



OIAD-776 and OIAD-777

9(2)(a)

Tēnā koe 9(2)(a)

I refer to your two emails both dated 31 August 2023 to the Ministry for the Environment (the Ministry) requesting the following under the Official Information Act 1982 (the Act):

*Could you please send me a copy of any briefings, reports or recommendations to the Minister or Associate Minister on the proposed amendments to the NES-DW. Can you please also update me on the timing of the amendments to the NES-DW. Please consider this a request under the Official Information Act.*

and

*Could you please provide a copy of the evaluation report made under s32 of the RMA in relation to the amendments to the NES-DW.*

We note that your first request was not time bound, after not being able to get in touch by email, we elected to limit this to April 2023 (as in April, we undertook a proactive release which is available on our website here: the related pages section contains our final policy paper, our RIS, and the related Cabinet paper: <https://environment.govt.nz/acts-and-regulations/regulations/national-environmental-standard-for-sources-of-human-drinking-water/>).

The Ministry has found two documents in scope your requests. These are listed in the attached document schedule. Some information has been redacted under Section 9(2)(f)(iv) of the Act, as to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials.

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).

Ngā mihi

*Electronically approved by Hayden Johnston*

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

### Document schedule

Document no.	Document date	Content	Decisions	OIA sections applied
1	16/6/2023	BRF-3414: Prioritisation and options for the NES-DW amendments	Release in Full	NA
2	11/7/2023	BRF-3554: Draft Cabinet paper - Approval to consult on an Exposure Draft for Amendments to the NES-DW	Partial Release	9(2)(f)(iv)



## BRF-3414: Prioritisation and options for the NES-DW amendments

Date Submitted:	16 June 2023	Tracking #: BRF-3414	
Security Level	[REDACTED]	MfE Priority:	Urgent

	Action sought:	Response by:
To Hon Peeni Henare, Associate Minister for the Environment	note the prioritisation of the NES-DW amendments. agree to an option in relation to the NES-DW.	23 June 2023
Cc Hon David Parker, Minister for the Environment	n/a	

Actions for Minister's Office Staff	Return the signed report to MfE.
Number of appendices and attachments # 1	Appendix 1 – Overview of the NES-DW amendments and options to progress A3

### Ministry for the Environment contacts

Position	Name	Cell phone	1 <sup>st</sup> contact
Principal Author	Vania Llewellyn	9(2)(a)	
Responsible Manager	Thomas O'Flaherty	[REDACTED]	
Director	Jo Gascoigne	[REDACTED]	✓



# BRF-3414: Prioritisation and options for the NES-DW amendments


## Key Messages

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1. The National Environmental Standards for Sources of Human Drinking Water (NES-DW) is the regulatory tool for protecting sources of drinking water.
2. It was previously agreed that the NES-DW should be further strengthened through regulatory changes, and in October 2022, Cabinet agreed to proposed amendments to achieve this. Work has been underway to make those changes within this parliamentary term.
3. Given the high volume of priority legislation that the Parliamentary Counsel Office (PCO) is due to draft this term, the prioritisation for the work to amend the NES-DW has now changed. We have been advised by your office that amending the NES-DW will no longer be feasible this term.
4. We have not included an option to amend the NES-DW this term due to the advice on PCO availability. If you did want to consider this, we are happy to discuss potential options.
5. We now seek your decision to progress the workstream for improving source water protection through the NES-DW. The options are:
  - a. Option one: continue with amendments to the NES-DW on a delayed timeframe (preferred option)
  - b. Option two: retain the existing NES-DW and provide non-regulatory guidance and support.
6. Our preferred option is option one. This option progresses the amendments to the NES-DW and responds to the issues identified with the existing regulations. Given the delayed timeframe, we also recommend that an exposure draft process is undertaken to provide an opportunity for further input from stakeholders.
7. Officials will meet with you next week to further discuss the options presented in this briefing. We will also provide you with further advice on updating Cabinet and stakeholders, based on your decision.

