

Office of the Minister for the Environment

Office of the Minister of Agriculture

Chair

Cabinet

Fresh Start for Fresh Water – forward work programme

Proposal

1. This paper provides an overview of the water reform package, including the role of the proposed National Policy Statement for Freshwater Management (to be considered in a parallel Cabinet paper) and the irrigation and clean-up funds (recently agreed by Cabinet) alongside other components of the reform package.
2. It also seeks agreement to timing of a formal response to the report of the Land and Water Forum (LAWF), and to a staged work programme to deliver the reform package.

Executive summary

3. Fresh water is one of New Zealand's key strategic and productive assets. Improving the way we manage fresh water is critical to New Zealand's future economic growth, environmental integrity, and cultural well-being. Improvements to the current regime for managing water, and to the way that regime is implemented in practice, are needed to reduce the escalating costs of clean-ups and lost productivity, to optimise the range of benefits from our water resources, and to better deliver on New Zealanders' values and expectations for those resources.
4. The LAWF's report *A Fresh Start for Freshwater*, released in September 2010, has provided the basis for public engagement on reform options, helped frame discussions between Ministers and the Iwi Leaders Group, and informed policy development by officials. On the basis of work to date, stakeholders (including the LAWF), the Iwi Leaders Group and officials agree that the issues are complex and require careful, considered analysis and response. There is broad agreement, however, that the underpinning driver for reform is the need for a more effective limits-based regime for making decisions on water management. The changes needed to give effect to this regime can be made within the current overall resource management framework, but improvements are also needed in how the framework is implemented on the ground.
5. In order to maintain the momentum generated through engagement and policy work to date, we intend to report back to the Cabinet Economic Growth and Infrastructure Committee by [withheld] with a high-level response to recommendations in the LAWF's report. This response will help to shape the

development of options in the future work programme, and signal the likely direction of reform in 2012.

6. We propose a three-tranche process for designing and implementing the strengthened limits-based regime. Work under each tranche is to be progressed in parallel, but to different time-frames:
 - Tranche 1: Early progress on three key interventions to signal the new limits-based regime: the irrigation fund, Fresh Start for Fresh Water clean-up assistance fund, and National Policy Statement for Freshwater Management
 - Tranche 2: A broad programme of work on setting limits on water quality and quantity, including governance arrangements, aimed at delivering policy options to Cabinet by [withheld] 2012
 - Tranche 3: Work on managing to limits, including more efficient allocation mechanisms and additional tools to manage the effects of land use, to be delivered by [withheld].
7. Involving key stakeholders, particularly the LAWF, local government, and the Iwi Leaders Group and their advisers, will be critical to successful policy design and implementation. The LAWF has provided us with some thoughts on its future role, and we intend to consider these further before responding as part of the government's high-level response to the LAWF's recommendations in [withheld]. We want to explore an ongoing role for LAWF in the design of the specific instruments and policies needed to progress water reform in New Zealand.
8. The Government will continue to engage, as a matter of priority, with the Iwi Leadership Group on Freshwater regarding iwi rights and interests in the development of any fresh water management policies.
9. To date, the work programme has been known as 'New Start for Fresh Water'. The programme is now to be renamed 'Fresh Start for Fresh Water' to align with the LAWF's report, and to mark the significant transition from the LAWF's provision of advice to the government's consideration of its response to the LAWF's report.

Background

10. In June 2009, Cabinet agreed to a new strategic direction to improve freshwater management (CAB Min (09) 20/12 refers), to be advanced using:
 - a stakeholder-led collaborative process run by the Land and Water Forum
 - ongoing discussions between Ministers and the Iwi Leaders Group, and
 - a core officials' work programme to scope policy options on key matters including national direction, allocation regimes, underpinning science and information needs, and infrastructure.
11. Cabinet agreed that the new policy direction should be shaped by the assumption that resource limits will be set, within which different values in water must be balanced, in order to get the most value from finite water resources. The expected outcome of this approach is that most waterbodies would provide for most public values and some level of use, with relatively few being highly

protected (in a pristine or natural state) and very few being highly degraded (if it is agreed that the economic benefits are sufficient to outweigh other costs). It was also agreed that central government would provide stronger leadership and national direction, and investigate whether water management decisions are made at the right level. Allocation models were expected to, firstly, set ecological bottom lines and make allocations to public purposes, and then maximise the economic return from the remaining water available for consumptive use.

