Regulatory Impact Statement: Proposed Water Conservation Order: Te Waikoropupū Springs

Coversheet

Purpose of Document	
Decision sought:	*Whether to accept or reject the Environment Court's recommendation that a Water Conservation Order for the Te Waikoropupū Springs be made*
Advising agencies:	*Ministry for the Environment*
Proposing Ministers:	*Minister for the Environment*
Date finalised:	*12/09/23*

Problem Definition

The Minister for the Environment (the Minister) is required to either accept or reject the recommendation from the Environment Court to create a Water Conservation Order (WCO) to protect the outstanding values of the Te Waikoropupū Springs (the Springs). The Environment Court found that there was a progressive increase in potentially harmful contaminants that would impact the Spring's outstanding values. As the Minister's discretion is limited, the problem is whether a WCO would better protect the Springs than the policy process that will happen under the counterfactual.

Executive Summary

Ngāti Tama Ki Te Waipounamu Trust (Ngāti Tama) and Andrew Yuill, an engineer from Tākaka, applied to the then Minister for a WCO to protect the outstanding values of the Springs in April 2017. A Special Tribunal was appointed and held a hearing, ultimately recommending that an order be granted. Several parties made submissions to the Environment Court under s209 of the Resource Management Act 1991 (RMA). This triggered the requirement for the Environment Court to hold a public inquiry into the report (s210 of the RMA).

The inquiry process has recently concluded, and the Environment Court has recommended that the Minister accepts their recommendation that a WCO protecting the outstanding values of the Springs be created. The Governor-General may, by Order in Council made on the recommendation of the Minister, make a WCO in respect of any water body.

The Environment Court included a draft WCO that outlines minimum acceptable environmental states for various parameters of water quality to be achieved, and outlines timeframes for their achievement.

This Regulatory Impact Statement (RIS) explores, through use of analysis derived from the two sets of proceedings, the costs and benefits of the Minister either accepting or rejecting the recommendation to create an order.

In terms of costs, the Ministry for the Environment (the Ministry) considers that change from the counterfactual (under the counterfactual, Tasman District Council would work with their communities to release a plan achieving agreed outcomes for the Springs) would have relatively minimal impacts on resource users due to the upcoming deadline for

compliance with the National Policy Statement for Freshwater Management 2020 (NPS-FM). Under the NPS-FM, the Springs would need to be protected to ensure existing water quality is maintained or improved. This RIS assumes that under the counterfactual, the NPS-FM is fully implemented by Tasman District Council (who are required to notify a compliant plan by the end of 2024).

The WCO, if accepted, would create a specific instrument providing a level of national protection to the outstanding values of the Springs that have been identified by the Special Tribunal and the Environment Court. It would do this in a timely fashion and would provide a greater degree of permanence than a regional plan (which are amended from time to time and produced on the basis of the current regulatory framework).

For these reasons, this RIS has identified that the preferred option is for the Minister to accept the WCO.

Limitations and Constraints on Analysis

This RIS covers the legal process followed for a proposed WCO, the scope of the decisions that the Minister and Cabinet can make, and the scope of the Ministry's involvement / advice. In reading this RIS, it is important to note that the Special Tribunal and Environmental Court do the "impact analysis" and consultation, based on criteria in the RMA. This RIS has been prepared using information and evidence gathered through those processes.

The Minister (and hence Cabinet) has a binary choice, to either accept the recommendations of the Environment Court to recommend the creation of an order, or to not (in which case, they will have to present their reasons to the House of Representatives). There is no scope to change the WCO (except for very minor changes).

Accurately estimating the impacts of a proposal within a devolved system of resource management is inherently difficult. There is no easy way to predict how councils will choose to exercise their discretion (such as what timeframes would be used for 'maintaining' the current state under the NPS-FM), nor what mitigation measures resource users might choose to put in place to meet limits and over what timeframe.

To explain the above limitation in this context, while the draft WCO creates target attribute states,[1] it does not prescribe methods for achieving those targets, instead leaving this to the council (which is in a better position to design a pathway to achievement of those targets).

Additionally, it is more difficult to measure the value of environmental improvement / maintenance than it is to estimate the financial costs of mitigating pollution or other adverse effects on freshwater.

This RIS has been prepared relatively quickly and, for much of the analysis, has relied on the comprehensive submissions and analysis undertaken throughout the Special Tribunal and Environment Court processes. The Ministry has not undertaken further specific consultation with affected parties – though the Ministry notes that it is important that the Minister considers the report and recommendations of the Environment Court in arriving at their decision.

The reason for moving quickly is the impending compliance deadline for the NPS-FM. Tasman District Council will need to have notified a regional plan that implements the NPS-FM by the end of 2024. If this WCO application is accepted, then that plan will need to not be inconsistent with the terms of the WCO.

[1] Attribute means a measurable characteristic (numeric, narrative, or both) that can be used to assess the extent to which a particular value is provided for. A target attribute state is the level set for the council to achieve over time.

Responsible Manager	
Nik Andic *Manager* *Water and Land Use Policy* *Ministry for the Environment*  *12 September 2023*	
Quality Assurance (completed by QA panel)	
Reviewing Agency:	Ministry for the Environment
Panel Assessment & Comment:	A Regulatory Impact Analysis Panel from the Ministry for the Environment has reviewed the Regulatory Impact Statement (RIS) "Proposed Water Conservation Order: Te Waikoropupū Springs". The Panel considers that the RIS meets the quality assessment criteria. The Panel notes that even though the Ministry has not undertaken its own consultation on the options, the consultation requirement has effectively been met through the reliance on the engagement and submissions made during Special Tribunal and Environment Court processes leading to this point. Even though this RIS was prepared over a short time period the information provided supports the preferred option.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

What are Water Conservation Orders?

1. Water Conservation Orders (WCOs) are a tool under the RMA for recognising, at a national level, water bodies that are outstanding on a national basis and providing for their protection. A WCO identifies the outstanding characteristics or features of a water body and provides for their protection by way of restrictions on the use of the water. Regional councils must comply with the requirements of any WCOs when managing water in their region.
2. WCOs have, so far, never been used to improve current state and have only been used to preserve already existing outstanding values. The draft WCO produced by the Environment Court continues the trend of maintaining already existing outstanding values.
3. Ultimately, the point of the WCO system is to identify the outstanding values of New Zealand's freshwaters and protect them.

