



OIAD-20

9(2)(a)

Dear 9(2)(a)

Thank you for your email of 03 May 2021 requesting the following under the Official Information Act 1982 (the Act):

*I'd like to submit a request under the OIA for the following briefings:*

1. 2/02/2021 - Application by Mackenzie District Council for a six-month extension to issue a decision on Proposed Plan Change 18 – Parker
2. 3/02/2021 - Contaminated and orphan sites liability regime – Parker
3. 5/02/2021 - Overview of hazardous substances policy issues and possible improvements – Parker
4. 9/02/2021 - Meeting with Dairy NZ, Beef + Lamb, and Federated Farmers, 11 February 2021 – Parker

Please note, your request has been numbered for ease of reference.

In response to your request, four documents have been identified within scope and are summarised in the attached document schedule. Documents 1, 3 and 4 are being released to you with some information withheld under the following sections of the Act:

- 9(2)(a) to protect the privacy of individuals.
- 9(2)(f)(iv) to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials.
- 9(2)(h) to maintain legal professional privilege.
- 18(d) as the information requested is, or will soon be, publicly available.

Where information has been refused as it is already publicly available, the information can be found using the following links:

- Document 3, appendix 2:  
[www.epa.govt.nz/assets/Uploads/Documents/EPA-Publications/Hazardous Substances Compliance System Findings Report 2019.pdf](http://www.epa.govt.nz/assets/Uploads/Documents/EPA-Publications/Hazardous_Substances_Compliance_System_Findings_Report_2019.pdf)
- Document 3, appendix 3:  
[www.pce.parliament.nz/publications/letter-to-ministers-concerning-pollutant-release-and-transfer-register](http://www.pce.parliament.nz/publications/letter-to-ministers-concerning-pollutant-release-and-transfer-register)
- Document 4, appendix 3:  
[www.dairynz.co.nz/publications/dairynz-corporate/](http://www.dairynz.co.nz/publications/dairynz-corporate/)

The Ministry is currently preparing these documents for release to you and will provide them by the end of the week.

The remaining document within scope of your request, document 2, has been withheld in full under section 9(2)(f)(iv) of the Act.

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](http://www.ombudsman.parliament.nz).

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

Yours sincerely

This response has been approved electronically by Debbie Bell.

Debbie Bell  
**Manager – Ministerial Services**

### Document Schedule

Ref #	Document Date	Document Title	Sections of the Act used
1	2 February 2021	Application by Mackenzie District Council for a six-month extension to issue a decision on Proposed Plan Change 18	9(2)(a) 9(2)(h)
2	3 February 2021	Contaminated land and orphaned sites liability	Withheld in full under s9(2)(f)(iv)
3	5 February 2021	Overview of hazardous substances policy issues and possible improvements	9(2)(f)(iv) 18(d)
4	9 February 2021	Talking points – Meeting with Dairy NZ, Beef + Lamb, and Federated Farmers, 11 February 2021	18(d)

Released under the provisions of the Official Information Act 1982

## Application by Mackenzie District Council for a six-month extension to issue a decision on Proposed Plan Change 18

Date Submitted:	02 February 2021	Tracking #: 2021-B-07496	
Security Level	In confidence	MfE Priority:	Non-Urgent
Hon David Parker, Minister for the Environment		<b>Action sought:</b>	<b>Response by:</b>
		Sign approval letter	15 February 2021

Actions for Minister's Office Staff	<b>Return</b> the signed report to MfE. <b>Send</b> the signed letter to Mackenzie District Council
Number of appendices and attachments: 3	Titles of appendices and attachments (ie. separate attached documents): 1. Application on behalf of Mackenzie District Council for an extension of time to make a decision on Proposed Plan Change 18 to the Mackenzie District Plan 2. Statement of Ann Fiona Rodgers in support of an application by Mackenzie District Council pursuant to clause 10A, Schedule 1, of the Resource Management Act 1991 3. Letter to Mackenzie District Council approving the 6-month extension of time

### Ministry for the Environment contacts

Position	Name	Cell phone	1 <sup>st</sup> contact
Principal Author	Rico Bautista		
Responsible Manager	Matthew Barbati-Ross	022 010 2147	✓
Director	Jo Gascoigne		

## **Application by Mackenzie District Council for a six-month extension to issue a decision on Proposed Plan Change 18**

### ***Purpose of the briefing note***

1. The purpose of this briefing is to seek your decision on an application by Mackenzie District Council (MDC) requesting a six-month extension of the Resource Management Act 1991 (RMA) two-year timeframe for issuing its decision on Proposed Plan Change 18 (PC 18) to the Mackenzie District Plan.
2. You previously granted a one-year extension to MDC for PC 18 on 16 March 2020 (refer 2019-B-06302).
3. MDC is now requesting a further 6-months to issue the decision on PC 18. Granting this further request would extend the statutory two-year timeframe to a total of three and half years.
4. The purpose of PC 18 is to address indigenous biodiversity matters and provide the District Plan provisions for the control of indigenous vegetation clearance.

### ***There are statutory RMA considerations for your decision***

5. Under clause 10(4)(a) of Schedule 1 of the RMA, the council must give a decision on a proposed plan change within two years from the date of notification.
6. Clause 10A of Schedule 1 sets out how local authorities can apply to you for an extension of time for giving a decision on a plan change if the local authority is unable to meet this statutory timeframe. The application must set out the duration of the extension required and the reasons for the request.
7. You may grant an extension of time under clause 10A of Schedule 1. The total number of time extensions you may grant is not specified, however this is the first request that seeks a further time extension on issuing a decision on a plan change.
8. You may only approve or decline the extension. You do not have the discretion to amend the duration of the extension proposed, or to address the content of the planning document.
9. The RMA does not include any specific powers or consequences if the timeframe is breached.

### ***The context for the further extension is complex***

10. The current Mackenzie District Plan provisions controlling vegetation clearance were made operative in 2004. The vegetation clearance rules were intended to be temporary as they were to be reviewed as part of a full plan review in 2007. The full plan review did not occur and so the 2004 vegetation clearance rules have remained. Instead, PC 18 is the latest in a suite of plan changes since 2004.
11. As part of this suite, Plan Changes 13 and 17 sought to provide greater protection of landscape values and suspend certain vegetation clearance exemptions. These plan changes were subject to long litigious proceedings, during which, gaps in the regulatory framework were identified. As a result, MDC notified PC 18 on 20 December 2017 to address these matters.
12. MDC sought a declaration from the Environment Court (Decision No. [2017] NZEnvC202) to identify that Rules 1.1 to 1.3 of PC 18 had immediate legal effect on notification because of concerns regarding the rapid environmental degradation in Te Manahuna/Mackenzie Basin.
13. The declaration from the Environment Court stands until such time as PC 18 is made operative or withdrawn. In the scenario that PC18 is withdrawn, then control of vegetation

clearance under the RMA would revert to the operative 2004 rules, which MDC consider no longer fit for purpose.

14. After being notified on 20 December 2017, PC 18 was subject to a public submissions period which closed on 9 March 2018. In response to the submissions received, MDC identified the need for additional policy work and detailed evidence to be completed. This included mapping Sites of Natural Significance (SONS) and recognition of the overlap between biodiversity, ecology and landscape values.

***You granted the first time extension sought by MDC for this plan change***

15. In December 2019 MDC sought the first, one-year time extension (refer 2019-B-06302) in order to:
- a) properly consider and address the complex matters raised by submissions and to make a decision.
  - b) ensure that PC 18 and their district plan review process were integrated with no gaps. The plan review was intended to be notified in late 2020.
  - c) enable MDC to give effect to the National Policy Statement for Indigenous Biodiversity (NPS-IB), which was originally planned to be gazetted in mid-2020.
16. You granted the first time extension on 16 March 2020. The reasons noted in your decision were that (refer 2019-B-06302):
- a) The protection provided by the operative provisions of PC 18 enables a level of protection to indigenous biodiversity while more robust work is completed. The environmental risk resulting from withdrawing the plan change is significant.
  - b) The decision on PC 18 should be based on the best evidence. It is appropriate for SONS identification and mapping to be completed and for policy work to be undertaken around the overlap between biodiversity, ecology and landscape values.
  - c) Better planning outcomes will be achieved for the Mackenzie District if PC 18 integrates well with the district plan review as this would result in less risk of gaps or duplication, and more effective management of indigenous biodiversity and vegetation.

***MDC have requested the further time extension because of COVID related delays***

17. MDC has now applied for a further six-month extension for the following reasons:
- a) COVID-19 related lockdowns and alert levels have hampered MDC's progress in giving a decision on PC 18.
    - i. MDC Planning Manager Ann Rodgers, in her Statement in support of the application (dated 11 December 2020), included a work programme for 2020 which demonstrates how the council have tried to ensure progress is made on giving a decision (refer Appendix 2). This work is predominantly complete. Technical consultants have continued to gather information to include in their evidence and these were submitted to MDC on 14 December 2020. However, cumulative effects from COVID-19 have hampered several key processes.
    - ii. The availability of suitable commissioners has been limited due to scheduling difficulties arising from the effects of COVID-19. MDC has only recently appointed a hearings panel they consider suitably qualified and experienced, with hearing dates scheduled in March 2021.
  - b) If the extension is not granted it would be likely that PC 18 would be withdrawn. This would mean that vegetation clearance rules in the Mackenzie Basin would revert back to the old regulatory framework which was introduced in 2004. This framework is no



longer fit for purpose and would lead to irreversible loss of significant indigenous vegetation.

- i. MDC is concerned that if PC 18 were to lapse, there is a potential that areas of significant indigenous vegetation could be cleared under the 2004 rules.

***MDC have met the statutory requirements for making an application***

18. We consider that MDC has met the statutory requirements of clause 10A of Schedule 1 of the RMA as demonstrated below.