12. Cabinet subsequently invited the LAWF to prepare a report on its proposals for potential reform of fresh water management in New Zealand (CBC Min (09) 10/4 refers). This report was delivered in September 2010, and has provided the basis for a period of public engagement (led by the LAWF) between October 2010 and March 2011 (as agreed in CAB Min (10) 33/12). Recommendations from the LAWF's report are attached as Appendix 1.
13. In August 2009 the Government established a Protocol with the Iwi Leaders Group (EGI Min (09) 15/4 refers). Engagement with this group on iwi rights and interests is ongoing.
14. In September 2010, Cabinet invited officials to report back, in due course, with further advice on ingredients of the reform package; and with a response to the recommendations in the LAWF report (STR Min (10) 14/1 refers).
15. Cabinet recently agreed to progress work on two water-related initiatives at the national level – an irrigation fund (EGI Min (11) 4/6 refers) and a clean-up assistance fund (the Fresh Start for Fresh Water Fund – EGI Min (11) 4/5 refers). Cabinet decisions on a third initiative – a National Policy Statement for Freshwater Management – are being sought in parallel with this paper.
16. Establishing a fairer and more efficient water management system is one of ten work streams being progressed under Phase Two of the Resource Management Reforms (RMII). These work streams are being taken forward at different paces and are at different stages of analysis, recommendation and implementation. The Fresh Start for Fresh Water reform programme is the vehicle for delivering on the 'freshwater' work stream for RMII.

Rationale for reform

17. The well-being of New Zealand's economy, ecosystems and human communities is dependent on the quality and quantity of our freshwater resources. Freshwater resources underpin our cultural identity and are playing an increasingly important role as part of our international brand. Looking after these resources well, and harnessing the value that they can deliver, is important for our future well-being at both the domestic and international levels.
18. However, our freshwater resources are under increasing pressure from competing human uses, and there is a recent trend of decline in some key environmental indicators. Water quality and quantity levels are already unacceptable in some catchments – especially in lowland areas (e.g. nitrate and phosphate levels have reached trigger values for action in over half the monitored river sites in Northland, Waikato, Canterbury and Southland). Some water resources are already over-allocated or reaching full allocation (e.g. in

Canterbury there are ten 'red zones' where water has been fully allocated, and four 'yellow zones' where allocation exceeds 80% of the allocation limit).

19. Deficiencies in the current water management framework and its implementation mean that it is not delivering to community expectations for water quality and quantity, and opportunities for improved productivity are being lost or constrained. Significant clean up costs have already been incurred in Lake Taupo, the Rotorua lakes and the Waikato River, with \$318 million committed by the Crown. Iwi dissatisfaction with the operation of the framework can be seen in an increasing focus on contemporary water issues as part of historical Treaty settlement negotiations.
20. The underlying issue is that effective limits for water quantity and especially quality are not being adequately set and managed to. Although the Resource Management Act (RMA) currently enables councils to set limits for both water quality and quantity, the legislative framework does not explicitly require limits to be set. Only four of the 17 regional councils have a complete set of operative or proposed quality and quantity limits in place, and many of the quality limits set to date are in a form that is difficult to implement effectively.
21. The incentives to delay setting limits are strong, particularly in relation to limits on water quality. Setting effective limits that reflect community and iwi values is both technically and politically difficult. It takes time and resources, and involves winners and losers. Existing governance structures, information, guidance and support are not sufficient to facilitate well-informed and timely decision making on limits. However, effective limits are required to deliver on New Zealanders' values and expectations for water and to provide investment certainty, especially for long term infrastructure. If action on freshwater management is not taken now, existing problems will become increasingly difficult and expensive to address, and new problems will emerge. (By way of illustration, the Australian government recently committed NZ\$11.9 billion over 10 years to purchase water licenses in the Murray-Darling Basin to help overcome over-allocation, and to fund rural water projects to improve the efficiency of water use and management.)
22. Managing to limits can also be difficult, and some regulatory tools are missing or require improvement. For example, there is a lack of regulatory control over many diffuse discharges from land use activities (as most land uses are permitted activities under the Resource Management Act unless a regional plan has set rules to control the activity).
23. The current 'first-in, first-served' approach to allocation is not efficient when water resources are approaching full allocation, especially where simple, transparent mechanisms are not available to enable transfer of water to higher value uses. Once fully allocated, water in some catchments is locked into low value uses due to regulatory and/or hydrological constraints to transferring water between users. As a result the full economic potential of New Zealand's freshwater resources is not being reached.
24. Although the proposed National Policy Statement for Freshwater (the NPS) will put in place some important ingredients of a strengthened limits-based regulatory regime for water management, it is a regulatory tool that operates within the bounds of the Resource Management Act. The NPS therefore cannot

deal with broader issues such as governance arrangements, and further reform beyond the NPS is necessary.

Common and emerging themes from work to date

25. The LAWF's report *A Fresh Start for Freshwater*, released in September 2010, has provided the basis for public engagement on reform options, and helped to inform policy development by officials and discussions between Ministers and the Iwi Leaders Group. [See Appendix 1 for report recommendations.]
26. Engagement and policy work to date has generated a broad level of agreement and buy-in on the main issues that need to be addressed through the reform package, and the most important ingredients of reform. In summary, there is broad agreement on the need for:
 - stronger national direction on outcomes for water management
 - a stronger partnership between the Crown and iwi in managing water resources; and the need for effective involvement of iwi at all levels of water management
 - clear limits on resource use (dealing with both water quality and quantity)
 - stronger guidance and improved methods for setting limits and ensuring that water use is managed within limits
 - more efficient means for allocating and transferring entitlements to water available for use within the designated limits
 - better information and modelling to inform water management decisions
 - greater certainty for investors in activities that require taking or discharging to water, or are affected by water quality (e.g. tourism).

