

**Planning & Regulatory Working Party**  
**Wednesday 29 January 2020 at 9.00am**

# **AGENDA**

## Planning & Regulatory Working Party Agenda

Meeting to be held in the Kaipara Room  
36 Water Street, Whangārei  
on Wednesday 29 January 2020, commencing at 9.00am

**Please note: Working Parties and Working Groups carry NO formal decision-making delegations from council. The purpose of the Working Party/Group is to carry out preparatory work and discussions prior to taking matters to the full council for formal consideration and decision-making.**  
**Working Party/Group meetings are open to the public to attend (unless there are specific grounds under LGOIMA for the public to be excluded).**

### MEMBERSHIP OF THE PLANNING AND REGULATORY WORKING PARTY

Cr Joce Yeoman (Chair)

Cr Amy Macdonald

Cr Colin Kitchen

Cr Justin Blaikie

Cr Penny Smart (ex officio)

Item	Page
<b>1.0 APOLOGIES</b>	
NRC Chief Executive	
<b>2.0 DECLARATIONS OF CONFLICTS OF INTEREST</b>	
<b>3.0 REPORTS</b>	
<b>3.1 Planning and Policy Work Programme</b>	<b>3</b>
Strategic Policy & Planning Manager and Natural Resources Policy Manager	
<b>3.2 Regulatory Services Work Programme</b>	
Group Manager – Regulatory Services	
<b>3.3 Update on Regional Plan Appeals</b>	<b>5</b>
Natural Resources Policy Manager	
<b>3.4 Council Water Policy Development</b>	<b>21</b>
Policy Specialist - Water	
<b>3.5 Central Government Initiatives - Overview</b>	<b>24</b>
Strategic Policy Specialist	

**TITLE: Planning and Policy Work Programme**

**ID:** A1279853

**From:** Ben Lee, Strategic Policy and Planning Manager and Michael Day, Natural Resources Policy Manager

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**Executive Summary | Whakarāpopototanga**

The following table sets out the work programme for the Planning and Policy team for the next three years. It only includes work relevant to the Planning and Regulatory Working Party's terms of reference.

Activity	Detail	When
<b>Coastal occupation charging</b>	Develop regime options for further council direction in time for plan change costs to be incorporated into LTP.	Present regime options and seek council confirmation to proceed (or not) with plan change early 2020
<b>Marine protected areas</b>	Progressing Mimiwhangata proposal with Ngāti Wai. Explore implications of recent case law on council's ability to regulate fishing.	TBC
<b>Wetland mapping</b>	Mapping project to clearly define wetlands and provide certainty about where wetland rules apply. Methodology and technology limitation mean final delivery date is unknown.	TBC
<b>Freshwater quality management plan change</b>	A plan change to set freshwater quality objectives and limits and regulation to ensure the objectives are achieved and limits are met. Required to give effect to the Freshwater NPS	Notify 2021
<b>Catchment-specific water quantity limits</b>	Possible plan change(s). Catchment-specific limits to replace regional 'default' limits for priority water bodies. Contingent on outcome of technical work in priority catchments.	TBC (if at all)
<b>Proposed Regional Plan appeals</b>	Environment Court process.	Hearings on unresolved matters start April 2020.
<b>District plan changes</b>	The planning team provide feedback and make submissions on changes to district plans. The main reasons are to ensure the RPS is being given effect and ensure council operations (e.g. flood management) are not unduly regulated.	Ongoing
<b>District council consents (review / commentary)</b>	See explanation for district plan changes.	Ongoing

Activity	Detail	When
<b>Treaty settlement process</b>	Supporting Treaty settlements as there are implications for council's activities. Currently involved in the Kaipara Moana settlement process.	Ongoing
<b>TOAT Beach Board (90 Mile Beach)</b>	Advice to board and leading / assisting with preparation of beach management plan.	Advice to board – ongoing Beach management plan – complete early 2021
<b>NRC input into national proposals (e.g. proposed NPS for biodiversity)</b>	Lead council input into national proposals (e.g. submissions and sitting on advisory groups).	Ongoing
<b>Regional Plan guidance material</b>	Once the Plan (or parts of) are operative, the planning team will produce guidance material to assist with interpreting / implementing the Plan.	Start mid 2020
<b>Additional sites of significance to tangata whenua – plan change</b>	Possible plan change. Likely to piggy-back on other water related plan change.	Notify 2021
<b>Mana Whakahono o Rohe (MWR)</b>	Planning team working with TTMAC to develop the joint hapū MWR. Will also be involved in developing any iwi based MWR	Joint hapū MWR will be presented at the February 2020 council meeting for endorsement
<b>RPS – 5-year review</b>	RMA requires a review of the RPS.	2021

### Recommended Action

1. Planning and Policy team to present an updated work programme to the June 2020 Planning and Regulatory Working Party meeting.

### Attachments | Ngā tapirihanga

Nil

### Authorised by Group Manager

**Name:** Jonathan Gibbard  
**Title:** Group Manager - Strategy, Governance and Engagement  
**Date:** 24 January 2020

**TITLE:** Update on Regional Plan Appeals  
**ID:** A1279955  
**From:** Michael Day, Natural Resources Policy Manager

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### Executive Summary | Whakarāpopototanga

There are 23 appeals (to the Environment Court) against the Council's decision on the Proposed Regional Plan for Northland (Proposed Plan).

To date, the parties have participated in 18 days of court-assisted mediation. The mediation process is managed by the Environment Court and involves all appellants and those registered as interested parties (s274 parties). This process is aimed at settling appeals out of court and therefore happens before hearings.

The council circulated a memorandum to the Court and all appeal parties on 13 December 2019, which provided a report as to progress following mediation (the memorandum is attached). Key points include:

- Approximately 60 % of appeal points (mediated to date) have been resolved.
- Of the remaining appeal points, approximately 35% are unresolved but resolution is possible. All these appeal points have clear actions and reporting timelines recorded in the relevant mediation agreements or position papers.
- The remaining appeal points (mediated to date) require case management to hearing as further mediation is unlikely to result in settlement.

Council received directions from the presiding Judge on 18 December. Key points were:

- For appeal points that are resolved, the regional council shall file consent documents with the Court by **28 February 2020**.
- By **28 February 2020**, the regional council shall file with the Court and serve on all relevant case parties a report as to progress on appeal points that are unresolved but possibly able to be resolved. In its report, the Council shall identify the relevant appeals associated with each topic/appeal point.
- By **31 January 2020**, the regional council shall file with the Court and serve on all relevant case parties (after conferring with the case parties) a memorandum addressing the sequence of potential hearings, an estimate of hearing time required and timetabling matters.
- The Environment Court shall convene a call-over in Whangārei on **12 March 2020** to address matters arising from the regional council's memoranda of 31 January 2020 and 28 February 2020.
- The appeal points on Genetically Modified Organisms, marine protected areas, the policies in Topic 14 and proposed amendments to the plan structure are to be set down for Court-assisted mediation in 2020. Notices of Mediation will be issued in due course.
- The Environment Court shall convene pre-hearing conferences in Whangārei on **16 January 2020** to address: mangroves, air quality and marine protected areas.

