Ministry for the Environment
Manatū Mō Te Taiao

OIAD-102

9(2)(a)

Dear 9(2)(a)

Thank you for your email of 04 August 2021 requesting the following under the Official Information Act 1982 (the Act):

> *- all briefings, notes, reports, aides memoire and other written material relating to proposed amendments to the National Environmental S andard for Sources of Human Drinking Water.*
>
> *Please provide all reports in an electronically searchable format and include all attachments.*

On 16 August 2021, the Ministry for the Environment (the Ministry) contacted you to clarify your request. You specified your request furthe for the following:

> *Documents produced by the ministry from July 1st 2020*

The Ministry has interpreted your reques to be for documents that are on the subject of or contain information regarding National Environment Standard for Sources of Human Drinking Water.

The Ministry has identified ten documents in scope of your request, as listed in the attached document schedule.

One document is withheld in full under s9(2)(f)(iv) of the Act to maintain the constitutional conventions for the time being which p otect the confidentiality of advice tendered by Ministers of the Crown and officials

Nine documents are released in part, with some information withheld under section 9(2)(f)(iv) of the Act to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials.

The briefings mention work on proposed national direction on wastewater discharges and overflows. The Ministry has advised that further work on a national regulation for wastewater is heavily dependent on the future of national direction and resource management reform, and that evidence collected through consultation and research indicates that an NES may not be the most effective way to address issues facing the sector. Officials are currently exploring the best method for improving the management of wastewater discharges in light of the Three Waters and Resource Management reforms.

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

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

Released under the provision of the Official Information Act 1982

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

Yours sincerely

Jo Gascoigne
**Director - Natural and Built System and Urban Water**

Released under the provision of the Official Information Act 1982

## Document schedule

| Document no. | Document date | Content | Decisions | OIA sections applied |
|---|---|---|---|---|
| 1. | 3 August 2020 | Next stage for Drinking Water NES engagement (NES-DW #5) | Release in part | Section 9(2)(f)(iv) |
| 2. | 5 August 2020 | Drinking Water National Environment Standard for Sources of Human Drinking Water update – Critical Friends Group Feedback | Release in part | Section 9(2)(f)(iv) |
| 3. | 19 November 2020 | Introduction to the Urban Water Portfo io and information for the Three Waters Ministers meeting on 25 November | Release in part | Section 9(2)(f)(iv) |
| 4. | 4 February 2020 | Amendments to National Environmental Standard for Sources of Human Drinking Water | Release in part | Section 9(2)(f)(iv) |
| 5. | 16 February 2021 | Additional information to support decisions on NES-DW | Release in part | Section 9(2)(f)(iv) |
| 6. | 19 February 2021 | Timeline for Urban Water Portfolio | Release in part | Section 9(2)(f)(iv) |

Released under the provision of the Official Information Act 1982

| | | | | |
|---|---|---|---|---|
| 7. | 1 March 2021 | NES-DW Technical Advisory Group and Engagement Approach | Release in part | Section 9(2)(f)(iv) |
| 8. | 21 May 2021 | Progress update on proposed amendments to the National Environmental Standard for Sources of Human Drinking Water | Release in part | Section 9(2)(f)(iv) |
| 9. | 18 June 2021 | Detailed Update on proposed amendments to the National Environmental Standards for Sources of Human Drinki g Water | Release in part | Section 9(2)(f)(iv) |
| 10. | 16 July 2021 | Draft Ministerial Package to inform amendments to the National Environmental Standard for Sources of Human Drinking Water | Withheld in full | Section 9(2)(f)(iv) |

Released under the provision of the Official Information Act 1982

Ministry for the Environment
Manatū Mō Te Taiao

Making Aotearoa New Zealand the most liveable place in the world
Aotearoa – he whenua mana kura mo te tangata

# Next stage for Drinking Water NES engagement (NES-DW #5)

| | | | |
|---|---|---|---|
| Date Submitted: | 3 August 2020 | Tracking #: 2020-B-07008 | |
| Security Level | In-confidence | MfE Priority: | Non-Urgent |

| | Action sought: | Response by: |
|---|---|---|
| To Hon David Parker, Minister for the Environment | Agree to proposed engagement approach | 10 August 2020 |
| CC Hon Nanaia Mahuta, Associate Minister for the Environment | n/a | n/a |

| | |
|---|---|
| Actions for Minister's Office Staff | **Return** the signed report to MfE. |
| Number of appendices and attachments | Nil |

## Ministry for the Environment contacts

| Position | Name | Cell phone | 1st contact |
|---|---|---|---|
| Principal Author | Megan Coffey | | |
| Responsible Manager | Adrian Young | 021 169 3893 | ✓ |
| Director | Jo Gascoigne | 027 531 7202 | |

Released under the provision of the Official Information Act 1982

## Next stage for Drinking Water NES engagement

1. This briefing seeks your agreement to MfE's engagement approach for testing and refining the proposed amendments to the National Environmental Standard for the Sources of Human Drinking Water (NES-DW). Within this approach, we propose to partner with the Department of Internal Affairs (DIA) and the Taumata Arowai (water services regulator) establishment unit, including through a regional iwi/Māori roadshow.

2. This is the 5th briefing provided to you on this NES, and should be read alongside briefing #4 which updates you on the proposed amendments (2020-B-07009 refers).

*The Government has been engaging widely on the three waters reforms*

3. The Three Waters reforms aim to enhance drinking water, wastewater and stormwater regulation and performance in response to the findings of the Havelock North Drinking Water Inquiry. Briefing #4 (2020-B-07009 refers) provides further information about these reforms.

4. There has been significant engagement over the last 18 months on Three Waters reforms with key stakeholders involved in the management and regulation of water services. This has been led by DIA and supported by officials from MfE and the Ministry of Health.

5. This engagement has included local government, district health boards, technical experts, water sector representatives, and iwi/Māori. Nine regional engagement workshops were held in March and April 2019, along with ongoing stakeholder meetings engagements with local government reference groups, and water advisory bodies[1].

6. A specific iwi/Māori engagement strategy was also developed to better understand Treaty rights and interests in Three Waters. This involved regional roadshows, case studies, and regular workshops with the Kāhui Wai Māori, the Waikato/Waipā River Iwi and the Iwi Representatives Rōpū convened specifically for this programme.

7. Key findings from this engagement included:

    a. There is support for a whole of system holistic approach to drinking water safety and source protection, including wastewater and stormwater systems, and for an independent water regulator

    b. Strong views that all proposed Three Waters reforms must uphold Te Mana o te Wai, and need to be aligned and integrated with the Government's other work programmes, including Essential Freshwater

    c. Concerns raised about costs and compliance burden for increased regulation, particularly for small communities and iwi/Māori.

*MfE have also been engaging on amendments to the NES-DW*

8. We are progressing proposed amendments to the NES-DW to ensure that councils are placing appropriate controls on activities which pose unacceptable risks to source waters. These amendments are intended to address the recommendations of the Havelock North Inquiry and are being staged for implementation on a similar timeframe to the Water Services Bill, a core element of the Three Waters reforms.

9. In September 2019, high level proposals for amending the NES-DW were included in the Action for healthy waterways consultation (CAB-19-Min-06189 refers).

10. Analysis of the relevant submissions received indicated broad support for strengthening the

[1] Cabinet Paper: Strengthening the Regulation of Drinking Water, Wastewater and Stormwater, Offices of the Ministers of/for Local Government, Health and Environment



Released under the provision of the Official Information Act 1982

requirements for source protection. Submitters sought clarification on how the NES-DW would be integrated into the wider drinking water reform, and wanted assurance there would be sufficient support to help councils implement the proposed amendments.

11. From March to June we further refined these proposed amendments, including seeking feedback from a Critical Friends Group. The outcomes from this work are outlined in briefing #4 (2020-B-07009 refers).

*MfE are now planning further engagement on the NES-DW in partnership with DIA*

12. We are planning further engagement to test and further refine the proposed amendments to the NES-DW, which will inform formal public consultation in early 2021. We want to test the amendments with:

    a. local government who will be responsible for implementing the NES-DW, and specifically Territorial Authorities in their role as water suppliers

    b. iwi/ Māori groups whom we are have obligations with as Treaty Partners, and those iwi which operate small water supplies

    c. land users/owners, including in the agriculture sector whom will potentially be affected by the changes, eg restrictions on activities and impacts on land-values.

13. We will also engage with drinking water suppliers (suppliers) in particular utilising the Water NZ network. Where possible we also intend to engage with small-scale suppliers (of under 500 people) whom are currently not regulated. These suppliers include small rural communities which have community governed wells outside of council control, for example small South Island settlements such as Glenorchy.

14. We are working closely with DIA/Taumata Arowai to identify opportunities to test our amendments alongside their engagement programme on the Three Waters reforms.

15. As part of this programme, DIA/Taumata Arowai are developing a strategy for engaging with iwi/Māori to inform further advice and decisions. This includes a series of regional roadshows across September to November.

16. We are proposing to partner with DIA/Taumata Arowai in these roadshows to test our ideas and further refine our amendments with iwi/Māori. Partnering with DIA will provide efficiencies, reduce engagement fatigue of participants and ensure we approach all drinking waters issues in a ho istic all-of-government way.

17. Our engagement approach is also closely aligned to the development of the Wastewater NES. You were previously provided a copy of advice (2020-B-06962 refers) on a proposed engagement approach for this NES, including the initial plan for targeted engagement with iwi/Māori groups and local government. We will work to combine engagements on these two NESs where possible

s9(2)(f)(iv)

19. The ollowing table summarises the proposed engagement approach and expected timeline.

Table 1: Engagement approach indicative timeline



Released under the provision of the Official Information Act 1982

s9(2)(f)(iv)

| Engagement activity |
| --- |
| Engagement scoping and planning (internally and with DIA/Taumata Arowai) |
| Partner with DIA/Taumata Arowai on iwi/Māori regional roadshows |
| Targeted engagement with councils, land users and d inking water suppliers |
| Finalise proposed amendments |
| Public consultation on amendments |

*Next steps*

20. If you agree to our proposed engagement approach (table 1), we will begin working with DIA/Taumata Arowai to plan for the iwi/Māori roadshow. We will also continue internal discussions on how best to align our engagement with that of the wastewater NES.
21. Following this next stage of engagement, we will further test the draft amendments with a Technical Advisory Group s9(2)(f)(iv)

## Recommendations



Released under the provision of the Official Information Act 1982

1. We recommend that you:

    a. **Agree** to the proposed engagement approach on the NES-DW, specifically for engagement with iwi/Māori through the DIA/Taumata Arowai roadshows.

Yes/No

s9(2)(f)(iv)

## Signature

Jo Gascoigne
Director
**Natural and Built System**

Hon David Parker
**Minister for the Environment** **Date**

Released under the provision of the Official Information Act 1982

# Drinking Water National Environmental Standard for Sources of Human Drinking Water update - Critical Friends Group feedback and next steps (NES-DW#4)

| | | | |
|---|---|---|---|
| Date Submitted: | 5 August 2020 | Tracking #: 2020-B-07009 | |
| Security Level | In-confidence | MfE Priority: | Non-Urgent |

| | Action sought: | Response by: |
|---|---|---|
| To Hon David Parker, Minister for the Environment | Agree to engagement approach | 18 August 2020 |

| | |
|---|---|
| Actions for Minister's Office Staff | **Forward** this report to Hon Nanaia Mahuta, Minister of Local Government<br>**Return** the signed report to MfE. |
| Number of appendices and attachments | Nil |

## Ministry for the Environment contacts

| Position | Name | Cell phone | 1st contact |
|---|---|---|---|
| Principal Author | Dianna Caird | | |
| Responsible Manager | Adrian Young | 021 169 3893 | ✓ |
| Director | Jo Gascoigne | 027 531 7202 | |

Released under the provision of the Official Information Act 1982

# Drinking Water National Environmental Standard for Sources of Human Drinking Water update - Critical Friends Group feedback and next steps (NES-DW#4)

## Key Messages

1. This briefing updates you on the proposed amendments to the National Environmental Standard for Sources of Human Drinking Water (NES-DW) and seeks your agreement to MfEs engagement approach for testing and refining these further.

*MfE are progressing amendments to the NES-DW*

2. As previously advised (Briefing 2020-B-06382 refers), MfE is amending the NES-DW in alignment with the wider three waters reforms, which responds to the Havelock North Inquiry.

3. The proposed amendments were originally consulted on as part of the Action for healthy waterways package. The amendments aim to ensure that councils are placing appropriate controls on activities which pose unacceptable risks to source waters. This includes changes to definitions of source protection areas, and new controls on development near source waters.

*A Critical Friend's Group was established in March 2020 to help refine the amendments.*

4. A Critical Friends Group has worked to refine the proposed amendments following consultation, identifying knowledge gaps and potential hurdles for implementation.

s9(2)(f)(iv)

7. We are also looking for opportunities to align our engagement with the development of the Wastewater NES.

s9(2)(f)(iv)

Released under the provision of the Official Information Act 1982

## Recommendations

9. We recommend that you:

a. **Note** that officials have further developed the proposed amendments to the NES-DW with the Critical Friends Group, identifying potential changes required.

b. **Agree** to the proposed engagement approach on the NES-DW, specifically fo engagement with iwi/Māori through the DIA/Taumata Arowai roadshows.

Yes/No

## Signature

Jo Gascoigne
Director:
**Natural and Built System**

Hon David Parker
**Minister for the Environment**
**Date**

Released under the provision of the Official Information Act 1982

# Drinking Water National Environmental Standard for Sources of Human Drinking Water update - Critical Friends Group feedback and next steps (NES-DW#4)

10. This briefing updates you on the proposed amendments to the National Environmental Standard for Sources of Human Drinking Water (NES-DW) and seeks your agreement to MfEs engagement approach for testing and refining these further.

**Context**

*Amending the NES-DW as a part of the Three Waters Reforms*

11. The amendments to the NES-DW are part of the Government's reforms to the three waters regulatory system, which aims to, among others, enhance drinking water safety and address the findings of the Havelock North Drinking Water Inquiry (the Inquiry).

12. These regulatory reforms are largely being progressed through the Taumata Arowai – the Water Services Regulator Bill (WSRB), which establishes the Water Services Regulator Taumata Arowai (Taumata Arowai), and the Water Services Bill (WSB), which sets out a new regulatory framework for drinking water.

13. The WSB imposes a number of duties on drinking water suppliers (suppliers) to ensure the provision of safe drinking water. It also includes obligations on suppliers and local authorities to work together to identify and manage risks to source waters. These provisions are intended to work alongside the NES-DW to provide a comprehensive framework to manage risks to source water.

14. The NES-DW was gazetted in 2008 to reduce the risk of land-use activities contaminating drinking water sources. The NES-DW currently requires regional councils to decline consents and remove or update plan rules in accordance with the criteria specified in the NES. The intended outcome of the NES-DW is to ensure long-term protection of drinking water sources, by controlling activities that can affect the safety of drinking water.

15. The Inquiry and the Ministry for the Environment's Review of the Drinking Water NES (the Ministry's Review) found that the current drafting and implementation of the NES-DW has not achieved its intended outcomes. The proposed amendments to the NES-DW are primarily intended to address a number of specific issues identified by the Inquiry and the Ministry.

16. The NES-DW is the second oldest NES and it has never been amended. Since 2007 there has been a significant increase on regulation related to, and affecting, water. This includes a range of other national direction tools which have been made in the last 12 years. This means that any amendments must not only update known deficiencies with the NES-DW and align to the WSB, but also ensure the NES-DW remains fit for purpose and consistent with other key RMA regulations that apply to water, land and urban environments.

s9(2)(f)(ii)

**Engagement to date**

18. There has been significant engagement over the last 18 months on Three Waters reforms with key stakeholders involved in the management and regulation of water services. This has been led by DIA and supported by officials from MfE and the Ministry of Health.





Released under the provision of the Official Information Act 1982

19. In September 2019, we consulted on the six high level amendments to the NES in the Action for healthy (AfHW) waterways discussion document as follows:

    - Amendment 1. Providing direction on setting source water protection areas, which will define the land area to which the regulations in the NES-DW apply
    - Amendment 2. Define the types of activities that must be assessed as potential risks to source waters within the source protection areas, including consent applications that require public notification
    - Amendment 3. Expand the scope of the regulations so they apply to all registered water supplies serving more than 25 people
    - Amendment 4. Develop a new approach for managing specific contaminants in source waters, including nitrate-nitrogen, that are challenging for drinking water suppliers to remove with conventional treatment processes
    - Amendment 5. Require regional councils and territorial authorities to place appropriate controls on the development and use of land in source water protection areas
    - Amendment 6. Require regional councils and territorial authorities to review plan rules for activities located within source water risk management areas.

20. Analysis of the relevant submissions received indicated broad support for strengthening the requirements for source protection. Submitters sought clarification on how the NES-DW would be integrated into the wider drinking water reform, and wanted assurance there would be sufficient support to help councils implement the proposed amendments.

**Analysis and Advice**

*Establishment of the Critical Friends Group*

21. Our Critical Friends Group (the Group) was convened in early March 2020. The Group worked to refine the proposed amendments following consultation, identify knowledge gaps and potential hurdles for implementation. We had to suspend the group during the COVID-19 situation. We reconvened in early May via video conferencing. We have included the input from the Group in the analysis of the proposals below.

22. The Group comprised a mix of experts in drinking water supply, regulation, consenting, te ao Māori, groundwater science and surface water science. Members were drawn from territorial authorities, regional councils, crown research institutes and consultancies. Officials from the Department of Internal Affairs (DIA) and the Ministry of Health (MoH) attended some meetings to observe and offer advice and information on intersecting policy.

**Refinement of the proposed amendments to the NES-DW**

23. Working with Critical Friends Group, the amendments have been furthered refined, and the Group also suggested further analysis and investigation for the Ministry to pursue.

