

ISSUE: Stock access to waterways - recent Wairua River complaints - council's response

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To: Environmental Management Committee meeting, 28 February 2012

From: Tony Phipps, Operations Director/Deputy CEO;
Riaan Elliot, Monitoring Senior Programme Manager

Date: 20 February 2012

Summary The purpose of this report is to provide an update on council's response to recent complaints regarding stock access to water. It concludes with the recommendation that the report be received and that the current ongoing and proposed additional responses be supported.

Introduction:

Over recent months council has received a dozen complaints about the lack of fences preventing stock from accessing waterways, in particular the lower reaches of the Wairua River.

This report provides some background on the water quality and policy/regulation framework for it, and a summary of the council actions to date and proposes further actions for the committee's consideration.

Stock in waterways and water quality

It is widely accepted that stock in waterways and grazing streambanks result in contamination of the water with dung, urine and sediment, and this reduces water quality. While the exact contribution in any individual situation is usually difficult to quantify and may be small, in larger catchments the cumulative effect of many small sources of contamination is significantly reduced water quality. In Northland, as across the country, most lowland streams in intensively farmed areas have significantly degraded water quality. Research reports, such as the NIWA (2002) report "Review of Environmental Effects of Agriculture on Freshwaters", conclude that excluding stock from waterways and streambanks is an important practice for improving degraded water quality in intensively farmed areas.

This approach has national endorsement. For example, the Land and Water Forum (<http://www.landandwater.org.nz>) in its 2011 report "A Fresh Start for Fresh Water" recommended that:

"Effective riparian management, including stock exclusion where topography allows, should be prioritised by pastoral industries as an important tool which contributes to improved water quality. In those areas where reticulated stock water is not possible or practical, and natural surface water is the sole source of water for grazing animals, provision for access to water must be allowed."

Wairua River water quality

NIWA regularly (monthly) monitors water quality in the Wairua River at Purua, a site close downstream from the Hikurangi swamp drainage scheme and the area of the recent complaints. The site is included in the council's Regional River Water Quality Network; and it is downstream of a large area of intensive pastoral farming. The water quality at the site is variable, with typically poorer water quality following significant rainfall/runoff events. For example, the median E.Coli bacteria counts (median of 73 n/100ml) over the last three years meet bathing guidelines (260 n/100ml) on more than half the sampling occasions, whereas some of the individual samples following runoff events are well outside the guideline. While it is one of the more impacted river sites in the region, regular monitoring since the mid 1990s has shown improving trends in most water quality indicators.

The Wairua site is also one of the Northland sites that is included in the 77 site national river water quality network. In the MfE (2007) published river water quality league tables, the Wairua ranked 54th and 71st out of 77 sites for the bacterial indicator E.Coli and nutrient level respectively. This shows that the water quality in the lower Wairua River is comparable to, and better than, many lowland rivers in intensively farmed catchments.

Stock exclusion from waterways - current regulation, policy and the Dairy and Clean Streams Accord.

There is no national regulation specifically requiring the exclusion of stock from rivers or riparian areas. While the Regional Coastal Plan for Northland requires the exclusion of stock from the coast (Coastal Marine Area) a less regulatory approach was adopted for the freshwater environment. The Regional Water and Soil Plan for Northland took a permissive approach and contains no rules requiring stock exclusion or fencing.

As an alternative to rules, the council, along with government and regional councils nationally, adopted (in 2004) the Dairying and Clean Streams Accord (DCSA) for inland water bodies in dairying areas. The DCSA is a voluntary (non-regulatory) approach promoting exclusion of stock from streams and other environmental initiatives to reduce the impact of dairying on water quality. There is no such arrangement covering dry stock farming.

The DCSA set a target of 50% of streams, rivers¹ and lakes fenced by 2007 and 90% by 2012. It was agreed through the Accord that monitoring of achievement of this target would primarily be by Fonterra, with farmers submit self monitoring surveys. Fonterra reported for 2010-11 that some 82% of Northland dairy farms reported that they had stock excluded from Accord defined waterways. By contrast a recent audit carried out by MAF found that the figure for Northland (based on a sample of 52 farms) was 33% (+/- 12%). (The audit found the national average to be 42% (+/- 4%) of farms had stock excluded.)

In response to the poor figures, Fonterra has recently written to all their supplying farms saying that as part of their terms and conditions of supply, the farmers have 18 months from the beginning of next milking season to fence all rivers, lakes and streams. Suppliers who cannot comply with Accord targets for exclusion and crossings as at 1 June 2013 will need to have an Environmental Improvement Plan in

¹ The DCSA targets apply to rivers defined in the Accord as "*deeper than a "Red Band" (ankle depth) and wider than a stride and permanently flowing.*"

place to resolve the non-compliance. Fonterra is to follow this up with visits in 2014 and ultimately with deductions or non-collection in 2015 if the plan is not implemented.

The lack of success so far of the voluntary regime indicates that more specific regulation and compulsion may be needed. It also indicates that while there may be acceptance of such targets and the need for environmental good practise at the corporate and national levels in the farming industry, acceptance is not universal amongst farmers, at least not to the extent that they act voluntarily. The difficulty with developing new regulation is that the public processes have historically proven slow and expensive, and farmers' groups and even government agencies have not supported, or have actively opposed, regulatory options. Current processes and changes to the regulatory and policy regime are discussed further below.

Responses to the Wairua incidents

Since 6 April 2011, there have been 12 incidents raised as a result of reports submitted in relation to the lower Wairua River. These have been reports of:

- Dead animals in the waterway (5)
- Cattle grazing river banks with no fencing present (6, some are repeats)
- Fertiliser stockpile close to water (1).

