

1 November 2017

Hon David Parker
Minister for the Environment
Parliament Buildings
Wellington

Hon Damien O'Connor
Minister of Agriculture
Parliament Buildings
Wellington

Dear Ministers,

From the Chair of the Land and Water Forum - the challenge of freshwater reform

Fresh water was an important election issue, and improving freshwater management is crucial to New Zealand's environment, economy and national identity. This letter introduces you to the Land and Water Forum, outlines its value in assisting with freshwater reform, and provides a brief overview of the challenges Forum members see as requiring attention.

To make further progress on freshwater management, the major challenges are to make needed changes to the National Policy Statement for Freshwater Management 2017 (NPS-FM) and see them successfully implemented; decide how New Zealand grapples with issues of allocation, charging, and iwi rights and interests; improve our management of soil, land and urban water; and deal with the other issues set out in this letter.

The Forum's consensus recommendations, institutional knowledge and social capital can prove valuable in assisting you to resolve the divisions that inevitably arise with difficult policy challenges in arriving at new policy on fresh water.

Overview of the Forum's origin, development and achievements

Creating new directions for freshwater management is one of the toughest public policy challenges in New Zealand. There are a multitude of competing interests and values. Numerous efforts at reform in the 1990s and 2000s stalled, while water quality declined and in some areas water became increasingly scarce. There was an adversarial environment that prevented communication, compromise and mutually beneficial arrangements.

In response, the Land and Water Forum was established in 2009 in the belief that stakeholders needed to engage directly with each other if they are to find a way forward. The Forum was initially

self-organising and self-mandating, but gained ministerial support and pulled in members as it gained momentum. The Forum's membership includes iwi, primary sector interests, environmental NGOs, electricity generators, universities, research and science institutions, and a wide range of other organisations with an interest in freshwater management. Central and local government participate as active observers.

In the last eight years, the Forum has forged a detailed and durable consensus on key issues that previously seemed intractable. The Forum has produced four reports, containing over 200 recommendations on how the freshwater management system should be reformed, with detailed prescriptions on how key aspects of that system should be designed, transitioned to, implemented, and resourced. The Forum was responsible for recommending the framework for setting national numeric bottom lines (but not the detail, with the exception of the 2017 improvements for the use of the Macroinvertebrate Community Index and more detailed prescriptions on nutrients). More recently we produced a review of implementation of the NPS-FM.

While the previous government did not implement many of the Forum's recommendations, without the Forum they would not have been able to break the deadlock in freshwater policy development and make the progress that they did. Now, for the first time, there is a national policy framework (the NPS-FM) based on clear environmental bottom lines, and an expectation of transparency and collaboration.

The value proposition provided by the Forum

Policy development in complex areas like water management inevitably requires equity issues, and the detail of how policy is going to be implemented, to be considered alongside social, scientific, and economic factors. International experience has demonstrated that consensus-driven collaborative processes produce more durable solutions to difficult public policy challenges. Our experience over the past eight years leads us to believe that this also holds true for the challenge of freshwater reform in New Zealand.

By forging a consensus that stakeholders publicly support, the Forum provides space for governments to take difficult decisions. The consensus developed by the Forum helps moderate public debate, and the Forum's collective advocacy provides solid sectoral and stakeholder support for Government policy direction, when consistent with the Forum's recommendations.

The involvement of the full range of stakeholders with interests in freshwater management reduces the risk of naïve or poorly crafted regulation. The Forum provides a stream of analysis that differs in perspective from that provided solely by officials. By working with Ministries and two groups jointly overseen by the Forum and the Ministry for the Environment (a reference group of those who implement policy and, importantly, a science review panel of New Zealand's best freshwater scientists) the Forum formally integrates scientific and technical advice with stakeholder and sector perspectives and experience. This makes its advice rigorous but also grounded in consensus, and implementable.

In the few instances where the Forum has been unable to reach a consensus it has provided the reasons why views diverge and the options that were considered. This goes beyond the views that stakeholders might express as part of a conventional consultation exercise where sectoral views

might remain entrenched and gives regulators and politicians valuable insight into the interests and positions of the various stakeholders.

The Forum is more effective and more useful to the Government when its membership fully reflects the breadth of interests in freshwater management. We will take active steps to draw those organisations that have left (notably Forest & Bird and Fish & Game) back in to the Forum. We also want to reach out to those organisations that are emerging voices in water management and discuss making them members or how to incorporate their views.

Future challenges for freshwater management

There are important areas where policy still needs to be developed. Some of these the Forum has addressed in the past, but our recommendations have not been implemented. Other areas we have not yet discussed in detail or reached a consensus position. Consequently, this letter reflects the view of the Chair, not a necessarily a consensus view of the Forum as a whole, but nevertheless is broadly in line with members views.

Further amendments to the NPS-FM – Possibly the most important recent freshwater reform is the National Policy Statement for Freshwater Management (NPS-FM), which introduced a water management framework based on clear biophysical limits. Numeric national bottom lines are now outlined in the NPS-FM for many of the most important contaminants, but important ones are still missing. Their absence is in some cases skewing attention and diverting resources away from more important priorities (e.g. by encouraging councils to focus on nitrogen where the bigger problem in some catchments may be sediment, by de-emphasising urban contaminants, or by focussing council resources on *E.coli* and swimming targets).