*Amendment 1 Direction on setting source water protection areas*

24. This amendment seeks to address the findings of the Inquiry, by clarifying the spatial area to which the regulations apply. This is intended to provide an objective method for regional councils and territorial authorities to identify activities that need to be assessed against the requirements of the regulations. The AfHW discussion document included reference to a set of technical methods for identifying drinking water source protection areas (SPAs) as the

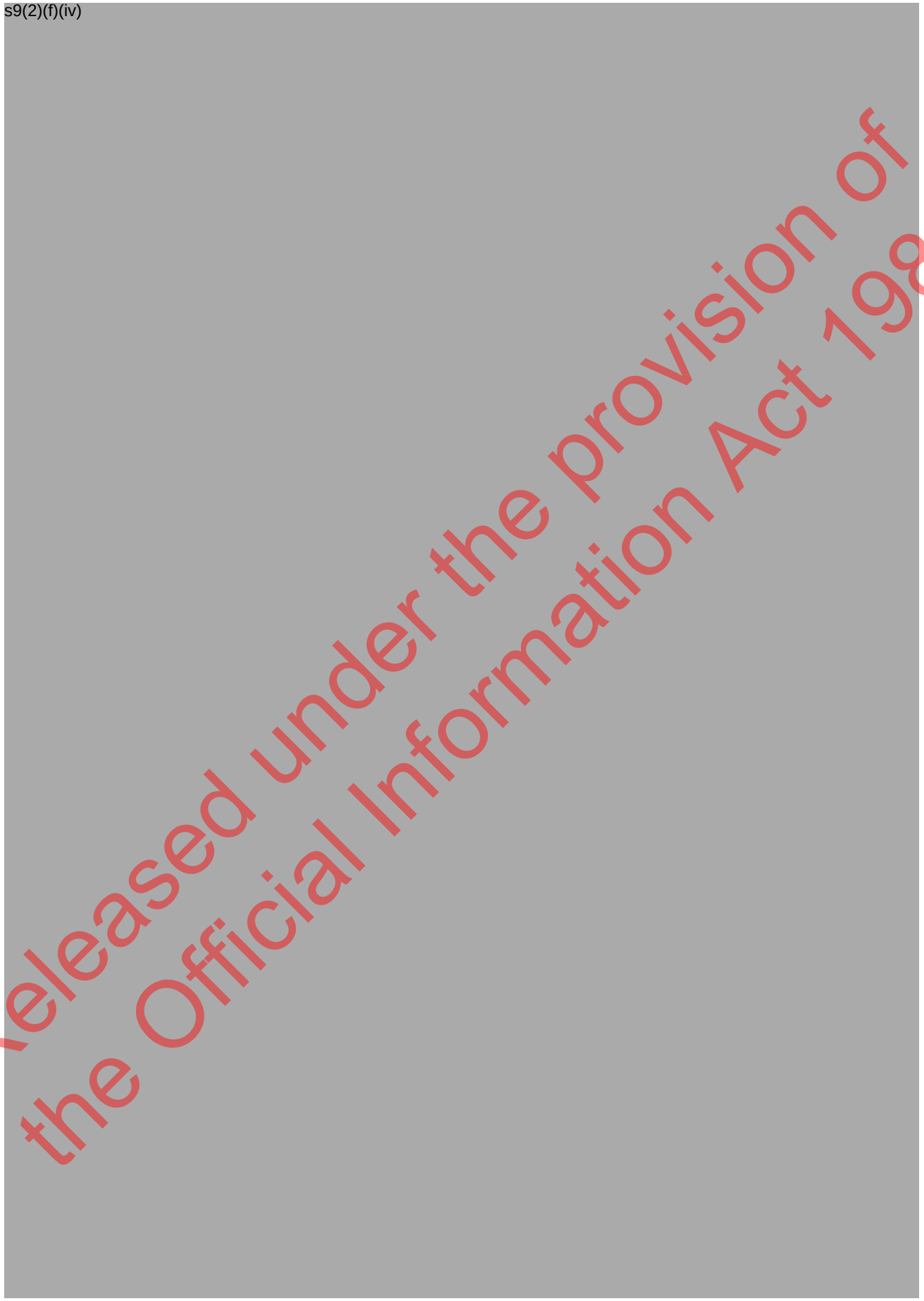




Released under the provision of the Official Information Act 1982

basis for this proposal[1].

s9(2)(f)(iv)



Released under the provision of the Official Information Act 1982

s9(2)(f)(iv)

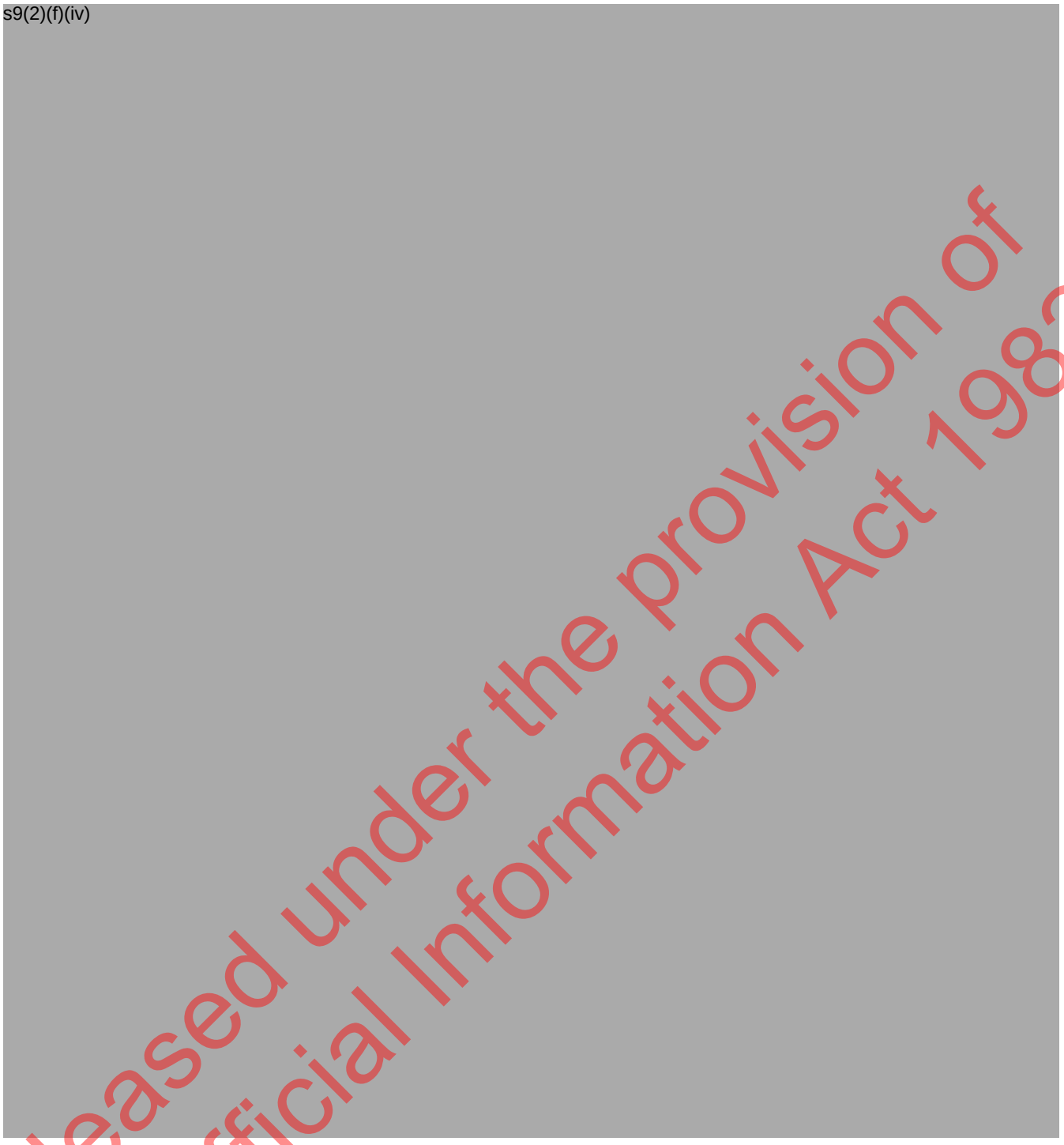
34. s9(2)(f)(iv)

We will also work with Taumata Arowai to ensure alignment between the NES-DW and the Source Water Risk Management Plans required by the WSB.

s9(2)(f)(iv)

Released under the provision of the Official Information Act 1982

s9(2)(f)(iv)



Released under the provision of the Official Information Act 1982

50. We will continue to work with our legal advisors and the National Direction Hub to ensure the NES-DW is designed to be fit for purpose when implemented. We will work with Taumata Arowai to determine what implementation assistance and support may be required.

*Other amendments*

51. Some minor and technical amendments to the NES-DW are likely to be required to align with the WSB, and other recent legislation changes. We will give you the detail of these changes in a subsequent briefing.

*MfE are now planning further engagement on the NES-DW in partnership with DIA*

52. We are planning further engagement to test and further refine the proposed amendments to the NES-DW, which will inform formal public consultation in early 2021. We want to test the amendments with:

- local government who will be responsible for implementing the NES-DW, and specifically Territorial Authorities in their role as water suppliers
- iwi/ Māori groups whom we are have obligations with as Treaty Partners, and those iwi which operate small water supplies
- land users/owners, including in the agriculture sector, whom will potentially be affected by the changes, eg restrictions on activities and impacts on land-values

53. We will also engage with drinking water suppliers (suppliers) in particular utilising the Water NZ network. Where possible we also intend to engage with small-scale suppliers (of unde 500 people) whom are currently not regulated. These suppliers include small rural communities which have community governed wells outside of council control, for example small South Island settlements such as Glenorchy.
54. We are working closely with DIA/Taumata Arowai to identify opportunities to test our amendments alongside their engagement programme on the Three Waters reforms.
55. As part of this programme, DIA/Taumata Arowai are developing a strategy for engaging with iwi/Māori to inform further advice and decisions. This includes a series of regional roadshows across September to November.
56. We are proposing to partner with DIA/Taumata Arowai in these roadshows to test our ideas and further refine our amendments with iwi/Māori. Pa tnering with DIA will provide efficiencies, reduce engagement fatigue of participants and ensure we approach all drinking waters issues in a holistic all-of-government way.
57. Our engagement approach is also closely aligned to the development of the Wastewater NES. You were previously provided a copy of advice to the Associate Minister for the Environment, Hon Nanaia Mahiuta (2020-B-06962 refers) on a proposed engagement approach for this NES, including the nitial plan for targeted engagement with iwi/Māori groups and local government. We will work to combine engagements on these two NESs where possible.

s9(2)(f)(iv)

*Next Steps and our anticipated timeframes*

59. If you agree to our proposed engagement approach, we will begin working with DIA/Taumata Arowai to plan for the iwi/Māori roadshow. We will also continue internal discussions on how best to align our engagement with that of the wastewater NES.
60. Officials are developing the policy to support the amendments, incorporating suggestions from the Group and obtain ng any further advice required. We will continue to work with DIA, MoH and the Taumata Arowai Establishment Unit to progress the policy and ensure the NES-DW will be a part of a nationally and regionally consistent regulatory framework.

s9(2)(f)(iv)

62. As previously agreed, a commissioner will be appointed to independently review the submissions analysis report following consultation, along with the report from the TAG final decisions on the amendments are made. A shortlist of candidates for the commissioner to review the final policy recommendations will be submitted post-election.
63. Our current policy development and engagement process and timeframe is outlined below in diagram 1.





Released under the provision of the Official Information Act 1982

s9(2)(f)(iv)

Released under the provision of the Official Information Act 1982

Document 3

Ministry for the Environment
Manatū Mō Te Taiao

Making Aotearoa New Zealand the most liveable place in the world
Aotearoa – he whenua mana kura mō te tangata

# Introduction to the Urban Water portfolio and information for the Three Waters Ministers meeting on 25 November

| | | | |
|---|---|---|---|
| Date Submitted: | 19 November 2020 | Tracking #: 2020-B-07342 | |
| Security Level | In-confidence | MfE Priority: | Non-Urgent |

| | Action sought: | Response by: |
|---|---|---|
| To Hon Kiritapu Allan, Associate Minister for the Environment | Read before meeting | 25 November 5pm |
| CC Hon David Parker, Minister for the Environment | None | |

| | |
|---|---|
| Actions for Minister's Office Staff | **Return** the signed report to MfE. |
| Number of appendices and attachments<br>2 | Titles of appendices and attachments (ie separate attached documents):<br>1. Progressing amendments to the National Environmental Standard for Sources of Human Drinking Water.<br>2. Next steps for improving on the regulation and management of wastewater discharges and overflows. |

## Ministry for the Environment contacts

| Position | Name | Cell phone | 1st contact |
|---|---|---|---|
| Principal Author | Adrian Young | | |
| Responsible Manager | Jen Price | 022 493 0064 | |
| Director | Jo Gascoigne | 027 531 7202 | ✓ |

Released under the provision of the Official Information Act 1982

# Introduction to the Urban Water portfolio and information for the Three Waters Ministers meeting on 25 November

## Key Messages

1. This briefing introduces you to the Urban Water portfolio and includes information on Three Waters reforms to support your participation at a Three Waters[1] Ministers meeting on 25 November 2020.

2. The Ministers meeting will be chaired by the Minister of Local Government who is leading the Government's Three Waters reform programme. The Minister of Local Government will provide materials to support discussions prior to the meeting. Officials from the Ministry will be in attendance to support you on any matters that relate to the Urban Water portfolio.

*Urban Water portfolio*

3. As Associate Minister for the Environment you have been delegated responsibility for the Urban Water portfolio. This portfolio focuses on improving the planning and management of urban development, land-use, and Three Waters infrastructure in our cities and towns to enhance Te Mana o Te Wai and support well-functioning urban environments.

4. The objectives for the Ministry's urban water work programme include:

    a. ensuring the resource management system is supporting an integrated approach for managing urban water issues by local authorities in partnership with iwi/Māori

    b. promoting and enabling good practices for land-use and urban development that improve urban water outcomes

    c. supporting improvements to the management and regulation of Three Waters, including regulation of wastewater, stormwater and drinking water sources under the resource management system.

5. Further details on the Urban Water portfolio and the Ministry's urban water work programme are provided in the supporting material section of this briefing.

*Three Waters reforms*

6. The Minister of Local Government is the lead Minister for the Government's Three Waters reform programme. This work is focused on improving the regulation and delivery of Three Waters infrastructure and services, which are primarily owned and managed by local authorities and council-controlled organisations.

7. The objectives of the Three Waters reforms include, among others:

    a. significantly improving the safety and quality of drinking water services and the environmental performance of wastewater and stormwater networks

    b. improving coordination and unlocking opportunities for infrastructure investment

    c. increasing resilience of Three Waters service provision to risks and events, particularly climate change and natural hazards.

8. The Three Waters reforms have strong linkages with the Urban Water portfolio but it is a separate work programme that is led by the Department of Internal Affairs.

[1] Three Waters refers to drinking water, wastewater and stormwater infrastructure services.



Released under the provision of the Official Information Act 1982

*Urban Water portfolio opportunities in the short-term*

9. We would like to meet with you to discuss the Urban Water portfolio and your priorities for what can be achieved through the Ministry's work programme, including linkages with other Environment portfolio areas and relevant cross-government work programmes.
10. There are two policy matters in the Urban Water portfolio that we recommend you consider over the coming months:
    a. Progressing amendments to the National Environmental Standard for Sources of Human Drinking Water
    b. Next steps for improving the regulation and management of wastewater discharges and overflows.
11. We have provided additional information on these two pieces of work in Appendix 1 of this briefing. We propose to provide you with further advice on these two policy matters in December 2020, including details of the process and timeframes for completing this work.
12. There are additional longer-term issues and opportunities to improve urban water outcomes that could be progressed during the new term of Government. Further information is provided in the supporting material section of this briefing.

## Recommendations

13. We recommend that you:

    a. **Note** the information we have provided on the Urban Water portfolio and Three Waters reforms to support your participation at the Three Waters Ministers meeting on 25 November

    b. **Note** that additional materials for the Three Waters Ministers meeting are expected to be provided by the Minister of Local Government

    c. **Meet** with officials for further discussion on the Urban Water portfolio and work programme

Yes/No

Released under the provision of the Official Information Act 1982

d. **Agree** that this briefing and appendices will be released proactively on the Ministry for the Environment's website within the next eight weeks

Yes/No

**Signature**

19/11/20

Jo Gascoigne
Director
**Natural and Built System**

Hon Kiritapu Allan
**Associate Minister for the Environment** **Date**

Released under the provision of the Official Information Act 1982

# Introduction to the Urban Water portfolio and information for the Three Waters Ministers meeting on 25 November

## Supporting material

### Purpose

1. This briefing introduces you to the Urban Water portfolio and includes information on Three Waters reforms to support your participation at a Three Waters Ministers meeting on 25 November 2020 from 5pm to 6pm.

*Three Waters Ministers meeting*

2. The Three Waters Ministers meeting will be chaired by the Minister of Local Government who is leading the Government's Three Waters reform programme. This is an informal group currently comprising the Ministers of/for Finance, Infrastructure, Housing, Commerce and Consumer Affairs, Environment, Rural Communities, Climate Change, Health, and Economic and Regional Development.
3. We understand the meeting will be led by officials from the Department of Internal Affairs who will provide an update on the current programme of work on Three Waters regulatory and service delivery reform. There is also expected to be discussion on next steps for service delivery reform, including Cabinet decisions in December 2020.
4. The Minister of Local Government will provide materials to support discussions prior to the meeting. We will provide further advice on these materials once received. Officials from the Ministry will also attend the meeting to support you on any matters that relate to your Urban Water portfolio. Officials can meet with you prior to the meeting if you wish.

### Context – the Urban Water portfolio

5. In Aotearoa's cities and towns people have important relationships with water. Water provides for the basic needs of our communities and supports the natural and built environments that many New Zealanders call home. Water can also present risks for our communities and infrastructure, such as flooding or contact with contaminated water.
6. Careful planning and management of water in urban areas is essential for ensuring the benefits of water can be enjoyed by all.
7. The Urban Water portfolio integrates and aligns the management of water, land and infrastructure in our cities and towns. It focuses on improving the planning and management of urban development, land-use, and Three Waters infrastructure to enhance Te Mana o te Wai[2], support well-functioning urban environments, and enhance the wellbeing of our communities.
8. Providing for Te Mana o te Wai means that by protecting the health and well-being of our freshwater we protect the health and well-being of our people and environments.

[2] Te Mana o te Wai is a concept that encompasses the integrated and holistic health and well-being of waters as a continuum from the mountains to the sea. A framework for Te Mana o te Wai is set out in the updated National Policy Statement for Freshwater Management and has also been incorporated into the Taumata Arowai – Water Services Regulator Act and the Water Services Bill.



Released under the provision of the Official Information Act 1982

9. Creating well-functioning urban environments that give effect to Te Mana o te Wai will require a transition towards new approaches to urban design, planning and infrastructure management that improve urban water outcomes while increasing resilience to natural hazards and climate change.

## Analysis and Advice

### Issues and factors that shape urban water outcomes

*The urban water system is facing a number of challenges*

10. Our urban waterways are some of the most degraded in the country with urban streams, harbours and beaches frequently polluted during heavy rainfall events. This affects the ability of communities and iwi/Māori to utilise and connect with urban water environments. Waterway degradation also impacts on the ability of iwi/Māori to exercise kaitiakitanga and affects our international reputation as a clean, green tourist destination.

11. The Three Waters regulatory system has failed to ensure that water services are delivered in a way that proactively addresses risks to human health and the environment. This means we cannot always be confident that our drinking water is safe, or that wastewater and stormwater systems are achieving good environmental outcomes.

12. The freshwater and wider resource management system have failed to provide the right incentives and frameworks to drive practice improvement and investment. The status quo is locked in, sub-optimal solutions are continued, and innovative solutions are difficult to introduce. This is problematic for increasing the uptake of green infrastructure (eg. permeable pavements and rain gardens), and interventions targeting the source of contaminants to prevent them being discharged into infrastructure networks or the environment.

13. Climate change is expected to pose significant risks to our drinking water, wastewater and stormwater systems as identified in the recently published National Climate Change Risk Assessment. The risks include changes in rainfall, temperature, drought, extreme weather events and sea-level rise. Existing infrastructure is often ill-equipped to cope with the impacts of climate change, as demonstrated during the recent drought affecting water supplies in Auckland and flooding in Napier. Legislative frameworks need to be reviewed to ensure climate change risks are actively considered in resource management planning decisions and investment decisions by water service providers.

14. There has been chronic underinvestment in Three Waters infrastructure with an estimated $30 billion to $50 billion deficit facing local government water service providers set against an annual spend of around $1.5 billion. Many local authorities lack the capacity and capability to respond to current and emerging challenges facing the urban water system.

15. There is also a lack of leadership at the national and city/catchment level to help guide investment decisions and coordinate the actions of councils, developers, central government agencies and community groups. Many community and iwi groups are frustrated by a lack of meaningful involvement in decision-making.

*There are three broad factors that significantly affect urban water outcomes*

16. **Planning and consenting decisions of local authorities under the Resource Management Act** (RMA) that set out the objectives, policies and rules that apply in urban areas. These decisions shape the design of urban areas by determining how and where different land-use activities can occur, including new urban developments and infrastructure, and what conditions are imposed on resource consents (e.g. discharges of stormwater). Local authorities must also provide for a range of matters of national



Released under the provision of the Official Information Act 1982

importance, such as maintaining public access to waterways, preserving natural character of coastal areas, and managing significant risks from natural hazards.

17. **Planning and investment decisions of water service providers** (territorial authorities and council-controlled organisations) which largely determine how, when and where Three Waters infrastructure is built and upgraded. These decisions are in turn heavily influenced by the design of legacy infrastructure, which often causes ongoing, difficult-to-solve issues and determines the "ceiling" of environmental quality that can be attained. Transport agencies and regional councils are also influential given their respective roles in building and maintaining roads and flood control infrastructure (ie. stormwater management).
18. **Decisions and behaviours of individuals, households, and businesses**, which collectively influence the demand for water services in urban areas and the volume and types of pollution entering urban environments (freshwater and marine). Influencing these decisions is critical for addressing urban issues that arise on private property, such as leaking pipes, cross-connections between stormwater and wastewater networks, and controlling contaminants at source.

**Objectives for urban water work programme**

19. To address the challenges facing the urban water system the Ministry has identified three high-level objectives for the urban water work programme:
    a. Ensuring the resource management system is supporting an integrated approach for managing urban water issues by local authorities in partnership with iwi/Māori, including clear roles, responsibilities, and objectives.
    b. Promoting and enabling best practice approaches to land-use and urban development that enhance Te Mana o Te Wai and support well-functioning urban environments.
    c. Supporting improvements to the management and regulation of Three Waters, recognising that achieving good environmental outcomes is fundamental for enabling sustainable urban development, building resilience to climate change, and supporting Te Mana o Te Wai.
20. Achieving these objectives and improving urban water outcomes requires the Ministry to apply different policy and non-regulatory levers and work in partnership with our Treaty partners, councils and other agencies.

**Previous work on urban water and Three Waters reforms**

21. During the last term of Government the Ministry's urban water work programme was largely focused on influencing urban water outcomes through the freshwater and Three Waters reform programmes. We also supported the Urban Water Working Group to identify opportunities to improve urban water outcomes.
22. Moving forwards we expect the Ministry's role in the Three Waters reforms to decrease as the focus of that programme shifts towards improving the funding and capability of water service providers through service delivery reforms. This provides an opportunity for the Ministry's urban water work programme to focus on other pathways for improving urban water outcomes. For example, working more closely with councils and iwi/Māori to develop strategies for enhancing Te Mana o Te Wai in urban areas and increasing the uptake of water sensitive urban design. Further details are provided below.

