



Cabinet

Minute of Decision

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Replacing the National Policy Statement for Freshwater Management 2020 and Addressing its Implementation in the Interim

Portfolios **RMA Reform / Agriculture / Environment**

On 11 December 2023, Cabinet:

Background

- 1 **noted** that:
 - 1.1 the National Policy Statement for Freshwater Management 2020 (NPS-FM) is a key driver of how freshwater is managed;
 - 1.2 the NPS-FM takes effect through the policies and rules set by regional councils in freshwater planning instruments, as well as influencing resource consent decisions prior to councils developing those rules and policies;
- 2 **noted** that the NPS-FM has a bespoke planning process set out in the Resource Management Act 1991 (RMA), which specifies that planning instruments giving effect to it must be notified by 31 December 2024;
- 3 **noted** that councils, along with communities, sector groups and tangata whenua have begun establishing catchment level targets and limits to achieve freshwater outcomes;
- 4 **noted** that the Government's Coalition Agreements include commitments to replace the NPS-FM to rebalance Te Mana o Te Wai to better reflect the interests of all water users;
- 5 **noted** that implications for Treaty of Waitangi settlements will need to be considered in the replacement of the NPS-FM to meet the Government's commitments to honour the undertakings made by the Crown through historical Treaty of Waitangi settlements, and that a meaningful engagement process will be required to achieve this;

Replacing the NPS-FM as part of the resource management priorities this term

- 6 **agreed** to review and replace the NPS-FM in the current term of government;

Extending the notification date for planning instruments to give effect to the NPS-FM

- 7 **agreed** to amend the RMA, through the Natural and Built Environment Act and Spatial Planning Act Repeal Bill, to extend the date that requires councils to notify their freshwater planning instruments by three years, from 31 December 2024 to 31 December 2027;
- 8 **authorised** the Minister for the Environment to issue drafting instructions to the Parliamentary Counsel Office to give effect to the proposals in the paper under CAB-23-SUB-0486;
- 9 **authorised** the Minister Responsible for RMA Reform and the Minister for the Environment to write to post-settlement governance entities and other relevant Māori groups and local government informing them of the date change;

Two existing extensions remain

- 10 **noted** that two extensions to the notification date have already been progressed for Hawke's Bay (to 2027) and Tairāwhiti/Gisborne (to 2026) through Orders in Council under the Severe Weather Emergency Recovery Legislation Act 2023 (SWERLA);
- 11 **agreed** that the Tairāwhiti/Gisborne date be extended to 2027 and that the Hawke's Bay date remain unchanged;

Providing clarity on NPS-FM and its application to resource consents

- 12 **noted** that the Minister Responsible for RMA Reform, the Minister of Agriculture and the Minister for the Environment (the Ministers) have concerns about how some councils appear to be applying Te Mana o Te Wai in individual consent applications;
- 13 **noted** that the Ministers do not believe that individual consent applicants should have to demonstrate how their activity does or does not adhere to the hierarchy of obligations contained in Te Mana o Te Wai, and that this was not the intent of the NPS-FM;
- 14 **agreed** to clarify that councils should not be requiring individual resource consent applicants to demonstrate that their proposed activity adheres to the hierarchy of obligations contained in Te Mana o te Wai provisions of the NPS-FM, and that this clarification be made through the Fast Track Consenting Bill, at this stage;
- 15 **directed** officials to provide advice early in 2024, in time for inclusion in the Fast Track Consenting Bill, on options to amend or exclude the hierarchy of obligations contained in the Te Mana o te Wai provisions of the NPS-FM when making decisions on consent applications;
- 16 **noted** that the approach set out in paragraph 15 above would allow advice to include the outcome of targeted engagement with iwi whose Treaty of Waitangi settlements include specific engagement commitments on freshwater policy matters and regional councils on technical matters;

Implementation

- 17 **noted** that extending the deadline for council notification of freshwater planning instruments and signalling that a replacement of the NPS-FM is imminent will have implications for regional councils that are now part way through developing freshwater planning instruments, but will also provide councils with the option of halting work on implementing the existing NPS-FM while a replacement is developed;

Communications

- 18 **noted** that, following Cabinet approval, the Minister of Agriculture and the Minister for the Environment intend to publicly announce the decisions outlined above.

Rachel Hayward
Secretary of the Cabinet