Key outputs from the pre-hearing conference for mangroves were:

- Council to prepare draft consent order and joint memorandum and send to parties – **31 January 2020**
- Draft consent order and joint memorandum to be filed – **28 February 2020**
- Council and appellants to circulate and file evidence in chief – **27 March 2020**
- Council to file its final proposed provisions and electronic case bundle – **1 May 2020**
- Hearing – week starting **11 May 2020**

Key outputs from the pre-hearing conference for air quality were:

- Council to circulate its proposed wording to parties – **31 January 2020**
- Council and section 274 parties to circulate and file evidence in chief – **6 March 2020**
- Council to file electronic case bundle – **3 April 2020**
- Hearing – week starting **20 April 2020**

Key outputs from the pre-hearing conference for marine protected areas were:

- The Judge directed that the Council identify its position by the **end of March 2020**


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### Recommended Action

1. That the Planning and Regulatory Working Party receive the update and provide verbal feedback.

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### Attachments | Ngā tapirihanga

Attachment 1: PRP for Northland - Appeals Progress Update [↓](#) 

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### Authorised by Group Manager

**Name:** Jonathan Gibbard

**Title:** Group Manager - Strategy, Governance and Engagement

**Date:** 24 January 2020

**BEFORE THE ENVIRONMENT COURT  
AT AUCKLAND**

**I MUA I TE KŌTI TAIAO O AOTEAROA  
TĀMAKI MAKĀURAU ROHE**

**UNDER** the Resource Management Act 1991

**IN THE MATTER** of appeals under Clause 14 of Schedule 1 of the Act

**BETWEEN** **HANCOCK FOREST MANAGEMENT NZ LIMITED**  
(ENV-2019-AKL-000096)

**TRANSPower NEW ZEALAND LIMITED**  
(ENV-2019-AKL-000107)

**THE NATIONAL INSTITUTE OF WATER AND  
ATMOSPHERIC RESEARCH LIMITED**  
(ENV-2019-AKL-000108)

**MLP LLC**  
(ENV-2019-AKL-000109)

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**MEMORANDUM OF COUNSEL FOR NORTHLAND REGIONAL COUNCIL  
REPORTING ON PROGRESS**

**13 DECEMBER 2019**

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Respondent's Solicitor  
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Solicitor: M J Doesburg

**WYNNWILLIAMS**

**MANGAWHAI HARBOUR RESTORATION SOCIETY**  
(ENV-2019-AKL-000110)

**CEP SERVICES MATAUWHI LIMITED**  
(ENV-2019-AKL-000111)

**MATAKA RESIDENTS ASSOCIATION  
INCORPORATED**  
(ENV-2019-AKL-000112)

**PAROA BAY STATION LIMITED**  
(ENV-2019-AKL-000113)

**FEDERATED FARMERS OF NEW ZEALAND**  
(ENV-2019-AKL-000114)

**ROBINA INVESTMENTS LIMITED**  
(ENV-2019-AKL-000115)

**HORTICULTURE NEW ZEALAND**  
(ENV-2019-AKL-000116)

**BAY OF ISLANDS MARITIME PARK INCORPORATED**  
(ENV-2019-AKL-000117)

**YACHTING NEW ZEALAND INCORPORATED**  
(ENV-2019-AKL-000118)

**THE OIL COMPANIES**  
(ENV-2019-AKL-000119)

**NORTHLAND FISH AND GAME COUNCIL**  
(ENV-2019-AKL-000120)

**THE NEW ZEALAND REFINING COMPANY LIMITED**  
(ENV-2019-AKL-000121)

**MINISTER OF CONSERVATION**  
(ENV-2019-AKL-000122)

**NORTHPOWER LIMITED**  
(ENV-2019-AKL-000123)

**AQUACULTURE NEW ZEALAND**  
(ENV-2019-AKL-000124)

**TOP ENERGY LIMITED**  
(ENV-2019-AKL-000125)

**PUBLIC AND POPULATION HEALTH UNIT OF THE  
NORTHLAND DISTRICT HEALTH BOARD**  
(ENV-2019-AKL-000126)



**ROYAL FOREST AND BIRD PROTECTION SOCIETY  
OF NEW ZEALAND INCORPORATED**  
(ENV-2019-AKL-000127)

**LOURIE**  
(ENV-2019-AKL-000128)

**WHANGAREI DISTRICT COUNCIL AND FAR NORTH  
DISTRICT COUNCIL**  
(ENV-2019-AKL-000177)

**Appellants**

**AND**

**NORTHLAND REGIONAL COUNCIL**

**Respondent**

### MAY IT PLEASE THE COURT

- 1 These proceedings relate to 23 appeals against the Council's decision on the Proposed Regional Plan for Northland (**Proposed Plan**). The proceedings also involve an appeal against the Council's subsequent decision not to include provisions in the Proposed Plan in relation to genetically modified organisms.
- 2 Following a callover on 14 August 2019, the Court issued a Minute dated 23 August 2019. Among other things, the Minute directed the Council to file a report as to progress by 5 December 2019. As a result of additional mediation being set down on 3, 4, and 5 December 2019, the Court granted the Council's request to extend the report date to 13 December 2019. The Minute details the Court's expectation that 1/3 of matters would be resolved by 15 November 2019, 2/3 of matters by 2020 (or set down for hearing), and 95% resolved by the end of July 2020.
- 3 This memorandum provides a report as to progress following mediation. It includes, in **Appendix 1**, a table detailing the number of appeal points resolved,<sup>1</sup> those that are unresolved but where resolution is possible and those that are likely to require hearing time or further preliminary steps. The table is structured to follow the structure of the appendix to the Council's memorandum filed on 26 July 2019 – it divides appeals into 14 topics and 40 subtopics.

### Summary of progress

- 4 To date, the parties have participated in 18 days of court-assisted mediation. Some topics were subject first to a "general" mediation, followed by substantive mediation. All topics other than Topic 14 – General Provisions and Plan Structure have been mediated, with some topics having had a second session during 3-5 December 2019.
- 5 From the Council's perspective, mediation has been effective and the Council is grateful for the way that the appellants and section 274 parties have committed time and resources to participate constructively. The Council is also grateful for the assistance of Commissioner Leijnen.

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<sup>1</sup> Appeal points are treated as "resolved" if they are agreed by all parties, or the appellant has agreed not to pursue the appeal point and no party has taken issue with that.

- 6 The Council is pleased to report that substantial progress has been made on the resolution of appeal points. Further detail is provided below.

*Appeal points resolved*

- 7 A substantial number of appeal points have been resolved through mediation, which has been recorded in mediation agreements.
- 8 For two topics, all appeal points have been resolved at mediation. These are:
- (a) Topic 12 – Natural hazards; and
  - (b) Topic 13 – Cultural.
- 9 There are also several sub-topics for which all appeal points have been resolved. These include:
- (a) Topic 1 – Coastal Activities: Coastal objective;
  - (b) Topic 1 – Coastal: Marine Pests;
  - (c) Topic 2 – Activities in beds of lakes and rivers: Wetlands; and
  - (d) Topic 6 – Damming and diversion of water: Damming and diversion of water.<sup>2</sup>
- 10 In almost all remaining sub-topics, multiple appeal points have been resolved.
- 11 The appeal by Hancock Forest Management NZ Limited (ENV-2019-AKL-096) has been resolved in its entirety.
- 12 Appendix 1 provides a detailed breakdown of the percentages of appeal points that have been resolved.
- 13 The Council is pleased to confirm that the parties have met the Court's expectation, as approximately **59% of appeal points** (within the 13 topics mediated to date) **have been resolved**.
- 14 Now that the initial round of mediation is complete, the Council proposes to begin preparing consent documentation for the topics and sub-topics that have been resolved. The Council proposes to circulate consent documentation to the relevant parties in January 2020, for filing with the Court in February 2020. The Council will also consider preparing consent documentation for topics and sub-topics that are not fully resolved, where

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<sup>2</sup> Topic 6 also includes the sub-topic land drainage and flood control.

it would be efficient to do so (for example, where a related suite of provisions are resolved). The Council is willing to consider preparing consent documentation on other matters, if parties are eager to have consent documents filed.