Response to the LAWF report

27. In order to maintain the momentum generated through engagement and policy work to date, we intend to report back to the Cabinet Economic Growth and Infrastructure Committee by [withheld] with a high-level response to the LAWF's recommendations. This response will reflect areas of commonality and difference between the LAWF's recommendations and specific components of the reform package outlined below. It will also help shape the development of options in the future work programme, and signal the likely direction of reform in 2012.

Proposed work programme to develop and deliver the reform package

28. In designing the work programme to develop and deliver the reform package, we are conscious of the need to take measured steps. The work programme needs to be staged in a way that responds appropriately to the complex nature of the issues, makes appropriate provision for ongoing input by the public, stakeholders (including the LAWF), and iwi/Māori, and makes appropriate links into related work areas (such as Phase Two of the Resource Management reforms, local government reforms, and emerging Treaty settlements).

29. In line with previous Cabinet decisions and key outcomes from work to date, the focus of the work programme will be on delivering a strengthened limits-based regime for water management. We propose a three-tranche work programme for signalling, designing and implementing this regime, with work under each tranche to be progressed in parallel, but to different time-frames:
- Tranche 1: Early progress on three key interventions to signal the new limits-based regime: the irrigation fund, Fresh Start for Fresh Water clean-up assistance fund, and National Policy Statement for Freshwater Management
 - Tranche 2: A broad programme of work on setting limits on water quality and quantity, including governance arrangements, aimed at delivering policy options to Cabinet by [withheld] 2012
 - Tranche 3: Work on managing to limits, including more efficient allocation mechanisms and additional tools to manage the effects of land use, to be delivered by [withheld].
30. This work will build on the body of policy work and research that has been done since 2003. The three tranches of work will be progressed in parallel, but to different timeframes, and will inform each other as they evolve. The sequencing proposed here is broadly consistent with that proposed to us by the LAWF in early April.

Tranche 1: Signalling the strengthened limits-based regime

31. Cabinet recently agreed to progress work on two water-related initiatives at the national level – an irrigation fund (EGI Min (11) 4/6 refers) and a clean-up assistance fund (the Fresh Start for Fresh Water Fund – EGI Min (11) 4/5 refers). Cabinet decisions on a third initiative – a National Policy Statement for Freshwater Management – are being sought in parallel with this paper.
32. In combination, the three initiatives described above will provide an important signal that the government is progressing with roll-out of a water reform package, in line with key recommendations of the LAWF report. The first tranche of work also needs to be followed quickly in [withheld] by a high-level government response to the full LAWF report, to avoid the perception that a handful of LAWF recommendations have been ‘cherry-picked’.
33. The three initiatives will help maintain the momentum generated through the LAWF process, and deliver some early and visible ‘wins’ to stakeholders across a range of outcomes (environmental, economic, and regulatory). The three initiatives also create some linked incentives to improve water management practices. Regional councils will not be able to bid for money from the clean-up assistance fund unless they have a robust planning framework in place to avoid future water quality problems, which will incentivise the implementation of the NPS. The irrigation fund will support the development of irrigation schemes that work within, and seek to maximise the efficiency and environmental gains to be had from, a new limits-based framework.
34. The NPS will set in place some important ingredients of a strengthened limits-based regime for water management, and will help clarify the regulatory framework for the reform package as a whole. While the RMA framework

currently enables regional councils to set and manage to limits for both water quality and quantity, the NPS will require them to do so. The NPS will also require regional councils to prepare or change their regional plans to ensure that the new requirements for setting and managing to limits will have effect as soon as reasonably practicable (by 2014 if possible).

35. The clean-up fund will address some of the legacy problems with decline of water quality that have arisen in the absence of clear limits.
36. The irrigation fund will address some of the constraints to realising the potential for economic growth from water in over-allocated catchments, and help avoid the need for costly clawback of existing consents to take water.
37. As noted in the parallel paper on the NPS, implementing the NPS will involve a range of measures, including general guidance for councils on implementation, detailed work on the nature of limits, technical methods for describing limits, other regulatory tools as required, and information- and research-based measures at the national and regional levels.

