



AGENDA

Policy & Planning

Tuesday 19 March 2024 10.30am

Policy and Planning Committee

19 March 2024 10:30 AM



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Whakataka te hau

Karakia to open and close meetings

| | |
|------------------------------------|---|
| Whakataka te hau ki te uru | Cease the winds from the west |
| Whakataka te hau ki te tonga | Cease the winds from the south |
| Kia mākinakina ki uta | Let the breeze blow over the land |
| Kia mātaratara ki tai | Let the breeze blow over the ocean |
| Kia hī ake ana te atakura | Let the red-tipped dawn come with a sharpened air |
| He tio, he huka, he hauhu | A touch of frost, a promise of glorious day |
| Tūturu o whiti whakamaua kia tina. | Let there be certainty |
| Tina! | Secure it! |
| Hui ē! Tāiki ē! | Draw together! Affirm! |

Nau mai e ngā hua

Karakia for kai

| | |
|---------------------------------|--|
| Nau mai e ngā hua | Welcome the gifts of food |
| o te wao | from the sacred forests |
| o te ngakina | from the cultivated gardens |
| o te wai tai | from the sea |
| o te wai Māori | from the fresh waters |
| Nā Tāne | The food of Tāne |
| Nā Rongo | of Rongo |
| Nā Tangaroa | of Tangaroa |
| Nā Maru | of Maru |
| Ko Ranginui e tū iho nei | I acknowledge Ranginui above and Papatūānuku |
| Ko Papatūānuku e takoto ake nei | below |
| Tūturu o whiti whakamaua kia | Let there be certainty |
| tina | Secure it! |
| Tina! Hui e! Taiki e! | Draw together! Affirm! |



Date: 19 March 2024

Subject: Policy and Planning Committee Minutes - 13 February 2024

Author: M Jones, Governance Administrator

Approved by: A D McLay, Director - Resource Management

Document: 3252843

Recommendations

That Taranaki Regional Council:

- a) takes as read and confirms the minutes of the Policy and Planning Committee meeting of the Taranaki Regional Council held in the Taranaki Regional Council chambers, 47 Cloten Road, Stratford on Tuesday 13 February 2024
- b) notes the recommendations therein were adopted by the Taranaki Regional Council on Tuesday 27 February 2024.

Appendices/Attachments

Document 3247021: [Policy and Planning Committee Minutes – 13 February 2024](#)



| | |
|-------------------|---|
| Date: | 13 February 2024 |
| Venue: | Taranaki Regional Council Boardroom, 47 Cloten Road, Stratford |
| Document: | 3247021 |
| Present: | C S Williamson Chairperson B J Bigham D M Cram (zoom) D H McIntyre A L Jamieson C L Littlewood (ex officio) N W Walker (ex officio) P Moeahu Iwi Representative E Bailey Iwi Representative (zoom) L Gibbs Federated Framers G Boyde Stratford District Council C Filbee South Taranaki District Council B Haque New Plymouth District Council |
| Attending: | S J Ruru Chief Executive A D McLay Director – Resource Management A J Matthews Director – Environment Quality D Harrison Director – Operations M J Nield Director – Corporate Services L Hawkins Planning Manager F Kiddle Strategy lead L Hawkins Policy Manager G Marcroft Senior Policy Analyst S Harris Policy Analyst J Reader Communications and Engagement Manager A Smith Science Communications Advisor M Jones Governance Administrator N Chadwick Executive Assistant |

The meeting opened with a group Karakia at 10.30am.

Apologies: Were received and sustained from Councillor Hughes and M Ritai.

1. Confirmation of Minutes Policy and Planning 21 November 2023

Resolved

That the Taranaki Regional Council:

- a) took as read and confirmed the minutes of the Policy and Planning Committee of the Taranaki Regional Council held at 10.30 on 21 November 2023 at Taranaki Regional Council 47 Cloten Road Stratford
- b) noted the recommendations therein were adopted by the Taranaki Regional Council on Tuesday 12 December 2023.

McIntyre/Boyd

2. Government Policy Update

- 2.1 Mr F Kiddle gave an update on key policy statements from the new Government's freshwater policy.

Resolved

That the Taranaki Regional Council:

- a) received the memorandum titled *Government Policy Update*
- b) noted that the Government's announced policy programme will have significant impacts, but considerable uncertainty remains on the detail of that policy programme
- c) noted significant advocacy effort will likely be needed to engage in the national policy process.

Walker/Filbee

3. Freshwater Implementation Update

- 3.1 Ms L Hawkins provided an update on the Freshwater Implementation project.

Resolved

That the Taranaki Regional Council:

- a) received the February 2024 update on the Freshwater Implementation Programme.

McIntyre/Boyd

4. Freshwater Engagement

- 4.1 Miss S Harris presented the findings of the third phase of public engagement on freshwater emphasising that public engagement is a critical component on implementing the *National Objectives Framework (NOF)* under the *National Policy Statement for Freshwater Management (NPS-FM) 2020*.

Resolved

That the Taranaki Regional Council:

- a) received this memorandum titled Freshwater engagement report following September/October 2023 consultation.
- b) noted that this engagement period is part of a broader community consultation process which will continue in 2024 as part of developing the *Proposed Land and Freshwater Plan for Taranaki*.

Williamson/Walker

There being no further business the Committee Chairperson, C S Williamson, declared the meeting of the Policy and Planning Committee closed at 11.17am.

Policy and Planning

Committee Chairperson: _____

C S Williamson



Date: 19 March 2024

Subject: Dangerous Dams: Policy Officer's Report

Author: F Kiddle, Strategy Lead

Approved by: A D McLay, Director - Resource Management

Document: 3252501

Purpose

1. To seek the approval of the *Policy on Dangerous Dams, Earthquake-Prone Dams and Flood-Prone Dams* (Dangerous Dams Policy).

Executive summary

2. We received two submissions on the Dangerous Dams Policy, neither wished to be heard. Based on these submissions, we recommend two minor changes to the policy prior to its approval. The first is to facilitate the notification of relevant operators of critical infrastructure or lifeline utilities of a dangerous dam. The second is to address a misinterpretation one submitter had with the policy. They read the policy as extending the regulated dam safety certification process to all dams. This is not the case.

Recommendations

That Taranaki Regional Council:

- a. receives the memorandum titled Dangerous Dams Policy Officer's Report
- b. notes that two submissions were received on the Dangerous Dams Policy consultation and that neither wished to be heard
- c. adopts the *Policy on Dangerous Dams, Earthquake-Prone Dams and Flood-Prone Dams* as contained in Attachment One
- d. determines that this decision be recognised not significant in terms of section 76 of the Local Government Act 2002
- e. determines that it has complied with the decision-making provisions of the Local Government Act 2002 to the extent necessary in relation to this decision; and in accordance with section 79 of the Act, determines that it does not require further information, further assessment of options or further analysis of costs and benefits, or advantages and disadvantages prior to making a decision on this matter.

Background

3. Consultation on the Dangerous Dams Policy was open from 11 December 2023 to 19 February 2024. The purpose of the policy is to set out:
 - the approach we will take in performing its dam related functions under the *Building Act 2004* (the Act);
 - our priorities in performing those functions; and
 - how the policy will apply to heritage dams.
4. The specific dam safety responsibilities we have under the Act are that we:
 - must maintain a register of all dams in its district;
 - must administer and monitor the dam safety process;
 - must have a dangerous dams policy that is reviewed every five years; and
 - is given a range of powers to act if a dam poses an imminent risk to public safety.
5. While the submission period has been open, we have updated the internal administrative procedures for the dam safety process. The Consents Business Support Team will have primary responsibility for processing dam safety applications. The Compliance Team will take action in-line with already established processes and policies. The Consents Manager, Compliance Manager, Director Resource Management, and Chief Executive already have the required delegations from when we were preparing to implement an earlier version of the dam safety regulations.

Issues

6. We are required to adopt a Dangerous Dams Policy that is compliant with the Building Act 2004. This policy must go through the special consultative procedure.

Discussion

7. We received two submissions on the Dangerous Dams Policy. A summary of these submissions and the recommended action are presented in Attachment Two. Neither submitter wished to be heard. Attachment Three and Four contain the submissions themselves.
8. Based on the submissions, two changes are recommended. The first is to require the Council to directly notify operators of critical infrastructure or lifeline utilities downstream of a dangerous, earthquake-prone or flood-prone dam. This is appropriate considering the important nature of this infrastructure, and is administratively manageable. The second is to make it explicit that the Dangerous Dams Policy does not extend the regulated dam safety process to non-classifiable dams. This is to address a seeming misinterpretation from one of the submitters that the policy would require dams that do not meet the classifiable threshold to be assessed by a recognized engineer.

Options

9. We can adopt the Dangerous Dams Policy as presented in Appendix One, or make further changes based on the received submissions. Adopting the policy is recommended as regard has been given to the submissions as part of preparing this memorandum.

Significance

10. This decision is not considered significant in terms of the Significance and Engagement Policy. Adoption of the Dangerous Dams Policy is a statutory requirement. Public and community interests have been considered through the special consultative process.

Financial considerations—LTP/Annual Plan

11. This memorandum and the associated recommendations are consistent with the Council's adopted Long-Term Plan and estimates. Any financial information included in this memorandum has been prepared in accordance with generally accepted accounting practice.

Policy considerations

12. This memorandum and the associated recommendations are consistent with the policy documents and positions adopted by this Council under various legislative frameworks including, but not restricted to, the Local Government Act 2002, the Resource Management Act 1991 and the Local Government Official Information and Meetings Act 1987.

Iwi considerations

13. This memorandum and the associated recommendations are consistent with the Council's policy for the development of Māori capacity to contribute to decision-making processes (schedule 10 of the Local Government Act 2002) as outlined in the adopted Long-Term Plan and/or Annual Plan. Similarly, iwi involvement in adopted work programmes has been recognised in the preparation of this memorandum.
14. No submissions from iwi or hapū were received on the draft policy.