## Recommendations

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8. We recommend that you:
    - a. **note** the update to the prioritisation of amendments to the NES-DW
    - b. **agree** to progress the work to improve the NES-DW by choosing one of the below options:
      - i. option one: continue with amendments to the NES-DW on a delayed timeframe  
Yes/No
      - ii. option two: retain the existing NES-DW and provide non-regulatory guidance and support  
Yes/No
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- c. **agree**, as part of option one, to undertake an exposure draft process

Yes/No

- d. **note** that both option one and two include the release of updated technical mapping guidelines within this term

- e. **note** that officials can further discuss the options set out in this briefing

- f. **note** that further advice on updating Cabinet and stakeholders will be provided to you shortly, tailored to the option you choose to proceed with

- g. **agree** that this briefing and appendices will be released proactively on the Ministry for the Environment's website

Yes/No

## Signature

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

Hon Peeni Henare  
**Associate Minister for the Environment**  
**Date**

# BRF-3414: Prioritisation and options for the NES-DW amendments

## Supporting material

### Purpose

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1. This briefing provides you with an update on the planned amendments to the National Environmental Standards for Sources of Human Drinking Water (NES-DW), as your office has advised that the Parliamentary Counsel Office (PCO) is unable to draft the amendments this parliamentary term.
2. Due to this change, we now provide you with alternative options, for your decision, to progress the workstream for improving source water protection through the NES-DW.

### Context

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3. The NES-DW is the regulatory tool under the Resource Management Act 1991 (RMA) to protect sources of human drinking water. The Havelock North Inquiry (HNI) and a subsequent Ministry for the Environment (the Ministry) review found that the NES-DW was not working as intended and recommended strengthening the NES-DW.<sup>1</sup>
4. We consulted on a range of policy options to amend the NES-DW. These options were refined based on the submission feedback we received.
5. On 23 November 2022, Cabinet agreed [CAB-22-MIN-0539 refers] to:
  - a. **Introduce mapping of protection zones**<sup>2</sup> by requiring regional councils to use technical mapping guidelines provided by the Ministry; and
  - b. **Better manage activities** by introducing controls for activities that pose a risk to source water within these protected zones.
6. In taking up your role as Associate Minister for the Environment, you agreed to continue progressing this work within this parliamentary term [BRF-2827 refers].

### Update on prioritisation and timeframe changes to amend the NES-DW

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7. We have recently been advised by your office that PCO is unable to draft the planned amendments to the NES-DW within this term. This is due to the significant amount of high priority legislation that requires immediate drafting, including legislation relating to Cyclone Gabrielle recovery, and resource management reform.
8. To progress the work to improve source water protection through the NES-DW, we have outlined alternative options, on different timeframes, for your decision.
9. We have not included an option to progress with the amendments this term, given the advice from your office that PCO is unable to draft the changes in the planned timeframe. If you do want to consider this as an option, we can provide additional information to discuss with you further.

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<sup>1</sup> Note that findings of the HNI and subsequent Ministry review included that the NES-DW was complex and difficult to interpret, applied variably between regions and water suppliers, and lacked clarity on the management of all activities that have an effect on source water.

<sup>2</sup> These zones are referred to as "Source Water Risk Management Areas" (SWRMAs).

### *Communicating with stakeholders on the changes*

10. Stakeholders have expectations that the amendments to the NES-DW will be delivered this term. The most recent update was provided in April 2023, when we advised key stakeholders of the publicly released Cabinet materials, including the decision to proceed with amendments.
11. There is likely to be a mixed response from stakeholders. Some stakeholders are likely to welcome the delay given the range of other regulations and reform that is currently underway. Other stakeholders will be disappointed in the delay because the existing problems identified with the NES-DW will continue. This disappointment may, in part, be mitigated through the opportunity for further consultation, engagement and guidance (dependent on which option you decide to progress with).
12. A communications plan, including key messages, will be prepared to let stakeholders know of the change. The messaging will be tailored based on the option that you choose and will clearly set out what stakeholders can expect with the future of this work. We will work with your office on the best approach to communicate this with stakeholders.

### **Options for progressing work to improve source water protection through the NES-DW**

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13. We have outlined two options for your decision:
  - a. Option one: continue with amendments to the NES-DW on a delayed timeframe (preferred option)
  - b. Option two: retain the existing NES-DW and provide non-regulatory guidance and support.
14. Our preferred option is option one as it more fully addresses the problems identified with the existing NES-DW by the HNI.
15. More detail on each option, including the benefits, challenges and next steps, is set out below. Also attached is an A3 which provides an overview of the NES-DW amendments and summarises these options (see Appendix 1).

#### **Option one – Continue with amendments to the NES-DW on a delayed timeframe (preferred option)**

16. This option would progress the drafting of the amendments on a delayed timeframe. This would enable an exposure draft process to be undertaken early in the next parliamentary term, if desired. Drafting would commence once PCO has more availability (most likely post-election). We anticipate that gazettal of the amendments could occur in the first half of 2024.
17. In this option we recommend the technical mapping guidelines – intended to be referenced in the amended NES-DW – is released this term. This would provide councils with the option to use the mapping tools ahead of any regulatory change.