Tranche 2: Setting limits on water quality and quantity

38. Alongside work on these key interventions, we propose to progress a second tranche of work on methods, tools and governance arrangements for setting limits required by the new NPS.
39. Like the LAWF, we believe that the existing legislative framework can support a strengthened limits-based regime, but stronger direction and guidance from central government will be needed to support regional councils in setting well-specified limits for water quality and quantity, and to guide the processes by which the limits should be set. This is likely to involve more use of the tools available under the RMA to give greater central government direction, such as national environmental standards.
40. Although the NPS will put in place some important ingredients of a strengthened limits-based regime for water management, it cannot deliver all the components of this regime.
41. Policy work on limit-setting will begin in the short term, to provide early signals on governance changes, to reduce uncertainty for water users, to support councils' planning and decision-making processes (e.g. to align with the new NPS), and to inform the ongoing conversation with iwi leaders on rights and interests. In addition to the NPS implementation measures already referenced above, the work programme will involve consideration of:
 - measures for providing any further guidance (if needed in addition to the NPS) on national interests and values that must be reflected in decisions at the regional or catchment levels
 - efficient and improved governance structures for limit-setting (e.g., committees at regional or catchment levels to advise regional councils, and/or to advise the Minister for the Environment on issues as they arise), including provision for stakeholder involvement
 - specific provisions for iwi/Māori participation in limit-setting processes and decisions at catchment, regional and national levels

- information, research and modelling tools that are required to understand the economic, environmental, social and cultural consequences of limits, to enable well-informed decision making
 - training, funding, and support for those involved in setting limits
 - means for incorporating limits, and methods for managing to them, into regional plans (which might include the development of national environmental standards or similar regulatory tools, in the interests of consistency and efficiency)
 - monitoring and auditing provisions for limit-setting processes
 - step-in provisions, and criteria for triggering them, to allow Ministers to intervene where limit-setting processes stall.
42. As part of work on governance issues, officials will explore how proposals under the water reform work programme relate to those under Treaty settlement programmes. Both are making provision for improved iwi participation in decision making. This work will specifically look at whether there are generic approaches for involving iwi in water management (including limit setting) that would obviate the need for arrangements to be negotiated through Treaty settlements. Care will be taken to ensure that changes to governance arrangements proposed as part of the reform package do not undermine governance arrangements under existing Treaty settlements or negotiations that are well advanced.
43. There will be a transition period of some years before limits are fully in place. There is a risk of further over-allocation of water quantity and quality in this period – particularly from unregulated diffuse discharges from land use. As part of the Tranche 2 work programme, officials will work on potential interim measures to address this risk, so that measures can be implemented rapidly if required.

Tranche 3: Managing to limits and allocating water efficiently

44. We know that just setting limits will not be sufficient to achieve the outcomes we seek. New tools and methods will be needed so that regional councils can manage efficiently within the new limits once they are in place, and to provide water users with a range of tools for responding to the new limits. New allocation methods will be a focus, as the current ‘first-in, first-served’ approach under the RMA is not efficient when water resources are approaching full allocation. More effective tools to manage the links between land use and water will also be necessary.
45. The specific design of these new tools and methods will be informed by the new limit-setting regime as it evolves (and vice versa), but in broad terms we will need:
- Stronger regulatory and non-regulatory tools (including voluntary methods such as audited self management) to ensure that activities that involve taking and/or discharging to water are managed within the designated limits. This will be important to ensure that diffuse discharges from land use activities, which are currently largely unregulated, are brought within the resource management regime. It will include development of better

tools to help councils manage the effects of land use on water, and models of industry best practice.

- More efficient and effective methods for initial allocation of rights to take and discharge to water once limits are set
- Trading/transfer systems that allow rights to take and discharge to water to be transferred to higher-value uses
- Specific tools and methods to enable change so that desired limits can be met over time in areas where those limits have already been exceeded. These may include a mix of regulatory, market-based and voluntary approaches to adjustment to limits.

Urban water services

46. Another major aspect of water policy raised in the LAWF report is water services management, primarily the delivery of urban water services. The LAWF's recommendations for improvement in this area have been contentious with local government and other key stakeholders in the area, notwithstanding the LAWF's finding that further investigation of the issues and options was needed.
47. Any further investigation of water services management also needs to intersect with the National Infrastructure Plan, and with potential further reforms to local government. For these reasons we propose that we report further, as part of the high-level response to the LAWF report in [withheld], on how and when work in this area might be advanced.

Risks and advantages of the proposed sequencing of the work programme

48. We see the following advantages of taking a staged approach to deliver the proposed new regime:
 - It will allow for an appropriate level of input by stakeholders (including water users and technical experts), councils and iwi/Māori into the design of components of the new regime
 - It will provide early signalling of the future regulatory regime (i.e., NPS) while detailed options are being designed, which will help councils and stakeholders plan for transition to the new limits-based regime
 - It will allow development of tools and processes for managing to limits to be informed by ongoing discussions between Ministers and Iwi Leaders on rights and issues
 - It will ensure the required resourcing can be provided by departments, local government, iwi organisations and stakeholder organisations.
49. We see the risks of the proposed staged approach as follows:
 - Work on designing and setting the new limits will require input from stakeholders during the remainder of this year and into 2012. This may raise expectations or contentious issues about the detail of reforms.
 - Transitional problems (such as gold-rushes before limits are set in place) may arise as a result of the lag between gazetting the NPS and limits being

incorporated in plans. As well as investigating potential new policy responses, officials will also monitor for emergent regional-level risks and, if these do eventuate, consider whether the use of existing ministerial intervention powers under the Resource Management Act (such as requiring a regional council to review its plan) would be sufficient to manage those risks.

