. The Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 provides for a co-management regime between tāngata whenua, the Crown and local authorities in relation to the Waikato River. In addition to this redress, the Crown settled on the Waikato Raupatu River Trust \$20 million for the 'Sir Robert Mahuta Endowment' and \$50 million for the 'River Initiatives Fund' and provided a contribution of \$210 million to the Clean-up Fund administered by the Waikato River Authority. This funding is not considered redress money.

*Advancing the Fresh Start for Fresh Water programme*

15. In a separate but parallel paper, the Minister of Agriculture is proposing options for driving significant economic growth through increased irrigation infrastructure. This could result in expansion in the dairy, horticulture and viticulture sectors particularly in Canterbury and Hawke's Bay. Such development presents an opportunity to demonstrate good land management practices to minimise any environmental effects.
16. Officials are currently finalising the policy work for a National Policy Statement for Freshwater Management which I will report back to Cabinet during April. The National Policy Statement will direct regional councils to set limits for water quality and quantity and improve water management practices. The comprehensive reform package under the Fresh Start for Fresh Water programme will follow and complement the NPS by introducing further measures for sustainable water management. A central part of this wider reform will be a new regional council governance model for setting water quantity and quality limits.

## **Comment**

### *Freshwater is a key strategic and productive asset for New Zealand*

17. Freshwater underpins our two major export industries, agriculture and tourism, provides over 50 percent of our electricity, and is fundamental to our economic, social, environmental and cultural well-being. New Zealand has the opportunity to capitalise on this asset, but to do so we need to improve the way water is managed. This will include restoring the quality of some freshwater bodies that have been contaminated during periods of settlement and growth.

### *Water quality is patchy and in some areas poor*

18. By world standards New Zealand's freshwater bodies are, on average, good quality. They support a unique array of flora and fauna and are highly regarded internationally for their recreational value.
19. There is accumulating evidence, however, that regional councils are struggling to manage localised pressures on the quality and quantity of freshwater. The main pressures are in the lowland regions in which there is significant irrigation, intensive land uses or legacy issues from urban and rural development. Appendix 1 sets out the major contaminated lakes and rivers.

### *Some water quality problems are due to previous decisions and development*

20. In many cases historical urban and rural development has led to the current contamination in New Zealand's waterways. Some level of degradation is unavoidable when land is taken out of indigenous cover and in the past some decisions have made quality worse due to poor land use choices or low levels of regulation (such as the conversion from native forest in sensitive catchments to pastoral land and the discharge of effluent directly into waterways). The situation is complicated by the long lag times of contaminants in the system, for example, waterbodies that seem good quality will become contaminated from pollutants discharged decades ago (Lake Taupo is an example of this).

### *A number of Treaty claims and settlements include clean-up funding*

21. In April 2009 Cabinet agreed that although scoping studies and clean up funds could be pursued concurrently with settlements, these may not be included within the Deed of Settlement, or settlement negotiations generally [CAB Min (09) 12/11 refers]. However, there is no framework for how and when requests for funding for scoping studies and clean-up funding alongside Treaty settlements will be managed and determining whether requests will be successful.
22. One example is the Waikato River funding as detailed in paragraph 13. Other examples of clean-up funding contributions include the Ngāti Pahauwera settlement (payment of \$2 million to Hawke's Bay Regional Council to fund the clean-up of the Mohaka, Waikare and Waihua Rivers), and a one-off contribution of \$250,000 each to Ngāti Whare and Ngāti Manawa for projects associated with the Rangitaiki River and the Rangitaiki River Management Framework.
23. I propose that any future requests for clean-up funding following a Treaty settlement be dealt with as a separate application but assessed using a consistent framework (see paragraphs 37 – 40).

*A number of barriers to clean-up remain*

24. There are a number of barriers to the clean-up of contaminated waterbodies:

- **cause and effect:** it is difficult to attribute the direct cause of the contamination, especially when dealing with historical decisions
- **funding:** there is often insufficient funding to fund a clean-up meaning that significant reprioritisation is required which can be a challenge at the local level. The scale of funding required is often beyond what local communities can afford to pay
- **technical capability:** clean-up solutions may be novel and untested requiring significant investment in knowledge building and testing
- **awareness:** contributors to contamination are often unwilling or do not realise the negative contribution that are making.

