

# Greater Wellington Regional Council

submission on the *Next steps for fresh water* consultation

April 2016

Greater Wellington Regional Council

Shed 39, 2 Fryatt Quay

Pipitea, Wellington 6011

Contact: Jo Beaglehole

04 830 4156 / jo.beaglehole@gw.govt.nz

## Overarching comment

Greater Wellington Regional Council continues to support the government's reform of freshwater management in New Zealand, including backing for the Land and Water Forum. However, the council is disappointed that the *Next steps for fresh water* consultation document does not implement many of the Forum's recommendations.

The first recommendation of the *Fourth Report of the Land and Water Forum*, says **the government should complete implementing the Forum's recommendations from its three previous reports as soon as possible**. Greater Wellington Regional Council agrees with this statement. The proposals in *Next steps for fresh water* do not do this.

In particular, the council is concerned that the whole of the freshwater objectives-limits framework is not included in the *National Policy Statement for Freshwater Management*, despite the Forum's second report being in the Government's hands since April 2012. **The National Objective Framework is not complete, and further direction on limits is required**, including what a 'limit' is and how it is used in the regional planning framework.

**The absence of the complete framework**, as envisaged in the Forum's second report, **is creating considerable confusion for regional councils, iwi, stakeholders, and even Boards of Inquiry.**

**Question 1: Do you agree that overall water quality should be maintained or improved within a freshwater management unit rather than within a region? Why or why not?**

Greater Wellington Regional Council (GWRC) agrees that overall water quality should be maintained or improved within a freshwater management unit.

Defining the freshwater management unit as less than the region is appropriate as decisions, and any offsets for changes in water quality or quantity, should be made within the catchment or community to which they apply. The consequences of decisions or offsets need to be considered by the catchment community at the time of setting limits.

Most regional councils could not set freshwater objectives and limits across the whole region all at once. If offsets were to be determined at a regional scale it would be necessary to consider the region as a whole. Councils do not have the resources to do this.

**Question 2: How should the attributes be applied, or the values protected, in giving effect to the requirement to maintain or improve overall water quality? Please explain.**

It must be possible to allow for movement within an attribute band – otherwise, what would be the utility of a band? However, caution should be applied as allowing movement within an attribute state may have an effect on the value for two reasons.

Firstly, the relationships between stressor and effect are typically linear for each attribute rather than having clear inflection points, and the thresholds between attribute states are somewhat subjective assessments of effect along these relationships. This means that there may be incremental changes in the value even when the attributes remains within the same band.

The second reason is that individual attributes do not consider synergistic effects that could occur from multiple stressors. Allowing a number of attributes to move within a band could have a magnified effect on values due to multiple stressors having a synergistic effect.

**Question 3: What is an appropriate way to include measures of macroinvertebrates in the National Policy Statement for Freshwater Management? What alternative measures could be used for monitoring ecosystem health?**

Mandatory reporting of measures (such as MCI as proposed) if not linked to the NOF or regionally set objectives, lacks rationale and will not improve or add value to the NPS-FM framework. GWRC does not support this proposal – it is not the appropriate way to include macroinvertebrates in the NPS-FM.

There is also no rationale for proposing MCI as the only mandatory reporting measure. Why would there not be measures for other values such as human health or mahinga kai?

If the government is intent on including a measure of ecosystem health in the NPS-FM, GWRC offers the following comments.

GWRC supports the consistent and regular measurement and reporting of ecosystem health through other legislative and non-legislative mechanisms, such as the Environmental Reporting Act and the combined regional and central government Environmental Monitoring and Reporting (EMaR) programme.

Further work is needed before MCI can be included as an attribute in the National Objectives Framework; however, most councils already monitor macroinvertebrates. There is a large body of monitoring data that could be used to assess the suitability of a macroinvertebrate health attribute as a measure of ecosystem health. EMaR also provides a mechanism to continue building a consistent body of monitoring data.

Macroinvertebrates, and specifically the MCI, are narrow measures of ecosystem health. There are a range of biotic indicators that are often used to evaluate ecosystem health, including macroinvertebrates, periphyton, aquatic plants, and fish. All of these should be considered when evaluating ecosystem health rather than relying on MCI *or any other single indicator*.