#### *Benefits*

18. This option has the least degree of change from the prior plan to amend the NES-DW and provides assurance that the Government intends to proceed with the amendments.
19. Undertaking an exposure draft process is likely to strengthen the final drafting of the NES-DW by ensuring the regulations are clear and workable in practice. Signalling the intent of an exposure draft is likely to be welcomed from most stakeholders, as it is another opportunity to engage in the process.

20. An exposure draft will respond to the requests for this that were made by stakeholders during the consultation period. Most recently this was requested by Federated Farmers.

#### *Challenges*

21. While this option gives assurance of the intent to proceed, there will still be uncertainty over the timeframes for delivery due to the timing of the election cycle. It is likely that PCO availability will continue to be under pressure over this period, making it difficult to confirm timeframes.

#### *Next Steps*

22. To progress this option, we will provide you with further advice on seeking Cabinet approval to undertake an exposure draft process, with the caveat that drafting will be dependent on PCO availability.
23. We would then work with your office to update stakeholders to signal the intention of:
- a. the planned amendments continuing on a delayed timeframe;
  - b. undertaking an exposure draft; and
  - c. making the newly developed technical mapping guidance available.

### **Option two – Retain the NES-DW and provide non-regulatory guidance and support**

24. This option retains the existing NES-DW and delivers a package of guidance and tools over the next 6–9 months. Plans to amend the NES-DW can be reassessed in the next parliamentary term.
25. The guidance and tools will be designed to improve the implementation of the existing NES-DW. The package would be comprised of the technical mapping guidelines, and best practice guidance. We anticipate a staggered release of this material, with the mapping guidance delivered before the end of this parliamentary term. We would aim for the package of guidance to be released in its entirety by March 2024.

#### *Benefits*

26. This option will provide stakeholders with guidance and tools to better implement the existing NES-DW in the short term. Using a non-regulatory approach will provide councils with clarification on how to interpret and apply different aspects of the NES-DW. This is likely to improve consistency in the way the NES-DW is applied.<sup>3</sup>
27. The development of the guidance and tools will allow us to benefit from the earlier work and input from stakeholders on how to better implement the NES-DW.

#### *Challenges*

28. While additional guidance will likely be welcomed by stakeholders, we expect some stakeholders will be disappointed that there is no confirmation of regulatory change for the future.
29. Providing non-regulatory support does not address the issues with the NES-DW identified through the HNI and subsequent Ministry review. This means the risk of source water contamination due to the current NES-DW legislation will persist. While guidance can help mitigate this risk, it will rely on regional councils choosing to adhere to the guidance and will not fully address issues with the legislation itself.

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<sup>3</sup> This responds to the issue of inconsistent application of the NES-DW identified in the HNI and the subsequent Ministry review.



*Next Steps*

30. To progress this option, we will provide you with further advice to update Cabinet on the changes.
31. We would then work with your office to agree an approach to update stakeholders on the changes and the upcoming release of guidance.


**Alignment of the NES-DW with the National Planning Framework**

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32. As part of resource management reform, there is work underway to consolidate national direction regulatory instruments into a single framework called the National Planning Framework (NPF). This will contribute to a more cohesive and efficient system.
33. We anticipate work to incorporate the NES-DW into the NPF will begin next year.
34. If the NES-DW is amended within the next parliamentary term, these amendments will be transferred into the NPF. In the interim, the amended NES-DW will continue to be the primary instrument for source water protection.
35. If you choose not to amend the NES-DW, there is still an opportunity for further consideration of how source water is protected under the NPF. This could include the proposed amendments forming the basis of that direction. However, the benefits of these amendments will not be felt until the national and built environment plans come into force in 7–10 years.

