Submission on updating RMA national direction: package 2 (primary sector) and package 3 (freshwater)

25 July 2025

To the Ministry for the Environment

Submitter details

This submission is from the Parliamentary Commissioner for the Environment, Simon Upton.

My contact details are:

Phone: 04 495 8350
Email: pce@pce.parliament.nz

Parliamentary Commissioner for the Environment

The Parliamentary Commissioner for the Environment was established under the Environment Act 1986. As an independent Officer of Parliament, the Commissioner has broad powers to investigate environmental concerns and is wholly independent of the government of the day. The current Parliamentary Commissioner for the Environment is Simon Upton.

Introduction

The Ministry's consultation on updating RMA national direction includes four packages. This submission focuses on two of them – primary sector (package 2) and freshwater (package 3). My comments on infrastructure and development (package 1) are provided in a separate submission.

Overarching comments

The problem definition underlying many of the proposed amendments in this package fails to identify a critical issue: the near constant changes to national policy statements over the last 15 years. There have been four iterations of the National Policy Statement for Freshwater Management since it was first introduced in 2011. This is going to be the fifth iteration in 14 years. The National Environmental Standard for Plantation Forestry came into effect in 2017 and was reviewed in 2023. This will be its third iteration in seven years.

Throughout this process, regional councils have been an easy target for criticism. They have been left to implement – and take the flak for – policies that central government has imposed on

them. In some cases, they have not had the time to fully implement one round of national policy directions before these have been replaced with new directions, justified on the basis that previous iterations were not working. This has contributed to uncertainty for land users, foresters, farmers and developers, and has been demoralising for practical, highly qualified staff who have to make sense of what Wellington has passed down the line.

The proposals outlined in the discussion document will not, in my view, reduce the likelihood of future change. They are unlikely to provide the stability of an "enduring freshwater management system" noted in the interim regulatory impact statement (iRIS) and requested by councils and private interests. [1] This is unsurprising given that the proposals are, to use the language of the Cabinet paper, driven by a desire to "help New Zealanders get things done" in a way that will "result in 'quick wins'".[2] New Zealand's problems with water quality and sustainable land use have been a long time in the making. Policy changes designed to yield "quick wins" are unlikely to address current or future challenges that require patient attention over the sorts of timeframes landowners can reasonably be expected to act.

From what has been outlined to date, it appears that the intended resource management reforms are designed to deliver a wider range of activities that are permitted, backed by standard performance requirements that are auditable. This approach has some appeal and will simplify things for some activities. But it will only work if some serious shortcomings are addressed – and these are not of the "quick wins" variety. For a start, any performance-related requirements or standards will need to rely on robust environmental information if there is going to be meaningful compliance and, if necessary, enforcement. Yet, as I have outlined on numerous occasions, environmental information remains patchy. Another unresolved issue in the rural space will be the cumulative effects of pollutants and how to deal with situations of overallocation. These proposals do little to move these issues forward.

Given these points – and because the ability of councils to make most plan changes is likely to be frozen pending passage of new legislation – officials' efforts would be better spent focused on making a really good job of designing the new system and providing it with the tools and information needed to support it. For that reason, I would advise against proceeding with any of these changes at this time.

If, however, the Government elects to proceed with these amendments, I strongly recommend that it considers the following comments for the primary sector and freshwater package.

[1] Interim Regulatory Impact Statement: Replacing the National Policy Statement for Freshwater Management 2020, p.16.
[2] Cabinet paper: Replacing the Resource Management Act 1991 – Approach to development of new legislation, p.1. https://environment.govt.nz/assets/publications/Replacing-the-RMA-MfE.pdf

Primary sector (package 2)

National Environmental Standard for Marine Aquaculture

Under the National Environmental Standard for Marine Aquaculture (NES-MA), most changes to marine farms' infrastructure and farmed species are currently a discretionary restricted activity. The amendments proposed to the NES-MA are seeking to streamline specific applications to change consent conditions by making them controlled activities – a more lenient activity status.

Most of these amendments seem reasonable. However, I would like to express concerns regarding the proposal to add *Undaria pinnatifida* (Undaria) to an existing marine farm through an application to change consent conditions as a controlled activity.

Undaria is an introduced seaweed species that was first discovered in Aotearoa in 1987 and has impacted many coastal areas, including the highly valued pristine marine area around Fiordland. Undaria is considered one of the most dangerous invasive seaweed species in the world and has been extensively researched for its impacts on the marine environment.[3] Despite the known risk for the environment, it has been identified as a potential aquaculture species.[4]

Farmed stock and infrastructure can act as primary and secondary vectors of introduced marine species (IMS), contributing to incursions and the spread of unwanted species. This has already been identified as a risk by the New Zealand Conservation Authority.[5] While Undaria is not technically being farmed in Aotearoa at present, it is being harvested from mussel farms, and wild harvested in the South Island. If left unmanaged, Undaria could easily spread from aquaculture facilities to unwanted coastal areas, with very likely direct dire consequences on the marine environment. I am therefore worried about the potential biosecurity impacts of permitting the farming of Undaria as a controlled activity. If farming Undaria is to be permitted as a commercial activity, I would recommend that it should only be able to proceed as a discretionary restricted activity.

The NES-MA does not require marine farms to maintain a biosecurity plan. The onus of controlling biosecurity risks lies with regional councils. Many struggle to implement effective marine biosecurity management due to a lack of capacity and capability. Biosecurity management can thus be better achieved through a discretionary restricted activity status, which allows councils to impose conditions and to retain the power to take a precautionary approach to management, including declining a consent if certain (biosecurity) matters are not adequately considered in the application.

Aquaculture New Zealand has developed voluntary biosecurity standards for mussels, oysters and salmon farms. Given the apparent direction of travel of the impending resource management reform, it would make sense to ask Aquaculture New Zealand to develop standards for **all** marine species being farmed and make these mandatory when the reforms

[3] James, K. (2016). A review of the impacts from invasion by the introduced kelp *Undaria pinnatifida*. Prepared for Waikato Regional Council. https://www.waikatoregion.govt.nz/assets/WRC/WRC-2019/TR201640.pdf
[4] MPI, 2023. https://www.mpi.govt.nz/dmsdocument/58012-Seaweed-farming-in-New-Zealand-fact-sheet/
[5] NZCA, 2009. https://www.doc.govt.nz/about-us/statutory-and-advisory-bodies/nz-conservation-authority/submissions/review-of-the-undaria-commercial-harvest-policy

are implemented. Having national standards to assess and manage biosecurity risks could be helpful for councils and act as a starting point for biosecurity plans. This is again a reason to delay these reforms until the new RM system is in place.