- In order for the strengthened limits-based regime to take full effect, all parts of the reform package need to be in place. There is therefore a risk that delays to any part of the work programme will push out implementation of the regime as a whole. Careful project management and resource prioritisation across agencies will be required to mitigate this risk.
50. Some risks are also created by ongoing and accelerated progress of the Treaty settlements process. Efficiency gains, and opportunities for consistent governance approaches between regions, may be constrained if governance proposals for the new limits-based regime do not align with water-related governance structures being generated through Treaty settlements. [*Withheld – negotiations sensitive*]. It will be important to ensure that settlement-based arrangements are taken into account when developing governance options for the new limits-based regime; and to provide early signals, where possible, of likely structures under the new regime so that future settlement negotiations can be informed by these.

Next steps for engagement with stakeholders, councils and iwi/Māori

51. Cabinet has previously agreed that targeted discussions with local government, iwi, non-governmental organisations and industry will be carried out in the development of policy options for reform of freshwater management (EGI Min (09) 20/6 refers).
52. Cabinet has also agreed that the Iwi Leaders Group and their advisors will be involved in the scoping of policy options to ensure matters of concern for Māori are identified and considered; and has noted that wider good-faith consultation with Māori will be needed before major decisions are made (EGI Min (09) 20/6 refers).
53. The public engagement process led by the LAWF has raised expectations about the nature of future reforms, how quickly they can be implemented (with calls for urgent action), and the role of stakeholders in designing and implementing the reforms. Stakeholders are keen to be involved in future work to design and implement the reforms, and many expect the LAWF to continue to be engaged in these processes. They support the idea of a collaborative approach to design and implementation work, although many are unclear about what this would mean in practice.
54. The LAWF considers that it could play a useful role in support of the Government's reform programme in a variety of areas, including through work on limits and targets, allocation, and water services management. The LAWF's final report to Ministers in April 2011 provided some thoughts on their role in policy design and implementation which need further consideration from central government, including consideration of how a future role for the LAWF would be funded, before responding in detail.

55. We propose to include more detailed proposals regarding the nature of the future role of the LAWF, and ongoing engagement with other key parties including local government, iwi/Māori, non-governmental organisations and industry, in the report-back in *[withheld]*. Given the progress made to date by LAWF there is potential benefit that it have some sort of ongoing role to support both the development of policy reforms, and the design of the specific instruments.
56. We do not propose any changes to the operation of the Protocol with the Iwi Leaders Group agreed by Cabinet in August 2009 (EGI Min (09) 15/4 refers). Ministers have committed to an ongoing discussion with the Iwi Leaders Group on the rights and interests of iwi/Māori as part of the forward policy development process.

Links with RMII reforms

57. Fresh Start for Fresh Water is one of ten work streams under Phase Two of the Resource Management reform package (RMII). We will ensure that the Fresh Start for Fresh Water reform package is progressed in line with the wider RMII package to avoid potential duplications or conflicting precedents (e.g., with regard to the role of collaborative processes, infrastructure, or Resource Management Act consenting processes).

Summary of timelines and key milestones

58. Proposed timing for key deliverables under the work programme can be summarised as follows:
- Announcement of the NPS, clean-up assistance fund, and irrigation fund; plus a commitment to a forward work programme as set out in this paper: prior to Budget Day
 - Report back to Cabinet with a high-level response to the LAWF's recommendations and proposals for ongoing engagement with other key parties including local government, iwi/Māori, non-governmental organisations and industry: by *[withheld]*
 - Delivery of policy options and a draft discussion document on Tranche 2: setting limits (including governance arrangements) to Cabinet by *[withheld]* 2012
 - Public and iwi/Māori engagement on Tranche 2 options: *[withheld]*
 - Cabinet decisions on final policy for Tranche 2 by *[withheld]*
 - Legislation for Tranche 2 introduced by *[withheld]*
 - Policy options developed under Tranche 3: managing to limits (including allocation mechanisms and additional tools for managing the links between land use and water) finalised in *[withheld]*
 - National Policy Statement for Freshwater Management implemented by 2014.

Consultation

59. The following agencies have been consulted on this paper and their views have been taken into account: Te Puni Kōkiri, Ministry of Economic Development, The Treasury, Department of Conservation, Department of Internal Affairs, The Office of Treaty Settlements, Ministry of Fisheries, and Department of Prime Minister and Cabinet.

Financial implications

60. There are currently no financial implications associated with this proposal. Funding to support the two funds described in paragraphs 31-36 has been dealt with in separate papers.

Human rights

61. There are no human rights implications or inconsistencies with the Human Rights Act 1993 arising from the proposals in this paper.

