

I N C O N F I D E N C E

In Confidence

Office of the Associate Minister for the Environment

Cabinet Environment, Energy and Climate Committee

Consulting on changes to the NES for sources of human drinking water

Proposal

- 1 This paper seeks approval to publicly consult on proposed amendments to the Resource Management (National Environmental Standards for Sources of Human Drinking Water) Regulations 2007 (NES-DW).
- 2 This proposal, as part of a suite of changes to three waters management, gives effect to Cabinet decisions to comprehensively reform regulation of drinking water in response to the findings of the Havelock North Drinking Water Inquiry [CAB-18-MIN-0545 refers] (HNI) and the subsequent Three Waters Review [CAB-19-MIN-0332 refers]. It also supports our Essential Freshwater programme, to restore and protect the health of waterways [CAB-19-MIN-0414 refers].

Government priorities

- 3 This proposal relates to the Labour Party's 2020 Election Manifesto commitment to reform our drinking water system and to improve the health of our freshwater.

Executive Summary

- 4 Protection of the water body from which drinking water is taken (source water) provides the first of multiple barriers required to protect drinking water from contamination. The NES-DW was introduced in 2007 to protect source water, but the HNI and a review by the Ministry for the Environment (the Ministry) found it had not achieved its intended purpose. A comprehensive review of the NES-DW and source water protection was recommended.
- 5 While both the National Policy Statement for Freshwater Management 2020 (NPS-FM) and the Water Services Act 2021 (WSA) strengthen recognition of the hazards and associated risks to source water, the NES-DW is necessary to ensure plan rules and consenting decisions adequately protect source water.

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- 6 I am proposing to consult on amendments to the NES-DW to address issues found by the HNI and the Ministry review, as follows:
- 6.1 prescribing a consistent national approach for defining 'source water risk management areas' (SWRMAs), establishing three categories of land in terms of proximity to a source water take, and therefore risk to water quality
 - 6.2 updating and strengthening requirements for managing activities that pose risks to source waters in Resource Management Act 1991 (RMA) plans and consenting decisions, based on SWRMAs
 - 6.3 providing a staged approach for application of the requirements to all registered water supplies.
- 7 Following Cabinet approval, I propose to release the consultation document (see Appendix 1) for public consultation on 10 January 2022, with an eight-week period for submissions. Direct engagement with iwi authorities and key stakeholders, including regional councils, water suppliers and the primary sector, will occur during that time.

Background*The drinking water system*

- 8 Drinking water suppliers take water from rivers, lakes, and aquifers. Water taken is typically treated to ensure it is safe to drink by removing or reducing bacteria, viral and protozoal pathogens, and other contaminants¹, before delivery to the community via a piped distribution network. Water suppliers are responsible for managing risks to their water and ensuring safety measures to prevent contamination are in place at all stages of the water supply process. This is known as a 'multiple-barrier' approach. Protection of the water body from which drinking water is taken provides the first barrier against drinking water contamination and illness.
- 9 Activities with the potential to impact source water include contaminant discharges such as wastewater management, intensive farming practices, activities within the bed of a river, other water takes, and drilling into aquifers. These activities can increase the likelihood of contaminants, such as bacteria, viral and protozoal pathogens, sediment,

¹ Treatment can also be used to adjust the characteristics of the water to minimise its corrosiveness and therefore potential damage to pipes. Fluoride may be added for health reasons. Chlorination occurs to ensure disinfection continues in the drinking water distribution system.

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and other substances, entering source water that is taken by water suppliers. Only some contaminants may be removed or reduced by current treatment processes.

The NES-DW

- 10 The NES-DW was introduced in 2007 to provide first barrier protection and support drinking water supply and delivery requirements of the Health (Drinking Water) Amendment Act 2007². Its main requirements are limited to activities that are likely to contribute to large drinking water supplies breaching national drinking water standards³ after treatment.

The HNI indicated failures

- 11 While the majority of New Zealanders have access to safe drinking water, there have been instances where contaminated drinking water has led to serious illness and death. For example, in 2016, four people died and an estimated 5,500 fell ill with gastroenteritis in Havelock North because of *Campylobacter* contamination in the town's drinking water source.
- 12 The HNI found "significant problems" with the NES-DW⁴, which a Ministry review in 2017-18 concurred with, and made recommendations to resolve those problems. In summary:
- 12.1 it is difficult to interpret and apply
 - 12.2 it does not adequately address the full range of activities that can pose a risk to drinking water sources nor provide adequate protection for small water supplies
 - 12.3 regional councils and resource users⁵ are not required to involve water suppliers in resource consent and plan development processes
 - 12.4 it has had variable implementation across New Zealand.

² Now repealed by the WSA.

³ Water is considered safe to drink, where it meets the Drinking-water Standards for New Zealand 2005 (Revised 2018): a set of criteria prescribing limits for various contaminants that may be present in drinking water.

⁴ Government Inquiry into Havelock North Drinking Water (2017) [Report of the Havelock North Drinking Water Inquiry: Stage 2](#).

⁵ Landowners, land occupiers, and others who undertake activities under the RMA.