Te Waikoropupū Springs

4. Te Waikoropupū Springs (the Springs) and the Wharepapa Arthur Marble Aquifer are a complex and vast interconnected system of artesian springs, underground karst aquifers, and the Tākaka River and its tributaries. They are located in the top-west corner of the South Island in the Tasman District, and for Ngāti Tama ki te Tauihu, Te Ātiawa and Ngāti Rārua, they are one of the most sacred places in Mohua (Golden Bay).
5. The Springs are especially renowned for their high clarity and have important scientific and ecological values. The biotic and abiotic components of the ecosystem are sensitive to even small changes in water quality.
6. The Special Tribunal and Environment Court both found that the Springs have outstanding values and that there was a possibility that these outstanding values were under threat. In their decision, the Environment Court noted that "monitoring data, primarily gathered by members of Friends of Golden Bay Inc. ('FOGB'), revealed a worrying progressive increase in the Springs of levels of potentially harmful nitrate-nitrogen ('NO_3-N')."[2] Excess plant and algal growth, as a result of eutrophication of the Springs, would lead to decreased water clarity.

The counterfactual under the National Policy Statement for Freshwater Management 2020 (NPS-FM)

7. Under the counterfactual, the Springs will require protection through the National Policy Statement for Freshwater Management 2020 (NPS-FM). The NPS-FM is a key piece of national direction which establishes a management framework for both freshwater quality and quantity, and prescribes Te Mana o te Wai[3] as the fundamental concept to inform objectives. Regional councils are required to give effect to the content and requirements

[2] "*Report and Recommendation on Te Waikoropupū Springs Water Conservation Order*" p.4 at [6].

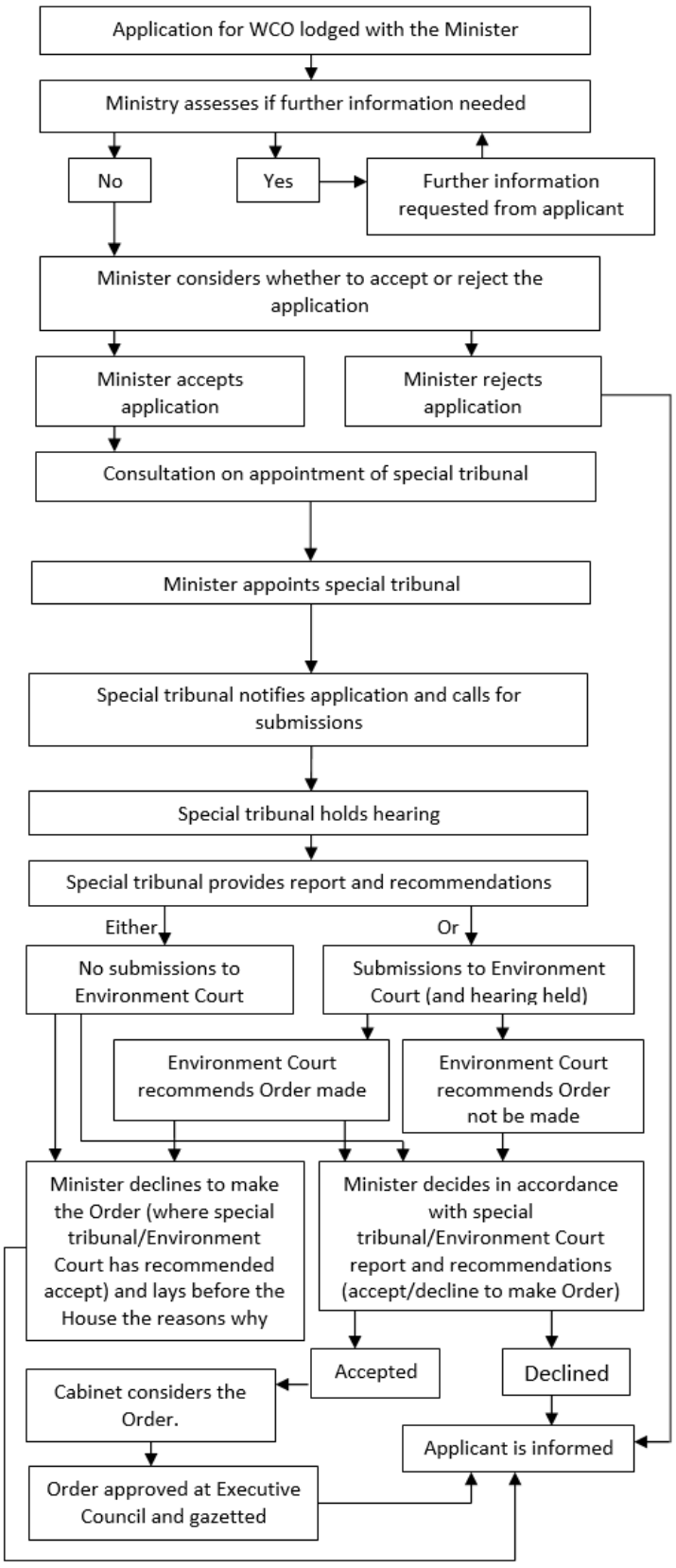
[3] *Te Mana o Te Wai* is a concept defined in the NPS-FM, that refers to the fundamental importance of water and recognises that protecting the health of freshwater protects the health and wellbeing of the wider environment. There is a hierarchy of obligations in Te Mana o te Wai that prioritises: (a) first, the health and well-being of water bodies and freshwater ecosystems (b) second, the health needs of people (such as drinking water) (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

set out in the NPS-FM, following a specific planning process as set out in the Resource Management Act 1991 (RMA).

8. Policy 5 of the NPS-FM requires regional councils to improve degraded water bodies against national bottom lines, and maintain or improve all others against baseline states[4] (referred to as the 'maintain or improve' requirements). For each identified attribute (eg, NO_3-N), regional councils must first determine the baseline state, set a target attribute state, and then establish a timeframe over which to improve or maintain that state through limiting resource use (eg, restrictions on the ability to discharge contaminants).
9. Regional councils, alongside their communities and iwi, are currently developing regional plans to give effect to the NPS-FM, including the timeframes to achieve outcomes. In some cases, regional councils are expected to set long-term timeframes to achieve outcomes, including 10-year interim targets. Section 80A of the RMA requires regional councils to publicly notify these plans by 31 December 2024. Following a hearing process, it is expected these plans will be operative (subject to appeals) by 2026.
10. This assessment of the development of the status quo under the NPS-FM is dependent on how the Tasman District Council gives effect to the NPS-FM through its updated regional plan, and is reliant on effective implementation, in order to maintain or improve outcomes for the Springs.