The following list of important contaminants and parameters, identified by the Forum, should be revisited and new attributes, values and guidance developed for them:

- sediment
- heavy metals –copper and zinc
- dissolved oxygen
- fishing, swimming and mahinga kai
- natural form and character of waterbodies
- recognising the value of cultivation
- flood protection and drainage.

For most of the above, the development of numeric bottom lines is preferable, but where this is not possible minimum national requirements should be specified in narrative form.

It is also important to identify water quality problems that must be addressed in different ways – examples include the impact of introduced species such as koi carp, and how to address wetlands, estuaries and floods. Some of this might involve other forms of national regulation (for example to address copper and zinc from transport and building materials).

Looking further ahead, to facilitate the inclusion of a greater range of numeric attributes, reduce the need for exceptions, and make the framework more robust, a spatial classification system for waterbodies must be developed. This would allow national and regional objectives to be set taking

into account the spatial variation in biophysical characteristics of different waterbody types. Without developing this system, the inclusion of more contaminants and attributes in the NPS-FM will be constrained. In the interim, Appendix 3 of the NPS-FM, which deals with exceptions for waterbodies affected by infrastructure, and which is currently empty, needs to be populated.

This work will take some time to complete and may therefore not be able to influence the current generation of NPS-driven regional plans. In order to avoid this it will be important for this work to be done with urgency, and signalled clearly, ahead of the next generation of plans.

The Forum and MfE share oversight of the National Objectives Framework (NOF) Reference Group and Science Review Panel, which have developed the numeric water quality standards underpinning the NPS-FM. This mechanism has proven to be effective in developing, reviewing, evaluating and providing practical advice to government on new water quality standards. These groups are well placed to assist in the development of any new standards or the revision of existing ones to reflect the priorities of your government, along with any wider review of the NPS-FM you may wish to undertake.

Implementation issues – Timely and effective implementation of the NPS-FM is essential to further progress. Earlier this year the Forum provided the government with a report that identified significant gaps in the way that the NPS-FM was being implemented. A copy of that report is attached – the first two pages provide a snapshot of the Forum’s views.

One of our key findings was that there should be a more active implementation role for the Ministry for the Environment, rather than relying predominantly on regional councils. We identified several tasks that would assist with this:

- the development of an implementation strategy for the NPS-FM
- review and oversight of regional plan development and implementation
- coordination of resource-allocation and information-sharing between councils and other institutions
- identification of skills gaps in councils and other organisations and processes, and the necessary actions for filling them
- prioritisation of nationally important waterbodies for restoration
- prioritisation of science funding
- enabling greater agile planning in regional freshwater management.

Effective compliance, monitoring and enforcement systems are also essential to ensure that laws and rules, once set, are adhered to. The amount of compliance, monitoring and enforcement activities councils will have to undertake due to the NPS-FM will require a significant increase in resources and capability.

Further engagement with stakeholders on the implementation of Good Management Practices (GMPs) by land users will also be required. Successful implementation will require universal use of GMP, which is currently variable. In some sectors it is highly developed, and in others it is embryonic. It needs to be in place across all sectors, including urban water management. Apart from completing GMP standards for all sectors, a form of stakeholder engagement in this process would assist public trust in GMP.

Preventing environmental deterioration during the planning process - Much of what the Forum, and others, say needs to be done cannot be completed overnight. It's not much use designing the perfect regulatory, compliance, monitoring and enforcement regime if water quality continues to deteriorate significantly before you can implement it. We have in the past made recommendations in this area, but the previous government did not act on them as it regarded this as a lesser priority. It would be worth revisiting these recommendations in the light of how councils have addressed this issue. The Forum could give further consideration to the range of tools that are available, including requiring consents for further intensification.

Stock exclusion and riparian management – In its fourth report, the Forum provided advice on the design of a national regulation for stock exclusion and riparian setbacks. We advised that stock exclusion requirements should vary according to the type of livestock being farmed and the terrain, in order to balance environmental imperatives with the costs and practicalities of excluding stock in different farming contexts. This advice included a requirement that *“when permanent fences are erected to exclude stock, they should be placed the appropriate distance back from the waterway. The appropriate setback distance will vary and should be determined by an on farm assessment...”* Our advice on stock exclusion and riparian setbacks awaits final implementation.

Allocation and transfer (of water and nitrogen) – A well-designed allocation and transfer regime is needed for water and nutrients to move to their most efficient uses within a limits-based system. Any allocation regime for water and nutrients must also address questions of equity (i.e. who gets allocated what initially, the extent to which existing use is grandparented, providing headroom for further development/new users), and iwi rights and interests.

The Forum provided the previous government with a suite of recommendations on allocation. The government subsequently set up a Technical Advisory Group (TAG) which aimed to provide recommendations to the government by the end of 2017, with implementation in 2018. It seems inevitable, given the potential contention surrounding allocation that when and if the TAG presents its report that there will need to be an engagement with stakeholders. Our members are united in the view that the Forum is an ideal mechanism for this.