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- 13 The proposed amendments to the NES-DW are part of a larger programme of improvements to drinking water and freshwater management.
- 14 The Three Waters Review programme has introduced the new WSA that gives direction to water suppliers and regional councils to better manage and monitor risks to source waters. The WSA has amended the RMA to require consent decision makers to consider risks and effects on registered drinking water sources and it expands regulation to all drinking water supplies other than domestic self-suppliers⁶.
- 15 At the time it was made (2007), the NES-DW was the sole national direction instrument for freshwater. There are now four national direction instruments aimed at improving freshwater management:
- 15.1 the NPS-FM, updated in 2020, gives specific direction to regional councils on managing the cumulative effects of all activities affecting freshwater, within Freshwater Management Units. Drinking water supply is a value in source water catchments that must be recognised and accounted for where it is present.
- 15.2 the National Environmental Standard for Freshwater 2020 and Stock Exclusion Regulations 2020, aim to reduce nutrient and sediment inputs from farming activities to water and improves bacterial loadings in water due to stock.
- 16 While the WSA and NPS-FM strengthen recognition of the hazards and associated risks to source water, there remains a need to explicitly ensure plan rules and resource consents address those risks in a nationally consistent manner. Otherwise, the current situation will continue where potentially harmful activities may impact source water, and consequently the community that drinks from it.
- 17 Proposals to amend the NES-DW were developed through submissions on the Action for Healthy Waterways discussion document [CAB-19-MIN-0414 refers], and further refined through officials-led targeted engagement with key stakeholders,

⁶ A domestic self-supplier is defined as a stand-alone or single domestic dwelling that has its own supply of water.

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including regional councils, water suppliers, primary sector groups and iwi/Māori. Refinements have also included expert advice from a technical advisory group. A summary of stakeholders' views is included in Appendix 5.

18 I am now seeking approval to consult on proposed amendments to the NES-DW.

Analysis

19 The proposed amendments build on the findings and recommendations of the HNI and the Ministry review. There are three key elements to the amendments proposed to the NES-DW:

19.1 **Proposal 1:** prescribing a consistent national approach for defining 'source water risk management areas' (SWRMAs), establishing three categories of land in terms of proximity to a source water take, and therefore risk to water quality

19.2 **Proposal 2:** updating and strengthening requirements for managing activities that pose risks to source waters in RMA plans and consenting decisions based on SWRMA

19.3 **Proposal 3:** providing a staged approach for application of the requirements to all registered water supplies.

20 Details of the proposed amendments are provided below and in the attached consultation document (Appendix 1). The attached draft interim regulatory impact statement (RIS) (Appendix 2) identifies alternative approaches and anticipated costs and benefits of amending the NES-DW.

Proposal 1: Prescribing a consistent national approach for defining SWRMAs

21 The NES-DW currently includes criteria relating to "abstraction points"⁷, and "upstream" activities which only apply if an activity is likely to contribute to contaminants exceeding national drinking water standards after treatment. These criteria are technically challenging to apply, with variability in implementation. Allowing degradation is inconsistent with NPS-FM requirements to maintain or improve water quality, and it inappropriately emphasises reliance on treatment processes as a barrier to contamination.

⁷ Abstraction is a technical term that means taking water from a water body.

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22 I am therefore proposing to prescribe an approach for mapping SWRMAs: a scientifically derived, internationally used practice⁸, that is risk-based and improves certainty for resource users, regional councils, and water suppliers. There are three categories (illustrated in Appendix 3) to which the activity controls (described in Proposal 2) will be applied:

22.1 **SWRMA 1** is the immediate area around the location of source water take (intake)⁹. It has the highest short-term risk because of an activity's proximity to the intake, and there is very little time to respond to any contamination before it enters the water supply. It will result in the most stringent controls on resource users but is a relatively small area.

22.2 **SWRMA 2** is a larger area¹⁰ where activities need to be managed to mitigate more medium-term risks of contamination to source water. The size of this area will vary because it is based on the time it takes for water to flow to the intake. It may result in additional consenting requirements and considerations depending on how well the relevant regional council currently manages the risk of activities on source water in their region.

22.3 **SWRMA 3** is the entire catchment area for the source water. Persistent contaminants and long-term risks are the management focus in this area. It is intended to elevate source water as a consideration in freshwater management in regional planning processes. No additional restrictions are proposed in SWRMA 3, as current requirements under the RMA are considered adequate. The proposed amendments to the NES-DW will simply clarify that the effects of any activity on source water must be considered in a catchment used for source water.

23 Regional councils will be required to map SWRMAs using the prescribed approach although a 'bespoke' approach will also be enabled where appropriate¹¹.

⁸ For examples see [the United States Environmental Protection Agency](#), or [the United Kingdom Environment Agency](#).

⁹ For rivers, it includes the river and its bed 1,000 metres upstream and 100 metres downstream of the intake, extending 5 metres into land from the river edge. For lakes, it is the lake and its bed within a 500-metre radius of the intake, extending 5 metres into land from the lake edge. For groundwater, this is a 5 m radius around the intake (bore head).

¹⁰ For rivers, it is the river and bed from where water travels to the intake within an 8-hour period. For lakes, it is the entire lake area, extending landward 100 metres, and includes tributaries (being the rivers and beds from where water travels to the lake within an 8-hour period). For groundwater, this is 1 year travel time (to a maximum distance of 2.5 km).

¹¹ For example, where the 'default' SWRMA does not provide adequate protection or where evidence demonstrates it would be unnecessarily restrictive to land use.

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- 24 Requiring regional councils to map SWRMAs without prescribing a method, but with non-statutory guidance provided, was also considered. This option is not preferred because it will require substantially more regional council resources as each establishes an approach, and it would take more time to implement thereby delaying improved source water protection.
- 25 Mapping SWRMAs using a nationally consistent method identifies areas where activities may impact source water. It will come into effect quickly and combined with guidance, it has the greatest potential to effectively lift the standard of source water management. Feedback will be sought on the technical details of how SWRMAs are mapped.
- 26 Estimates of the area to be included in SWRMA 1 and 2 for currently registered water supplies is summarised in the table below. These estimates do not include the area covered by currently unregistered small water supplies. This information will only be known once these supplies register with Taumata Arowai (see paragraph 36).