[4] Baseline state, in relation to an attribute, means the best state out of the following: the state of the attribute on the date it is first identified by a regional council under clause 3.10(1)(b) or (c), the state of the attribute on the date on which a regional council set a freshwater objective under the NPS-FM 2014 (as amended in 2017), or the state of the attribute on 7 September 2017.

11. Below is a diagram showing the full process (as required by Part 9 of the RMA) for creating a WCO. This proposed WCO for the Springs is currently at the 'Environment Court recommends order to be made' stage:



Background to this application

12. Ngāti Tama Ki Te Waipounamu Trust (Ngāti Tama) and Andrew Yuill, an engineer from Tākaka, (the Applicants) applied for the WCO in April 2017.

13. Their application included:

    a. the confined and unconfined Arthur Marble Aquifer;

    b. the Springs;

    c. the Tākaka River and its tributaries, including the Waingaro, Anatoki and Waikoropupū Rivers; and

    d. hydraulically connected groundwater including the Tākaka Unconfined Gravel Aquifer (TUGA).

14. The Applicants claimed that each of these water bodies is either of outstanding value itself, or is inextricably linked to the maintenance of such values in the other water bodies listed. The outstanding values identified in their application are outstanding:

    a. in accordance with tikanga Māori[5];

    b. as a habitat for aquatic organisms;

    c. for its wild, scenic, or other natural values;

    d. for scientific and ecological reasons; and

    e. for recreational purposes.

15. The then Minister for the Environment (Hon Nick Smith) appointed a Special Tribunal to hear and report on the WCO application (per s202(1)(a) of RMA).

16. The Special Tribunal recommended that a WCO be made for the Tākaka River, one of its three tributaries (Waingaro River), the Tākaka Limestone Aquifer (TLA) and TUGA. Several parties, including the Applicants, Tasman District Council, local farmers, and Save Our Springs Aotearoa New Zealand Inc, made submissions to the Environment Court. These submissions traversed a broad range of issues. The Environment Court inquiry into the report is effectively a new hearing that traverses the full range of issues to make a comprehensive recommendation.

17. The Environment Court has now provided the current Minister with their recommendation that the application for a WCO be granted and have provided a draft WCO that they recommend.

Summary of the findings of the Environment Court

18. In summary, the Environment Court have found that:

    a. the waters of the Springs are natural state waters in accordance with tikanga Māori;

    b. the Springs and Wharepapa Arthur Marble Aquifer have outstanding values;

    c. that the natural state of the Springs and those outstanding values are at significant risk from human-induced pollution (particularly increasing levels of NO_3-N); and

    d. an effective and robust WCO is needed to preserve the Springs' natural state as far as possible and sustain and protect the outstanding values of the Springs and Wharepapa Arthur Marble Aquifer. The WCO needs to also extend to the contributing groundwaters and surface waters.

[5] Tikanga Māori means Māori customary values and practices.

The Environment Court's recommendation and the Minister for the Environment's role

19. The Environment Court has provided a draft WCO for consideration as part of their report. This draft WCO provides for target attribute states for nitrate-nitrogen NO_3-N), dissolved reactive phosphorus (DRP), dissolved oxygen (DO), water clarity, and flow to be achieved over a certain timeframe. These are addressed in the sections below.

20. The Minister now has a role under the RMA (s214 and s215) to decide whether to accept or reject the draft WCO, as presented in the Environment Court's report. There is no scope to change the WCO (except for very minor changes).

The Environment Court's findings in relation to nitrogen losses

Setting of the NO_3-N limit

21. The Environment Court noted the WCO can and should utilise the precautionary principle[6] to minimise the risk of unacceptable harm to the Springs and their natural state and outstanding values. The Environment Court therefore recommended that Tasman District Council have a duty to proactively use its available powers, both in planning and consenting terms, to ensure NO_3-N concentrations in the Springs do not exceed 0.41 mg/L (or a lower limit as may be specified in the regional plan) by 1 January 2038.[7]

22. The Environment Court also allowed flexibility for Tasman District Council to formulate provisions on a basis that equitably and fairly considers individual farm circumstances, allows for sound water management, and encourages stewardship practices.

Status quo of land-uses that contribute NO_3-N loads to the Springs

23. The majority of the land area in the catchment and contributing area is in natural land use, which leaches a very low rate of NO_3-N. The estimated NO_3-N losses from the major land uses in the wider catchment are summarised in Table 1. After taking into account flow pathways (not all of the flow reaches the Springs), farming activities in the valley floor contribute approximately 75% of all NO_3-N reaching the Springs.

24. Tasman District Council estimated that wastewater treatment plants and septic tanks contribute less than 1% or 2% of the total nitrogen reaching the Springs.

Table 1. Estimated NO_3-N losses from different land uses based on the Environment Court's nitrate experts' evidence.

Land use	Area (ha)	Estimated NO_3-N loss (tN/year)	Estimate range of NO_3-N loss loads (tN/year)
Dairy farming – irrigated	858	81	56 – 105
Dairy farming – non-irrigated	1,574	75	71 – 94
Dairy support and drystock	4,000	99	75 – 147
Treed areas (native + exotic)	61,814	5	0.6 – 185
Gorse and broom	571	26	17 – 34

[6] This is the principle that, where there are threats of serious damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

[7] The limit of 0.41 mg/L does not imply a safety threshold against harm, but rather the limit which the Environment Court could safely determine as appropriate on the evidence available.

Land use intensification over the last 30 years

25. Evidence presented to the Environment Court found that:

    a. from 2005 onwards there has been a generally increasing trend in NO_3-N concentrations and loads reaching the Springs. Over this same time period, there has been a corresponding increase in NO_3-N loads leached from the valley floor of around 30 tN/year in lower flow periods and 70-85 tN/year in higher flow periods;

    b. the only land use changes that have occurred in the Wharepapa Arthur Marble Aquifer Recharge Area (WAMARA) between the 1990s and 2020 which could have caused this increase in NO_3-N were a seven-fold increase in the irrigated area and a more than 10% increase in cattle numbers;

    c. there is no evidence to suggest that natural sources are the main contributor to increased NO_3-N concentrations or load reaching the Springs; and

    d. based on the agreed evidence of the nitrate experts, irrigating an increased area of 858 ha of dairy farms, compared to not irrigating it, increases NO_3-N leached by approximately 40 tN/year, without considering the effects of increased cow numbers or variability due to rainfall. This was broadly consistent with the average of increases in loads observed at the Springs under low and high flow periods.