National Environmental Standard for Commercial Forestry

The NES-CF aims to provide nationally consistent rules for commercial forestry activities, while allowing some regional nuance. The proposed changes seek to reduce the flexibility local councils have to address place-specific risks and environmental issues from forestry. [6]

Forestry risks are place-based, resulting from the interaction of different physical and other characteristics that are unique to each place. While some generalisation is possible, there will also be places that need bespoke risk assessments. Some degree of flexibility needs to be retained for local councils to manage those risks. In my view, the proposed changes to the NES-CF go too far in restricting regional flexibility.

Currently, regulation 6(1)(a) allows councils to impose additional stringency to give effect to the NPS-FM, i.e. water quality. It is proposed that reference to the NPS-FM be removed but flexibility, within narrow parameters, be retained to allow councils to consider erosion risk. To do so, councils would need to prove there is an unacceptable erosion risk that is not covered by existing rules by providing more granular mapping (scale of 1:10,000) than is currently required in the NES-CF (1:50,000). The onus of providing this information would fall on the council.

I support the use of better information to manage risks. More granular risk assessments should be standard across the entire commercial forestry estate. Paying for this information should be seen as a cost of doing business borne by forestry companies. The cost should not fall on ratepayers.

I do not support the removal of references to the NPS-FM as the *quid pro quo* for additional erosion risk management limited only to areas where more granular erosion maps are available. Councils are required to manage water pollution across whole catchments and should have the discretion to consider cumulative effects at that level. Forestry meeting the requirements of the NES-CF will still cause some pollution of waterways from sediment, detritus and woody debris. I recommend retaining reference to the NPS-FM in the NES-CF. That will allow councils to equitably manage water pollution amongst all land users, not give foresters first priority on allowable pollution because they are upstream.

I also caution against the removal of the term ‘woody debris’ from the NES-CF. Woody debris can include fallen trees, logs, branches, twigs, bark and root balls. It includes material, such as toppled and fallen trees, unrelated to any forest activity. Slash – defined as “any tree waste left behind after commercial forestry activities” within the NES-CF – is a subset of woody debris. Woody debris that originates from a commercial forest has considerable potential to cause damage to infrastructure, private land and the environment. It must be considered somehow. If

[6] Proposed provisions – Amendments to the Resource Management (National Environmental Standard for Commercial Forestry) Regulations 2017 National direction consultation – Package 2: Primary sector. Attachment 2.2

the concern is about a lack of clear definition, MPI has defined 'woody debris' elsewhere, a definition that could be adopted in the NES-CF. [7]

The erosion susceptibility zones used in the NES-CF are coarse and often misidentify the level of risk (see Box 1). Currently regulation 6(4A), gives councils some flexibility to make rules more stringent for areas where they know there is a higher risk than the standard NES-CF classifications.

With the proposal to repeal regulation 6(4A), it is unclear how the proposed changes will allow councils to delineate no-go areas, where any form of commercial forestry is too risky. The repeal would remove the ability for councils to have additional flexibility around where afforestation occurs. Environmental damage from commercial forestry is not limited to harvesting. Landslides and woody debris discharges can occur in growing forests where exotic trees are planted in the wrong place. To some degree, these risks in a production forest are managed indirectly through regulations that manage harvest risks. The same cannot be said for permanent carbon forests, which will never be harvested. The best way to manage those risks is through regulation of afforestation. I recommend retaining regulation 6(4A).

It should also be noted that the decision to repeal regulation 6(4A) is not based on evidence. The iRIS clearly states that "Amendments or alternatives to 6(4A) were not developed further because the Government has a clear policy intent to repeal the regulation".[8] Consequently, a full option analysis was never developed, limiting evidence-based policy development. This is not a good way to make sound, durable regulation.

I am not opposed to replacing the current blanket requirement to remove slash from the cutover with a triage-based risk assessment approach to identify areas where removal is essential. Due to the coarse nature of the Erosion Susceptibility Classification (ESC) mapping (see Box 1), I only support the removal of the blanket requirement if the risk matrix is applied to harvests in all ESC zones (green, yellow, orange, red), to capture any high-risk areas that might exist, not just in the "orange-zones" of the ESC classification.

As a concluding point, the NES-CF is not sufficiently future-proofed to manage the risks from severe weather, which are likely to increase both in frequency and severity with climate change. Rather, the proposed changes take us in the opposite direction by lessening the ability of councils to manage risks through the NES-CF. We know from research and investigations post-Cyclone Gabrielle that the scale of clear-fell areas can be an issue. There have been clear recommendations to limit their size in terms of the proportion of a catchment that can be clear-fell harvested at any one time.[9] None of the proposed changes to the NES-CF address this fundamental concern. Inconvenient though it may be for forestry companies, we must address place-based assessment of risk.

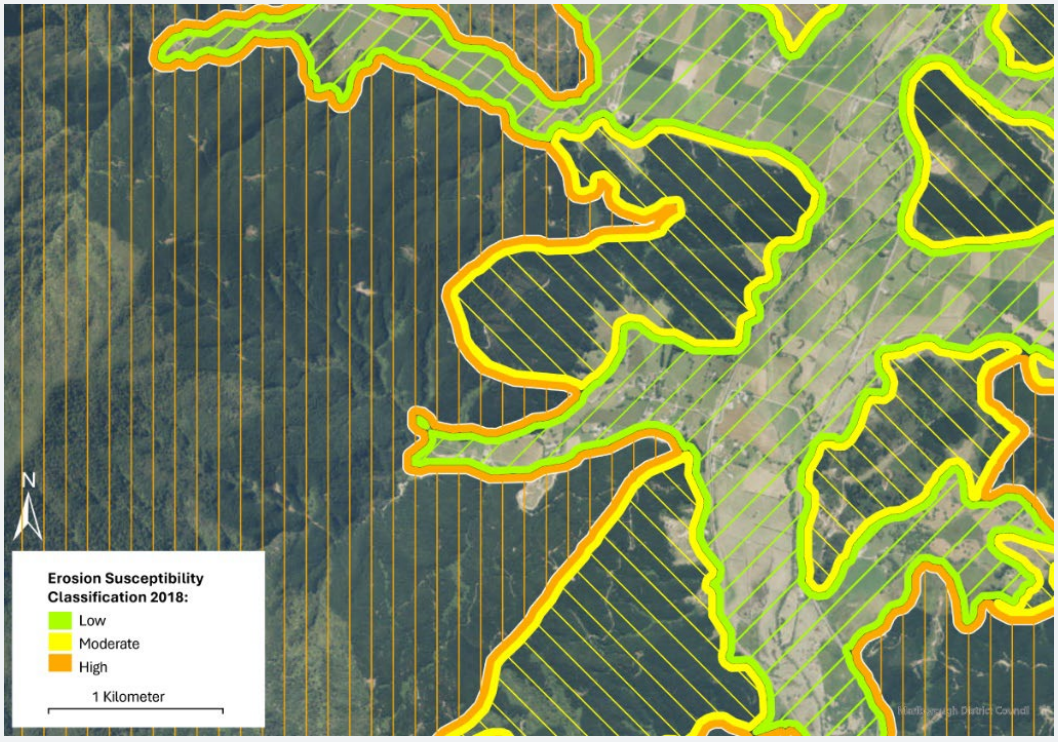
[7] Ministry for Primary Industries (MPI), 2024a. Forestry and wood processing data. https://www.mpi.govt.nz/forestry/forest-industry-and-workforce/forestry-wood-processing-data/
[8] See *Regulatory Impact Statement: National Environmental Standard for Commercial Forestry, p. 22*
[9] See *Outrage to Optimism 2023;* Bloomberg & Urlich (2025, *in press*) *Lessons for steep land forestry harvesting in New Zealand from recent Resource Management Act prosecutions*. In: NZ Journal of Forestry, August 2025, Vol. 70, No. 2.