**Next Steps**

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36. Officials are scheduled to meet with you on Tuesday 20 June 2023 to discuss the next steps for the NES-DW.
  37. Dependent on the option you decide to progress with, we will provide you with a follow-up briefing outlining what will be required to update Cabinet on the changes. We will also provide information on the approach to update stakeholders.
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# Overview of the NES-DW amendments

DRAFT – FOR DISCUSSION / NOT GOVERNMENT POLICY

## What is the NES-DW...

- The regulatory tool responsible for providing our drinking water with first barrier protection
- Prevents risky activities 'upstream' of a drinking water intake, IF that activity could impact water safety after treatment

## Why are changes necessary?

- The 2016 Havelock North drinking water contamination incident resulted in thousands of people contracting waterborne illness and 4 deaths
- The Havelock North Inquiry found the NES-DW to be limited in scope and application, complex and technically challenging, and inconsistently applied

## Cabinet agreed to the following changes

- Regional councils will be required to map three areas around drinking water intakes categorised by risk
- Regional councils will enforce and consider new controls for the most high-risk activities in these mapped areas
- To retain the existing coverage of the NES-DW to supplies serving more than 500 people

## What we heard from public consultation in early 2022...

### Regional councils

- Supportive of minimum standards/more clarity
- Concern re cost of mapping SWRMAs
- Challenges relating to inclusion of small and unregistered water supplies

### Iwi / Māori

- Concern re cost and regulatory burdens on marae, papakāinga and small rural communities
- Potential unintended impacts on small water suppliers
- Need to engage with mana whenua

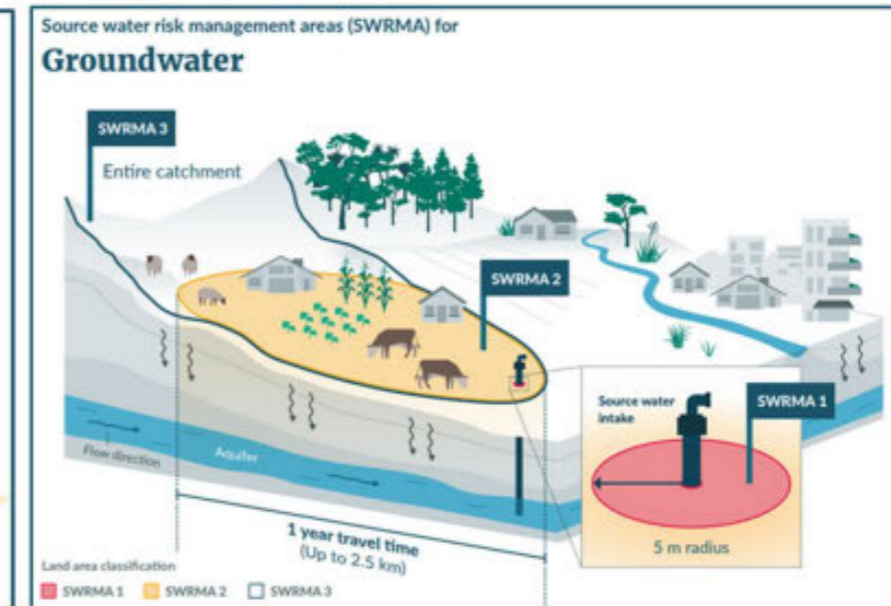
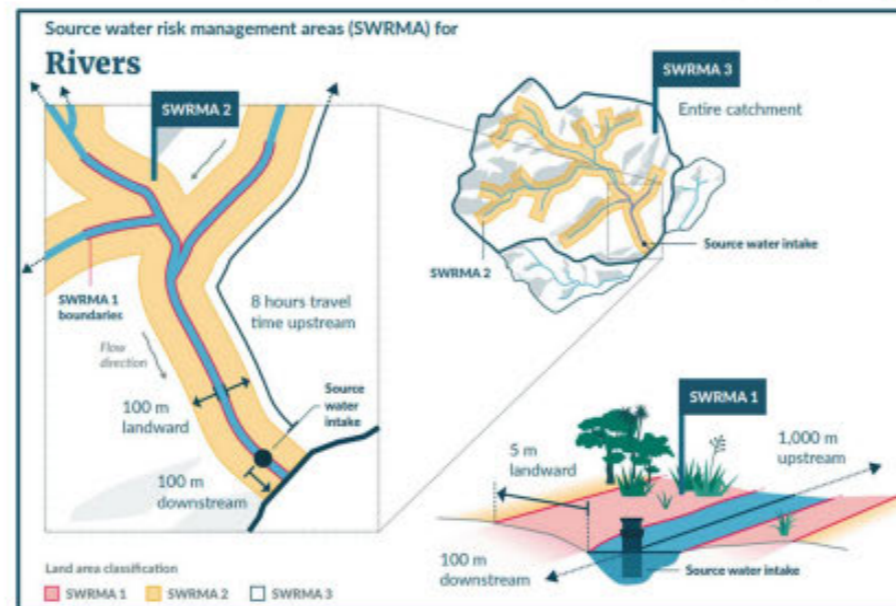
### Environmental organisations