Legislative implications

62. There are no legislative implications arising from the proposals in this paper at this time.

Regulatory impact analysis

63. A regulatory impact analysis for the overall reform proposal is not required at this time.

Publicity

64. To date, the work programme has been known as 'New Start for Fresh Water'. As was noted by Cabinet in its consideration of the Fresh Start for Fresh Water Fund (assistance fund for freshwater clean-up projects) in April 2011 (EGI Min (11) 4/5 refers), we propose that this should now be renamed 'Fresh Start for Fresh Water' to align with the Land and Water Forum's report, and to mark the significant transition from the LAWF's initial collaborative process to the government's consideration of its response to the report.
65. Communications material is being prepared on Fresh Start for Fresh Water as part of the broader communications strategy for Budget 2011.

Recommendations

66. The Minister for the Environment and Minister of Agriculture recommend that the Committee:
1. note that:
 - 1.1. in June 2009, Cabinet agreed to:
 - 1.1.1. a new strategic direction for freshwater management, founded on setting and managing to limits of water quality and quantity

- 1.1.2. the use of a stakeholder-led collaborative process run by the Land and Water Forum, to develop options to achieve outcomes and goals for improved water management (CAB Min (09) 20/12 refers)
- 1.2. following receipt of the Land and Water Forum's report in September 2010, Cabinet invited the Forum to lead a process of public engagement on freshwater issues (CAB Min (10) 33/12 refers)
- 1.3. in September 2010, Cabinet invited Ministers to report back in due course with further advice on ingredients of the reform package; and with a response to the recommendations in the LAWF report (STR Min (10) 14/1 refers)
- 1.4. the Land and Water Forum reported to Ministers on the results of its engagement process in April 2011
2. note that there is wide agreement, based on engagement and policy work to date, that the key to water reform is delivery of new methods, tools and governance arrangements for setting and managing to limits for water quality and quantity

Response to the Land and Water Forum and ongoing engagement with stakeholders, councils and iwi/Māori

3. agree to explore an ongoing role for the Land and Water Forum in water reform
4. invite the Minister for the Environment and Minister of Agriculture to report back to the Cabinet Economic Growth and Infrastructure Committee by [withheld] with:
 - 4.1. a high-level government response to recommendations in the Land and Water Forum's report
 - 4.2. recommendations on the future role of the Land and Water Forum, and processes for ongoing engagement with other key parties including local government, iwi/Māori, non-governmental organisations and industry, and
 - 4.3. options for commissioning further work on water services management
5. agree that there will be ongoing engagement, on the rights and interests of iwi in fresh water, between the relevant portfolio Ministers and the Iwi Leaders' Group, consistent with the principles of the existing Protocol between the Government and Iwi Leaders' Group

Work programme to develop and deliver the water reform package

6. agree to a three-tranche work programme for signalling, designing and implementing a strengthened limits-based regime for freshwater management:
 - 6.1. Tranche 1: Early progress on three key interventions to signal the new limits-based regime: the irrigation fund, Fresh Start for Fresh

Water clean-up assistance fund, and National Policy Statement for Freshwater Management

- 6.2. Tranche 2: A broad programme of work on setting limits on water quality and quantity, including governance arrangements
- 6.3. Tranche 3: Work on managing to limits, including allocation mechanisms and additional tools to manage the effects of land use.

Tranche 1: signalling the strengthened limits-based regime

- 7. note that in April 2011 Cabinet:
 - 7.1. agreed in principle to an assistance fund for freshwater clean-ups entitled the Fresh Start for Fresh Water Fund (EGI Min (11) 4/5 refers) and
 - 7.2. agreed in principle to a fund to assist irrigation schemes to become investment-ready (EGI Min (11) 4/6 refers)
- 8. note that:
 - 8.1. Cabinet is considering a parallel paper that proposes the gazetting of a National Policy Statement for Freshwater Management
 - 8.2. this National Policy Statement will put in place some key ingredients of a new regime for setting limits for water quality and quantity
- 9. note that the three initiatives set out in paragraphs 7-8 will deliver early gains across economic, environmental and regulatory outcomes, and provide an important signal of the government's commitment to water reform

Tranche 2: Setting limits on water quality and quantity

- 10. agree that, while the NPS is an important first step to implementing a strengthened limits-based regime for managing freshwater, wider reforms need to follow quickly to deal with related matters that are beyond its scope, such as governance arrangements
- 11. invite the Minister for the Environment and Minister of Agriculture to report back to the Cabinet Economic Growth and Infrastructure Committee by [withheld] 2012 with detailed options for methods, tools and governance arrangements for setting limits for water quality and quantity

Tranche 3: Managing to limits

- 12. note that additional reforms and new methods will also be needed to enable councils to manage efficiently within the set limits
- 13. direct the Minister for the Environment and Minister of Agriculture to report back to the Cabinet Economic Growth and Infrastructure Committee by [withheld] with detailed options for managing to limits, including allocation methods and additional tools to manage the effects of land use on water

Publicity

14. note that communications material is being prepared on Fresh Start for Fresh Water as part of the broader communications strategy for Budget 2011.