Community considerations

15. This memorandum and the associated recommendations have considered the views of the community, interested and affected parties and those views have been recognised in the preparation of this memorandum.

Legal considerations

16. This memorandum and the associated recommendations comply with the appropriate statutory requirements imposed upon the Council.

Appendices/Attachments

Document 3252584: [Policy on Dangerous Dams, Earthquake-Prone Dams and Flood-Prone Dams Officer's Report Version](#)

Document 3252570: [Taranaki Regional Council Dangerous Dams Policy Officer's Report](#)

Document 3252607: [NZTA Submission on Dangerous Dams Policy](#)

Document 3252605: [Federated Farmers Submission on Dangerous Dams Policy](#)

The Taranaki Regional Council ("Council")

S161 Building Act 2004

POLICY ON DANGEROUS DAMS, EARTHQUAKE-PRONE DAMS AND FLOOD-PRONE DAMS

| | |
|----------------|--|
| [Council logo] | Document Name: Policy on Dangerous Dams, Earthquake-Prone Dams and Flood-Prone Dams |
| | Document Owner: Director Resource Management |
| | Authorised By: Taranaki Regional Council |
| | Implementation Date: 13 May 2024 |
| | Review Period: 5 Years |
| | Last Reviewed: n/a |
| | Next Review: 13 May 2028 |

1. Introduction

This document sets out the policy on dangerous dams, earthquake-prone dams and flood-prone dams adopted by the Council in accordance with sections 161 and 162 of the Building Act 2004.

The policy states the approach and priorities the Council will take in performing its functions in relation to dangerous dams, earthquake-prone dams and flood-prone dams in Taranaki, and how the policy will apply to heritage dams.

This policy applies to dams defined in section 7 of the Building Act 2004 (“the Act”).

The dam safety provisions in subpart 7 of Part 2 of the Act, apply to:

1. Classifiable dams (defined in regulation 5 of the Building (Dam Safety) Regulations 2022 (“the Regulations”) to be either:
 - a. 4m or more in height and holding 20,000m³ in volume; or
 - b. 1m or more in height and retaining 40,000m³ in volume.
2. Referable dams as defined in the Regulations¹.
3. All dams but only for the purposes of section 133B² (height measurement of dams) and sections 157-158 (measures by a regional authority to avoid immediate danger).

2. Application of this policy

This policy applies to dams everywhere in Taranaki, and irrespective of the age and intended life of the dam. Some parts of this policy may apply to all dams. Where required by the Act, this policy applies to classifiable dams, which also includes “large dams” as defined in section 7 of the Act.

For the avoidance of doubt, nothing in this policy extends the certification requirements currently applicable to classifiable dams to non-classifiable dams

The terms ‘dangerous dam’, ‘earthquake-prone dam’ and ‘flood-prone dam’ have the same meaning as provided in section 153, 153A and 153AA of the Act.³

This policy must be read alongside the Building (Dam Safety) Regulations 2022 (“the Regulations”) which defines terms used in the Act in relation to “dangerous dams”, “earthquake-prone dams” and “flood-prone dams”.⁴

The Regulations and the Act can be accessed at www.legislation.govt.nz⁵:

¹ The current Regulations do not define a referable dam.

² When measuring the height of the dam under this section, the crest of the dam includes any freeboard – refer Appendix A for the definition.

³ This includes buildings in areas designated under subpart 6B as set out in section 153AA of the Building Act 2004.

⁴ Section 19 of the Regulations defines moderate earthquake, moderate flood, earthquake threshold event and flood threshold event.

⁵ <https://www.legislation.govt.nz/regulation/public/2022/0133/latest/whole.html#LMS489207> and https://www.legislation.govt.nz/act/public/2004/0072/latest/whole.html?search=ts_act%40bill%40regulation%40deemedreg_building+act+2004_resel_25_a&p=1#whole

This policy commences on 13 May 2024.

This policy will be reviewed every five years or earlier as required. The policy remains in effect even though it is due for review or being reviewed.

3. Principles

The Council will apply the following principles to the exercise of its dangerous dams, earthquake-prone dams and flood-prone dams functions under the Building Act:

1. Dam owners have the primary responsibility for identifying, monitoring and reporting on dangerous, earthquake-prone and flood-prone dams and for reducing or removing the risk of harm to people, property and the environment in a timely and effective manner.
2. An engineer engaged (by the owner) to provide a certificate for the purposes of [sections 135\(1\)\(b\)](#), [142\(1\)\(b\)](#), or [150\(2\)\(f\)](#) will notify Council and the owner of the dam if he or she or they believe that the dam is dangerous.
3. The state of all dangerous, earthquake-prone and flood-prone dams (as defined in the Act and the Regulations) must be known (noting that other dam safety provisions in the Act apply to all dams) and this information, if known to the Council, will be made readily available by the Council, to all persons potentially affected by the safety risks of a dangerous, earthquake-prone or flood-prone dam.

4. Council's approach to performing these functions

4.1 Information on dam status

The Council will keep a register of all dams as required by section 151 of the Act, recording the dangerous, earthquake-prone and flood-prone status of each classifiable dam. The Council will develop a monitoring procedure to maintain the register.

Should the Council receive information about a dangerous, earthquake-prone and flood-prone dam in its region, the Council will notify the relevant territorial authority and Civil Defence and Emergency Management Group.

4.2 Working with dam owners

The Regulations require owners of all classifiable dams to know whether their dam is dangerous, earthquake-prone or flood-prone and that they will take the necessary steps, in a timely manner, to comply with the Act and the Regulations. The Act requires dam owners to immediately notify the Council if they have reasonable grounds for believing their dam is dangerous. This applies to dams that are either a high potential impact dam or a medium potential impact dam and are likely to fail in the ordinary course of events, or a "moderate earthquake" or "moderate flood" (as defined in the Regulations).

The Act also requires an engineer (engaged by the owner) to provide a certificate for the purposes of [sections 135\(1\)\(b\)](#), [142\(1\)\(b\)](#), or [150\(2\)\(f\)](#), to notify Council and the owner of the dam if he or she or they believes that the dam is

dangerous.

The Council will work with the owners of identified dangerous dams, earthquake-prone dams and flood-prone dams to develop an action plan (with timeframes) with the goals of increasing the safety of the dam and eliminating or reducing the risks of the dam to people, property and the environment. It is not realistic to specify a timeframe in this policy for achieving this goal because timeframes will be dictated by the circumstances of each case. When setting a timeframe for action, the Council will consider the state of the dam, and the likelihood and consequences of dam failure.

4.3 Directing and taking action

The Council may intervene:

- For dangerous, earthquake-prone and flood-prone dams:
 - if the owner of any dam is not acting in accordance with an agreed action plan;
 - where there is no agreed action plan;
 - where it considers that the agreed action plan requires review or amendment; or
 - where ownership is not known or is disputed; and
- for all dams, where there is or likely to be a risk of immediate danger.

Before exercising any of its powers under Sections 154 to 159 of the Building Act the Council will, unless the circumstances dictate otherwise (such as where there is immediate danger to the safety of persons, property, or the environment), seek to discuss options for action with the owner of the dam, with a view to obtaining from the owner a mutually acceptable formal proposal for reducing or removing the danger. Acceptable actions by the owner may include, one or more of the following:

- operational changes such as reducing the volume of impounded fluid or completely emptying the reservoir;
- reconfiguring an existing spillway or creating a new or supplementary spillway so as to limit the maximum impounded volume and/or to safely route flood flows;
- increased surveillance and monitoring;
- development of emergency preparedness and response plans;
- review of the dam safety assurance programme;
- require the owner to engage a dam specialist to investigate and make recommendations with any report provided to the Council;
- implementing measures to enable controlled, rapid emptying of the impounded fluid;
- measures downstream of the dam to mitigate the impact of dam failure;
- physical works including reconstruction or partial demolition of the dam; and
- decommissioning and/or removal of the dam.

The whole or part of any agreement between the Council and the dam owner may be formalised in a Notice to Fix issued under section 164 of the Act. If agreement cannot be reached between the Council and the dam owner, the Council may exercise any of its statutory powers in sections 154-159 and 164 of the Act.

The Council will notify potentially affected communities downstream of a dangerous, earthquake-prone or flood-prone dams. The Council will do this by publishing information about any dangerous, earthquake-prone or flood-prone dams in its region. **The Council will notify operators of critical infrastructure or lifeline utilities downstream of a dangerous, earthquake-prone or flood-prone dam.** The Council will also work with the Taranaki Civil Defence Emergency Group.

The Council may at any time require the dam owner to review a dam safety assurance programme if the dam is an earthquake-prone or flood-prone dam.

In a situation where a dam is dangerous, the Council may:

- erect a hoarding or fence to prevent people from approaching the dam nearer than is safe;
- attach a notice on or near the dam (or affected downstream areas) that warns people not to approach; or
- give written notice to the owner requiring work to be carried out on the dam, and within the time stated in the notice to remove or reduce the danger.

In a situation where the Chief Executive of the Council considers that, because of the state of the dam, immediate danger to the safety of persons, property, or the environment is likely, then the Chief Executive of the Council may:

- cause any action to be taken to that is necessary to remove that danger; and
- recover the costs of taking any action from the dam owner.

5. Council's priorities in performing these functions

The dangerous dam provisions of the Building Act will be used by the Council as a mechanism to remedy an unsatisfactory situation that has developed in Taranaki, rather than a means of responding to "emergencies" that arise in the future. The Council's approach to dangerous dams is therefore tailored toward achieving a reduction in the pre-existing risk whilst still being able to deal with risks that emerge in the future.

The priorities will be as follows in which 1 is the highest priority and 5 is the lowest priority.