*Unresolved but resolution possible*

- 15 Appendix 1 shows that there are a number of appeal points that are unresolved, but where resolution is expected to be achieved (approximately 36% of appeal points mediated to date). All these appeal points have clear actions and reporting timelines recorded in the relevant mediation agreements or position papers.
- 16 Although the timing of the agreed actions and reporting timelines vary, all tasks should be completed by the end of February 2020. Accordingly, the Council proposes that a further report is provided to the Court on these appeal points by Friday 28 February 2020. That report can address the progress of the outstanding appeal points and whether issues should be set for judicial telephone conference, set down for hearing or set for further preliminary steps.
- 17 Importantly, a large majority of the unresolved appeal points in Topic 1 – Coastal relate to the appeal by CEP Services Matauwhi Limited seeking mapping of Outstanding Natural Landscapes in the coastal marine area. A substantial number of points also relate to the request for further mapping of Significant Ecological Areas or Significant Bird Areas (such as from Royal Forest and Bird) and relevant rules. Resolution of these matters is expected to result in many appeal points being resolved.

*Unresolved and hearing time likely*

- 18 There are a number of appeal points that were not resolved at mediation, that further mediation is unlikely to resolve and therefore may require case management to hearing.
- 19 The relevant provisions are:
  - (a) Topic 1 – Coastal Activities: Mangrove policies and rules – Policy D.5.27 and multiple Mangrove rules;
  - (b) Topic 3 – Allocation and use of water: Rules for taking and use of water – Rule C.5.1.14;
  - (c) Topic 5 – Water quality: Objectives and policies – Policies D.4.1 and H.3 Water quality guidelines and standards;

- (d) Topic 7 – Discharges to land and water: Production land discharge rules – Rule C.6.3.1;
  - (e) Topic 8 – Discharges to air and agrichemicals: Objective and policies – Request for a new dust on road Policy.
  - (f) Topic 8 – Discharges to air and agrichemicals: Other air discharge rules – Rules C.7.2.5 and C.7.2.6;
  - (g) Topic 9 – Land use and disturbance activities: Livestock exclusion rules – Rule C.8.1.2;
  - (h) Topic 9 – Land use and disturbance activities: Land preparation – Rule C.8.2.1.
- 20 Hearing time may also be required on appeals relating to mapping and provisions associated with Significant Ecological Areas, Significant Bird Areas and Outstanding Natural Landscapes, depending on the outcome of ongoing work.
- 21 The Council proposes to confer with the parties to the appeal points referred to in paragraph 19 and prepare a memorandum on the path to hearing (including to address the sequence of potential hearings, estimate of hearing time required and timetabling matters). If desirable, Judicial Telephone Conferences could follow.

*Appeal points not yet mediated*

- 22 Some appeal points have not yet been subject to mediation. This includes the appeal points in Topic 14 – General Provisions and Plan Structure and the appeal against the Council's decision not to include provisions in the Proposed Plan in relation to genetically modified organisms.
- 23 Topic 14 – General Provisions and Plan Structure includes appeals against two general policies, an appeal seeking rules relating to historic heritage, appeals seeking changes to the Proposed Plan's structure and appeals seeking new provisions establishing marine protected areas to protect marine biodiversity.
- 24 The parties to the appeal relating to genetically modified organisms have confirmed that they are willing to proceed to court-assisted mediation and that one day of mediation should be set down, along with one reserve day.
- 25 The appeals seeking new provisions establishing marine protected areas were effectively parked, pending a decision from the Court of Appeal. On

4 November 2019 the Court of Appeal issued its judgment in *Attorney-General v The Trustees of the Motiti Rohe Moana Trust*.<sup>3</sup> The judgment confirms that regional councils have jurisdiction to control fisheries resources in the exercise of their section 30 functions, provided that they do not do so to manage those resources for Fisheries Act purposes. As the jurisdictional issue has been clarified, the Council proposes that the appeals be set down for mediation in 2020. The Council anticipates that expert conferencing may be required in relation to these appeals but proposes mediation as a first step.

- 26 In terms of the remaining appeal points in Topic 14 – General Provisions and Plan Structure the Council proposes that:
- (a) the appeals against the two general policies and relating to the structure of the Proposed Plan also be set down for mediation in 2020; and
  - (b) on the appeal seeking historic heritage provisions, the Council will confer with the appellant and confirm whether or not the appeal has been resolved as a result of other agreed changes to the Proposed Plan.

#### **Proposed next steps and request for directions**

- 27 In summary, the proposed next steps for the appeals are:
- (a) for appeal points that are resolved, that the Council begins preparing consent documents for circulation to the parties in January 2020 with the expectation of filing consent documents with the Court in February 2020;
  - (b) for appeal points that are unresolved but are possibly able to be resolved, that a further report date is set for Friday 28 February 2020;
  - (c) for appeal points that are unresolved and it is likely that a hearing will be required, that the Council confer with the parties and prepare a memorandum on the way forward to hearing;
  - (d) for appeal points that have not yet been mediated, that appeals points on genetically modified organisms, marine protected areas, the policies in Topic 14 – General Provisions and Plan Structure and

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<sup>3</sup> *Attorney-General v The Trustees of the Motiti Rohe Moana Trust* [2019] NZCA 532.

proposed amendments to plan structure be set down for mediation in 2020.

- 28 Accordingly, the Council respectfully requests that the Court directs that:
- (a) by 28 February 2020 the Council files with the Court a report as to progress on the appeal points identified in Appendix 1 as unresolved but possibly able to be resolved;
  - (b) by 31 January 2020 the Council files with the Court (after conferring with the parties) a memorandum addressing the sequence of potential hearings, an estimate of hearing time required and timetabling matters; and
  - (c) the appeal points on genetically modified organisms, marine protected areas, the policies in Topic 14 – General Provisions and Plan Structure and proposed amendments to plan structure be set down for mediation in 2020.

**DATED** this 13<sup>th</sup> day of December 2019



**M J Doesburg**

Counsel for Northland Regional Council

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**Appendix 1 –breakdown of progress of appeal points on the Proposed Plan (excluding GE/GMOs)**

Topic	Sub-topic	Resolved (%)	Unresolved but resolution possible (%)	Unresolved and likely to require hearing
<b>Topic 1 Coastal activities</b>	<i>Coastal objective</i>	100% (1 of 1)	None	None
	<i>General coastal policies and general structure rules, including relevant definitions</i>  <i>Includes Marsden Point Port Zone map layer</i>	100% of policies (7 of 7)  70% of rules (13 of 19)	30% of rules – these rely on the outcome of the ONL/SEA mapping	None
	<i>Moorings and anchorage and marinas</i>	100% of policies (1 of 1) 80% of rules (9 of 11)	20% - relies on outcome of ONL/SEA mapping	None
	<i>Aquaculture (Policies, rules and maps)</i>	40% of policies (3 of 7) 23% of rules (3 of 13)	60% of policies and 77% of rules Discussions are ongoing between parties to resolve the policies and rules. The Council is hopeful this can be achieved without a hearing.	None
	<i>Mangrove policies and rules</i>	50% of policies (1 of 2)	100% of mangrove rules are unresolved. (6 of 6)	1 policy (D.5.26) likely to head to court. The Council is hopeful that some mangrove rules might be resolved via further discussions, but it is likely that others will need to be set down for a hearing.
	<i>Dredging, disturbance and disposal – Policies and rules</i>	50% of policies (1 of 2)  40% of rules (5 of 13)	The unresolved policy and majority of rules rely on outcome of SEA/ONL mapping.  The exception is vehicles on beaches and maintenance dredging, which does not rely on the SEA/ONL mapping. These discussions are ongoing but there is a possibility that a hearing might be required.	None