If mandatory monitoring measures are adopted for ecosystem health, there will need to be agreed standards for monitoring methods and frequency.

GWRC also note that the consultation document mentions macroinvertebrate community health as a measure of *water quality* on some occasions and as a measure of *ecosystem health* on others. Describing it as a measure of ecosystem health is more accurate as macroinvertebrate communities are influenced by stressors other than water quality (e.g. habitat quality).

The government could provide guidance for the development of metrics for mahinga kai. Mahinga kai links an important environmental measure (the vitality of freshwater fish and plants) with cultural and human health through consumption. This is a broader and more inclusive view of freshwater which engages Māori and community values. Mahinga kai will need to be defined by councils at a regional / catchment / FMU scale through engagement with iwi/hapū, so does not lend itself to being a mandatory reporting measure at a national level, but some guidance would be appreciated.

**Question 4: What information should be required in a request to include significant infrastructure in Appendix 3 of the National Policy Statement for Freshwater Management, and why would this information be important?**

GWRC considers the framework relating to exemptions to be flawed.

Exemptions from national bottom lines in setting freshwater objectives should indeed be exceptional and rare, and relate to matters of national importance.

Exemptions should relate to *waterbodies* where a freshwater objective is set below the national bottom line and include the attributes to which the exemption applies.

Appendix 3 should include *nationally significant infrastructure* and the waterbodies (or parts of water bodies) where the exemption will apply. Listing infrastructure generally in

Appendix 3 will leave regional councils in a position where infrastructure providers will expect exemptions in *all* cases for *all* attributes.

Exemptions should be at a waterbody scale, and be determined nationally.

**Question 5: Do you agree with applying lake attributes and national bottom lines to intermittently closing or opening lakes or lagoons? Why or why not?**

GWRC agrees that lake attributes and national bottom lines could be applied to intermittently closing or opening lakes or lagoons (ICOLLs). However we caution that these attributes are not necessarily the most significant attributes likely to be impacting on the ecological health of ICOLLs. More important attributes may include:

- the opening/closing regime of the ICOLL (i.e. is the ICOLL mouth opened more or less often to alleviate flood risk compared to its natural state?) and
- the state of the ICOLLs submerged plant communities (given that this can influence a variety of factors from habitat through to water quality).

We acknowledge that setting states/thresholds around these attributes might be problematic, require significant further work, and may need to be developed specifically for each ICOLL.

GWRC would support the application of lake attributes and bottom lines to ICOLLs if:

- sufficient documentation supported this decision, including details on the key attributes of ICOLLs that influence ecological health, and where insufficient information is currently available to develop states/thresholds for these attributes, and
- it was a first step, with a commitment to further development of specific attributes.

Figure 3 (map of ICOLLs that are managed as freshwater) does not show any ICOLLs in the Wellington Region. Lakes Onoke, Kohangatera and Kohangapiripiri all meet the definition of an ICOLL. In section 3.6 of GWRC's Proposed Natural Resources Plan, Lake Onoke is required to be managed as a freshwater lake when its mouth is closed. Further, we consider both Lakes Kohangatera and Kohangapiripiri to be largely freshwater lakes and manage them as such.

GWRC seeks clarification on why these lake systems have not been classified as ICOLLs in the consultation document, and what, if any difference these omissions make for the management of these systems.

**Question 6: What information should be required in a request to list a water body in Appendix 4 of the National Policy Statement for Freshwater Management, and why would this information be important?**

Appendix 4 should be removed. It is not a necessary part of the overall framework, creates confusion and false expectations.

The framework allows for freshwater objectives to be set in a regional plan, and for the regional council to determine the timeframe within which these will be achieved. This process sets clear expectations, as well as the necessary flexibility for communities to adjust to change. Appendix 4 is unnecessary.

**Question 7: Do you agree with the proposed requirements and deadlines for excluding livestock from water bodies? Why or why not?**

GWRC has rules restricting livestock access to the beds of surface water bodies in the Proposed Natural Resources Plan for the Wellington Region 2015 (proposed Plan). These rules generally align with the Dairy Accord and what is proposed in the *Next steps for freshwater* consultation document.