1. Dams that upon commencement of the Regulations are dangerous and/or earthquake-prone and/or flood-prone due to their pre-existing condition (and not an actual change in risk), and do not have a Dam Safety Assurance Programme (DSAP) that complies with the

Regulations. This priority would first consider classifiable high potential impact dams followed by medium potential impact dams;

2. Dams that are dangerous and/or earthquake-prone and/or flood-prone due to their pre-existing condition (and not an actual change in risk), and do have a Dam Safety Assurance Programme that complies with the Regulations. This priority would first consider classifiable high potential impact dams followed by medium potential impact dams;
3. Dams that due to deterioration or damage (e.g. reduction in structural integrity), or identification of previously unobserved defects, are regarded as dangerous and/or earthquake-prone and/or flood-prone (i.e. a change in likelihood of failure). This priority would first consider classifiable high potential impact dams followed by medium potential impact dams;
4. Dams that because of new or improved information (or their exposure or their setting e.g. change in assessment of whether the dam constitutes a “moderate flood” or “moderate earthquake” for that site) are regarded as dangerous and/or earthquake-prone and/or flood-prone. This priority would first consider classifiable high potential impact dams followed by medium potential impact dams;
5. Dams that due to the potential impact classification for the dam increasing from low to medium or high or from medium to high are regarded as dangerous and/or earthquake-prone and/or flood-prone (i.e. a change in consequence of failure). This priority would first consider classifiable high potential impact dams followed by medium potential impact dams.

6. Application to heritage dams

For the purposes of this policy, a heritage dam means a dam that is included on:

- (a) the New Zealand Heritage List/Rārangi Kōrero maintained under [section 65](#) of the Heritage New Zealand Pouhere Taonga Act 2014; or
- (b) the National Historic Landmarks/Ngā Manawhenua o Aotearoa me ōna Kōrero Tūturu list maintained under [section 81](#) of the Heritage New Zealand Pouhere Taonga Act 2014.

Section 4(2)(l) of the Building Act recognises the “need to facilitate the preservation of buildings of significant cultural, historical, or heritage value”.

The Council recognises the need to retain heritage values of the dam itself, but also the need to reduce or remove any risk posed by a heritage dam which has been classified as dangerous, flood-prone or earthquake-prone. When considering heritage dams under this policy, account will be taken of the need to facilitate the preservation of parts of the dams with significant heritage value.

When dealing with heritage dangerous dams, the Council will seek advice from the Heritage New Zealand/Pouhere Taonga and the relevant territorial authority (if appropriate) before any actions are undertaken by the regional authority under

sections 153 – 160 of the Act.

The Council may also engage suitably qualified professionals with engineering expertise and heritage expertise to advise and recommend actions. When considering any recommendations, the Council will have regard to the priorities set out in clause 5 of this policy. Copies of all served notices for heritage dangerous dams, earthquake-prone dams and flood-prone dams will be provided to Heritage New Zealand/Pouhere Taonga.

The Council will record the heritage listing of all dangerous, earthquake-prone and flood-prone dams it is made aware of in its register of dams and supply this information to the relevant Territorial Authority for inclusion on any relevant Land Information Memorandum.

| Taranaki Regional Council Dangerous Dams Policy Officer's Report | | | | |
|---|---|--|---|--|
| # | Submitter | Summary | Relief Sought (additions in red) | Officer's Recommendation |
| 1 | Tony Horton Principal Planning Advisor NZ Transport Agency | NZTA wishes to receive direct notification of any dangerous, earthquake-prone, or flood-prone dams upstream of the state highway network rather than relying solely on the general public notification from the Council. | 4.3 ... The Council will notify potentially affected communities downstream of a dangerous, earthquake-prone or flood-prone dams. The Council will do this by publishing information about any dangerous, earthquake-prone or flood-prone dams in its region. The Council will notify operators of critical infrastructure or lifeline utilities downstream of a dangerous, earthquake-prone or flood-prone dam. The Council will also work with the Taranaki Civil Defence Emergency Group. | The relief be granted. It is appropriate that providers of critical infrastructure are directly notified. |
| 2 | Leedom Gibbs Taranaki Provincial President Federated Farmers of New Zealand | Federated Farmers is concerned about the cost to owners of low risk dams of having to go through the full certification process whereby the input from a recognised engineer is required. | Remove mandatory engineer certification for low potential impact dams. | The relief be rejected. The submission is out of scope. Certification requirements are set by Central Government. The Council has no ability to change this. However, for the avoidance of doubt, it is recommended that the Policy be amended to clarify that certification requirements only apply to classifiable dams. The following addition to section 2 is recommended: "For the avoidance of doubt, nothing in this policy extends the certification requirements |

| | | | | |
|---|--|---|--|---|
| | | | | currently applicable to classifiable dams to non-classifiable dams.” |
| 3 | | Federated Farmers is concerned that the policy does not provide sufficient checks and balances on the chief executives power to intervene when a dam poses an imminent danger. They suggest an assessment should be required by a qualified engineer, dispute resolution be followed and there be an appeals process. | Ensure appropriate checks and balances, require independent engineering assessment and peer review before the chief executive takes substantive action under Section 4.3 | <p>The relief be rejected.</p> <p>The powers referenced are established in the Building Act itself, where they are only to be used if there is imminent danger to the safety of persons, property or the environment. It is appropriate these powers are broad so they can be used to react to a variety of situations. The Act also provides a robust check whereby the Chief Executive is required to have the warrant used to act confirmed by the District Court. An engineering assessment is also already part of the process through the standard dam safety system.</p> |
| 4 | | Federated Farmers believes there is a need for tailored guidance for agricultural and irrigation dams. | Develop practical guidance for dam owners to assist understanding of requirements. | <p>The relief be rejected.</p> <p>The provision of guidance on the wider dam safety scheme is beyond the scope of the Dangerous Dams Policy. Council also does not have the technical capacity to develop such guidance. However, where possible, we can publish guidance prepared by others on our website.</p> |



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NZ Transport Agency Waka Kotahi

15/02/2024

The Chief Executive
Taranaki Regional Council
Private Bag 713
STRATFORD

Sent via: info@trc.govt.nz

Kia ora koutou

POLICY ON DANGEROUS DAMS, EARTHQUAKE-PRONE DAMS AND FLOOD-PRONE DAMS FOR TARANAKI

Thank you for the opportunity to provide feedback on the policy on dangerous dams, earthquake-prone dams and flood-prone dams for Taranaki. The NZ Transport Agency Waka Kotahi (NZTA) is generally supportive of the development of a policy for managing dangerous, earthquake-prone and flood-prone dams.

Section 4.3 of the proposed policy sets out that the Council will notify potentially affected communities downstream of dangerous, earthquake-prone or flood-prone dams by publishing the information.

NZTA wish to receive direct notification of dangerous, earthquake-prone or flood-prone dams upstream of the state highway network (including ancillary infrastructure), rather than relying on the release of more generally available information.

This is particularly important where dam failure may pose a risk to life, critical infrastructure/ lifeline utilities. NZTA will be able to utilise such information to provide a more integrated approach with its operational and resilience planning. It will also be able to provide feedback to the Council on the potential implications of any risk arising from dam failure that can inform emergency preparedness and response planning.

It is considered that Section 4.3 should be more explicit and set out that the Council will directly notify providers of critical infrastructure/ lifeline utilities where these are downstream of the dangerous, earthquake-prone or flood-prone dam. Suggested wording to this effect is underlined in the paragraph below.

'...The Council will notify potentially affected communities downstream of a dangerous, earthquake-prone or flood-prone dams. The Council will do this by publishing information about any dangerous, earthquake-prone or flood-prone dams in its region. Council will notify operators of critical infrastructure or lifeline utilities downstream of a dangerous, earthquake-prone or flood-prone dam.' The Council will also work with the Taranaki Civil Defence Emergency Group.

NZTA do not wish to appear at the hearing for this policy.

Yours sincerely,

Tony Horton
Principal Planning Advisor

SUBMISSION

TELEPHONE 0800 327 646 | WEBSITE WWW.FEDFARM.ORG.NZ



To: Taranaki Regional Council

Via email: info@trc.govt.nz

Date: 19th February 2024

Submission on: Statement of position for the policy on dangerous dams, earthquake prone dams, and flood-prone dams

Submission by: Federated Farmers of New Zealand Inc.
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TARANAKI PROVINCIAL PRESIDENT
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1. INTRODUCTION

- 1.1. Federated Farmers of New Zealand Inc (Federated Farmers) welcomes the opportunity to provide a submission on Taranaki Regional Council's (TRC) Statement of Position for the Policy on Dangerous Dams, Earthquake-Prone Dams and Flood-Prone Dams (the policy).
- 1.2. Federated Farmers is a voluntary membership-based organisation that represents the interests of farmers in New Zealand. We work constructively with local and central government on policies affecting the agricultural sector.
- 1.3. We appreciate Taranaki Regional Council consulting on this important issue. Our submission focuses on ensuring the policy balances improving dam safety with minimising compliance costs and practical workability, especially for farmers.
- 1.4. While Federated Farmers supports the overall intent of the policy to enhance dam safety, we wish to ensure it strikes an appropriate balance between improving safety and workability for farmers. Our submission focuses on several key areas where we believe the policy could be improved.

2. KEY ISSUES

Federated Farmers submission to Taranaki Regional Council – Statement of Position for the policy on dangerous dams, earthquake prone dams, and flood-prone dams

2.1. The policy aims to align with recent changes to national regulations on dam safety. While Federated Farmers supports the policy intent, we have identified some key issues:

- Requirements for engineer certification of low potential impact dams
- Unintended consequences of compliance costs and practicality for farmers
- Lack of detail and specificity within Taranaki's emergency policy

3. ENGINEER CERTIFICATION OF LOW POTENTIAL IMPACT DAMS

- 3.1. Federated Farmers supports requiring dam owners to conduct initial assessments to determine potential impact classifications.
- 3.2. Federated Farmers has previously expressed concern at a national level regarding the requirement that initial owner assessments of dams which turn out to be low risk must be submitted to a recognised engineer for audit.
- 3.3. We are concerned about the costs of submitting a low potential impact classification (PIC) dam to a recognised engineer for a certificate when the benefits of doing so are likely to be very low.
- 3.4. If there is concern about the risk of dams being inappropriately assessed as a low PIC dam, there could be a regime where a random sample of low PIC dam assessments are audited.
- 3.5. There is a shortage of qualified engineers nationwide. Mandatory certification for low risk dams would divert limited engineering resources. It may also impose unreasonable costs on farmers for audits of obviously low risk dams.