*Urban Water Working Group*

23. The Ministry convened the Urban Water Working Group in 2017 to assess existing problems related to urban water and to help identify policies and practices for improving



Released under the provision of the Official Information Act 1982

urban water outcomes. The Urban Water Working Group was an independent body of urban water practitioners from local government, consultancies and water industry groups.

24. During the last term of Government the Ministry supported the Group to prepare and publish two reports. The first report sets out a vision and principles for giving effect to Te Mana o Te Wai in urban areas and the second report provides recommendations for how to incorporate these principles into existing policies and practices. A key message from these reports is that each city and town in New Zealand needs a coherent vision and strategy for improving urban water outcomes to help guide decision-making at all levels.

25. Both of these reports have been published on the Ministry's website but they have not been endorsed as government policy. There is an opportunity for the Ministry to prepare a formal response to the Group's recommendation and use this as a platform for promoting transformation change in how urban water issues are addressed at a national, regional, and local level.

*Three Waters reform programme*

26. The Department of Internal Affairs (DIA) has been leading the Three Waters reform programme, which is focused on improving the regulation and delivery of Three Waters infrastructure. This work is led by DIA as the majority of Three Waters infrastructure is owned and managed by local authorities and councils controlled organisations.

27. The objectives of the Three Water reforms include, among others:

    a. significantly improving the safety and quality of drinking water services and the environmental performance of wastewater and stormwater networks

    b. ensuring all New Zealanders have equitable access to affordable water services

    c. improving coordination and unlocking opportunities for infrastructure investment

    d. increasing resilience of three waters service provision to risks and events, particularly climate change and natural hazards

    e. moving water services to a financially sustainable footing

    f. improving transparency and accountability in cost and delivery of water services.

28. During the last term of Government the Three Waters work programme had a strong focus on improving the Three Waters regulatory system and responding to the findings of the Government Inquiry into Havelock Drinking Water to address the first objective above (a.).

29. In June 2019 Cabinet agreed to initiate system-wide reforms to the drinking water regulatory system, and targeted reforms to the regulation of wastewater and drinking water sources under the Resource Management Act. This included the establishment of Taumata Arowai (the Water Services Regulator) to oversee and enforce the new drinking water regulatory regime. Taumata Arowai will also be required to benchmark the environmental performance of wastewater and stormwater systems and provide advice on good practices.

30. The Water Services Regulator Act was enacted in June 2020 to establish Taumata Arowai as an independent Crown agent. An Order in Council will be required to formally appoint the Board and enable Taumata Arowai to assume its regulatory functions in July 2021.

31. A Water Services Bill was introduced to Parliament before the election that will put in place the details of this new regulatory regime and provide Taumata Arowai with all the necessary powers to implement its regulatory functions.

32. As part of these reforms, Cabinet also agreed to progress amendments to the National Environmental Standard for Sources of Human Drinking Water (NES-DW) and initiate work to develop new regulation for wastewater discharges and overflows. This work is led by the Ministry for the Environment as part of the Urban Water portfolio and is being

Released under the provision of the Official Information Act 1982

progressed in parallel through the resource management framework (as discussed further below and in Appendix 1 and 2).

33. In the new term of Government the Three Waters reform programme is expected to focus on progressing reforms to service delivery arrangements for water services. This includes working towards the establishment of multi-regional water service providers that would be responsible for the planning and management of drinking water and wastewater networks, and in some cases, stormwater networks. The potential introduction of economic regulation for water services is also being considered.

34. The establishment of multi-regional water service providers is expected to achieve a step-change in the management, operation and performance of Three Waters infrastructure. We consider that it important to ensure the mandate for these entities enables them to deliver improved urban water outcomes and respond to the needs of urban development.

*Freshwater reforms*

35. The Ministry for the Environment has recently implemented significant freshwater reforms through the Essential Freshwater work programme. This includes the recently updated National Policy Statement for Freshwater Management (NPS-FM), the new National Environmental Standard for Freshwater (NES-F), and a new freshwater planning process under the RMA[3].

36. These reforms direct how regional councils plan and manage freshwater and resource use to give effect to Te Mana o Te Wai. They also require territorial authorities to play a role in managing the impact of urban development on water quality through their district plans. All local authorities must also actively involve tangata whenua in freshwater planning and management.

37. A significant level of resource and work will be required by councils to implement these reforms. Territorial authorities in particular are facing competing demands to implement freshwater reforms, better enable urban development, and navigate through the complexities of Three Waters service delivery reform, while partnering effectively with Iwi/Māori.

38. These demands have become even more difficult to manage in 2020 with the additional responsibilities and budgetary constraints brought on by COVID-19. In this context, the urban water work programme could step up its role in supporting territorial authorities to implement the freshwater reforms and help achieve better urban water outcomes.

**Urban Water portfolio opportunities in the short-term**

39. There are two policy matters in the Urban Water portfolio that you have the opportunity to consider over the coming months:

    a. **Progressing amendments to the National Environmental Standard for Sources of Human Drinking Water.** These amendments are intended to ensure the resource management system provides a robust framework for managing risks to drinking water sources in planning and consenting decisions. This work is closely aligned with the enactment of the Water Services Bill (led by DIA), which is expected to be referred to a Select Committee upon the resumption of Parliament.

    b. **Making decisions on the next steps for improving on the regulation and management of wastewater discharges and overflows**. This work is intended to enable a more consistent and robust approach for regulating discharges from municipal wastewater networks under the RMA. It has close linkages with new

[3] The new freshwater planning process was enacted by the Resource Management Amendment Act 2020.



Released under the provision of the Official Information Act 1982

wastewater reporting functions for Taumata Arowai that are set out in the Water Services Bill.

40. We have provided additional information on these two pieces of work in Appendix 1 and 2 of this briefing. We propose to provide you with further advice on these two policy matters in December 2020, including details of the process and timeframes for completing this work.

41. There are additional medium-term and longer-term opportunities to improve urban water outcomes that could be progressed during the new term of Government. These include:

    a. formally responding to the recommendations of the Urban Water Working Group

    b. progress a long-term national strategy for urban water in New Zealand

    c. ensuring that reforms to freshwater, resource management, and Three Waters provide an effective framework for managing stormwater in urban areas

    d. addressing heavy metal contamination (e.g. copper and zinc) in urban waterways through interventions targeted at controlling these contaminants at source

    e. addressing barriers for the uptake of water sensitive urban design and green infrastructure to improve stormwater management, particularly in urban areas undergoing intensification

    f. providing guidance for the implementation of freshwater reforms in urban areas

    g. ensuring climate change risks are actively considered in urban water related planning and investment decisions. Development of the National Adaptation Plan and resource management reforms are a potential vehicle for achieving this.

**Next Steps**

42. You will be attending the Three Waters Ministers meeting on 25 November 2020. Officials from the Ministry will be in attendance to support you on any matters that related to the Urban Water portfolio.

43. Officials would also like to meet with you to discuss these opportunities and your priorities for the Urban Water portfolio, including linkages with other Environment portfolio areas. We can provide further advice on any of the matters addressed in this briefing.

44. We propose to provide you with further advice on the National Environmental Standard for Sources of Human Drinking Water and wastewater regulation in December 2020.

Released under the provision of the Official Information Act 1982

## Appendix 1 – Progressing amendments to the National Environmental Standard for Sources of Human Drinking Water

### Why we are proposing doing this work

1. In June 2019 Cabinet agreed to initiate system-wide reforms to the drinking water regulatory system as part of the Government's Three Waters reform programme. The objective is to ensure risks to drinking water are being managed effectively by water suppliers and local authorities from 'source to tap'.

2. As part of these reforms, Cabinet agreed to consult on a high-level proposal for making amendments to the National Environmental Standard for Sources of Human Drinking Water (NES-DW) as part of the Action for Healthy Waterways discussion document.

3. This proposal signalled the need to place stronger obligations on local government to manage risks to drinking water sources in planning and consenting decisions under the Resource Management Act (RMA). This includes managing the effects of land-use activities on water quality in certain locations.

4. These amendments are intended to work in tandem with wider reforms of the Three Waters regulatory systems and the establishment of Taumata Arowai, which are being progressed through the Water Services Bill and the Water Services Regulator Act 2020.

5. This work forms part of the Ministry's urban water work programme, which supports better planning, management and regulation of Three Waters infrastructure and urban development. It also builds upon the Ministry's review of the NES-DW completed in 2018.

### Rationale for the work

6. The amended NES-DW is intended to establish a more consistent and robust approach for councils to use when considering the effects of activities on drinking water sources in RMA decisions. This includes imposing appropriate consent conditions, or in some cases declining consents, for activities that pose an unacceptable risk to drinking water sources.

7. These amendments are intended to work in tandem with provisions in the Water Services Bill that require water suppliers and local councils to share information and work together to identify and assess risks to drinking water sources in each catchment.

### Current situation

8. The proposed amendments to the NES-DW were signalled in the Action for Healthy Waterways discussion document in September 2019. Feedback from submissions indicated support for the proposed amendments, but many submitters raised questions about its workability and the costs of implementation.

9. We have also tested these proposals further with a group of technical experts in early – mid 2020. The group identified a number of knowledge gaps and issues that required further analysis to ensure the amended NES-DW is fit for purpose and aligned with both the wider drinking water reforms and other recently updated national direction such as the National Policy Statement for Freshwater Management.

10. Following this feedback the Ministry has been gathering and analysing further information to help test and refine the proposed amendments to the NES-DW and identify additional inventions that may be required to support implementation.

Released under the provision of the Official Information Act 1982

**Key decisions**

11. There are some key decisions that need to be made on the scope and timeframes for progressing these proposed amendments to the NES-DW. Some of these decisions include:

    a. scope of the proposed amendments to the NES-DW and any matters best addressed through other regulatory or non-regulatory interventions

    b. timing of public consultation and final policy decisions to ensure alignment with the enactment of the Water Services Bill and resource management reforms

    c. the terms of reference for a technical advisory group and commissioner (pending agreement to progress with amendments)

    d. details of specific amendments to the NES-DW including timeframes for implementation of specific provisions (pending agreement to progress with amendments).

12. The Minister for the Environment has overall responsibility for national direction instruments under the RMA, including decisions on amendments to the NES-DW.

**Engagement**

13. The proposed NES-DW amendments will require further engagement with Taumata Arowai, iwi/Māori, the drinking water sector and local authorities to test and refine the proposals.

14. Public consultation on the details of the proposed amendments will also be required in accordance with section 46A of the RMA.

**Connections with other policies**

15. The NES-DW is a component of the new drinking water regulatory framework that is primarily being put in place through the Water Services Bill, which will soon be considered by the Select Committee. Some of the proposed amendments to the NES DW are dependent on provisions contained in the Water Services Bill being enacted.

16. The NES-DW is a piece of national direction under the RMA and is connected to the future of national direction and RMA reform. The NES-DW also has specific connections to other pieces of national direction, particularly freshwater management. The Ministry is continuing to consider how to align advice with other national direction work programmes.

**Timeframes for work**

17. We are proposing to provide advice to you in December 2020 on options for the scope and timeframes of this work. This advice will take into account issues raised by the group of technical experts and previous Ministerial directions.

18. If you and the Minister for the Environment agree to progress with amendments we will seek agreement on the terms of reference for a technical advisory group and commissioner shortly afterwards.

19. s9(2)(f)(iv) [redacted] This timeframe is intended to align with the progress of the Water Services Bill that contains a number of enabling provisions.

Released under the provision of the Official Information Act 1982

**Next steps**

20. We intend to brief you on the various options and timeframes for progressing the NES-DW before the end of December 2020.

Released under the provision of the Official Information Act 1982

## Appendix 2 – Next steps for improving the regulation of wastewater discharges and overflows

### Why we are proposing doing this work

1. The Three Waters Review, led by the Department of Internal Affairs, identified a number of issues facing the regulation of three waters infrastructure (drinking water, wastewater and stormwater). One of the key findings was the need for greater national consistency in the regulation of municipal wastewater networks and more transparency on their environmental performance.

2. In June 2019, Cabinet agreed to initiate system-wide reforms to the drinking water regulatory system, and targeted reforms to the regulation of wastewater and stormwater networks.

3. As part of these reforms, Cabinet agreed in August 2019 to consult on a high-level proposal for a new national environmental standard for wastewater discharges and overflows as part of the Action for Healthy Waterways discussion document.

4. This proposal suggested the use of more consistent and robust approaches for regulating discharges from municipal wastewater networks under the Resource Management Act (RMA). This proposed regulation was intended to complement wider reforms to the three waters regulatory system, which are being progressed through the Water Services Bill.

### Current situation

5. Feedback from submissions on the Action for Healthy Waterways discussion document indicated in principle support for a proposed new environmental standard, but many submitters raised questions about its workability and costs of implementation.

6. Following this feedback the Ministry has been gathering and analysing further information to inform the design of a proposed new national regulation. This has included collating more detailed information on the current and emerging issues facing the wastewater sector, and reviewing existing consent conditions for wastewater treatment plants.

7. This work forms part of the Ministry's urban water work programme, which supports better planning, management and regulation of three waters infrastructure and urban development.

### Key decisions

8. There are some key decisions that need to be made on the scope, process and timeframes for further policy work to provide national direction on wastewater. Some of these decisions include:

    a. scope of further policy work to improve the regulation and management of wastewater networks, including any matters best addressed through wider resource management reforms or other regulatory or non-regulatory interventions

    b. process and timeframes for progressing further policy work, including the role of Treaty partners and other key stakeholders in policy development and timeframes for public consultation.

Released under the provision of the Official Information Act 1982

**Engagement**

9. The Ministry has initiated engagement with select representatives from regional councils and iwi/Māori groups to discuss their experience and understanding of wastewater management issues. We are also in discussions with these iwi/Māori groups about their participation in a proposed collaborative approach for policy development.

10. We intend to continue this engagement through to the end of 2020, including discussion with territorial authorities and water industry groups.

**Connections with other work programmes**

11. Further work on a national regulation for wastewater is heavily dependent on the future of national direction and resource management reform. The proposal has specific connections to other pieces of national direction, including freshwater management and the Coastal Policy Statement.

12. This work also has specific connections to the Three Water reforms being led by the Minister of Local Government. This includes:

    a. the Water Services Bill – which will provide Taumata Arowai with powers to monitor and report on the performance of wastewater operators

    b. proposed water service delivery reforms – which are working towards the establishment of multi-regional water services providers.

**Tentative timeframes**

13. We are proposing to provide advice to you in December 2020 on the scope and direction for further policy work on wastewater regulation. This advice will take into account issues raised during early engagement with councils and iwi/Māori groups and previous Ministerial directions.

14. If you agree to progress with further policy work on wastewater regulation we will provide advice on the proposed process and timeframes shortly afterwards. This will include advice on any Treaty partnership and statutory consultation processes that may need to be observed, as well as opportunities for utilising collaborative approaches to policy development.

**Next steps**

15. We will provide further advice on future policy work to improve the regulation and management of wastewater networks in December 2020. This will include advice on the interactions with the Water Services Bill.

Released under the provision of the Official Information Act 1982

Released under the provision of the Official Information Act 1982

Document 4

Ministry for the Environment
Manatū Mō Te Taiao

Making Aotearoa New Zealand the most liveable place in the world
Aotearoa - he whenua mana kura mō te tangata

# Amendments to National Environmental Standard for Sources of Human Drinking Water

| | | | |
|---|---|---|---|
| Date Submitted: | 04/02/2020 | Tracking #: 2021-B-07526 | |
| Security Level | In-confidence | MfE Priority: | Non-Urgent |

| | Action sought: | Response by: |
|---|---|---|
| To Hon Kiritapu Allan, Associate Minister for the Environment | Approve proposed process, scope and timeframes for amending the National Environmental Standard for Sources of Human Drinking Water | 12 February 2021 |
| CC Hon David Parker, Minister for the Environment | N/A | |

| | |
|---|---|
| Actions for Minister's Office Staff | **Forward** this report to the Minister of Local Government<br>**Return** the signed report to MfE. |
| Number of appendices and attachments<br>2 | Titles of appendices and attachments (ie separate attached documents):<br>1. Scope of the proposed amendments to the NES-DW including objectives and practical considerations<br>2. National direction instruments with linkages to the NES-DW |

## Ministry for the Environment contacts

| Position | Name | Cell phone | 1st contact |
|---|---|---|---|
| Principal Author | Adrian Young | | |
| Responsible Manager | Jennifer Price | 022 493 0064 | ✓ |
| Director | Jo Gascoigne | 027 531 7202 | |

Released under the provision of the Official Information Act 1982

# Amendments to National Environmental Standard for Sources of Human Drinking Water

## Key Messages

1. This briefing seeks your agreement on the statutory process, scope and timeframes for progressing proposed amendments to the National Environmental Standard for Sources of Human Drinking Water (NES-DW) as part of reforms to the three waters regulatory system.
2. We previously provided you with advice on the Urban Water portfolio (2020-B-07342 refers) and signalled the need for decisions on the NES-DW amendments. These decisions fall within your delegation as Associate Minister for the Environment but you may wish to consult with the Minister for the Environment before confirming your agreement.

*Statutory process for amending the NES-DW*

3. We are seeking your agreement to progress proposed amendments to the NES-DW using an alternative process led by officials.
4. Section 46A(3) of the Resource Management Act 1991 (RMA) requires the Minister for the Environment to choose between a Board of Inquiry or 'alternative process' when developing or amending a national environmental standard. In summary, the alternative process must meet certain requirements including:
    a. providing notice to the public and iwi authorities of the proposed national direction, including adequate time and opportunity to make submissions
    b. preparation of a report and recommendations to the Minister based on the submissions received that will inform final policy decisions.
5. We are recommending an alternative process led by officials with support from a departmental technical advisory group, including an independent review of our report and recommendations. We will also invite members of Kahui Wai Māori to provide advice and be involved in the technical advisory group.
6. If you agree with this proposed alternative process, we will provide you with an opportunity to provide feedback on the membership and terms of reference for the technical advisory group in late February. This will enable us to have the group operational by mid-March.

*Scope of the proposed NES-DW amendments*

7. We are seeking your agreement on the scope of the proposed amendments to the NES-DW to be progressed as part of the officials-led process. This will determine the proposals to be considered by the technical advisory group and subject to further investigation and testing by officials.
8. Further details on the proposed amendments, including objectives and practical considerations, are provided in Appendix 1. There may also be opportunities to improve how the risks to drinking water sources are being managed as part of the wider resource management reforms, but these would need to be progressed on a different timeframe.

*Proposed timeframes for amending the NES-DW*

9. The proposed amendments to the NES-DW are part of the wider three waters reforms that are being progressed through the Water Services Bill (WSB). The WSB is currently before the Health Committee and is expected to be enacted in mid-2021.

s9(2)(f)(iv)



Released under the provision of the Official Information Act 1982

s9(2)(f)(iv)

[redacted]

## Recommendations

12. We recommend that you:

a. **Agree** to progress amendments to the NES-DW with an alternative officials-led process with support from a departmental technical advisory group and an independent review of our report and recommendations.

Yes/No

b. **Agree** on the scope of the proposed amendments to the NES-DW to be progressed as part of the official-led process as detailed in Appendix 1.

Yes/No

s9(2)(f)(iv)

[redacted]

Released under the provision of the Official Information Act 1982

d. **Forward** this briefing to the Minister of Local Government

Yes/No

**Signature**

Jo Gascoigne
Director
**Natural and Built System**

04/02/21
**Date**

Hon Kiritapu Allan
**Associate Minister for the Environment**

**Date**

Released under the provision of the Official Information Act 1982

# Amendments to National Environmental Standard for Sources of Human Drinking Water

## Supporting material

### Purpose

1. This briefing seeks your agreement on the statutory process, scope and timeframes for progressing proposed amendments to the National Environmental Standard for Sources of Human Drinking Water (NES-DW) as part of reforms to the three waters regulatory system.
2. In our previous advice in November 2020 (2020-B-07342 refers) we indicated that there are some key decisions that need to be made in order to progress amendments to the NES-DW. These decisions include:
    a. the statutory process for progressing the proposed amendments to the NES-DW
    b. the scope of the proposed NES-DW amendments
    c. the timing of public consultation and final policy decisions.
3. This briefing provides background information and advice to support your decisions on these three matters.

### Context

4. The NES-DW was gazetted in 2008 alongside reforms to the Health Act to support a 'multi-barrier approach'[1] to drinking water safety in New Zealand. The purpose of the NES-DW was to reduce the risk of contamination of drinking water sources by requiring regional councils to consider the effects of certain activities on drinking-water sources. Its scope was limited to plan rules, and discharge and water permits that affect source water quality.
5. Following the drinking water contamination event at Havelock North in 2016, the Havelock North Inquiry and the Ministry for the Environment each reviewed the role of the NES-DW in supporting the provision of safe drinking water. The Havelock North Inquiry and the Ministry found that the design and implementation of the NES-DW had not achieved its intended goal of supporting a multi-barrier approach to drinking water safety.
6. The Havelock North Inquiry recommended major reforms to the drinking water regulatory system in New Zealand, including changes to the NES-DW, to ensure risks to drinking water are being managed effectively by water suppliers and local authorities from 'source to tap'.
7. In June 2019, Cabinet agreed to initiate system-wide reforms to the drinking water regulatory system as part of the Government's Three Waters reform programme, including the establishment of Taumata Arowai – the Water Services Regulator. The bulk of these regulatory reforms are being implemented through the Water Services Bill (WSB), which was introduced by the Minister of Local Government in September 2020 and is currently before the Health Select Committee. The WSB includes a number of provisions addressing

[1] The multi barrier approach is a system of procedures, processes and tools that collectively prevent or reduce the contamination of drinking water. It includes managing risks to source waters, robust water treatment processes, secure water supply networks, monitoring programmes, and emergency response procedures.