Box 1: Erosion Susceptibility Classification (ESC) used in the NES-CF inadequately identifies risk

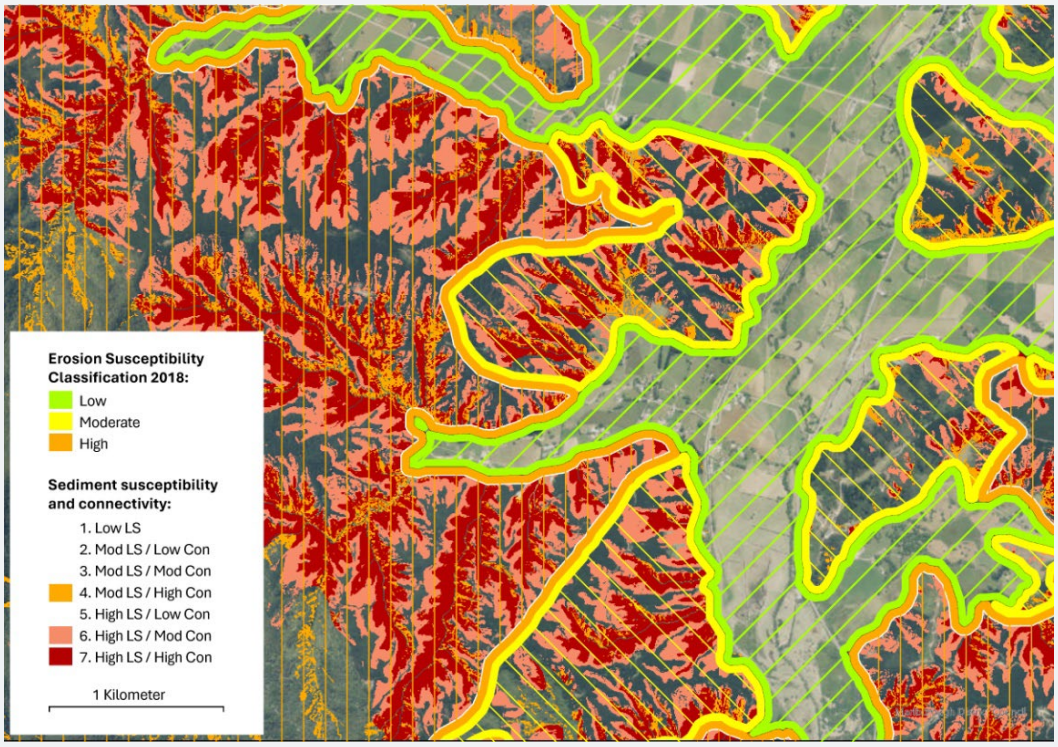
Currently, the national criterion for afforestation relies on the Erosion Susceptibility Classification (ESC) in the NES-CF, which is derived from the Land Use Capability (LUC) classification. I am currently preparing a short publication on the LUC and ESC classifications, where I voice my concerns about using these tools to underpin national policy direction because they are dated and coarse, amongst other shortcomings.

To illustrate, the ESC does not offer the granularity of information required to make robust and enduring decisions on afforestation and forest management, as it is only available at 1:50,000 scale. To be useful, erosion risk to inform afforestation and forest management should be mapped at a finer scale, ideally 1:10,000. The information and underpinning data should be publicly and freely available, funded by central government – I have made this point several times before.[10]

Where councils do have more granular, high-quality information, then this should underpin decisions on afforestation and forest management. For example, Marlborough District Council uses the results of recent research by Manaaki Whenua -Landcare Research, (now part of the Bioeconomy Science Institute), which identifies and prioritises areas of landslide susceptibility and connectivity to waterways to provide advice on targeted management. These areas include areas of low, moderate and high susceptibility and connectivity. The maps below illustrate the contrast between the coarse resolution of ESC zones compared with the much more fine-grained output of recent MWLR research.



[10] See PCE (2024) Going with the Grain: Changing land uses to fit a changing landscape; PCE (2025) A federated system to improve environmental information



Source: Adapted from maps supplied by Marlborough District Council.

Figure 1: The top map (map A) shows erosion susceptibility of land in Marlborough according to the ESC. The bottom map (map B) shows erosion susceptibility of the same land using the ESC and the outputs from Manaaki Whenua – Landcare Research's (MWLR) landslide susceptibility and connectivity research. The maps show that the yellow moderate ESC zones are not homogeneous – these large zones contain areas that have high landslide susceptibility and high connectivity to waterways. These areas need more land use controls than the NES-CF currently provides. Orange high ESC zones are not homogenous either, as they contain areas that have low landslide susceptibility and low connectivity to waterways. These are the areas where current settings in the ESC may be too stringent. This demonstrates that the ESC zones are coarse; the outputs from the recent MWLR research are more fine-grained and are better placed to inform targeted management.

New Zealand Coastal Policy Statement

The NZCPS aims to promote the sustainable management of natural and physical resources of the New Zealand's coastal marine area. New Zealand's coastal marine area spans from subtropical to sub-Antarctic regions. This vast area, often remote from any inhabited region, contains an exceptional range of environments that support remarkable biodiversity, establishing it as a globally significant biodiversity hotspot. Just as importantly, the coastal marine area at large provides important benefits for New Zealanders and the New Zealand economy.

I wish to raise two matters concerning the proposed amendments to the NZCPS:

- the proposal to strengthen the language in policy 6 (activities in the coastal environment), to better enable the use and development of the coastal environment for the Government's priority activities; and
- recognising the operational need of priority activities in the coastal marine area.

The NZCPS provides direction on how some matters of national importance in section 6 of the RMA must be protected. This includes indigenous biodiversity (Policy 11), natural character (policy 13), and natural features and natural landscapes (Policy 15). They are referred to as the "protection policies". Each of the protection policies contains 'avoid' requirements to protect these domains from adverse effects. Strengthening the language in Policy 6 of the NZPC to make it more directive in a way that is similar to the language in Policy 9 on ports will elevate the importance of priority activities in decision making and soften these 'avoid' requirements.