26. The Environment Court concluded that, "despite the best efforts of members of the farming community giving evidence before us, it is clear from our comprehensive evaluation of multiple lines of inquiry that increases in NO_3-N concentrations and loads reaching Te Waikoropupū have resulted from the increased use of irrigation and, to an extent, increased cow numbers from 2005 onwards."[8]

Load reductions required to meet the proposed WCO limits

27. Expert evidence showed that in 2022 the state for NO_3-N in the Main Spring[9] was a median concentration of 0.45 mg/L. No evidence on the 2022 state for Fish Creek Springs was provided.

28. This means that the 2022 'contemporary' state is higher than the 2017 'baseline' state (at which maintain or improve is required) by 0.04 mg/L. Therefore, to achieve compliance with the 2017 levels of 0.41mg/L (as would be required by the proposed WCO and one of the baseline setting options available under the NPS-FM) a 9.76% reduction in nitrate losses is required (**Error! Reference source not found.** – yellow highlight).

[8] "*Report and Recommendation on Te Waikoropupū Springs Water Conservation Order*" p.204 at [536].

[9] The Springs complex is made up of a number of springs, with two broad groupings being the 'Main Spring' to the north, and 'Fish Creek Springs' a little to the south.

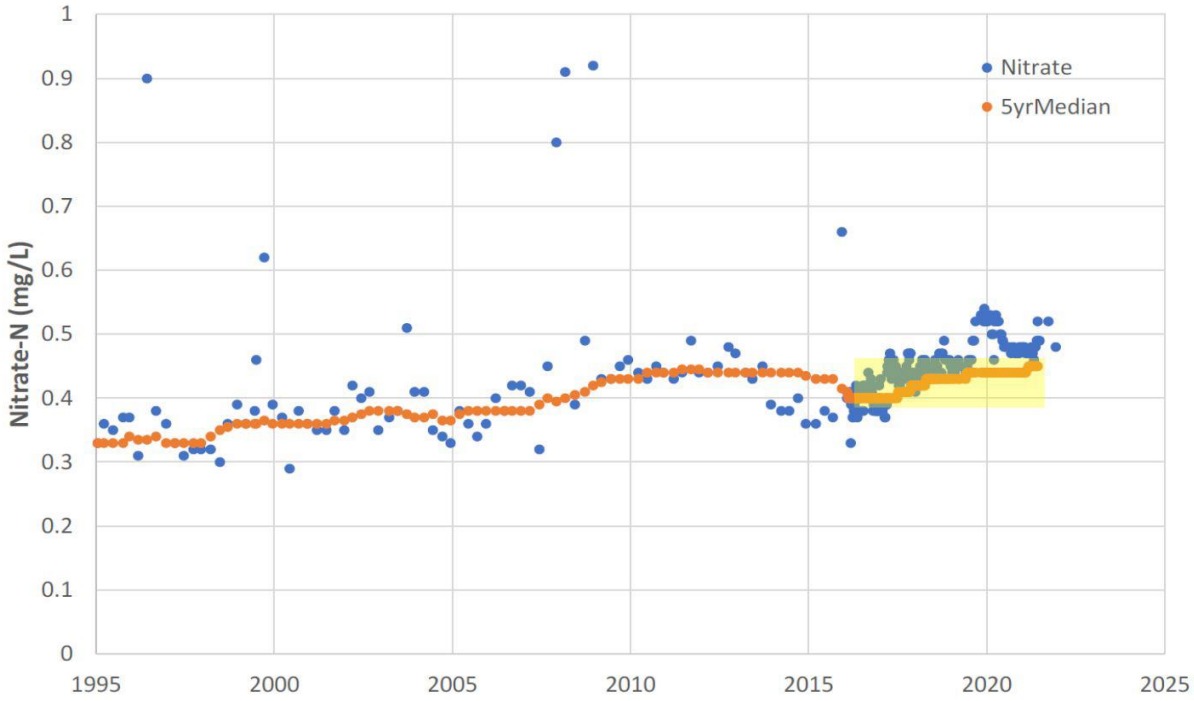


Figure 1. Five-year rolling median nitrate-nitrogen concentrations at the Main Spring, 1995-2022. The yellow box highlights the range of reductions required by the draft WCO.[10]

Load reductions from gorse

29. Load reductions as a result of gorse removal could be between 15–40% of the required NO_3-N reduction at the Springs, which is small in comparison to the reductions possible from agricultural land uses.

Load reductions from farming activities

30. Regardless of what the actual contribution of gorse turns out to be, farming activities will still remain the largest contributor of NO_3-N reaching the Springs. As no reductions in loads from natural sources will be possible (which contributed around 2%), controls on farming activities will have to make up the difference in load reductions. If controls on gorse do not result in a reduction of NO_3-N, the farming activities will likely be required to further adjust their practices to achieve the targets.

31. The allocation of which particular land uses or businesses are required to make nitrate loss reductions (in order to meet the proposed nitrate limits) is not addressed through the proposed WCO and would need to be addressed by Tasman District Council through the regional planning process, in consultation with their communities. Options to further reduce nitrate losses could include, but are not limited to: improving irrigation practices; reducing fertiliser usage; reducing stock numbers; or land use change.

Timing

32. The Environment Court recognised that the recommended nitrate limit of 0.41 mg/L would require changes in land use practices that impact the ability of people and communities to provide for their social, economic and cultural wellbeing (the third of the Te Mana o te Wai principles). However, the Environment Court, in their draft WCO, set a compliance date for achieving the water quality limits at 1 January 2038. This aligns with

[10] Modified from Figure Q in "*Report and Recommendation on Te Waikoropupū Springs Water Conservation Order*" p.181 at [479].

the NPS-FM which allows regional councils flexibility to set timeframes over which target attribute states are achieved.

The Environment Court's findings in relation to flow allocation

Water take and flow allocation limits

33. The Environment Court recommended that no resource consent may grant, and no rule may permit, any take of surface or groundwater that would cause or contribute to the:
    a. catchment allocation limit being exceeded (766 litres per second); or
    b. flow of water from the Main Spring being less than the minimum flow (6,895 litres per second).
34. Additionally, they recommend that; for all new water takes that contribute to the flow of the Springs:
    a. the take is controlled through a management system that may include rationing to ensure that the flow from the Main Spring is equal to or greater than the minimum flow at all times; and
    b. there is a reasonable need to take that water, instead of taking water from a source that does not contribute to that flow.
35. Dairy sheds that were in operation at 31 January 2018 are exempted for water take restrictions for 'reasonable water demand requirements'.
36. The Environment Court heard evidence (which they noted should undergo further review) that the total water allocation from the recharge area (as of February 2022) was 391 litres per second from 21 consented water permits. This means that there would be an additional 248–375 litres per second that could be allocated under the RMA, subject to the balance of the provisions of the WCO.
37. However, it is important to note that the nitrate limit will likely be the constraining factor as to whether this remaining water take allocation can be effectively used by farming land uses, due to the additional nitrate leaching from irrigated land uses.