4. COMPLIANCE COSTS AND PRACTICALITY FOR FARMERS

- 4.1. As stated in the Introduction of the policy, the policy applies to all dams not just classifiable dams.
- 4.2. The number of dams that the policy will capture is unknown to both Federated Farmers and Council.
- 4.3. Many farms have multiple dams for irrigation, water supply or firefighting. While most will not meet thresholds to be classifiable, those that do face increased compliance costs and those that do not may as well.
- 4.4. For example, initial engineer assessments even for a low PIC dam can cost \$3,000-\$7,000 per dam. Ongoing compliance for medium/high risk dams like Dam Safety Assurance Programmes, can cost up to \$50,000 every 5-10 years.¹
- 4.5. These costs could make irrigation dams uneconomic and impede on-farm water storage, which is vital for climate change adaptation. We caution against unintended consequences from unworkable or excessive requirements.

5. CHIEF EXECUTIVE AUTHORITY UNDER SECTION 4.3

- 5.1. Section 4.3 of the consultation document grants the Chief Executive of the Council broad authority to take "any action necessary" when the condition of a dam jeopardises the

¹ Proposed Regulatory Framework for Dam Safety, MBIE, 2019, pg 49 - 50.
Federated Farmers submission to Taranaki Regional Council – Statement of Position for the policy on dangerous dams, earthquake prone dams, and flood-prone dams

safety of persons, property, or the environment. While the ability to swiftly address imminent dangers is important, there is merit in establishing stronger checks and balances on this power.

- 5.2. One primary issue lies in the lack of precision and specificity, potentially leading to varied interpretations and decision-making challenges across different emergency scenarios. This lack of clarity poses a risk to the overall effectiveness of our emergency response efforts.
- 5.3. Additionally, the policy fails to provide a clearly defined list of specific actions authorised for the chief executive. The absence of such specifics not only hampers public understanding and expectation during emergencies but also diminishes public trust.
- 5.4. Furthermore, the policy is notably silent on oversight, transparency, and dispute resolution processes. This omission raises fundamental questions about accountability and the mechanisms in place to ensure that the chief executive's emergency actions align with public interest and adhere to legal and ethical standards.
- 5.5. This submission proposes requiring an initial assessment by a qualified engineer, followed by an independent peer review, before the chief executive undertakes any substantive actions under Section 4.3. This aims to evaluate the necessity and proportionality of the proposed response.
- 5.6. Additionally, if the initial engineer recommends significant measures like demolition or decommissioning, mandatory consultation with both engineering experts and affected downstream communities should occur before action is taken.
- 5.7. An appeals process for dam owners who believe the chief executive has overstepped their authority should also be specified in the policy. This would enable disputes to be settled transparently and fairly.
- 5.8. Overall, placing further oversight and review requirements around the chief executive's emergency powers allows urgent safety issues to be addressed promptly when genuinely needed. However, it also prevents hasty or excessive actions that lack appropriate scrutiny, providing checks and balances previously absent from this section of the policy.

6. TAILORED GUIDANCE AND RESOURCES

- 6.1. Federated Farmers believes that the needs of farmers owning agricultural and irrigation dams will be very different to those of other dam owners and very different again to those of engineers and council staff.
- 6.2. With this in mind Council should consider tailoring specific guidance material to different audiences acknowledging the unique needs of various dam owners compared to engineers and council staff.

7. REVIEW PERIODS FOR MEDIUM POTENTIAL IMPACT DAMS

- 7.1. We support the policy's alignment with national regulations, advocating for an initial 10 yearly review of Dam Safety Assurance Programmes (DSAPs) for medium impact dams. This approach recognises and supports the differentiated review periods stipulated by the regulations, which accurately reflect the lower risks associated with medium potential impact dams.

8. RECOMMENDATIONS

- 8.1. Federated Farmers recommends Taranaki Regional Council:

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- Remove mandatory engineer certification requirements for low potential impact dams.
- Ensure appropriate checks and balances, require independent engineering assessment and peer review before the chief executive takes substantive action under Section 4.3.
- Develop practical guidance for dam owners to assist understanding of requirements.

9. CONCLUSION

- 9.1. Federated Farmers believes the dangerous dams policy has merit in aligning with national regulations and improving dam safety.
- 9.2. However, to ensure the policy strikes an appropriate balance, Taranaki Regional Council should consider removing mandatory certification requirements for low-risk dams, as the costs outweigh the benefits.
- 9.3. Oversight and review processes for the council's and chief executive's emergency powers should also be strengthened.
- 9.4. Additionally, providing tailored guidance materials for dam owners and upholding the differentiated review timeframes will help minimise compliance burdens.
- 9.5. Federated Farmers looks forward to working constructively with Council to refine elements of the policy. Doing so will help produce a fair, practical framework that enhances dam safety across Taranaki while avoiding undue impacts on dam owners. We believe addressing the concerns outlined in this submission will lead to a policy with broad support that sustainably achieves the shared aims of Council and dam owners.

Federated Farmers thanks Taranaki Regional Council for considering our submission.

About Federated Farmers

Federated Farmers is a not-for-profit primary sector policy and advocacy organisation that represents the majority of farming businesses in New Zealand. Federated Farmers has a long and proud history of representing the interests of New Zealand's farmers.

The Federation aims to add value to its members' farming businesses. Our key strategic outcomes include the need for New Zealand to provide an economic and social environment within which:

- Our members may operate their business in a fair and flexible commercial environment;
- Our members' families and their staff have access to services essential to the needs of the rural community; and
- Our members adopt responsible management and environmental practices.

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This submission is representative of member views and reflect the fact that local government plans, policies and spending impact on our member's daily lives as farmers and members of local communities.



Federated Farmers submission to Taranaki Regional Council – Statement of Position for the policy on dangerous dams, earthquake prone dams, and flood-prone dams



Date: 19 March 2024

Subject: Freshwater Implementation Update

Author: L Hawkins, Policy Manager

Approved by: A D McLay, Director - Resource Management

Document: 3253766

Purpose

1. The purpose of this memorandum is to provide a Freshwater Implementation project update.

Executive summary

2. Set out in this memorandum is an update on the progress of implementing the freshwater package from central government. The memorandum focusses on the key tasks undertaken since the previous Committee meeting, and identifies risks associated with the project and achievement of the project timeframes.
3. The attached report focusses on the key streams of work associated with the freshwater package. This being policy development, implementation of the Freshwater Farm Plans (FWFP) regulations and the communications and engagement timeline.

Recommendation

That Taranaki Regional Council:

- a. receives the March 2024 update on the Freshwater Implementation Programme.

Background

4. This memorandum updates on progress in implementing the Freshwater Package. An implementation programme was previously presented to, and approved by the Committee. This report provides an overview on the progress of the work programme, specifically focusing on the previous 6 weeks and those ahead. It provides an opportunity for discussions relating to progress and risks identified.

Discussion

5. The attached report (attachment 1) provides a high level overview of the progress made since the last Committee meeting in February 2024, and identifies those tasks to be undertaken in the coming 6 weeks. It also identifies risks associated with the programme, and a copy of the high level engagement strategy – although please note that the engagement strategy will be reviewed in light of the recent government announcements.

6. Key discussion points are included in this covering memorandum to draw attention to key areas of work.

Update on Government Announcements

7. Since the update provided at the February Policy and Planning Committee meeting, the government has not made any significant announcements regarding detail relating to updates and/or replacement of the National Policy Statement for Freshwater (NPSFM). The government however, have announced the intention to introduce a separate bill to change how the hierarchy of obligations contained in Te Mana o Te Wai provisions of the NPSFM applies to consent applications and consent decisions. Indications are that this change will not impact plan development at this stage. The new bill is expected early March, but was not available at the time of writing this report.
8. The Governments signaled changes to the NPSFM and the amended deadline for implementation to December 2027 have prompted a review of the current work programme to develop a new Land and Freshwater Regional Plan. Various options and considerations were presented on 27 February 2024. A paper seeking endorsement of a proposed approach to progressing the policy development programme is considered as a separate item on this Agenda. The recommended option is to maintain momentum in the process and aim for about a mid 2025 notification.

Freshwater Farm Plans (FWFP)

9. We continue our mahi in working towards implementing the freshwater farm plan system and key tasks currently underway are included in the attachment to this memorandum. Recent correspondence from the government has indicated that phase 3 Councils (including TRC) are unlikely to receive an Order in Council (OIC) in the immediate future, and as such it has been suggested these Councils review their draft OIC and submit an updated programme to the Government.

Working with iwi

10. Work continues with the Ngā iwi o Tarankai Pou Taiao officer on key elements of work, including the development of a summary report identifying potential measures for Māori freshwater values to help inform the setting of Target Attribute States. The next meeting with iwi Pou Taiao has been set for the end of March, which will focus on key elements of policy drafting to help inform the next stages of consultation with the wider community. This will include input on target attribute state setting.

Financial considerations—LTP/Annual Plan

11. This memorandum and the associated recommendations are consistent with the Council's adopted Long-Term Plan and estimates. Any financial information included in this memorandum has been prepared in accordance with generally accepted accounting practice.

Policy considerations

12. This memorandum and the associated recommendations are consistent with the policy documents and positions adopted by this Council under various legislative frameworks including, but not restricted to, the Local Government Act 2002, the Resource Management Act 1991 and the Local Government Official Information and Meetings Act 1987.

Iwi considerations

13. This memorandum and the associated recommendations are consistent with the Council's policy for the development of Māori capacity to contribute to decision-making processes (schedule 10 of the Local Government Act 2002) as outlined in the adopted Long-Term Plan and/or Annual Plan. Similarly, iwi involvement in adopted work programmes has been recognised in the preparation of this memorandum.

Community considerations

14. This memorandum and the associated recommendations have considered the views of the community, interested and affected parties and those views have been recognised in the preparation of this memorandum.