2

Topic	Sub-topic	Resolved (%)	Unresolved but resolution possible (%)	Unresolved and likely to require hearing
	<i>Reclamations – policies and rules</i>	100% of policies (2 of 2)  60% of rules (3 of 5)	The two unresolved rules rely on outcome of SEA/ONL mapping	None
	<i>Marine pest rules</i>	100% (5 of 5)	None	None
	<i>Coastal general conditions</i>	None (0 of 5)	Whilst none of these appeals have been resolved in full, there is agreement on a number of aspects of appeal points. Discussions are ongoing between parties to resolve these appeals. It is hopeful this can be done without going to a hearing.	None
<b>Topic 2 Activities in beds of lakes and rivers</b>	<i>Activities in the bed of rivers and lakes</i>	85 % (11 of 13)	Discussions are ongoing between parties to resolve the remaining rules. It is hopeful this can be done without going to a hearing.	None
	<i>Wetlands (policies, rules and definitions)</i>	90 % (9 of 10)	One definition remains outstanding but hopefully it can be resolved without a hearing.	None
	<i>Rivers and wetland general conditions</i>	50% (1 of 2 appeals)	It appears parties are close to agreement on the outstanding appeal point and look likely to resolve.	None
<b>Topic 3 Allocation and use of Water</b>	<i>Rules for taking and use of water</i>	20% (1 of 5)	60% (3 of 5) Discussions are ongoing between parties to resolve the remaining rules. It is hopeful this can be done without going to a hearing.	20% (1 of 5) C.5.1.14 Water take that will exceed an allocation limit
<b>Topic 4 Water quantity</b>	<i>Objectives and policies</i>	57% (4 of 7)	43% (3 of 7) Parties still working towards resolution of these points.	None
<b>Topic 5 Water quality</b>	<i>Objectives and policies</i>	57% (4 of 7)	14% (1 of 7) One appeal point looks likely to be resolved without a hearing.	28% (2/7) D.4.1 Maintaining overall water quality H.3 Water quality guidelines and standards

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Topic	Sub-topic	Resolved (%)	Unresolved but resolution possible (%)	Unresolved and likely to require hearing
<b>Topic 6</b> <b>Damming and diversion of water</b>	<i>Damming and diverting water</i>	100% (6 of 6)	None	None
	<i>Land drainage and flood control</i>	None	100% - only two appellants (on 2 provisions) and parties still working towards resolution	None
<b>Topic 7</b> <b>Discharges to land and water</b>	<i>Production land discharge rules</i>	60% (3 of 5)	20% (1 of 5)	20% (1 of 5) C.6.3.1
	<i>Stormwater discharge rules</i>	60 % (3 of 5)	Two permitted activity rules remain unresolved – discussions ongoing and hopeful of resolution without a hearing.	None
	<i>Industrial and trade wastewater discharges</i>	100% (4 of 4)	None	None
	<i>Contaminated land</i>	75% (3 of 4)	Awaiting agreement on final wording of one rule.	None
	<i>Other discharges of contaminants</i>	50% (1 of 2)	50% (1 of 2) – Discussions are ongoing over the remaining rule.	None
<b>Topic 8</b> <b>Discharges to air and agrichemicals</b>	<i>Objective and policies</i>	50% (2 of 4)	No agreement yet on the objective but it is hoped this can be successfully resolved without a hearing.	A hearing may be required on a proposed new policy seeking to control dust from roads
	<i>Burning rules</i>	75% (2 of 3)	The one outstanding rule is very close to agreement.	None
	<i>Other air discharge rules</i>	None	None	100% - two appeal points (C.7.2.5 and C.7.2.6) are signaled for court and discussions are ongoing with one other point
	<i>Agrichemical rules</i>	None	100% (0 of 2) Waiting for updated wording from Horticulture NZ to distribute to parties – resolution hopeful.	None
<b>Topic 9</b> <b>Land use and disturbance activities</b>	<i>Livestock exclusion rules</i>	33% (1 of 3)	33% (1 of 3)	A hearing may be required on the appeal against the stock density triggers in rule C.8.1.2

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Topic	Sub-topic	Resolved (%)	Unresolved but resolution possible (%)	Unresolved and likely to require hearing
	<i>Land preparation</i>	50% (1 of 2) Agreement on definition but not rule	None	A hearing may be required on the appeal against rule C.8.2.1
	<i>Earthworks definitions and rules</i>	50% (2 of 4) – the two definitions are agreed	50% (2 of 4) – the two rules remain unresolved but the Council is hopeful they will be resolved without a hearing	None
	<i>Vegetation clearance</i>	33% (1 of 3)	66% (2 of 3) – one rule and definition remain unresolved but the Council is hopeful these can be agreed without a hearing	None
<b>Topic 10 Infrastructure and energy</b>	<i>Objectives, policies and definition</i>	50% of objectives (1 of 2) Definition agreed (2 of 8 in total)	None (of 5) the policies have been resolved but the Council is hopeful that resolution will be reached through further discussions between the parties	
<b>Topic 11 Biodiversity and outstanding natural features/landscapes</b>	<i>Objectives and policies</i>	100% for objectives  50% of policies (2 of 4)	One policy is likely to be resolved without a hearing	A hearing may be required on the appeal against policy D.2.18
	<i>Maps – significant marine areas and significant bird areas in the CMA</i>	None	The output is imminent from the experts who have been considering new significant bird area mapping.  The parties continue to work through their positions, which currently are not aligned. A 'preliminary' hearing may be required if no agreement can be reached.  This will be updated further at the next report to Court.	There is a high chance that a number of appeal points may need to be set down for a hearing but the actual extent is uncertain at this stage. This will be updated during the next report to Court.
	<i>Maps – natural character and outstanding natural features/landscapes</i>	None	100% - discussions ongoing with regards to requests for additional mapping and the removal of some discrete high natural character units.	There is a high chance that a number of appeal points may need to be set down for a hearing but the actual extent is uncertain at this stage. This

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Topic	Sub-topic	Resolved (%)	Unresolved but resolution possible (%)	Unresolved and likely to require hearing
				will be updated during the next report to Court.
<b>Topic 12</b> <b>Natural hazards</b>	<i>Objectives and policies</i>	100% (5 of 5)	None	None
<b>Topic 13</b> <b>Cultural</b>	<i>Policies</i>	100% (2 of 2)	None	None
<b>Topic 14</b> <b>General provisions and plan structure</b>	<i>Resource consent duration policy</i>	-	-	-
	<i>Policy – rules for managing natural and physical resources</i>	-	-	-
	<i>Request for new provisions relating to marine protection/prohibition on fishing activities</i>	-	-	-
	<i>Changes to plan structure</i>	-	-	-

**TITLE:** Council Water Policy Development

**ID:** A1279805

**From:** Ben Tait, Policy Specialist - Water

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### Executive Summary | Whakarāpopototanga

Council is working to make one or more changes to its Proposed Regional Plan for Northland:

- a) a 2021 plan change to implement the water quality planning requirements of the National Policy Statement for Freshwater Management 2014 (as amended in 2017); and
- b) a potential change(s) to the plan by including specific, ie. tailored, freshwater quantity limits (minimum flows and/or levels) for several water bodies that are fully allocated and are under reasonably foreseeable significant demand pressures or showing significant adverse effects resulting from current allocations.

The work is being progressed as scheduled with the immediate priority being developing a plan change to implement the water quality planning requirements of the NPS-FM, given Government signalled expectations that plan changes should be expedited.

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### Recommended Action

- 1. That updates on the water quality and freshwater quantity plan change projects will be provided to the Planning and Regulatory Working Party on a regular basis (ie. as a standing item).

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### Background | Tuhinga

The National Policy Statement for Freshwater Management (first issued in 2011 and amended in 2014 and 2017) directs regional councils on how they are to manage fresh water through their regional policy statements and, primarily, regional plans. The key purpose of the NPS-FM is to require regional councils to set enforceable limits on freshwater quality and quantity following engagement with communities, including tangata whenua.

Policy E1 of the NPS-FM states that every regional council is to implement the policies of the policy statement as promptly as is reasonable in the circumstances, so that it is fully completed by no later than 31 December 2025. Where a regional council is satisfied that it is impracticable for it to complete implementation by 31 December 2015, the council may implement it by a programme of defined time-limited stages by which it is to be fully implemented by 31 December 2025 or 31 December 2030 if Policy E1(ba) applies.