25. Delay in clean up and the continuation of some practices will mean that some waterbodies will deteriorate further, creating a much more difficult problem to fix. Central Government has had to commit \$318 million to address water quality in Lake Taupo, the Rotorua Lakes and the Waikato River.

*Improvements are required in the way requests for funding are managed*

26. Previous requests for clean-up funding have either been ad hoc (such as Lake Taupo and the Rotorua Lakes) or have been developed via the Treaty settlement process (such as the Waikato River). The implementation of the New Start for Freshwater policy package will require local authorities to begin to improve the quality of badly contaminated waterbodies. When undertaken within a limits framework, this should allow for continued use of the land for economic purposes.

27. I expect there to be an increase in the ad hoc requests for a Crown contribution to clean up contaminated waterways. To date the Ministry for the Environment has responded on a case-by-case basis which often does not allow for a comparison of the greatest need or benefit. The highest priority clean-up work may not be addressed by maintaining this ad hoc approach as the number of requests increase.

*There will be a national benefit to some clean-up projects*

28. If further central government assistance is given to clean up specific waterbodies there needs to be a clear national benefit of doing so. Some waterbodies provide nationally and internationally important habitat for wildlife, some have important values for local iwi and hapū, while other provide outstanding recreational opportunities. The clean and green brand is important for attracting international tourists and flows through to other sectors to attract business and provides an environmentally-friendly brand for our export goods. The lack of clean-up action on degraded waterbodies is a barrier to continued leveraging off the clean green brand.

29. The Fresh Start for Fresh Water policy package reinforces the government's commitment to better freshwater management. It is a benefit to the nation to ensure good quality and available freshwater resources are passed on to future generations for continued economic growth.

## *Options for encouraging clean-up*

### *Status Quo - Ad-hoc funding*

30. Previous funding applications for the clean-up of contaminated waterbodies have been ad hoc and dealt with on a case-by-case basis. This has meant there has been a very narrow analysis of the merits of clean-up with little comparison of alternatives that might be funded. Funding may not be prioritised to schemes that would generate the greatest national benefit. The continuation of the status quo places the onus on local authorities, iwi and other stakeholders to make applications to the Crown for funding; each application may be treated differently in the absence of a consistent framework to assess applications.

### *Crown-led Facilitation*

31. This option would rely on the Ministry for the Environment working with local authorities, iwi and other stakeholders to begin the clean-up of waterbodies without a significant Crown contribution. This facilitation could take the form of aiding with funding applications, assisting with organising a collaborative approach to funding and/or assisting with awareness-raising.

It is highly unlikely that this would result in increased clean-up due to the cost. It would partially address the awareness-raising barrier.

### *Reliance on the broader Fresh Start for Fresh Water package*

32. This option would retain the responsibility of any clean-up with local authorities. The Fresh Start for Fresh Water package would then provide the impetus for clean-up via the National Policy Statement for Freshwater Management and other future policy settings requiring limits to be set. This option would not address the problem of access to funding and the ability of one or two stakeholders to fund nationally beneficial clean-up.
33. It is highly unlikely that this option would result in significant clean-up of contaminated waterbodies and may place a financial burden on local authorities.

### *Additional regulation*

34. This option would introduce additional regulation to require the clean-up of contaminated waterbodies. The cost burden would then be placed on local authorities and force the reprioritisation of funding. At a time of increasing pressures on local rate-payers, this option would not deliver the outcomes required and would make the situation more conflictual for local authorities and interested parties. This may result in halted economic development in some areas.

### *Fresh Start for Freshwater Fund*

35. This option would take a strategic approach to funding the clean-up of contaminated waterbodies via a standalone fund administered by the Ministry for the Environment. The fund would be designed to clean up waterways that have a contaminated legacy and would provide a benefit to the nation. This would address all the barriers set out above:
  - a requirement of the funding application would be to establish cause and effect to determine what funding split is appropriate

- the fund would provide sufficient funding to undertake potentially large scale and experimental clean-up
- the fund would initiate investment in technical capability which the nation may be able to use as a knowledge export
- awareness-raising would be a fundamental first step and required as part of any funding application.