Released under the provision of the Official Information Act 1982

the identification, management and monitoring of risks to sources waters, including an amendment to Part 6 of the RMA.

8. In parallel, the Ministry has been developing proposed amendments to the NES-DW to address the issues identified by the Havelock North Inquiry and the Ministry. These amendments are intended to work in tandem with provisions in the WSB to provide a comprehensive approach for managing risks to drinking water sources.

9. These matters are being addressed through amendments to the NES-DW, as opposed to amendments to the RMA or through provisions in the WSB, because they provide technical details related to plan rules and how local authorities make consenting decisions under the RMA, which are more appropriately provided for by secondary legislation.

10. The Ministry has also been progressing wider reforms to the freshwater management system. This includes the Essential Freshwater reforms that introduced new rules and regulations to better safeguard Te Mana o te Wai and ecosystem health in September 2020. These new rules and regulations will impact on the management of source waters and the proposed amendments to the NES-DW will need to align with these existing regulations (see paragraphs 42-45 below for more detail on related national direction instruments).

**Engagement to date on three waters reform and NES-DW**

11. Over the last two years there have been multiple engagement processes undertaken by officials to inform three waters reforms, largely focused on local government and iwi/Māori. This engagement has been led by the Department of Internal Affairs (DIA) with support from the Ministry of Health (MoH) and the Ministry for the Environment.

12. The Taumata Arowai establishment unit has also undertaken engagement and outreach activities with the drinking water sector and iwi/Māori as it prepares to take on responsibility for administering the drinking water regulatory system in mid-2021.

13. In September 2019 high-level proposals for amending the NES-DW were included in the Action for Healthy Waterways discussion document alongside the Essential Freshwater reform package. Following this the Ministry for the Environment conducted engagement on technical matters related to the NES-DW, and provided opportunities for councils, water suppliers and iwi/Māori to provide feedback during wider engagement on three waters reform.

14. The engagement to date has indicated broad support for the proposed amendments to the NES-DW and for improving how the RMA addresses risks to source waters. However, feedback has raised some technical and workability issues that required further testing and analysis, including with Treaty partners and stakeholders that may be affected by specific proposals.

## Analysis and Advice

**Statutory process for amending the NES-DW**

15. We are seeking your agreement to progress proposed amendments to the NES-DW using an alternative process led by officials.

16. As associate Minister for the Environment you have delegated responsibility for exercising Ministerial functions and powers to develop national direction under the Resource Management Act 1991 (RMA) for matters related to urban water. This includes making decisions on amendments to the NES-DW, which is a national direction instrument under the RMA.

Released under the provision of the Official Information Act 1982

17. Section 46A(3) of the RMA requires the Minister for the Environment to choose between a Board of Inquiry or 'alternative process' for developing or amending a national direction instrument. In summary, the alternative process must meet certain requirements including:

    a. providing notice to the public and iwi authorities of the proposed national direction, including adequate time and opportunity to make submissions, usually in the form of a discussion document

    b. preparation of a report and recommendations to the Minister based on the submissions received that will inform final policy decisions.

18. We previously advised the Minister for the Environment to amend the NES-DW using an alternative process rather than a Board of Inquiry process (2019-B-05629 refers). We considered that the Board of Inquiry process was unwarranted given that the NES-DW is an existing national direction instrument and the proposed amendments are relatively narrow in scope.

19. s9(2)(f)(iv) s9(2)(f)(iv) We recommend that these amendments to the NES-DW are progressed using an alternative process led by officials with support from a departmental technical advisory group. We will also invite members of Kahui Wai Māori to participate in the technical advisory group and provide advice on the proposals.

20. The role of the departmental technical advisory group will be to provide advice to officials on the technical details of the proposed amendments that will be included in public consultation materials. The technical advisory group will also review technical issues identified in feedback from submissions and provide advice to officials to inform policy recommendations. This approach is similar to the process that has been used for other national direction instruments, such as the National Environmental Standards for Air Quality.

21. If you agree with this approach, we will provide further advice on the proposed membership and terms of reference for the technical advisory group in late February. This will enable us to have the group in place by mid-March.

**Scope of the proposed amendments to the NES-DW**

22. We are seeking your agreement on the scope of the proposed amendments to the NES-DW to be progressed as part of the official-led process. This will help determine the proposals to be considered by the technical advisory group and subject to further investigation and testing by officials.

23. As noted at paragraph 13 above, high-level proposals for amending the NES-DW were previously subject to public consultation in September 2019. During 2020 we undertook further work to test and refine these high-level proposals and consider how they would work alongside the wider reforms to three waters and the resource management system to improve the management of risks to source waters[2].

24. This included reviewing submissions made on the Action for Healthy Waterways discussion document, and testing proposals with regional councils and technical experts. We also took into account the feedback obtained through wider engagement on three waters reforms undertaken by DIA and Taumata Arowai, and the findings of the Havelock North Inquiry.

[2] The international convention is to use the term "source water protection" however the term "source water risk management" has been adopted in the Water Services Bill to better convey the purpose and function of this component of the multi-barrier approach to drinking water safety.



Released under the provision of the Official Information Act 1982

25. Through this process we identified a set of proposed amendments that we recommend are progressed this year alongside the enactment of the WSB in order to give effect to Cabinet decisions on three waters regulatory reform.

s9(2)(f)(iv)

27. Further details on these proposed amendments, including objectives and practical implications are provided in Appendix 1.

28. These proposed amendments are designed to work in tandem with provisions in the WSB to provide a comprehensive approach for managing risks to drinking water sources.

29. For example, the WSB will require water suppliers to work with local authorities to prepare source water risk management plans. s9(2)(f)(iv)

s9(2)(f)(iv)

30. The WSB also proposes to insert a new provision in Part 6 of the RMA that requires consenting authorities to have regards to risks to source waters in RMA consent decisions.

s9(2)(f)(iv)

31. We note that the proposed amendments are focused on those issues deemed essential for ensuring compatibility between the NES-DW and the provisions in the WSB. Other issues may be identified by the technical group or through engagement and public consultation that warrant further consideration.

32. Any issues not directly related to the scope of the proposed amendments to the NES-DW would most likely need to be addressed separately and on a different timeframe. For example, there may be opportunities to improve how the resource management system manages risks to drinking water sources as part of the repeal and replacement of the RMA.

33. We will notify you of any developments that affect the scope of the proposed amendments. You will also have the opportunity to review and agree on the details on the proposed amendments prior to seeking Cabinet approval to undertake public consultation.

s9(2)(f)(iv)

Released under the provision of the Official Information Act 1982

35. The WSB is scheduled to be enacted in mid-2021[3]. The timeframes for amending the NES-DW are recommended to closely follow the enactment of the WSB to ensure a coherent regulatory framework is in place across the WSB and RMA.

36. The proposed amendments to the NES-DW are dependent on provisions contained in the WSB so they cannot be progressed in advance of the enactment of the WSB. We will also need to consider submissions received on the WSB and use them to inform the design of the proposed amendments to the NES-DW.

s9(2)(f)(iv)

38. This timeframe would provide certainty for local authorities and water suppliers regarding their respective obligations under these two legislative instruments. s9(2)(f)(iv)
s9(2)(f)(iv)

39. This proposed timeframe would see the amendments to the NES-DW progressed in advance of the repeal and replacement of the RMA. National direction instruments, including the NES-DW, may be subject to changes when they are transitioned into the new resource management system. s9(2)(f)(iv)
s9(2)(f)(iv)

40. We note that Cabinet decisions on resource management reforms are anticipated to occur in 2021, which may have implications for the timing for Cabinet decisions on the NES-DW.

41. We will keep you updated on any risks to the timeframes for the NES-DW that may arise as a result of the resource management reforms and the Select Committee process for the WSB.

**Connections with other national direction instruments under the RMA**

42. The NES-DW has important connections with other existing national direction instruments under the RMA, particularly the National Policy Statement for Freshwater Management (NPS-FM).

43. The NPS-FM set outs a framework and process for freshwater management that also applies to waterbodies used as sources of drinking water. Underpinning the NPS-FM is the fundamental concept of Te Mana o Te Wai, which emphasises the importance of protecting the health and wellbeing of water in order to provide for the health of people and to provide for their social, economic, and cultural well-being. The WSB also makes explicit reference to the concept of Te Mana o Te Wai as defined in the NPS-FM.

44. Other national direction instruments with linkages to the NES-DW include:

    a. National Environmental Standard for Plantation Forestry
    b. National Environmental Standard for Freshwater
    c. Resource Management (Stock Exclusion) Regulations 2020

[3] The Health Select Committee is due to provide its report to Parliament on the WSB by 8 June 2021, with the second and third readings to follow.

[4] This would involve resolving any conflicts between the NES-DW and regional plans and determining whether the NES-DW is supported by objectives and policies of regional plans.



Released under the provision of the Official Information Act 1982

d. National Policy Statement for Urban Development

e. Freshwater farm plans (regulations currently under development).

45. Further detail on these linkages is provided in Appendix 2. The proposed amendments to the NES-DW will need to align with these instruments to avoid duplication of regulatory requirements under the RMA.

## Consultation and Collaboration

46. Officials from DIA and MoH have provided feedback on the advice contained in this briefing. We have also discussed the proposed timeframes with the Taumata Arowai establishment unit to ensure it aligns with the regulatory approach they are developing to implement the provisions in the WSB.

47. We note that further engagement with these agencies will be undertaken to ensure alignment of the implementation timeframes for the provisions in the NES-DW with the related provisions in the WSB.

48. We intended to undertake targeted engagement in March and April 2021 to test detailed policy proposals before undertaking formal public consultation. This is intended to include engagement with Treaty Partners and stakeholders that may be affected by specific proposals.

s9(2)(f)(iv)

[redacted]

## Financial, regulatory and legislative implications

51. As indicated above, the NES-DW is part of the wider three waters reform programme being progressed through the WSB. The amendments to the NES-DW need to remain aligned with timeframes for progressing the WSB.

52. There are no significant financial implications for the Ministry associated with the recommended approach for progressing amendments to the NES-DW. This work has already been budgeted within existing baselines.

## Next Steps

53. If you agree with the recommended process, scope and timeframes for progressing the NES-DW, then we will provide further advice on the membership and terms for reference for the departmental technical advisory group.

54. We will also provide you with advice on our proposed targeted engagement approach for testing the proposed amendments with Treaty partners and key stakeholders.

Released under the provision of the Official Information Act 1982

s9(2)(f)(iv)

Released under the provision of the Official Information Act 1982

s9(2)(f)(iv)

Released under the provision of the Official Information Act 1982

## Appendix 2 – National direction instruments and regulations with linkages to the NES-DW

| National Direction Instrument or regulation | Provisions relevant to NES-DW |
|---|---|
| **National Policy Statement for Freshwater Management 2020** | • Establishes Te Mana o te Wai as a fundamental concept that is relevant to all freshwater management.<br>• Objective is to manage freshwater to provide firstly for health and well-being of water bodies and freshwater ecosystems and then, secondly, for the health needs of people (such as drinking water) and, thirdly, for the ability of people and communities to provide for their social, economic and cultural well-being.<br>• Requires Regional Councils to identify if the national value of "Drinking Water Supply" applies to a Freshwater Management Unit (or part thereof). |
| **National Environmental Standards for Freshwater Management** | • Imposes a higher activity status for feedlots and stockholding activities carried out within 50 m of water body or within 50 m of a water abstraction bore.<br>• Where located within 50 m of water body or water abstraction bore, feedlots are Non-complying activities and stockholding is a Discretionary Activity. |
| **National Environmental Standards for Plantation Forestry** | • Provides for rules in a Regional Plan to be more stringent that the forestry regulations if the rules manage activities within 1km of an abstraction point for a drinking water supply for more than 25 people, or for quarrying activities undertaken over a shallow water table (<30 m below ground) that is above an aquifer used for drinking water.<br>• Requires Forestry Management Plans and Harvest Plans to identify any registered drinking water supply servicing more than 25 people within 1 km downstream of the forestry activity. |
| **Resource Management (Stock Exclusion) Regulations 2020** | • Requires stock to be excluded from specified wetlands, lakes and rivers that are more than 1 m wide. This is of relevance to surface water sources and groundwater where they receive contributions from surface water as the stock exclusion rules will reduce the potential for stock faeces to directly enter the water body.<br>• There are no specific provisions relating to sources of human drinking water. |
| **National Policy Statement for Urban Development.** | • Requires councils to provide at least for sufficient development capacity in the short-term (within the next three years), which includes networked infrastructure for drinking water supply.<br>• There are no specific provisions relating to sources of human drinking water. |
| **Freshwater farm plans*** | • Part 9A of the RMA enables the Minister for the Environment to impose regulation requiring the use of certified freshwater farm plans to control the adverse effects of farming on freshwater within specified districts or regions.<br>• *These regulations are currently under development. |

Released under the provision of the Official Information Act 1982

Released under the provision of the Official Information Act 1982

Ministry for the Environment
Manatū Mō Te Taiao

Making Aotearoa New Zealand the most liveable place in the world

# Additional information to support decisions on NES-DW

| | | | |
|---|---|---|---|
| Date Submitted: | 16/02/2021 | Tracking #: 2021-B-07612 | |
| Security Level | In-confidence | MfE Priority: | Non-Urgent |

| | Action sought: | Response by: |
|---|---|---|
| To Hon Kiritapu Allan, Associate Minister for the Environment | Review this additional information to inform your decisions on amendments to the NES-DW as recommended in 2021-B-07526 | 23/02/2021 |

| | |
|---|---|
| Actions for Minister's Office Staff | **Return** the signed report to MfE. |
| Number of appendices and attachments<br>3 | Titles of appendices and attachments (ie separate attached documents):<br>1. Appendix 1 – Scope of the proposed amendments to the NES-DW including Havelock North Inquiry findings<br>2. Appendix 2 – Overview of how source water provisions in Water Services Bill and NES-DW work together<br>3. Appendix 3 – Overview of links between NES-DW and other regulations and policy work programmes |

## Ministry for the Environment contacts

| Position | Name | Cell phone | 1st contact |
|---|---|---|---|
| Principal Author | Adrian Young | | |
| Responsible Manager | Jennifer Price | 022 493 0064 | |
| Director | Jo Gascoigne | 027 531 7202 | ✓ |

Released under the provision of the Official Information Act 1982

# Additional information to support decisions on NES-DW

## Key Messages

1. This briefing provides additional information to support your decisions on the process, scope and timeframes for amending the National Environmental Standard for Sources of Human Drinking Water (NES-DW).
2. We previously provided you with our advice on the process, scope and timeframes for amending the NES-DW (2021-B-07526 refers). Following discussions with officials on 11 February you requested additional information to support your decisions on these matters.
3. The following information has been provided in this briefing:
    a. summary of the existing provisions in the NES-DW
    b. summary of the Havelock North Inquiry findings and recommendation in relation to the NES-DW and managing risks to source waters
    c. details on how the proposed amendments to the NES-DW have been informed by the Havelock North Inquiry findings (Appendix 1)
    d. details on the source water provisions in the Water Services Bill (WSB) and connections with the proposed amendments to the NES-DW (Appendix 2)
    e. the timing of key milestones and decisions for progressing amendments to the NES-DW, including alignment with timeframes for the WSB
    f. a diagram indicating the links between the NES-DW and other regulations and policy work programmes (Appendix 3).

## Recommendations

4. We recommend that you
    a. **Note** that we have provided additional information to support your decisions on the process, scope and timeframes for amending the NES-DW

## Signature

Jennifer Price
Manager – Urban Water
**Water and Land Use Policy** **Date**

Hon Kiritapu Allan
**Associate Minister for the Environment** **Date**

Released under the provision of the Official Information Act 1982

# Additional information to support decisions on NES-DW

## Supporting material

### Purpose

1. This briefing provides additional information to support your decisions on the process, scope and timeframes for amending the National Environmental Standard for Sources of Human Drinking Water (NES-DW).

### Additional information to support decisions on the NES-DW

#### The provisions in the NES-DW

2. The NES-DW came into force in June 2008 and has never been amended.
3. The NES-DW requires regional councils and territorial authorities to consider risks to drinking water sources in certain consenting decisions. It also requires regional councils to review their plan rules and ensure the comply with the requirements of the NES-DW.
4. The provisions in the NES-DW are summarised in the table below.

**Summary of NES-DW provisions**

**Obligations on regional councils**

- Must decline any **discharge or water permits** that would cause a drinking water supply to become unsafe after existing treatment.
- Must be satisfied that **permitted activity rules** in regional plans will not cause a drinking water supply to become unsafe after existing treatment.
- These decisions must be based on the drinking water supply's current level of compliance with the Drinking Water Standards for New Zealand (DWSNZ) as follows:
    - If the drinking water supply is compliant with the DWSNZ then regional councils only need to consider effects on the quality of drinking water after treatment
    - If the drinking water supply is not compliant with the DWSNZ then regional councils to be satisfied that the activity will not degrade the quality of the source water by more than a minor amount.
- These provisions only apply to permits for activities located **upstream** or **up-gradient** of drinking water supplies serving more than **500 people**.

**Obligations on regional councils and territorial authorities**

- **Must consider whether an activity may, directly or indirectly, have a significant adverse effect on the quality of a drinking water supply, before making a decision on a resource consent application.**
- Must include an emergency notification condition on a **resource consent** for any activity that could, as a result of an accident or event (eg, chemical spill), cause significant contamination of a drinking water supply.
- These provisions only apply to permits for activities located upstream or up-gradient of drinking water supplies serving more than **25 people**.

Released under the provision of the Official Information Act 1982

**The Havelock North Inquiry findings and recommendations on source water**

5. In its Stage 2 Report the Havelock North Inquiry ('the Inquiry') found that the NES-DW and the Resource Management Act (RMA) did not provide adequate protection of drinking water sources.

*Inquiry's findings and recommendations on the RMA*

6. The Inquiry found that prior to the drinking water contamination event in Havelock North the protection of source waters was not 'front-of-mind' for RMA decision-makers in Hawke's Bay. They concluded that express recognition was required in the primary legislation to ensure all regional councils were giving this issue appropriate weight in RMA decision-making.
7. The Inquiry emphasised the need for 'precise and careful' wording in any changes to the RMA in relation to source water protection. They proposed that source water protection should encompass 'identifying and understanding the risks to drinking water sources and addressing and managing them appropriately'.
8. The Inquiry recommended amending sections 6 and 30 of the RMA to make it clear that regional councils have a responsibility to identify and manage risks to source waters when exercising their duties and functions under the RMA.

*Inquiry's findings and recommendations on the NES-DW*

9. The Inquiry identified a number of 'significant problems' with the NES-DW that they concluded have limited their effectiveness. These issues can be summarised as:
    a. the regulations are difficult to interpret and apply, and require a detailed understanding of drinking water treatment processes, catchment hydrology, and contaminant transport behaviour
    b. the regulations do not adequately address the full range of activities that can pose a risk to drinking water sources (including existing land-use activities) or provide adequate protection for water supplies serving less than 500 people
    c. there is a lack of information, guidance and communication protocols to support the effective implementation of the regulations by councils, and to ensure that risks to drinking water sources are addressed proactively.
10. To address these issues the Inquiry recommended consideration of a number of specific changes to the NES-DW including:
    a. replacing the upstream/up-gradient definition with a spatial criterion that defines the spatial area where the regulations apply, based upon source protection zones
    b. changing the criteria for assessing the effects of activities on drinking water supplies so that is it based upon source protection zones rather than existing levels of treatment
    c. changing the scope of the regulations so they apply to:
        i. all applicable land-use activities that pose a risk to drinking water sources, including activities governed by district plans, controlled activities, and activities that require land-use consents
        ii. drinking water supplies serving 25 or more people
    d. requiring regional councils to inform drinking-water suppliers and local health authorities of any consent applications with a potential to pose a risk to drinking water sources

Released under the provision of the Official Information Act 1982

e. reframing the emergency notification provision to require consent holders to adopt a more proactive and preventative approach for potential contamination events

f. redrafting the regulations so they are easier to interpret and apply.

11. The Inquiry also recommended updating and finalising the draft guidelines for the NES-DW to support better implementation.

