



## Essential Freshwater 80: Feedback on the proposed package and key areas to consider in response - for discussion by Sustainable Land Use Ministers

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Security Level	In confidence	MfE Priority:	Urgent

	Action sought:	Response by:
To Hon David Parker, Minister for the Environment	Forward this briefing to Sustainable Land-Use Ministers in time for your meeting on 19 November 2019	
To Hon Damien O'Connor, Minister of Agriculture		

Actions for Minister's Office Staff	<b>Return</b> the signed report to MfE and MPI.
Number of appendices and attachments 2	Titles of appendices and attachments (ie separate attached documents): 1. Possible options to amend the Healthy Waterways package in response to headline issues identified to date 2. Essential freshwater roadmap 2019/20
Note any feedback on the quality of the report	

### Ministry contacts

Position	Name	Cell phone	1 <sup>st</sup> contact
Principal Author	S9(2)(a)		
Director – MfE	S9(2)(a)	S9( )	✓
Director – MPI	S9(2)(a)	S9(2)(a)	✓

## **Essential Freshwater 80: Feedback on the proposed package and key areas to consider in response – for discussion by Sustainable Land Use Ministers**

### **Purpose**

1. This briefing provides background material for a meeting of Sustainable Land Use Ministers on 19 November, at which the freshwater reforms will be an agenda item.
2. The brief identifies 'headline issues' arising from recent public engagement on the freshwater regulatory proposals. For each issue, officials have identified alternative options or possible adjustments that could be explored and considered in response. Appendix one summarises these options.

### **Context**

3. Through public meetings, hui and council meetings the Government has received direct feedback from hundreds of farmers, the general public, tangata whenua, and councils.
4. 17,416 submissions have been received. These are being processed and analysed now. In the meantime, officials have reviewed the submissions of a number of key sector groups and stakeholders and, in general terms, have included these views in the analysis in this briefing.

### **Emerging key themes from submissions**

5. Emerging key themes are summarised below.

#### *Over-arching themes*

- i. There is widespread support for the Government's objectives of improving water quality and halting further degradation.
- ii. Many submitters support Te Mana o te Wai as an overarching framework, though some have questioned whether the hierarchy of putting the health of the water first is appropriate/lawful.
- iii. There are different views as to the degree of top-down regulation versus supporting 'on-the-ground' farm action this package should have.

#### *Sector themes*

- iv. Māori and eNGOs generally believe strong regulation and strengthening the performance and accountability of councils is critical. This includes strong support for the possible new nitrogen and phosphorus attribute tables.
- v. Māori have also expressed desire for the Crown to address wider rights and interests issues as soon as possible, especially propriety interests, governance and decision-making.
- vi. Local Government New Zealand and Federated Farmers consider that water quality issues are overstated, the case for such widespread regulatory reform is not made, and practical 'on-the-ground' action is largely what is needed.
- vii. Dairy sector organisations<sup>1</sup> appear mostly concerned about the proposed nitrogen and phosphorous attribute tables, followed by proposals that would require existing fences to

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<sup>1</sup> Fonterra, Dairy NZ

be moved. They appear to be largely supportive of most other proposals, albeit with some suggested changes.

- viii. The sheep and beef sector is particularly concerned that the proposals restrict their ability to adapt/intensify their farming systems. The sector is also concerned about the new proposed sediment bottom lines and many consider that estimated costs on farmers have been highly understated.
- ix. Vegetable growers are concerned they will be forced to reduce output in existing areas, but restrictions in other catchments will make it impossible for them to move/increase production elsewhere.
- x. There was concern from nearly all sectors and interests about the exemptions for hydroelectricity generation schemes.

#### *Allocation*

- xi. A number of stakeholders have noted that issues around allocation of water resources, including nitrogen discharges, need to be resolved.

#### *Proposed new attributes*

- xii. There is concern that the proposed dissolved inorganic nitrogen (DIN) bottom line is likely to be too ambitious for many waterways and insufficient impact analysis has been undertaken. Some are also concerned that the relationship between DIN and environmental harm (e.g. to macroinvertebrates) is not clear in all situations.
- xiii. There is concern that the proposed dissolved reactive phosphorus (DRP) bottom line is lower than what naturally occurs in many waterways. It has been suggested that further analysis is required to determine an appropriate DRP bottom line. There is also strong support for DIN and DRP bottom lines from many sectors and interests (largely outside the agricultural sector).