If this amendment were confined to public infrastructure, it could be acceptable. Infrastructure, such as transmission and energy generation, provides long run public benefits. While the specifics of sites will differ, the built assets and their attendant risks are well understood. However, priority activities such as resource extraction introduce the possibility of one-off, private developments that involve significant and more often than not irremediable environmental harm. In this respect, the proposal continues the approach taken under the Fast-track Approvals Act, which has permitted the Government to identify projects of predominantly private benefit to gain easier access to publicly owned resources.

Unlike much infrastructure, the risks and trade-offs of resource extraction are usually site specific and rely on bespoke research and information-gathering. A significant level of uncertainty is almost inevitable, with the result that the robustness of any assessment of costs and benefits will likely be compromised. What is certain, however, is that any benefits are likely to be largely and unequivocally private in nature. In my view, private activities deemed to be political priorities should not be treated in the same as ports (as in Policy 9) or other public infrastructure, as these provide important public benefits.

Giving recognition to operational needs in the coastal marine area will also make the NZCPS more lenient and invite more activity. The operational needs test clearly intends to enable greater use of the coastal marine area. Expanding the test from functional to also include operational would vastly broaden the number of activities that can take place in the coastal marine area. In the absence of any limitations or restrictions on this language, almost any activity could occur in the coastal marine area. From the consultation document, it is unclear *how* the operational needs test would be examined and weighted. Would it be as important as the functional needs test? To what extent would a consent applicant have to prove their operational need to be in the coastal marine area versus somewhere else?

Infrastructure providers and developers that seek to operate in the coastal marine area will identify this preferred location or route based on private considerations – 'which locations maximise the return on investment associated with this project'. If public costs are also considered, it is quite possible that alternative routes and locations would be preferred. I have

echoed similar sentiments regarding the operational needs test in my submission on Package 1 on infrastructure.

In addition, the iRIS provides poor evidence that the proposed change would lead to the desired outcomes, indicating that it is unclear if changes to the policy statement would address the issues it seeks to remedy (more certainty and more development).[11] There is also poor evidence about the types of activities that might seek out consent once the proposed amendments are in place, with the risk that lower value activities could displace higher value ones.[12] As noted in the iRIS, other options would provide more certainty for developers of priority activities and enable better protection of high value coastal marine areas, such as mapping high value areas that are out-of-bounds for development or creating allocation provisions in plans to ensure the right activities are approved: in effect, undertaking spatial planning of the coastal marine area.[13]

National Policy Statement for Highly Productive Land

Highly productive land (HPL) is currently defined within the NPS-HPL using the LUC classification system. The proposed amendment would change the definition of HPL to encompass only LUC 1 and 2, rather than LUC 1, 2 and 3. In addition, the consultation document proposes to introduce Special Agricultural Areas (SAAs).

I am currently preparing a short publication on the limitations of the LUC classification system and challenges encountered when it is used in a regulatory context. Based on my findings so far, I believe that the LUC classification and the associated national datasets, as they currently stand, are unfit for the regulatory instruments they underpin. A better approach would be the identification of Special Agricultural Areas (SAAs) based on several sources of targeted and granular environmental information, including soil, climate and current land use, to name a few.

The NPS-HPL relies on the LUC classification and the accompanying New Zealand Land Resources Inventory (NZLRI) LUC dataset. This NZLRI LUC dataset was compiled in the 1970–1990s, has a coarse scale of 1:50,000 and is now dated. Relying on such coarse and dated information will make it challenging for regional councils to identify precise areas of highly productive land in their regions. The scale (1:50,000) is too coarse to be meaningfully used at a paddock or property scale, which needs information at a nominal scale of 1:5,000–1:15,000 depending on management intensity. This raises the question of who pays for such granular mapping to implement national direction based on poor environmental information.

Under the proposal, the use of the coarse NZLRI LUC dataset as a default dataset will become a particular issue at the boundaries between LUC 2 and LUC 3 land classes, where landowners may have to prove their land is LUC 3 so that they can change land uses away from primary production to enable residential development.

But the same problem of potential misclassification of land arises with respect to the mapping and definition of LUC 1 and LUC 2 as HPL. Removing LUC 3 from the definition of HPL would

[11] The New Zealand Coastal Policy Interim Regulatory Impact Statement, p. 6
[12] The New Zealand Coastal Policy Interim Regulatory Impact Statement, p. 20
[13] The New Zealand Coastal Policy Interim Regulatory Impact Statement, p. 20

roughly reduce the total New Zealand land defined as HPL from 15% to 5%. While I support the removal of LUC 3 land, its removal will mean that HPL will not appear as large and geographically cohesive areas, as areas of LUC 3 land usually surround areas of LUC 1 and 2 land.[14] As a consequence, smaller and more isolated parcels of land will need to be mapped as HPL. Logically, this would need to be much more granular to avoid boundary disputes.

Land Use Capability classification and associated data should not be used to identify these zones. Instead, more granular mapping should be undertaken that can reveal a range of environmental data, including soil types and soil properties, climate, land use and its current productivity. This should result in high quality information, which will in turn lead to decreased debates about the boundaries of highly productive land which would lead to more enduring zones.

I recognise the importance certain agricultural areas play for our domestic and export-oriented food growing. I support the idea of designating Special Agricultural Areas (SAAs). These areas should be used instead of the HPL areas as it is currently defined in the NPS-HPL. Nor should SSAs be limited to pre-determined areas, like Horowhenua and Pukekohe. The proposal to enable Commercial Vegetable Growing (CVGs) (see my comments below) should be folded into the SAAs, rather than becoming a separate instrument.

The creation of zones should be based on specific standards that are collaboratively developed across the country by central government with regional councils and respective industries based on several criteria, including the inherent properties of the land, current land use and proximity to infrastructure. This will require high-quality more granular information of the sort outlined above.

The process of establishing SAAs raises several questions, but two are critical:

- What is the pathway into SSA status? This question becomes particularly relevant after the initial mapping of SAAs and as our food growing methods and needs evolve and change over time.
- Is there a pathway out of SAAs? Particularly, I am thinking of when landowners come to the end of their careers in food growing but cannot find any succession arrangements.

Regarding the timeframes for the mapping of HPL, I have surveyed regional councils as part of my upcoming short publication on the LUC classification and its use in a regulatory context. Many councils are already working on their HPL mapping, and some have even completed it. Changing the rules of engagement halfway through the game means that regional councils will need more time. If changes are made to the NPS-HPL and the mapping requirements now, these should not be then changed again by the upcoming RMA reform.

[14] Note that the discussion document is less clear about this and is explicitly asking whether amending "large and geographically cohesive" in clause 3.4(5)(b) would be needed as a consequential amendment.