Hon Dr Nick Smith
Minister for the Environment

Hon David Carter
Minister of Agriculture

4 May 2011

Appendix 1. List of recommendations from the *Report of the Land and Water Forum: A Fresh Start for Fresh Water*, published in September 2010

Set Limits for Quantity and Quality

1. Central government should define national objectives for the state of our waterbodies and set an overall timeframe within which they will be achieved, through instruments (National Policy Statements and National Environmental Standards) made under the Resource Management Act.
2. Regional councils must give effect to these national objectives at catchment level taking into account the spatial variation in biophysical characteristics of their waterbodies and their current state, and by expressing objectives at a regional level as measurable environmental states, and linking these to standards and limits.
3. Regional councils must engage with communities including iwi about the way their waterbodies are valued, and work collaboratively with relevant land and water users and interested parties throughout the catchment to set specific targets, standards and limits through their Regional Plans, including timeframes for meeting them.
4. Catchment standards and limits must at least meet national level objectives.
5. Central government should establish uniform processes for accounting for spatial variation of waterbodies, defining objectives and standards setting, and implementation by regional councils.
6. Both processes and outcomes should be monitored and regularly reported on.

Achieving Targets

7. Regional councils should employ a range of instruments to ensure that targets and limits they set are met, including voluntary schemes, codes of good management practice (including audited self-management), regulation, and funding. They should do this in collaboration with stakeholders and iwi.
8. Good management practice in land and water use must be encouraged by regulators, industry and others as an essential tool for improving and maintaining water quality, quantity, and water use efficiency.
9. Good management practice must operate within the overall framework of standards and limits. Targets and measures included in good management practice programmes need to be tailored towards achieving specific water outcomes.
10. Regulators and industry should provide incentives, assistance and penalties to improve uptake of good management practice.
11. Good management practice should be continuously improved, including through adaptive management, with wide stakeholder involvement in design and review.
12. Effective riparian management, including stock exclusion where topography allows, should be prioritised by pastoral industries as an important tool which contributes to enhanced water quality. In those areas where reticulated stock water provision is not possible or practical, and natural surface water is the sole source of water for grazing animals, provision for access to water must be allowed.
13. Audited self management should be used by industry and regulators to ensure that outcomes are being met.
14. A robust policy framework which sets the site-specific objectives for good practice in terms of water outcomes is needed.

15. Robust industry standards and audited self management schemes need to be recognised in the development of regulatory approaches to water quality.
16. Central government should provide guidance to regional councils on regulatory design for water quality.
17. Regional councils should ensure that regulatory approaches are as far as possible consistent across catchments and between councils.
18. Provisions for Water Conservation Orders should be amended to achieve an integrated management approach including land use.
19. The proposed National Land and Water Commission should investigate the use of price based measures for improving water quality, identify any law changes required, and provide guidance and assistance to regional councils on their design and the circumstances in which they might be used.
20. A fund should be established that would, operating within an overall strategic framework set by the proposed National Land and Water Commission, enable clean-up of contaminated waterbodies to occur.

Improve Allocation

21. Limits are required to protect instream values. Allocation limits (including setting reliability levels) may be established. Both should use the process set out in recommendations 1–5.
22. Allocation of water should start at the boundaries of the waterbody, surface or groundwater.
23. The approach of first-in first-served does not work in an increasing number of catchments where water is fully allocated or approaching full allocation. Regional councils should set a threshold for each catchment. When the amount of water allocated exceeds or threatens to exceed this threshold a more effective allocation system should be put in place.
24. Scarce water should be allocated as efficiently as possible, and water allocation methods should not pick winners based on land use.
25. The Government should consider three broad options for efficiently allocating scarce water after instream limits have been set:
 - continuing existing consents but using consent expiry as an opportunity to make changes to conditions;
 - using a different administrative system based on efficiency criteria and community considerations;
 - payment, including through the tendering, auction or regular re-tendering of permits.
26. A more flexible system for transferring water permits should be put in place only once over-allocation of water has been managed. Each regional council must develop plans to manage any over-allocated catchment in its region.
27. The government should consider options to allow water permits to be transferred more freely, including:
 - permits being able to be transferred without financial consideration between
 - cooperating members of the same community;
 - permits being able to be freely traded without payment for the permits;
 - permits being able to be freely traded but only after payment for the permits;
 - the subdivisibility of permits;
 - requiring regional councils to define the areas and conditions within which transfers could freely take place, without requiring individual consideration of their site-specific impacts.
28. The government should consider establishing a collaborative process to investigate in further detail the allocation and transfer options, including considering water priority use issues and the

transitional implications (including equity issues and the risks to existing infrastructure investments) of any changes to the water allocation framework.

29. The transition to any new system of water allocation should proceed hand in hand with Crown-iwi discussions on iwi rights and interests in water management.
30. National direction should be given to regional councils to provide:
 - a consistent process for developing a scarcity threshold for each catchment;
 - guidance for allocation and transfer methods, and the circumstances in which they should be used;
 - consistency of approach to setting instream limits and to water allocation, while recognising spatial variability.

