



OIAD-73

9(2)(a)

Dear 9(2)(a)

Thank you for your email of 2 July 2021 requesting the following under the Official Information Act 1982 (the Act):

*I was wondering if I could get all memos, correspondence and reports, about the review into whether to set bottom-line limits for dissolved inorganic nitrogen (DIN).*

*This is for all internal and external correspondence – including but not limited to ministries and ministers, lobby groups and sector organisations.*

*If this could be released in a searchable format for the time period of the 12 months up to now.*

The Ministry for the Environment (the Ministry) contacted you on 12 July 2021 to clarify the scope of your request. You responded on 13 July to narrow your timeframe to beginning of this year until July. The Ministry's Water and Land Use Systems team spoke to you via phone on 16 July 2021 to explain what was involved in compiling a response to a request like yours, and to help refine your request.

Following this phone call, Ministry staff confirmed your agreed approach and advised you the new due date of your request, which was 13 August 2021:

- any internal memos (i.e., confirmation of advice or decisions internally);
- any advice to the Minister;
- any reports; and,
- any correspondence with ministers, other ministries, lobby groups and/or sector organisations

that are about the review into whether to set bottom-line limits for dissolved inorganic nitrogen (DIN).

The Ministry carried out several searches in our document management system to gather material in scope of your request.

A search of information relating to the last part of your request returned a significantly large number of documents (emails and attachments). The Ministry identified over 2000 emails to external agencies over the past 12 months, and over 1500 for the past 6 months. After narrowing search parameters, the Ministry still identified over 500 emails potentially in scope.

Even with a lengthy extension, it would take a considerable amount of time and effort to assess the material in scope of this part of your request. As such, I am refusing this last part

of your request under section 18(f) of the Act as the information requested cannot be made available without substantial collation or research.

The Ministry has identified seven documents in scope of the first three parts of your request, as detailed in the document schedule below.

The letters sent to STAG members are being released to you, with some information withheld under the following section of the Act:

- 9(2)(a) – to protect the privacy of natural persons

The briefing *2020-B-07248 Water and land use regulations proposed work areas*, is released in part to you, with information withheld where it is out of scope, and under the following sections of the Act:

- 9(2)(a) – to protect the privacy of natural
- 9(2)(f)(iv) – to maintain the confidentiality of advice tendered by Ministers of the Crown and officials

The briefing *2021-B-07902 Aide Memoire – Process for reconsidering DIN* is withheld in full under section (9)(2)(f)(iv) of the Act – to maintain the confidentiality of advice tendered by Ministers of the Crown and officials.

The draft memo on the NPS-FM and both the one pager policy documents are withheld in full under the following section of the Act:

- 9(2)(g)(i) – to maintain the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any public service agency or organisation in the course of their duty

A memo containing extracts from the Cabinet paper seeking final policy decisions for the Essential Freshwater package last year is released to you in full.

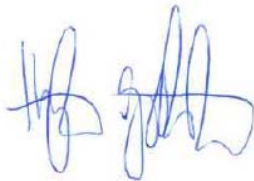
In terms of section 9(1) of the Act, I am satisfied that, in the circumstances, the withholding of this information is not outweighed by other considerations that render it desirable to make the information available in the public interest.

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

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Hayden Johnston', is positioned above the printed name.

Hayden Johnston  
**Director - Water and Land Use Policy**

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the Official Information Act 1982

### Document schedule

Document no.	Document date	Content	Decisions	OIA sections applied
1	2 December 2020	2020-B-07248 Water and land use regulations proposed work areas	Release in part	9(2)(a) 9(2)(f)(iv)
2	9 April 2021	2021-B-07902 Aide Memoire – Process for reconsidering DIN	Withhold in full	9(2)(f)(iv)
3	10 May 2021	Final STAG letters	Release in part	9(2)(a)
4		Extracts from Cabinet paper	Release in full	
5	27 July 2021	Draft memo NPS-FM Policy	Withhold in full	9(2)(g)(i)
6		One page policy 3.13	Withhold in full	9(2)(g)(i)
7		One page policy 3.13	Withhold in full	9(2)(g)(i)



## Water and land use regulations proposed work areas



Date Submitted:	2 December 2020	Tracking #: 2020-B-07248	MPI tracking #: B20-0557
Security Level	In confidence	MfE Priority:	Non-Urgent