SWRMA	Area (ha)	% of New Zealand's total area ¹²
1	2,137	0.008
2	1,362,819	5

Proposal 2: Updating and strengthening requirements for managing activities that pose risk to source waters in RMA plans and consenting decisions based on SWRMAs

- 27 The activities to which the NES-DW currently applies is limited, and its scope and complexity mean effects on source water are not always appropriately or consistently addressed.
- 28 In consent processes under the current NES-DW, regional councils are only able to decline consents for certain activities - discharges, and taking, damming, or diverting water - where those activities contribute to large supplies breaching national drinking water standards after treatment. Restrictions are only applicable during consent applications, and not to existing activities. Regional councils also cannot permit activities where those activities contribute to large supplies breaching national drinking water standards.

¹² The total amount of mid-high quality agricultural land collectively covered in SWRMA 1 and 2 is estimated to be 433,022 ha (1.6% of New Zealand).

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- 29 Water suppliers may also be overlooked in current resource consent and plan development processes, so they may not be aware of source water risks.
- 30 Delineation of SWRMAs will improve how regional councils identify areas where activities may pose a risk to source water, and consequently how they are managed. I propose to seek feedback on the following matters:
- 30.1 for any person other than the drinking-water supplier, consideration is being given to placing stringent controls on activities¹³ in SWRMA 1, to avoid, or where necessary, mitigate, adverse effects on source water
 - 30.2 imposing controls on any currently permitted high-risk activities within SWRMA 2
 - 30.3 improving bore management, and land disturbance over vulnerable aquifers
 - 30.4 ensuring risks to source water are consistently considered in all consent applications within SWRMAs, with appropriate conditions imposed
 - 30.5 incentivising consent applicants to engage with water suppliers during the consent application process.
- 31 Proposal 2 will mean additional controls over activities within SWRMA 1 and 2 that may affect source water, such as wastewater or stormwater discharges, agrichemical use, and drilling and construction of bores (to name a few). Costs related to any additional controls will vary depending on the current status¹⁴ of the activity in regional plans.
- 32 With the establishment of SWRMAs, regional councils could be required to determine appropriate controls on activities within those areas. However, this approach could result in inconsistent and inappropriate management of high-risk activities, and it may be less efficient, take longer to implement, and carry a higher risk of litigation and further delays.
- 33 Feedback from consultation will be used to refine an approach that supports clear and consistent management of activities that pose risks to source water.

¹³ The proposed activities to which controls would apply include drilling of bores and earthworks over vulnerable aquifers (RMA section 9), uses of the beds of lakes and rivers (RMA section 13), all restrictions on water (RMA section 14), and discharges, excluding to air (RMA section 15).

¹⁴ Whether the activity already requires a consent, or if it is currently permitted.

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Proposal 3: Providing a staged approach for application of the requirements to all registered water supplies

- 34 It is my strong view that everyone deserves safe drinking water, whether they get their water from a large or a small supplier. Safe drinking water is a human right recognised by the United Nations¹⁵. The main provisions of the NES-DW currently only apply to activities with the potential to affect a registered drinking water supply for no fewer than 501 people for not less than 60 days in a calendar year. As a result, many small communities are particularly vulnerable to the risks of unsafe drinking water.
- 35 Small supplies are less likely than large supplies to meet drinking water standards as they often have limited capability and capacity to respond to source water quality issues, meaning first barrier protection is particularly important.
- 36 The WSA now requires all water supplies other than a 'domestic self-supplier' (ie, a stand-alone or single domestic dwelling that has its own supply of water) to become registered, and to identify and manage risks to drinking water. Water suppliers currently registered under the Health Act have 12 months to register and submit a Source Water Risk Management Plan (SWRMP) to Taumata Arowai, while unregistered supplies have four years to register and seven years to submit a SWRMP¹⁶. A recent report for Taumata Arowai estimates there are 75,000-130,000 unregistered supplies.
- 37 Consistent with the WSA, I am proposing to extend the protections of the NES-DW to all registered water supplies. This will occur in stages, as mapping of SWRMAs and application of any necessary direction can only occur once supplies have been registered (and intake location data is provided). What this means is that each individual abstraction point of a registered drinking water supplier will be identified and included on the relevant SWRMA map. The costs for mapping SWRMAs will be borne by regional councils.
- 38 Alternative approaches considered include excluding some smaller supplies from the protections of the NES-DW, instead relying on the WSA amendment to the RMA that now requires risks and effects on source waters for registered supplies to be considered in all consent decisions, and reliance on freshwater plan development giving effect to the NPS-FM, or revisiting an expanded coverage of the NES-DW

¹⁵ Resolution 64/292: The human right to water and sanitation.

¹⁶ Unless an acceptable solution is adopted, or a general exemption is granted.

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following the registration of currently unregistered supplies with Taumata Arowai, in around 4 years. I do not consider these approaches will adequately reduce risks to source water for those smaller suppliers in a timely manner, and they risk misalignment with the source water requirements of the WSA.