Statutory Requirements		Assessment
Clause 10A(1) – a local authority must apply for an extension of time before the statutory timeframe for giving a decision lapses.		MDC submitted their extension for time application to the Ministry on 11 December 2020, which was before the first extended statutory deadline of 20 December 2020.
Clause 10A(2) – a local authority must set out:	(a) the reasons for the request for an extension; and	MDC has stated their reasons for the request and this is outlined above.
	(b) the duration of the extension required	MDC have stated the duration of the extension required is a period of six-month.
Clause 10A(3) – before applying for an extension, a local authority must take into account:	(a) the interests of any person who, in its opinion, may be directly affected by an extension; and	MDC has considered the interest of any person, who in their opinion, may be directly affected by an extension. MDC has identified that the only persons directly affected by this application are those who have some interest in clearing vegetation beyond permitted activity levels.  MDC considers that this extension will allow the continuation of the current regulatory framework including PC 18, which will bring about no significant changes to these parties beyond an extended period of uncertainty.
	(b) the interests of the community in achieving adequate assessment of the effects of the proposed policy statement or plan or change to a policy statement or plan; and	MDC has also acknowledged the interests of the community in achieving adequate assessment of the effects of the proposed plan change. MDC is aware that whilst the extension will result in further delays in decision making, an extension is in the best interest of the Mackenzie District due to the complexities of PC 18.
	(c) its duty under section 21 to avoid unreasonable delay	MDC has taken into account its duty to avoid unreasonable delay. The provided work programme for the next six-month anticipates

		a decision on PC 18 by April/May 2021. The programme shows MDC's commitment to having a decision issued by that time and the Panel is aware of the need for a timely decision. MDC considers an extension until 30 June 2021 to be appropriate to provide the Panel with enough time to write a decision given the technical complexity of PC 18.
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***It is acceptable to grant MDC the further time extension***

19. We are of the view that it is acceptable to grant MDC a six-month extension because:
- Granting this extension would provide a clear statutory basis for MDC to make a decision on PC 18 after 20 December 2020 and by 30 June 2021.
  - MDC has advised that although their work was impacted by COVID-19, they have completed the additional policy and evidence required for PC 18 hearings to proceed. They have secured commissioners they consider appropriate for their hearings panel to ensure that a high quality decision can be made.
  - The total number of extensions that may be granted under clause 10A of Schedule 1 is not specified and MDC have met the statutory requirements for making an application.
20. A decision not to grant this extension is likely to result in MDC withdrawing PC 18 with the loss of the control of vegetation clearance afforded by the Environment Court declaration.
21. If you grant the further six-month extension, this would result in an 18-month delay to PC18 beyond the standard two-year deadline in the RMA. This could prompt similar requests from other councils in the future where RMA decisions on plans have been delayed by COVID-19 or other unforeseen significant events occur. Each application would need to be considered by you on its own merits under clause 10A of Schedule 1 and there is no limit on the total number of extensions that can be applied for by a council.

***The application addresses other wider matters related to MDC's RMA work programme***

22. The application information provided by MDC addresses matters that goes beyond the specific considerations required under clause 10A of Schedule 1. These matters relate to the capacity and capability of a small council to successfully progress RMA processes. We have not provided an assessment of these matters as they are not relevant to your decision under clause 10A of Schedule 1.

s 9(2)(h)

***Next Steps***

24. If you agree to grant MDC a further extension of time to make a decision on PC 18, a draft decision letter to approve the extension is attached in Appendix 3 for your signature.
25. If you are considering not granting the six-month extension of time for MDC to continue to progress PC 18, we suggest you discuss this matter with officials.



## Recommendations

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26. We recommend that you:

- a. **agree** to grant MDC a six-month extension of time for issuing a decision on PC 18 to the Mackenzie District Plan, from 20 December 2020 to 30 June 2021, under clause 10A(4) of Schedule 1 of the RMA.

Yes/No

- b. **agree** that your reasons for granting MDC a six-month extension to issuing a decision on PC 18 are:

- i. Granting this extension would provide a clear statutory basis for MDC to make a decision on PC 18 after 20 December 2020 and by 30 June 2021.
- ii. MDC has advised that although their work was impacted by COVID-19, they have completed the additional policy and evidence required for PC 18 hearings to proceed. They have secured commissioners they consider appropriate for their hearings panel to ensure that a high quality decision can be made.
- iii. The total number of extensions that may be granted under clause 10A of Schedule 1 is not specified and MDC have met the statutory requirements for making an application.

Yes/No

**either**

- c. **sign and send** to MDC the letter attached to this briefing, serving notice of your decision as required under clause 10(5) of Schedule 1 of the RMA (Appendix 3)

Yes/No

**or**

- d. **agree to meet** with officials.

Yes/No

**Signature**

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Jo Gascoigne  
Director  
**Natural and Built Systems**

**Date**

Hon David Parker  
**Minister for the Environment**

**Date**

Released under the provision of  
the Official Information Act 1982

**Appendix 1: Application on behalf of Mackenzie District Council for an extension of time to make a decision on Proposed Plan Change 18 to the Mackenzie District Plan**

Released under the provision of  
the Official Information Act 1982

**APPLICATION TO MINISTER FOR THE ENVIRONMENT PURSUANT TO  
CLAUSE 10A, SCHEDULE 1 OF THE RESOURCE MANAGEMENT ACT 1991**

**UNDER** the Resource Management Act 1991 (Act)

**IN THE MATTER OF** an application for an extension of time pursuant  
to clause 10A, Schedule 1 of the Act for  
decisions on Plan Change 18 to the Mackenzie  
District Plan

**BY** **MACKENZIE DISTRICT COUNCIL**

Applicant

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**APPLICATION ON BEHALF OF MACKENZIE DISTRICT COUNCIL FOR AN  
EXTENSION OF TIME TO MAKE A DECISION ON PLAN CHANGE 18 TO THE  
PROPOSED MACKENZIE DISTRICT PLAN**

Dated 11 December 2020

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**Counsel Acting: David Caldwell / Alanya Limmer**

Email: S 9(2)(a)

Telephone: S 9(2)(a)

P O Box 3180

Christchurch 8013

To: The Minister for the Environment  
Ministry for the Environment  
WELLINGTON

1. **MACKENZIE DISTRICT COUNCIL** applies to the Minister for the Environment (Minister) for a further extension of time to make a decision on Plan Change 18 (PC18) to the Proposed Mackenzie District Plan (Proposed Plan) pursuant to clause 10A, Schedule 1 of the Resource Management Act 1991 (Act).
2. Mackenzie District Council (Council) seeks an extension of time from 20 December 2020 to 31 June 2021, to make a decision on PC18. This request follows from Council's first request (made in December 2019).
3. In total, granting this further request would extend the timeframes for a decision to three and a half years from notification of PC18, rather than the statutory maximum of two years. For the reasons explained in this Application document and the accompanying Statement of Ann Rodgers, it is submitted the requested six months is a fair and reasonable response to current circumstances – including those brought about by the disruption of Covid-19.

#### Context for this Application

4. Particularly relevant context for this Application is:
  - 4.1 On 20 December 2017, Council publicly notified PC18 to the Proposed Plan. PC18 proposes a complete overhaul of the operative Mackenzie District Plan's (Operative Plan) approach to vegetation clearance. The provisions it proposes to permanently replace, were made operative in 2004. The Rules<sup>1</sup> that have caused particular consternation over recent years, expressly record – in their text – *An interim rule that will be revised three years after the Plan becomes operative.*
  - 4.2 PC18 follows the long and complex litigation associated with Plan Change 13 (PC13), which entailed some 12 Environment Court and 3 High Court decisions. While PC13 was focused on landscape protection, it inevitably involved consideration of vegetation clearance insofar as that impacted the values of the Outstanding Natural Landscape of the Basin. PC18 is different because it seeks to address the protection and/or maintenance of

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<sup>1</sup> Rules 12.1.1.g and 12.1.1.h

biodiversity, for biodiversity's sake. As such, its scope is different and the planning responses it offers are not constrained in the same ways.

4.3 PC18 is also the immediate successor to Plan Change 17 (PC17). PC17 only addressed the two Rules of particular concern, and only for a period of 12 months. In essence, it was an urgent and reactive response to ever increasing pressure for vegetation clearance as part of agricultural conversion and farming intensification in the Mackenzie Basin (Basin). In that case, the Environment Court found there was no serious contradiction of the evidence it received<sup>2</sup> as to the following<sup>3</sup>:

- (a) Since 2009 the pace of change of land use in the Mackenzie Basin has significantly increased;
- (b) This was facilitated by vegetation clearance and pastoral intensification enabled by the "loopholes" in the Plan;
- (c) These activities had resulted in widespread degradation or loss of endangered, vulnerable and rare indigenous ecosystems and outstanding landscape values;
- (d) A high proportion of areas not identified as sites of natural significance (SONS) in the Plan, and that have not yet been cultivated or irrigated, are likely to qualify as significant under the Canterbury Regional Policy Statement (RPS)<sup>4</sup>;
- (e) That most of the vegetation cleared since June 2014 would have met the RPS significance threshold; and
- (f) The pace of change had reached a "tipping point" and "extraordinary intervention" was necessary to prevent permanent loss rendering future, more protective provisions redundant.

4.4 Ultimately, the Court in the PC17 (Immediate Legal Effect) proceedings found:

**I find that there is a need to meet the purpose of the Act, and that this is best served by putting the temporary regulatory regime in place urgently, with consent authority oversight by way of a resource consent process. This will afford protection of significant indigenous vegetation and significant habitats of indigenous fauna, as well [as] indirectly**

<sup>2</sup> *Environmental Defence Society Incorporated v Mackenzie District Council* [2016] NZEnvC 253 at [49]

<sup>3</sup> *Environmental Defence Society Incorporated v Mackenzie District Council* [2016] NZEnvC 253 at [47] and [48]

<sup>4</sup> Chapter 9 – Ecosystems and Biodiversity and Appendix 3



outstanding natural landscape values in the Mackenzie Basin that are contributed to by indigenous flora and fauna values.<sup>5</sup>

And

...I agree it is almost trite that pending finalisation of PC13 and promulgation of the District Plan Review could lead beforehand to a gold rush that would undermine what might otherwise be achieved through those instruments if confirmed. Indeed the evidence is clear that there is already a gold rush in progress.<sup>6</sup>

- 4.5 Consequently, PC17 had legal effect from notification on 24 December 2016 to 24 December 2017. This afforded Council time to formulate a comprehensive and coherent District Plan response to the issue of vegetation clearance and associated effects on the District's biodiversity.
- 4.6 PC18 was notified before PC17 expired. A further Environment Court order was obtained that gave its rules immediate legal effect<sup>7</sup>. In granting that Order, the Court made the following statements (amongst others):
- (a) The effect of PC19 will be to afford protection to significant area and habitats that can currently be cleared as of right.<sup>8</sup>
  - (b) Sections 6(c) and 31(1)(b)(iii) of the Act recognise the importance of maintaining biodiversity. This reinforces that PC18 is concerned with vulnerable resources that are of importance under the Act.<sup>9</sup>
  - (c) The [Canterbury Regional Policy Statement] requires the protection of significant areas and habitats, the halting of decline in biodiversity and attainment of "no net loss" of biodiversity where adverse effects are proposed to be brought upon areas or habitats of significance.<sup>10</sup>
  - (d) When the directives of the Act and the RPS are viewed with Ms Morrow's evidence, it is clear that managing the clearance of indigenous vegetation within the Mackenzie Basin Subzone is a matter of strategic importance.<sup>11</sup>
  - (e) I accept that there is potential for a gold rush within the Basin in respect of clearance...if a gold rush was to take place the proposed PC18

<sup>5</sup> *Environmental Defence Society Incorporated v Mackenzie District Council* [2016] NZEnvC 253 at [60]

<sup>6</sup> *Environmental Defence Society Incorporated v Mackenzie District Council* [2016] NZEnvC 253 at [65]

<sup>7</sup> *Re Application by Mackenzie District Council* [2017] NZEnvC202

<sup>8</sup> *Re Application by Mackenzie District Council* [2017] NZEnvC202 at [5]

<sup>9</sup> *Re Application by Mackenzie District Council* [2017] NZEnvC202 at [7]

<sup>10</sup> *Re Application by Mackenzie District Council* [2017] NZEnvC202 at [8]

<sup>11</sup> *Re Application by Mackenzie District Council* [2017] NZEnvC202 at [9]

controls would be of diminished effect because the biodiversity will already have been lost or sanctioned for loss.<sup>12</sup>

#### Grounds for this second Application

5. Substantially, the grounds for this further Application are:

##### Reversion to pre-PC17 regulation

5.1 If the Minister declines this Application, vegetation clearance in the Mackenzie Basin will likely have to revert to being regulated by the framework that existed prior to PC18 (and PC17). This is of particular concern, including for the following reasons:

- (a) The pre-PC17 regulatory framework for vegetation clearance, is not "fit for purpose" in today's environment. It was introduced in 2004 and it was meant to be replaced in 2007. In 2004 it is very unlikely anyone anticipated the scale of irrigation and dryland conversion that has occurred, and is still occurring, in the District and particularly the Basin. So many aspects of the Mackenzie District environment (social, cultural, economic and natural) changed when Meridian Energy Limited agreed to make large amounts of water available to farmers in the District. For the Council, PC18 is one means of catching-up with that change and proactively managing further change.
- (b) A reversion to pre-PC17 regulation would create the opportunity for activities that cause irreversible loss of significant indigenous vegetation and significant habitat of indigenous fauna, to once again be undertaken as of right. Such an outcome would run contrary to the reasons that underpinned Court findings in PC13, PC17 (Immediate Legal Effect) and PC18 (Immediate Legal Effect) proceedings and the Act;

##### Continued effort and progress toward deciding PC18

5.2 2020 has been an extraordinary year. It has created unusual circumstances. Despite this, Council has made steady progress toward the hearing and deciding of PC18. In some areas, that progress has been hampered by the "ripples" of Covid-related lockdowns and alert levels.