- Concern re nitrate contamination
- Support strong controls to minimise the risk of contamination
- Very supportive of expanding scope but should include everyone including domestic self-supplies

### Rural sector

- Overlap with other regulatory changes currently underway – too much, all at once
- Disproportionate costs and impacts for farmers and small rural communities
- Further restrictions on land use and productive land practices

## What the maps will look like...



## Available options to progress improvements to the NES-DW

<p><b>Option 1</b> Continue with amendments to the NES-DW on a delayed timeframe (and plan for an exposure draft process)</p>	<p><b>Details</b></p> <ul style="list-style-type: none"> <li>Allows for an exposure draft process</li> <li>Early release of technical mapping guidelines</li> <li>Non-regulatory implementation support</li> <li>Amended NES-DW</li> </ul>	<p><b>Benefits</b></p> <ul style="list-style-type: none"> <li>Satisfies requests for an exposure draft</li> <li>Exposure draft enables stakeholder input on workability</li> <li>Possible early adoption of mapped protection zones</li> <li>Improved protections prior to the NPF</li> </ul>	<p><b>Challenges</b></p> <ul style="list-style-type: none"> <li>Potential stakeholder dissatisfaction due to unmet expectations</li> <li>Continued ambiguity on timeframes</li> </ul>	<p><b>Next steps</b></p> <ul style="list-style-type: none"> <li>You will receive information on updating Cabinet and seeking approval to undertake an exposure draft process</li> <li>We will work with your office to update stakeholders – potential key messages are:             <ul style="list-style-type: none"> <li>Work to amend the NES-DW continues on new timeframes</li> <li>We intend on undertaking an exposure draft process</li> <li>Mapping guidance to support improving drinking water protection will be available shortly</li> </ul> </li> </ul>
<p><b>Potential timeframe</b></p> <p>The timeline for Option 1 starts at 'Now' with a 'Stakeholder update'. This is followed by 'Release technical mapping guidance'. An 'Election' event occurs. Then, 'PCO drafting (subject to availability)' leads to an 'Exposure draft' in 2024. This is followed by 'Gazettal &amp; implementation mid 2024 onward' and 'Cabinet' approval. Finally, the process is 'Incorporated into NPF' by '2025 onward'.</p>				

<p><b>Option 2</b> Retain the NES-DW and provide non-regulatory guidance and support</p>	<p><b>Details</b></p> <ul style="list-style-type: none"> <li>Guidance/tools package to improve implementation of existing NES-DW</li> <li>Staggered release of material</li> </ul>	<p><b>Benefits</b></p> <ul style="list-style-type: none"> <li>Likely improvements to implementation of the existing NES-DW</li> <li>Supports the adoption of mapping protection zones</li> <li>Utilises earlier work and input from stakeholders</li> </ul>	<p><b>Challenges</b></p> <ul style="list-style-type: none"> <li>Potential stakeholder dissatisfaction due to unmet expectations</li> <li>Benefits reliant on voluntary adoption of the guidance given that regulatory requirements remain unchanged for now</li> </ul>	<p><b>Next steps</b></p> <ul style="list-style-type: none"> <li>You will receive further information on updating Cabinet</li> <li>We will work with your office to update stakeholders – potential key messages are:             <ul style="list-style-type: none"> <li>Regulatory changes to the NES-DW will be delayed and can be reassessed in the next term</li> <li>We will be releasing a package of guidance and tools to improve the way the existing NES-DW is applied</li> <li>Mapping guidance will be available shortly with further guidance to follow</li> </ul> </li> </ul>
<p><b>Potential timeframe</b></p> <p>The timeline for Option 2 starts at 'Now' with a 'Stakeholder update'. This is followed by 'Develop tailored non-regulatory support package'. An 'Election' event occurs. Then, 'Non-regulatory support released' leads to 'Released in entirety by March' in 2024. Finally, the process is 'Incorporated into NPF' by '2025 onward'.</p>				



## BRF-3554: Draft Cabinet paper - Approval to Consult on an Exposure Draft for Amendments to the NES-DW

Date submitted: 11/07/2023

Tracking number: BRF-3554

Security level: Policy and Privacy, [REDACTED]

MfE priority: Non-Urgent

Actions sought from ministers		
Name and position	Action sought	Response by
To Hon Peeni HENARE Associate Minister for the Environment	<b>note</b> the proposed timeframes for lodgement agree to circulate the attached Cabinet paper with your Ministerial colleagues	
CC Hon David PARKER Minister for the Environment	N/A	N/A

### Actions for Minister's Office staff

Return the signed briefing to Ministry for the Environment ([ministerials@mfe.govt.nz](mailto:ministerials@mfe.govt.nz)).