Impacts of amending the NES-DW

- 39 The main benefit resulting from this proposal is a reduction in the preventable risk of source water contamination resulting from various uses of land and water. Consequently, this better enables water suppliers to provide safe drinking water. This, however, does not come without costs.
- 40 The main estimated costs for stakeholders include:
- 40.1 \$400,000: a one-off cost to the Government for guidance, consultation with stakeholders, and technical assistance for consent authorities, to aid the implementation of the NES-DW and set up the mechanism for Ministerial approval of bespoke SWRMAs.
 - 40.2 \$1,000–\$5,000: delineating a single water supply. Regional councils can make cost efficiencies by doing this for several water supplies at the same time, eg, \$5,000–\$10,000 per region using a default SWRMA.
 - 40.3 \$70,000–\$300,000: delineating a water supply using a bespoke SWRMA. However, a number of regional councils have already defined source protection areas for their regions, and we expect regional councils to apply for bespoke SWRMAs using existing data. The cost in this scenario would be about \$5,000 for a region.
 - 40.4 \$100,000 and \$200,000 per consent authority: to review activity status in the amended NES-DW against existing plans. This cost may vary depending on the extent to which existing source water protection provisions align with the amended NES-DW.
 - 40.5 For activities permitted under the current NES-DW that may require consent under the proposed amendments, the costs will vary depending on the complexity of the application. Consent costs may lie between \$5,000–\$40,000 per application.

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- 41 After conducting dedicated engagement, my officials have gathered additional views on the impacts of these proposals on key stakeholders, including regional councils, water suppliers and resource users. These impacts are summarised in Appendix 4.
- 42 It is important to note that calculating some of the costs of the amendments on a national level is complex, particularly for proposals 2 and 3, due to regional variations and the uncertainty around currently unregistered water supplies, including the type of source water body, number of supplies, and their location. Information gathered during public consultation will help better understand these costs.
- 43 Potentially increased costs to regional councils and resource users (further detailed in the draft interim RIS), will be balanced against potentially reduced costs to water suppliers, and in a contamination event, the health system, and individuals. Ministry of Health estimates put the total economic costs to society of the Havelock North outbreak to be just above \$21 million¹⁷.
- 44 Recent media coverage notes that ongoing water reforms may motivate some small water suppliers to stop their provision of drinking water services. This was explicitly discussed with a reference group including small water suppliers. There were no indications that the proposed amendments to the NES-DW would motivate them to stop providing drinking water services. To ensure this is representative of all suppliers, including the smallest ones, further analysis and engagement needs to occur, which will be enabled through public consultation. Where there are significant or potentially significant problems with a private water supplier (eg, ceasing to operate a supply), territorial authorities are required to work collaboratively with that supplier, its affected consumers, and Taumata Arowai¹⁸.

Implementation

- 45 The consultation document will seek further feedback to refine the proposal, and the support and guidance that may be required to facilitate its effective implementation.
- 46 The Government has an ambitious reform agenda across three waters and freshwater management, and there are opportunities to align NES-DW support and guidance with

¹⁷ Government Inquiry into Havelock North Drinking Water (2017) [Report of the Havelock North Drinking Water Inquiry: Stage 2](#).

¹⁸ As required through recent amendments to section 127 of the Local Government Act (2002)

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that of Three Waters Reform, and other initiatives such as for the NPS-FM or freshwater farm plans.

- 47 Amendments to the NES-DW relate closely to ongoing Three Waters reforms. My officials are currently working with Department of Internal Affairs and Taumata Arowai to develop a joint implementation plan for the NES-DW to ensure it reflects appropriately all relevant parties and interdependencies in the drinking water system.

Public consultation is the next step

- 48 When developing or amending a national environmental standard, Section 46A(3) of the RMA provides for use of a Board of Inquiry or an 'alternative process'. This proposal to amend an existing standard is narrow in scope, therefore I propose to use an alternative process, led by officials, with support from a technical advisory group. Notice will be provided to the public and iwi authorities, and a report prepared with recommendations to the Minister based on the submissions received to inform final policy decisions.
- 49 Subject to Cabinet's agreement, I intend to release the consultation document for public consultation on 10 January 2022 with an eight-week submission period, with direct engagement with iwi authorities and key stakeholders including regional councils, water suppliers and the primary sector. I consider this approach will give the public 'adequate time and opportunity to make a submission' as required by section 46A(4)(b) of the RMA.
- 50 Any significant changes to the proposed amendments to the NES-DW resulting from public consultation, will be brought back to Cabinet.

Treaty of Waitangi implications

- 51 Māori partners have been engaged during development of this proposal. Overall, iwi groups were supportive but raised concerns in relation to drinking water regulation and the wider resource management system.
- 52 The NES-DW will not change overall involvement of Māori in resource management matters. In strengthening source water requirements, iwi/Māori who are water suppliers will have a greater opportunity to be notified and involved in planning and consenting processes.

IN C O N F I D E N C E**Financial Implications**

53 There are no direct financial implications associated with this paper.

Legislative Implications

54 There are no immediate legislative implications from this paper.

55 Information obtained in response to the consultation document will be used to inform policy proposals that would result in amendments to the NES-DW.

Impact Analysis**Regulatory Impact Statement**

56 A draft interim regulatory impact statement (RIS) has been prepared and is attached to this paper.

57 The Ministry's RIS Panel has concluded the draft interim RIS partially meets the regulatory impact criteria "on the grounds that it is interim and recognises that the consultation process will be used to gather further information. The RIS adequately sets out the context and general rationale for the proposals. The RIS assesses the merits of the approaches to implementing the options, but assessment of alternative options is limited. There are several areas where the limited assessment of costs and benefits may impact on the quality of feedback."