12. We provided advice to the Minister for the Environment on these recommendations in August 2018. We recommended that addressing the findings and recommendations of the Inquiry would be best addressed through amendments to the NES-DW rather than through substantial changes to the primary legislation.

13. Cabinet subsequently agreed to progress high-level proposed amendments to the NES-DW and include provisions in the Water Services Bill addressing source waters as par of its response to the Inquiry. The Minister for the Environment also authorised the inclusion of a proposed amendment to Part 6 of the RMA in the Water Services Bill. Further details on these provisions are provided below.

**How the proposed NES-DW amendments address the Havelock North Inquiry findings**

14. We previously provided you with a table with details of the proposed scope of the amendments to the NES-DW (2021-B-07526 refers).

15. We have provided you with an updated version of this table at Appendix 1 that includes details on how the findings of the Inquiry informed each of the proposed amendments to the NES-DW. The updated table demonstrates that all the proposed amendments to the NES-DW were directly informed by the findings of the Inquiry from the Stage 2 Report.

**Source water provisions in the WSB**

16. In July 2020 the Minister of ocal Government introduced the Water Service Bill that will implement system-wide reforms to the three waters regulatory system.

17. The Water Services Bill includes provisions that place obligations on drinking water suppliers and local authorities to identify, assess, manage and monitor risks to source waters. In summary, these provisions will require:

a. drinking water suppliers to provide geographical coordinates of the location of each abstraction point where they take water from the source waters

b. drinking water suppliers and local authorities to work together to assess and manage risks to source waters through the development of source water risk management plans

c. drinking water suppliers to periodically monitor the quality of their source waters

d. egional councils to report annually on changes in source water quality and assess the effectiveness of source water risk management actions every five years

e water suppliers and local authorities to proactively inform each other of any known risks and hazards that could affect the safety of drinking water

f. local authorities to have regard for risks to source waters when making decisions on resource consents (proposed amendment to Part 6 of RMA).

18. These provisions are intended to work in tandem with amendments to the NES-DW to provide a comprehensive approach for managing risks to source waters. The primary mechanism through which these two instruments interact are the source water risk managements plans (SWRMPs). These SWRMPs are largely the responsibility of water suppliers, but they are also intended to help inform RMA decisions.



Released under the provision of the Official Information Act 1982

19. We have provided a diagram in Appendix 2 that illustrates how the provisions in the Water Services Bill are expected to work alongside the amended NES-DW.

20. We note that as a package, the provisions in the Water Services Bill and the proposed amendments to the NES-DW are designed to address the findings and recommendations of the Inquiry in regards to improving the management of risks to source waters under the RMA.

### Timeframes for key decisions on NES-DW

The table below provides an overview of the timeframes for the key milestone and decisions for amending the NES-DW.

| Key Milestone/Decision Point | Indicative timeframe |
|---|---|
| **Minister approval** of process, scope and timeframes for NES- DW amendments | February 2021 |
| Officials test and refine proposed amendments with Technical Advisory Group and targeted engagement, taking into account Select Committee submissions for the Water Services Bill | March/April/May 2021 |
| **Minister approval** of proposed NES-DW amendments for public consultation, including discussion document | s 9(2)(f)(iv) |
| **Minister seeks Cabinet approval** to consult | s 9(2)(f)(iv) |
| Public consultation | s 9(2)(f)(iv) |
| Officials analyse submissions and prepare report and recommendations | s 9(2)(f)(iv) |
| **Minister and Cabinet approval** of final policy decisions on NES-DW amendments | s 9(2)(f)(iv) |
| Officials work with PCO to draft amended NES-DW | s 9(2)(f)(iv) |
| **Minister seeks Cabinet approval** to gazette the amended NES-DW | s 9(2)(f)(iv) |

### Links between NES-DW and related policy work programmes

We have prepared a diagram at Appendix 3 that illustrates the links between the NES-DW and related regulations and policy work programmes.

Released under the provision of the Official Information Act 1982

## Appendix 1 – Scope of the proposed amendments to the NES-DW including Havelock North Inquiry findings

s 9(2)(f)(iv)

Released under the provision of the Official Information Act 1982

[1] Technical Guidelines for Drinking Water Source Protection Zones is available at https://www.mfe.govt.nz/publications/fresh-water/technical-guidelines-drinking-water-source-protection-zones.

[2] The Drinking Water Standards for New Zealand are regulations made under the Health Act 1956.

| Proposal | Current regulation under NES-DW | Proposed amendment | Relationship to findings of the Havelock North Inquiry | What this means in practice | Considerations and next steps for further refinement |
|---|---|---|---|---|---|
| s 9(2)(f)(iv) | | | | | |

Released under the provision of the Official Information Act 1982

## Appendix 2 – Overview of how source water provisions in Water Services Bill and proposed amendments to NES-DW work together (subject to Select Committee process)

**Note:** SWRMP = source water risk management plan

### Step 1 - Water suppliers develop SWRMP in collaboration with local authorities (WSB)

| | | | | |
|---|---|---|---|---|
| Water suppliers provide Taumata Arowia with GIS data on location of abstraction points | Local authorities provide information to water suppliers in accordance with any compliance rules | Water suppliers undertake risk assessment based on environmental conditions of the catchment | Water suppliers (and local authorities) determine actions that will be undertaken to manage risk to source waters | Water supplier lodges SWRMP with Taumata Arowai, which is shared with local authorities |

### Step 2a - Water suppliers (and local authorities) implement SWRMP (WSB)

| | | |
|---|---|---|
| Water supplier implements actions to manage risks as documented in the SWMRP | Local authorities implement actions to manage risks on behalf of the water supplier as agreed in the SWMRP | Water suppliers submit on notified plan changes and consents (optional - not a regulatory requirement) |

### Step 2b - Local authorities comply with NES-DW and consider SWRMPs in RMA decisions

s 9(2)(f)(iv)

Consenting authorities have regard for SWRMPs when making decisions on resource consents (WSB inserts provision in Part 6 of RMA)

### Step 3 - Water suppliers and local authorities monitor and evaluate SWRMPs (WSB)

| | | |
|---|---|---|
| Water suppliers monitor water quality in source waters and provide this information to regional councils | Regional councils publish information annually on source water quality and quantity | Regional councils assess the effectiveness of regulatory and non-regulatory interventions to manage risks to source water every 3 years |

Released under the provision of the Official Information Act 1982

## Appendix 3 – Overview of links between NES-DW and other regulations and policy work programmes

### Department of Internal Affairs

**Three Waters Reform programme**

**Service Delivery reforms**

Establishment of new water service entities *(in progress)*

**Taumata Arowai**

The new Water Services regulator – goes live mid-2021 *(pending enactment of Water Services Bill)*

Must protect safety of drinking water and give effect to Te Mana o te Wai in its functions and duties

**Water Services Bill**

Puts in place the new drinking water regulatory framework, including obligations on water suppliers and local authorities to work together to identify and assess risks to source waters.

Provides powers for Taumata Arowai to provide oversight of the environmental performance of wastewater and stormwater networks

### Ministry for the Environment

**NPS for Freshwater Management**

Establishes Te Mana o te Wai as a fundamental concept that is relevant to all freshwater management decisions

Requires regional councils to identify waterbodies used for drinking water supply and set freshwater objectives/limits

**NES-Drinking Water**

Proposed amendments enable better management of risks to source waters in RMA decisions

**Other related National Direction Instruments**

NES Plantation Forestry
NES Freshwater
Stock Exclusion Regulations
NPS Urban Development
*Freshwater farm plans (under development)*

**Wider policy work underway**

Resource Management reforms

Rights and Interests

Allocation

Released under the provision of the Official Information Act 1982

Ministry for the Environment
Manatū Mō Te Taiao

Making Aotearoa New Zealand the most liveable place in the world
Aotearoa – he whenua mana kura mo te tangata

# Timeline for Urban Water portfolio

| | | | |
|---|---|---|---|
| Date Submitted: | 19 February 2021 | Tracking #: 2021-B-07636 | |
| Security Level | In-confidence | MfE Priority: | Non-Urgent |

| | Action sought: | Response by: |
|---|---|---|
| To Hon Kiritapu Allan, Associate Minister for the Environment | Discuss with officials | 5/03/2021 |

| | |
|---|---|
| Actions for Minister's Office Staff | **Return** the signed report to MfE. |
| Number of appendices and attachments<br>2 | Titles of appendices and attachments (ie separate attached documents):<br>1. Appendix 1 - Water for liveability: A vision for Urban Water<br>2. Appendix 2 - Timeline for Urban Water portfolio |

## Ministry for the Environment contacts

| Position | Name | Cell phone | 1st contact |
|---|---|---|---|
| Responsible Manager | Jennifer Price | 022 493 0064 | |
| Director | Jo Gascoigne | 027 531 7202 | ✓ |

Released under the provision of the Official Information Act 1982

# Timeline for Urban Water portfolio

## Purpose

1. The purpose of this briefing is to propose a work programme outline for the Urban Water portfolio. It includes information on the purpose and long-term vision for urban water underpinning the proposed work programme and is intended as a conversation starter for further discussion with officials.

## Objectives and vision for Urban Water

2. We previously provided you with an introduction to the Urban Water portfolio (2020-B-07342 refers) noting that the objectives for the programme are:

    - ensuring the resource management system is supporting an integrated approach for managing urban water issues by local authorities in partnership with iwi/Māori
    - promoting and enabling good practices for land-use and urban development that improve urban water outcomes
    - supporting improvements to the management and regulation of Three Waters, including regulation of wastewater, stormwater and drinking water sources under the resource management system.

3. These objectives are intended to contribute towards to a long-term vision for urban water that was previously endorsed by Hon Nanaia Mahuta as Associate Minister for the Environment (see Appendix 1). This vision was informed by the urban water principles developed by the Urban Water Working Group in 2018[1].

4. Our proposed focus for the ne t 2 3 years is to progress initiatives that will put New Zealand on the path towards achieving this vision for urban water. This could include making necessary changes to the resource management system, introducing non-regulatory tools such as guidance, and supporting work on a new regulatory framework for Three Waters that will be enacted through the Water Services Bill.

5. The evidence base for these objectives includes the findings of the Three Waters Review, the Our Freshwater 2020 report[2], the National Climate Change Risk Assessment, and the

[1] The Ministry convened the Urban Water Working Group in 2017 to assess existing problems related to urban water and to help identify policies and practices for improving urban water outcomes. During the last term of Government the Ministry supported the Group to prepare and publish two reports.

[2] A report produced jointly by Ministry for the Environment and Stats NZ that examines the most pressing issues on our freshwater.



Released under the provision of the Official Information Act 1982

recommendations of the Urban Water Working Group. We have also commissioned technical advice on managing risks to drinking water sources, a review of challenges and opportunities for urban water in New Zealand, a review of the current state of the wastewater sector, and a stocktake of stormwater policy and plan provisions.

6. The sources above identified significant issues facing the urban water sector including:
    - lack of effective regulation and management of Three Waters infrastructure
    - persistent poor water quality outcomes in urban freshwater and coastal environments
    - risks to Three Waters infrastructure from climate change
    - barriers preventing the uptake of good practices such as water sensitive urban design.
7. Anecdotal evidence from stakeholders and iwi partners indicates that these issues are affecting the development and growth of urban areas and affecting people's ability to enjoy and connect with their urban environments.

## Key milestones

8. Our proposed work programme is outlined in Appendix 2. In the first half of 2021, we propose to focus on the amendments to the National Environmental Standard for Sources of Human Drinking Water (NES-DW), which we have briefed you about separately (2021-B-07526 and 2021-B-07612 refer).
9. We also intend to provide input into policy work informing Cabinet decisions on Three Waters reforms, in particular, decisions on proposed new wastewater performance standards, how stormwa er is addressed in the new resource management system, and service delivery arrangements.

## Work programmes under development

10. As the work on the NES-DW and Three Waters reform progresses we will have the opportunity to increase our effort in other work streams. In the first half of 2021 we anticipate working with our colleagues, especially in Resource Management Reform and Department of Internal Affairs, to scope future work.
11. We consider that future work will focus on supporting the transition towards *kind, liveable and resilient urban environments that give effect to Te Mana o te Wai* (Appendix 1).
12. This could include:



Released under the provision of the Official Information Act 1982

- supporting the transition in how stormwater services are regulated, managed and delivered to support Te Mana o te Wai and ensure resilience to climate change
- providing greater direction and support for local authorities in regards to giving effect to Te Mana o te Wai in urban environments
- addressing barriers to the greater uptake of good practices, such as water sensitive urban design
- enabling and promoting interventions to control sources of contamination in urban areas, for contaminants such as copper and zinc
- developing methodologies to achieve quality urban water outcomes into resource management reform Strategic Planning Act development

## Next steps

13. We wish to discuss with you the proposed work programme focus, your priorities for the portfolio, and sequencing of work over the next term. We will incorporate any feedback from you and will continue working towards these milestones providing further advice where needed.

## Recommendations

14. We recommend that you:

a. **Meet** with officials for further discussion

Yes/No

## Signature

Approved e ectronically by Jo Gascoigne 18/02/21

Jo Gascoigne
Director
**Water and Land Use Policy** **Date**

Released under the provision of the Official Information Act 1982

Hon Kiritapu Allan
**Associate Minister for the Environment** **Date**

Released under the provision of the Official Information Act 1982

## Appendix 1 - Water for liveability: A vision for Urban Water

# *Water for liveability: A vision for urban water*

Kind, liveable and resilient urban environments that provide for Te Mana o Te Wai.

***Te hauora o te taiao***
Urban environments that are healthy, sustainable, vibrant and well connected.

6. Engaged and informed communities that care about urban water issues

7. Integrated catchment management, ki uta ki tai

8. New urban developments that use water sensitive design and materials

9. Reduction in impervious surfaces

10. Reduced road-based pollution through more sustainable transport

11. Reduced water demand in homes and businesses

12. Environmental health seen as a core aspect of the business case for investment

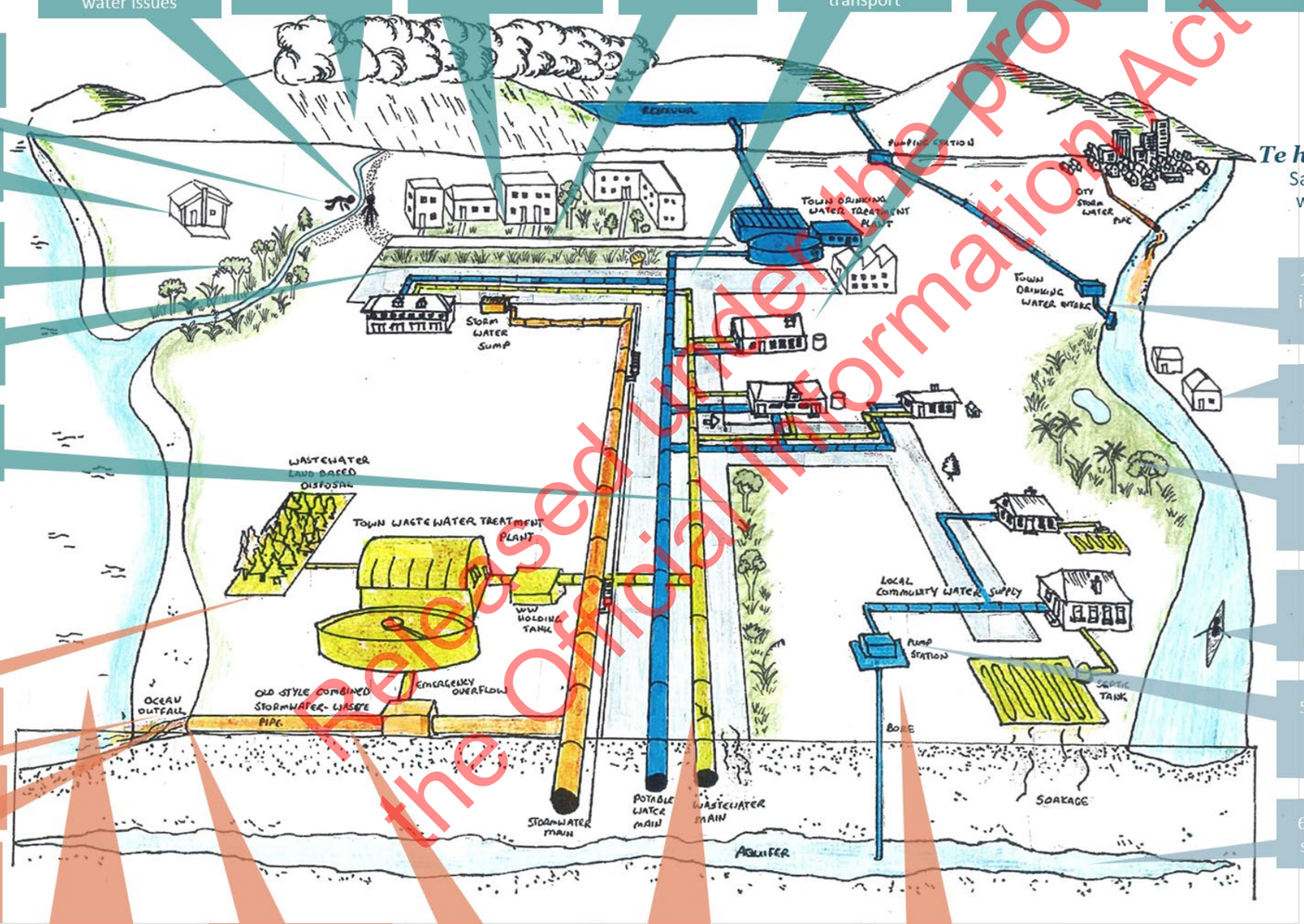
1. Greater opportunities for people to interact with water

2. Opportunities to exercise kaitiakitanga and maintain cultural connections to water

3. Improved habitat, including daylighting and improved fish passage, in urban streams

4. Water sensitive alternatives for stormwater management

5. Greater use of roadside plantings, swales and rubbish traps




***Te hauora o te tangata***
Safeguarding the health and wellbeing of people in their interaction with water

1. Risks to drinking water are identified and managed from 'source to tap'

2. Support for small communities without water network connections

3. Improved flood management through setbacks, flood ponds and wetlands

4. Reduced health risk and improved outcomes for recreation and mahinga kai

5. Improved management of human health risks from groundwater

6. Management of the risk of saline intrusion into aquifers

***Te hauora o te wai***
Improving the water quality impacts of urban water infrastucture

1. Circular economy – greater use of waste as a resource

2. Improvement in the quality of water reaching ocean outfalls

3. Identification and effective management of emerging contaminants of concern

4. Biodiversity in receiving environments is supported (eg. reduce impacts of toxoplasmosis on dolphins)

5. Reduction in emergency overflow events

6. Investment to replace shared stormwater and wastewater pipes

7. Appropriate levels of investment in infrastructure maintenance at private and public scales

8. Improved septic tanks or alternatives (eg, composting toilets)

Released Under the provision of the Official Information Act 1982

s9(2)(f)(iv)

Released under the provision of the Official Information Act 1982

## Conversation starter on potential work programme focus

| Topic | Why are we proposing doing this work? | Current situation – what are we doing? | Key decisions | Linkages/dependencies |
|---|---|---|---|---|
| **Drinking water** | To ensure there is a comprehensive suite of legislation for managing risks to sources of drinking water.<br>The current NES-DW does not adequately manage risks to drinking water sources. | s9(2)(f)(iv) | s9(2)(f)(iv) | Important to finalise NES-DW amendments within 6 months of Water Services Act being enacted |
| **Wastewater** | To provide greater national consistency in the regulation of municipal wastewater networks.<br>To help improve community and environmental outcomes for the wastewater sector. | We are working with officials from DIA/Taumata Arowai to prepare advice on wastewater, as responsibility sits across Environment and Local Government portfolios. | March 2021: alignment of the Ministry's wastewater work with DIA/Taumata Arowai<br>April 2021: process and scope for Ministry led work: may include a collaborative approach to develop national wastewater objectives (further advice to come) | Linkages with Water Services Bill and Resource Management Reform |
| **Stormwater** | Stormwater discharges are a key pressure on urban freshwater ecosystems. Because stormwater comes from many sources in the catchment, managing the effects of stormwater is complex and requires an understanding of Te Mana o te Wai, catchment management, urban development, climate adaptation and resource management planning. | We are scoping policy work on stormwater.<br>We will be part of the DIA-led technical working group on stormwater as part of Three Waters reform and will be ensuring environmental and broader urban water considerations are part of service delivery design.<br>We will soon publish:<br>• a stocktake and assessment of stormwater policy and plan provisions<br>• guidance on structure planning for water sensitive network<br>• guidance on comprehensive stormwater consent conditions.<br>We are contributing towards NZTA research on emissions from vehicles that can impact freshwater. | August 2021: Scope and process for MfE-led work | Three Waters reform presents an opportunity to improve the way stormwater is managed to improve environmental outcomes.<br>Timely input from MfE needed to influence details of water service entity involvement. |
| **Te Mana o te Wai** | Te Mana o te Wai sets out a hierarchy of obligations which can be complex to give effect to in urban areas where infrastructure has caused impacts that are difficult to reverse. For example, where rivers have stopbanks that constrain flow to prevent flooding of property, it may not be feasible to fully prioritise the rights of the waterbody.<br>In urban environments, it is important that communities establish a common understanding of what it means to achieve Te Mana o Te Wai in their specific area. | We could work with local government and Iwi/Māori to understand the challenges and considerations involved in giving effect to Te Mana o te Wai in urban environments, and develop guidance or educational materials to support others. | | Te Mana o te Wai is an overarching concept of the NPS-FM and must be given effect to in regional freshwater plans by 2024. |
| **Water sensitive urban design** | Water sensitive urban design approaches are a means of supporting the health of environments and people in a way that upholds Te Mana o te Wai.<br>Water sensitive design seeks to protect and enhance natural freshwater systems, sustainably manage water resources, and mimic natural processes to achieve enhanced outcomes for ecosystems and our communities.<br>Information on good practice exists, but there are other barriers (such as current design standards and perceived cost) that prevent wide-spread uptake of water sensitive urban design | We could work with local government, MBIE, MHUD, and the MfE RM reform team to ensure that water sensitive design is supported in the new legislation, that local authorities are provided with legislation to support them working together and have the tools to appropriately enforce water protective legislation and regulations. | | |
| **Including urban water considerations in regional strategic planning** | To formulate methodology for incorporating urban water outcomes into resource management reform Strategic Planning Act development<br>To help guide urban water priorities for local authorities and other participants within specific urban areas. | | | |