#### *Agricultural proposals*

- xiv. Many felt that the proposals should recognise existing efforts to improve water quality and the actions of 'early movers' should not be punished under the regulations.
- xv. Some submitters consider the proposals for fencing of waterways are too restrictive and a more targeted approach is required to be practical and impactful. On the other hand, many submitters considered the proposals should be strengthened, especially to cover smaller streams and drains.
- xvi. Some submitters consider the Freshwater Farm Environment Plans (FW-FPs) proposals should be removed from the regulatory package, others favour stronger rules set by national and regional instruments. Fonterra and Dairy NZ support mandatory FW-FPs but have concerns with the ability of existing certified farm planners to develop robust FW-FPs given the current capacity and timeframes to implement proposals in the NES.
- xvii. There is widespread concern over the level and quality of impact analysis at farm, regional and national level.
- xviii. There is a concern that the effect of the package would force nutrient use to be static or reduced, even in catchments where there are not water quality issues.

#### *Implementation*

- xix. There is concern about the level of compliance cost, the capacity of rural professionals, council capacity, and the administrative burden on landowners.
- xx. Many are concerned councils either wouldn't or couldn't deliver what is required.

## Headline issues in the package

6. In response to the key themes discussed above officials have identified some 'headline' issues where we recommend Ministers seek further advice from officials and/or the independent advisory panel.
7. The headline issues largely relate to the effect of the package on rural landowners and communities. This is unsurprising given that:
  - a. proposals affecting urban waste and storm water are yet to be developed in detail
  - b. forestry has been addressed under the plantation forestry NES – at least until this is substantively reviewed in 2021
  - c. some 60 percent of our waterways run through agricultural land.
8. The issues are:
  - a. Stock exclusion
  - b. Farm Environment Plans
  - c. Interim intensification controls including for commercial vegetable growers
  - d. Dissolved Reactive Phosphorus (DRP) table
  - e. Dissolved Inorganic Nitrogen (DIN) table
  - f. Periphyton (MPI proposal)
  - g. Exceptions for hydroelectricity generators
  - h. Compliance costs and administrative burden generally
9. Each of these issues are discussed in the table provide at Appendix One.
10. Ultimately, any changes to the package will need to be tested against the Government's agreed objectives of:
  - a. stopping further degradation and start making immediate improvements so that water quality is materially improving within five years; and
  - b. reversing past damage to bring freshwater resources, waterways and ecosystems to a healthy state within a generation.
11. As well as the headline issues, the submissions reviewed to date have identified many other aspects of the package that will need to be worked through.
12. We have attached a timeline for when decisions need to be made in order to have the regulatory package in place by the middle of 2020 (see Appendix two).

## Recommendations

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13. We recommend that you:


- a. Forward this briefing to Sustainable Land-Use Ministers in time for your meeting on 19 November 2019.

YES / NO

## Signature

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S9(2)(a)



Hon David Parker  
**Minister for the Environment**

**Date**

Hon Damien O'Connor  
**Minister for the Agriculture**

**Date**

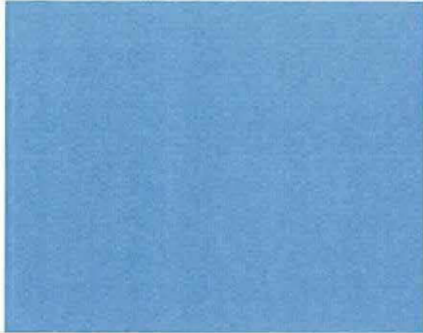
Appendix One: Possible options to amend the Healthy Waterways package in response to headline issues identified to date