Changes to NPS-IB, NPS-FM, NES-F and NPS-HPL to enable quarrying and mining

The consultation document proposes to align the terminology and gateway tests to provide for consent pathways for quarrying and mining activities that adversely affect significant natural areas (SNAs), wetlands and highly productive land (HPL).

The proposal is to remove the gateway tests ("public benefit test" and "that could not otherwise be achieved using resources within New Zealand") from the National Policy Statement for Indigenous Biodiversity (NPS-IB) and NPS-HPL and to introduce the operational needs test for the NPS-FM and the National Environment Standards for Freshwater (NES-F). There are significant environmental risks associated with reducing the protection of SNAs and wetlands in particular.

The effect of these amendments would reduce the protection of SNAs, including wetlands, and could allow mining and quarrying activities in and around SNAs for a very low threshold ("any benefit") without the need for the mining or quarrying company to seek alternative locations.

The effects management hierarchy contained in the NPS-IB and NPS-FM would not provide meaningful protection for SNAs and wetlands due to a lack of environmental information and poor monitoring. To protect biodiversity, an effects management hierarchy requires a considerable amount of monitoring to measure and verify that biodiversity gains being claimed to occur elsewhere in lieu of local losses are real, additional and enduring. Consider the difference between removing a patch of old-growth forest at one location and planting some seedlings in another. The proposed amendments mean that adverse impacts will likely increase.

Biodiversity, such as that protected in SNAs, is predominantly a public good. Removing the public benefit test would essentially mean only the private gain would be considered while the public good aspects and the costs of losing biodiversity would be ignored. That is highly questionable. I therefore oppose the removal of the "public benefit" gateway test.

More generally, I do not believe that "for consistency" is justification enough to amend these gateway tests. The tests in different NPSs might be different for a reason: we have lost so many wetlands that it is well-advised to have a higher gateway test for any activities that could have adverse impacts on them. I have already voiced my concerns about including an operational needs test in the NPSs and NESs, as this would practically allow any activity to occur anywhere. It also questions the purpose of the functional needs test. If consistency is desired, I suggest you align the wording in all NPSs and NESs to the most stringent standard to protect our most vulnerable environments.

Resource Management (Stock Exclusion) Regulations 2020

Regulation 17 currently requires all stock to be excluded from wetlands that support threatened species, regardless of the size of the wetland or the intensity of the farming system. The proposal is to amend the regulation so that it would not apply to non-intensively grazed beef cattle and deer.

The evidence base supporting this proposal is extremely poor. We have limited information on wetlands, and this information base is likely to be made even more limited because of the proposal to remove wetland mapping requirements as part of the freshwater package consultation (see my comments below). The iRIS explicitly states that there is "extremely limited information on the number of wetlands which are captured by regulation 17… or the cost and benefits of this regulation." The iRIS assessing the stock exclusion regulations had minimal analysis on the impacts of the regulations regarding wetlands, due to the availability of information."[15] This is not good enough evidence on which to base regulatory changes.

Against the backdrop of this lack of information, we know that threatened species can occur in wetlands of any size. Wetlands supporting threatened species are likely to be quite sensitive.[16] As I say below, I think we should map **potential** wetlands to assess which ones might be sensitive. Some wetlands, such as peat bogs or those where native vegetation is dominant (or strong seed banks exist), are best left ungrazed to encourage native regeneration and avoid the introduction of pest plants. Existing protections for these sensitive wetlands should be retained and sensitive wetlands should be fenced. Given that the benefits of such protection are largely public, it would be reasonable to provide some public subsidy. An Emissions Trading Scheme that operated properly could provide the Crown with the income to explore these possibilities.

The claims New Zealand likes to make about the environment in which it produces high quality food are undermined by regulatory settings that effectively facilitate the further degradation of our already seriously damaged biodiversity. I doubt many farmers in possession of wetlands would like their products advertised as being "produced at the expense of threatened indigenous biodiversity".

[15] Interim regulatory impact statement: Options to amend regulations for farming activities, p.4.
[16] Wetlands harbour specialised flora and fauna and are sensitive to shifts in nutrient and sediment inputs. Consequently, they are prone to rapid transformations in response to hydrological and nutrient disturbances that alter species' compositions and ecological processes. Sorrell B, Gerbeaux P. 2004. Wetland ecosystems. In: Harding J, Mosley P, Pearson C, Sorrell B, editor. Freshwaters of New Zealand. Christchurch: New Zealand Hydrological Society Inc and New Zealand Limnological Society Inc; p. 28.1–28.15.

Freshwater (package 3)

Overarching comments

The proposals in the freshwater discussion document (package 3) do not represent a well-considered approach, and in my view, will not reduce the likelihood of future change. They are unlikely to provide the stability of an "enduring freshwater management system" noted in the iRIS.[17] As noted above, there have been four iterations of the NPS-FM since it was first introduced in 2011. This is going to be the fifth iteration in 14 years.

Assessing the proposals, including their environmental impacts, is made harder by the fact that the discussion document does not have any developed drafting for any of the proposals. It explicitly states that further consultation will be undertaken on an exposure draft of proposals to amend freshwater national direction later in 2025. However, the wording of that exposure draft might be different from the proposals in the discussion document. Further, as mentioned above, it is not exactly clear how the proposed changes with regards to freshwater management will work in the new resource management system that is proposed to be tabled in the House later this year with a view to the new system coming on stream in 2027.

The discussion document explicitly asks, "whether any of the changes proposed ... should be implemented now, or if they should instead be incorporated into or made under the upcoming replacement legislation for the RMA."[18] On that question, my view is clear: the proposals should be part of the replacement legislation for the RMA. It seems silly to be running the two processes in parallel.

Below, I provide more detailed comments on most of the proposals, which should be considered in the event that the proposals are moved forward.

Rebalancing freshwater management through multiple objectives

I have concerns about this proposal. Overall, the proposal to "rebalance freshwater management" is weakening environmental considerations when managing freshwater across the country, so will likely have significant environmental impacts.

While a single objective brings clarity, the need to balance multiple objectives tends to make things more ambiguous and more uncertain. Balancing conflicting objectives without much guidance on prioritisation is challenging. The balancing will almost certainly have to happen at the regional catchment level (or sub-catchment level). The complexity of the process invites a large degree of discretion, which increases uncertainty and risks flux as local political mixes change (unless the balancing is to be done by local government officials).

Balancing becomes even more challenging when catchments are over-allocated and water bodies degraded. Tough trade-offs will result in losers. From an environmental point of view, in places where water is already seriously degraded or over-allocated in terms of quantity, the

[17] Interim Regulatory Impact Statement: Replacing the National Policy Statement for Freshwater Management 2020, p.16.
[18] MfE, 2025. Package 3: Freshwater – Discussion document, p.11.

balancing of multiple objectives should be in favour of the environment. But as this may require some restriction on pure economic growth, this will be politically challenging.