Legal considerations

15. This memorandum and the associated recommendations comply with the appropriate statutory requirements imposed upon the Council.

Appendices/Attachments

Document 3253767: [Freshwater Implementation Progress Report 19 March 2024](#)

| <p style="text-align: center;">Freshwater Implementation Project Report to Policy & Planning Committee</p> <p style="text-align: center;">March 2024</p> | | | |
|--|---|---|--|
| | Progress in the last six weeks | Key tasks in the coming six weeks | Risks |
| National Policy Statement for Freshwater Management | <ul style="list-style-type: none"> Finalise first draft of TAS technical reports on phosphorus, nitrate, <i>E.coli</i>, sediment and flow. Finalise approach for first draft of Region Wide objective, policies and rule framework. Begin drafting TAS, flows and limits, aligning science and policy approach. Work through the Māori Freshwater attributes report with iwi Pou Taiao in order to set TAS. Continue discussions with iwi pou taiao on policy and science investigations and approach, particular focus on working through NOF process and rule framework Work through implications of recent announcements in the freshwater space by the Government and present options for discussion at the Council meeting 27 February 2024. | <ul style="list-style-type: none"> Work through the Māori Freshwater attributes report with iwi Pou Taiao in order to set TAS. Continue discussions with iwi pou taiao on policy and science investigations and approach, particular focus on working through NOF process and rule framework. Finalise draft of the visions, values and environmental outcomes framework. Finalise target attribute state memos (including those associated with non-compulsory values) to inform policy development. Finalise drafts of key aspects of the Region Wide Rule framework to inform consultation preparation ahead of scheduled mid-year consultation. Prepare for discussion with Policy and Planning Committee on key policy drafting options. | <ul style="list-style-type: none"> Medium risk – Partnership with iwi. Risk that the timeframes, complexity of issues and the need to be working in an agile manner to develop the policy framework will impact on the partnership approach being fostered. Amendments to the Pou Taiao Agreement including the setting up of a steering committee to mitigate this risk. Opportunity to consider amendment to programme to providing more time and opportunity to work through policy drafting. Continue to present progress to the Wai Steering Committee. Medium risk – participation in the community engagement is low. Mitigated through continued promotion of process, community meetings switched to being held at various locations, targeted engagement with industry groups to lessen the load on individuals. High risk –change to direction of the NPSFM with the new government. We can mitigate against this risk by maintaining momentum on policy development, keeping abreast of policy announcements from the government, and taking pause when necessary to confirm approach as policy guidance from the government develops. |
| Freshwater Farm Plans | <ul style="list-style-type: none"> Continue work on developing the CCCV for the Waingongoro River, including preparation for discussions with industry bodies to test the approach. Meet with iwi Pou Taiao to discuss the approach on how TRC and iwi work together for FWFP implementation, particular focus to be on CCCV development and regional training development. Begin work on developing the framework for regional training. | <ul style="list-style-type: none"> Continue work on developing the CCCV for the Waingongoro River, including preparation for discussions with industry bodies to test the approach. Confirm approach to any changes required of OIC. Discuss with relevant iwi for the Waingongoro the approach with hapū. Continue work on developing the framework for regional training. | <ul style="list-style-type: none"> low risk – potential change to direction of FWFP regulations with the new government. The government has signalled the continuation of the FWFP process and Councils should expect an order in council, as such this is a low risk. The continuation of the programme will mitigate against any pressure to respond to an OIC when released. |

Engagement and Communication Strategy (Policy Development)

Please note the following is currently under review and will be updated upon adoption of an updated work programme.

Set out below is a high level summary of the engagement approach and timing for key components supporting the policy development. Also noted is a high level timeline for key communications and engagement activity. Note this engagement plan does not include Council working with their tangata whenua partners, this process is subject to an alternative approach led with the Pou Taiao and Council’s Iwi communications advisor.

| Phase | Stage | What | Who | Timing* |
|---------|---|--|--|---|
| Phase 1 | Seek to understand Focus: gathering info from audiences about what’s important to them | This phase has covered seeking input on a variety of high level freshwater matters including visions for Freshwater in Taranaki, identification of values for freshwater management and feedback on the proposed FMU boundaries. Input has been sought through a variety of mediums including online surveys, social pinpoint, face to face meetings and drop-in sessions (ie Stratford A&P show). | Community and special interest groups. | Apr 2021 to Mar 2023 |
| Phase 2 | Test options Focus: building and discussion on options that meet the region’s wants and needs | There are two key steps in this process: 1. Testing the building blocks of the National Objectives Framework. A discussion document for each FMU is being prepared and will cover visions, values, baselines and environmental outcomes. 2. Testing limits and targets. Continuing to build the National Objectives Framework, this step will present options for the limits and targets for the new plan. This phase will also likely include region wide policy framework discussions. | 1. Community – via online consultation opportunity. Special interest groups including industry bodies, catchment groups, government agencies, district councils, environmental NGOs – via workshop discussions. 2. Community and special interest groups. A series of face to face meetings around the region and opportunity for online feedback. | Aug 2023 to Mar 2024 |
| Phase 3 | Present preferred solution Focus: presentation of best options (draft plan) | A draft plan will be compiled and through requirements of the RMA an opportunity for written feedback provided. | Clause 3 – listed in the RMA, and special interest groups. | Mid 2024 |
| Phase 4 | Notification: Public submissions Focus: formal communication relating to Plan notification | The Freshwater components of the NRP must be notified by December 2024. Once notified all interested parties will have the opportunity formally submit written submissions on the notified plan. | All interested parties. | End 2024 for notification. Submission period early 2025. |

* Note the timing is indicative only, as a full programme review is currently being undertaken.

Essential Freshwater Engagement Strategy timeline

| | Seek to understand | | | | | | | | Test options | | | | | Solution | Notification | | | | | | | | | |
|--|--------------------|--------|--------|--------|--------|--------|--------|--------|--------------|--------|--------|--------|--------|----------|--------------|--------|--------|--------|--------|------------|------------|------------|------------|------------|
| | Jun-22 | Jul-22 | Aug-22 | Sep-22 | Oct-22 | Nov-22 | Dec-22 | Jan-23 | Feb-23 | Mar-23 | Apr-23 | May-23 | Jun-23 | Jul-23 | Aug-23 | Sep-23 | Oct-23 | Nov-23 | Dec-23 | Jan-Mar 24 | Apr-Jun 24 | Jul-Sep 24 | Oct-Dec 24 | Jan-Mar 25 |
| Phase 1: Seek to understand | | | | | | | | | | | | | | | | | | | | | | | | |
| - Freshwater Visions | | | | | | | | | | | | | | | | | | | | | | | | |
| - Freshwater Values | | | | | | | | | | | | | | | | | | | | | | | | |
| - FMU boundaries | | | | | | | | | | | | | | | | | | | | | | | | |
| Phase 2: Test Options | | | | | | | | | | | | | | | | | | | | | | | | |
| - Freshwater Visions | | | | | | | | | | | | | | | | | | | | | | | | |
| - Freshwater Values | | | | | | | | | | | | | | | | | | | | | | | | |
| - Environmental outcomes | | | | | | | | | | | | | | | | | | | | | | | | |
| Phase 3: Present Preferred solution | | | | | | | | | | | | | | | | | | | | | | | | |
| - Draft plan clause 3 consultaion | | | | | | | | | | | | | | | | | | | | | | | | |
| Phase 4: Notification | | | | | | | | | | | | | | | | | | | | | | | | |
| - Plan notification + consultation | | | | | | | | | | | | | | | | | | | | | | | | |
| Inform: NES Rules | | | | | | | | | | | | | | | | | | | | | | | | |
| - Nitrogen Cap | | | | | | | | | | | | | | | | | | | | | | | | |
| - Stock Exclusion | | | | | | | | | | | | | | | | | | | | | | | | |
| - Land intensification | | | | | | | | | | | | | | | | | | | | | | | | |
| - Freshwater Farm Plans | | | | | | | | | | | | | | | | | | | | | | | | |
| - Intensive Winter Grazing | | | | | | | | | | | | | | | | | | | | | | | | |
| - Structures in rivers | | | | | | | | | | | | | | | | | | | | | | | | |
| - Feedlots and stockholding | | | | | | | | | | | | | | | | | | | | | | | | |



Date: 19 March 2024

Subject: Land and Freshwater Plan review Programme

Author: L Hawkins, Policy Manager

Approved by: A D McLay, Director - Resource Management

Document: 3252648

Purpose

1. The purpose of this memorandum is to provide an update on the recent announcements by the coalition government in relation to freshwater management, and seek endorsement for an updated programme for the development of a new Land and Freshwater Plan, and necessary updates to the Regional Policy statement.

Executive summary

2. In December 2023 the coalition government announced a number of changes to how freshwater is managed. A key component of these announcements was a change to the notification deadline for the implementation of the National Policy Statement for Freshwater (NPSFM). A shift to December 2027 from December 2024, provides time for the government to replace the NPSFM, with work expected to take 18-24 months.
3. This change impacts on our current policy programme to develop a new Land and Freshwater Plan and updates to the Regional Policy Statement, to give effect to the NPSFM. This memo sets out the considerations to determine an appropriate way forward in light of the proposal to make changes to the NPSFM. The memo also describes three possible options. The recommended option (*Option 2 – maintaining momentum*) would see work continuing on development of a draft Land and Water Plan albeit with review to consider any implications of the changes that Government are proposing to the NPSFM as the nature of the changes proposed become clearer over the next 12 – 18 months. Option 2 would see a draft Land and Water Plan being notified in about mid-2025.
4. The main reasons for *Option 2 – maintaining momentum* being the preferred option are due to:
 - a. Being able to address water quality issues quicker;
 - b. The importance of maintaining momentum and currency with iwi, community and stakeholders;
 - c. Responding to the age of the operative freshwater plan;
 - d. Making best use of investment to date; and
 - e. Allowing flexibility to consider and respond to any updated freshwater policy guidance that the government may release relating to a new NPSFM.