*Summary of options analysis*

| <b>Barrier</b>       | <b>Status Quo</b> | <b>Facilitation</b> | <b>NSFW</b> | <b>Regulate</b> | <b>Fund</b> |
|----------------------|-------------------|---------------------|-------------|-----------------|-------------|
| Cause and effect     | No                | Partially           | Partially   | Partially       | Yes         |
| Funding              | No                | Partially           | No          | No              | Yes         |
| Technical capability | No                | No                  | No          | No              | Yes         |
| Awareness            | No                | Partially           | Partially   | Partially       | Yes         |

36. I propose that a Fresh Start for Fresh Water Fund forms part of the government's response to the Land and Water Forum and an element of the government's plans to ensure that there is a robust regulatory framework for freshwater management (via the National Policy Statement in the short term and the broader water reform package in the medium term) and to encourage investment in irrigation infrastructure (via the community irrigation and capital fund). This approach ensure that there will be:

- clear central government direction about our expectations for improvements in freshwater management
- increased investment in irrigation to boost economic productivity and
- a programme of clean-up of New Zealand's most contaminated waterways to help councils, producers and iwi achieve the improvements the regulatory regime is driving over time.

The clean-up fund will provide an incentive to local authorities to meet the expectations of the National Policy Statement and broader freshwater reform package.

*Operation of the fund*

37. The fund would be based on a number of principles to ensure the Crown invests wisely:

- Cost effectiveness: benefits should exceed the costs
- National benefit: there should be a demonstrable benefit to the nation in order for the Crown to commit funding

- Polluter and beneficiary pays: the polluter and beneficiary should contribute funding
  - Regulatory driver: local authorities should have the necessary plans and policies in place to ensure future contamination is minimised and managed
  - Scale and contribution: demonstrated to be beyond local resources but with a significant local contribution
  - Collaboration: relevant stakeholders should be involved in the clean-up programme (e.g. regional council, district councils, local iwi, primary sector, industry, and so on).
38. As part of any funding agreement it will be made clear that the Crown will assist with the clean-up of the legacy issue but local authorities need to have regulatory and other measures in place to manage future contamination. Any proposal will be subject to agreement on the outcomes to be achieved by the investment e.g. reduction in the trophic level index in a lake or a specific amount of nitrogen being removed.
39. I propose that the fund has an annual budget allowing a funding round to be held each year. Local authorities (who may be leading a consortium of broader stakeholders) could then submit bids into the fund – each application would then be assessed on its merits taking into account the principles in paragraph 36. Given the nature of the fund focusing on clean-up for national benefit, I do not envisage a flood of applications. It is unlikely that small local clean-up schemes would meet the principles or criteria for the fund.
40. A budget of up to [*withheld*] per annum is proposed – this would allow for either ongoing capital works similar to Taupo or Rotorua on a rolling basis or numerous smaller interventions. The following chart sets this out over time (note that the Taupo funding has been averaged but is a multi-year appropriation). All current funding for the clean-up of waterbodies already committed to would not be affected by this proposal.
- [financial data withheld]*
41. Any agreed clean-up funds negotiated as part of, or in parallel with, Treaty settlements will be additional to the base funding sought in this package and will not be part of the competitive process. The base fund would be topped up by the amounts agreed by Cabinet arising from Treaty settlements. I propose to have discussions with the Minister for Treaty of Waitangi Negotiations to align criteria used to assess requests for clean-up funding arising from Treaty negotiations with those that would apply to other requests.