Population Implications

58 The proposal will have a greater impact on resource users in rural communities as many source water takes, particularly for small water supplies, are located outside of urban centres. Resource users may find themselves located within SWRMAs, meaning where they undertake an activity, they will need to address their potential effects on source water.

59 Māori communities, in some rural environments, receive their drinking water from a marae. Work is currently underway to better understand how the proposed amendments to the NES-DW could impact on these communities. Further engagement is planned to support this work. This information will form part of the final RIS.

Human Rights

60 The proposals in this paper and the attached consultation document are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

IN CONFIDENCE**Consultation**

- 61 In September 2019, the Ministers for the Environment and Agriculture invited submissions on high-level proposals for amending the NES-DW through the Action for Healthy Waterways discussion document [CAB-19-MIN-0414 refers]. Since then, the proposals have been refined based on submission feedback, as well as through technical advice, analytical work and engagement with councils, water suppliers, iwi/Māori, technical working groups and other organisations. Stakeholder views are summarised in Appendix 5.
- 62 Officials have worked closely with the Department of Internal Affairs, Taumata Arowai, Ministry of Health and Ministry for Primary Industries. In addition, Defence New Zealand, the Department of Conservation, Department of Corrections, Ministry of Education, Ministry of Housing and Development, Ministry for Business, Innovation & Employment, Te Arawhiti, Te Puni Kōkiri, Waka Kotahi and the Department of Prime Minister and Cabinet have been consulted. Their feedback has been used to finalise this proposal.

Communications

- 63 I propose a press release immediately following Cabinet approval to consult on the proposed amendments to the NES-DW.
- 64 As discussed above, I propose to release the consultation document for public consultation, following Cabinet approval on 10 January 2022, with an eight-week period for submissions. Direct engagement with iwi authorities and key stakeholders including regional councils, water suppliers and the primary sector, will happen over that time.

Proactive Release

- 65 I also propose to proactively release this Cabinet paper and the draft interim RIS at the same time as the consultation document.

Recommendations

The Associate Minister for the Environment recommends that the Committee:

- 1 **note** that protection of the water body from which drinking water is taken provides a crucial barrier to protect drinking water from contamination

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- 2 **note** the intent of the National Environmental Standards for Sources of Human Drinking Water (NES-DW), introduced in 2007 was to protect source water, but the Havelock North Drinking Water Inquiry (HNI) and Ministry of Environment (the Ministry) review found it had not achieved its intended purpose
- 3 **note** the proposed amendments to the NES-DW are part of other improvements to drinking water and freshwater management, implemented through the Three Waters Review and Essential Freshwater programmes
- 4 **note** that proposals have been developed through submissions on high-level proposals to amend the NES-DW through the Action for Healthy Waterways discussion document [CAB-19-MIN-0414 refers], and through officials-led targeted engagement with key stakeholders, including regional councils, water suppliers, primary sector groups and iwi/Māori. Refinements have also included expert advice from a technical advisory group
- 5 **note** that proposed amendments to the NES-DW include:
- 5.1 **Proposal 1:** prescribing a consistent national approach for defining 'source water risk management areas' (SWRMAs), establishing three categories of land in terms of proximity to a source water take, and therefore risk to water quality
- 5.2 **Proposal 2:** updating and strengthening requirements for activities that pose risks to source waters in RMA plans and consenting decisions based on SWRMA
- 5.3 **Proposal 3:** providing a staged approach for application of the requirements to all registered water supplies
- 6 **note** that I have directed officials to work on a joint implementation plan with Department of Internal Affairs and Taumata Arowai to ensure alignment of these proposals with wider Three Waters reforms. I will report back on this implementation plan once final Cabinet decisions on these proposals are made
- 7 **note** that with regard to small private water supplies:
- 7.1 the Department of Internal Affairs is setting up a working group on rural water supply issues, including for small suppliers, as part of ongoing work for Three Waters Reform

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- 7.2 issues pertaining to the NES-DW that affect those types of supplies will be discussed with this working group, to a sensible extent
- 7.3 in reporting to Cabinet on issues arising from Select Committee consideration of the Three Waters Reform, Department of Internal Affairs officials will pay particular attention to the effects of the reforms (including the NES-DW) on small suppliers
- 7.4 Ministry for the Environment officials will include an assessment of the effect of including small supplies in the NES-DW as part of its report on submissions received
- 7.5 Ministry and Taumata Arowai officials will work together to build a clearer picture of small supplies, to inform their respective work programmes and take a tailored approach to implementation
- 8 **agree** to release the consultation document and regulatory impact statement for the purposes of public consultation
- 9 **agree** that public consultation on the proposed amendments is scheduled to commence on 10 January 2022, for a period of 8 weeks
- 10 **authorise** the Associate Minister of the Environment (Hon Kiritapu Allan) to make any final minor or technical changes to the consultation document prior to release
- 11 **note** that in mid-2022, I intend to report back to Cabinet with any amendments to the policy proposals resulting from consultation and seeking approval to issue drafting instructions.