Rather than debating policy settings that will change as the political mix of decision makers changes, we should focus on practical improvements on the ground. The main barrier to getting improvements on the ground is **not** the national objectives framework, nor Te Mana o Te Wai (discussed more below). The key barrier is a lack of consideration by successive governments and successive reform attempts to deal with over-allocation. I think this issue is a much more important matter to concentrate on than anything in this proposal. I shall return to this point at the end of my submission.

Previous versions of the NPS-FM (2011, 2014 and 2017) all had multiple objectives. For example, the NPS-FM 2017 included objectives to "safeguard the life-supporting capacity, ecosystem processes and indigenous species … in sustainably managing the use and development of land, and of discharges of contaminants" and to "enable communities to provide for their economic well-being, including productive economic opportunities, in sustainably managing freshwater quality, within limits".

Inclusion of an explicit objective to consider the pace and cost of change feels pointless as councils do that already through community consultation processes. The iRIS notes that "there is a common misconception that under the NPS-FM, water quality and bottom lines must be achieved right away, and that pristine water quality is what must be achieved." But as the iRIS continues, "a timeframe by which targets (environmental limits) must be met has never been specified by the NPS-FM."[19] Indeed, in my interactions with regional councils, I have heard that long timeframes for changing degraded water quality trends have always been seen as appropriate and can be established by councils. I have to question whether the issue that the proposals claim to be addressing are even an issue. They appear to me to be the result of unsubstantiated claims that are wide of reality on the ground.

I support the proposed inclusion of the requirement to maintain or improve freshwater quality as an objective of the NPS-FM. In my view, the wording of the objective needs to require the quality of freshwater to be maintained or improved. (In effect this means requiring degraded freshwater ecosystems to be improved, and all other freshwater ecosystems to be maintained or, if a community chooses, to be improved). I do not support the wording that requires the **overall** quality of freshwater to be maintained or improved within a freshwater management unit, as it could allow for significant localised degradation of water quality provided improvements were made elsewhere (through the reference to "overall" improvement).

I comment on the other proposed objectives providing for vegetable growing and water security later in this submission.

Finally, while the discussion document is clear that regional councils will be required to balance multiple objectives, it is less clear about the stage in the process that this balancing needs to occur. In other words, will the balancing of multiple objectives be undertaken in the

[19] The freshwater interim regulatory impact statement (iRIS), p14

regional plans or through the resource consenting process and in the individual resource consents? This needs to be clarified.

Rebalancing Te Mana o te Wai

The freshwater iRIS states that one of the key issues being addressed by the proposals is that "Te Mana o te Wai provisions could be clearer and more certain about the meaning of the concept and how it operates."[20] It also notes that "The Government is also concerned that Te Mana o te Wai is not correctly balanced and lacks clarity as to how it is intended to operate".[21]

The concept of Te Mana o te Wai is undeniably aspirational. But the idea that it has imposed some cast-iron hierarchy that leads only to a condition of pristine quality is undone by the very words of section 1.3 of the NPS-FM 2020 that suggests a fairly pragmatic understanding of what needs to happen: "Te Mana o te Wai is about restoring and preserving the balance between the water, the wider environment, and the community." The notion of a balance is there in black and white. There will be different implications for different water bodies depending on where current imbalances lie.

Obviously, achieving balance will be much more difficult in overallocated catchments with degraded waterbodies. Common sense suggests that water that is loaded with *E.coli* and nitrates is out of balance with natural environmental values and human health. Steps need to be taken to re-establish a balance. What that balance is will inevitably reflect political and community preferences. On the other hand, it is a perfectly serviceable starting point for water that is in good shape. Where the 2020 drafting may have created problems is leaving the impression that the starting point for decision-making is always the same. It isn't – even if the outcome that is sought is an overarching improvement in water quality. In my view, we shouldn't get hung up about a high-level concept when it is practical improvements on the ground that matter. It should be possible to provide guidance on how to operationalise the practical application of Te Mana o te Wai. I agree with the proposal to remove application of the implied hierarchy at the level of individual resource consents. That is something that should apply at a higher level.

Equally, I don't believe the sky would fall in if we reverted to the 2017 version. Those who think it might provide an easier ride should reflect on its language:

> "Te Mana o te Wai is the integrated and holistic well-being of a freshwater body … By recognising Te Mana o te Wai as an integral part of the freshwater management framework it is intended that the health and well-being of freshwater bodies is at the forefront of all discussions and decisions about fresh water, including the identification of freshwater values and objectives, setting limits and the development of policies and rules. This is intended to ensure that water is available for the use and enjoyment of all New Zealanders, including tangata whenua, now and for future generations."

To be frank, adjudicating between these different versions has more than a whiff of the sort of doctrinal disputes that ignited the Reformation. Another outbreak of legal wordsmithing is not

[20] The freshwater interim regulatory impact statement (iRIS), p1
[21] The freshwater interim regulatory impact statement (iRIS), p1

what is needed – particularly when the Resource Management Act is about to be replaced with completely new law. It is a distraction that we don't need at the moment.

The immediate practical problem is well understood: in some regions of New Zealand, pressures on either the quantity or quality of water – or both – are such that we have allocated to ourselves more than the resource can yield. Difficult decisions will have to be taken, and they can only realistically be taken at the level of the catchment, in consultation with all those who live there and with a clear sense of who pays and over what timeframe. In my report *Going with the Grain,* I tried to crystallise some of the hard questions and ways forward[22]. They do not involve arcane legal drafting issues. They are much more to do with information, money and timeframes.

Providing flexibility in the National Objectives Framework

I support providing regional councils with greater flexibility when it comes to implementing the National Objectives Framework (NOF), while retaining a core set of compulsory values, attributes and bottom lines (with optionality for local circumstances).

The core set of compulsory attributes should include, but not be limited to, the four major contaminants – nitrogen, phosphorus, sediment and *E. coli*. Beyond the compulsory set, councils should monitor (at least some) optional attributes, and take action where they show degradation, taking into account local circumstances.

As I mentioned in *Going with the grain*, taking action to deliver practical on-the-ground improvements should be focused on overallocated catchments with degraded waterbodies. The research undertaken to date, including the map from Our Land and Water National Science Challenge presented in my report, provides a good starting point for prioritisation of catchments and assessing the size of the job ahead.

The setting of environmental limits should sit firmly with regional councils guided by central government, not with non-public institutions such as catchment groups. I emphasise this here, not in response to your consultation document, but as a reaction to the cabinet paper underpinning it.[23] In *Going with the Grain* I was very clear that central and regional levels of government must set the direction of travel ('the **what**', i.e. what environmental limits). Those limits are ultimately political, and elected officials have to be able to defend them.

Catchment groups may contribute to discussions and decisions on **how** on-the-ground action can achieve these limits (e.g. environmental mitigations are implemented or **how** land use change is rolled out). This separation is critical to ensure transparency and accountability.