Released under the provision of the Official Information Act 1982

Document 7

Ministry for the Environment
Manatū Mō Te Taiao

Making Aotearoa New Zealand the most liveable place in the world
Aotearoa - he whenua mana kura mō te tangata

# NES-DW Technical Advisory Group and Engagement Approach

| | | | |
|---|---|---|---|
| Date Submitted: | 1 March 2021 | Tracking #: 2021-B-07657 | |
| Security Level | In-confidence | MfE Priority: | Non-Urgent |

| | Action sought: | Response by: |
|---|---|---|
| To Hon Kiritapu Allan, Associate Minister for the Environment | Note role and composition of the technical advisory group for the NES-DW and proposed engagement approach | 3 March 2021 |
| CC Hon David Parker, Minister for the Environment | N/A | N/A |

| | |
|---|---|
| Actions for Minister's Office Staff | **Return** the signed report to MfE. |
| Number of appendices and attachments<br>2 | 1. Proposed TAG members<br>2. Draft Terms of Reference |

## Ministry for the Environment contacts

| Position | Name | Cell phone | 1st contact |
|---|---|---|---|
| Principal Author | Georgia Kahan | | |
| Responsible Manager | Jennifer Price | 022 493 0064 | ✓ |
| Director | Jo Gascoigne | 027 531 7202 | |

Released under the provision of the Official Information Act 1982

# NES-DW Technical Advisory Group and Engagement Approach

## Key Messages

1. This briefing provides an overview of our plans to seek input on proposed amendments to the National Environmental Standard for Sources of Human Drinking Water (NES-DW) prior to public consultation. Specifically, we plan to establish a departmental technical advisory group (TAG) and conduct further targeted engagement with iwi/Māori and local government.
2. We have chosen this approach because there has already been public consultation and targeted engagement on the proposed amendments. This will have created awareness of, and expectations on, our work programme. As such, our engagement approach has been specifically designed to meet our timeframes and best make use of information we have gathered through the public consultation and engagement to date.
3. The primary purpose of the TAG will be to support officials from the Ministry for the Environment (MfE) to test and refine the proposed amendments to the NES-DW, based on information we have gathered to date. We are proposing that the TAG will have 7-10 members, including the chair. The members between them will have expertise in drinking water safety, science, resource management, and mātauranga Māori.
4. Because the TAG for the NES-DW work is a departmental TAG, and its function is to advise officials on technical matters to inform policy work, formal Ministerial approval is not required. However, we wish to provide you with a chance to provide feedback.
5. To complement the work of the TAG, we will undertake further engagement with iwi/Māori and local government on the proposals prior to public consultation. We will also engage directly with Post-Settlement Governance Entities (PSGEs). We expect to receive further information to inform policy development from wider engagement undertaken by MfE, the Department of Internal Affairs (DIA) and Taumata Arowai.
6. We will provide you with further updates as engagement progresses.

Released under the provision of the Official Information Act 1982

## Recommendations

7. We recommend that you:

   a. **Note** that the Ministry for the Environment proposes to engage a technical advisory group to work through the detail of proposed amendments to the National Environmental Standard for Sources of Human Drinking Water.

   b. **Note** that targeted engagement will occur with the local government and iwi/Māori to discuss the proposed amendments, refine them, and consider their impacts.

   c. **Note** that officials will provide you with regular updates as engagement progresses.

## Signature

1/3/21

Jennifer Price
Manager
**Urban Water** **Date**

Hon Kiritapu Allan
**Associate Minister for the Environment** **Date**

Released under the provision of the Official Information Act 1982

## Supporting material

### Purpose

1. This briefing provides an overview of, and opportunity to provide feedback on, the establishment of a departmental technical advisory group (TAG) and a proposed engagement approach for progressing amendments to the National Environmental Standard for Sources of Human Drinking Water (NES-DW).

### Context

2. We have previously provided you with advice on the planned process, timeframes and scope of proposed amendments to the NES-DW (2021-B-07526 refers). You agreed to an officials-led process to progress the amendments to the NES-DW, with support from a TAG. We signalled that we would provide you with further advice on the TAG and on our engagement approach. This briefing provides that advice.

   *The proposed NES-DW amendments have been informed by engagement conducted to date*

3. Over the last two years, we have received feedback on three waters reform including proposed amendments to the NES-DW. During March-April 2019, we engaged with key stakeholders involved in the management and regulation of water services. This engagement was led by the Department of Internal Affairs (DIA) and supported by the Ministry for the Environment (MfE) and the Ministry of Health (MoH). Nine regional workshops were held, along with stakeholder meetings, meetings with local government reference groups, and water advisory bodies.

4. As well as the above targeted meetings, high level proposals for amending the NES-DW were included in the Action for healthy waterways consultation in September 2019 (CAB-19-Min-06189 refers). While there was broad support for the proposals, submitters sought clarification on how the NES-DW would be integrated into the wider drinking water reforms and wanted assurance that there would be sufficient support for councils implementing the proposed amendments.

5. Based on this and other feedback, the proposed amendments were further refined in 2020. MfE officials convened a Critical Friends Group comprising experts in drinking water supply, regulation, consenting, te ao Māori, groundwater science and surface water science. Officials from the DIA and MoH attended some meetings to observe and advise on intersecting policy.

Released under the provision of the Official Information Act 1982

6. In addition to this direct engagement, MfE officials have provided opportunities for councils, water suppliers and iwi/Māori to provide feedback on the NES-DW amendments during the Government's wider engagement on three waters reform.

## Analysis and Advice

### Establishment of a departmental technical advisory group

*The TAG will build on the engagement that has already occurred*

7. While generally supportive of the proposed amendments, submitters and affected parties raised technical and workability issues that require further testing and analysis. To this end, the TAG is being established to support MfE officials as they test and refine the proposed amendments. This will include:

   - providing advice on the technical details of the proposed amendments including workability and effectiveness of proposals which will in turn inform proposals to be included in a discussion document expected in mid-2021
   - reviewing any technical issues identified in submissions and providing advice to officials to inform final policy recommendations
   - providing input, as required, on any technical issues that arise in the preparation of drafting instructions for the amendments.

8. We propose that the composition of the TAG is as follows:

   - 7-10 members, one of whom will be the chair
   - members will include technical experts in water supply and safety, source water risk management, groundwater and surface water science, source protection zone delineation, mātauranga Māori, and resource management planning.

9. The proposed members have confirmed their availability to participate subject to the Ministry confirming the membership of the group. Details of the proposed members of the TAG are attached as Appendix 1.

10. We are proposing similar terms of reference (TOR) to those used for the Freshwater Science and Technical Advisory Group. The draft TOR are provided in Appendix 2.

*We invite you to give feedback on the role and composition of the TAG*

11. The Cabinet Office Manual guidance on appointments notes that as the TAG's function is to advise officials on technical matters to inform policy work, Ministerial approval is not required. However, we invite your feedback on the composition and role of the TAG.

Released under the provision of the Official Information Act 1982

*We will seek an independent review of our recommendations after public consultation*

12. Following public consultation s9(2)(f)(iv) we are planning to commission a suitably qualified expert to conduct an independent review of our report and recommendations on the proposed amendments to the NES-DW before we finalise the report. The TAG will not be involved in this independent review but may be called upon to help answer any technical questions that arise post-consultation.

**Proposed engagement approach with iwi/Māori and local government**

*Additional engagement with iwi/Māori and local government will complement the TAG*

13. The Ministry is planning further engagement to test and refine the proposed amendments. There has already been public input on the proposed amendments through the Action for healthy waterways public consultation. This will have created awareness and expectations of our work programme. Furthermore, policy changes have been well-signalled during the engagement programmes outlined above. As such, our engagement approach has been specifically designed to meet our timeframes and make best use of information we have gathered through the public consultation and engagement to date.

14. While the engagement described here for March-April is a targeted approach, the upcoming public consultation process s9(2)(f)(iv) will give everyone a chance to have their say on the detailed proposals. For the targeted engagement, we will establish a process to capture information from local government and Post-Settlement Governance Entities (PSGEs).

15. We plan to hold two online sessions with representatives from PSGEs. These sessions will give PSGEs an opportunity to provide feedback on the proposed amendments prior to public consultation. We also want to engage with Waikato-Waipā River Iwi and have requested attendance at upcoming monthly hui.

16. We will also introduce the proposed amendments to the regional sector Resource Managers Group (RMG). We will continue to work with RMG to support the NES-DW work programme and to address any outstanding issues members may raise. We will hold one-on-one conversations with regional council and territorial authority representatives as needed.

17. Māori technical specialists and local government technical staff have also been invited to participate in the TAG.

*We will receive further information through joined-up engagement*

18. We are working closely with officials from DIA to support their upcoming engagement in

Released under the provision of the Official Information Act 1982

March on the three waters reform programme.[1] There will be a series of workshops held with representatives from local government and iwi/Māori. The workshops will include content on the upcoming process to amend the NES-DW.

s9(2)(f)(iv)

**Risks and mitigations**

s9(2)(f)(iv)

23. Drinking water is a high-profile issue and there are wide differences of opinion on its access, use, and protection. The scope of the NES-DW amendments means that it is not possible to satisfy every stakeholder expectation for drinking water. We will minimise this risk as much as possible by communicating what the proposed amendments are and are not designed to achieve and how they will be implemented, including their alignment with the wider three waters work programme.

[1] We will also help DIA to answer questions that are raised on the topics of Māori rights and interests, allocation, and freshwater more generally.



Released under the provision of the Official Information Act 1982

24. We are planning to further mitigate these risks by working with DIA and Taumata Arowai to approach drinking water safety in an inclusive and integrated fashion. We will align our work programme with other ongoing work streams, including Māori rights and interests in freshwater.

25. Your office will continue to be supplied with talking points, media statements and updates on developments to the NES-DW. These will help answer questions on our work programme as they arise.

**Legal issues**

26. The draft terms of reference for the TAG have been reviewed and approved by MfE's legal team.

**Next Steps**

s9(2)(f)(iv)

28. We plan to initiate engagement with PSGEs in mid-March and finalise it in mid-April.

29. We will start conversations with regional sector representatives in early March and hold additional meetings with the local government as needed throughout the first half of 2021.

30. We will provide you with ongoing feedback from these engagements.

s9(2)(f)(iv)

Released under the provision of the Official Information Act 1982

## Appendix 1 – Proposed TAG members

| Name | Organisation | Expertise |
|---|---|---|
| Tony Cussins | Tonkin+Taylor | Hydrogeologist with extensive experience in groundwater resource management, including groundwater allocation, groundwater quality and aquifer contamination issues. Critical Friends group member. |
| Brett Chapman | Hastings District Council | Directly involved with the Havelock North incident. Water supply management and source water risk management from a drinking water supplier/territorial authority perspective. Critical Friends group member. |
| Hilary Lough* **OR** | Pattle Delamore Partners (consultancy) | Groundwater and drinking water delineation. Critical Friends group member |
| Helen Rutter* | Aqualinc (consultancy) | Hydrogeology, groundwater, source protection zones. Critical Friends group member |
| James Whetu | Whetu Consultancy Group | RMA consents & policy planning, mātauranga Māori, RMA processes and outcomes. RMA Independent Commissioner Accreditation & former member of EPA Māori advisory group |
| John Hadfield** | Waikato Regional Council | Groundwater scientist. Critical Friends group member. |

Released under the provision of the Official Information Act 1982

| | | |
|---|---|---|
| Carl Hanson** | Environment Canterbury (regional council) | Groundwater scientist. Critical Friends group member. |
| Deborah Lind | AECOM (consultancy)<br>Board member of Water New Zealand | RMA planning, water supply operations, drinking water compliance, risk and resilience |
| Ken Taylor (Chair) | Independent (formerly of Environment Canterbury and Our Land & Water Science Challenge) | Freshwater science/policy interface. Chair of the Essential Freshwater Science and Technical Advisory Group. |
| Jim Graham[2] | Taumata Arowai | Former drinking water assessor. Expertise in drinking-water supply compliance, risk assessment and treatment |
| Juliet Milne | NIWA | Resource management scientist. Experience in linking science with resource management, policy and planning requirements |

* Only one of PDP or Aqualinc will be in the TAG. The Ministry is currently in the process of procuring services where PDP and Aqualinc are the two bidders. The company that secures this work is unlikely to be on this panel.

** Only one scientist representative from Environment Canterbury or Waikato Regional Council will be in the TAG.

[2] Jim Graham is yet to confirm his availability. If he is unavailable, we will approach another person recommended by Taumata Arowai to be on the TAG.



Released under the provision of the Official Information Act 1982

## Appendix 2 – Draft Terms of Reference for the Technical Advisory Group

Released under the provision of the Official Information Act 1982

Released under the provision of the Official Information Act 1982

# National Environmental Standard for Sources of Human Drinking Water – Technical Advisory Group

## Terms of Reference

**February 2021**

DRAFT
Released under the provision of the Official Information Act 1982

## Contents


| | | |
|---|---|---|
| 1. | Purpose of this document | 3 |
| 2. | Background and context | 3 |
| | The Drinking Water NES and the wider three waters and freshwater reforms | 3 |
| 3. | Purpose | 4 |
| 4. | Group Membership | 4 |
| | Appointment of Group members | 4 |
| | Membership | 6 |
| 5. | Meetings | 6 |
| 6. | Roles and responsibilities | 7 |
| 7. | Term of group | 8 |
| 8. | Ministry officials – Key contacts | 8 |
| Conflicts of interest | | 8 |
| 9. | Remuneration and reimbursement of expenses | 9 |
| 10. | Confidentiality of information | 9 |
| Appendix 1: Standards of Conduct | | 11 |
| Appendix 2: Conflict of Interest Declaration Form | | 13 |
| Appendix 3: Confidentiality Undertaking | | 15 |


Released under the provision of the Official Information Act 1982

# 1. Purpose of this document

To set out terms of reference for a departmental Technical Advisory Group (the Group) who will contribute to testing and refining proposed amendments to the National Environment Standard for the Sources of Human Drinking Water (NES-DW).

# 2. Background and context

## The Drinking Water NES and the wider three waters and freshwater reforms

The NES-DW was gazetted in 2007 alongside reforms to the Health Act to support a 'multi-barrier approach' to drinking water safety in New Zealand. The purpose of the NES-DW is to reduce the risk of contamination of drinking water sources by requiring regional councils to consider the effects of certain activities on drinking water sources. The scope aimed to address plan rules, and discharge and water permits that affect source water quality.

Following the drinking water contamination event at Havelock North in 2016, the Havelock North Inquiry and the Ministry for the Environment (the Ministry) each reviewed the role of the NES-DW in supporting the provision of safe drinking water. The Havelock North Inquiry and the Ministry found that the design and implementation of the NES-DW had not achieved its intended goal of supporting a multi-barrier approach to drinking water safety.

The Havelock North Inquiry recommended major reforms to the drinking water regulatory system in New Zealand, including changes to the NES-DW, to ensure risks to drinking water are being managed effectively by water suppliers and local authorities from 'source to tap'.

In June 2019, Cabinet agreed to initiate system-wide reforms to the drinking water regulatory system as part of the Government's Three Waters reform programme, including the establishment of Taumata Arowai – the Water Services Regulator. The bulk of these regulatory reforms are being implemented through the Water Services Bill (WSB), which was introduced by the Minister of Local Government in September 2020 and as of February 2021, is before the Health Select Committee. The WSB includes a number of provisions addressing the identification, management and monitoring of risks to sources waters, including an amendment to Part 6 of the RMA.

In parallel, the Ministry has been developing proposed amendments to the NES-DW to address the issues identified by the Havelock North Inquiry and the Ministry. These amendments are intended to work in tandem with provisions in the WSB to provide a comprehensive approach for managing risks to drinking water sources.

In September 2019, high-level proposals for amending the NES-DW were included in the Action for healthy waterways discussion document alongside the Essential Freshwater reform package. Following this, the Ministry conducted engagement on technical matters related to the NES-DW with a 'critical friends group' in 2020, and provided opportunities for councils, water suppliers and iwi/Māori to provide feedback during wider engagement on three waters reform.

The engagement to date has indicated broad support for the proposed amendments to the NES-DW and for improving how the RMA addresses risks to source waters. However, feedback has raised some technical and workability issues that required further testing and analysis.

The Ministry has also been progressing wider reforms to the freshwater management system. This includes the Essential Freshwater reforms that introduced new rules and regulations to better safeguard Te Mana o te Wai and ecosystem health in September 2020. These new rules and regulations will impact on the management of source waters and the proposed amendments to the NES-DW will need to align with these existing regulations.

Released under the provision of the Official Information Act 1982

# 3. Purpose

The purpose of the Group is to support Ministry officials in further developing the proposed amendments of to the National Environmental Standard for the Sources of Human Drinking Water (NES-DW).

Members of the Group will be appointed based on their expertise and background, not as representatives of the organisation(s) they work for or are professionally associated with.

This Group will act in an advisory capacity. The Group does not have a decision making role and does not have responsibility for producing their own deliverables. Specifically, the role of the Group is to:

- advise on scientific/technical evidence and methods underpinning the delineation of source water risk management areas and associated contaminant transport behaviour in groundwater and surface water, including any gaps, assumptions and limitations in evidence and methods, and the extent to which evidence and methods align with Te Ao Māori
- provide policy advice/critical analysis of the purpose, objectives, and content of the proposed amendments, including the extent to which they align with and support Te Mana o te Wai (as defined in the National Policy Statement for Freshwater Management) and other national direction instruments under the RMA
- provide feedback and evidence relating to the implementation, workability, and enforceability of the proposed changes for local authorities and resource users, including alignment with existing planning and consenting practices
- provide feedback on the development of evidence, discussion documents, supporting policy documents (e.g. section 32, RIS documents) for the NES-DW
- provide scientific and technical advice on issues raised in public submissions on proposed NES-DW amendments
- other related work, as requested by the Ministry such as reviewing drafts of the proposed amended regulations.

Ministry officials will continue to engage with other organisations and individuals on the NES-DW amendments in parallel with their work with the Group.

This work is connected to a number of other government projects that are underway in the three waters and freshwater management area, however the scope of this group is specifically focused on the refinement of the amendments to the NES-DW.

# 4. Group Membership

## Appointment of Group members

Group members will have varied expertise across a range of scientific and technical matters related to source protection area delineation and implementation, contaminant transport behaviour and microbial risk assessment, public health and drinking water safety, water supply management, drinking water catchment management, RMA planning and consenting, and mātauranga Māori (see table below).

Availability of individuals both at meetings and before/after to provide feedback and undertake preparation work will also be a critical criteria for members.

If specific expert input is required by the Ministry that cannot be provided by the group, then that expertise may be separately sought.

Released under the provision of the Official Information Act 1982

Members and the Chair will be appointed by the Ministry officials responsible for the Group. Appointment will be on a merits based assessment by MfE staff lining up the candidates/potential members with the below criteria. Members will be appointed until the end of review period required (likely to be March to May 2021 and August to October 2021), and may be reappointed for a subsequent term/s.