Authorised for lodgement

Hon Kiritapu Allan

Associate Minister for the Environment

Appendix 1: draft consultation document

Proactively Released

Appendix 2: draft interim regulatory impact statement

Proactively Released

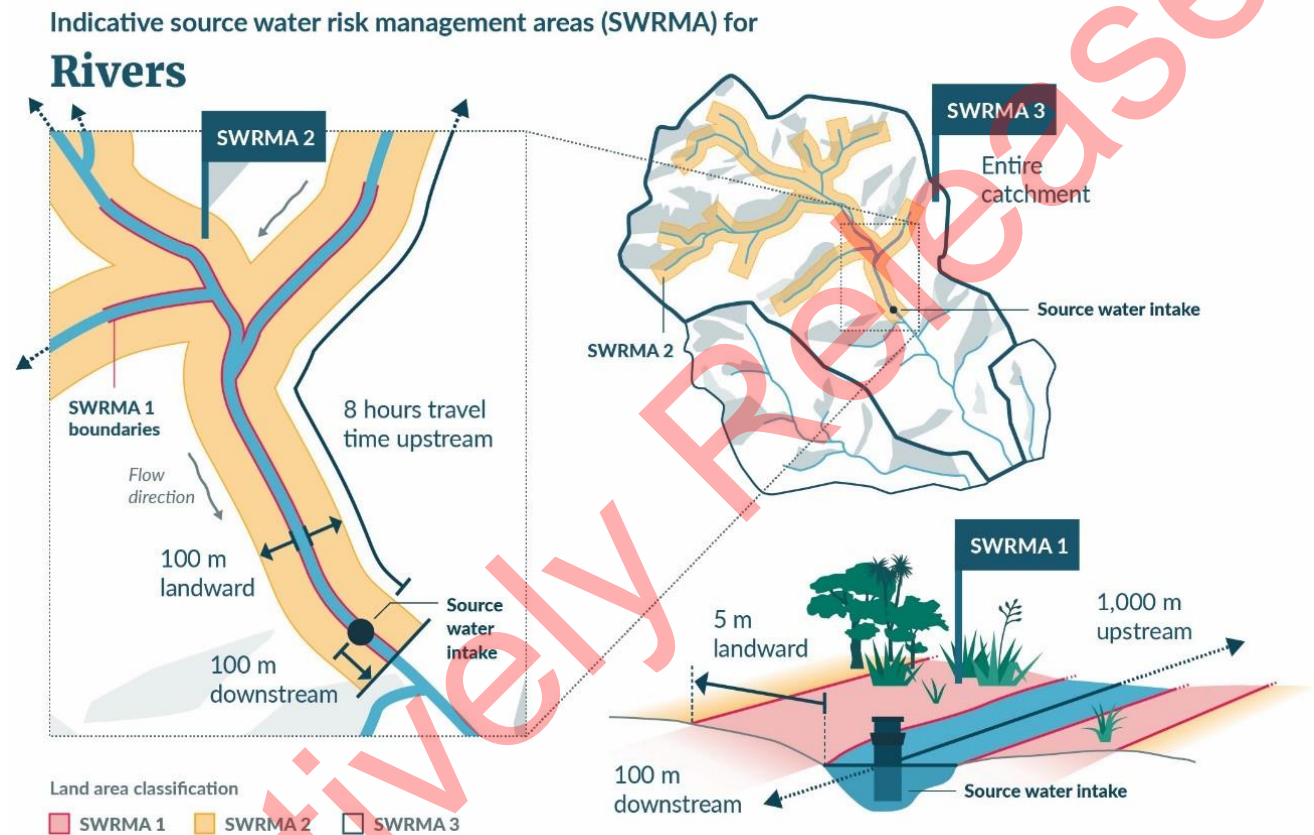
Appendix 3: Indicative SWRMA for rivers, lakes and aquifers

3-1 Indicative SWRMA for rivers

SWRMA 1 encompasses the river and its bed 1,000 metres upstream and 100 metres downstream of the intake, extending 5 metres into land from the river edge

SWRMA 2 is the area from where water travels to the intake within an 8-hour period

SWRMA 3 is the rest of the river catchment



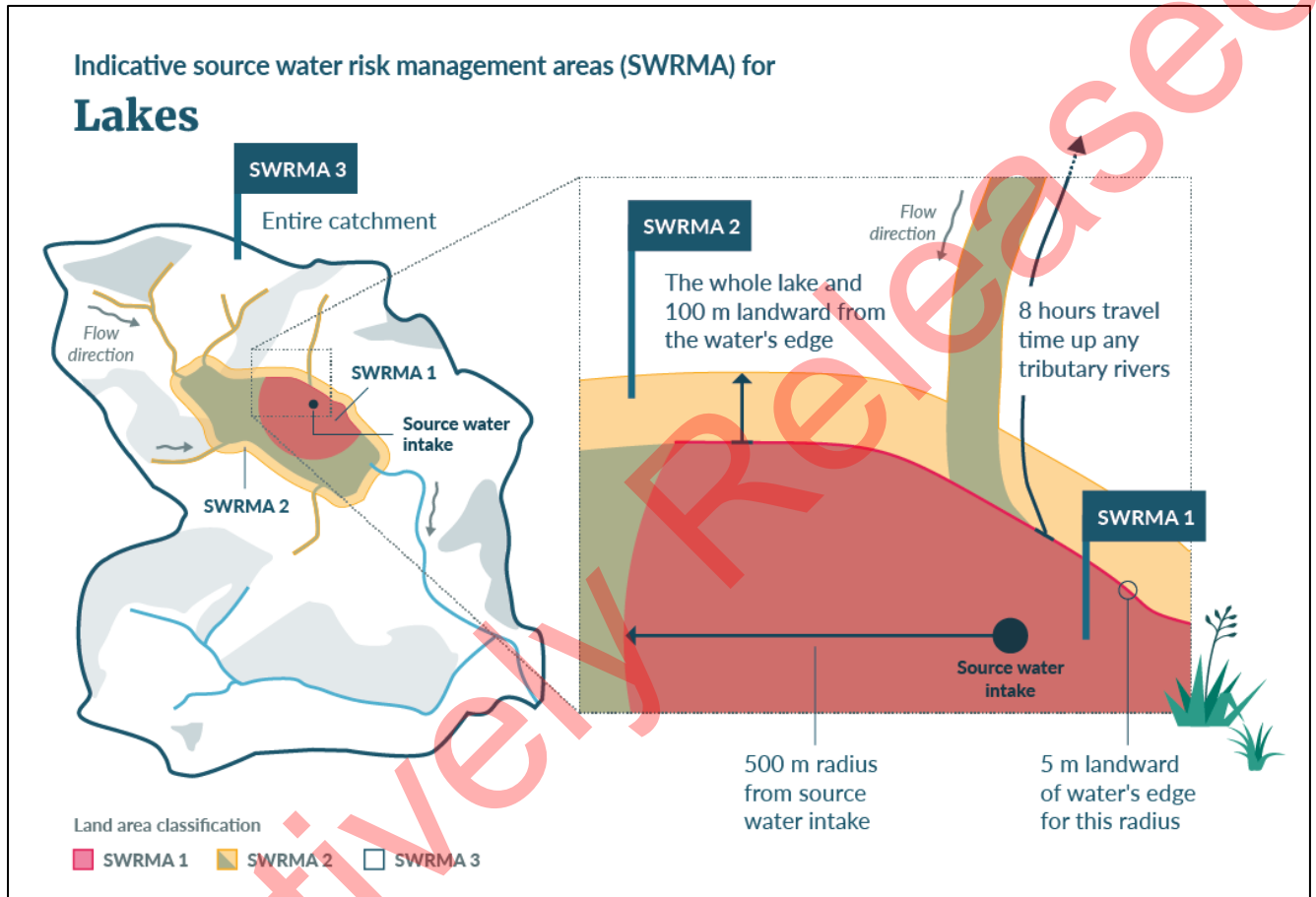
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3-2 Indicative SWRMA for lakes