Need to take water to support farming

38. The Environment Court accepted evidence which demonstrated the importance and benefits for farms of existing irrigation, but they noted that the WCO will not restrict the taking of water allocated by existing resource consents.
39. If additional users wish to take water in the future, they can apply to the Tasman District Council to potentially be allocated any remaining water under the allocation limit.
40. The Environment Court heard some evidence that, if the WCO was to prevent access to irrigation water during a dry season, the lost business revenue could be $1.52M p.a. However, this is of limited usefulness because the WCO would not prevent water access to existing users, and leaves water remaining to be potentially allocated.

Flow allocation summary

41. The Ministry estimate that the impact of the recommended WCO's allocation limit and minimum flow will be minimal, given that current water takes do not exceed the allocation limit, so there is still some headroom available for allocation to new users.

The Environment Court's findings in relation to dissolved reactive phosphorus, dissolved oxygen, and water clarity.

42. The Ministry estimates that the Environment Court's proposed limits on DRP, dissolved oxygen, water clarity (and flow) will have minimal effect on resource users compared to

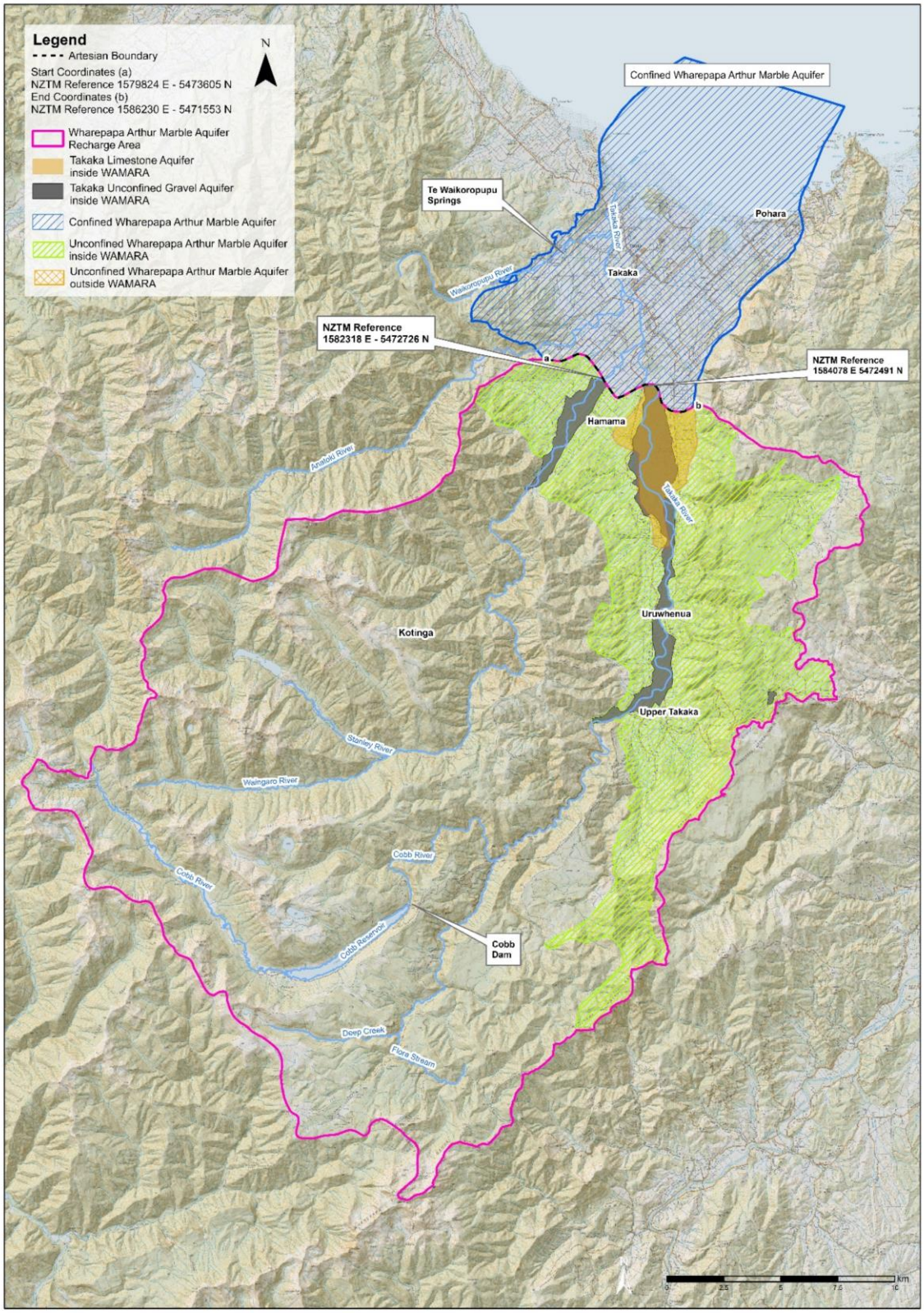
NO_3-N, because the current observed levels do not require reductions to be made to meet the proposed limits in the WCO (sections 8 and 9 of the proposed WCO).

43. Dissolved oxygen and water clarity are outcomes that are less directly within the control of resource users, but instead are largely resultant from NO_3-N concentrations in the Springs (which is within the direct control of resource users).

44. Regarding DRP, the Environment Court said: "Based on the expert evidence discussed above, the current DRP concentrations are likely to limit the growth of nuisance algae in Te Waikoropupū ... There is no evidential basis to set a lower limit along the same lines as that for NO_3-N".[11]

[11] "*Report and Recommendation on Te Waikoropupū Springs Water Conservation Order*" p.252 at [670].

Figure 2. Map of Contributing Groundwaters and Contributing Surface Waters.[12]



[12] Reproduced from Figure 3 of Annexure 1 of "*Report and Recommendation on Te Waikoropupū Springs Water Conservation Order*" p.94.

What is the policy problem or opportunity?

45. The Ministry considers that the underlying policy problem is that the outstanding values of the Springs are under increasing pressure from surrounding land uses.
46. This Regulatory Impact Statement (RIS) provides information to support the Minister in their decision on whether to accept or reject the draft WCO provided by the Environment Court. The Minister has very limited discretion (being only able to accept or reject the Environment Court's recommended order). In considering the Minister's decision here, the Ministry has accepted as fact the finding of both the Special Tribunal and the Environment Court that outstanding values exist within the Springs.
47. While there will be many options in terms of what interventions might be done 'on the ground' to address the increasing pressure faced by the Springs, those are matters for the regional council in their implementation of either their plan or the WCO.
48. The Minister has two options, to either agree to progress the WCO or reject the Environment Court's recommendation to create a WCO to protect the outstanding values of the Springs.