Delete/add Ministers as appropriate	Action sought:	Response by:
To Hon David Parker, Minister for the Environment	Discuss with officials	9 December 2020
To Hon Damien O'Connor Minister of Agriculture	Discuss with officials	9 December 2020

Actions for Minister's Office Staff	<b>Return</b> the signed report to MfE.
Number of appendices and attachments 1	Titles of appendices and attachments (ie separate attached documents): Water and land use regulations proposed work areas

### Ministry for the Environment contacts

Position	Name	Cell phone	1 <sup>st</sup> contact
Principal Author	Peter Nelson	022 493 0560	
MfE Responsible Manager	Jo Burton	022 066 1645	
MPI Responsible Manager	s 9(2)(a)	s 9(2)(a)	
MfE Director	Hayden Johnston	022 153 0221	✓
MPI Director	s 9(2)(a)	s 9(2)(a)	

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## Water and land use regulations proposed work areas

### Key Messages

1. This briefing provides you with information on the proposed regulatory work plan for freshwater and rural land use that the Ministry for the Environment (MfE) and the Ministry for Primary Industries (MPI) are working on.
2. We would like to discuss these areas of work with you to better understand your preferred prioritisation of projects and sequencing of delivery over the next Parliamentary term, and to hear your views on the work areas.
3. There are some significant regulatory work programme components which you have already received, or will soon receive, briefings on. These include:
  - freshwater allocation (2020-B-07473 to be provided next week) and rights and interests (draft Cabinet paper to Minister Parker only)
  - freshwater farm plans (FW-FP)
  - the National Policy Statement for Indigenous Biodiversity (NPS-IB) (Minister Parker only)
  - the NPS for Highly Productive Land (due January 2021)
  - the National Environmental Standards (NES) for Plantation Forestry.
4. This paper provides a brief outline of the following work areas:

#### *Freshwater*

- Potential amendments to existing directions or regulations

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**Advice**

6. This briefing sets out the various work areas related to freshwater and rural land use. These work areas have either: been requested by Cabinet or Ministers, or are from the Labour Party Manifesto; or are potential responses to issues raised during discussions about the implementation of Essential Freshwater; or are part of a long-term work plan to address environmental concerns.
7. The majority of these work areas are either the joint responsibility of MfE and MPI or are areas of work which MfE and MPI work closely on. The exceptions are estuaries and biodiversity, which are joint MfE and Department of Conservation (DOC) work areas and the urban water work on drinking water and wastewater, which MfE is working with the Department of Internal Affairs (DIA) on.
8. Some of these work areas are underway, while others have not begun, and have not yet been resourced. We would like to discuss with you options for sequencing and prioritisation of this work programme over the Parliamentary term.
9. Careful sequencing will help to ensure that dependencies across the work programme are managed, in terms of both policy and implementation. It would also enable officials to plan public consultation and engagement with stakeholders in an efficient way that provides informed feedback and reduces the burden on submitters and stakeholders.
10. Consideration also needs to be given to how this work programme aligns with the broader RM reform programme.
11. Table 1 provides the key information about each work area, and more detail is provided in Appendix 1.

**Out of Scope**

[Redacted]

13. The other work areas are less time critical and, except for estuaries, and DIN and DRP, involve separate regulations or directions. Out of Scope


[Redacted]

**Out of Scope**

[Redacted]

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Out of Scope



### Next steps

16. Officials would appreciate the opportunity to discuss your priorities and possible sequencing of these work areas.
17. After preliminary discussions with you, officials will prepare a work programme for the next 3 years. This work programme will take account of your priorities, interdependencies within the work programme and ties to other government priorities and will ensure adequate resourcing across the work programme.
18. More detailed briefings on individual work areas will be provided over the next two weeks and in early 2021.