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<sup>12</sup> Re Application by Mackenzie District Council [2017] NZEnvC202 at [10] and [12]



- 5.3 Ms Rodger's Statement demonstrates how Council has ensured progress, albeit some anticipated timings have slipped. Technical consultants have continued to gather information to include in their evidence. Those reports will be with the Panel and Submitters on Monday 14 December 2020.
- 5.4 Whilst a differently constituted Panel may have been able to hear and decide PC18 sooner, Council is committed to having a particularly suitable Hearings Panel for the PC18 hearings. As a result, Council decided to engage Commissioners who are both subject-savvy and complementary in the skill and experience set they offer.
- 5.5 Mackenzie is a large District with a small rate payer base. To the extent possible, Council wants to ensure a robust, thorough and high-quality decision in the hope this will (at the least) reduce the amount of ongoing litigation that might ensue. It is submitted this is an understandable choice to make, for a Council that has been in almost constant litigation for over a decade now. Council has accepted a hearing date in 2021 to secure a Panel it considers will be well-suited to the task.

#### Fairness


- 5.6 It is submitted an additional six months is fair and reasonable in the circumstances, including for the following reasons:
- (a) The only persons directly affected (in a constraining sense) by this additional period of time are those who have some interest in clearing vegetation (beyond permitted activity levels) on the 33 stations within the Basin. As noted in the PC18 Immediate Legal Effect decision<sup>13</sup>, the emergence of this proposed regulatory framework and the changes it brings about can be of no surprise to those parties. In addition, no party could have realistically expected a return to pre-PC17 times.
  - (b) An additional 6 months will mean the current regulatory framework for vegetation clearance is in place for 3.5 years before a decision is made. This is a relatively small period of time when compared with the fact the previous Rules, which have enabled widespread and irreversible clearance of biodiversity, prevailed for 12 years – 9 of those being beyond what the Rules themselves anticipated.

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<sup>13</sup> *Re Application by Mackenzie District Council* [2017] NZEnvC202 at [13(f) to (j)]

- (c) Council's focus on selecting a particularly well-suited Hearings Panel is driven by a desire to reduce the incidence of, and therefore costs associated with, ongoing litigation about PC18. This ought to be of benefit to submitters and District constituents alike, regardless of their position on PC18.
- (d) Covid disrupted many – if not most – people's lives and/or jobs to some degree. Council submits a short extension to accommodate any impact it has had on the PC18 process is unlikely to be perplexing.
6. It is submitted the combination of circumstances that provide the context for this request are unusual. As such, it is submitted this must be the kind of situation Parliament meant to cater for when enacting clause 10A to Schedule 1 of the Act. Given the importance of the values at issue, Council is continuing towards a hearing in early February, while it respectfully awaits your decision. It has taken the view this is the most responsible approach, given the difficulties there might be in convening the Hearings Panel at a later time.
7. For all the above reasons, and the further reasons offered by Ms Rodgers, Council respectfully submits it is appropriate for the Minister to exercise his discretion to grant the further extension sought and requests he does so.

DATED this 11<sup>th</sup> day of December 2020



David Caldwell / Alanya Limmer  
Counsel for Mackenzie District Council

**Appendix 2: Statement of Ann Fiona Rodgers in support of an application by Mackenzie District Council pursuant to Clause 10A, Schedule 1, of the Resource Management Act 1991**

Released under the provision of  
the Official Information Act 1982

**APPLICATION TO MINISTER FOR THE ENVIRONMENT PURSUANT TO  
CLAUSE 10A, SCHEDULE 1 OF THE RESOURCE MANAGEMENT ACT 1991**

**UNDER** the Resource Management Act  
1991 (Act)

**AND**

**IN THE MATTER OF** an application for an extension of  
time pursuant to clause 10A,  
Schedule 1 of the Act

**BY** **MACKENZIE DISTRICT COUNCIL**  
Applicant

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**STATEMENT OF ANN FIONA RODGERS IN SUPPORT OF AN APPLICATION  
BY MACKENZIE DISTRICT COUNCIL PURSUANT TO CLAUSE 10A,  
SCHEDULE 1, OF THE RESOURCE MANAGEMENT ACT 1991**

**PLAN CHANGE 18 TO THE MACKENZIE DISTRICT PLAN**

Dated 11 December 2020

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**Counsel Acting: David Caldwell / Alanya Limmer**  
Email: § 9(2)(a)  
Telephone: § 9(2)(a)  
P O Box 3180  
Christchurch 8013



I, ANN FIONA RODGERS of Fairlie, Planning Manager for the Mackenzie District Council, say:

1. I am currently the Planning Manager at Mackenzie District Council (Council). I have been with the Council and in this role since August 2018.
2. On 17 December 2019, Council applied to the Minister for the Environment (Minister) for an extension of time under clause 10A of Schedule 1 to the Resource Management Act 1991 (Act). Council's application related to Plan Change 18 (PC18) to the Mackenzie District Plan (Plan). I refer to this as the 2019 Application for the purposes of this Statement.
3. I provided a Statement in support of that application, also dated 17 December 2019. In that Statement I outlined my qualifications and experience. I also outlined my current responsibilities as Planning Manager at the Council – relevantly being, to manage the planning and resource management functions of the Council so it fulfils its duties and obligations under the Act.
4. I confirm the matters in my earlier Statement, except where the effluxion of time has altered the factual context for the further extension now sought. I address any factual matters that have changed or new ones that have arisen, in this Statement.
5. I am authorised to provide this Statement on behalf of the Council. I have knowledge of all matters addressed in this Statement, although I have not always been directly involved in everything I discuss. I indicate where that is the case.

#### **This Application**

6. By way of this application, Council is applying to the Minister for a further six months to issue a decision on PC18. As with the 2019 Application, this Application is made pursuant to clause 10A, Schedule 1 of the Act.
7. On 16 March 2020, the Minister granted Council an extension of the statutory time-period for a decision on PC18. The extension period expires on 20 December 2020 (being three years after notification of PC18). This Application seeks a further extension (of just over six months), to 30 June 2021. The Council is seeking a further extension of the time because it considers it is unable to make a decision by the date previously agreed to by the Minister.

8. The reasons for this further Application are discussed in more detail below. Although there is more than one reason, a material impediment has been securing the services of suitable Commissioners, given the bottleneck Covid-related events and lockdowns have caused.

#### PC18

9. My December 2019 Statement described the history of and context for PC18 (paragraphs 10 to 48). This remains the same.
10. I also outlined the rules proposed by PC18 (paragraphs 49 to 56). Again, that evidence remains current and correct.
11. At paragraphs 57 to 67 I described the effect of the PC18 rule framework. This remains the same. In summary, the proposed framework greatly reduces the opportunity for permitted vegetation clearance, which in turn reduces the potential for adverse effects on indigenous biodiversity (both significant and otherwise). As a consequence of both the new framework and the Court order for immediate legal effect, there has been a reduction in the scale of vegetation clearance within the Mackenzie Basin<sup>1</sup>.
12. Paragraphs 68 to 73 of my earlier Statement set out the impact of PC18, with reference to the area covered by - and the number of properties affected by - the effective rules. Consistent with my earlier Statement, the impact of this Application is a further six months of constraint on vegetation clearance activities within the Mackenzie Basin (in which there are 33 Stations).
13. In paragraphs 74 to 78 I discussed the consultation process for PC18 generally. As to notification and submissions, I concluded with the following paragraphs (79 to 81):

**79. Submissions on PC18 were open until 9 March 2018 (inclusive). A total of 21 submissions were received. Public notice of the Summary of Submissions was given with further submissions to be received on or before 4 May 2018. A total of 13 further submissions were received during the further submission period. A copy of the summary of submissions is at Tab J of the BOD. The submissions and further submissions on PC18 are available on the Council's website at**

<sup>1</sup> As explained in paragraph 69 of my 2019 Statement, the Court order for immediate legal effect only related to the Mackenzie Basin part of the Rural Zone. PC18 affects the entire Rural Zone but only has regulatory effect once decisions are notified.

[http://www.mackenzie.govt.nz/Site/Documents\\_and\\_policy/key\\_documents/district\\_plan.aspx](http://www.mackenzie.govt.nz/Site/Documents_and_policy/key_documents/district_plan.aspx).

80. The submissions and further submissions raised various issues. There were a number of submissions on PC18 as a whole. These identified a number of matters, including the need to map all SONS and the need to recognise the overlap between biodiversity, ecology and landscape values. A number of submissions supported, a number of the submissions opposed.

81. Council acknowledges the importance of ensuring that SONS are mapped, to protect indigenous biodiversity. Council has engaged ecologist Mike Harding to undertake a review of existing SONS and the mapping of new SONS for inclusion in the District Plan as part of the wider DPR. This work is and has been on-going for the past eighteen months. There are currently 152 SONS identified and mapped, 71 of which are new and which will be notified as part of the DPR.

14. By way of update, Mr Harding has now mapped all the SONS he can. That is not to say the entire Rural Zone is now mapped – unfortunately, there are parts of the District Mr Harding could not get access to. There are now 157 SONS identified and mapped, along with others that have been re-surveyed using the Canterbury Regional Council criteria.
15. In addition to the on-going mapping of SONS Mr Harding has recently undertaken mapping of improved pasture in the Mackenzie Basin. Council is now in receipt of those maps. The next phase of this programme is to map alluvial, outwash, moraine and other landforms. The programme will be undertaken over several years and will ultimately result in a greater understanding of indigenous biodiversity in the Mackenzie Basin.