Policy area	Summary of Discussion document proposal	Issues / concerns with the current proposal (based on feedback assessed to date and subject to further analysis of submissions and subsequent change)	Additional options to explore
<p><b>Exclusion of stock from waterways</b></p>	<ul style="list-style-type: none"> <li>• New requirements for excluding stock from wetlands, lakes and rivers &gt; 1 metre, with 5 metre average setback required, in areas mapped as low-slope</li> <li>• Existing fences less than 5 metres back from waterways need to be moved by 2025 or 2035 depending on current setback</li> <li>• Freshwater module in Farm Environment Plans (FEPs) to set out how/when stock will be excluded from rivers and streams &lt;1 metre wide and on farms outside the mapped low-slope areas (i.e. on hill country farms).</li> </ul>	<p>While supportive of the intent of this proposal, many farmers and agriculture sector organisations had concerns regarding aspects of the proposals for fencing of waterways. Concerns especially related to: the absence of supporting evidence or targeting to areas of highest risk; overall cost of the requirements which was expected to considerably exceed estimates in the interim RIS; the potential costs and fairness of having to move existing fences which is seen as penalising and disincentivising early adopters who have taken voluntary action; and the proposed average 5 metres setback.</p> <p>There was also considerable support for strengthening the stock exclusion proposals, including from 10,000 submitters using environmental groups' submission forms, a number of the science and research organisations, Iwi organisations, environmental groups and the Freshwater Leaders' Group.</p> <p>Key areas submitters considered needed strengthening were: inclusion of streams less than 1 metre wide and drains; increasing the area where the regulations would apply (i.e. beyond the current maximum mapped area); increasing buffer zones (especially on steeper slopes); and covering all stock.</p>	<p><b>Requirements to move existing fences:</b></p> <ul style="list-style-type: none"> <li>i. Develop exceptions criteria for when existing fences need not be moved</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>ii. Require fences to be moved at the end of their serviceable life</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>iii. Insert rules/guidance around when to move existing fences into FEPs.</li> </ul> <p><b>Requirements for setbacks from waterbodies:</b></p> <ul style="list-style-type: none"> <li>i. Tailor setback width to risk through a formula set out in rules/guidance in FEPs</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>ii. Change the proposed 5 metre setback distance</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>iii. Set criteria in the exceptions regime for when 5 metre setbacks are not required</li> </ul> <p><b>Coverage of the regulations</b></p> <ul style="list-style-type: none"> <li>i. Include streams less than 1 metre wide and drains</li> </ul> <p>AND/OR</p> <ul style="list-style-type: none"> <li>ii. Increase the mapped area in which the mandatory exclusions will apply to include areas up to [15 degrees] slope</li> </ul>
<p><b>Freshwater module of a Farm Environment Plan (FEP) framework</b></p>	<ul style="list-style-type: none"> <li>• Farmer to engage a Certified Farm Planner (CFP)</li> <li>• CFP to approve/certify the freshwater module of a FEP based on criteria in the NES.</li> <li>• FEP to be audited within two years, to be repeated every 2-3 years by an independent and recognised auditor.</li> <li>• Compliance with FEP requirements enforced by regional councils.</li> </ul>	<p>There is a skills shortage of rural professionals that are likely to be eligible to become Certified Farm Planners in the timeframe proposed. The number and capacity of farm planners needed is a key risk to the implementation of the FEP proposal consulted on.</p> <p>Other specific feedback arising from the FW-FP proposals include:</p> <ul style="list-style-type: none"> <li>• existing industry-led farm/land environment plan regimes should be recognised (with most other aspects of the FEP proposals deleted from the draft NES)</li> <li>• high upfront cost of developing a FEP for farmers and growers and the level of planning and auditing should be tailored to the level of risk being managed by the FEP</li> </ul>	<p><b>To address potential capacity constraints of Certified Farm Planners:</b></p> <ul style="list-style-type: none"> <li>i. Allow interim (eg, 5 years) recognition of industry FEP schemes. Farmers and growers can use: <ul style="list-style-type: none"> <li>a) certified planners to develop a FEP; or</li> <li>b) an industry certified scheme FEP</li> </ul> </li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>ii. Remove prescriptive details around content of FEPs from the NES and use existing industry guidance as a basis for developing a government specified scheme</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>iii. Extend the timeframes for the phasing-in of FEPs, but</li> </ul>