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Table 1 key information about each work area

Policy area	Description	Driver	Other considerations
Out of Scope	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
Dissolved inorganic nitrogen and dissolved reactive phosphorous (p14)	9(2)(f)(iv)	Cabinet direction	9(2)(f)(iv)
Out of Scope	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]

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**Recommendations**

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19. We recommend that you:

- a. **Meet** with officials to discuss prioritisation and sequencing of the water and land use regulations work areas

Yes/No

**Signature**

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Hayden Johnston  
MfE Director  
**Water and Land Use Policy**



Charlotte Denny  
MPI Director  
**Land, Water and Climate**

Hon David Parker  
**Minister for the Environment**

Date

Hon Damien O'Conner  
**Minister of Agriculture**

Date

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## Dissolved inorganic nitrogen and dissolved reactive phosphorous

### Why we are doing this work

67. Cabinet agreed to include the dissolved reactive phosphorous (DRP) attribute proposed by the Science and technical Advisory Group (STAG) in the NPS-FM 2020, as an action plan attribute without a national bottom line. The dissolved inorganic nitrogen (DIN), limit setting attribute recommended by the STAG was omitted. However a policy was added to the NPS-FM which requires councils to set DIN and DRP concentrations to protect attributes affected by nutrients (eg, periphyton and others) and downstream receiving environments [CAB-20-MIN-0231 refers].
68. In omitting the DRP bottom line and the DIN attribute, the Cabinet paper stated that:
- future work would include considering in 12 months' time whether there should be a DIN bottom line (likely with exceptions)
  - officials had been tasked to continue work on an environmental classification system, to reflect the high natural variation in DRP in New Zealand's freshwater environments and to report back to the Minister for Environment and the Minister of Agriculture within 12 months.
69. These 12-month reviews were announced publicly and require a report back to Ministers in June 2021.
70. STAG initially proposed attributes with bottom lines for DIN and DRP to better manage nutrient levels in water. Some STAG members considered it desirable to use attributes to directly manage nitrogen and phosphorus to protect ecosystem health due to uncertainties and variability in the relationship between nitrogen, phosphorus and periphyton.
71. Their initial proposal was for attributes with national bottom lines of 1 mg/l for DIN, and 0.018 mg/l for DRP. However, there was not unanimous agreement within STAG for these attributes, and their associated bottom lines.

### Current situation

72. Although there is no DRP bottom line or DIN attribute, the NPSFM still requires councils to manage for DIN and DRP. This includes setting instream concentrations for DIN and DRP to achieve target attribute states for: periphyton; other nutrient attributes (such as nitrate toxicity); any other attribute affected by nutrients (such as MCI); and also to protect downstream nutrient-sensitive receiving environments, such as estuaries. Councils must set limits on resource use to achieve the instream concentrations. Accordingly, the NPSFM sets strong direction for DIN and DRP as it is.

#### *Dissolved inorganic nitrogen*

73.9(2)(f)(iv)

74.9(2)(f)(iv)

75.9(2)(f)(iv)

76. 9(2)(f)(iv)

*Dissolved reactive phosphorus*

77. We consider gains can be made through further research to develop national bottom lines for DRP that account for natural variation in river types.

78. At the beginning of 2020 NIWA was contracted to scope the work involved in developing DRP bottom lines which vary by river type. NIWA has advised us that it would take around 12 months to complete this work and that it will not have capacity to begin a new project of this scale until mid-2021. Consequently a draft attribute for consultation may not be available until mid-2022.

79. 9(2)(f)(iv)

**Key issues**

80. 9(2)(f)(iv)

81.

82.

**Timeframes and Next steps**

83. 9(2)(f)(iv)

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85. 9(2)(f)(iv)

[Redacted]

86. 9(2)(f)(iv)

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## Extracts from Cabinet Paper: Action For Healthy Waterways – Decisions On National Direction And Regulations For Freshwater Management

This document contains extracts from the paper “*Action For Healthy Waterways – Decisions On National Direction And Regulations For Freshwater Management*” relating to commitments to review or reconsider policies managing nitrogen in fresh water.

### Recommendation 159:

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- “**note** that the Government intends to reconsider the possibility of a DIN bottom line of 1mg/l (likely with exceptions) in 12 months time”