#### Council's 2020 work programme

- 16 In my 2019 Statement, I forecasted the anticipated work programme for PC18 and the remainder of the District Plan review. I have included that same table below and added an extra column explaining what has occurred over 2020:



Month	Tasks	Update as at 4 December 2020
December 2019	Informal engagement with stakeholders for District Plan review	Completed
December 2019 to March 2020	Updating Council's website	Completed
	Drafting guidelines for plan drafting	Completed
	Preparing templates for section 32 reports and section 42A report for PC18	Completed
	Engagement plan developed	Completed March 2020 in relation to Spatial Planning work that will inform wider District Plan review to be undertaken in partnership with Rūnanga
	Technical consultants engaged	Completed
January 2020	Initial formal engagement – web based	Completed – community survey undertaken January 2020
	Initial Rūnanga engagement	Completed – Rūnanga will partner with Council in spatial planning process and wider District Plan review.

February to March 2020	Targeted engagement with Rūnanga, key stakeholder and the wider Mackenzie community	Commenced but interrupted by Covid-19
February to April 2020	<p>Drafting of Strategic Objectives</p> <p>Formulating e-Plan structure</p> <p>Initial work on technical reports and necessary research</p> <p>Preparation of discussion document following the initial informal and formal engagement</p>	<p>Initial discussions with Councillors during Lockdown</p> <p>Completed</p> <p>Underway along with a procurement plan</p> <p>Spatial Planning establishment reports and targeted workshops completed, along with optioneering and public engagement.</p>
May to June 2020	<p>Ongoing work on technical reports</p> <p>Continuing engagement with Rūnanga and Key stakeholders</p> <p>Finalising e-Plan structure</p>	<p>On-going</p> <p>Working in partnership with Rūnanga</p>
July to September 2020	Section 42A reporting for PC18	Completed and ready for release 14 <sup>th</sup> December 2020
August to December 2020	Drafting of e-Plan and section 32 reports	Disrupted by Covid-19 – spatial planning output

	Continuing engagement with Rūnanga and Key stakeholders	designed to populate section 32 reports.
October 2020	Hearing on PC18	Scheduled to commence 1 February 2020, (panel appointed)
Late 2020 / early 2021	District Plan notification	Now programmed for late 2021

17. In addition to the changes captured on the table above, the following matters are relevant to this request for a further 6 months:
- The Covid-19 Alert Levels have disrupted our ability to retain an appropriately qualified and experienced independent panel for the latter part of 2020 due to the 'concertina' effect created by the re-scheduling of hearings that were to be held during the lockdown periods.
  - We have now retained and appointed a very qualified and experienced panel. Their availability is limited to a small window for a hearing at the start of February.
  - The six months requested is to allow for a robust decision-making process, potentially including expert conferencing.

#### Council's 2021 work programme

- When contacting potential commissioners it became apparent many were stretched thin due to the reactivation of tasks that had stalled over lockdown or were otherwise affected by Covid-19.
- My focus has been to find the type and mix of commissioners I thought would be most suitable for PC18. This is because Council wants to obtain a quality outcome. Given the history of litigation in the District and the toll this has taken on resources, Council decided to pursue a quality decision informed by coherent and holistic evidence – rather than focussing on obtaining a decision by a certain date.
- I then identified several individuals who I thought would have useful and relevant knowledge and experience, and I contacted them. The mix I settled on was:



- a. A Chairperson who is very experienced at chairing RMA hearings and planning under the RMA;
  - b. A Commissioner who is also a planner, but who often works in the wider Mackenzie area and so can bring local knowledge and context to the Panel; and
  - c. An experienced ecologist (albeit aquatic. I could not identify a terrestrial ecologist to sit) who will be able to engage at a technical level with the ecological evidence presented.
21. None of the persons I contacted were available to hear submissions this year. Consequently, a date in February 2021 has been selected, which was the earliest all three of the commissioners could do.
22. The hearing is scheduled to be held over two weeks. Allowing for that, expert conferencing and the need for any adjournments and/or other information prior to the hearing being closed, Council considers the end of June a reasonable timeframe within which to issue a decision.

#### Considerations relevant to this further Application

23. In my 2019 Statement, I said the following:
- 85. Before filing this further Application, the Council considered:
    - a. the interests of the persons it considers may be directly affected by the Application;
    - b. the interests of the community in achieving adequate assessment of the effects of PC18;
    - c. its duty under section 21 of the Act to avoid unreasonable delay.
  - 86. The Council is cognisant of and has considered the interests of the those directly affected by the requested extension. Those directly affected include the submitters on PC18 and those people identified above.
  - 87. While the Council recognises the requested extension will result in a delay in decision making, and consequently uncertainty about the planning environment for vegetation clearance, it considers an extension is in the best interests of the Mackenzie District, the community and, given the national importance of indigenous biodiversity, the wider community.

24. I confirm I have turned my mind to the same matters, as has the Council. Council remains of the view a further 6-month extension is appropriate, mainly for the following reasons:

- a. The vegetation rules superseded by PC18 were meant to be reviewed in 2007. Instead, for various reasons, they were effective for 12 years. In this context, Council does not consider another 6-months under the present regime to be unfair or even material.
- b. Council is firmly of the view a quality decision in 6-months' time is more important than a decision prior to 20 December 2020. The two main reasons for this are:
  - (i) Because PC18 deals with biodiversity resources of immense significance, including (in places) under section 6 of the Act. In addition, the biodiversity of the Basin contributes to the landscape of the Basin – a landscape the Environment Court has determined to be Outstanding (also as per section 6 of the Act); and
  - (ii) Because for more than a decade this Council (more particularly, its constituents) has spent a huge amount of financial and people resource participating in litigation related to development of the Basin versus adequate protection of the natural resources of the Basin. Council wants to minimise its exposure to a similar level of litigation unfolding in respect of biodiversity (as opposed to landscape). It sees a quality first-instance decision as potentially helpful in that regard.

25. I concluded my 2019 Statement with this paragraph, which is still appropriate today:

This is not a case where the Council could withdraw PC18 and begin the process again. As discussed above, PC18 follows various lengthy processes involving multiple Environment Court proceedings. If PC18 were to lapse, there is a potential that areas of indigenous vegetation and significant indigenous vegetation could be lost. While PC13 has controlled a number of the activities which have given rise to clearance pressures, it did not address the vegetation clearance rules. I have a real concern that indigenous biodiversity will be at risk.



Ann Fiona Rodgers

11 December 2020

**Appendix 3: Letter to Mackenzie District Council approving the 6-month extension of time**

Released under the provision of  
the Official Information Act 1982

Mackenzie District Council  
c/o Alanya Limmer  
Bridgeside Chambers  
PO Box 3180  
CHRISTCHURCH 8140

Dear Alanya Limmer

**Application from Mackenzie District Council for a six-month extension of time to give decisions on Proposed Plan Change 18 to the Mackenzie District Plan**

On 11 December 2020, Mackenzie District Council lodged an application for a six-month extension of time (until 30 June 2021) to issue a decision on Proposed Plan Change 18 of the Mackenzie District Plan.

This is in addition to the extension of time I granted on 16 March 2020 to extend the timeframes to give a decision on this plan change from 20 December 2019 to 20 December 2020.

I agree to this extension under clause 10A(4)(a) of Schedule 1 of the Resource Management Act 1991 (RMA). Decisions on the Proposed Plan Change 18 to the Mackenzie District Plan must be made on or before 30 June 2021. The reasons for my decision are the following:

- Granting this extension would provide a clear statutory basis for MDC to make a decision on PC 18 after 20 December 2020 and by 30 June 2021.
- MDC has advised that although their work was impacted by COVID-19, they have completed the additional policy and evidence required for PC 18 hearings to proceed. They have secured commissioners they consider appropriate for their hearings panel to ensure that a high quality decision can be made.
- The total number of extensions that may be granted under clause 10A of Schedule 1 is not specified and MDC have met the statutory requirements for making an application.

In accordance with clause 10A(6) of Schedule 1 of the RMA, you are now required to give public notice of this extension.

I wish you well with the remainder of your plan making process.

Yours sincerely

Hon David Parker  
**Minister for the Environment**

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the Official Information Act 1982



## Overview of hazardous substances policy issues and possible improvements

Date Submitted:	5 February 2021	Tracking #: 2020-B-07388	
Security Level	In-confidence	MfE Priority:	Non-Urgent

	<b>Action sought:</b>	<b>Response by:</b>
To Hon David Parker, Minister for the Environment	Forward this report to Hon Phil Twyford, Associate Minister for the Environment	19 February

Actions for Minister's Office Staff	<b>Forward</b> this report to Hon Phil Twyford, Associate Minister for the Environment. <b>Return</b> the signed report to MfE.
Number of appendices and attachments 3	Titles of appendices and attachments (i.e. separate attached documents): 1. Indicative timelines for the current work programmes as of February 2021 2. Hazardous substances compliance system findings report 3. Letter from the Parliamentary Commissioner for the Environment to Ministers concerning Pollutant Release and Transfer Register

### Ministry for the Environment contacts

Position	Name	Cell phone	1 <sup>st</sup> contact
Principal Author	Rio Yoon	021 535 325	
Responsible Manager	Amanda Baldwin	022 362 5798	
Director	Glenn Wigley	027 491 7806	✓

# Overview of hazardous substances policy issues and possible improvements

## Key Messages

1. This introductory briefing outlines the hazardous substances regulatory system, key policy issues and the current work programme.
2. This advice is intended for Hon Phil Twyford in his new role as Associate Minister for the Environment, supporting policy development and other matters related to the Hazardous Substances and New Organisms Act 1996 (HSNO). Separate briefings have been provided on improving hazardous substance assessments and reassessments, genetically modified organisms and methyl bromide.

### *Regulation of hazardous substances in New Zealand*

3. In New Zealand, the regulation of hazardous substances is primarily split between the HSNO and the Health and Safety at Work Act 2015 (HSWA). HSNO is largely implemented by the Environmental Protection Authority while HSWA is primarily implemented and enforced by WorkSafe New Zealand.
4. Other key legislation supporting hazardous substance management includes the Resource Management Act 1991, Fire and Emergency New Zealand Act 2017, the Agricultural Compounds and Veterinary Medicines Act 1997, the Customs and Excise Act 2018 and the Imports and Exports (Restrictions) Act 1988.

### *Domestic and international drivers affecting hazardous substances regulation*

5. New Zealand is a party to several multilateral environmental agreements on the regulation and safe movements of hazardous chemicals and waste. New Zealand's international obligations and commitments are implemented through domestic legislation.
6. The review of the hazardous substances regulatory system by an independent Technical Working Group in 2019 pointed to some issues within the hazardous substances regulatory system. The issues included the absence of graduated enforcement tools, lack of system leadership, incomplete data and information on hazardous substances, and weak oversight of hazardous waste disposal.
7. The draft advice on global warming emissions reduction pathways from the Climate Change Commission signals a desire to increase efforts to phase out hydrofluorocarbons (HFCs) due to their high global warming potential. The Ministry for the Environment has also been monitoring the use of the ozone depleting substance methyl bromide.

### *Current hazardous substances work programme*

8. The Ministry's hazardous substances work programme seeks to manage the harm from hazardous substances and their wastes throughout their life cycles.
9. Priority has been given to policy initiatives that lead to safer and greener substances over the long term. This currently includes improvements to the process for assessing and reassessing hazardous substances. Other projects in this workstream seek restriction on problematic substances including mercury, some persistent organic pollutants and substance that are ozone depleting or high global warming potential.
10. The remainder of the work programme is made up of projects to incentivise safe use and environmentally responsible disposal.