SWRMA 1 encompasses the lake and its bed within a 500-metre radius of the intake, extending 5 metres into land from the lake edge

SWRMA 2 is the entire lake area, extending landward 100 metres, and includes tributaries (being the area from where water travels to the lake within an 8-hour period)

SWRMA 3 is the rest of the lake catchment



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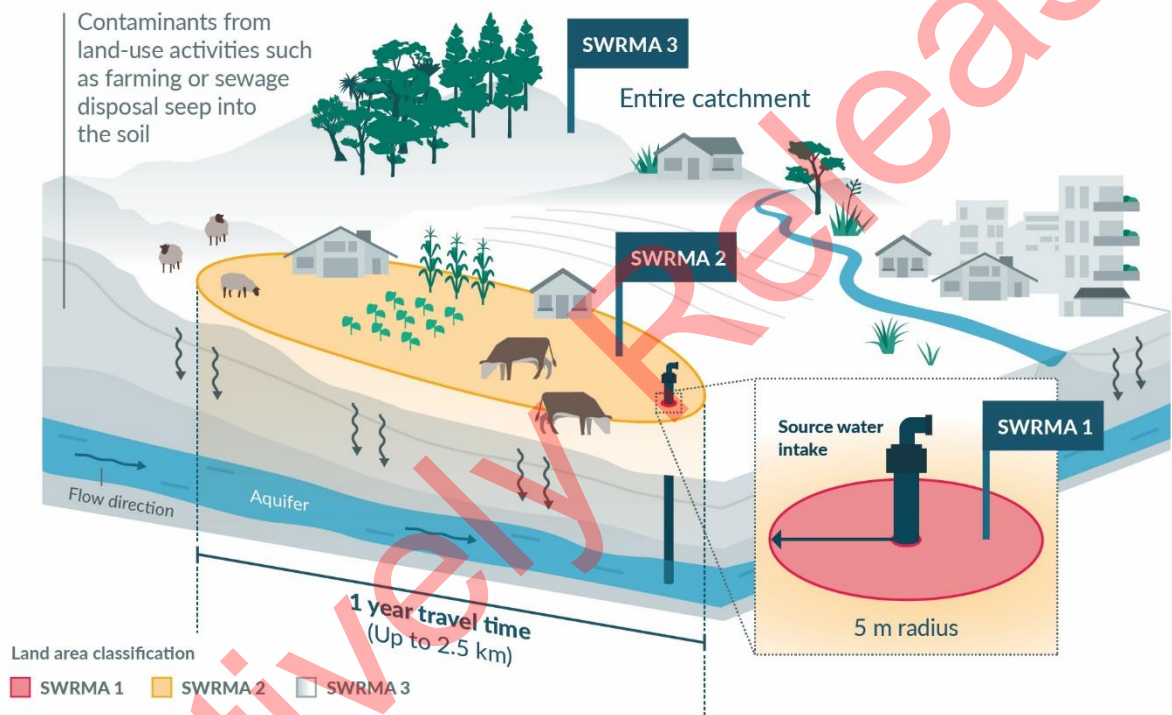
3-3 Indicative SWRMA for aquifers

SWRMA 1 encompasses land within a 5-metre radius around the intake (bore head)

SWRMA 2 is the land area above where groundwater travels to the intake (bore) within a 1-year period, to a maximum of 2.5 kilometres

SWRMA 3 is the rest of the land area overlying the aquifer, that contributes water to the aquifer

Indicative source water risk management areas (SWRMA) for Aquifers



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Appendix 4 - How will an amended NES-DW affect stakeholders?