### Text in body relating to recommendation 159:

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- Paragraph 22.1.3:
  - “delaying consideration of a dissolved inorganic nitrogen (DIN) bottom line for 12 months, but specifying that DIN levels will still have to be maintained or improved and increasing oversight of councils’ implementation of requirements”
- Footnote attached to paragraph 22.1.3:
  - “Over 95% of New Zealand’s rivers and streams are estimated to have median DIN levels of 1 mg/l or less. The proposals generally require DIN levels to be at least maintained at current state, or improved where they exceed water quality bottom lines or contribute to the exceedance of other attribute bottom lines (such as for periphyton, macroinvertebrates, or dissolved oxygen). If a DIN bottom line were adopted later, it would most likely be with exceptions and would be incorporated in regional planning processes before, or during, the proposed freshwater panel hearings process.”
- Paragraph 38.2:
  - “considering in 12 months’ time whether there should be a DIN bottom line in the NPS-FM...”
- Paragraph 95:
  - “On balance, we do not believe we can progress a national bottom line for DIN at this time, but it is critical that the Government take steps now to improve how nitrogen is managed. We will re-assess the appropriateness of a DIN bottom line in 12 months, with the benefit of a thorough review of the environmental and economic implications. If such a bottom line were to be adopted, it would most likely be with exceptions; and would be incorporated in regional planning processes before, or during, the proposed freshwater panel hearings process.”

### Recommendation 164:

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- “**agree** that there will be a review by 2023 of nitrogen management settings; and that if by then there is not a material reduction in the use of synthetic nitrogen fertiliser across New Zealand, the review will include an assessment of whether further input controls on agriculture are needed”

### Text in body relating to recommendation 159:

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- Paragraph 22.1.2:
  - “establishing a cap on the use of synthetic nitrogen fertiliser set initially at 190 kilograms of nitrogen/ha/year with a review required by 2023”
- Paragraph 38.2:
  - “...and by 2023 reviewing the cap on the use of synthetic nitrogen fertiliser”
- Paragraph 66:
  - “... This proposal includes a review by 2023 of the size of the cap, as part of an overall review of nitrogen management settings, including whether further interventions are required.”

#### Recommendation 149 (DRP):

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- “**note** that the Ministry for the Environment will continue work to develop national bottom lines for DRP that account for natural variation between different river types, with a report back to the Minister for the Environment and the Minister of Agriculture within 12 months”

#### Text in body (and other recommendations) relating to recommendation 149:

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- Recommendation 146
  - “**note** that STAG proposed a new water quality attribute for dissolved reactive phosphorus (DRP) for inclusion in the NPS-FM”
- Recommendation 147
  - “**note** that there is high natural variation in DRP in New Zealand rivers and therefore a single national bottom line is considered inappropriate at this time”
- Paragraphs 87-89
  - “The Government consulted on a possible new national bottom line for DRP, as recommended by the STAG (although STAG was not unanimous in this recommendation, and the Government did not express a preference whether or not to include DRP). Submitter feedback was mixed – many were concerned about the consequences for the environment if immediate improvements in phosphorus management are not made. Also, many noted that there is very high natural variation in DRP in rivers and streams.
  - Officials assessed these issues and concluded that while there is a policy gap in management of DRP by councils, an attribute that required limit-setting and included a bottom line would need an environmental classification system, such as that used in the sediment attributes, to reflect the high natural variation in DRP in New Zealand’s freshwater environments. We have tasked officials to continue work on this topic with a report back to the Minister for Environment and the Minister of Agriculture within 12 months.
  - On balance, we do not believe we can progress a national bottom line for DRP at this time, but it is critical that the Government take steps now to improve how phosphorus is managed. Our recommendation to include a DRP attribute without a bottom line will require improvement of DRP, or at least maintenance at current state; likewise, there is new explicit direction for councils to manage DRP to ensure other ecosystem health attributes are maintained or improved.”

10 May 2021  
Adam Canning  
s9(2)(a)

Dear Adam,

**STAG member views on DIN and any new information on that topic**

Thank you for your contribution to the Essential Freshwater reforms through your role on the Science and Technical Advisory Group (STAG).

As you will be aware, the Government committed to “reconsider the possibility of a DIN bottom line of 1mg/l (likely with exceptions) in 12 months’ time”, and in doing so to revisit the environmental and economic implications.

The STAG has previously provided advice on this issue, and you will be familiar with the reasons for the decisions Ministers took last year. In reconsidering those decisions, it is important for Ministers to be aware of anything that may have changed in the interim.

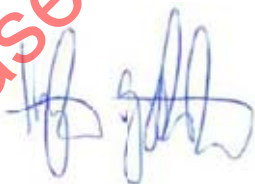
We are therefore checking with all STAG members whether they have become aware of any new research that would affect their previous advice on nitrogen thresholds. In particular, we would be interested to know:

- whether you are aware of relevant research published since STAG gave its supplementary report, which might change your previous advice;
- whether your views have changed since the supplementary report in any way; and
- if your views have changed, why that is.