Iwi rights and interests – Iwi rights and interests in both water and nutrient discharges remain unsettled. The Forum has previously stated that any transition to a more effective allocation regime should proceed hand-in-hand with Crown-iwi discussions on rights and interests to avoid the risk that the issue is revisited later with disruptive consequences. The Forum has attempted to ensure that its recommendations on allocation could sit within any Crown-iwi agreement, but progress on this issue has been slow. It is our view that the Forum remains the best vehicle for addressing how any Crown-iwi agreement might fit with other stakeholders' views on allocation and the design of the broader freshwater management framework.

Charging for water use - Recent public debate around water charging has focussed on the export of bottled water from New Zealand. The broader issue of water charging is highly contentious and needs to be considered alongside the issues of water allocation and iwi rights and interests.

Soil and land management – Soil is an important part of the ecosystem, it provides a number of ecosystem services, and it is a valuable resource that underpins primary production. Soils can be lost through erosion and the resulting sediment can find its way into waterways. Sediment is the biggest

water quality issue in some areas of New Zealand but there is currently no national bottom line included in the NPS-FM. This is because it has so far proven too complex and variable for the scientists to be able to recommend national bottom-lines and band levels for the different ecosystem health issues related to sediment. As the scientific research effort progresses, this may become more feasible.

There is a need for an assessment of how various land-uses affect soils, erosion and sedimentation and how to manage the issues. This could include enhancements to the National Objectives Framework, the use of GMPs to improve the management of sediment, what role catchment-scale approaches to mitigate the impacts of sediment might play, and how these measures should be regulated at a national level. The *Our Land and Water Science Challenge* is doing valuable work on land use suitability which should be considered. There is also a need to address the complex interactions between climate change, its effect on land use patterns, and the policy challenges in adapting to needed changes proactively rather than reactively.

Urban water management – To date, the bulk of the attention of the Forum and a variety of other groups has been on how to better manage rural water issues. The NPS-FM applies to all waterbodies, but urban areas have specific and significant water management issues that require action. Urban water quality is generally poor, efficient water use practices are limited, and there are infrastructure funding issues both for expanding and declining urban areas.

Particular issues that need addressing in urban water management include:

- The sustainable and integrated provision and management of three-waters infrastructure, including the underlying management, funding and governance structures.
- How best practice/good management practice can contribute to urban water management objectives.
- Drinking water quality in urban areas, and how the findings of the Havelock North inquiry should be considered in the context of broader integrated catchment management, and how they relate to the NPS-FM.
- Dealing with the significant urban contaminants copper and zinc, primarily from brake pads and building materials.

This is an area where a number of organisations have reviews or work under way (the Havelock North inquiry, Department of Internal Affairs, Local Government New Zealand, Infrastructure Unit, Ministry for the Environment). Many of these are focussing on a limited number of aspects of urban water. The Forum's view is urban water issues need to be tackled in an integrated way and the Forum can structure itself in a way to help with this.

Protecting outstanding waterbodies – There are two regimes for identifying and protecting outstanding waterbodies – water conservation orders and regional plans as required by the NPS-FM, with divided views amongst stakeholders about the merits of one approach above the other. Without entering into this debate, what is clear is that there is no nationally agreed set of criteria for identifying nationally or internationally significant freshwater bodies, despite considerable work by officials in the 2000s. Furthermore, the way New Zealand recognises and gives effect to protecting waterbodies of national significance is less systematic and coherent than many other developed countries.

Supporting issues:

- The Forum has previously made recommendations on improving governance and accountability arrangements of regional councils, but these were not picked up by the previous government. The Forum could do further work to identify governance and accountability issues that affect freshwater management.
- We need better knowledge for more effective freshwater management. The Forum could consider the science funding system holistically (across central government, local government, and sector groups) and provide advice on whether the overall science system is producing the information and tools to improve outcomes for fresh water, and what improvements could be made.
- Work needs to be done to identify regulation that indirectly influences freshwater outcomes. Examples include:
 - the way the Local Government Act influences council provision of three-waters infrastructure
 - the way the Dairy Industry Restructuring Act affects intensive land-uses
 - the Coastal Policy Statement/NPS-FM interface.

Concluding remarks

The Land and Water Forum was an important factor in breaking the logjam that bedevilled freshwater policy development in the 1990s and 2000s. Progress has been made in improving the policy framework for freshwater management. Nevertheless, as public debate about water has demonstrated, there remains considerable work to do both in policy and its implementation.

This letter briefly describes what many stakeholders see as future priorities. In a new government, and as new Ministers, you will have your own suite of priorities for water. The Land and Water Forum can, with your support, materially assist with your priorities, advising on direction, helping develop well critiqued policy in specific areas, and acting as a consultative group.

I would welcome an opportunity to meet with you at the earliest opportunity to discuss the future and direction for the Forum and freshwater management generally.

We were planning a meeting of the core group of the Forum on 15 November in order to complete a piece of work on "Future Priorities" requested by the previous government. We would welcome you to that meeting, or at a time convenient to you.

Yours sincerely



Hugh Logan
Chair, Land and Water Forum