Importantly, to be able to effectively choose attributes and manage them, councils will need both resources and better guidance on selecting and then managing attributes. However, from the discussion document, it is unclear what process the councils will need to follow to have greater flexibility, including selecting values and attributes. One risk associated with greater

[22] PCE, 2024. Going with the Grain: Changing land uses to fit a changing landscape.
[23] Cabinet paper: Replacing the Resource Management Act 1991 – Approach to development of new legislation, paragraphs 56 and 57 on pp. 9–10

flexibility is the increased litigation risk through the freshwater planning process. While this risk could be decreased with access to resources, clear guidance and a pool of technical expertise, it will not be completely mitigated.

One of the questions the discussion document poses is whether councils should have flexibility to deviate from detailed methods for monitoring attributes. I note that variations in the monitoring methods risk consistency of national data and long-term datasets. As I have highlighted several times in my previous reports, inconsistencies pose challenges for obtaining a full picture of what's happening with freshwater across the country. If the methods prescribed in the NPS-FM 2020 have become outdated, then it makes sense to update them. As above, councils would benefit from resources and better guidance on the methodology and any deviations.

Finally, I want to point to a stark difference between the intended changes to the NPS-FM and the NES-CF. While this proposal strives to increase regional councils' flexibility in the context of the NPS-FM and the NOF in particular, the NES-CF proposals strive to limit regional councils' flexibility.[24] Both the NPS-FM and the NES-CF are national instruments under the RMA, so shouldn't the same logic apply to all national instruments (especially given the goal of moving to a more consistent regime for national direction)?

Enabling commercial vegetable growing

This proposal seeks to recognise the importance of commercial vegetable growing either via creating a new objective in the NPS-FM or developing new national standards for commercial vegetable growing.

As noted in the iRIS, prioritising one sector (horticulture) constrains the ability of other sectors to pollute. The constraint will be greatest in catchments where either water quantity or quality is already close to fully allocated or over-allocated. Giving preference to one sector at the expense of other sectors should only be done through a rigorous assessment process that includes looking at the costs, benefits and the trade-offs involved.

I do not think that special rules for vegetable growing should be limited to pre-determined geographical areas, like Horowhenua and Pukekohe. Rather the areas they might apply in should be selected using objective criteria.

Establishing special rules for vegetable growing limited to certain areas overlaps with the proposal to establish special agricultural areas (SAAs) under the NPS-HPL. In my view, recognising the importance of commercial vegetable growing is better done by identifying special horticultural zones – essentially undertaking spatial planning. These special zones should have specific standards that must be met to be able to grow X and Y crops without a consent. Part of the standard should be notification to local council with details of the activity.

The points I made earlier in this submission about defining SSAs are relevant here and should be considered if the Government chooses to proceed with special treatment for vegetable growing.

[24] See the proposal to repeal regulation 6(4A) in the NES-CF.

Addressing water security and water storage

This proposal seeks to provide for water security either via creating a new objective in the NPS-FM or developing new national standards (or amending the NES-F) that permit the construction of (off-stream) water storage.

In my view, this is best dealt with in the context of the broader resource management reform. This is because:

- there are three large-scale water storage projects (Tukituki/ Rautaniwha Dam; Klondyke /Ashburton water storage and Balmoral/ Hurunui water storage) that are being fast-tracked under the new legislation, and
- regional councils have expressed concerns, as captured in the iRIS, about the problem this proposal is trying to address. As mentioned in the iRIS, there may be no need for national regulations as there are already good regional rules enabling provision of water storage. Further, councils tend to be permissive about the construction of dams on farms (off-stream).[25]

Simplifying the wetlands provisions

This proposal aims to make several changes to the current provisions for wetlands.

I support the proposals to incentivise wetland construction and edge-of-field mitigations. I also support the proposals to make activities that are unlikely to have an adverse effect on a wetland (e.g. fencing) a permitted activity.

However, I have concerns with the other proposals. While I understand the policy intent to exclude low-value wetlands from protections and make it easier to undertake activities, I am concerned about environmental impacts. These impacts will depend on the definition of wetlands and interpretation of these definitions. We still need a good, practical definition of what a low or high value wetland is. If these definitions are too liberal and too many wetlands are considered low value, then there is a real risk of losing even more wetlands. Unfortunately, New Zealand does not have many wetlands left. Some 90% of natural wetlands have been lost since human settlement began, and degradation and loss of the ones that remain is ongoing.

Changing the definition of wetlands yet again will create further uncertainty. The existing definitions of wetlands have been tested in Courts, with judgements providing clarity.[26] Any change of definition will likely induce further court action to provide clarity on what that new definition means in practice.

The proposed definition of 'induced wetlands' as "wetlands that have developed **unintentionally** as an outcome of human activity for purposes other than creating a wetland or water body" is confusing to the uninitiated. [27] This is because the term 'induced' means

[25] Interim Regulatory Impact Statement: Water security and water storage, p.13.
[26] For example, see Greater Wellington Regional Council v S L Adams [2022] NZEnvC 25; and Page v Greater Wellington Regional Council [2024] NZCA 51. Parts of the second case went all the way to the Supreme Court – see Page v Greater Wellington Regional Council [2024] NZSC 179.
[27] MfE, 2025. *Package 3: Freshwater – Discussion document,* p.26.

intentional in all other uses of this word. If this definition is interpreted as wetlands that appeared as a result of human activity since human settlement of this country, this definition is very liberal and could include many of the remaining wetlands.

I do not support the proposal to remove mapping requirements for wetlands altogether. It flies against everything I have been saying about the need for comprehensive high-quality information against the backdrop of extensive gaps in environmental information. Removing the requirement for mapping wetlands stands in stark contrast with the proposal to require mapping of drinking water sources (see below). Wet land has important consequences for a wide variety of environmental outcomes. I encourage finding practical and sensible solutions – the current proposal risks throwing the baby out with the bath water.

Instead of removing the requirement for councils to map natural inland wetlands altogether, one suggestion could be to modify the requirement to require mapping of **potential** wetlands. In practical terms, this could mean requiring councils to identify areas of potential wetlands using remote sensing and aerial imagery and requiring ground truthing as part of any development proposals or consent applications. We should harness the possibilities offered by 21st century technologies to generate maps of potential wetlands in a cost-effective way.

Addressing synthetic nitrogen fertiliser

I am concerned about the proposal to repeal the nitrogen cap altogether.

Ideally, the amount of fertiliser that can be used should be place-based and informed by environmental information on a catchment's ability to deal with nitrogen, including cumulative effects. In the absence of that, a blunt but not in any way onerous cap is probably a sensible thing to retain. The current cap is quite generous and has helped to reduce nitrogen application in certain areas, where too much of it was applied (i.e. beyond the soil's capacity) and money was being wasted. If there is no cap on the application of nitrogen, then discharge permits for fertiliser applications might be needed instead to ensure that the effects of nitrogen pollution remain within the carrying capacity of land and waterways.