		<p>Many submitters supported FEPs but did not consider they should be mandatory or used as a regulatory instrument. For some this was a concern about cost, that the FEP would become a 'tick-box' compliance exercise, or the current formulation in the draft NES was too restrictive. Many environmental groups and Māori were concerned that mandatory FEPs would be overly-relied upon, would not be strong enough and would not achieve the outcomes sought. These groups favoured strengthened rules from both central and regional government.</p> <p>A number of agriculture sector organisations and many other submitters generally support the mandatory FEP proposals. This includes Fonterra, DairyNZ, around 400 submitters using the Dairy NZ form, and the NZ Farm Forestry Association. Beef and Lamb supported the concept for farm plans but want a non-regulatory approach, with actions targeted at identified weaknesses and risks.</p>	<p>strengthen and/or increase the coverage of immediate controls on some agricultural practices to compensate for longer time to establish controls through FEPs</p> <p><b>To address the concerns about upfront costs of the FEP:</b></p> <ul style="list-style-type: none"> <li>i. Officials explore the merits of options to reduce the direct costs to farmers of developing and/or implementing an initial farm environment plan.</li> </ul>
<p><b>Intensification</b></p>	<ul style="list-style-type: none"> <li>• Interim restrictions on land use changes and on increases in farm outputs, including restrictions on irrigated farming and high-risk land use changes.</li> <li>• Interim restrictions on commercial vegetable growing.</li> </ul>	<p>Concerns were raised that the intensification restrictions as proposed do not sufficiently delineate between higher and lower impact farming and growing activities. This can lead to unnecessary restrictions on activities with marginal net improvements to water quality outcomes.</p> <p>Specific concerns related to the land intensification proposals include:</p> <ul style="list-style-type: none"> <li>• Overly restrictive in terms of irrigation, in particular that some low-impact horticultural crops that need irrigation (like tree crops, grapes and berries) would be unnecessarily captured</li> <li>• The intensification rules overlook the importance of local food/vegetable production and associated health benefits of vegetables</li> <li>• Sheep and beef farmers are concerned they are being unfairly targeted/affected by the intensification rules, which are not targeted at the specific environmental impact of their farming systems and will constrain their flexibility to adapt in order to respond to other elements of these and other regulatory proposals</li> <li>• The cost and for some farms the challenge of retrospectively demonstrating baselines</li> <li>• A perception the interim rules will set the long term allocation of nitrogen discharge privileges – being grand parenting.</li> </ul> <p>There was also considerable support for the interim controls on intensification, including from key dairy sector organisations. A</p>	<p><b>Irrigated farming:</b></p> <ul style="list-style-type: none"> <li>i. Confine restrictions to only apply to increases in pastoral, arable and vegetable cropping. Irrigation for low-impact horticulture not captured</li> </ul> <p><b>High risk land use changes:</b></p> <ul style="list-style-type: none"> <li>i. Remove / change restrictions on land use change for dairy support</li> </ul> <p><b>Timing:</b></p> <ul style="list-style-type: none"> <li>i. Include a sunset clause in the NES to specify an end date to the intensification policies (until the end of 2025)</li> </ul> <p><b>Commercial vegetable growing:</b></p> <ul style="list-style-type: none"> <li>i. More analysis is required to achieve the Government's water quality objectives whilst helping maintain the supply of fresh vegetables at a reasonable cost for public health reasons. Recommend that officials lead the development of possible solutions for vegetable growing and the IAP is advised of this</li> </ul> <p><b>Strengthening the intensification controls (MfE Proposal):</b></p> <ul style="list-style-type: none"> <li>i. Consider extending intensification controls to intensification within a current farm system, for particular contaminants in catchments most at risk from increases in that/those contaminant(s)</li> </ul>

		<p>number of submitters, including Māori organisations, environmental groups, and individuals submitting of environmental organisations' forms, and the Kahui Wai Māori called for strengthening of the interim controls including: a 10 year total moratorium / 'total ban' on all intensification (including within current farm systems) and applications for further water extraction.</p>	
<p><b>Nutrient Attributes under the National Policy Statement for Freshwater Management (NPS-FM)</b></p>			
<p><b>Dissolved reactive phosphorous</b></p>	<p>New bottom lines in the NPS-FM for dissolved reactive phosphorous (DRP) of 0.018 mg P per litre.</p>	<p>The main concerns raised with the DRP proposal are that: it is not well-supported by science, not necessary to reach the DRP bottom line to achieve good ecosystem health in all types of rivers; the bottom line is stricter than the reference state for some catchments; and the concern about the economic impacts of meeting the bottom line in some areas.</p> <p>Other concerns raised include:</p> <ul style="list-style-type: none"> <li>the bottom line may be disproportionately stringent compared to other attribute bottom lines</li> <li>there is a wide range in natural variation in DRP around the country that has not been taken into account</li> <li>the economic costs of meeting the bottom line will outweigh the environmental benefits.</li> </ul> <p>Many submitters strongly supported the retention of the DRP based on the advice of the STAG. This included many environmental organisations and 10,000 submitters using environmental groups' submission forms.</p>	<p><b>Phosphorous</b></p> <p>i. Incorporate table into NPS-FM as:</p> <ul style="list-style-type: none"> <li>a) an Action plan attribute, or</li> <li>b) a Trigger value</li> </ul> <p>OR</p> <p>ii. <u>Defer</u> inclusion for now, but do more work on science evidence base/regional variation – e.g. examine feasibility of a deviation from reference state approach (similar to sediment attributes), and either:</p> <ul style="list-style-type: none"> <li>a) Aim to incorporate changes in 2020 NPS-FM revisions, or</li> <li>b) Defer changes to later date</li> </ul> <p>OR</p> <p>iii. Explore a managed transition / staged reductions in some areas:</p> <ul style="list-style-type: none"> <li>a) by waterway type, or</li> <li>b) based on load reduction feasibility and economic impact and impact of rural communities. This might involve an upper limit on the load reductions that are required for different farm or catchment types</li> </ul> <p>OR</p> <p>iv. Explore an exceptions regime based on environmental criteria:</p> <ul style="list-style-type: none"> <li>a) where a Council can demonstrate that improving DRP does not correspond with an increase in ecosystem health for that waterway, or</li> <li>b) where Council can demonstrate ecosystem health components are in a healthy state (e.g. MCI, fish IBI)</li> </ul>
<p><b>Dissolved inorganic nitrogen</b></p>	<p>New bottom lines in the NPS-FM for dissolved inorganic nitrogen (DIN) of 1.0 mg N per litre</p>	<p>The main concerns raised related to the proposed bottom line for DIN are that: it is not necessary to reach the DIN bottom line to achieve good ecosystem health in all types of rivers; and the</p>	<p><b>Nitrogen</b></p>