We also welcome any other comments you may wish to provide in relation to STAG’s scientific advice on the Essential Freshwater package.

We would appreciate any response by 28 May 2021.

Yours sincerely



Hayden Johnston

**Director, Water and Land Use Policy**

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10 May 2021  
Bev Clarkson  
s9(2)(a)

Dear Bev,

**STAG member views on DIN and any new information on that topic**

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As you will be aware, the Government committed to “reconsider the possibility of a DIN bottom line of 1mg/l (likely with exceptions) in 12 months’ time”, and in doing so to revisit the environmental and economic implications.

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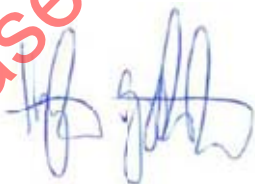
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- if your views have changed, why that is.

We also welcome any other comments you may wish to provide in relation to STAG’s scientific advice on the Essential Freshwater package.

We would appreciate any response by 28 May 2021.

Yours sincerely



Hayden Johnston

**Director, Water and Land Use Policy**

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10 May 2021  
Bryce Cooper  
s9(2)(a)

Dear Bryce,

**STAG member views on DIN and any new information on that topic**

Thank you for your contribution to the Essential Freshwater reforms through your role on the Science and Technical Advisory Group (STAG).

As you will be aware, the Government committed to “reconsider the possibility of a DIN bottom line of 1mg/l (likely with exceptions) in 12 months’ time”, and in doing so to revisit the environmental and economic implications.

The STAG has previously provided advice on this issue, and you will be familiar with the reasons for the decisions Ministers took last year. In reconsidering those decisions, it is important for Ministers to be aware of anything that may have changed in the interim.

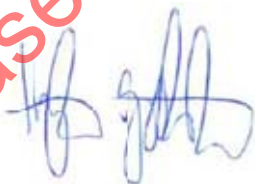
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- if your views have changed, why that is.

We also welcome any other comments you may wish to provide in relation to STAG’s scientific advice on the Essential Freshwater package.

We would appreciate any response by 28 May 2021.

Yours sincerely



Hayden Johnston

**Director, Water and Land Use Policy**

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10 May 2021  
Chris Daughney  
chris.daughney@mfe.govt.nz

Dear Chris,

**STAG member views on DIN and any new information on that topic**

Thank you for your contribution to the Essential Freshwater reforms through your role on the Science and Technical Advisory Group (STAG).

As you will be aware, the Government committed to “reconsider the possibility of a DIN bottom line of 1mg/l (likely with exceptions) in 12 months’ time”, and in doing so to revisit the environmental and economic implications.

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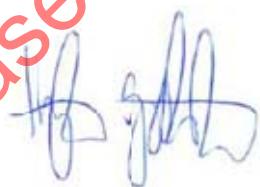
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We also welcome any other comments you may wish to provide in relation to STAG’s scientific advice on the Essential Freshwater package.

We would appreciate any response by 28 May 2021.

Yours sincerely



Hayden Johnston

**Director, Water and Land Use Policy**

10 May 2021  
Clive Howard-Williams  
s9(2)(a)

Dear Clive,

**STAG member views on DIN and any new information on that topic**

Thank you for your contribution to the Essential Freshwater reforms through your role on the Science and Technical Advisory Group (STAG).

As you will be aware, the Government committed to “reconsider the possibility of a DIN bottom line of 1mg/l (likely with exceptions) in 12 months’ time”, and in doing so to revisit the environmental and economic implications.

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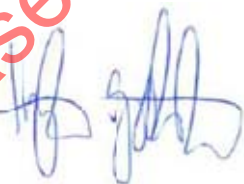
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We would appreciate any response by 28 May 2021.

Yours sincerely



Hayden Johnston

**Director, Water and Land Use Policy**

10 May 2021  
Dan Hikuroa  
s9(2)(a)

Dear Dan,

**STAG member views on DIN and any new information on that topic**

Thank you for your contribution to the Essential Freshwater reforms through your role on the Science and Technical Advisory Group (STAG).