### Appendices and attachments

- Appendix 1: CAB-318: Approval to Consult on an Exposure Draft for Amendments to the Resource Management (National Environmental Standards for Sources of Human Drinking Water) Regulations 2007

### Key contacts at Ministry for the Environment

Position	Name	Cell phone	First contact
Principal Author	Kyle Moffat		
Responsible Manager	Thomas O'Flaherty	(2Ra) [REDACTED]	
Director	Fiona Newlove	[REDACTED]	

### Minister's comments

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# Draft Cabinet paper – Approval to Consult on an Exposure Draft for Amendments to the NES-DW

## Key messages

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- 1 This briefing seeks your feedback on the attached draft Cabinet paper (Appendix 1) in preparation for taking this paper to the Cabinet Environment, Energy and Climate Committee (ENV) meeting on Thursday 3 August.
- 2 You previously agreed to continue with the amendments to the Resource Management (National Environmental Standards for Sources of Human Drinking Water) Regulations 2007 (NES-DW) on a delayed timeframe, and to seek Cabinet approval to consult on an exposure draft in early 2024 [BRF-3414 refers].
- 3 The delay to amending the NES-DW is due to the significant amount of high priority legislation requiring drafting by the Parliamentary Counsel Office this term.
- 4 We recommended using this delay as an opportunity to release an exposure draft to strengthen the final drafting of the NES-DW. This would help ensure that the amended regulations are clear and workable. Multiple stakeholders requested an exposure draft both during and after public consultation in early 2022.
- 5 The attached Cabinet paper:
  - 5.1 provides an update on the delay,
  - 5.2 seeks Cabinet agreement to release an exposure draft of the proposed amendments to the NES-DW; and
  - 5.3 seeks Cabinet agreement to clarify previously agreed policy matters relating to activity classifications. In November 2022, Cabinet agreed to establish minimum requirements for specific high-risk activities in certain mapped risk areas [ENV-22-MIN-0052 refers]. Continued policy development has identified appropriate activity classifications for these activities.
- 6 This Cabinet paper has been prepared in consultation with the Ministry for Primary Industries, Ministry of Health, Department of Internal Affairs, Department of Conservation, Ministry of Transport, Ministry for Business, Innovation and Employment, Te Arawhiti, Te Puni Kōkiri and Department of the Prime Minister and Cabinet.

## Next steps

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- 7 Pending your feedback on the attached draft Cabinet paper, your office will circulate the attached Cabinet paper for formal Ministerial consultation. We will work with your office to incorporate any feedback received into the final paper.

- 8 To be considered by ENV on 3 August, the final paper will need to be lodged by Thursday 27 July (as per timeline below). We will provide your office with suggested talking points in advance of your attending ENV committee.
- 9 We will work with your office to inform relevant stakeholders of updates to this work immediately following Cabinet's decision.
- 10 The below table provides an indicative timeline for the next steps.

Ministerial consultation	12 - 26 July 2023
Lodgement	27 July 2023
ENV committee seeking approval to: <ul style="list-style-type: none"> <li>- consult on an exposure draft; and</li> <li>- clarify additional policy details</li> </ul>	3 August 2023
Cabinet	7 August 2023
Stakeholder update	TBC post Cabinet decision

## Recommendations

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We recommend that you:

- a **note** the proposed timeframes for lodgement

Yes  No  Discuss

- b **agree** to circulate the attached Cabinet paper with your Ministerial colleagues or indicate preference to discuss feedback on the draft

Yes  No  Discuss

## Signatures

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Fiona NEWLOVE  
Acting Director  
**Water and Land Use Policy**

**11/07/2023**

Hon Peeni HENARE  
**Associate Minister for the  
Environment**

# **Appendix 1 – CAB-318: Approval to Consult on an Exposure Draft for Amendments to the Resource Management (National Environmental Standards for Sources of Human Drinking Water) Regulations 2007**

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Please see appendices as attached via email to the Minister's office.

**Appendix 1 withheld under section 9(2)(f)(iv)**