		<p>concern for the economic impacts of meeting the bottom line in some areas relative to the environmental benefits.</p> <p>Other concerns raised include:</p> <ul style="list-style-type: none"> <li>the science evidence base informing the attributes</li> <li>inconsistent with a holistic approach to managing ecosystem health the level of economic modelling and impact assessment undertaken</li> <li>how meeting this bottom line would impact the viability of primary sector production</li> <li>the overall achievability of the bottom line</li> <li>the proposals do not sufficiently take into account the natural variability in nutrient levels (and the relationship between DIN with other ecosystem components needs to be better understood and recognised through a more tailored approach).</li> </ul> <p>Many submitters strongly supported the retention of the DIN based on the advice of the STAG. This included many environmental organisations and 10,000 submitters using environmental groups' submission forms.</p>	<p>Apply any of the options (i to iv) outlined above for phosphorus (amended as necessary for nitrogen)</p> <p>WITH THE ADDITIONAL OPTION OF:</p> <ul style="list-style-type: none"> <li>v. Adjust the nitrate toxicity bottom line (current 6.9mg/l – protects 80% of species) <ul style="list-style-type: none"> <li>a) 2.4 mg/L (current B/C band) – protects 95% of species</li> <li>b) 3.8 mg/L (DairyNZ &amp; Fonterra suggestion) – protects 90% of species)</li> </ul> </li> </ul>
<p><b>Periphyton</b></p>	<p>Periphyton attribute in the existing 2017 NPS-FM</p>	<p>MPI comment: When the periphyton attribute was introduced in 2014 there was little data on this. Government was advised that there would be little impact but that it should be reviewed in future, which occurred in 2017. Since then we have much more regional council data on periphyton concentrations and modelling linking this to nutrient concentrations.</p> <p>It has now become clear that the impacts of achieving the bottom line are greater than was previously known. Major mitigation effort and broad swathes of land use change may be required to achieve the bottom line.</p>	<p><b>Periphyton (MPI proposal)</b></p> <ul style="list-style-type: none"> <li>i. Review existing Periphyton attribute table</li> </ul> <p>AND/OR</p> <ul style="list-style-type: none"> <li>ii. Explore a managed transition / staged reductions (based on economic impacts) as described for phosphorus and nitrogen above</li> </ul>
<p><b>Exceptions for hydroelectricity generation schemes</b></p>		<p>Consultation highlighted a common view (shared by Māori, environmental NGOs and some in the rural sector) that there should be no exemptions for hydroelectricity generation. Concerns include: that mitigating the generators' effects on waterways will need to be met by greater reductions/efforts by other water users; and that prioritising renewable generation is not consistent with achieving Te Mana o te Wai (especially where major diversions were in place).</p>	<ul style="list-style-type: none"> <li>i. Remove the exemption proposal</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>ii. Consider whether the exceptions need to apply in all the generation schemes currently proposed</li> </ul>
<p><b>Compliance costs and administrative burden generally</b></p>		<p>Many landowners have expressed concern at the level of administrative burden (including time and management focus) and compliance cost that would be driven by the regulatory package.</p> <p>In particular, compliance costs associated with obtaining, updating and auditing a farm plan and the costs and time associated with</p>	<ul style="list-style-type: none"> <li>i. Officials review the package with a view to considering options that may reduce administrative burden on landowners and councils, especially resource consent requirements</li> </ul>



obtaining resource consents where activities are not permitted activities. Farming sector submitters have estimated that these costs will be significantly in excess of those indicated in the interim RIS.

There is also widespread concern that councils may not have sufficient capacity and capability to fully implement the NPS-FM in the timeframes desired, and that the increased consenting requirements will place even more pressure on councils.

AND

- ii. Officials explore the merits of options to reduce the direct costs to farmers of developing and/or implementing an initial farm environment plan (discussed above)