

Justice Watch NZ inc.- summary of:

SUBMISSION

FRESHWATER PLAN

SUPPORTING FARMING - SUPPORTING NORTHLAND



SUMMARY OF SUBMISSION – FRESHWATER PLAN

This submission explains why the proposed Northland Regional Council Freshwater Plan—affecting approximately 200,000 hectares of privately owned farmland, with no clearly established precedent at this scale, and supported by a new enforcement structure of 27 council officers—may result in significant economic and social consequences, including the conversion of farmland into pine forestry and the increasing transfer of land into large foreign and offshore investment holdings.

This submission was provided by Justice Watch NZ member Andrew Major and Northland farmer Owen Clements in response to the Northland Regional Council’s proposed Freshwater Plan. The submission is dated 30 March 2024 and comprises a detailed 89-page document.

This webpage provides a complete and accessible summary of that submission so that readers can fully understand its content without needing to review the full document.

What the Submission Is About

The submission opposes the proposed Freshwater Plan on the basis that it would impose significant and wide-ranging restrictions on the use of privately owned farmland across Northland.

It identifies that approximately 200,000 hectares of privately owned and actively farmed land may be affected.

The submission emphasises that:

- This land is privately owned and economically productive.
- The scale of the proposed intervention is unprecedented in New Zealand.
- There is no clearly established precedent for restrictions of this magnitude being applied across such a large area of private land.

Legal Framework and Concerns

A central argument of the submission is that the Council must act within the limits of the law.

It explains that:

- Legislation must be interpreted according to its text, purpose, and context.
- Local authorities must act on behalf of, and in the interests of, their communities.
- Property rights are fundamental and cannot be interfered with without clear legal authority and justification.

The submission raises concern that affecting approximately 200,000 hectares of private land represents a substantial and coordinated interference with property rights, without clear legal foundation or precedent.

Governance and Process Issues

The submission raises concerns about how the Plan has been developed.

It states that:

- Many affected landowners were not directly informed of the proposal.
- Engagement with the farming community has been limited.
- Decisions appear to rely on generalised mapping and assumptions rather than direct consultation.

It further notes that the Council proposes the use of approximately 27 council officers to implement and enforce the Plan.

The submission raises concern that this reflects a regulatory approach that is:

- Enforcement-driven.
- Centralised.
- Disconnected from practical land management experience.

Environmental and Ecological Argument

A major component of the submission challenges the environmental basis of the Plan.

It explains that:

- The movement of soil and sediment in waterways is a natural and ongoing process.
- Well-managed pasture and farming practices can stabilise soil and reduce erosion.
- Responsible livestock farming can contribute positively to land stability.

The submission contrasts this with forestry and deforestation, arguing that:

- Historic deforestation has been a major contributor to sediment accumulation.
- Modern forestry practices, particularly harvesting on steep terrain, can create significant erosion risks.
- Storm events have demonstrated the vulnerability of forested land to slips and debris flow.

Natural Water Processes – Key Example

The submission highlights the importance of recognising the natural functions of water within ecological systems.

In nature, water moves through continuous cycles involving:

- Contact with organic material.
- Decomposition.
- Soil interaction.
- Natural filtration through the earth.

Through decomposition, clean water may become soiled or sediment-laden, not as a harmful event, but as a natural and necessary stage in ecological function. Through natural filtration processes within soil and geology, water is then gradually clarified and restored.

The submission raises concern that the proposed Plan does not sufficiently distinguish between:

- Natural ecological processes, and
- Actual environmental harm.

Council Representations – Te Mana o te Wai

A central issue raised in the submission concerns how the Northland Regional Council has represented and applied the concept of Te Mana o te Wai within the proposed Freshwater Plan.

The Council states that this concept sits at the heart of freshwater management and has adopted it regionally as:

“Te Mana me te Mauri o te Wai for Te Taiokerau.”

Application of a Concept as a Determinative Framework

The submission raises concern that the Council has:

- Elevated a conceptual and cultural framework into a determinative basis for policy and decision-making.
- Applied that framework in a way that produces real legal and practical consequences for landowners.
- Relied on that framework as justification for restrictions affecting large areas of private land.

The submission notes that a concept, in itself, is not law, and does not automatically carry enforceable legal authority.

Freshwater as a Living Entity

The Council further describes freshwater within this framework as:

- A living being
- Derived from ngā atua (translated as “gods”)
- An entity with rights to be healthy, to flourish, and to be respected as an ancestor.

The submission acknowledges that this reflects a Māori worldview and cultural understanding of water.

Concern Raised in the Submission

The concern identified is not with the recognition of cultural perspectives themselves, but with the manner and extent of their application.

The submission raises the following issues:

- That a belief-based or conceptual framework has been elevated into a position where it informs binding regulatory outcomes.
- That this framework is being applied in a way that directly affects property rights and land use.
- That such application is not clearly expressed in statute as a basis for enforceable land-use restrictions.
- That the framework may not be universally accepted across the wider community yet is being applied broadly.

Key Question Raised

The submission therefore asks whether the Council has:

- Maintained a clear distinction between cultural values, policy, and enforceable law;
- Properly balanced this framework against the rights and interests of all members of the community.
- Ensured that any resulting restrictions are lawfully justified and proportionate.

Link to Environmental Application

This issue is reinforced by the ecological argument raised earlier.

The submission highlights that natural water processes—including decomposition and filtration—are essential to ecological function and raises concern that these processes may not have been fully recognised within the application of the Council’s framework.

Land Use and Economic Impacts

The submission places strong emphasis on the economic consequences of the proposed Plan.

It argues that affecting approximately 200,000 hectares of productive farmland would:

- Reduce land available for food production.
- Disrupt farming operations and rural livelihoods.
- Impact employment and regional economic activity.
- Create long-term instability in land use patterns.

It further raises concern that:

- Restrictions may increase pressure for land-use change, particularly into pine forestry.
- There is an observable trend of farmland being acquired by large investment entities, including foreign and offshore-backed forestry and carbon interests.
- The proposed Plan may accelerate this trend, leading to the transfer of locally owned farmland into large-scale investment holdings.

The submission emphasises that this would have lasting consequences for:

- Community structure.
- Local ownership.
- Long-term economic resilience in Northland.

Overall Conclusion of the Submission

The submission concludes that the proposed Freshwater Plan:

- Affects a scale of private land (200,000 hectares) for which there is no clear precedent.
- Is not supported by a sufficiently robust legal foundation.
- Relies on assumptions not fully supported by ecological evidence.
- Has been developed without adequate engagement with landowners.
- Applies a conceptual framework in a way that produces significant real-world consequences.
- Introduces an enforcement structure (27 council officers) that may be disproportionate.
- May contribute to long-term structural changes in land ownership and regional economic control.

Final Position

The submission calls for the proposed Freshwater Plan to be reconsidered in its current form.

It advocates for an approach that:

- Reflects the law and proper role of local government.
- Is based on balanced and evidence-based environmental analysis.

- Properly engages with affected communities.
- Balances environmental objectives with property rights, local ownership, and economic sustainability.

Final Outcome

Following the 2023 General Election, New Zealanders elected a new government. Subsequent amendments to the Resource Management Act resulted in the Northland Regional Council's proposed Freshwater Plan being cancelled in its current form.