## Recommendations

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11. We recommend that you:

- a. **Forward** this briefing to Hon Phil Twyford, Associate Minister for the Environment.

Yes/No

## Signature

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Glenn Wigley  
Director – Policy and Regulatory  
**Waste and Resource Efficiency**

Hon David Parker  
**Minister for the Environment**

**Date**

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the Official Information Act 1982

# Overview of hazardous substances policy issues and possible improvements

## Supporting material

### Purpose

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1. This introductory briefing provides an overview of hazardous substances matters to support Hon Phil Twyford, Associate Minister for the Environment, on supporting policy development and other matters related to the Hazardous Substances and New Organisms Act 1996 (HSNO). It covers:
  - a. New Zealand's hazardous substances regulatory system
  - b. Key hazardous substances policy issues and opportunities
  - c. External reviews and recommendations relating to the hazardous substances regulatory system
  - d. Current work programmes to respond to identified issues and opportunities.
2. Separate briefings are being provided in response to the request from the Associate Minister for the Environment for advice on the following specific matters:
  - a. Genetically modified organisms
  - b. Methyl bromide and alternatives
  - c. Improving the processes for assessing and reassessing hazardous substances.

### Background

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3. This section outlines specific aspects of the hazardous substances regulatory system to support the discussion of the key issues and recommendations in this briefing.

### New Zealand's hazardous substances regulatory system

*What is a hazardous substance?*

4. Hazardous substances are chemicals or mixes of chemicals that can be explosive, flammable, corrosive, have a capacity to oxidise (which means it can accelerate the combustion of other material) and/or be toxic to people and the environment.
5. Hazardous substances are an essential part of many industrial, commercial and agricultural processes (for example, growing crops) and of products which we use in our everyday lives. They include fuels, solvents, industrial chemicals, agrichemicals, fireworks, swimming pool products, and even some cosmetics and toothpastes, among many others.
6. Due to their hazardous properties they can present risks to the users, workers handling them, property, communities who may be exposed, and the environment.

*Hazardous Substances and New Organisms Act 1996*

7. While the management of hazardous substances sits across a number of pieces of legislation, HSNO is the primary instrument to protect the environment and people in non-workplaces. The Minister for the Environment has specific powers, functions and duties under HSNO.



8. The purpose of HSNO is to protect the environment and the health and safety of people and communities by preventing and managing the adverse effects of hazardous substances.
9. Broadly, HSNO establishes nationally consistent, performance-based requirements based on the degree of hazard of each substance and regulates the substances across their life cycles (including their disposal).
10. HSNO came into force in two stages. Provisions relating to new organisms took effect in July 1998 and the provisions relating to hazardous substances came into force on 2 July 2001. A five-year transitional period for hazardous substances ended in July 2006.
11. Prior to HSNO, hazardous substances were regulated by many different agencies under a patchwork of legislation, each focusing on only one type of hazard or one aspect of the use of different hazardous substances. In addition, most of those laws were not designed to protect the environment.
12. HSNO established the Environmental Risk Management Authority (ERMA) to assess and decide on applications to introduce hazardous substances or new organisms into New Zealand. In July 2011, ERMA became the Environmental Protection Authority (EPA).

*Historical amendments to HSNO and its regulations*

13. There has been no comprehensive review of HSNO since its enactment in 1996. However, some targeted improvements relating to hazardous substances have been made, for example:
  - a. In 2003, Cabinet agreed to a strategy to improve the workability of the hazardous substances provisions of HSNO, which comprised long and short term actions. The short-term actions were completed in 2004, and included the transfer of explosives from other legislation to HSNO, funding to support territorial authority hazardous substances enforcement and funding for ERMA approvals.
  - b. In 2005, the long-term actions were implemented through the Hazardous Substances and New Organisms (Approvals and Enforcement) Amendment Act 2005. The amendment introduced group standards, which enabled a group of hazardous substances of a similar nature, type or use to be managed together. As those substances no longer needed to be individually approved and were subject to consolidated controls, the mechanism increased efficiency and saved costs for importers and manufacturers. It also provided simpler requirements for compliance and enforcement. Most domestic and workplace chemicals (except for pesticides, timber treatment chemicals and vertebrate toxic agents) are currently approved under group standards.
  - c. In 2007, a regulatory amendment was made to better manage retail fireworks. The amendment was a result of the 2004 research into the sale of fireworks by retailers and for solutions that would prevent fireworks being misused. The research was commissioned because of the increasing number of fires and injuries caused by fireworks. Following the amendment, the sale period for retail fireworks was reduced to four days prior to and including 5 November. The legal age of purchase was raised to 18 years. The amendments also decreased the explosive content of fireworks sold by retailers to reduce noise and the number of nuisances raised.
  - d. In 2013, in response to the recommendations of the Royal Commission on the Pike River Coal Mine Tragedy and the Independent Taskforce on Workplace Health and Safety, the Government decided to overhaul New Zealand's workplace health and

safety system. Following the decision, WorkSafe New Zealand (WorkSafe) was established as a stand-alone regulatory entity for health and safety at work. The controls to protect worker health and safety were consolidated into one piece of legislation, the Health and Safety at Work Act 2015 (HSWA), which included the integration of the workplace hazardous substances management into the HSWA regime.

- e. In 2020, Cabinet approved proposals to amend HSNO to enable the EPA to make better use of international information, and other improvements to the chemical reassessment processes. We are preparing a separate briefing [2021-B-07511 refers] on this matter.









*Regulatory split between HSNO and HSWA*

14. Before the health and safety reforms, all risks posed by hazardous substances across all sectors were managed under HSNO. The requirements to manage workplace risks were split across several pieces of legislation, including HSNO.
15. From 1 December 2017, most of the controls to manage hazardous substances that affect human health and safety in the workplace transferred from HSNO to the Health and Safety at Work (Hazardous Substances) Regulations 2017 under HSWA.
16. The HSWA hazardous substances regulations are enforced by WorkSafe. The regulations focus on the 'downstream' use, handling and storage of hazardous substances in the workplace. WorkSafe's role also includes providing guidance, managing the compliance certification regime, and developing safe work instruments to set more detailed and technical rules for specific hazardous substances.
17. All hazardous substances made and used in New Zealand are still approved by the EPA under HSNO. The EPA remains responsible for setting the rules to protect the environment, and people in non-workplaces from hazardous substances. They include generic controls relating to classifications, labelling safety data sheets, packaging and disposal.
18. Many of those controls are set under EPA Notices, which are tertiary instruments administered by the EPA. The EPA Notices consolidated and simplified the controls previously covered by regulations under HSNO. However, the requirements relating to the retail sale of fireworks are still prescribed in the Hazardous Substances (Fireworks) Regulations 2001. Other controls are found in group standards and individual approvals under HSNO.
19. The role of the EPA and WorkSafe under the current regulatory arrangements are illustrated in Figure 1<sup>1</sup> below.

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<sup>1</sup> WorkSafe Website: <https://www.worksafe.govt.nz/dmsdocument/2170-summary-table>

## Hazardous Substances Reforms – the Role of WorkSafe and the Environmental Protection Authority

	 Hazardous substance rules to PROTECT PEOPLE from WORKPLACE activities <small>SET UNDER HSW ACT</small>	 Hazardous substance DISPOSAL rules and rules to protect the ENVIRONMENT in WORKPLACES* <small>SET UNDER HSNO ACT</small>	 Hazardous substance rules at the IMPORTERS, MANUFACTURERS and SUPPLIERS** <small>SET UNDER HSNO ACT</small>	 Hazardous substance rules to PROTECT PEOPLE and the ENVIRONMENT in NON-WORKPLACES <small>SET UNDER HSNO ACT</small>
Regulator	<b>WORKSAFE</b>	 Environmental Protection Authority <small>Te Mana Rauhi Tāiao</small>	 Environmental Protection Authority <small>Te Mana Rauhi Tāiao</small>	 Environmental Protection Authority <small>Te Mana Rauhi Tāiao</small>
Enforced by	<b>WORKSAFE</b>	<b>WORKSAFE</b>	 Environmental Protection Authority <small>Te Mana Rauhi Tāiao</small>	<b>COUNCILS***</b>

\* There are other hazardous substance environmental and disposal rules set under the Resource Management Act and local council bylaws. These rules are enforced by local, district and regional councils.

\*\* Such as the classification framework, labelling, packaging, safety data sheets and restrictions on ingredients in certain hazardous substance products.

\*\*\* City and district councils.

Figure 1: Summary table showing the role of the EPA and WorkSafe

### Enforcement under HSNO

20. Under HSNO, enforcement responsibilities are devolved across central government agencies and local authorities. HSNO enforcement agencies include the EPA, WorkSafe, New Zealand Police, territorial authorities, regional councils, Civil Aviation Authority, Maritime New Zealand, Ministry of Health and the New Zealand Transport Agency.
21. Under section 99(1) of HSNO, the EPA is required to ensure that its provisions are enforced in all premises likely to contain a hazardous substance or new organism. It also requires the EPA to advise the Minister for the Environment, and HSNO enforcement agencies, when it considers that there is insufficient or unnecessary inspection and enforcement.

### Other legislation applying to hazardous substances

22. A number of other legislative instruments apply to hazardous substances.
23. For example, local authorities can address specific local risks of hazardous substances through the Resource Management Act 1991 (RMA). The RMA also manages the environmental impacts of waste facilities and contaminated land.
24. The Resource Legislation Amendment Act 2017 (RLAA) removed the explicit function of regional and territorial authorities under section 30 and 31 to control the adverse effects of the storage, use, disposal and transportation of hazardous substances to ensure RMA controls do not duplicate controls in HSNO and HSWA. RLAA also introduced a procedural principle to ensure that council plans and policy statements include only matters relevant to the purpose of the RMA (section 18A).
25. Local authorities still retain a broad power under the RMA. They can manage hazardous substances through their plans and policy statements to achieve the purpose of the RMA. They are also able to carry out the function of integrated management of natural and physical resources in their region or district. However, in many cases, HSNO and HSWA

controls are adequate to avoid, remedy or mitigate adverse environmental effects of hazardous substances.

26. As part of the comprehensive reform of the resource management system, the RMA will be repealed and replaced with new legislation. As noted by Cabinet [2020-C-07278 refers], the reform recognises the important interface between the RMA and HSNO.
27. Other legislation applying to hazardous substances include the Fire and Emergency New Zealand Act 2017, the Agricultural Compounds and Veterinary Medicines Act 1997, the Customs and Excise Act 2018 and the Imports and Exports (Restrictions) Act 1988.