The Proposed Regional Plan for Northland was prepared in part to give effect to the freshwater *quantity* planning requirements of the NPS-FM. However, it did not contain provisions to give effect to the freshwater *quality* planning requirements.

### Water Quality Plan Change

Northland Regional Council formally adopted and publicly notified a revised progressive implementation programme (PIP) in March 2018 following the gazettal of the amended NPS-FM in August 2017. The PIP states that Council will notify a plan change in circa 2021 to give effect to the water quality planning requirements of the NPS-FM (Policies A1, A2, A3, A5 and associated policies, eg. AA1, CA1 and CA2).

Council has developed an internal work programme to prepare a plan change. On Tuesday 18 June 2010, the previous council approved the following timetable for preparing a plan change to give effect to the NPS-FM water quality planning requirements:<sup>1</sup>

1. Define freshwater management units (scheduled for May – June 2019, completed<sup>2</sup>).
2. Assess and decide on an appropriate modelling tool(s) for:
  - a. predicting water quality in the freshwater management units (scheduled October 2019, expected March 2020); and
  - b. determining what catchment interventions (and costs) are needed to achieve aspirational freshwater quality objectives (scheduled October 2019, expected June 2020).
3. Provide the evidence base to underpin the plan change and any accompanying new non-regulatory initiatives (scheduled for November 2019 – March 2021, remains on-track).
4. Engage with iwi and hapū, key stakeholders, and the wider community throughout the process.
5. Draft the plan change and an RMA section 32 evaluation report (scheduled for July 2020 – July 2021, remain on-track).
6. Notify the Proposed Water Quality Plan Change (by 31 December 2021, remains on-track).

While there has been some slippage in early milestones, it's recommended that we should continue to drive hard to maintain the longer-term milestones rather than making any adjustments at this stage.

In December 2019, Council contracted NIWA and Land & Water Science Ltd to predict current water quality state in the region's rivers using statistical relationships between water quality parameters (ie. attributes) and upstream catchment characteristics for the following attributes: total nitrogen, total phosphorus, dissolved inorganic nitrogen, dissolved reactive phosphorus, nitrate, ammonia, total suspended sediment, turbidity, clarity and *E.coli*. The information is due late March this year.

Council also contracted NIWA to develop a customised version of the CLUES model<sup>3</sup> to assess the effects of potential land use management (eg. excluding livestock from rivers, constructing wetlands, and revegetating riparian areas) and land use change options on current water quality state predictions. The modelling is scheduled to be undertaken in July-August this year.

The modelling is needed to help Council, through discussions with communities, including tangata whenua, and key stakeholders (ie. industry and sector groups, environmental NGOs, and relevant government departments), establish freshwater quality objectives, limits and methods to avoid over-allocation<sup>4</sup> for the plan change.

It is important to note that Government has stated that it intends to issue a new NPS-FM, National Standards for Freshwater Management, and National Stock Exclusion Regulations. We expect that they will be gazetted in July/August this year. The new planning instruments may affect Council's work programme for developing the plan change scheduled for some time in 2021 and the timing of the plan change. The instruments are not, however, likely to affect Council's work programme for identifying and assessing alternative freshwater quantity limits for water bodies that are highly allocated or that are highly allocated/or are likely to face significant demand pressures.

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<sup>1</sup> See [http://northland.infocouncil.biz/Open/2019/08/CO\\_20190820\\_AGN\\_2420\\_AT\\_WEB.htm](http://northland.infocouncil.biz/Open/2019/08/CO_20190820_AGN_2420_AT_WEB.htm)

<sup>2</sup> See [http://northland.infocouncil.biz/Open/2019/08/CO\\_20190820\\_AGN\\_2420\\_AT\\_WEB.htm](http://northland.infocouncil.biz/Open/2019/08/CO_20190820_AGN_2420_AT_WEB.htm)

<sup>3</sup> See <https://niwa.co.nz/freshwater-and-estuaries/our-services/catchment-modelling/clues-catchment-land-use-for-environmental-sustainability-model>

<sup>4</sup> Means "...the situation where the resource: a) has been allocated to users beyond a limit; or b) is being used to a point where a freshwater objective is no longer being met." NPS-FM

### Potential Freshwater Quantity Plan Change(s)

On 20 August 2018, the previous council endorsed “initial project milestones and timetable for assessing alternative freshwater quantity limits for fully allocated water bodies identified as:

- a) likely being under reasonably foreseeable significant future demand pressure, or
- b) showing significant adverse effects resulting from current allocation[s].”<sup>5</sup>

We have identified the following water bodies as priorities because of current and likely future demand pressures:

1. Aupōuri Aquifer
2. Russell Aquifer
3. Ruawai Aquifer
4. Waitangi River
5. Otaika River
6. Ruakaka River

Council’s Natural Resources Monitoring and Science team are determining what research, and associated costs, are needed to identify and assess alternative freshwater quantity limits for the water bodies.

We will provide the Working Party with updates on both projects on a regular basis (ie. as standing items).

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### Attachments | Ngā tapirihanga

Nil

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### Authorised by Group Manager

**Name:** Jonathan Gibbard  
**Title:** Group Manager - Strategy, Governance and Engagement  
**Date:** 23 January 2020

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<sup>5</sup> [http://northland.infocouncil.biz/Open/2019/08/CO\\_20190820\\_MIN\\_2420\\_WEB.htm](http://northland.infocouncil.biz/Open/2019/08/CO_20190820_MIN_2420_WEB.htm)

**TITLE:** Central Government Initiatives - Overview

**ID:** A1278724

**From:** Justin Murfitt, Strategic Policy Specialist

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### Executive Summary | Whakarāpopototanga

The Government has released two discussion documents on encouraging renewable energy and settings under the Emissions Trading Scheme. It has also put a Water Services Regulator Bill to select committee and called for submissions and released a Draft National Policy Statement on Indigenous Biodiversity.

It is likely council will have an interest in these proposals and feedback from the Working Party is sought prior to drafting submissions for council consideration at the February council meeting.

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### Recommended Actions

1. Staff are to draft submissions on the government proposals for consideration by council at the meeting of 18 February.
2. The draft submissions are to incorporate any feedback from the Working Party.

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### Background | Tuhinga

The government is seeking feedback on:

- Settings under the Emissions Trading Scheme
- Proposals to accelerate renewable energy generation
- A Bill to establish a water services regulator
- A draft NPS on indigenous biodiversity

A brief summary of these proposals is provided below, and staff will be available to provide the Working Party with further detail and answer questions.

### ETS Settings

This discussion document sets out proposed changes to settings under the ETS that are designed to help NZ meet its commitments under the Paris Agreement to keep average global temperature increase to 1.5°C and to progress towards the 2050 net zero carbon target established in the Climate Change Response / Zero Carbon Act. Emissions forecasts indicate NZ is likely to miss an interim target for 2030 by around 100Mt CO<sub>2</sub>e. The proposals are designed to address this and include:

- A provisional 5-year emissions budget to 2025 of 354Mt CO<sub>2</sub>e (note: this will be superseded by the first official emissions budget following advice from the Climate Change Commission in 2021)
- Define the number of NZU available for auction annually (estimated at 80m Mt CO<sub>2</sub>e).
- Increase the price of NZU's from \$25 to \$35 and introduce a price 'floor' of \$20.
- A trigger price of \$50 NZU for release of NZU in the cost containment reserve.

These changes are designed to drive progress on emissions reduction and make the transition to low emission alternatives progressively more viable. While this will mean added cost to business and households, the government estimates this to be moderate in the short-term for households (a carbon price of \$50 is estimated to increase household costs by about \$3.40/week).

It is also suggested costs to emission intensive businesses are offset by free allocation, and by passing costs on to consumers. The changes are also likely to incentivise increases in afforestation.