It is worth noting that the approach and the timeframes in the proposed Plan were only reached after considerable time and debate with stakeholder groups and the community. National requirements will be more efficient in addressing the issue, and are well overdue. GWRC supports the ability for councils to put in place more stringent restrictions where considered necessary or desirable, and ask that this be retained as part of the proposal.

Restrictions in the proposed Plan are introduced in a staged manner, which was considered appropriate to address the issues facing our region. A shorter timeframe is considered necessary to protect the values of areas identified as having significant values. Cattle (including dairy cows), farmed deer and pigs are to be excluded from significant areas (such as sites of significance to mana whenua and sites with significant indigenous biodiversity) within 3 years of notifying the plan: being mid-2018.

The proposed Plan also requires the exclusion of dairy cows from dairy relief blocks, by 2022 (compared to 2020-2025 in the consultation document), and this rule is supported by a non-regulatory programme. Livestock access to waterways in dairy-support blocks has the potential for environmental effects which would fail an effects-based test for a permitted activity status. Stakeholder feedback was that exclusion of livestock in this circumstance was common practice. GWRC supports the proposal to require livestock exclusion on dairy-support blocks, even if with different timelines.

The consultation document states that “farmers will need to put up permanent fences”. Clarification is required as to what is meant. GWRC consider electric fences effective for large animal movement and containment, as well as cost-effective - demonstrated by the common use of electric fences for break-feeding and other on-farm fencing requirements. GWRC would not support a requirement to have post and wire fences (with the limited exclusions in the proposals) in livestock exclusion regulations.

GWRC agrees that riparian buffers can provide multiple benefits for water quality, river management, and biodiversity. The extent of riparian buffers is difficult to standardise, and the effectiveness of riparian buffers in reducing environmental effects differs with circumstance. The use of buffers can be supported by central government direction and should be promoted by regional and district councils as a good practice method.

## Economic use of fresh water

**Question 8: Should standards for efficient water use be developed? Should standards for good management practices for diffuse nitrogen discharges be developed? Who should be involved in their development? When should they be applied to consents (e.g. on consent expiry and/or on limit setting and/or permanent transfer)?**

A tool that could be included in regional plans to guide consent applications and processing would be more helpful than standards for efficient water use.

Currently, Schedule Q of the GWRC proposed Plan contains a reasonable and efficient use test. This test is used when applications for replacement, new, or variations on water-take consents are received by GWRC.

National environment standards have been helpful in giving Councils greater confidence in managing water efficiency. In a similar way the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010 supports Council's initiatives through policy making and consenting.

If standards were to be developed, they should only be applied when transferring consents from site to site, and not for the more common transfer from old landowner to new landowner (as water infrastructure normally doesn't change with land ownership).

GWRC supports making the ECan-led Matrix of Good Management suitable as a national tool for the management of diffuse nitrogen discharges. The Matrix defines industry-agreed good practice across a range of farming systems for the Canterbury region but is likely nationally relevant. The Matrix could be made directly applicable for each region through the application of regional soil and climate data. Utilising the Matrix would reduce duplication of effort for industry to define good practices region by region and improve certainty for farmers.

**Question 9: Do you support easier transfer of consents? Do you think the changes outlined in Proposal 2.4 would better enable transfers? What other changes would better enable transfers?**

GWRC supports easier transfer of consents provided the requirements of the NPS-FM for efficient use of water and water quantity accounting can be met.

Transfers between users (i.e. from site to site) are not common in our region. Unless a consent holder has no infrastructure in place they tend to prefer to "hang on" to their consent rather than transfer water either temporarily or permanently. A key component of facilitating a transfer market is having a register of consent holders who are presently interested in temporarily or permanently transferring water.

The other matters raised in Proposal 2.4 are also supported.

**Question 10: How should the Government help councils and communities address over-allocation for water quality and water quantity? Should it provide guidance, rules or something else (please specify)?**

Guidance from central government on addressing over-allocation for water quality and quantity would be helpful.

A stronger steer on timeframes and mechanisms for addressing over-allocation would also be warranted. A stronger steer should be directed through plan policies rather than rules.