For each report received from the complainant, council raised an "incident" in its database systems and responded as follows:

- Where the incident involved dead stock, the land owners have been identified and have been required to remove the dead animal(s).
- Where complaints were about cattle grazing on the river banks, several different actions have been undertaken. To date these include:
 - Site visits to determine degree of adverse effects
 - Sending a letter to the farm owner requesting that they keep stock out of the waterways
 - Phoning the farm owner requesting that they keep stock out of the waterways
 - Visits by land management staff to discuss the issues with the farm owner
 - Issuing of an abatement notice.

Where incidents have occurred on land owned by Whangarei District Council as part of the Hikurangi Swamp Scheme, WDC have made an undertaking to amend their lease agreements with farmers to require stock watering troughs and fencing.

The abatement notice was issued where the grazing was of such intensity that more than minor adverse effects on water quality were likely. In this case the land next to the river had been heavily grazed and had little plant cover left.

Council is currently seeking legal opinion as to what, if any, other formal enforcement it may be able to take. Staff are aware that there have been several failed prosecutions taken by other regional councils for stock in streams. The Environmental Defence Society may also seek a legal opinion, on whether councils can take enforcement action to require farmers to fence water bodies to exclude stock. These opinions and their implications will be reported once available.

Other than enforcement, council's role is advice.

Advice

On request, or in this case following up on incidents, council's land management staff provides advice on stock exclusion options and the council has guidance material to help landowners. Staff note that there has been a significant increase in the number of enquires and requests for advice on keeping stock out of waterways since Fonterra sent out the letter advising that stock exclusion is to be a condition of supply.

In the case of the Wairua River, staff advice is that while it is an area subject to high flood flows and that fixed fencing may not be practical in some locations, there are cost effective stock exclusion fencing options in most cases and therefore no practical reason why farmers just can't get on and do it. This view is supported by some other farmers in the area that already have their stock excluded from the waterways.

Environment Fund support for riparian fencing

Fencing to exclude stock from streams, particularly where it supports council water quality priorities and achieving DCSA targets, is currently one of the priorities for funding support from the council's \$500,000 Environment Fund. In 2010-11, the fund provided \$135,000 to 24 farms for riparian fencing, and so far in 2011-12, \$162,000 has been approved for fencing for water quality projects.

Collaboration

Council staff are meeting with the complainants and farmers in the area to explore the potential for collaboration in developing and progressing local solutions. Meetings are being held firstly with individuals and then group meetings of the willing are proposed. It is hoped that this process will minimise the need for any further regulation or enforcement.

Policy development

There is opportunity both at national and regional level to change the current policy framework. Nationally, the government is pursuing its Fresh Start for Freshwater reforms (<http://www.mfe.govt.nz/issues/water/freshwater/fresh-start-for-fresh-water/>). The reforms include the National Policy Statement for Freshwater Management and the work of the Land and Water Forum, a stakeholder-led collaborative process building a consensus view on shared outcomes, goals and long term strategies for fresh water nationally. The Government may also take steps to make the development of new policy quicker and less onerous.

At regional level, the council is developing a new Regional Policy Statement and is preparing a plan for implementation of the requirements placed on it by the National Policy Statement for Freshwater Management. The draft RPS (released in October 2011) currently includes stock exclusion regulation as a method for assisting with improving water quality. The draft will be revised as a result of feedback received and will go out for public submission in the middle of this year, as part of the formal legal process for setting the resource management direction of the region.

The costs and benefits of proposals are also required to be tested and community views can inform this analysis as well. Council staff are encouraging those who are raising the stock exclusion issues to become involved in the process.

Any changes in the RPS will need to be given effect to by subordinate plans such as the Regional Water and Soil Plan.

Committee Workshop

Committee Chair, Cr Carr has asked that the committee be offered the opportunity of a workshop on the stock exclusion from waterways and related issues.

Proposed Further Responses

The following ongoing and proposed additional responses are proposed:

- Respond to individual incidents with advice and requests of farmers to exclude stock from waterways, and abatement notices where farmers do not respond to requests where there is sufficient evidence to support a notice.
- Facilitate meetings of farmers and concerned parties to collaborate in developing local solutions and agree on actions.
- Report on the legal opinions being sort on the use of current regulation and the implications thereof.
- Continue with development of new policy through the Regional Policy Statement process and in developing an implementation plan for the Northland response to the NPS for Freshwater Management.
- Hold an Environmental Management Committee workshop on stock exclusion from waterways and related water quality issues with the objective of advising the Council on options for addressing the issues.

Compliance with decision making processes:

The activities detailed in this report contribute to the Levels of Service detailed in the council's 2009-2019 Long Term Council Community Plan, and meet council's obligations under section 35 of the Resource Management Act 1991 and are in line with the council's decision making process and sections 76-82 of the Local Government Act 2002.

Recommendations:

1. That the report entitled Stock access to waterways - recent Wairua River complaints - council's response dated 20 February 2012 from Tony Phipps, Operations Director/Deputy CEO and Riaan Elliot, Monitoring Senior Programme Manager, be received.
 2. That the current ongoing and proposed additional responses taken by staff be supported, as follows
 - Respond to individual incidents with advice and requests of farmers to exclude stock from waterways, and abatement notices where farmers do not respond to requests where there is sufficient evidence to support a notice.
 - Facilitate meetings of farmers and concerned parties to collaborate in
 - Report on the legal opinions being sort on the use of current regulation and the implications thereof.
 - Continue with development of new policy through the Regional Policy Statement process and in developing an implementation plan for the Northland response to the NPS for Freshwater Management.
 - Hold an Environmental Management Committee workshop on stock exclusion from waterways and related water quality issues with the objective of advising the Council on options for addressing the issues.
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