A draft submission has yet to be developed but key submission points are summarised below for consideration by the Working Party:

- Support the proposals on the basis they have been well signalled and are fundamental component of emissions reduction
- Support for the \$35 price cap, as this will ensure emissions pricing does not impose dramatic economic impacts and provide for a just transition to a low emissions economy
- Support for a \$50 trigger price for release of NZU in the cost containment reserve but note the government should ensure the reserve holds enough NZU to manage the cost of NZU when the price cap is removed / increased
- That the government considers retaining a price floor of \$25 for NZU (as opposed to the proposed \$20) to ensure the ETS remains a strong incentive to reduce emissions.

Submissions close 28 February 2020. The discussion document is available here:

<https://www.mfe.govt.nz/consultations/nzets-proposed-settings>

### **Accelerating Renewable Energy**

The discussion document sets out a range of regulatory and financial measures to encourage renewable energy generation and energy efficiency, again designed to progress towards emission and renewable energy targets and complement ETS settings. These measures include:

- Developing markets for bioenergy and geothermal for process heat
- Phasing out fossil fuels in process heat
- Increasing investment in energy efficiency and renewable energy generation
- A potential levy on coal consumers
- Enabling renewables under the RMA (with potential changes to the NPS for renewable energy generation and possibly a new NES) and facilitating community / small-scale energy generation
- National grid and network improvements.

The discussion document does not identify preferred options but identifies barriers / issues and potential options to resolve these. One notable issue identified is the tension between the NPS for Renewable Energy generation and other National Policy Statements that have very directive policies (such as the NZ Coastal Policy Statement 2010), which often mean applications for renewable energy generation fail (eg. landscape or amenity values prevailing over wind turbines).

A draft submission is attached for consideration by the Working Party.

Submissions close 28 February 2020. The discussion document is available here:

<https://www.mbie.govt.nz/dmsdocument/10349-discussion-document-accelerating-renewable-energy-and-energy-efficiency>

### **Water Services Regulator Bill**

This Bill establishes a new regulatory body (Taumata Arowai) to oversee, administer and enforce the drinking water regulatory system and sets out the objectives, functions and governance regime. The Bill establishes a Taumata Arowai Board (of between 5-7 members by Ministerial appointment) and a Māori Advisory Group of 5-7 members (again by ministerial appointment). One of the key roles of the Māori Advisory Group is to support the Board to interpret and give effect to Te Mana o te Wai.

The Bill is largely procedural and does include substantive provisions on the management of water services – this will follow in a separate Bill that will implement system wide reform to drinking water and look at improvements to the performance of wastewater and stormwater networks.

A draft submission is attached for consideration by the Working Party.

Submissions close 4 March 2020. A copy of the Bill is available here:

<http://www.legislation.govt.nz/bill/government/2019/0202/latest/LMS294345.html#d14438303e2>

### Draft National Policy Statement for Indigenous Biodiversity (NPS-IB)

The NPS-IB sets out objectives, policies and methods to manage indigenous biodiversity on land. It does not apply to waterbodies or the coastal marine area on the basis that these areas are covered by other NPS (NPS Freshwater and NZ Coastal Policy Statement). Key elements include:

- A hierarchy of significance (high and medium) for indigenous biodiversity (significant natural areas - SNA)
- A requirement to map these SNA using a suite criteria
- Policies applying a hierarchy of protection for areas identified as high and medium value SNA and taonga identified by tangata whenua
- Policies recognising the role of tangata whenua as kaitiaki of indigenous biodiversity
- A requirement for regional councils to develop biodiversity strategy
- Policies on the management of adverse effects on SNA and indigenous biodiversity generally, including 'mobile' fauna
- A requirement to provide for restoration of biodiversity.
- A requirement for regional councils to develop monitoring plans.

Initial assessment suggests the following as key submission points on the NPS-IB:


- Support for the overall objectives of the NPS-IB
- The draft NPS-IB is extremely complex and ambitious and likely to impose significant costs on councils and landowners
- Remove the SNA ranking hierarchy (high and medium)
- Alignment with other NPS, especially the NZ Coastal Policy Statement 2010, NPS Freshwater, and NPS for Urban Development is very unclear and likely to create significant tension / complexity for landowners and decision makers
- Much of the content would be better in supporting guidance or regional biodiversity strategies and does not appear to rest well with the effects-based structure of the RMA (eg. the requirement to set 'targets' for indigenous cover in urban and rural environments where this is less than 10%)
- Potential conflict / tension with Section 85 RMA (which allows the Court to intervene in plans where they are considered to render land incapable of reasonable use.

Staff have yet to review the NPS-IB and ETS settings in full but are likely to recommend council lodge submissions on those elements that relate to council roles and functions. Following feedback from the Working Party, draft submissions will be put to the council meeting of 18 February 2020.

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### Attachments | Ngā tapirihanga

Attachment 1: Draft NRC Submission on accelerating renewable energy discussion document [↓](#) 

Attachment 2: Draft NRC submission on Water Services Regulator Bill [↓](#) 

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### Authorised by Group Manager

**Name:** Jonathan Gibbard  
**Title:** Group Manager - Strategy, Governance and Engagement  
**Date:** 24 January 2020



## Submission

**To:** Ministry of Business, Innovation and Employment  
**By:** Northland Regional Council  
**On:** Discussion document: Accelerating renewable energy and energy efficiency

### 1. Introduction

- 1.1. Northland Regional Council (NRC) is grateful for the opportunity to comment on the discussion document. NRC's submission is made in the interest of promoting the sustainable management of Northland's natural and physical resources and the social, economic, and cultural wellbeing of its people and communities. NRC's submission is focused for the most part on the proposals that relate to our functions under the Resource Management, Local Government and other Acts relevant to our role.

### 2. Background

- 2.1. Northland has several renewable energy generation sites of scale – Ngawha Geothermal Power Station operated by Top Energy and the Wairua Hydro Electric Power Station operated by Northpower (5MW). The Ngawha site is expanding capacity by 31.5MW (to a total of 57MW) by the end of 2020, with further potential to add an additional generation to provide a total of 88MW by 2025 subject to monitoring to prove the sustainability of the resource. The Ngawha expansion will greatly improve Northland's security and reliability of energy supply and mean the region will no longer rely on electricity imported from Waikato through Auckland – in fact it will likely mean the facility can export power south.
- 2.2. Northland supports strong forestry and wood processing sectors meaning there is significant potential for the development of wood energy in the region, especially for process heat. The potential for wind, solar and tidal energy generation in the region also present significant opportunities that have not been pursued at scale to date. The further development of renewable energy within the region presents a significant economic opportunity and potential to improve well-being for our communities and businesses that are currently exposed to changes in electricity pricing. Particularly concerning for us in this regard are recent proposals<sup>1</sup> by the Electricity Authority to alter the transmission pricing methodology which has the potential to materially increase electricity prices in Northland - for example, the Electricity Authority estimated that the transmission component of customers' bills may

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<sup>1</sup> Transmission Pricing Review – 2019 Issues Paper

increase by 15.5% (Northpower) to 31.6% (Top Energy) in 2022, largely as a result of the distance from major generation sites. NRC therefore strongly supports the intent signalled in the discussion document to promote renewable energy generation and efficiency. We also support a number of the proposals which we consider will assist with Government's targets for renewable energy and climate change mitigation. We expand on these points in more detail below with a focus on those matters that are relevant to Northland's socio-economic well-being and NRC's roles and functions.