**Question 11: Should councils have greater flexibility in how they meet the costs of improving freshwater management? For example, by recovering costs from water users and those who discharge to water? Please provide examples.**

GWRC support increasing council's flexibility to recover the costs of improving water management.

In terms of cost recovery, the mechanism for charging users in s36 of the RMA is the only RMA mechanism regional councils have at their disposal. In practice, the ability to make users pay for the adverse effects of discharging to freshwater is limited to monitoring requirements.

In 2013 GWRC embarked on a major review of state of the environment (SOE) monitoring charges which, in principle, increased charges to consent holders from ~6% of our total SOE costs to ~23% of our total costs. This approach is being phased in over 5 years.

## Iwi rights and interests in freshwater

Councils' relationships with iwi/hapū are increasingly being driven by central government devolution of resource management responsibilities to local and regional government (e.g. through the NPS-FM), and Treaty settlement legislation. There is considerable uncertainty and lack of national consistency as to how these new responsibilities give effect to the Crown–Iwi Treaty relationship.

GWRC is concerned about the extent to which councils are being perceived by iwi as the de-facto Treaty partner through the duties and responsibilities they deliver to enable the Crown meet its Treaty partnership obligations. Uncertainty in this space is a major constraint on effective partnerships between councils and iwi/hapū - not only for resource management.

GWRC recommends the government review its devolution of Treaty responsibilities to local authorities. The government should also provide support and direction to enable greater consistency and confidence in the formation and sustainability of resource management relationships between councils and iwi/hapū.

### **Question 12: How can the Government help councils and communities to better interpret and apply Te Mana o te Wai in their region?**

GWRC supports the importance of Te Mana o te Wai in the consultation document.

GWRC agrees that there is ambiguity and lack of clarity around Te Mana o te Wai. This lack of clarity is perpetuated by the consultation document which variously describes Te Mana o te Wai as:

- a framework: “Te Mana o te Wai sets overarching principles that are proposed to be included the NPS-FM” (page 4); “is used as the basis for community discussions on freshwater management (page 28)
- a biophysical measure of water: “the ability of water to sustain life and biodiversity – Te Mana o te Wai” (page 7)
- a “core objective” for iwi and hapū (page 9)
- a whole community objective: “the underpinning platform for community discussion on fresh water” (page 10 and page 27)
- a government priority: “ensuring freshwater management gives effect to Te Mana o te Wai” (page 27).

GWRC suggests that the government clearly defines “Te Mana o te Wai” so that councils and communities can interpret and apply it consistently.

GWRC offers the following points to assist the government in clarifying the definition:

- water is the primary source and prerequisite of all life, and must be cared for accordingly



- Te Mana o te Wai is not primarily about human values, but the integrity of water as a life source with its own mana
- Te Mana o te Wai needs to be interpreted by local communities, each in their own way and should promote supporting communities to better understand and value their water in all its forms.

In terms of the government assisting councils and communities to interpret and apply Te Mana o te Wai in the context of our fresh water management framework, statements that emphasise Te Mana o te Wai as a government or specifically Māori priority do not support the more inclusive construct of an “underpinning platform for community discussion on fresh water” proposed in the consultation document. Understanding Te Mana o te Wai is the immediate priority for *whole communities*. Issues, solutions and collective ownership of responsibility will flow from this.

Te Mana o te Wai should be presented as a self-educating process: a series of questions to communities, a wānanga encouraging them to describe Te Mana o te Wai in their area. Programmes could be developed to cater for all parts of community from children through to decision makers with an emphasis on collaborative learning processes. Questions could focus on what the community understands about the natural history of their water. Where does it come from? Where does it go? What qualities does it have? What challenges? What does it want to do?

Government can support this journey of learning and understanding through promoting Te Mana o te Wai to councils, training local Te Mana o te Wai facilitators, and including Te Mana o te Wai in SOE reporting requirements.

GWRC also recommends linking Te Mana o te Wai into NPS-FM guidelines as a best practice requirement for water quality decision making.

### **Question 13: Should councils be required to identify and record iwi/hapū relationships with freshwater bodies, and how should they do it?**

GWRC supports the proposal that councils be required to identify and record iwi/hapū relationships with freshwater bodies.