## **Consultation**

42. The following departments have been consulted: the Treasury, Ministry of Agriculture and Forestry, Office of Treaty Settlements, Ministry of Economic Development, Te Puni Kokiri and the Department of Conservation.
43. The Treasury considers a Freshwater Clean-up Assistance Fund could be a useful complement to, though not a fundamental part of, the wider water reform package. There are opportunities to use a fund to drive the reforms and incentivise local authorities to implement good water management practices. However, there are also risks that it may undermine accountabilities and encourage cost-shifting. While there are potential benefits from a freshwater clean-up assistance fund, they do not support this proposal in light of other Budget 2011 priorities and pressures.

## **Financial implications**

44. The cost of this proposal is [*withheld*] per annum operating in 2011/12 and outyears and is not currently funded as part of Budget 2011. Meeting these costs from within the operating allowance for new spending in Budget 2011 will require offsetting savings in other areas. It will be required that individual proposals agreed to under the Fund will have significant investments in cash and kind by local government (or other interested parties) to at least match the Crown contribution.
45. Currently this level of resource is not able to be reprioritised from within Vote Environment as [*withheld*].

## **Human rights**

46. There are no human rights implications of inconsistencies with the Human Rights Act 1993 as a result of the proposals in this paper.

## **Legislative implications**

47. There are no legislative implications arising from this paper.

## **Regulatory impact analysis**

48. A regulatory impact analysis and regulatory impact statement are not required given that there are no legislative proposals arising from this paper.

## Publicity

49. The intention would be for the Prime Minister to publicly announce the package with the Ministers of Agriculture and Environment. This announcement would cover the elements of irrigation economic development, environmental clean-up and freshwater management regulation.

## Recommendations

50. The Minister for the Environment recommends that the Committee:
  1. note that the government's overarching freshwater policy package consists of four parts:
    - 1.1. the Fresh Start for Fresh Water Fund
    - 1.2. the Community Irrigation Fund and Irrigation Capital Fund
    - 1.3. the National Policy Statement for Freshwater Management
    - 1.4. the longer term Fresh Start for Fresh Water policy package.
  2. note that the Environment and Agriculture Ministers intend to bring the National Policy Statement for Freshwater Management and longer term water reform policy package to Cabinet in April
  3. note that some of New Zealand's waterways suffer from a legacy of contamination from historical development and management, part of which will be the responsibility of the Crown
  4. note that there are four key barriers to the clean-up of New Zealand's waterways:
    - 4.1. difficulty in establishing cause and effect between historical decisions and activity and current water quality problems
    - 4.2. the lack of sufficient funding at a local or regional level
    - 4.3. the lack of technical capability for solutions that are often novel and experimental
    - 4.4. the lack of awareness of the behaviours that lead to contamination and taking responsibility for past actions
  5. note that there is expected to be an increase in requests for funding following introduction of the water reform package and from accelerated Treaty settlements
  6. note that I propose to set up a freshwater clean-up assistance fund to address legacy issues and to establish a consistent framework for assessing the merits of funding applications
  7. note the freshwater policy package – New Start for Fresh Water will be renamed to Fresh Start for Fresh Water
  8. note that a Fresh Start for Fresh Water Fund will be an incentive for local authorities to ensure they meet the governments expectations around freshwater management

9. note any agreed clean-up funds negotiated as part of, or in parallel with, Treaty settlements will be additional to the base funding sought in this package. Requests for funding arising from Treaty settlements will not be part of the competitive process
10. note that the cost of this proposal is [*withheld*] per annum operating in 2011/12 and outyears, and is not currently funded as part of Budget 2011
11. agree in principle to a Fresh Start for Fresh Water Fund, subject to suitable sources of funding being identified as part of the final Budget package
12. note that a final decision on the proposal, including agreement to financial recommendations, will be made when the Minister of Finance presents the final Budget package to Cabinet in April
13. invite the Minister for the Environment to discuss with the Minister for Treaty of Waitangi Negotiations ways of aligning criteria used to assess requests for clean-up funding arising from, or negotiated in parallel with, Treaty negotiations with those that would apply to other requests
14. invite the Minister for the Environment to report back to the Cabinet Economic Growth and Infrastructure Committee by [*withheld*] to confirm the funding criteria and how the fund will operate.

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Hon Dr Nick Smith  
**Minister for the Environment**  
8 March 2011