### 3. Submission

#### Wood and bioenergy:

- 3.1. We acknowledge RMA plan rules can at times inadvertently create undue impediments to new or emerging technology such as wood to energy plants, especially if 'rolled' over from earlier generation plans. NRC recently released decisions on its Proposed Regional Plan which includes rules permitting burning (including untreated wood) for energy generation (electricity or heat) subject to conditions – the conditions include a limit on the burning of wood for energy of up to 2.5MW. If this threshold is exceeded, the application would be treated as a discretionary activity. We consider the Proposed Regional Plan regime is appropriate based on past and current activity in Northland.
- 3.2. While we see some benefit in a 'user guide' for development and operation of wood energy facilities under the National Environmental Standard for Air Quality (NESAQ), amendment to the NESAQ would provide more certainty. This is because the NESAQ does not appear to explicitly provide for the burning of wood for other than domestic purposes (we note the definition of woodburner in the NES is limited to domestic appliances) and a user guide is a non-regulatory tool and does not provide certainty for the sector or councils. We agree that the NESAQ should retain flexibility for councils to manage air discharges taking into account local geographical / climactic circumstances, however we consider there is merit in amending the NESAQ so it explicitly provides for burning wood for process energy for clarity and certainty for applicants and councils alike.
- 3.3. The NESAQ is an environmental health standard, so could include 'discharge / design standards' but could also set activity status for burning wood for energy (i.e. permitted, controlled or discretionary activity standards) – provided councils retain the ability to set more stringent standards if needed it can also retain flexibility needed to address local concerns. We consider there is merit in providing national consistency, certainty and clarity in the NESAQ if government wants to encourage the energy generation opportunity the wood resource presents in New Zealand. This is especially important for an emerging industry that may result in a small number of specialist businesses seeking to operate in multiple regions with wide differences in

local RMA rules – inconsistent rules in RMA plans can be a real impediment to businesses that operate in multiple jurisdictions (especially relating to certainty and costs). Examples where this has resulted in National Environmental Standards being developed include forestry, electricity transmission and telecommunications. We note the Bioenergy Association has undertaken a review<sup>2</sup> of regional air quality rules relating to the operation / consenting of wood fuelled heat plant which provides an insight into the barriers to establishing such plant from an industry perspective.

- 3.4. If the guide were progressed, it would be useful if it set out how other standards (such as PM<sub>10</sub>) apply and how these can be met to avoid unnecessary regulatory impediments. It would also be useful if the guidance provided a process chart or checklist of some description to demonstrate how compliance with the NESAQ can be achieved. We would also support the guide including best practice planning rules to assist council plan-making processes pending amendment of the NESAQ.

Industry transformation plans:

- 3.5. We consider an Industry Transformation Plan (ITP) for the Wood Processing and Forestry sector would be beneficial in facilitating bioenergy markets and industry clusters. We see real potential for such a 'cluster' in Northland given the timber resource available in the region. This would be further complimented by the Te Uru Rakau forest strategy, especially if this strategy were to outline government investment, the identification of regional opportunities and secure greater volumes and availability of wood supply for energy / process heat. We therefore support both initiatives – the provincial growth fund could also provide financial support where needed in initial phases.

Deterring new and phasing out existing fossil fuel process heat:

- 3.6. We understand the rationale for a ban or other strong deterrent on new coal fired process heat plants, as this will a) assist in meeting the governments greenhouse gas emissions targets and b) limit the potential for 'stranded assets' in the future and c) encourage use of alternative, renewable fuel sources such as wood. We are aware of some Northland industries that rely on coal for process heat (such as Golden Bay Cement), however we do not expect a significant number of *new* coal-fired facilities to establish in the region. While not opposed to a ban on new low / medium temperature coal fired process heat facilities, we would be concerned if restrictions were to be applied to the expansion or upgrade of existing economically or regionally significant coal fired process heat plants, such as the Golden Bay Cement Plant kilns.

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<sup>2</sup> Review of regional air quality rules regulating wood fueled heat plant, Bioenergy Association of New Zealand; Occasional Paper 21; 20 April 2018

- 3.7. We would be interested in the effect of the removal of the \$25 price cap on NZU and more market-led carbon pricing under a revised Emissions Trading Scheme (ETS) as a deterrent for new or expansion of existing coal fired plant – if this impact is significant, an outright ban may not be necessary (noting a carbon price of \$60t/CO<sub>2</sub>-e makes some biomass alternatives viable). In terms of phasing out existing coal fired burners (<100 degrees C) by 2030, NRC would support this if accompanied by Corporate Energy Transition Plans. In our view emissions pricing, facilitating renewable alternative fuels and possibly well targeted incentives are likely to be more equitable and effective in making the transition than an outright prohibition. However, in the event these measures do not drive change fast enough, staged phase-out using national instruments / direction could be used to compel the transition.

Enabling development of renewable energy under the RMA:

- 3.8. For the most part NRC agrees with the problem statement at Section 7.1 of the discussion document, in that the National Policy Statement for Renewable Energy (NPS-REG) has not had a significant positive effect on the time, cost and complexity of the consenting process for renewable energy generation. We agree the NPS-REG uses less directive language than other National Policy Statements (NPS), such as the NZ Coastal Policy Statement or NPS for Freshwater Management and therefore tends to receive less weight in decision making. So, we do not consider the NPS-REG gives sufficient weight or direction to the importance of renewable energy. Nor has the NPS-REG likely to have improved consistency in planning provisions nationally – we note this is one of the issues with NPS given they typically result in each council interpreting and applying the provisions in the context of their jurisdiction resulting in varied approaches (this despite government efforts to provide implementation guidance). NPS also tend to generate significant costs nationally, as every council must go through the Schedule 1 RMA plan change process to implement the policy direction (as opposed to NES that are far simpler to implement).
- 3.9. NRC would support amendment to the NPS-REG to better recognise the national benefits of renewable energy generation and to include direction to spatially identify potential areas for renewable energy generation and / or areas where renewable energy should not locate. This would in our view provide a great deal more certainty for the industry and communities alike. It could be that instead of each individual council spatially identifying sites for renewable energy generation in their jurisdiction, that this be progressed at a national scale through the revised NPS-REG instead (provided it was in conjunction with the sector and councils and with appropriate opportunity for public / stakeholder input / consultation) – or alternatively included in a new NES for renewable energy generation. Another

alternative would be to develop a non-statutory resource for this purpose which enabled councils to 'adopt' the maps via RMA plan changes.

- 3.10. We agree there is real tension between the aims of the NPS-REG and other NPS – especially the NPS for Freshwater Management 2017 and the NZ Coastal Policy Statement 2010 (NZCPS). This will require resolution and we do not consider changes to the NPS-REG alone would be sufficient, especially where other NPS include the direction to 'avoid adverse effects' which leaves no discretion to councils – our view is that such NPS require amendment because no matter what changes are made to the NPS-REG it is unlikely to overcome the very strong / directive language used in the NZCPS and NPS Freshwater and the effect of associated case law. We note the Draft NPS on Indigenous Biodiversity uses similar directive language. Our view is that the government needs to decide on national priorities and provide certainty as to which should prevail in certain circumstances especially regarding national policy statements – otherwise councils, applicants and interested parties end up in expensive consent and appeal processes and / or opportunities are lost.
- 3.11. Noting the concern above, we would support changes to the NPS-REG along the lines set out below:
- A requirement to identify spatially (in Regional Policy Statements or plans) appropriate areas for renewable energy generation and to *enable* renewable energy generation in those places (in section E of the NPS-REG). Ideally this would be supported by maps generated at a national level to inform council processes or at a minimum, criteria to be applied to define such areas. This could also be complemented by criteria or maps identifying areas not suitable for renewable energy generation.
  - Clarifying the relationship between the NPS-REG and other NPS (especially the NPS for Freshwater and NZCPS) and how to balance these when potentially in conflict.
  - Provisions enabling maintenance, upgrades and renewal of existing generation facilities and recognising and facilitating connections to transmission and distribution networks.
  - We see a good case to expand the scope of the NPS-REG to include other types of renewable energy, e.g. wood energy, liquid biofuels, green hydrogen and waste-to-energy – otherwise these options could be disadvantaged and opportunities lost.
- 3.12. A potential complementary measure could be to progress a NES for renewable energy that addresses much of the above. While NPS are useful, NES provide far more certainty given they are effectively nation-wide 'rules'. They are also significantly less costly to implement in plans given plan changes can be avoided (plans can be amended using Section 55 RMA instead of the Schedule 1 plan change

process). Our preference would be for an amended and more directive NPS-REG (and amendments to other NPS as needed) supported by a new NES for renewable energy generation (and facilities). We support the NES including the matters (a-g) identified on Page 62 of the discussion document. This NES could also include the requirement to map areas deemed suitable for REG (or certain forms thereof) and provisions enabling renewable energy generation facilities in these areas (i.e. setting the activity status for a range of generation activities). In terms of scope, a new NES should include as many energy generation options as feasible - i.e. not be limited to wind, solar and tidal but include biomass and geothermal.