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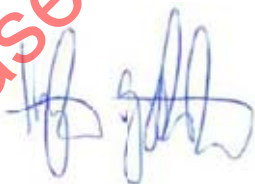
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We also welcome any other comments you may wish to provide in relation to STAG’s scientific advice on the Essential Freshwater package.

We would appreciate any response by 28 May 2021.

Yours sincerely



Hayden Johnston

**Director, Water and Land Use Policy**

10 May 2021  
Graham Sevicke-Jones  
s9(2)(a)

Dear Graham,

**STAG member views on DIN and any new information on that topic**

Thank you for your contribution to the Essential Freshwater reforms through your role on the Science and Technical Advisory Group (STAG).

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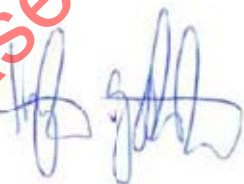
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Yours sincerely



Hayden Johnston

**Director, Water and Land Use Policy**



10 May 2021  
Ian Hawes  
s9(2)(a)

Dear Ian,

**STAG member views on DIN and any new information on that topic**

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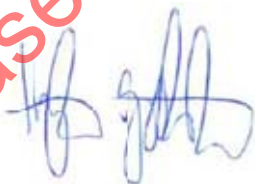
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We would appreciate any response by 28 May 2021.

Yours sincerely



Hayden Johnston

**Director, Water and Land Use Policy**

10 May 2021  
Jamie Ataria  
s9(2)(a)

Dear Jamie,

**STAG member views on DIN and any new information on that topic**

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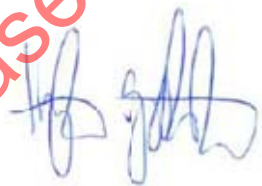
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Yours sincerely



Hayden Johnston

**Director, Water and Land Use Policy**

Released under the Official Information Act 1982

10 May 2021  
Jenny Webster-brown  
s9(2)(a)

Dear Jenny,

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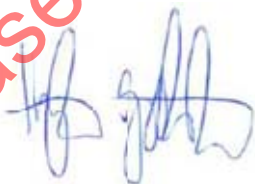
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**Director, Water and Land Use Policy**

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10 May 2021  
Jon Roygard  
s9(2)(a)

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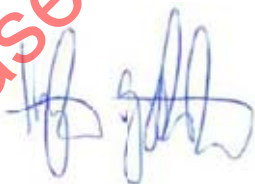
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**Director, Water and Land Use Policy**

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10 May 2021  
Mahinaarangi Baker  
s9(2)(a)

Dear Mahinaarangi,

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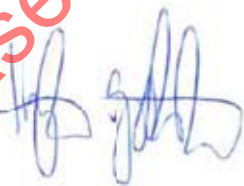
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Hayden Johnston

**Director, Water and Land Use Policy**



10 May 2021  
Marc Schallenberg  
s9(2)(a)

Dear Marc,

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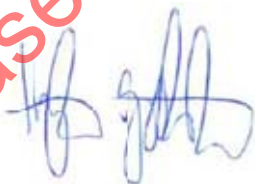
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**Director, Water and Land Use Policy**

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10 May 2021  
Maria Burgess  
s9(2)(a)

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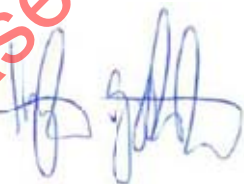
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**Director, Water and Land Use Policy**

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Mike Joy  
s9(2)(a)

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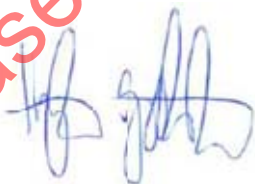
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10 May 2021  
Rawiri Smith  
s9(2)(a)

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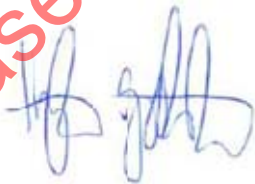
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Russell Death  
s9(2)(a)

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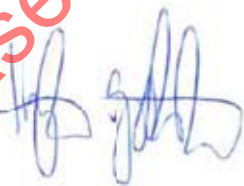
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Tanira Kingi  
s9(2)(a)

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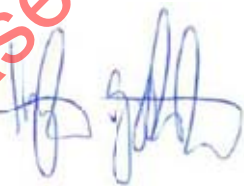
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