GWRC considers councils should do this by identifying and recording iwi/hapū relationships in the schedules of all council planning documents which include a description of iwi/hapū relationships with water, to whatever degree of detail iwi/hapū deem appropriate, including such matters as: hūanga (values); tikanga (process); mahinga wai (customary uses); issues of concern; and aspirations held for water bodies.

Councils can also record in plans any regulatory arrangements (including Treaty Settlement legislation and non-regulatory methods) that provide for these relationships including GIS mapping and linking sites and areas of significance to regulatory provisions.

Again councils can support community understanding of iwi/hapū fresh water values through communication and education processes and by supporting mana whenua collection and use of data on iwi/hapū relationships with fresh water as an ongoing part of resource management. This would be demonstrated in establishment of water quality limits, attendant measures and reporting, and iwi/hapū input into resource consent processes.

**Question 14: What would support councils and iwi/hapū to engage about their values for freshwater bodies?**

GWRC supports the development of standard agreements including iwi participation agreements / mana whakahono a rohe, and suggest the following support for councils and iwi/hapū.

The government should maintain the expectation that councils will engage iwi in planning and decision-making around fresh water, and the inclusion of Māori values in water quality measurement and reporting should be a standard requirement of all Councils.

Although ‘customary use’ of water operates in the same regulatory space as ‘contact recreation’, inclusion of cultural assessment directly engages Māori and local iwi/hapū with the management of water. Measures should follow the intent of the RMA and specify whether water quality and quantity supports Māori relationships with their water bodies.

The difficulty of engaging with constituencies is a shared issue for central government, councils, and iwi/hapū. Processes and resources (outlined in questions 12) are required to assist iwi/ hapū to facilitate the input of their people.

**Question 15: What are your views on the proposal for a new rohe-based agreement between iwi and councils for natural resource management? What type of support would be helpful for councils and iwi to implement these to enable better iwi/hapū engagement in natural resource planning and decision-making?**

GWRC supports a new rohe-based agreement between iwi and councils for natural resource management.

GWRC supports the formalised approach to engagement with iwi/hapū through the iwi participation arrangements proposed in the Resource Legislation Amendment Bill. Iwi participation arrangements will provide much needed national consistency through a formal engagement process requiring councils to actively facilitate the relationship. GWRC has had positive and evolving relationships with its iwi partners over more than 20 years, and the iwi participation arrangements would enhance our existing arrangements.

We support the primary intention of introducing mana whakahono a rohe - which we understand is to ensure iwi/hapū initiate and manage the timing, terms, and process of their own formal relationships. We consider this approach will assist mana whenua to establish relationships with councils particularly where they don’t already exist. However we have some concerns, and some suggestions to offer.

We suggest that there is benefit in allowing iwi participation arrangements and mana whakahono a rohe to co-exist. This would enable mana whenua and councils greater flexibility in determining the most appropriate model to suit their local circumstances, and to deliver their engagement goals and objectives.

The mana whakahono a rohe model removes the expectation that councils engage proactively (the base premise of iwi participation agreements) and places the initiative for engagement on iwi. This is a significant shift in the policy, and there is no explanation of how council consistency in the active engagement of iwi will be retained.

There are important questions regarding representation and mandate of iwi/hapū in resource management arrangements. There would be risks to councils, and to existing relationships, if councils were required to respond to requests for agreements from iwi/hapū where mana whenua status is uncertain, contentious or disputed. Establishment of mandate and mana whenua status can be complex and contentious and have a negative impact on existing relationships. Councils are not able to (nor should they), adjudicate on such matters. There is a risk that questions of representation and mandate could undermine advances in making formal relationships more widespread and consistent.

If councils were expected to resolve issues of mandate, GWRC suggests that the government develop guidelines to assist councils and iwi/hapū to establish mandate and mana whenua status in resource management arrangements where such mandates aren't already recognised (e.g. through Treaty settlement legislation).

If mana whakahono a rohe is the final preferred approach and it replaces iwi participation agreements, GWRC suggests that such arrangements retain the expectation that councils will develop formal arrangements with iwi/hapū. One way of achieving this would be through requiring councils to demonstrate that they have engagement planning processes that address barriers to engagement and support iwi/hapū led agreements recognising that these will require additional resources.