What objectives are sought in relation to the policy problem?

49. The Ministry considers that an appropriate outcome would be one where the values that have been successfully identified as 'outstanding' are appropriately protected.
50. The Ministry thinks that an appropriate outcome would be one that:
    a. provides sufficient environmental protection from competing land uses for the values identified as outstanding;
    b. provides a framework that is lasting;
    c. introduces this protection in a timely fashion; and
    d. complies with the principles of the Treaty of Waitangi.
51. Protection requires that existing state is maintained and that there is a mechanism present to ensure that those outstanding values may continue to be protected.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the counterfactual?

52. Due to the nature of the decision being between the counterfactual and only one additional option, we have used a simple set of criteria. We note at this stage that WCOs have their own unique purpose focussed on conservation that exists notwithstanding the broader purpose section of the RMA.

53. The chosen criteria are:

    a. **Effectiveness**: provides sufficient protection from competing land uses to the values identified as 'outstanding' by the Special Tribunal and Environment Court processes

    b. **Durability**: the option is able to endure and provide long-term certainty for the outcomes of the Springs

    c. **Timeliness**: prevents further degradation of the Springs and surrounding catchment in New Zealand in a timely fashion

    d. **Principles of the Treaty of Waitangi**: appropriately provides for the principles of the Treaty of Waitangi. Promotes partnership and protects Māori rights/interests and relationships with their taonga. There is a minimum standard that must be met in relation to this criterion, due to the Crown's obligations under the Treaty of Waitangi and the requirement under s8 of the RMA to take into account the principles of the Treaty of Waitangi, which applies in relation to this decision.

What options are being considered?

54. Under s214 or s215 of the RMA, the Minister is constrained in their decision making and is required to either recommend the making of the WCO in accordance with the Environment Court report, where it has held an inquiry, or decide not to recommend the making of the WCO.

55. If the Minister decides not to recommend the making of the WCO, they must lay their reasons for doing so before the House of Representatives. The Minister is not able to consider different options for amendment or accept or reject parts, but not all, of the report and recommendations.

56. Therefore, there are only two options under consideration, either:

    a. **Option 1:** reject the proposed amendment and retain the counterfactual; or

    b. **Option 2:** accept the proposed amendment (as recommended by the Environment Court).

Consultation

57. Although the Ministry has not undertaken further consultation with affected parties on the options outlined above (rejecting or accepting the proposed WCO), a substantial consultation process has been undertaken as part of the full process to create a WCO, as required by Part 9 of the RMA.

58. The Environment Court's report included expert opinion (western and mātauranga), alongside multiple rounds of consultation on draft WCOs with local iwi, farmers, Tasman District Council, residents, and Save our Springs Aotearoa NZ Inc. The Environment Court also considered submissions pertaining to the resource consent needs of Cobb Hydro-Electric Power Scheme, NZ King Salmon Hatchery, and dairy sheds.

59. In finalising their recommended WCO, the Environment Court's report summarised that "all parties were agreed that a WCO was needed to protect the Springs. Their differences

were about how the WCO should be framed to those ends."[13] The report further notes that the "inquiry has been a journey towards greater consensus between parties."[14]

[13] *Report and Recommendation on Te Waikoropupū Springs Water Conservation Order*", p.13 at [37].
[14] *Report and Recommendation on Te Waikoropupū Springs Water Conservation Order*", p.14 at [42].

How does the option compare to the counterfactual?

Key	
++	much better than the counterfactual
+	better than the counterfactual
0	about the same as the counterfactual
-	worse than the counterfactual
- -	much worse than the status quo

	Counterfactual – Rejection of the WCO	**Option Two – Creating the WCO**	**Reasoning –** this explains the difference between the counterfactual and option two for each of the criteria.
Effectiveness	0	0	This RIS has been written under the assumption that if the counterfactual is kept, that Tasman District Council would do a sufficient job at implementing the NPS-FM in their plan. The draft WCO has been prepared consistently with the requirement to at least maintain existing water quality within the NPS-FM. Tasman District Council could choose to further improve water quality under their implementation of the NPS-FM.
Timeliness	0	+	The Environment Court have suggested 2038 as an appropriate compliance date for achieving the target attribute states recommended in their draft WCO. The Ministry considers that this appears to be broadly consistent with what a similar date for compliance Tasman District Council might have used through their planning process. However, this WCO would likely be created before Tasman District Council have notified a compliant plan, providing certainty of protection sooner (a WCO taking almost immediate effect – 28 days from gazettal).
Durability	0	++	A WCO is an enduring mechanism. It is very hard to amend or revoke a WCO. It requires a process of the same duration as that used to initially install it. While the NPS-FM may lead to strong protections within a regional plan, the NPS-FM itself can be amended relatively easily (for example, the NPS-FM could be amended and the requirement to maintain or improve removed or changed).
Principles of the Treaty of Waitangi	0	+	Due to its permanent nature, the proposed WCO would provide an additional level of protection for the Springs. The active protection of taonga is a part of recognising rangatiratanga.
Overall assessment	0	+	The Ministry considers that Option 2 is better than the counterfactual. This conclusion is further elaborated on below.

Is the option likely to better address the problem, meet the policy objectives, and deliver higher net benefits than the counterfactual?

Retaining the counterfactual (Option 1)

60. As described earlier (paras 7 to 10), under the counterfactual the Springs will be provided protection through the NPS-FM. Tasman District Council will be required to update their regional plan to give effect to the NPS-FM, which will in turn require that the Springs are either maintained or improved against baseline states. At a minimum, the counterfactual (through the implementation of the NPS-FM) will maintain the values of the Springs identified by the Special Tribunal as 'outstanding'.

61. Although regional plans giving effect to the NPS-FM are expected to be fully operative by 2026, regional councils could set long-term timeframes to achieve targets. It is difficult to assess with certainty over what timeframe Tasman District Council would seek to maintain (or possibly improve) the current state of the Springs.

62. The protection of the Springs under the status quo is also highly reliant on how the NPS-FM is given effect through the Tasman District Council's regional plan, and how effectively these changes to the regional plan are implemented. There is also the possibility of future changes to the current NPS-FM requirements, which could in turn affect how the Springs are managed in the future. For example, the NPS-FM could be amended and the requirement to maintain or improve removed or changed.