*International agreements and commitments influence New Zealand's hazardous substances management*

28. The Ministry for the Environment's international work supports the rules-based framework for hazardous substances and seeks to ensure that the international rules and commitments reflect New Zealand's interests. The strategic engagement also provides an opportunity to learn from others' experiences to help improve the quality and effectiveness of New Zealand's domestic regulation.
29. New Zealand is a party to several multilateral environmental agreements on the regulation and safe movement of dangerous waste and chemicals. The Ministry has policy responsibility to ensure New Zealand's compliance with its international obligations and commitments. The international agreements have cyclical work programmes to prepare for the meetings of the parties, and then to implement the decisions made at the meetings. It is anticipated that the international meeting schedules and methods will continue to be affected by COVID-19 in the upcoming years.
30. New Zealand's international obligations and commitments are implemented through our domestic legislation. For example, HSNO contains the requirements to prohibit or restrict persistent organic pollutants listed under the Stockholm Convention. Persistent organic pollutants are highly toxic chemicals that persist in the environment, travel long distances, build up in human and animal tissue, and are passed from species to species through the food chain.
31. The Basel Convention and the Waigani Convention set out procedures for the movement of hazardous wastes and certain types of plastic wastes across borders. Those wastes can only be traded under a permit by the EPA issued under the Imports and Exports (Restrictions) Prohibition Order (No 2) 2004. The EPA permits can only be issued when the wastes cannot be managed domestically, there is written agreement between the importing and exporting countries and the importing country can guarantee that the waste will be managed in an environmentally sound manner.
32. Other international agreements include the Montreal Protocol to phase down ozone depleting substances (for example, hydrofluorocarbons under the Kigali Amendment) and the Rotterdam Convention to restrict dangerous chemicals and pesticides. The ozone depleting substances are regulated under the Ozone Layer Protection Act 1996, whereas the import and export of the Rotterdam Convention chemicals are managed under the Imports and Exports (Restrictions) Act 1988.

**External reviews and recommendations relating to the hazardous substances regulatory system**

33. Recent external reviews of the hazardous substances regulatory system have identified key issues and possible systematic improvement options. In addition, the Parliamentary Commissioner for the Environment (PCE) made a recommendation to the Ministers on a Pollutant Release and Transfer Register (PRTR), which is an inventory of hazardous substances and waste, for better data and information.



*The review of the hazardous substances compliance system by an independent Technical Working Group*

34. In 2019, an independent Technical Working Group (TWG) evaluated the hazardous substances compliance system in New Zealand, to analyse whether the system is fit-for-purpose and to recommend improvements.
35. The Ministry and the EPA decided to commission this independent review of the system to ensure that it is capable of protecting the health and safety of people and the environment, and to minimise the occurrence of harmful chemical incidents and mitigate their impacts.
36. Recent events of non-compliance with the regulations for hazardous substances have highlighted the dangers that the substances can pose and indicated a range of weaknesses within the hazardous substances compliance system. For example, two emergency incidents relating to Concours Electroplating in Timaru and Sustainable Solvents in Northland involved massive toxic chemical stockpiles accumulated at worksites. These incidents pointed to shortcomings in the suite of tools the RMA and HSNO give the enforcement agencies and to a failure at central and local government agency levels to use the tools available to best effect.
37. Those incidents have resulted, and continue to result, in significant risks to people and the environment and substantial costs to the Crown and local government to appropriately dispose of the accumulated hazardous materials, as well as to investigate contamination and remediate such sites.
38. The TWG found that while some elements of the system were robust, such as the hazardous substances classification and approval regime, many other elements required improvements. Their findings referred to a fractured system with regulatory clutter, lack of system leadership, insufficient enforcement tools, incomplete data and information on hazardous substances and weak oversight of hazardous waste disposal. The TWG's report is attached as Appendix 2.

*PCE's letter to Ministers concerning Pollutant Release and Transfer Register*

39. On 5 April 2019, the PCE wrote to the Environment Ministers suggesting the Ministry examine the merits of establishing a Pollutant Release and Transfer Register (PRTR).
40. The PCE noted that there were no standardised methods to estimate and track hazardous substances and waste released to the environment, even though the development of national environmental standards contributed to consistent monitoring and management of air quality and soil contamination across New Zealand.
41. The PCE's letter echoed the findings of the TWG on incomplete data and information on hazardous substances and waste. It also aligned with recommendations in the OECD review of New Zealand's environmental performance in 2017 that a PRTR be established to collect and facilitate public access to the information on environmental impacts of private companies. The PCE's letter and supporting document are attached as Appendix 3.

*Review of the EPA's cost recovery arrangements*

42. In April 2020, the Ministry commissioned Martin Jenkins to review the EPA's cost recovery arrangements for its regulatory activities in the exclusive economic zone (EEZ), hazardous substances, and trade of hazardous and plastic wastes.
43. The purpose of the review was to examine whether any changes are needed to the current cost recovery arrangements to support sustainable funding for the EPA and their regulatory functions relating to hazardous substances and EEZ activities.



44. The review identified opportunities for additional cost recovery and revenue for the EPA. For example, new cost recovery mechanisms could support the EPA's regulatory and enforcement activities relating to the import and export of hazardous substances and waste, and the reduction of ozone depleting substances.

*Climate Change Commission's initial advice on emissions reduction pathways*

45. On 31 January 2021, the Climate Change Commission (CCC) released its draft advice on the emissions budgets and on policy direction for the Government's first emissions reduction plan. The consultation is open for submission from 1 February to 14 March 2021.
46. In its draft report, the CCC proposed the first three five-year emissions budgets, limiting greenhouse gases and working as steppingstones towards New Zealand's 2050 net-zero target. To achieve the budgets, it made broad-ranging recommendations across land, transport, waste, electricity, industry and heat, and fluorinated gases.
47. The CCC recommended action be taken to manage the transition from hydrofluorocarbons (HFCs). It suggested the Government support reducing HFC emissions by:
- a. extending HFC import restrictions, where feasible, to include finished products and recycled bulk HFCs by 2025
  - b. reducing leakage and improper disposal of HFCs through mandating good practice from business and technicians.

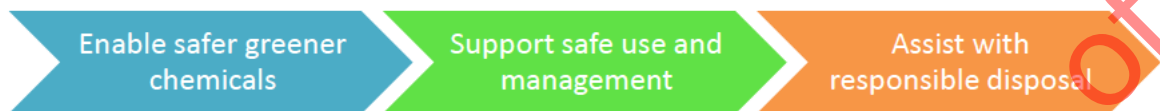
**Key hazardous substances policy issues and opportunities**

48. As advised [2019-B-06263 refers], the findings of the TWG point to some key issues within the hazardous substances regulatory system. In particular:
- a. lack of graduated enforcement tools under HSNO
  - b. absence of reliable data and information on hazardous substances and waste (a similar concern was raised in the PCE's letter)
  - c. regulatory clutter and lack of system leadership
  - d. inconsistent and fragmented management of hazardous wastes and associated legal and environmental risks.
49. In addition, Martin Jenkins suggested that additional EPA cost recovery could be promoted to support the regulation of hazardous substances and waste.
50. Furthermore, the CCC recommended the Government consider initiatives to reduce HFC emissions by strengthening the import restrictions and improving the management and disposal of HFCs.
51. Based on the external review findings and recommendations, there are opportunities to make the hazardous substances regulatory system more effective and efficient by implementing systematic improvements targeting the identified issues over the next 2-3 years.

**Current work programmes to respond to identified issues and opportunities.**

52. This section outlines the Ministry's current work programmes to address the identified issues and opportunities. Some of the work streams listed below, such as the legislative amendments to improve HSNO assessment and reassessment processes and the methyl bromide use monitoring, are discussed in separate briefings. This section also contains an update on the other work programmes including developing HSNO infringement regulations and exploring enhanced EPA cost recovery.

53. Our work is structured around a strategic framework which seeks to manage the harm from hazardous substances and waste throughout their life cycle. Under the framework, a hazardous substance life cycle starts from import and manufacture (enable safer greener chemicals), to use and management (support safe use and management), and then to disposal (assist with responsible disposal), as illustrated below.



#### *Enabling safer and greener chemicals*

54. We propose to promote and enable the use of safer and greener chemicals by:

- a. progressing legislative amendments to improve the HSNO assessment and reassessment processes [2021-B-07511 refers].
- b. implementing regulatory changes to enable the ratification of the Minamata Convention on Mercury to reduce mercury use and emissions [2019-B-06343 refers].
- c. identifying strategic and policy options to help reduce emissions from hydrofluorocarbons (HFCs) under the emissions reduction plan. HFCs are regulated under the Montreal Protocol and the Ozone Layer Protection Act 1996 (OLPA). We will provide the 2019 annual update on the operation of the OLPA in the first half of 2021.

#### *Safe use and management of hazardous substances and waste*

55. In order to support and incentivise the safe use and management of hazardous substances, we propose to:

- a. develop HSNO infringement regulations
- b. develop EPA cost recovery proposals

s 9(2)(f)(iv)

#### *Environmentally responsible disposal*

56. Our work seeks to encourage and assist with responsible and environmentally sound disposal of hazardous substances and waste.

57. The Ministry has progressed regulatory changes to implement the 2019 Basel Convention decision to better regulate trade in plastic waste. The import and export of most mixed plastic waste now requires a permit from the EPA.

58. We propose to explore options to implement further improvements for the regulation of hazardous waste and certain types of plastic waste, and to mitigate the environmental and liability risks associated with illegal traffic of waste under the Basel Convention. We will provide an update on this matter in 2021.

59. We provided a separate briefing to respond to the request from the Minister for the Environment for advice on the potential for improvements to New Zealand's contaminated land and orphan sites liability regime [2020-B-07417 refers].

#### *Summary of HSNO infringement regulations and EPA cost recovery work*

60. Many of the issues noted above are discussed in detail in recent or upcoming briefings. The following paragraphs provide a summary of cost recovery and infringement projects that are not covered in other documents.

61. **Developing HSNO infringement regulations:** the Ministry is developing HSNO infringement regulations to enable an escalation pathway to respond to different offences in a proportionate and efficient manner. We will provide further advice on the proposed work within the next few months.
62. Currently, there is no intermediate enforcement tool under HSNO to deter low-level offences, making a graduated regulatory response to offending impossible. HSNO does provide a mechanism for infringement regulations, allowing enforcement agencies to improve compliance by dis-incentivising various minor offences through infringement notices rather than costly prosecution. However, despite earlier Cabinet approval, the HSNO infringement regime is yet to be introduced. The only options available to enforcement agencies are compliance orders (or warning letters) and prosecution.
63. Prosecution is rarely pursued by enforcement agencies due to high legal and administrative costs and demands on staff time. Other non-punitive measures such as warning letters, compliance orders or education do not provide sufficient disincentives for deliberate or repeated breaches. This means that some minor offences are repeated, or contribute to more significant breaches that may lead to major environmental consequences.
64. The flexibility created by a toolkit of graduated enforcement responses would help enforcement agencies:
- target the most serious and highest-priority risks presented by the non-compliance for prosecution
  - minimise the costs associated with the agency's response
  - signal to the non-compliant entity concerned, and to the wider regulated sector, the level of seriousness with which the agency views the non-compliance and risks posed
  - adjust its response in an individual case by escalating or de-escalating the level of its approach as necessary.
65. We have commenced work with the EPA to develop the proposed infringement regulations. Under HSNO, the EPA will need to undertake consultation on the proposed regulations, upon the Minister for the Environment's request. Depending on resourcing and prioritisation, the EPA could consult on the proposed regulations by late 2021, enabling the new regulations to be put in place by mid/late-2022.
66. **Enhanced EPA Cost recovery:** a legislation programme bid on cost recovery proposals for the EPA, along with other Environment Portfolio legislation bids, has been submitted to the Cabinet Office for consideration for inclusion in the 2021 Legislation Programme [2020-B-07484 refers]. It is a Category 5 bid, where instructions need to be provided to the Parliamentary Counsel Office in 2022. The cost recovery proposals would require a mix of legislative and regulatory amendments. Legislative priorities in the wider context will need to be considered before progressing any cost recovery law change. The Ministry will provide further advice on the cost recovery proposals, upon Cabinet's approval of the inclusion of the bid in the legislation programme.
67. The Ministry commissioned Martin Jenkins in 2020 to undertake a recent review of the EPA's cost recovery arrangements for their regulation of the exclusive economic zone and continental shelf, hazardous substances (including ozone depleting substances), and hazardous waste. The review found that improved operational practices and cost recovery law changes could generate additional revenue for the EPA.
68. New permit fees could also be introduced to support the EPA's regulation of hazardous substances and waste. There is currently no cost recovery for the permitting activities relating to ozone depleting substances and hazardous waste. This is out of line with overseas regulators. For example, Australia currently charges from approximately A\$5,500 to A\$37,000 for permitting transits, imports and exports of similar hazardous substances and waste. The EPA has also been signalling that the recent and new addition

of small regulatory functions, such as the permitting function for plastic wastes and mercury, would increase pressure on its baseline funding.