Recommendations

That Taranaki Regional Council:

- a) receives the memorandum Land and Freshwater Plan review Programme
- b) endorses *Option 2 – maintaining momentum* as a new programme for the development of the Land and Freshwater Plan and associated updates to the Regional Policy Statement, aiming for a mid 2025 notification
- c) directs staff to consider any updates provided by the government on future changes to the NSPFM and requests appropriate reporting to the Committee, including consideration of any necessary changes to the programme
- d) determines that this decision be recognised as significant in terms of section 76 of the *Local Government Act 2002*
- e) determines that it has complied with the decision-making provisions of the *Local Government Act 2002* to the extent necessary in relation to this decision; and in accordance with section 79 of the Act, determines that it does not require further information, further assessment of options or further analysis of costs and benefits, or advantages and disadvantages prior to making a decision on this matter.

Background

5. In December 2023 Parliament passed legislation repealing the Natural and Built Environment Act 2023 and the Spatial Planning Act 2023. As part of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 the government extended the deadline for notification of regional freshwater planning instruments by three years.
6. Previously, the Resource Management Act 1991 required regional councils to publicly notify freshwater planning instruments that give effect to the National Policy Statement for Freshwater (NPSFM) by 31 December 2024.
7. As part of this package the government also signaled their intent to replace the NPSFM, with work beginning immediately, including a review of the National Environmental Standards for Freshwater (NES-F). The process is expected to take between 18 and 24 months and will include a full consultation process with all stakeholders including iwi and the community. To date there has been limited detail from the government indicating the level of change expected beyond such indications as '*... is committed to improving freshwater quality for the benefit of all New Zealanders by ensuring a sustainable and balanced approach that works towards improving the environmental outcomes for our waterways*'.
8. The government has recently announced the intention to introduce a separate bill to change how the hierarchy of obligations contained in Te Mana o Te Wai provisions of the NPSFM applies to consent applications and consent decisions. Indications are that this change will not impact plan development at this stage.
9. Since these announcements from the government, Council's NPSFM work programme has continued, but staff have considered the best approach and programme for this work given the uncertainty about future changes.
10. Our existing programme is budgeted for and is working towards the 2024 deadline. There is no doubt the existing timeline is challenging for staff, iwi partners and the community. The extension to the timeframes for notification where it allows us to work more with communities and tangata whenua to produce a better plan for our region has benefits. However, this must also be considered along with community expectations for improved freshwater outcomes, the legal risks arising from any unreasonable delay and the benefits of completing the planning work so we can shift effort to implementation for on the ground results in the region.

11. For these, and many other reasons, the extended notification date of 2027 is not an automatic default and an approach is required that supports Council to work to a timeframe that is best for Taranaki. Set out in this paper are three options which describe and assess each option against a number of considerations, resulting in a recommended approach for the consideration of the committee.

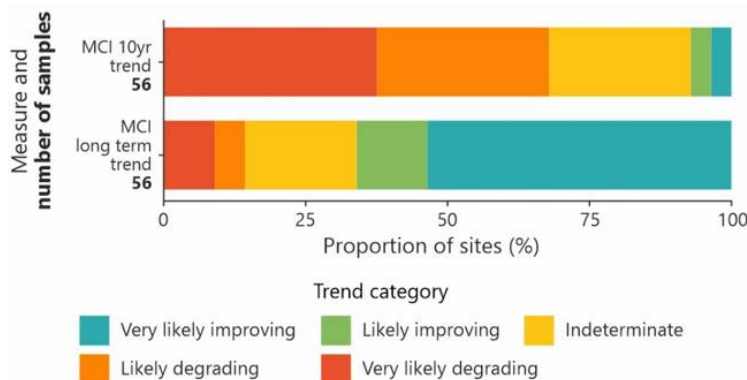
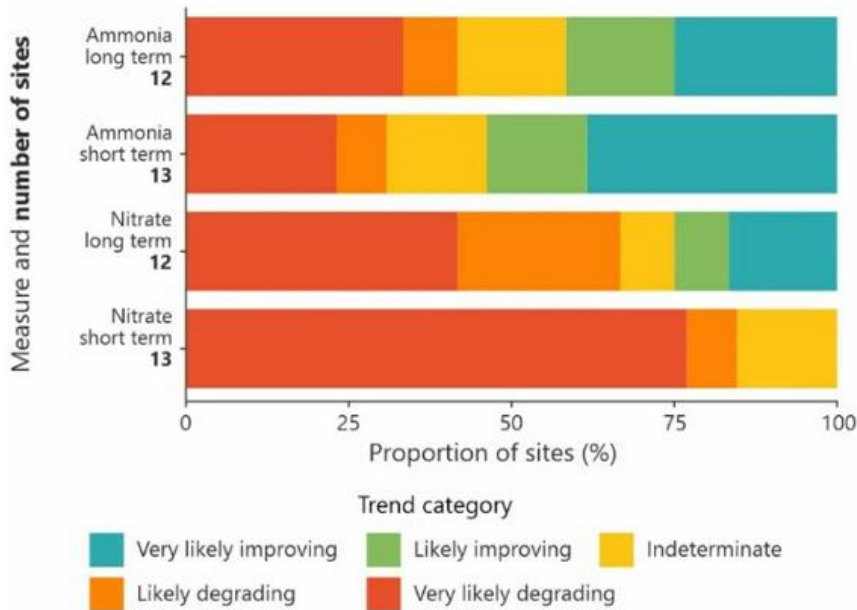
Discussion

12. There are a number of factors to consider when determining an appropriate approach for Taranaki in relation to our policy development program. These are covered by the following sections of the report.

Responding to the challenges facing Taranaki

13. Science investigations identifying the baseline states of NOF attributes for each FMU were published in September 2023, to support consultation on the long term visions, values, and environmental outcomes. These investigations identify the baseline state in accordance with the NPSFM and the relevant attribute bands. These reports confirm that our waterways are in a degraded state and in some instances fall below the national bottom line for a number of attributes. Recent trends show a decline in the state of freshwater over the past ten years. Key challenges for Taranaki include:
 - a. *E. coli* – we are currently falling well short of national swimmability targets, with 19 of the 22 (86%) river monitoring sites sitting within either band D or E. Modeling indicates that significant reductions in *E. coli* loads will be required to meet minimum standards and see improvements. Rainfall in Taranaki does expedite run-off of *E. coli* and other contaminants into waterways however, an assessment of earlier 'dry-weather' swim spot monitoring data found that 11 out of 16 sites were still failing the minimum standard, indicating direct contamination of waterways is a significant issue.
 - b. Sediment – eight of the 22 (36%) monitoring sites fall below the national bottom line sitting at band D. Erosion control measures have been successful to date, reducing sediment loads in our rivers by approximate 30%. There remains significant work to do however, if we are to combat the effects of climate change which will exacerbate erosion and sediment loss to waterways. Completion of existing soil conservation measures will be essential for offsetting these impacts in some areas, but further measures will also be required in other areas where increased sediment loads are forecasted to be highest.
 - c. Nitrate – Although most sites achieve the NPSFM bottom line for toxicity effects, nutrient concentrations must be managed to achieve ecosystem health outcomes through managing periphyton and other attributes that are affected by nutrients. This is likely to become more important in the future with the effects of climate change; for example, extended periods of low stream flows resulting in higher nitrate concentrations and increased algal growth during summer.
 - d. Ecosystem health – despite longer-term improvement, recent degrading trends in MCI are evident, with more than one third of sites showing a degrading trend. Macroinvertebrate community health is measured with three different metrics under the NOF (MCI, QMCI and ASPM). Out of the 58 sites for which baseline state could be assessed, 22 sites (32%) have at least one of the three metrics graded within the D band; below the national bottom line. There is a general pattern of declining macroinvertebrate community health with increasing distance downstream in monitored catchments.
14. The challenges reflected in the baseline work are also evident through the most recent State of Environment report (SoE report) released in 2022. The report highlights concerning downward trends in a number of water quality and ecosystem health attributes. Changes in these attributes (trends) are determined over the long term (25 years) and short term (10 years). The figures below show these trends for attributes ammonia, nitrate and macroinvertebrates. For ammonia and macroinvertebrate

health, there are more degrading trends than improving trends over the most recent 10 year period, while nitrate has predominantly degrading trends across both periods.



15. In addition to these attributes, the region also faces challenges with water availability. Our current framework provides a regime that is based on providing protection for in-stream food producing habitat and flow sensitive species, which translated to the current minimum flow default of 66% mean annual low flow (MALF), and no take limits set in the plan. This is unlikely to achieve environmental outcomes for ecosystem health or support improvements, where relevant, in other attributes. Climate change projections for Taranaki including considerable reductions in MALF by mid-century – at least 5-10% in the region’s streams, and up to 50% in some waterbodies. Therefore water allocation and the resulting impacts on freshwater health will be a significant issue to be addressed.
16. Climate change presents specific challenges for Taranaki, impacting many, if not all, of our identified freshwater values. We need to move towards a management approach to freshwater that ensures the resilience of both our community and the environment to the impacts of climate change. Halting degrading trends in freshwater attributes to assist in combating the effects of climate change is a pressing issue for the region that requires urgent action.

17. Stopping the decline and then identifying opportunities to improve these attributes will need to remain a focus for the Land and Freshwater Plan, regardless of any framework provided for by an NPSFM.

Existing requirements of the RMA

18. Despite the change to the deadline and the intention of the government to replace the existing NPSFM, until such time that it is replaced, it has legal effect. Existing legal requirements of the RMA and the NPSFM are for Regional Policy Statements (RPS) and Regional Plans to give effect¹ to the NPSFM 'as soon as reasonably practicable'².
19. This obligation has not been affected by the new deadline and therefore any delay of the programme that could be deemed unreasonable could risk legal challenge. Council has already been 'put on notice' in this regard.