- 3.13. We prefer a new NES to incorporating provisions into the National Planning Standards as this is simpler for councils to implement in that provisions that are inconsistent with the NES can be simply 'stripped out' of plans (usually without the need for a plan change), rather than duplicating the content of planning standards. We also note the National Planning Standards already include direction on how to reference NES in plans.
- 3.14. We do not support a 'pre-approval' process for central government to identify and authorise renewable generation sites outside the RMA system – the RMA (despite its faults) is designed for such purposes and generally provides a good process if policy settings are clear and robust. Another parallel system solely for REG purposes would be inefficient and appears unjustified.

#### **4. Conclusion**

- 4.1. We thank the Ministry for the opportunity to comment on the options in the discussion document. We agree with many of the options identified and reinforce comments above that the government needs to resolve the tensions within current (and Proposed national Policy Statements) and the aspirations for reducing greenhouse gas emissions and shifting to more renewable energy generation. We also strongly support development of a new NES for renewable facilities as this provides the greatest certainty for the sector and is likely more effective and efficient means to address regulatory barriers.

Signed on behalf of Northland Regional Council

Malcolm Nicolson (Chief Executive Officer)

Dated: XX / XX /2020



## Submission



To: Committee Secretariat  
Health Committee  
Parliament Buildings  
Wellington

By: Northland Regional Council

On: Taumata Arowai—the Water Services Regulator Bill

### 1. Introduction

- 1.1. Northland Regional Council (NRC) is grateful for the opportunity to comment on the Taumata Arowai—the Water Services Regulator Bill (the Bill). NRC's submission is made in the interest of promoting the sustainable management of Northland's natural and physical resources and the wellbeing of its people and communities. NRC's submission is made in relation to our functions under the Resource Management, Local Government and other Acts relevant to our role.

### 2. Background

- 2.1. Northland has not experienced the drinking water quality / contamination problems that have occurred in Havelock North and some other areas in NZ, largely because [all?] municipal drinking water supplies in Northland are treated. We note that since the Government inquiry into the Havelock North contamination event, the number of people receiving untreated water is estimated to have fallen from 600,000 to 90,000<sup>1</sup>, suggesting significant progress has already been made to address the issue. However, we understand that some members of the public / communities are opposed to the treatment of drinking water and that some form of Government direction and oversight is needed. We also acknowledge there are issues (including within Northland) around the operation and performance of wastewater and stormwater networks. Northland councils have established a 'three waters group' to collectively address some of these concerns. We therefore support the intent of the Bill and the establishment of the Board and its role in providing oversight of the 'water services' system.
- 2.2. Northland has areas of significant economic deprivation, especially in the mid and far north<sup>2</sup> (Appendix 1: Interactive maps of deprivation in NZ: University of Auckland). The region also

Commented [JM1]: Colin – can you confirm please?

<sup>1</sup> <https://www.health.govt.nz/our-work/environmental-health/drinking-water/government-inquiry-havelock-north-drinking-water-outbreak>

<sup>2</sup> [http://www.imd.ac.nz/NZIMD\\_Single\\_animation\\_w\\_logos/atlas.html](http://www.imd.ac.nz/NZIMD_Single_animation_w_logos/atlas.html)

has many small dispersed rural communities which leads to many small-scale three waters networks which are comparatively expensive and funded from small rate bases. The affordability of any system reform and consequent obligations imposed on local government (and ratepayers) is therefore of concern. This was highlighted in the December 2019 report by the Productivity Commission into local government funding and financing<sup>3</sup> which noted in relation to three waters infrastructure (at Page 90): *Small and dispersed communities with a large amount of water infrastructure per person face a particular challenge in funding and financing the maintenance and renewal of that infrastructure. This pressure is compounded by requirements to meet strengthened safety and environmental regulations.* Similar conclusions were reached in the Three Waters Review by the Department of Internal Affairs.

- 2.3. As noted above, NRC is concerned at the potential costs imposed on councils and ratepayers as a result of changes to the three waters regime. Environmental and health standards applied to three waters network performance should recognise affordability issues and the range of scales and variety of constraints, particularly by smaller communities in less affluent areas. While the Bill is focussed on establishment of the regulatory Board, its governance arrangements and functions with substantive regime changes to follow, NRC wishes to highlight affordability concerns to the Health Select Committee now so the issue can be considered in system design and especially performance standards. We also request that these issues are explicitly recognised in the Bill itself – we make suggestions as to how this could be done below.

### 3. Submission

- 3.1. NRC supports the establishment of a Board with regulatory oversight of the drinking water system. We also strongly support the establishment of a Maori advisory group to assist the Board in its functions. The governance arrangements for both appear logical. However, the Select Committee should consider whether the Bill should provide for the formation of a technical advisory group as well to ensure any system changes and especially any performance standards are technically robust and achievable. We suggest this technical advisory group include membership with experience in three waters infrastructure management, water quality management, public health and local government funding and consenting processes.
- 3.2. If a technical advisory group is not pursued, the specifications for Board membership in Clause 12(2) should also be expanded to include knowledge and experience in:
- three waters infrastructure management

<sup>3</sup> [https://www.productivity.govt.nz/assets/Documents/a40d80048d/Final-report\\_Local-government-funding-and-financing.pdf](https://www.productivity.govt.nz/assets/Documents/a40d80048d/Final-report_Local-government-funding-and-financing.pdf)

- water quality management
- local government funding and consenting processes
- water related central government policy direction.

- 3.3. The objectives of the Board in Clause 10 appear sound, however we suggest an addition to the objective in Clause e) as follows: *provide oversight of, and advice on, the regulation, management, and environmental performance of wastewater and stormwater networks while recognising environmental and financial constraints facing the sector.*
- 3.4. The functions of the Board in Clause 11 are logical and provide a good scope to address the concerns identified in the Havelock North inquiry. However, we suggest that consideration of affordability be explicit – for example Clause 11(b) could be amended to read: b) *identify and monitor matters that affect the safety of drinking water, and the environmental performance of wastewater and stormwater networks, including current and emerging contaminants and affordability.* A similar consideration should also be added to Clause 11(c): c) *develop standards that relate to drinking water composition and develop other regulatory requirements and measures necessary to fulfil its responsibilities under this or any other enactment, taking into account the range of constraints on network performance and affordability.*
- 3.5. The operating principles of the Board in Clause 18(2) should also include recognition of affordability issues and local government financial and funding constraints. As noted above these are real issues especially in rural provinces. We suggest an additional clause to the effect that: *Ensuring affordability and financial viability are considered in system design and performance* (or words to similar effect).

#### 4. Conclusion

- 4.1. NRC is grateful for the opportunity to provide input into the Bill. As noted above we support the establishment of a regulatory oversight body, subject to relief sought above. We do not seek to be heard in the event the Committee hold hearings or calls for verbal presentations.

Signed on behalf of Northland Regional Council

Malcolm Nicolson (Chief Executive Officer)

Dated: XX / XX /2020

**Appendix 1:** Extract – Interactive maps of deprivation in NZ: Index of multiple deprivation  
(University of Auckland) <https://www.fmhs.auckland.ac.nz/en/soph/about/our-departments/epidemiology-and-biostatistics/research/hgd/research-themes/imd/maps.html>