63. Therefore, there are risks associated in maintaining the counterfactual, due to the uncertainty relating to how, and when, the Springs would be protected through the NPS-FM.

Protection under a Water Conservation Order (Option 2)

64. As part of the proposed WCO, in relation to the maintain or improvement requirements under the NPS-FM, the Environment Court has recommended:

    a. adopting an attribute target state of 0.41 mg/l for NO_3-N and;

    b. setting the timeframe for compliance as 1 January 2038.

A high degree of protection

65. In determining the target attribute state, the Environment Court has sought to be broadly consistent with the NPS-FM, noting the adopted baseline date of early to mid-2017 best met the interpretation of 'best state' under the NPS-FM and is consistent with its objectives. The recommended attribute state is within the NPS-FM upper attribute band and well above national bottom lines (the minimum acceptable state).

66. The Environment Court noted that the NPS-FM is an instrument of national direction and is focused on (through Te Mana o Te Wai) the sustainable management of New Zealand's resources, whereas a WCO gives additional, targeted direction for protecting the recognised outstanding values and unique circumstances of the Springs.

Providing longer-term certainty

67. While the Environment Court notes the current NPS-FM is more stringent than the previous version (as amended 2017), a WCO is a permanent piece of regulation that is more difficult to modify or revoke. Under s216 of the RMA, all applications for the revocation or amendment of a WCO must undergo the same process as an application for a WCO (s201–215), unless:

    a. the Minister is of the opinion that the application should not be rejected but that, by reason of the minor effect of the amendment, it is unnecessary to hold an inquiry; and

    b. the original applicant for the order (if that person can be located) and the regional council agree to the amendment.

68. Therefore, a WCO affords greater future protections to the Springs due to the process required to revoke or amend the WCO, as well as by requiring compliance independent of the NPS-FM, meaning the protections stipulated in the WCO would continue to apply regardless of any future changes to the NPS-FM.

69. However, it should be noted that, this same difficulty to modify the WCO would also make it harder to change the limit, if new science determined that a lower limit was needed to preserve the outstanding values of the Springs.

Ensuring timeliness to prevent further degradation

70. The Environment Court recommends the compliance date of 1 January 2038. This means the attribute state of the Springs must be no more than 0.41 mg/l for NO_3-N at that time. This date balances and recognises that achieving a maintained attribute state will require changes in land use practices over time.

71. By installing the compliance date, the Environment Court has effectively removed any discretion of Tasman District Council to determine these timeframes through updating their regional plans to give effect to the NPS-FM. Option 2 provides more certainty around timeframes and protection measures – and will provide more immediate protection by requiring urgent action, compared to the NPS-FM (which is not expected to be given effect through regional plans until 2026).

Giving effect to the principles of the Treaty of Waitangi

72. The draft WCO gives effect to the principles of the Treaty of Waitangi, particularly through the principle of rangatiratanga and active protection of taonga. The Environment Court's report notes that a "purpose of the WCO is to preserve the subject waters in their natural state as Te Puna Wairoa in accordance with tikanga".[15] This recognises the value tikanga and mātauranga Māori provide in informing the outstanding values of the Springs, and the unique relationships iwi/Māori have with freshwater, particularly as kaitiaki.

73. The draft WCO imposes duties on Tasman District Council to have particular regard to, and recognition of, mana whenua in their excise of rangatiratanga and kaitiakitanga, and requires Tasman District Council to provide opportunities for mana whenua to be included in the exercising of powers to protect the Springs.

Overall view and recommendation

74. Of the two options considered (counterfactual or proposed WCO), the approval of the WCO is considered to have the greatest net benefits. The Ministry believes this to be the case for the following reasons, as the WCO will:

    a. ensure the protection of values identified by both a Special Tribunal and the Environment Court as outstanding, by setting specific attribute target states for the Springs, in line with the NPS-FM;

    b. provide longer term certainty for the protection of the Springs, as the WCO is a more permanent instrument that is difficult to amend or revoke;

    c. provide certainty around the timing for achieving maintenance of the existing values of the Springs; and

    d. give effect to the principles of the Treaty of Waitangi, by encouraging the active protection of taonga.

75. Therefore, the Ministry recommends that the WCO is created in accordance with the Environment Court's recommendations, and the preferred option is Option 2. The Ministry

[15] "*Report and Recommendations on Te Waikoropupū Springs Water Conservation Order",* page 23 at [70].

considers that this option will achieve the purpose set out in the RMA, and best meets the criteria set out in this RIS.

What are the marginal costs and benefits of the option?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Primary Resource Users	*Detailed below*	Low	Medium
Local Government	*Detailed below*	Low	Medium
The public of New Zealand	*Detailed below*	Low	Medium
Mana whenua	*Detailed below*	Low	Low
Total monetised costs	*N/A*	*N/A*	*N/A*
Non-monetised costs	*Detailed below*	Low	Medium
Additional benefits of the preferred option compared to taking no action			
Primary Resource Users	*Detailed below*	Low	Medium
Local Government	*Detailed below*	Medium	Medium
The public of New Zealand	*Detailed below*	High	Medium
Mana whenua	*Detailed below*	High	Low
Total monetised benefits	*N/A*	*N/A*	*N/A*
Non-monetised benefits	*Detailed below*	High	Medium

76. The Ministry considers that many of the below costs and benefits would be delivered by a regional plan that does a good job of implementing the NPS-FM. However, as outlined in paragraphs 60–63, the Ministry notes that there are risks associated with the current uncertainty of how, and when, the NPS-FM will be implemented through regional plans – while the WCO requires urgent action to ensure protection of the Springs.

Costs and benefits to mana whenua

77. Māori face significant barriers to developing the productive potential of their land and, as a result, Māori-owned land across New Zealand is disproportionately under-developed when compared to non-Māori owned land.[16] This includes disproportionately lower rates of irrigation.[17] In the case of the proposed WCO which seeks to set limits on catchment nitrate and water use, owners of land which is currently underdeveloped (but could potentially be intensified in the future) face a greater lost opportunities cost. Māori landowners in the catchment with less developed land due to historical injustices or barriers may face a financial disadvantage. The extent of Māori owned land in the catchment is not known.

78. Mana whenua have been at the forefront of engaging in various processes related to the legal protection of the Springs, including as co-applicants of the WCO. By granting the

[16] Growing the productive base of Māori freehold land – further evidence and analysis (mpi.govt.nz)

[17] Maori Agribusiness in New Zealand: A Study of the Māori Freehold Land Resource (waikatoregion.govt.nz)

WCO, this gives mana whenua certainty as to the on-going management of the Springs and could reduce their costs associated with engaging.