Change is a constant

20. Changes to the NPSFM are not new or unexpected. The first NPSFM was introduced in 2011. Since then there have been three significant updates, and a handful of minor changes. Set out in Attachment 1 below is a summary of the changes which have been made, and the key political, social and environmental factors at play at each of those times.
21. Although there have been a number of changes to the NPSFM and government policy direction over the past 15 years, across a number of different governments, the driving factor remains the same. That freshwater management in New Zealand needs to seek improvement in water quality and quantity and that the primary outcome to be achieved is that the life supporting capacity of water bodies and ecosystems is safeguarded. Over the years, additional factors have been added to this including safeguarding human health, and most recently the concept of Te Mana o Te Wai has sharpened the focus on the environmental health of our waterways.
22. Whilst details on the changes likely to be proposed by the coalition government are limited, it would be reasonable to expect that a focus on improving freshwater quality and quantity will remain. And to that end the work programme of recent years, particularly in the policy and science areas, aligns with this broad outcome.
23. At various points in this timeline, we have chosen to pause or slow development of freshwater plan updates that would meet the requirements of the NPS in place at that time. This has led to our existing freshwater plan now being over 22 years old, without any updates beyond those enforced by central government direction. The age of the plan is a consideration dealt with later on in this memorandum.
24. Whilst the coalition government has signaled their intent to replace the NPSFM, details on the scope of future change is limited. In this instance consideration of moving work forward to develop a Freshwater Plan that responds to the issues of our region needs to be balanced with any benefit from pausing work and awaiting clarification from government. Continuing with work under this current NPSFM, whilst remaining aware of details as they emerge on the updates to the NPSFM is an option to be explored. With the expectation that government will start consulting on the replacement NPSFM in the next 18 months, the opportunity to consider any emerging direction, and should the need arise to pause the programme and progress new areas of work should be considered in options.

Long term approach to see water quality and quantity improvements

25. Improvements to freshwater quality and quantity will not occur in a short period of time, it is a long journey. Instruments such as the Land and Freshwater Plan will need time to be implemented to see resulting benefits. The longer we continue to operate with a plan that does not respond to the known challenges for the region, the longer and more costly it will be to stop the downward trends, where these are occurring, and subsequently see improvement. Continuing to consent under the existing

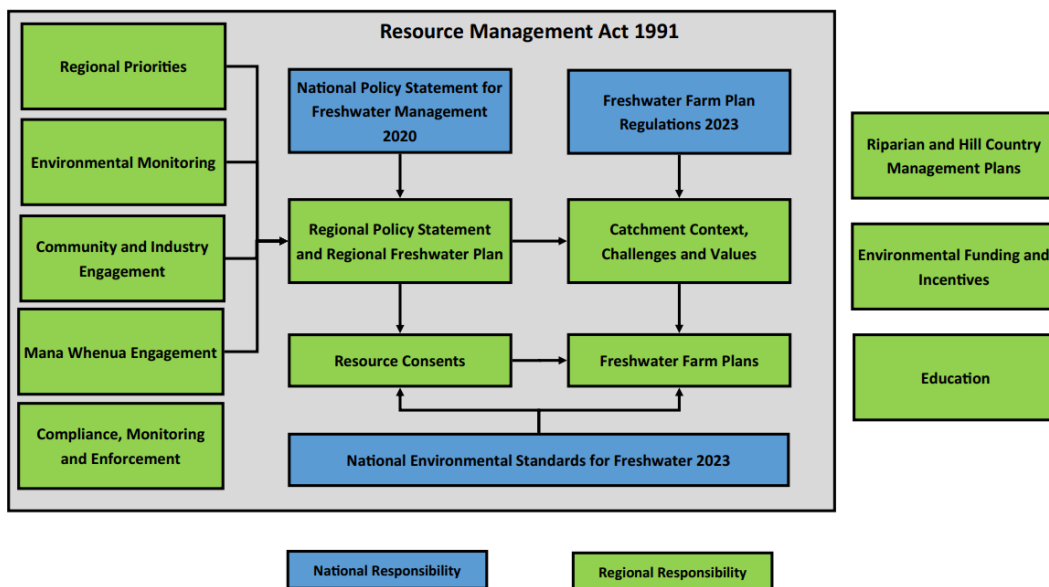
¹ S62(3) and 67(3)(a)

² S65(7) and NPSFM, cl 4.1

plan results in the continuation of freshwater management practices that don't assist in halting the decline and/or support improvements. Consent duration is typically in excess of 10-15 years, and over the next 3 years approximately a quarter of existing consents are due for renewal.

26. The Land and Freshwater Plan is not the only tool we have to affect change. There are a number of processes which have an impact on how freshwater is managed. They also have a role to play in informing the next iteration of the Land and Freshwater Plan, notwithstanding a change in direction that may come from a replacement NPSFM.
27. We have a long history of working with the community, particularly the farming community, and the continuation of such programs will play an important role in seeing water quality and quantity improvements achieved.
28. Set out below is a diagram depicting the overall freshwater management system through the lens of plan development. It highlights that national direction is but one part of a much wider system, there are multiple drivers for reviewing the plan beyond the NPSFM, and how the incoming freshwater farm plan system will be supported by an updated plan.

Freshwater Management Regime



Maintaining momentum and working towards certainty

29. Through work over recent years, the community expectation has been set based on a new plan being notified in December 2024. Input into the process by the community, key stakeholders and iwi has been building momentum. As have our work programmes to support policy development. Significant delay to the process could jeopardise the energy and commitment that has been built up to inform a new land and freshwater plan.
30. We can look to take advantage of the extra time a shift in notification deadline provides without losing momentum. However, this will need to be considered in light of the history of there being a number of iterations of policy development with our community over the years, with no process resulting in an updated plan being notified. There is a risk of consultation fatigue and the continuation of lack of certainty if an undue delay results.

Age of our existing plan

31. The current freshwater plan is over 22 years old and has not kept pace with current freshwater management practice and expectations of the community and industry. In addition to this, councils are

required to regularly review their plans under s.79 of the RMA. Section 79 requires that a review must be commenced on any part of a plan that has not been subject to a review within the last 10 years. This review then must be advanced “as promptly as is reasonable in the circumstances.”³ Council commenced a review of the plan in 2011, but that process has not resulted in either a decision that changes are not required, or a decision which results in new plan provisions being notified. The age of the plan combined with the protracted nature of the review is a concern and potential legal risk.

32. Aside from the concerns regarding our legal obligations, there are risks associated with continuing to operate under an ageing plan. Some of these include:
 - a. Dairy effluent discharges direct to water are currently a controlled activity – this does not reflect best practice or industry expectations, increases risk of *E. coli* and nutrient loading and is not supported by iwi partners.
 - b. Water allocation regime – current 2/3 MALF does not provide sufficiently for ecosystem health, the blanket limit does not differentiate water body size, and there is limited ability to address over allocation and avoid future over allocation or mitigate the effects of climate change.
 - c. Stormwater / wastewater – these are largely permitted or controlled activities, limits on volumes of contaminants do not take into account the size of a receiving waterbody and there is no ability to consider effects significant to the community or tangata whenua.
33. Couple the age of the plan with the need to respond to the environmental challenges of Taranaki, and it is clear that there is a need to bring the plan in line with best practice. A modern and fit for purpose plan will have benefit for the community through clearer and more streamlined consenting processes.

Options

34. In considering these factors there are number of options available to council. There are benefits and risks associated with each option. Set out below is an overview of the options and an analysis of the pros and cons of each option.

Option one – current approach

35. This option would see us continue with our current work programme towards a notification date of December 2024. This would include a short engagement period mid-year 2024, and limited exposure for Clause 3 consultation

| Option one – current approach | |
|--|---|
| Pros | Cons |
| <ul style="list-style-type: none"> • Meets legal obligations. • Environmental challenges and other freshwater related issues are addressed promptly. • New plan will be in place ahead of the large number of resource consents in coming years. • Maintains momentum – internally and externally. • Makes best use of existing investment in science and policy development. | <ul style="list-style-type: none"> • Tight timeframe will result in considerable pressure on staff, iwi and community. • Limited opportunities for community engagement. • Risk of community dissatisfaction due to limited engagement. • Tight timeframe to receive, assess and respond to feedback on the draft changes. • Potential changes to the NPSFM are unlikely to be known and cannot be considered in drafting. |

³ S21 RMA

| | |
|--|---|
| <ul style="list-style-type: none"> • Will provide a modern and streamlined plan in place as soon as possible. | <ul style="list-style-type: none"> • Potential for policy misalignment post 2024 if policy settings substantially change. • Limited time to consider feedback and alternative options that may be suggested through consultation processes. |
|--|---|

Option two – maintaining momentum

36. This option would see us continuing our momentum and work towards notifying a new Land and Freshwater Plan that gives effect to the existing NPSFM in the middle of 2025. It will enable the consideration of a wider clause 3 consultation to be undertaken, and the extra time will enable government direction to progress and be considered through policy development.

| Option two – maintain momentum | |
|--|---|
| Pros | Cons |
| <ul style="list-style-type: none"> • Will provide for the opportunity to pause and reflect on approach as more details emerge from the government. If necessary alternative timing and approach can then be undertaken. • Meets legal obligations. • Environmental challenges and other freshwater related issues are addressed sooner. • New plan will be in place ahead of the large number of resource consents in coming years. • More time for consultation and conversations with the community, and can enable a wider clause 3 consultation ahead of notification. • More time in the programme to investigate and respond to feedback received. • Additional time to explore options. • Maintains momentum – internally and externally. • A modern and streamlined plan will be in place in a timely manner. • Makes best use of existing investment in science and policy development. | <ul style="list-style-type: none"> • Updates to/or replacement of the NPSFM and national regulations may land around the time of notification or after it. • Potential for policy misalignment post 2025 if policy settings substantially change. |

Option 3 – delayed implementation

37. This option would see us wait until the replacement NPSFM has been gazetted to prepare a new Land and Freshwater Plan, with notification likely to be late 2027. This approach would see a slow down in the existing policy development programme to await additional direction from the government.