69. A HSNO levy for importers and manufacturers of hazardous substances could be considered to support the EPA's regulatory and compliance monitoring activities. At present, minimal cost is recovered from participants in the regulatory system, such as manufacturers, importers or users. These participants import, export or use the approved substances and benefit from the EPA's regulatory services at no or minimal cost. The EPA's services include the EPA's assessment of new substances, the EPA controls set under individual approvals or group standards (to protect people and the environment), reassessments, and compliance monitoring and enforcement activities.

*Possible future work for consideration*

70. The Ministry considers policy work could be undertaken in the longer term to:
- a. improve data and information on hazardous substances and waste
  - b. facilitate system leadership
  - c. improve hazardous waste disposal.

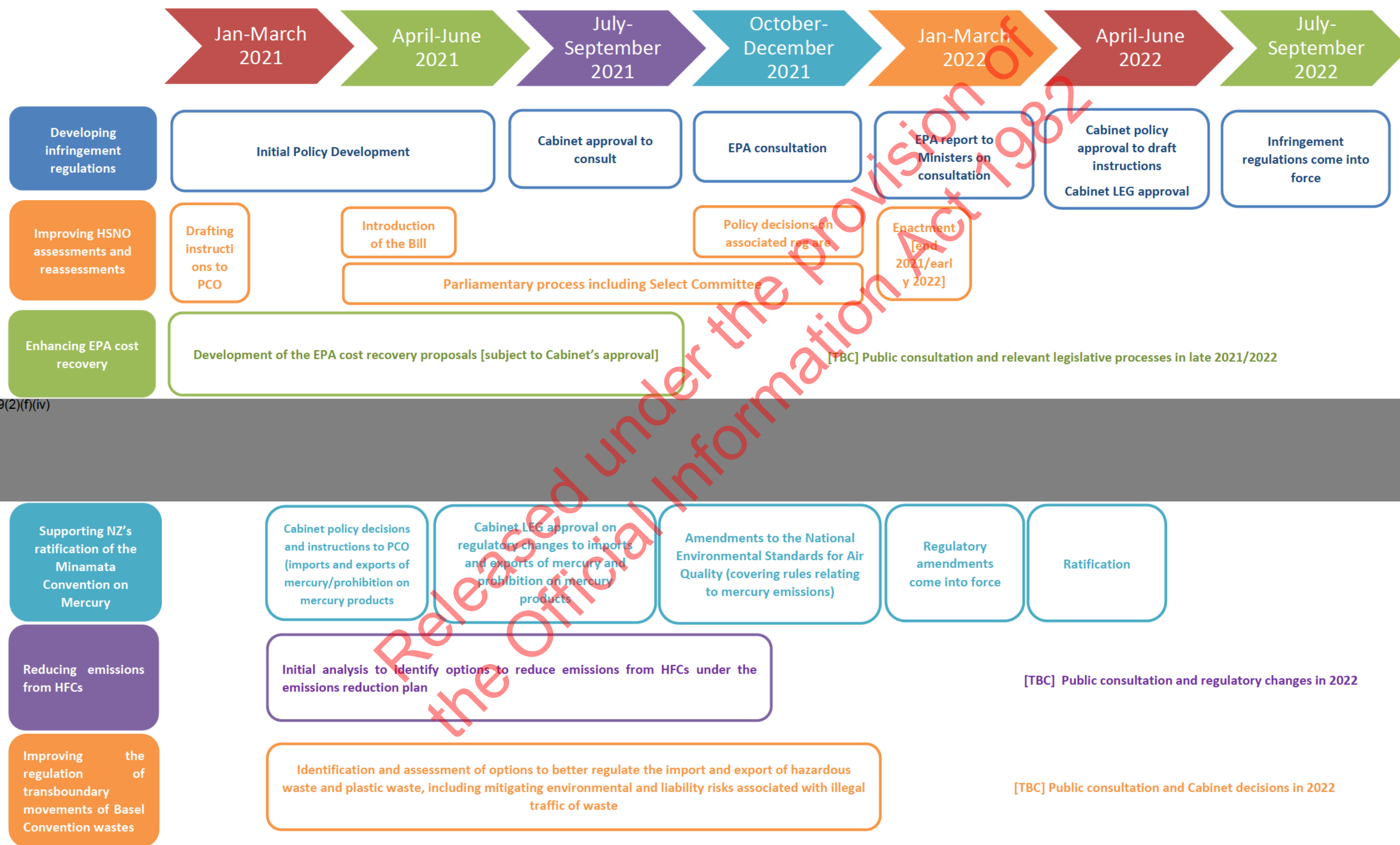
## Next Steps

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71. We submitted a legislation programme bid to progress HSNO amendments to improve the process for assessing and reassessing hazardous substances. We anticipate that the relevant bill could be introduced by mid-2021.
72. We have commenced work with the EPA on developing HSNO infringement regulations for hazardous substances. We will provide further update on the proposed work within the next few months.
73. We will provide further advice on the EPA cost recovery proposals, upon Cabinet's approval for the inclusion of the relevant legislation programme bid in the legislation programme.
74. s 9(2)(f)(iv)
75. We will provide the Minister for the Environment with a briefing and Cabinet paper seeking Cabinet's policy decisions relating to New Zealand's ratification of the Minamata Convention and for the Minister to instruct the Parliamentary Counsel Office, in late March.
76. We will provide the 2019 annual update on the operation of the OLPA in the first half of 2021. The update will contain information and advice regarding hydrofluorocarbons (HFCs).
77. We will provide an update on possible options to better regulate the Basel hazardous waste and plastic waste, and to mitigate risks associated with illegal traffic, in 2021.
78. Appendix 1 outlines indicative project timelines for the proposed work programmes.



Appendix 1: Indicative timelines for the current work programmes as of February 2021





## Appendix 2: Hazardous Substances Compliance System Findings Report

s 18(d)

Released under the provision of  
the Official Information Act 1982

**Appendix 3: Letter from the Parliamentary Commissioner for the Environment  
to Ministers concerning Pollutant Release and Transfer Register**

s 18(d)

Released under the provision of  
the Official Information Act 1982



## 2021-B-07583 Talking points – Meeting with Dairy NZ, Beef + Lamb, and Federated Farmers, 11 February 2021

Date Submitted:	9 February	Tracking #: 2021-B-07583	
Security Level:	In-confidence	MfE Priority:	Non-Urgent

	<b>Action sought:</b>	<b>Response by:</b>
To Hon David Parker, Minister for the Environment	Note talking points for meeting with Dairy New Zealand, Beef + Lamb, and Federated Farmers	11 February

Actions for Minister's Office Staff	Return the signed briefing to the Ministry for the Environment
Number of Attachments: 2	Appendix 1: Talking points Appendix 2: List of sector attendees Appendix 3: Dairy NZ Briefing for Incoming Ministers 2020

### Ministry for the Environment contacts

Position	Name	Cell phone	1 <sup>st</sup> contact
Responsible Manager	Spencer Clubb	022 023 2478	
Director	Hayden Johnston	022 153 0221	✓

## 2021-B-07583 Talking points – Meeting with Dairy New Zealand, Beef & Lamb, and Federated Farmers, 11 February 2021

1. You are meeting with the Boards of Dairy NZ, Beef + Lamb and Federated Farmers on Thursday 11 February 2021, from 5.30 to 6.40pm.
2. Based on their meeting request, we expect they will wish to discuss your priorities for the coming term including:
  - freshwater implementation
  - resource management reform
  - fair allocation of freshwater resources.
3. Talking points are provided to support your attendance at this event (Appendix 1), as well as a list of attendees (Appendix 2).
4. Note Dairy NZ have also provided you with a Briefing for Incoming Ministers that they may wish to discuss with you (Appendix 3). It sets out Dairy NZ's achievements, aspirations and issues. The key messages from Dairy NZ are:
  - We need time to implement the package of freshwater measures
  - DIN isn't the right lever to pull to improve ecosystem health
  - Regulations must be practical on-farm
  - 32% of farmers said that nutrient limits were their biggest concern, when asked about water quality.

**Signature**

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Hayden Johnston  
Director – Water and Land use Policy  
**Ministry for the Environment**

**Date**

Hon David Parker  
**Minister for the Environment**

**Date**

## **Appendix 1: Talking points – Meeting with Dairy New Zealand and Beef & Lamb, 11 February 2021**

## **Appendix 1: Talking points – Meeting with Dairy New Zealand, Beef & Lamb, Federated Farmers – 11 February 2021**

### **Freshwater regulations**

We all agree on the importance of freshwater quality and that overtime we need to see improved practice.

The Government's goal remains unchanged. To stop further degradation, show material improvements within five years and restore our waterways to health within a generation.

Achieving this will require significant effort. We want to make sure that we implement a package of reforms that endures. We need to see meaningful change.

You [the sector] have raised concerns about the package of freshwater reforms, including needing time to implement the package, and that the regulations need to be practical on-farm.

We are listening to your feedback, and I know that you have been discussing your concerns with my officials.



These concerns are at two levels:

- Technical and definitional changes
- More significant concerns about the impact of the package.

### **Technical and definitional changes**

On the technical and definitional issues. Some will be resolved through the provision of guidance.

Where there are other minor and technical issues that are having unintended consequences, we will look at how these can be resolved. Officials are keeping track of these issues in order to have them corrected at the earliest opportunity.

I encourage you to continue to engage with officials on these points.

### **More significant concerns**

#### ***Intensive Winter Grazing (IWG) regulations***

Before Christmas, the Southland NES Advisory Group (the Group) on IWG released a report on implementing the Intensive Winter Grazing provisions.

The group has been thinking both about how to practically implement the regulations, and about ways they think rules could be tweaked. The

report included recommendations to change permitted activity status conditions, and the creation of a new pathway (in addition to existing permitted activity conditions, and as an alternative to resource consents) based on farm planning modules focussed on IWG. Ministers I am aware of concern from the sector and councils about the implementation timeframes as they stand (IWG currently take effect on 1 May 2021).