79. The Environment Court accepted unchallenged evidence from mana whenua that the Springs are Te Puna Waiora in accordance with tikanga Māori. That concerns a relationship of wai and mana whenua which is inter-generational and pertains to cultural health and wellbeing. This relationship would be protected in perpetuity by the granting of the proposed WCO.

80. The proposed WCO imposes certain duties on the relationship between Tasman District Council and mana whenua. These duties are particularly in regard to mana whenua's upholding of rangatiratanga and the associated kaitiakitanga responsibilities in relation to the Springs, including as to cultural monitoring. The resourcing of these duties could incur some cost, dependent on the split with Tasman District Council.

Costs and benefits to local primary sector

81. Resource users will have to make changes that ultimately lead to a 9.7% reduction in the NO_3-N at the Springs. It will be up to Tasman District Council to work with their communities to decide how this is allocated over the resource users of the catchment. The reduction could either come from land use change (reducing dairy farming) or simply practice change (lower stocking rates, less fertilizer application, etc). A small portion could come from addressing gorse in the catchment.

82. The Ministry has included this information to be informative of the scale of change, however, as reasoned above, the Ministry does not consider that this properly reflects the impact of the option, as, under the counterfactual, the council will have to implement the NPS-FM which will lead to similar changes for the primary sector.

83. The draft WCO introduces a minimum flow regime as well as allocation limit. The Ministry has estimated that these will have no impact, as the quantum of the existing use is smaller than the allocation limit.

84. The proposed minimum flow regime and allocation limit allows for some additional allocation that some users may take up (subject to other conditions).

85. This will bring certainty for the primary sector in terms of existing consents, future NO_3-N use, and water availability.

Costs and benefits relating to Tasman District Council

86. Tasman District Council would need to ensure that their plan is not inconsistent with the provisions of the draft WCO. The Environment Court explained that they have framed their draft order to assist Tasman District Council in implementing an NPS-FM compliant plan. It may be easier for the Tasman District Council to implement the NPS-FM, in that some of the more complex decisions around resource use have been made by a party external to them and the community.

87. Tasman District Council will have to increase the monitoring of the Springs and the wider catchment (while they currently monitor, the WCO would lead to additional monitoring requirements to ensure the outstanding values are protected). There will be a relatively small cost associated with designing and implementing this monitoring regime – it is unclear whether this would be an additional cost on top of what monitoring Tasman District Council might initiate with their new plan.

Costs and benefits to New Zealand and the Springs

88. Granting the WCO will provide a high level of protection for the Springs. Although a robust plan produced under the NPS-FM would provide similar outcomes in the short term, a WCO is effectively a permanent piece of regulation that is very difficult to modify or revoke.

89. The draft WCO recognises the outstanding values of the Springs and provides a high degree of protection for those values. This will make it easier for decision-makers to

prioritise the wellbeing of the Springs when making difficult trade-offs in resource management decisions.

90. The Ministry considers that the draft WCO is aligned with values hierarchy outlined in the concept of Te Mana o te Wai present in the NPS-FM. It places the water bodies, and their needs, above those of the community, and resource users.
91. The Springs are a tourist destination. Their preservation allows them to continue to be an asset to New Zealand and will likely encourage tourists to travel to Tākaka.
92. The Ministry does not identify any significant costs to New Zealand.

Section 3: Delivering an option

How will the new arrangements be implemented?

93. The new WCO will take effect 28 days from the date of gazettal.

94. The effect of a WCO on a consent authority's decisions is detailed in s217 of the RMA. This section sets out how regional councils (in this case, Tasman District Council) must give effect to WCOs when considering applications for taking, use, diverting or damming water.

95. Tasman District Council would not be able to grant consents that are inconsistent with a WCO. Therefore, in deciding whether to grant any water take or discharge permit, the outstanding characteristics listed in the WCO will have to be taken into account. Tasman District Council may need to impose conditions on consents that ensure the continued protection of the identified outstanding values, or not grant the consent if there is no way for the activity to proceed while protecting those values.

96. Tasman District Council would need to ensure that their upcoming plan change to achieve compliance with the NPS-FM is not inconsistent with the terms of this WCO (if gazetted). One of the requirements of the regional plan will be to impose limits on resource use to achieve target attribute states. This will include setting limits on resource use to achieve the water quality and flow limits listed in the proposed WCO, and it will be up to Tasman District Council, in consultation with their communities, to decide how this will be implemented in practice.

97. Tasman District Council must engage (and work collaboratively) with tangata whenua in developing the regional plan, and in the design and implementation of cultural monitoring of the Springs. They also must work with tangata whenua to investigate the use of mechanisms to involve them in freshwater management, such as:

    a. transfers or delegations of power,

    b. joint management agreements,

    c. mana whakahono a rohe (iwi participation arrangements).

98. The Ministry has a role to play in ensuring that the WCO regime is successfully implemented. This involves ensuring that, under the current system, councils are ensuring that their plans are not inconsistent with the provisions of WCOs over water bodies within their area. The Ministry has a substantial programme of work designed to ensure an effective implementation of the NPS-FM. The Ministry will assess the extent to which Tasman District Council delivers a plan that works with the new WCO (if approved) as part of that.

99. WCOs have largely been reincorporated into the new resource management system. Although their implementation has been strengthened as plans produced under the new resource management system will be required to give effect to WCOs (as opposed to merely 'not being inconsistent with' as per the RMA). The Ministry is currently formulating a plan for the rollout and review of the implementation of the new resource management system.

How will the new arrangements be monitored, evaluated, and reviewed?

100. The RMA provides that any person can apply for an amendment to the WCO, should further outstanding values be identified, or if changes are sought to the restrictions and prohibitions. However, under s216, no application for a significant amendment that relates to this amendment will be able to be made from two years of the making of the WCO.

101. Tasman District Council will need to undertake sufficient monitoring to ensure that proposed target attribute states are achieved over time in accordance with the draft

WCO. This includes cultural monitoring designed by mana whenua in consultation with Tasman District Council.

102. Tasman District Council will be required to calculate various statistics of water quality parameters using suitable methods (as defined in section 8(i) of the draft WCO). If the data from these calculations are made publicly available by Tasman District Council, they may be able to be incorporated into national state of the environment reporting, such as that conducted by Statistics NZ/Ministry for the Environment or Land Air Water Aotearoa (LAWA). LAWA currently report on some surface water and groundwater sites in the catchment which could supplement additional monitoring required to implement the proposed WCO.