Members' appointments are on the terms and conditions specified in their letters of appointment or contracts and this Terms of Reference.

| | **Skill /experience** | **Explanation** |
|---|---|---|
| 1 | Source protection area delineation and implementation | Understanding of the technical requirements to map source water protection areas, including how to account for uncertainty in numerical modelling when developing bespoke models. Knowledge of how suppliers and regional councils can work together to ensure that source protection areas are |
| 2 | Contaminant transport behaviour and microbial risk assessment | Understanding how contaminants (particularly bacterial pathogens) behave and are transported is crucial in establishing the criteria for a source protection area. |
| 3 | Public health and drinking water safety | Knowledge of the public health rules and regulations and how the drinking water safety system is important so we can ensure the NES and the other parts of the drinking water safety system are well integrated. |
| 4 | Water supply management Drinking water catchment management | Understanding how water suppliers of various sizes operate is crucial to developing an NES that is able to be implemented. |
| 5 | RMA planning and consenting - CME | Understanding the relationship between water suppliers, regional councils/ and TA's.<br><br>Ensuring that we are able to monitor compliance and that the regulations are enforceable. |
| 6 | Urban and rural supply expertise | Urban and rural suppliers may face different challenges, as do large and small suppliers. |
| 7 | Planning and consenting expertise | Small councils and suppliers may require support to implement the NES, having expertise that is familiar with how this may be done will help us design our implementation support and design policy with clear implementation steps |
| 8 | Mātauranga Māori | Understanding, protection and incorporation of Māori world view |

Released under the provision of the Official Information Act 1982

## Membership

The Group will consist of 6-8 members plus a Chair.

A Member's appointment may be terminated at any time for good reason by the Ministry officials. Good reason includes, but is not limited to, failure to attend more than two consecutive Group meetings, and failure to act in accordance with the standards of conduct in Appendix 1.

A Member or the Chair may resign from the Group at any time by notifying the Ministry project contacts, or by following the specific processes required by their contract for services (if applicable).

If the Chair is absent from a meeting, the Chair may designate an Acting Chair for that meeting. If the Chair does not designate an Acting Chair, then the Acting Chair shall be elected by simple majority of those members present at the next meeting when an election is required.

Because Group members are appointed in their personal capacity rather than as representatives of organisations, no proxies will be permitted to attend in place of members except at the discretion of the Chair.

Ministry officials may co-opt expertise for particular meetings at their discretion. Any additional expertise will be contracted on an ad hoc basis on separate contracts.

# 5. Meetings

Meetings will be called by the Ministry, who will set the agenda and supply any required background material. The Ministry will provide policy options and technical papers or other materials that the Group members will review prior to the meeting.

Group meetings will be half day or one day long, held in Wellington or via videoconference.

If required, additional meetings will be held on an ad hoc basis, either face to face or via video conference.

The proposed format and indicative timeline for the TAG are:

- a mix of online and in person workshops (depending on COVID-19 levels)
- policy papers to inform discussion at meetings will be circulated to TAG members at least 1 week prior to the meeting.

| Date | Topic | Outcome |
|---|---|---|
| 1st meeting mid-March 2021 | Introductions and scene setting | Group members understand the context and background of the policy proposals |
| 2nd meeting late March | Review proposal for Source Water Risk Management Areas | Group members provide feedback on effectiveness and workability of proposals |
| 3rd meeting early April | Review proposal for new assessment criteria | Group members provide feedback on effectiveness and workability of proposals |
| 4th meeting mid/late April | Review all other proposals, and any outstanding matters. | Group members provide feedback on effectiveness and workability of proposals |

Released under the provision of the Official Information Act 1982

## 6. Roles and responsibilities

***Chair***

The Chair has the following roles and responsibilities:

a) set meeting agendas, with the assistance of the Coordinator, and approve meeting minutes

b) chair meetings, encouraging and modelling open communication where all members contribute effectively

c) determine, with assistance from the responsible Ministry manager, what action is appropriate if a member has a potential conflict of interest

d) seek written approval from the responsible Ministry manager before incurring any expenditure or financial commitment on behalf of the Group.

***Members***

All group members have the following roles and responsibilities:

a) make every effort to attend each meeting and report anticipated absences to the Ministry

b) prepare adequately prior to each meeting, review any reports/papers provided prior to meetings and participate actively in meetings, contributing to actions when agreed

c) use professional perspectives to undertake analysis, prepare advice, and/or provide feedback as required

d) contribute to email discussions amongst the Group about relevant technical issues (if required)

e) approve meeting minutes

f) comply with the Standards of Conduct in Appendix 1

g) complete the conflict of interest declaration form in Appendix 2 and return it to the Coordinator.

***Ministry officials***

The Group will be supported by a Coordinator from the Ministry's Urban Water team who will lead all administrative actions associated with the smooth operation of the Group including:

- leading communication with the Group
- organising meetings, including catering and arranging reimbursement of travel expenses for non-government members although it is expected that the majority of meetings will be held virtually
- distributing papers to members prior to meetings and notes after the meeting.

Ministry officials will attend all meetings. The coordinator will endeavour to organise meetings on a day that suits most members.

Ministry officials will record the deliberations of the Group as meeting minutes. With the agreement of the Chair, meeting minutes will be made available publicly on the Ministry website at the discretion of the Ministry.

Released under the provision of the Official Information Act 1982

## 7. Term of group

It is anticipated that the term of the group will be from 10 March 2021 until the end of June 2021. However, it is possible that the timeline for the NES-DW may change, and the expertise of the group may be required for a longer period if the time line and scope changes.

We anticipate the group will meeting in person in March and June, and via teleconference in April and either teleconference, or in person in May and in person in June.

## 8. Ministry officials – key contacts

Key project contacts from the Ministry are:

| | |
|---|---|
| Jenni Turner, TAG Coordinator | Jenni.turner@mfe.govt.nz |
| Adrian Young, Senior Policy Analyst | Adrian.Young@mfe.govt.nz |
| Jen Price, Manager – Urban Water | Jennifer.price@mfe.govt.nz |
| Jo Gascoigne, Director | Jo.Gascoigne@mfe.govt.nz |

Jenni Turner will be the primary contact for all administrative matters, Adrian Young will be the primary contact for all policy and technical related matters.

## 9. Conflicts of interest

Individuals will be asked to identify any actual or perceived conflicts of interest at the commencement of the group and should identify any further actual or perceived conflicts of interest for the duration of the group (see Appendix 2). These will be noted in the members' records and will be reviewed and accepted by Ministry officials.

Disclosure of interest can be:

- self-initiated
- raised by the Ministry
- raised by other group members
- raised by any other party

Members should operate on the understanding that "if in doubt, disclose the interest". The appearance and perception of a conflict is just as important to manage as an actual conflict. The Manager responsible for the Group will decide if there is a relevant interest and determine appropriate action. Depending on the nature of any conflict, the Ministry and the individual will actively manage these (including if appropriate not including an individual in a particular meeting/conversation or in the group).

Released under the provision of the Official Information Act 1982

## 10. Remuneration and reimbursement of expenses

The Ministry will compensate all group members for reasonable travel costs for attending meetings. Members will be reasonably compensated for their time based on their professional expertise and employment situation.

All reasonable travel costs will be paid for by the Ministry. The Ministry will, as a general rule, book all travel for members. Where members book their own travel, that person is entitled to have to have the actual and reasonable costs of Expenses for travel (Expenses) reimbursed by the Ministry, if:

- the Ministry has given prior written consent to the Supplier incurring the Expense
- the Expense is charged at actual and reasonable cost
- the claim for Expenses is supported by GST receipts.

## 11. Confidentiality of information

The group may review and discuss information that is confidential. This information could be held in emails, meeting minutes, and draft documents. Group members must treat all such information as sensitive and confidential. Group members should not forward confidential information to other colleagues or any other person without express permission to do so from the project team.

Maintaining confidentiality is important in order to effectively manage communications with external stakeholders and minimise misinformation.

Members will be asked to sign the confidentiality undertaking as in Appendix 3 of this document.

Released under the provision of the Official Information Act 1982

## 12. Agreement to the Terms of Reference

For the Ministry:

| Name | Company | Date | Signature |
|---|---|---|---|
| Jo Gascoigne | Director, Natural and Built System – Ministry for the Environment | | |

For the members:

| Name | Company | Date | Signature |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

Released under the provision of the Official Information Act 1982

# Appendix 1: Standards of Conduct

All members are expected to adhere to the following principles:

**Conflicts of interest**

A conflict of interest will occur when a member's private interest interferes, or could appear to interfere, with an issue that faces the group. A conflict of interest will also occur when there is a possibility that a benefit may apply to a sector, industry or organisation that they represent. A conflict of interest may be real or perceived.

Any situation that involves or may be expected to involve any real or potential conflict of interest must be declared immediately to Ministry officials responsible for the group, as soon as the conflict arises, using the form in Appendix 2.

At the discretion of the Ministry officials, members may participate in discussions about issues in which they have declared a conflict of interest.

**Confidentiality and media**

In order for the group to operate effectively, members must maintain the confidence of the group, including maintaining confidentiality of matters discussed at meetings, and any information or documents provided to the group. With the agreement of Ministry officials, members may share information about the business of the group.

Where information is already in the public domain (through no fault of a member or observer), the confidentiality requirements do not apply to that information.

Members and observers must refrain from representing the group, or commenting on the business of the group, to the media.

Where information is not already public;

1. Members may seek agreement from Ministry officials for the group to release a media statement.
2. Members may only participate in a media interview or public statement about the business of the group if they have obtained the prior written approval of the Ministry.

**Privacy Act 2020**

Members must at all times comply with the requirements of the Privacy Act 2020 and keep information about identifiable individuals confidential.

**Official Information Act 1982**

All information provided to the group will be treated as official information under the Official Information Act 1982 and, subject to the requirements of that Act, may be released to the public if there are no grounds for withholding it.

If/when the Ministry is considering releasing information about group meetings or group-authored documents under the Official Information Act 1982, the Ministry will consult with the person who provided the information before making a final decision on release.

Released under the provision of the Official Information Act 1982

**Corporate opportunities**

Members must not exploit any opportunity that is discovered through access to information within the group for their own personal gain or that of any industry, sector or organisation that they represent.

**Treatment of others and participation**

Members will treat each other and the opinions of others with respect at all times. Members will not take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts or any other unfair dealing practices.

Members will generously share practice and learnings and actively participate in constructive discussion and debate. Members will show respect for other participants and alternative ideas.

Released under the provision of the Official Information Act 1982

# Appendix 2: Conflict of Interest Declaration Form

An actual conflict of interest arises in a situation where a candidate's private interest interferes or appears to interfere with an issue that faces the National Environmental Standard for Sources of Human Drinking Water – Technical Advisory Group. Perceived or potential conflicts of interest exist in situations where a member of the group, a family member or a close personal relation has private interests that interfere or appear to interfere with an issue that faces the group (see Appendix 2 for further information).

A conflict of interest arises in a situation where there is a possibility that a benefit may apply to a sector, industry or organisation that a candidate may represent.

| | |
|---|---|
| Name: | |
| ☐ I declare that there are no conflicts of interest could compromise my objectivity, judgement, integrity or ability to perform the responsibilities of the group. | |
| ☐ I declare the following situation(s) that would cause a conflict of interest to exist | |
| Please describe how this conflict of interest will be managed: | |
| ☐ I declare the following situation(s) that may be perceived as a conflict of interest | |

Released under the provision of the Official Information Act 1982

| Please describe how this conflict of interest will be managed: |
| --- |
| |

Date:

Signed:

Released under the provision of the Official Information Act 1982

# Appendix 3: Confidentiality Undertaking

I, [NAME]

1. Agree and undertake that as an essential condition of my participation in the National Environmental Standard for Sources of Human Drinking Water – Technical Advisory Group (Technical Advisory Group), I will:

   (a) be discreet in all matters relating to the Minister for the Environment, the amendments to the National Environmental Standard for Sources of Human Drinking Water (NES-DW), and the affairs of the New Zealand Government generally;

   (b) keep confidential all information relating to the matters referred to in paragraph 1(a) above which I obtain or become aware of through my role with the Technical Advisory Group (the "Information");

   (c) not, other than as required by law, disclose or discuss the Information with any person who is not employed by the Ministry for the Environment, a Minister for the Environment, or otherwise a part of the Crown or without the prior written consent of the Ministry for the Environment;

   (d) limit discussion or disclosure of the Information to those who have expertise I consider would be helpful and ensure they keep any information provided to them confidential;

   (e) not use any Information to gain personal advantage or for the benefit of any person or organisation other than in accordance with the performance of my role with the Technical Advisory Group;

   (f) in particular, but without limitation, not discuss any matters referred to in paragraph 1(a) or any Information with any member of the media or submit articles for publication or dissemination outside the Crown without the prior authorisation of the Ministry for the Environment;

   (g) take all reasonable care to ensure that all Information in my possession is kept secure and I will immediately return, destroy or otherwise deal such Information as directed by the Ministry for the Environment.

2. I acknowledge that:

   (a) I will continue to honour the promises I make in signing this Undertaking of Confidentiality, even after my involvement with the Technical Advisory Group has ceased;

   (b) my obligations under paragraphs 1(a) above shall survive until the Information in question becomes publicly available (other than through a breach of my obligations under this Undertaking of Confidentiality), or until the Ministry for the Environment gives written approval for the disclosure or use of particular Information.

**Signature:** _____

**Date:** _____

Released under the provision of the Official Information Act 1982

Released under the provision of the Official Information Act 1982

Ministry for the Environment
Manatū Mō Te Taiao

Making Aotearoa New Zealand the most liveable place in the world
Aotearoa – he whenua mana kura mō te tangata

# Progress update on proposed amendments to the National Environmental Standard for Sources of Human Drinking Water

| | | | |
|---|---|---|---|
| Date Submitted: | 21/05/2021 | Tracking #: 2021-B-07959 | |
| Security Level | In-confidence | MfE Priority: | Non-Urgent |

| | Action sought: | Response by: |
|---|---|---|
| To Hon Kiritapu Allan, Associate Minister for the Environment | Review this update on the progress of the amendments to the NES-DW. | 04/06/21 |
| CC Hon David Parker, Minister for the Environment | N/A | N/A |

| | |
|---|---|
| Actions for Minister's Office Staff | **Return** the signed report to MfE. |
| Number of appendices and attachments<br>2 | Titles of appendices and attachments (ie separate attached documents):<br>1. Examples of Source Water Risk Management Areas<br>2. Summary of policy proposals and TAG feedback |

## Ministry for the Environment contacts

| Position | Name | Cell phone | 1st contact |
|---|---|---|---|
| Principal Author | Emily Limage | | |
| Responsible Manager | Jennifer Price | 022 493 0064 | |
| Director | Jo Gascoigne | 027 531 7202 | ✓ |

Released under the provision of the Official Information Act 1982

# Progress update on proposed amendments to the National Environmental Standard for Sources of Human Drinking Water

## Key messages

1. The purpose of this briefing is to update you on our work to amend the National Environmental Standard for Sources of Human Drinking Water (NES-DW), including feedback from our Technical Advisory Group (TAG) process. Work has progressed as planned, as per previous advice to you (2021-B-07526 and 2021-B-07657 refer). s9(2)(f)(iv)

s9(2)(f)(iv)

2. We have completed our TAG process and made some technical refinements to our proposals based on their feedback. Our engagement work is near completion, with broad support for the proposals thus far and valuable feedback provided on the practical implications of the amendments. We continue to refine the details of the proposals based on this feedback.

3. s9(2)(f)(iv)

4.

5. This timeframe will allow us to incorporate conclusions from the Water Services Bill select committee process (report back due 11 August). We can then incorporate final decisions on the Water Services Bill into our final policy recommendations following public consultation.

Released under the provision of the Official Information Act 1982

s9(2)(f)(iv)

6.

7.

Released under the provision of the Official Information Act 1982

8. s9(2)(f)(iv) [redacted]

9. Our proposed approach is designed to:

- give effect to the fundamental concept of Te Mana o te Wai (as defined in the NPS-FM) and the NPS-FM
- support the multi-barrier approach to drinking water safety (alongside new requirements on water suppliers in WSB)
- increase the understanding of hazards and risks to source waters to enable them to be appropriately managed
- ensure that resource consent decisions appropriately consider the effects of activities on risks to sources of human drinking water.

*Summary of the TAG feedback and associated policy refinements*

10. The TAG, a group of six drinking water experts, was established to support MfE officials as they test and refine the proposed amendments. The TAG met four times to assist in refining the three main policy areas based on their technical expertise and practical experience in water management. Officials from Taumata Arowai and the Ministry of Health also attended the meetings. A table in Appendix 2 summarises the proposed amendments and the TAG views and refinements.

11. s9(2)(f)(iv) [redacted]

12. [redacted]





Released under the provision of the Official Information Act 1982

13. s9(2)(f)(iv)

*Summary of engagement and associated policy refinements*

14. s9(2)(f)(iv)

15.

16.



Released under the provision of the Official Information Act 1982

s9(2)(f)(iv)

## Next Steps

*Linkages with the Water Services Bill*

s9(2)(f)(iv)

18. s9(2)(f)(iv)

19.

*Upcoming deliverables*

20. s9(2)(f)(iv)

21.

Released under the provision of the Official Information Act 1982

## Recommendations

22. We recommend that you:

s9(2)(f)(iv) [redacted]

c. **Discuss** any feedback with officials.