| Option three – delayed to 2027 | |
|---|---|
| Pros | Cons |
| <ul style="list-style-type: none"> Updated/replacement NPSFM will likely be in place and full consideration through policy development can be given to it. Enables some opportunity to continue to work with tangata whenua and the community, although this will be limited to discrete areas where certainty from government can be provided early. Freshwater Farm plans are likely to be in full swing for the region (assuming all areas are switched on by 1 Jan 2026), enables good practice to also be embedded through farm plan development. | <ul style="list-style-type: none"> Environmental challenges and other freshwater related issues are not addressed in the region in a timely manner. Legal risk of undue delay. A modern and streamlined plan is not in place prior to the large amount of resource consents that will present in the coming years. Existing policy approach continues to be out of step with industry and community practice. Loss of momentum – both internally and externally. This may result in a risk to the motivation and resourcing of tangata whenua and the community being involved in a prolonged programme Potential for wasted investment in policy and science work currently underway, where updates and revisions are required. NPSFM could take longer than government has currently signaled, this could squeeze the programme to meet the December 2027 notification deadline and result in limited time for engagement and discussion with the community and iwi. |

Recommended Option

38. Whilst all options present opportunities and risks, *option 2 – maintain momentum* provides us with the most flexibility in a time of uncertainty. A notification in about the middle of 2025 will add at least an additional 6 months to the current work programme timeframe. It enables us to move forward with developing a new land and freshwater plan that responds to the needs of Taranaki, whilst also meeting existing legal obligations. It also allows for consideration to be given to the likely impact that changes proposed by government might have as these become clearer over the next twelve months. The extension of the timeframe is still tight, but maintaining momentum will provide the opportunity to continue to make use of the existing investment in the process by council, tangata whenua and the community.
39. The main risk to option 2 is that the policy development programme and /or the notified plan may not give effect to the updated / replacement NPSFM. The impact of this will depend on when clarity of approach is provided by the government, and when a new NPSFM may be gazetted. Mitigations will be different depending on whether a plan has been notified or not, and these are set out through the approaches below:
- We will review and consider any further detail that is provided by the government on NPSFM changes, and will report back. If at any point it is considered appropriate to delay notification to address any areas of concern, this option will be available as long as the December 2027 notification is achievable.

- b. Staff will participate in any discussions held by the government about the proposed changes to the NPSFM, so that the policy and science programme can be 'future proofed' as best possible.
- c. Should direction from the updated / replacement NPSFM require changes following notification of the Land and Freshwater Plan, these can be dealt with through the submission process, or via scoped variation or plan change. Also it is worth noting the powers of the Freshwater Hearings Panel to make recommendations on content outside the scope of submissions. Hence, they do have some power to require amendments to reflect a new NPSFM if they deem it appropriate to do so.

Financial considerations—LTP/Annual Plan

- 40. This memorandum and the associated recommendations are consistent with the Council's adopted Long-Term Plan and estimates. Any financial information included in this memorandum has been prepared in accordance with generally accepted accounting practice.
- 41. The three options presented earlier can be accommodated as part of the 2024/2034 LTP preparation process. However, updates through the annual plan process may be required depending on future government announcements.

Policy considerations

- 42. This memorandum and the associated recommendations are consistent with the policy documents and positions adopted by this Council under various legislative frameworks including, but not restricted to, the Local Government Act 2002, the Resource Management Act 1991 and the Local Government Official Information and Meetings Act 1987.
- 43. We made a decision in December 2023 to confirm working towards notification of a new Land and Water Plan by December 2024. A decision in accordance with option one or two would be consistent with Council's current policy.

Iwi considerations

- 44. This memorandum and the associated recommendations are consistent with the Council's policy for the development of Māori capacity to contribute to decision-making processes (schedule 10 of the Local Government Act 2002) as outlined in the adopted Long-Term Plan and/or Annual Plan. Similarly, iwi involvement in adopted work programmes has been recognised in the preparation of this memorandum.
- 45. Conversations recently held at the Wai Steering Group with iwi indicated that iwi are supportive of progress continuing on the drafting of a new plan. Waiting to December 2027 is not acceptable and pushing ahead to a December 2024 deadline is unrealistic. Therefore support was given to maintaining momentum to a notification in about mid-2025.

Community considerations

- 46. This memorandum and the associated recommendations have considered the views of the community, interested and affected parties and those views have been recognised in the preparation of this memorandum.
- 47. There will be sections of the community that prefer the Council to delay notification until close to the 2027 deadline so certainty on the replacement NPSFM is available. There will also be parts of the community that will be dissatisfied with a multi-year delay for when the region will have a freshwater plan that can deliver better outcomes for Taranaki.

Legal considerations

48. This memorandum and the associated recommendations comply with the appropriate statutory requirements imposed upon the Council.
49. As noted earlier in the paper Council continues to have a legal obligation, under the Resource Management Act 1991, to give effect to the NPSFM as soon as reasonably practical. Parliament did not amend this requirement when it made a decision to change the December 2024 deadline to December 2027.
50. Given that Council endorsed, as recently as December 2023, its current approach to continue working towards notification of a new Land and Water Plan by December 2024, it would need to be able to point towards a change in circumstances that has arisen since that time to justify a decision to not proceed with option one or two.

Appendices/Attachments

Document 3246974: [Timeline of Freshwater Management and NPS development](#)

Timeline of Freshwater Management 2004-2023:

| Government at the time – Labour / Progressive take office | |
|--|--|
| 2004 | Parliamentary Commissioner for the Environment Morgan Williams identifies decreasing water quality arising from increasingly intensive farming in his report <i>Growing for good</i> . |
| 2006 | Work begins on a National Policy Statement for Freshwater Management (Freshwater NPS). |
| 2008 | National Environmental Standard for Ecological Flows and Levels proposed. This was later put on hold. Proposed Freshwater NPS referred to Board of Inquiry, chaired by Judge David Sheppard. |
| November 2008 - Change in government – National / ACT / United Future. Māori Party take office | |
| 2009 | Land and Water Forum (LAWF) established, bringing together industry groups, environment NGO's, iwi, scientists and other organisations with a stake in freshwater and land management to collaborate on freshwater management. |
| 2010 | Sheppard Board of Inquiry provides recommendations on the Freshwater NPS to the Minister for the Environment. First LAWF report released – includes a set of outcomes and goals for freshwater management. |
| 2011 | Freshwater NPS gazetted requiring that the 'overall quality of freshwater' in all regions of the country be maintained or improved and that the life supporting capacity of water bodies including their associated ecosystems is safeguarded. |
| | TRC responds to the NPSFM being gazetted by kicking off the review of the Water Plan |
| 2012 | LAWF release second report setting out a framework for setting limits and managing within limits. |
| 2013 | Parliamentary Commissioner for the Environment Dr Jan Wright releases <i>Water Quality in New Zealand: Land use change and nutrient pollution</i> – noting the need to address the link between land use and water quality. |
| 2014 | Freshwater NPS updated, including a National Objective Framework (NOF) and national bottom lines for water quality. Safeguarding water bodies for human health for recreation added alongside requirements for ecosystem health. |
| | TRC responds to the updated NPSFM by continuing on with plan review programme, aiming to notify a new plan in 2015, but acknowledge that it would not fully implement the NPSFM |

2015

Parliamentary Commissioner for the Environment Dr Jan Wright recommends further improvements to the Freshwater NPS in the report *Managing Water Quality*.

LAWF fourth report on maximising the economic benefits from freshwater while managing within limits and other issues released.

2017

OECD Environmental Performance Review of New Zealand recommends accelerating implementation of water management reforms, ensuring water quantity and quality limits are sufficiently ambitious.

Our fresh water 2017 – first dedicated report on the state of freshwater from the Ministry for the Environment and Statistics New Zealand shows freshwater is under pressure and trends worsening.

Freshwater NPS (August 2017) amended including setting targets for improving swimming water quality and clearer direction around recognising Te Mana o te Wai in freshwater management.

TRC pause work on their draft plan in November 2015 ahead of hearing an updated NPSFM was on its way. We committed to notifying by 31 December 2020. The new NPSFM would take 2 years to come to fruition.

October 2017 - Change in government – Labour / NZ First / Green Party take office

Growing public concern about water quality is reflected in opinion polls and was one of the top election issues. Labour focussed policy on setting ambitious target of making all rivers swimmable within a generation and fencing of all intensively stocked land beside waterways over a five year period.

2018

Upon request for further advice, LAWF reports to Ministers, recommending changes to the current regulatory regime, including the Freshwater NPS and the Resource Management Act. It also recommends prioritising action in at-risk catchments.

Government launches the 'Essential Freshwater' work programme.

2020

Ngāi Tahu lodge a High Court case against the Crown, seeking 'rangatiratanga' over all freshwater in its takiwā.

NPSFM updated, including a focus on implementing Te Mana o Te Wai through a hierarchy of obligations, setting out four compulsory values for freshwater management, compulsory attributes and a detailed process for monitoring and engagement processes with tangata whenua and the community.

NESF introduced (some components in force in 2021) setting standards for undertaking activities that pose risks to freshwater and freshwater ecosystems. It included standards for intensive winter grazing, stockholding areas and application of synthetic nitrogen fertiliser.

In November 2019 TRC brought the review of the freshwater plan into a combined Natural Resources Plan programme, working towards December 2023 deadline. In November 2023, an updated timeframe to refocus back on a Freshwater plan was approved, notification to be December 2024.

November 2023 - Change in government – National / NZ First / ACT Party take office

A policy approach to freshwater that better reflects the interests of all water users.

2023

In December Government announces a change the deadline for notification to December 2027, and its intention to replace the existing NPSFM over the next 18-24 months. In the interim the current NPSFM remains operative with a statutory obligation on local authorities to give effect to it as soon as reasonably practical. This obligation was not changed by Parliament when it amended the December 2024 deadline in the RMA.

AGENDA AUTHORISATION

Agenda for the Policy and Planning Committee meeting held on Tuesday 19 March 2024

Confirmed:



8 Mar, 2024 1:42:14 PM GMT+13

A D McLay

Director Resource Management

Approved:



8 Mar, 2024 3:40:23 PM GMT+13

S J Ruru

Chief Executive