I am expecting advice from my officials next week on ways to address the concerns raised.

### ***DIN attribute***

In May of last year, we undertook to reconsider in 12 months whether to include a DIN attribute and national bottom line of 1 mg/l in the NPS-FM.

Officials will be preparing advice on this matter. Key factors to consider when reconsidering a DIN of 1 mg/l include:

- whether anything has changed since we last considered it (eg, new scientific advice or information),

- the probable effects and impacts of a national bottom line on DIN over and above current policy settings, and whether other mechanisms exist to achieve the same levels of environmental protection (eg, the PCE's proposal for the protection of estuaries, or the way that the new NPSFM manages nitrogen-related attributes).

### ***Stock Exclusion regulations***

As you will know, we have directed officials to analyse the size and nature of issues with the low slope map for stock exclusion. The map establishes which parcels of land are subject to the regulations.

The online feedback tool has received more than 250 submissions, and I am told that MfE and MPI are having ongoing constructive conversations with the sector and with regional councils to test alternative mapping options.

I am expecting that advice on ways to address the concerns initially raised by the sector at the end of this month.

## **TMoTW**

You [Federated Farmers] have raised concerns about the intent of Te Mana o te Wai, and that the ability of people and communities to provide for their wellbeing, now and in the future.

Te Mana o te Wai is a fundamental concept of the NPS-FM 2020, rather than being part of the general statement of national significance as it was in the National Policy Statement for Freshwater Management 2014 (amended 2017).

The policy intent of Te Mana o te Wai is described in clause 1.3 of the NPS-FM 2020. Essentially, the intent is for regional councils to restore the balance between the water, the wider environment, and the community in their freshwater management decisions, by recognising that protecting the health of freshwater protects the health and well-being of the wider environment.

There is no intent that by making the health and well-being of water bodies and freshwater ecosystems the first priority in freshwater management, that councils will ignore the health needs of people, or the ability of people and communities to provide for their social,

economic, and cultural well-being, now and in the future. These are also priorities.

### ***N-cap guidance***

The nitrogen cap regulations set a cap of 190 kilograms per hectare per year on the application of synthetic nitrogen to any land in pastoral use.

Farmers who cannot meet the 190kg limit may get an exemption by resource consent if they can show either: (a) that, through their use of good practices, nitrogen discharges will not increase; or (b) they have a nitrogen reduction plan to meet the cap by 1 July 2023.

The cap will be reviewed in 2023 after its first full year of implementation.

I am aware that DairyNZ has expressed some concerns to my officials about the implementation of these regulations.

The Ministry will soon be preparing implementation guidance for farmers and councils and this will include a peer review process to ensure that all practical implementation options are well canvassed.



I understand that DairyNZ has accepted the invitation from my officials to join in that process.

### ***Fair allocation of freshwater resources***

We indicated in our election manifesto that we will work to achieve efficient and fair allocation of freshwater resources, having regard to all interests including Māori, and existing and potential new users.

For New Zealand to thrive economically this century, water is a key strategic asset and is a major competitive advantage for New Zealand.

The way we allocate freshwater now will affect the prosperity of future generations.

With increasing demand through growing population and pressures such as climate change, the current 'first-in, first-served' approach is no longer suitable for allocating this precious natural resource.

We have a window of opportunity to make meaningful and lasting change, with a broad consensus that change is needed.

While we are yet to finalise the work programme for this, it will require extensive work with Treaty partners, as well as engagement with the primary sector, other key stakeholders, and local government.

#### Climate Change Commission (CCC) – draft package of advice

The CCC recently released its draft package of advice. That advice contains the CCC's proposed reductions in NO<sub>2</sub> and CH<sub>4</sub> over the first three emissions budgets.

	2018 baseline	2022-2025 budget	2026-2030 budget	2031-2035 budget
Annual average emissions of <b>methane</b> (Mt)	1.32	1.23	1.17	1.11
% reduction against 2018 baseline	-	6.5%	11.4%	15.9%
Annual average emissions of <b>nitrous oxide</b> (Mt CO <sub>2</sub> e)	7.7	7.3	7.1	6.6
% reduction against 2018 baseline	-	4.9%	8.6%	14.2%

This pathway for methane includes achieving our 2030 target of 10% reduction in emissions compared to a 2017 baseline.

The CCC's projected emissions reductions (for both NO<sub>2</sub> and CH<sub>4</sub>) focus on farmers adopting and implementing existing technologies and

practices, rather than relying on any breakthrough technologies such as methane inhibitors/vaccine.

They also noted that farming is undergoing change already - many on-farm mitigations (such as using low nitrogen feeds) will be driven by freshwater policy, so farmers may already be taking actions to reduce their emissions.

### Resource management reform

It is widely recognised that we need to change the resource management system to deliver outcomes for present and future generations – not just for the natural environment but also for our urban areas and housing.

There has been a lot of critique of the RMA in the last decade and the deficiencies have been well traversed.

In the last parliamentary term, I initiated the most significant, broad ranging and inclusive piece of work on what a new system could look like since the RMA was enacted in 1991 by establishing the

independent Resource Management Review Panel, led by Hon Tony Randerson, QC.

The Panel's report, *New Directions for Resource Management in New Zealand*, was published on 29 July 2020.

The Government has agreed to take forward the panel's recommendations to repeal the existing RMA and replace it with three new pieces of legislation – a Natural and Built Environments Act (the NBA), a Strategic Planning Act (the SPA), along with a Climate Change Adaptation Act (the CAA) to address issues related to climate change adaptation and the managed retreat from areas threatened with inundation.

We have a clear mandate to progress this comprehensive reform.

The Panel's recommendations were informed by consultation with stakeholders, which included meeting with primary industry representatives. The Panel released an Issues and Options paper in November 2019 received 189 submissions and the Panel met with external advisory groups who also provided valuable input.

The Government has now adopted the Panel's recommendations to repeal and replace the RMA with the three acts – the NBA, SPA, and CAA.

The Government will need to work promptly to pass these laws in the current parliamentary term, and Cabinet has agreed to the following process to meet this timeframe:

- Using a special process for the NBA by developing an exposure draft of the legislation, which will be considered by a select committee inquiry ahead of legislation being formally introduced into Parliament.
- the Strategic Planning Act and the Climate Change Adaptation Act won't have an exposure draft process, but will progress in parallel.

I acknowledge it's a fast/ambitious timeline but one that's required in order to achieve much needed reform in this area.

While the legislation is important, there is also much more needed to ensure a new system is successful.



The system will take time to change and to transition to it, so continuing to implement the existing system is important so that the changes will be picked up in the new system – particularly for freshwater and urban development.

#### Other Issues - Essential Freshwater Implementation

##### ***Governance and priorities for implementation***

The Ministry for the Environment will take a strong role in implementation of the Essential Freshwater reforms to help ensure we can collectively deliver the on the ground change required to meet the freshwater objectives.

It is imperative that the government works collaboratively with local government, our Treaty partners, the primary sector and other key stakeholders.

A Freshwater Implementation Group (FIG) has been established to oversee delivery of an implementation programme. The FIG includes members from MfE, MPI, Regional Councils, Te Kāhui Wai Māori, DairyNZ, HorticultureNZ, Beef and Lamb, and environmental NGOs.

The FIG has identified a number of key priority projects. These include: Te Mana o te Wai (which focusses on engagement with iwi, Maori and building regional council capability); communications and networks; support for Freshwater Plan development within tighter timeframes; NES support and guidance; and systems performance monitoring and data.

Further engagement with the primary sector will take place as priority project work progresses.

Supporting Iwi and Māori to work with councils is crucial to the successful implementation of the Essential Freshwater package and ensuring that regional planning instruments give effect to the NPS-FM and Te Mana o te Wai.

### ***Freshwater Farm Plans***

In the last Parliamentary term, the Resource Management Act 1991 (RMA) was amended to enable regulations to be made that require farmers and growers to have mandatory and enforceable Freshwater Farm Plans (FW-FP).

The aim of FW-FPs is to “better control the adverse effects of farming on freshwater and freshwater ecosystems”. The regulations are at an early stage of development by MfE and MPI. The FW-FP system will also need to be aligned with the RM reforms.

Developing the FW-FP regime is a complex piece of policy design and regulation drafting and will touch on difficult resource management issues. These include:

- determining how to identify and respond to risk and uncertainty how to ensure ‘appropriate actions’ are identified at the farm scale, and
- how to ensure consistency in decision making by certifiers and auditors.

Regional councils will play a pivotal role in the development of the FW-FP regime, including ensuring regulations can be implemented.

Officials organised information-gathering workshops with key stakeholders and partners, including members of Te Kāhui Wai Māori, the Regional Sector, Iwi/Māori and farming stakeholders at the end of

last year. These helped identify some best practice aspects of existing farm plans and associated systems.

Thank you to Beef & Lamb for sharing with us your new draft Farm Plan package template. This will help inform the analytical work my officials are doing.

Public consultation and a significant drafting and exposure draft period will be needed for the future development of the regulations.

In the meantime, farmers should continue using any existing farm plans to manage environmental risks until the new FW-FP regime is in place in their region.

#### **Other issues – Cost benefit analysis of freshwater package**

#### ***Tailrisk review of cost benefit assessment of ‘Action for healthy waterways’***

I'm aware Federated Farmers have continued to express concerns with the Essential Freshwater package. You have recently shared with MfE, MPI, and the Department of Prime Minister and Cabinet (DPMC) a report outlining the issues you wish to discuss with officials.

You will know from your conversations with officials that they are preparing advice on some of these matters (wetland definition; stock exclusion; IWG).

The Ministry for the Environment stands by its assessment of costs and benefits of the Essential Freshwater package and considers there to be numerous flaws in Tailrisk's analysis.

The marginal benefits and costs have been quantified, critical aspects peer reviewed, and benefits from improving freshwater ecosystem health will exceed transition and implementation costs.

The economic costs were peer-reviewed by Sense Partners, Infometrics, and Australia-based Star Economics, which also reviewed the benefits assessment.

The Ministry is focussed on the implementation of the Essential Freshwater package and is working collaboratively with the primary sector, regional sector, and Kāhui Wai Māori to support this implementation.



## **Appendix 2: List of attendees**

### **DairyNZ**

Jim van der Poel – Chair  
Colin Glass  
Elaine Cook  
Jo Coughlan  
Jacqueline Rowarth  
Mary-Anne Macleod  
Tracy Brown  
Richard McIntyre  
Tim Mackle - CE  
David Burger – Senior Leadership

### **Beef+LambNZ**

Andrew Morrison – Chair  
Martin Coup  
Phil Smith  
George Tatham  
Tony Egan  
Bayden Barber  
Sam McIvor - CE  
Dave Harrison – Senior Leadership  
Corina Jordan (may be subject to change) – Senior Leadership

### **Federated Farmers**

Andrew Hoggard - President  
Karen Williams – Vice President  
Terry Copeland - CE  
Chris Allen – Senior Leadership

### **MfE**

Vicky Robertson

### Appendix 3: DairyNZ – Briefing for Incoming Minister

s 18(d)

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the Official Information Act 1982