Stakeholders	Roles and responsibilities
Regional councils	<ul style="list-style-type: none"> Mapping SWRMAs for all registered water supplies in their region, including engagement with water suppliers and other parties to help validate the delineation of SWRMAs and updating regional plans. Updating operational procedures to ensure the NES-DW is being applied to applicable consenting decisions and considered as part of compliance, monitoring and enforcement activities. Informing and educating resource users of the requirements of the NES-DW and any previously permitted activities now requiring a consent (noting a transition period will be provided for).
Territorial authorities (as consent authorities)	<ul style="list-style-type: none"> For any relevant land use restrictions, or other activities where proactive emergency response planning should be applied, updating operational procedures to ensure the NES-DW is being applied to applicable consenting decisions, and associated information and education of resource users.
Water suppliers	<ul style="list-style-type: none"> Permitted to undertake certain activities around their source water abstraction point, that support the provision of safe drinking water. Asked by resource users or regional councils, for greater involvement in consent applications where a risk to source water is identified.
Resource users	<ul style="list-style-type: none"> Activities continue to be controlled under the RMA, regional/district plans, and through any national direction including the NES-DW. Restricted from certain activities very close to source water abstraction points (SWRMA 1). New consents may be required for high-risk activities in a slightly broader area around the abstraction point (SWRMA 2) depending on how well their regional council previously regulated those risks. Must consider the effects of their activity on local registered drinking water supplies, and they are encouraged to engage with water suppliers when considering how to avoid, remedy, or mitigate effects.
Central government	<ul style="list-style-type: none"> Taumata Arowai to facilitate access to information on water supplies as contained in the national drinking water supply register, including location of abstraction points and information on risks to source waters (as identified in SWRMPs). Ministry for the Environment to provide support and guidance for councils to undertake mapping of SWRMAs. Ministry for the Environment to provide guidance on assessing risks to source water in consenting decisions in accordance with the requirements of the NES-DW.

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Appendix 5 – High-level feedback from stakeholders (including iwi partners)

Group	Overview of feedback provided
Post-Settlement Governance Entities & iwi	<ul style="list-style-type: none"> • Amendments to the NES-DW must give effect to Te Mana o te Wai. This includes allowing iwi direct involvement in the implementation of the proposed amendments. • An amended NES-DW must not hamper customary activities (eg, it will not preclude rāhui and is likely to enhance manaakitanga and mahinga kai). • Pre-existing governance settlements with iwi must not be affected by an amended NES-DW. • Water quality and quantity are part of the same equation for Māori. It is important to consider connections between the NES-DW, water allocation and Māori rights and interests. • Emphasised need to engage with tangata whenua during the implementation phase of any amendments.
Regional councils	<ul style="list-style-type: none"> • Generally supportive of the proposed amendments. • Noted that some regional councils have experience delineating source water risk management areas. • Stressed the importance of aligning the amendments with other current and planned policies. • Noted the amended NES-DW in relation to the on-going wave of reforms and point to some implementation and cost issues.
Territorial authorities	<ul style="list-style-type: none"> • Generally supportive of the amendments. • Noted the importance of amending the 'upstream' definition in the NES-DW. • Stressed the importance of investing in modelling to effectively delineate source water risk management areas efficiently. • Highlighted the importance of resource management reforms in relation to drinking water source management. • Regulating activities in source water risk management areas must account for real risks to source waters. • Some concerns about: <ul style="list-style-type: none"> - technical details not being clearly defined - impacts of on community use of land - how monitoring/enforcing regulations might hinder community resilience/innovation for water supplies. • Support inclusion of mātauranga Māori.
Water service providers	<ul style="list-style-type: none"> • Generally supportive of the inclusion water providers servicing communities smaller than 500 people. • Emphasised the importance of the NES-DW encouraging communication between consent applicants and water service providers.

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Group	Overview of feedback provided
	<ul style="list-style-type: none"> Highlighted the role of the NES-DW in the regional spatial strategies under the new resource management system. Generally supportive of risk management areas along with prescribed delineation methodologies. An amended NES-DW should lead to better outcomes by giving more authority to water suppliers. An amended NES-DW is unlikely to motivate stoppage of water service provision.
Water industry groups	<ul style="list-style-type: none"> Generally supportive of the amendments. Generally supportive of a risk management approach for source protection.
Primary sector groups	<ul style="list-style-type: none"> General agreement that source water needs to be protected. In rural areas, not all water use requires the same quality standards applied to drinking water. This includes water use for horticulture, stock water where treatment can cause issues. In some areas it is not feasible to treat water at source (ie, where it is used for stock and irrigation purposes that make treatment costly for the purpose). Policy needs to strike the right balance between water source protection and the commercial interests of the primary sector. Noted the complexity of water quality issues. Some concerns about land use controls impacting farming activities and the associated financial implications and costs of imposing these controls. Emphasised need to consider regional variations. Highlighted the value of Farm Environment Plans as an alternative to consenting.
Non-governmental organisations	<ul style="list-style-type: none"> Generally supportive of the principle of source water protection behind the NES-DW. Highlighted the importance giving effect to Te Mana o te Wai within the wider context of giving effect to the NPS-FM. Noted need for all sectors, regions, and communities to play their part in protecting and restoring the health of water. Default mechanisms to delineate source water risk management areas may be difficult due to the information required to complete models. Concern raised over the 5m distance in SWRMA 1. They provided evidence on the benefits of a 10m buffer strip particularly for freshwater sources. Further analysis is being completed on the risks associated with different distances for SWRMA 1 to inform final policy decisions. Suggested the NES-DW could prohibit some activities in specific source water risk management areas.

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