It is also worth pointing out that the iRIS states that none of the stakeholders consulted questioned the cap, but more the reporting requirements.[28] The analysis in the iRIS favours aligning the reporting date with the farming calendar.[29] Reporting alignment is a sensible proposal.

If stakeholders have not called for removal of the cap, it raises the question of why removal is proposed at all. It seems to be a 'pet' solution in search of a problem rather than evidence-based policy making.

[28] Interim regulatory impact statement: Options to amend regulations for farming activities, p.6.
[29] Interim regulatory impact statement: Options to amend regulations for farming activities, p.3

Including mapping requirement for drinking water sources

I have concerns with this proposal, as it will lead to further fragmentation of the regulatory landscape.

In particular, I question the proposed addition of drinking water mapping requirements in the NPS-FM under the RMA as the overarching legislation, instead of the Water Services Act, which sets up the framework for managing wastewater, stormwater and drinking water across the country.

I also question the proposal to require regional councils to map drinking water sources, given the existence of a dedicated water services authority (Taumata Arowai) responsible for regulating drinking water.

In my view, the responsibility for mapping source water risk management areas should go to the Water Services Authority – Taumata Arowai. This will minimise regulatory and institutional fragmentation, especially if specific controls on high-risk activities in source water risk management areas are envisaged to be introduced at a later stage.

Finally, I want to point to a stark contrast between the proposal to remove the requirement for mapping wetlands and the proposal to add a requirement for source water mapping. The timeframe for mapping wetlands (10 years) was considered resource intensive and difficult. Of course, there is a public health imperative that could justify moving quickly and prioritising resources towards source water mapping within five years. However, I'm not sure that one should be instead of the other.

Concluding remarks

It is very difficult to evaluate disparate packages of ideas that do not appear to have any coherent strategy. Without a clear understanding of how any such changes fit into an eventual replacement for the current Resource Management Act, I can't recommend that any of it proceeds.

As I have set out in my report, *Going with the Grain*, I share the concerns that many MPs, farmers and kaitiaki appear to have about the impact of policies on land use. This includes previous iterations of the National Policy Statements on commercial forestry, freshwater, biodiversity, highly productive land and climate policy more generally (and the New Zealand Emissions Trading Scheme in particular). With freshwater in particular, we have spent 15 years as a society debating the ideal end point of regulation. As a result of this debate, the regulation itself will have changed five times assuming the current proposals proceed. These changes have been so constant that few councils have been able to implement anything. There have been millions spent on policy development and science at national and council level and millions more spent in courts.

In my conversations with farmers and kaitiaki since publishing my report, *Going with the Grain,* they have impressed on me the confusion that yet another round of tinkering is causing. From conversations in the paddock with many groups of farmers who are trying to make a difference, I can confirm that the latest round of changes is having a chilling effect that is leading people to lose interest. Over a decade's engagement and commitment risks being lost.

In the absence of any overarching direction, all I can do is suggest my own framework for making progress and comment on how these proposals fit or don't fit within it. You will recall that in my report, *Going with the Grain,* I suggested that four major changes are needed. I will reiterate each of these below and briefly comment on how the proposed changes contribute to achieving them.

1. **Bring decision-making closer to the people who are having to make significant management changes or even change land uses.**

Most of these proposals remove or try to weaken blunt regulations (N limit, allowing flex in bottom lines, vegetable growing). I accept that some of these regulations are blunt. That is, to some extent, the nature of regulations, particularly if they are to have any clarity and certainty. But their unintended or unwelcome consequences are often a consequence of trying to regulate on the basis of property boundaries. As *Going with the Grain* set out, any attempt to do so will be difficult.

The answer isn't just to remove or water down environmental protection but instead make them part of the incentive structure. In the absence of funding for catchment groups to undertake improvements (which doesn't seem to be on the table currently), blunt regulations are the only incentive at the government's disposal. Collaboration isn't easy and requires encouragement, ideally through a mixture of carrots and sticks. In the absence of carrots, the threat of sticks will be needed if the Government wants a more collaborative approach.

A better way forward would be to leave the current regulations in place as a default but provide for explicit exceptions where catchment or sub-catchment initiatives put forward proposals to manage local environmental pressures in innovative ways. If real environmental improvement is likely to result, these initiatives could be exempted from these blanket rules. The regional council would be responsible for agreeing to such proposals and monitoring implementation. In other words, regional councils would be required to regulate unless bottom-up catchment initiatives could demonstrate how collective progress could be delivered over time. How catchment initiatives like these would be funded is dealt with in 3 below.

2. Ensure there is cheap, easy access to high quality environmental information. This is an investment that needs to be made by the Government as a fundamental public good.

Some of the proposals would result in some improvements in the quality of information – for example, the mapping of drinking water sources. However, the bulk of the proposals are regressive in terms of their contribution to policies based on evidence – for example, the removal of the requirement to map wetlands or collect information on the use of nitrogen fertiliser. This information is essential to inform a catchment approach to reducing the environmental impact of land use.

The collection of all this information could be made less onerous as part of a more comprehensive and coordinated approach to information collection and sharing.

3. Be upfront about the potential cost of making changes and who is going to have to pay.

As noted above, I believe a key driver behind the wish to remove Te Mana o te Wai and introduce flexibility into bottom lines comes from a fear of the unknown – in particular, not knowing how to deal with instances of overallocation (of water quantity or quality). No previous iteration of the NPS for freshwater has dealt with this issue during the design phase, and as a result no regional council has solved it in their attempts to implement the policies.

Instead of changing Te Mana o te Wai or bottom lines to placate critics, confront the issue. Allow regional councils to continue to implement the policy as it stands, but as set out above, an exception could be made where catchments come together and develop proposals for dealing with catchment or sub-catchment level environmental issues. Central government should be prepared to contribute to effectively purchasing from one generation of landowners, improvements that will benefit future landowners and the wider community. But if it is not prepared to contribute, catchment plans could be funded to some extent by regional councils and farmers in their rohe (i.e. through targeted rates). I would venture to suggest that collaboration will be more effective if the stick of default regulation remains credible for freeloaders.

4. Phase out forestry from the NZ ETS

Despite the NZ ETS being the largest driver of land use change in the country, it continues to be thought of within the silo of climate policy. This carbon tunnel vision ignores the broader positive and negative externalities of land use change to forestry. In its current form, the NZ ETS is the major barrier to getting the right tree in the right place. I think the money currently incentivising planting of (mostly) monoculture pine forestry could be better spent by catchment groups as per the above. NZ ETS reform is, in short, a missed opportunity.

Rt Hon Simon Upton
Parliamentary Commissioner for the Environment
Te Kaitiaki Taiao a Te Whare Pāremata