**Yes / No**

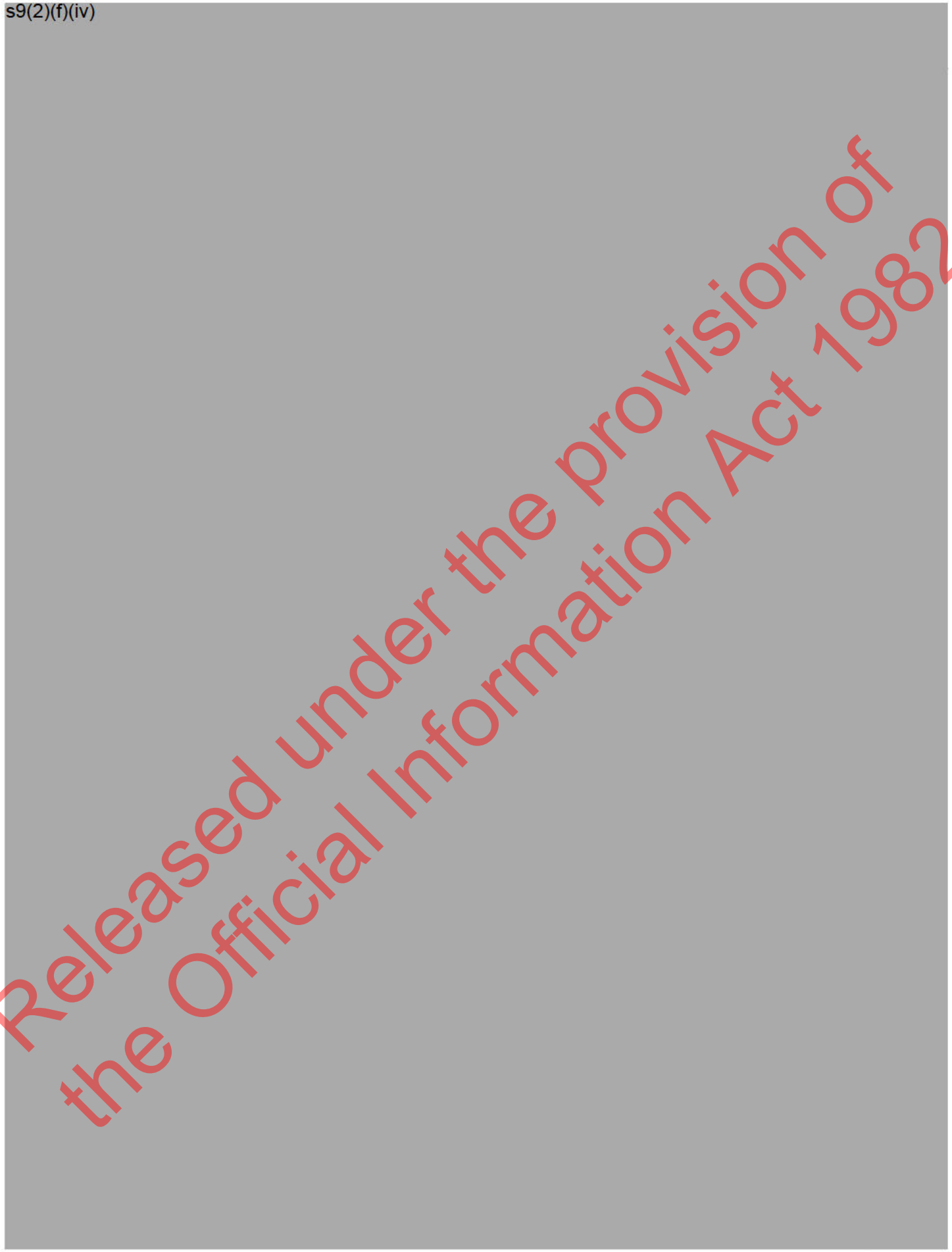
## Signature

Jennifer Price
Manager
**Urban Water** **Date** 21/5/21

Hon Kiritapu Allan
**Associate Minister for the Environment** **Date**

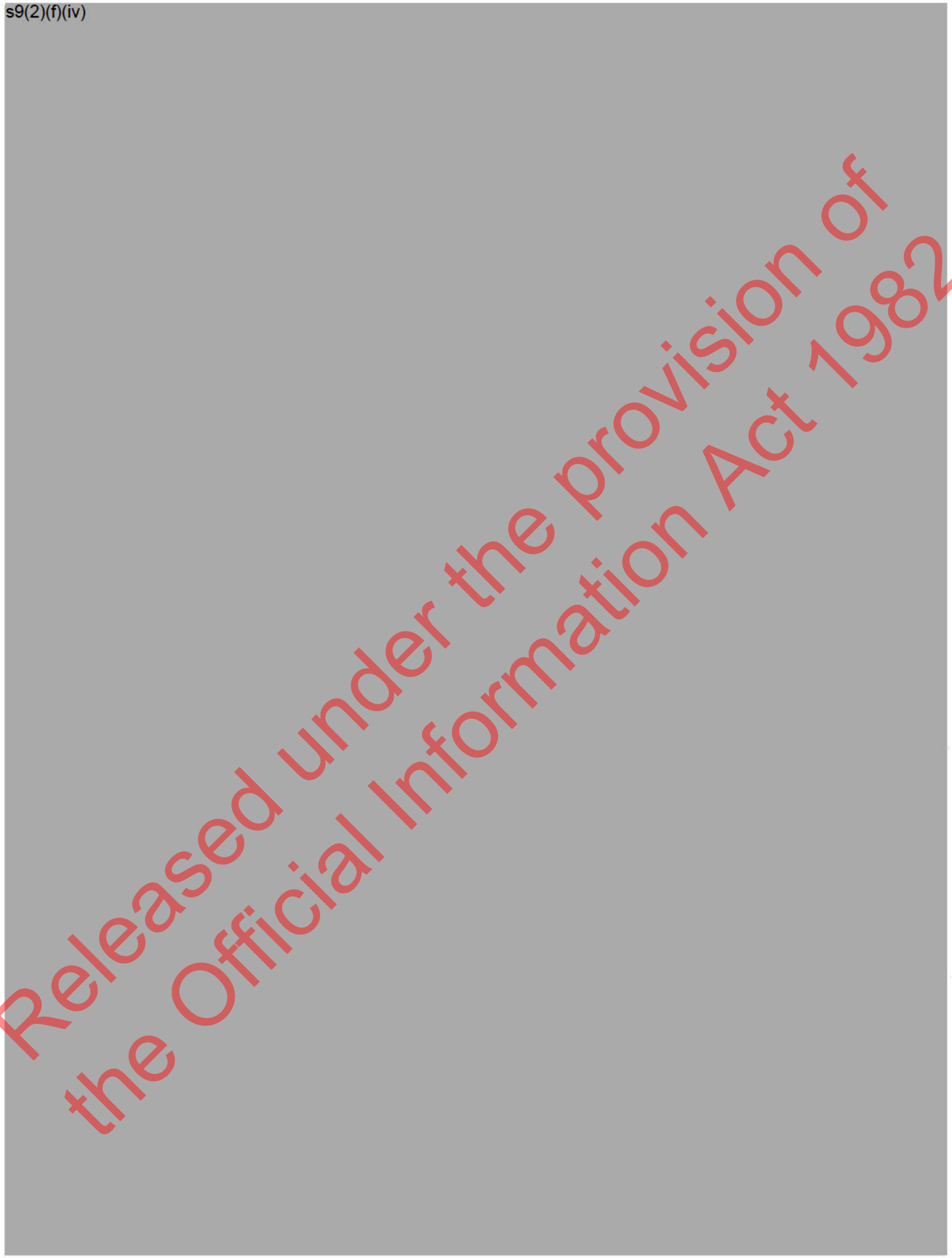
Released under the provision of the Official Information Act 1982

s9(2)(f)(iv)



Released under the provision of the Official Information Act 1982

s9(2)(f)(iv)



Released under the provision of the Official Information Act 1982

Released under the provision of the Official Information Act 1982

# Detailed update on proposed amendments to the National Environmental Standards for Sources of Human Drinking Water

| | | | |
|---|---|---|---|
| Date Submitted: | 18 June 2021 | Tracking #: BRF-232 | |
| Security Level | In-Confidence | MfE Priority: | Not Urgent |

| | Action sought: | Response by: |
|---|---|---|
| To: Hon Kiritapu ALLAN, Associate Minister for the Environment | **Read** the information in this briefing<br>**Discuss** with officials | 25 June 2021 |
| CC Hon David PARKER, Minister for the Environment | N/A | N/A |

| | |
|---|---|
| Actions for Minister's Office Staff | **Return** the signed report to MfE. |
| Number of appendices and attachments | N/A |

## Key contacts

| Position | Name | Cell phone | 1st contact |
|---|---|---|---|
| Principal Author | Adan Suazo | 022 186 7719 | |
| Responsible Manager | Jennifer Price | 022 493 0064 | |
| Director | Jo Gascoigne | 027 531 7202 | X |

Released under the provision of the Official Information Act 1982

Ministry for the Environment
Manatū Mō Te Taiao

BRIEFING NOTE

# Detailed update on proposed amendments to the National Environmental Standards for Sources of Human Drinking Water

## Key Messages

1. This briefing provides further information on proposed amendments to the National Environmental Standards for Sources of Human Drinking Water (NES-DW). It provides further details on the following points:

    a) engagement with iwi, hapū and marae, and identified issues

    b) involvement of iwi and hapū in amendments to the NES-DW and its going implementation

    c) information on proposed requirements/impacts on local government

    d) summary of the advice presented by our Technical Advisory Group.

s9(2)(f)(iv)

Released under the provision of the Official Information Act 1982

## Recommendations

We recommend that you:

a. **Read** the information in this briefing

b. **Discuss** with officials

**Yes / No**

## Signature

| | |
|---|---|
| This briefing has been approved electronically by Jennifer Price<br>Jennifer Price<br>Manager - Urban Water | 18/06/2021<br>Date |
| Hon Kiritapu ALLAN, Associate Minister for the Environment | Date |

Released under the provision of the Official Information Act 1982

## Purpose

1. This briefing provides further information on proposed amendments to the National Environmental Standards for Sources of Human Drinking Water (NES-DW).

2. On 21 May 2021 we updated you on progress to amend the NES-DW and provided you with an opportunity to comment on the policy proposals (2021-B-07959 refers). This briefing included a summary of policy proposals, a synthesis of our Technical Advisory Group's (TAG) feedback, and an overview of our engagement to date.

s9(2)(f)(iv)

4. This briefing provides further details on the following points

   a. engagement with iwi, hapū and marae, and identified issues

   b. involvement of iwi and hapū in amendments to the NES-DW and its implementation

   c. information on proposed requirements/impacts on local government

   d. summary of the advice presented by our Technical Advisory Group.

## Analysis and Advice

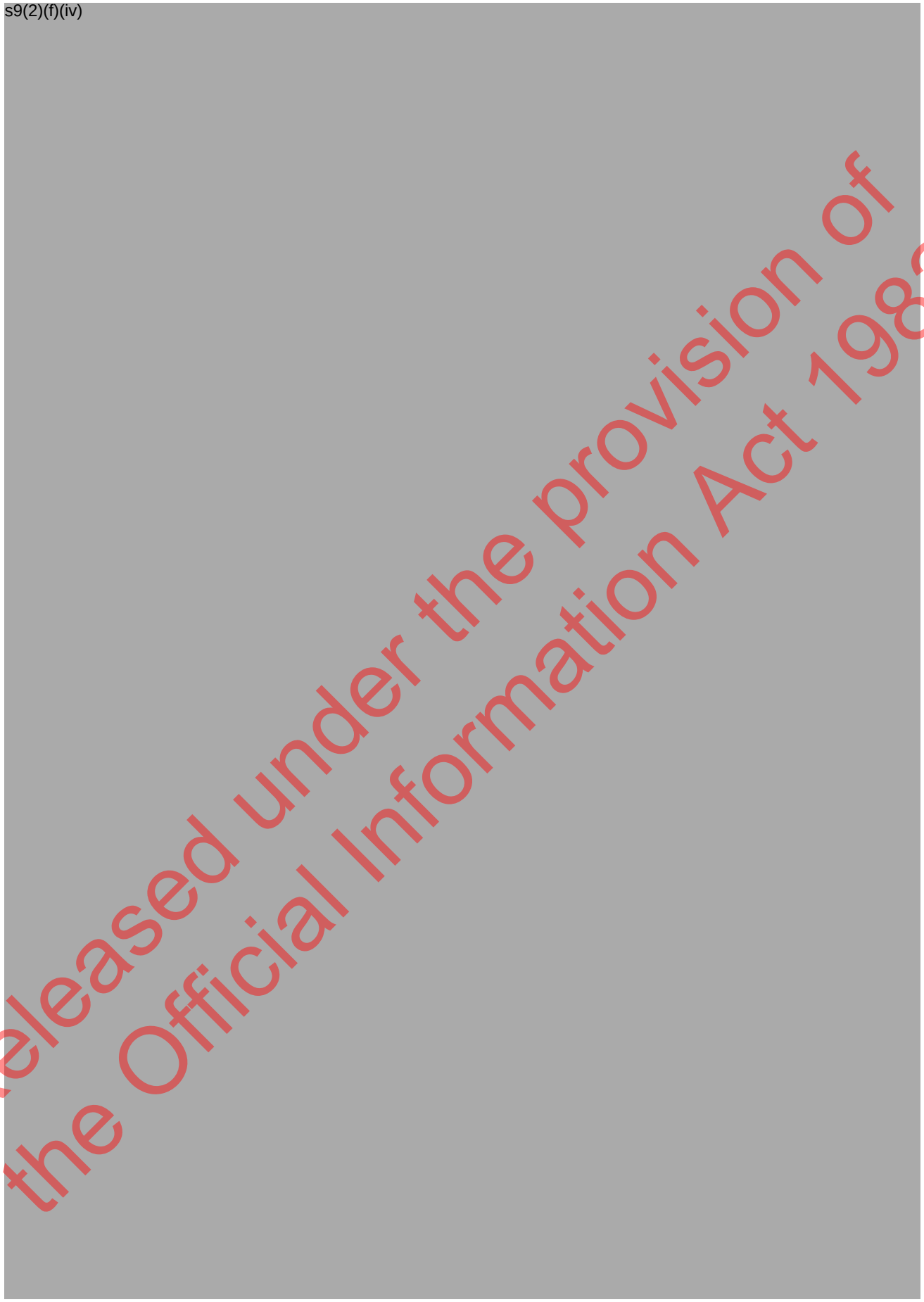
*Engagement with iwi, hapū and marae, and identified issues*

5. To inform our proposed amendments to the NES-DW, officials have engaged with key stakeholders and iwi/Māori over the last two years. This has taken place as part of the Three Waters reform programme led by Department of Internal Affairs (DIA), through work initiated by Taumata Arowai, and through programme-specific, targeted engagement led by Ministry of Environment (Ministry) officials.

s9(2)(f)(iv)

Released under the provision of the Official Information Act 1982

s9(2)(f)(iv)



Released under the provision of the Official Information Act 1982

s9(2)(f)(iv)

*Role of iwi and hapū in the design and implementation of the NES-DW*

11. To continue refining our proposed amendments, officials are planning a series of hui with local leaders and whānau. This will provide them additional opportunities to directly interface with Ministry officials, and to share their views and concerns around drinking water in their communities s9(2)(f)(iv)

s9(2)(f)(iv)

13. Once decisions in regards to public consultation are finalised, officials intend to formalise plans for these hui. We will update you on these engagements once they progress.

14. In regards to the role of iwi and hapū in the implementation of the NES-DW, we note that the instrument cannot change overall RMA processes around direct involvement for iwi and hapū, as this would require amendments to the RMA. However, we note that the NPS-FM directs councils to actively involve tangata whenua in freshwater management

Released under the provision of the Official Information Act 1982

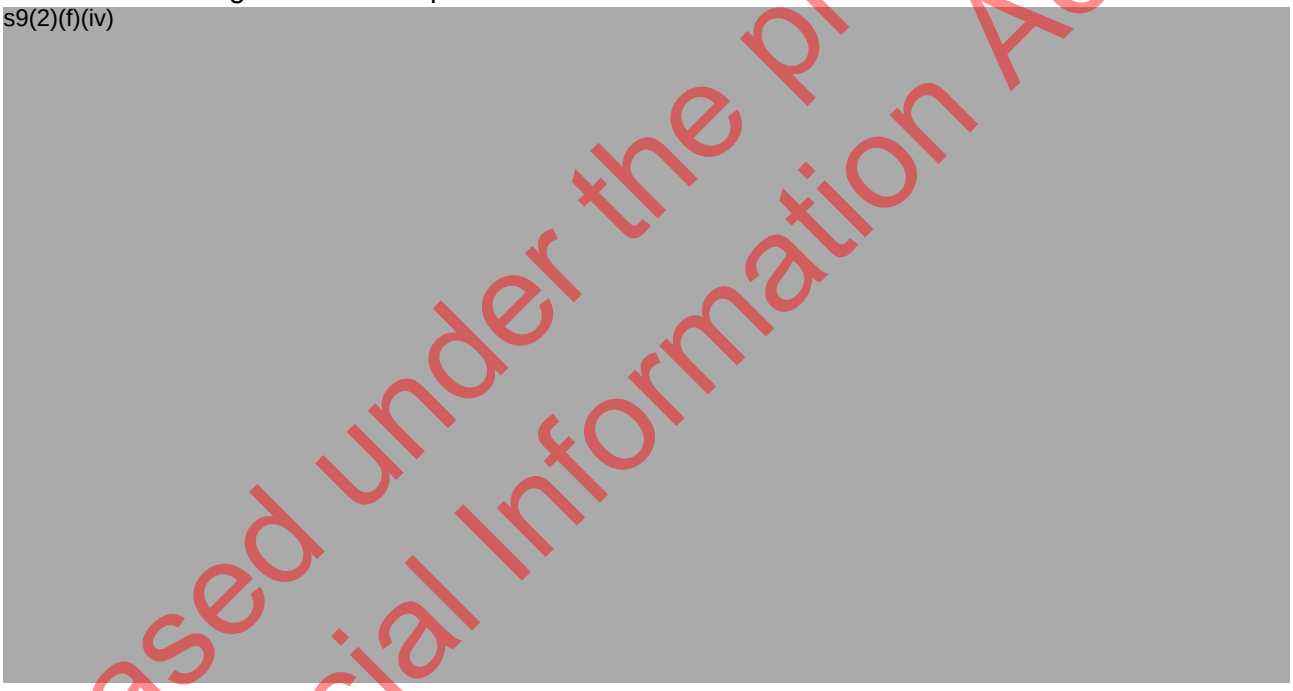
and decision-making through transfer or delegations of power, or joint management agreements. The NPS-FM requires councils to give effect to all aspects of Te Mana o te Wai, including those related to authority and decision making in freshwater management[1].

15. We expect that through the NPS-FM, iwi and hapū will have greater involvement in freshwater issues. As the NES-DW will be designed to fit within the wider NPS-FM framework, we expect the requirements of the NPS-FM to follow through to the NES-DW This will be communicated in our public consultation documents and guidance accompanying the final NES-DW amendments, including in guidance on the NPS-FM.

*Information on proposed requirements/impacts on local government*

16. Local authorities are responsible for the implementation of regulations made under the RMA, including the NES-DW. This means that local authorities must also ensure that the NES-DW aligns with the requirements of the NPS-FM.

s9(2)(f)(iv)



18. Wa er suppliers wil also have a role to play in supporting the effective implementation of the NES-DW s9(2)(f)(iv)

They must also ensure that their source water risk management plans include information on activities posing risk to source waters.

19. Our understanding of impacts on local government has been developed through engagement and a commissioned cost-benefit analysis report. Officials engaged with 31

[1] Mana whakahaere, kaitiakitanga, manaakitanga, governance, stewardship, care and respect.



Released under the provision of the Official Information Act 1982

regional council representatives to discuss the proposed amendments to the NES-DW. This engagement was followed by more targeted conversations with two reference groups comprised of water service providers and territorial authorities.

s9(2)(f)(iv)

21. To complement this information officials commissioned a report that documented some of the projected costs and benefits of an amended NES-DW[2]. The perceived impacts of the report align with the views expressed by local government during our engagement.

s9(2)(f)(iv)

s9(2)(f)(iv)

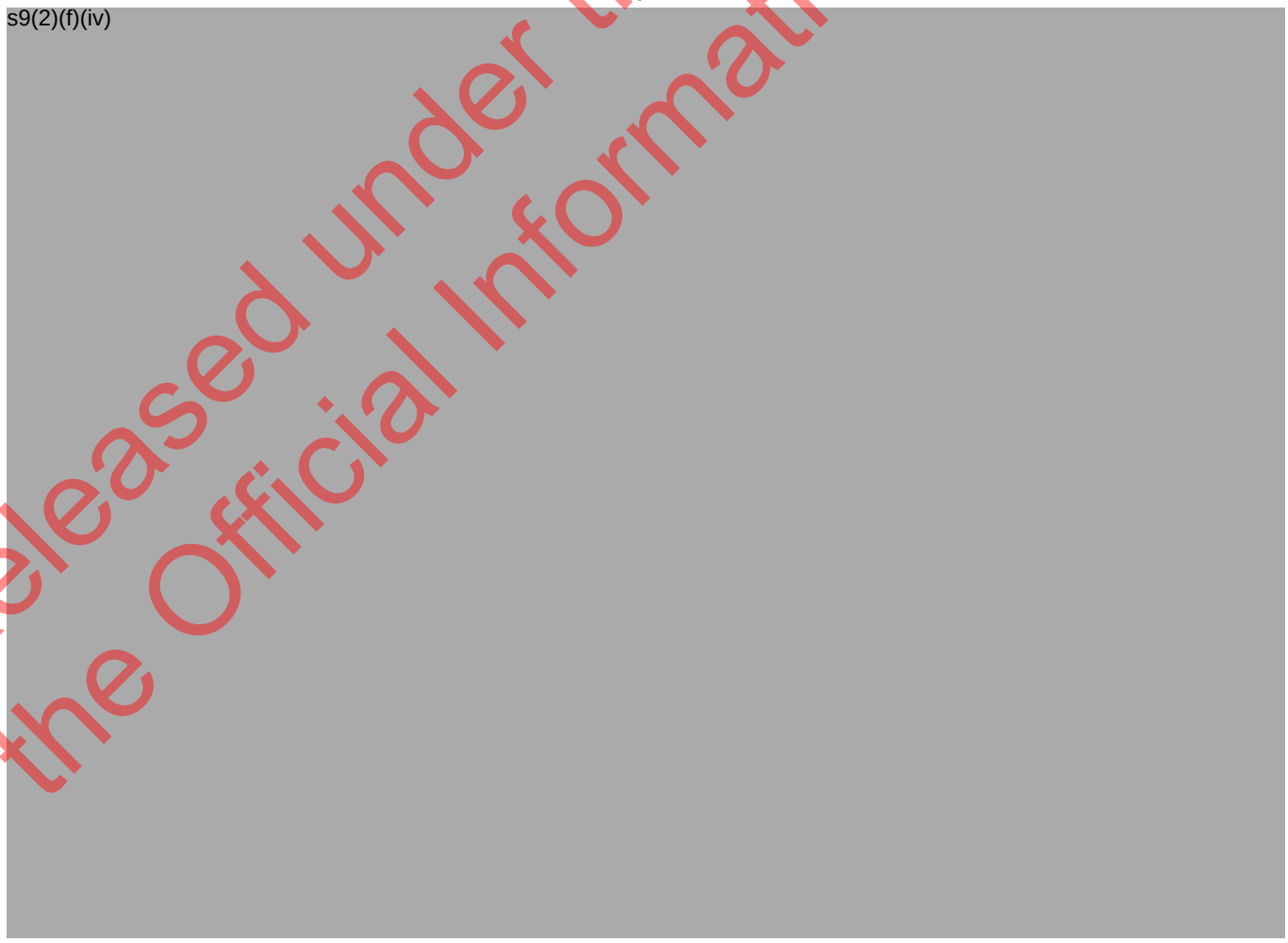
Released under the provision of the Official Information Act 1982

s9(2)(f)(iv)

*Summary of the advice presented by the Technical Advisory Group (TAG)*

24. A TAG was established by the Ministry to provide technical advice on our proposed amendments to the NES-DW. The advice provided by the TAG was collected through a series of technical workshops, and synthesised by officials to inform and refine our proposals. As such, no report was produced by the TAG.

s9(2)(f)(iv)



Released under the provision of the Official Information Act 1982

s9(2)(f)(iv)

## Next Steps

### Linkages with the Water Services Bill

s9(2)(f)(iv)

Released under the provision of the Official Information Act 1982