Rural Water Infrastructure

31. Regional planning on a collaborative basis must occur so that rural infrastructure can be developed in a way that provides a range of social, economic, cultural and environmental benefits.
32. Regional rules should set clearly defined standards and pre-conditions for the processing of consents for rural water projects over a certain size, including the use of a collaborative approach starting early in the project feasibility stage.
33. National instruments should be developed to enable and give priority to large scale consents, regional plans and Water Conservation Orders that have undertaken an initial collaborative approach over proposals that have not undertaken this approach.
34. Both regional councils and holders of consents in cooperative rural infrastructure schemes should be able to withhold water in circumstances where environmental conditions of the consent to take water are not being met.
35. Public funding of rural infrastructure projects should be targeted to early stages of such projects, and linked to the use of collaborative approaches for the proposal design.
36. The permissible duration of water permits for rural water infrastructure should be reviewed.

Changes to Governance

37. A non-statutory National Land and Water Commission should be established on a co-governance basis with iwi.
38. The Commission should develop and oversee the implementation of a National Land and Water Strategy, and advise Ministers on the management of water resources. The role of the Commission is fully set out in paragraph 171 of this report.
39. The Strategy should:
 - identify opportunities for enhancing cultural, economic, environmental and social value in an integrated way from water resources, including water infrastructure development;
 - support links between water resources and other related nationally significant issues and objectives;
 - set out expectations and outcomes capable of informing the development of regional water strategies;
 - set out needs and priorities for data and knowledge about water;
 - recognise the relationship between iwi and the Crown, and iwi expectations for water management.
40. Collaborative approaches should be mandated for the development of any land and water strategy, or regional water plan.

41. National direction for regional councils must be given through national policy statements and national environmental standards, and templates on different aspects of water management. Regional Councils should be assisted to resolve capacity issues including through coordination.
42. Improvements should be made to the process for developing any National Environmental Standard to ensure the process has a more collaborative option.
43. Regional council performance in water and related land use management should be improved through:
 - government appointments to regional council committees or councils;
 - the development of non-statutory regional water strategies;
 - the mandatory development of integrated regional water plans under the Resource Management Act, according to a national template and using a collaborative approach;
 - ensuring that iwi have adequate representation in regional committees dealing with water;
 - the establishment and maintenance of comprehensive water data sets on a basis consistent with national data; and
 - using their existing powers under section 30 of the RMA to control those land uses that impact on water quality.
44. Regional councils should have the option of:
 - notifying a regional water plan under Schedule 1 of the RMA and following that process in full, or
 - after having used a collaborative approach, making a decision on the plan without conducting a hearing as set out in Schedule 1, and having that decision referred directly to the Environment Court if it is challenged by any party.
45. In limited circumstances, with Ministerial approval, moratoria are a possible tool to facilitate strategic planning in areas where it is needed to get better water management outcomes.
46. The Forum of regional council and relevant government agency Chief Executives should be strengthened to improve 'whole of government' direction, provide essential links between central and regional government, and focus on removing obstacles to implementing improved water management.
47. The Parliamentary Commissioner for the Environment should be responsible for a rolling system of two-yearly reporting on the effectiveness of each regional council in achieving water management goals and objectives, and a five yearly review on the effectiveness of the system of land and water management.

National Policy Statement

48. The government should:
 - promulgate a National Policy Statement for fresh water quickly. The current draft as recommended by the Board of Inquiry is a basis to work from.
 - consider changes in the following areas of the current draft –
 - the references to Tangata Whenua roles and Māori values and interests
 - drafting changes to policy C1 to include reference to "mitigate" in achieving prescribed standards
 - policy E2 to clarify what contamination means in relation to the objectives
 - drafting changes to the transitional measures to correct a perceived vires problem.
 - consider promptly a set of issues which need further work. They include -
 - specific measures dealing with use and development
 - recognising the benefits of significant infrastructure
 - making environmental values more specific by adding an objective which protects the values of fishing, swimming and mahinga kai, and
 - providing for allocation efficiency.

- deal with these issues through collaborative processes that consider a suite of national instruments (note: some Forum members think these issues should be addressed in the current NPS; others think they should be dealt with separately).

Science and Knowledge

49. Freshwater science and knowledge (including Mātauranga Māori) is an essential part of governance and should be:
- based on reliable data consistently collected, archived and publicly available;
 - made an integral part of the framework of freshwater and land use management, including its collaborative and strategic processes;
 - disseminated in an accessible form to enhance uptake;
 - underpinned by a water research strategy and a land resources and use research strategy which draw on the range of relevant disciplines.

Water services management

50. The way water services infrastructure is managed and organised should be investigated to consider the potential benefits of rationalisation. This includes the possibility of a national regulator with oversight of pricing and performance issues.
51. Subsequently, the issue of volumetric metering and direct billing should be worked through collaboratively with stakeholders.

Drainage

52. The government should review legislation relating to drainage to ensure that it is consistent with the need to protect wetlands and biodiversity, and the recommendations contained in this report.

Floods

53. The government should investigate the role of greater national direction in flood management, and whether additional extension services are required.