Councils will need to manage the likely growth in both the number and complexity of iwi/hapū relationships and the attendant expectations that come with them. By way of example, GWRC is already working with our iwi partners at a hapū level through the Wairarapa Moana Governance Group and is committed to working with whatever structural arrangements our mana whenua partners establish to achieve their aspirations.

**Question 16: What are your views of the proposed amendments to water conservation orders? Outline any issues you see with the process and protection afforded by water conservation orders.**

GWRC supports amending the RMA to better provide for the involvement of tangata whenua in establishing Water Conservation Orders, and better integrating them into regional planning processes.

GWRC suggests that the expansion of existing Water Conservation Orders to provide for a broader range of values including those of tangata whenua should be prioritised through a streamlined process.

**Question 17: If you are involved with a marae or live in a papakāinga, does it have access to clean, safe drinking water? What would improve access to clean, safe drinking water for your marae or papakāinga?**

Generally, GWRC has indirect relationships with marae in our region. We have been informally advised that some of the marae may not have access to clean, safe drinking water but we have not undertaken any research to test the scope and extent of this concern.

GWRC proposes that research should be undertaken to determine how many marae nationwide are in this position as a basis for doing further work on these issues.

## Freshwater funding

### Question 18: Do you agree with the proposed criteria for the Freshwater Improvement Fund? Why or why not?

GWRC supports the proposal to broaden the application of the Freshwater Improvement Fund. The fund provides an opportunity to bring legacy infrastructure and resource use decisions into line with new freshwater management frameworks. It also provides an opportunity to advance the good work that has already been done to restore some of our important waterbodies.

In order to best achieve these objectives, we recommend revising the proposed criteria in the following ways.

#### Introduce flexibility for cost-sharing when projects have a largely public benefit

While the minimum contribution is useful – it signals the intended scale of projects – it could also present a barrier for poorly resourced local authorities if they need to fund the remaining 50% for a large scale project.

Some local authorities are operating old infrastructure (such as wastewater systems) that is contributing to freshwater degradation. The costs to upgrade this infrastructure to come into line with the new expectations are likely to be substantial in some cases.

GWRC recommends the criteria be more flexible about what percentage of a project's cost is met by the applicant when the benefits are expected to be largely or purely public.

#### Clarify the 'public and private costs' criterion

The third listed criterion explains the need for applicants to 'clearly demonstrate' that the public and private benefits of proposals will be greater than the public and private costs. GWRC recommends the criterion be improved in two ways.

The first is to explain the threshold for determining what 'clearly demonstrating' means. The problem for poorly-resourced applicants is that generating full cost-benefit analyses can be very expensive. It would be helpful if the standard for evidence of benefits is commensurate with the expected resources of groups the government expects will be applying for a grant.

Secondly, the criterion could clarify what the mix of public and private benefits are expected to be. Given the fund will be using public money it would be surprising if it was used to fund projects that have a largely private benefit.

#### Clarify the roles of the Freshwater Improvement Fund and the Irrigation Acceleration Fund

There appears to be an overlap between the freshwater improvement fund and the irrigation acceleration fund (IAF). They both appear to be able to fund the development of water harvesting, storage and distribution proposals.

GWRC agrees that improvements to irrigation schemes can provide good environmental outcomes. The IAF currently funds this activity, though it is understood that the criteria for the IAF is also under review.

GWRC recommend the government clarify the roles and criteria of the IAF and Freshwater Improvement Fund at the same time to ensure any overlap is acknowledged and deliberate.

### Organise and order the proposed criteria more clearly

The current list is jumbled and does not present a clear picture of the kinds of projects that might be eligible for funding. Some criteria are very basic, such as the 'legal entity' criteria, some relate specifically to certain types of projects such as irrigation and extension programmes, while others discuss the level of funding available.

It would be helpful to present the criteria in a more ordered fashion and identify which ones are the most important, which apply across the spectrum of possible projects, and which relate to only specific kinds of projects. GWRC suggests criteria could be grouped under the following categories:

- basic criteria, such as the fact the fund is open to any legal entity, and funding arrangements
- criteria related to water quality projects
- criteria related to water use projects e.g. irrigation schemes (prefaced by the comment above regarding the IAF).