

Office of the Minister for Primary Industries
Office of the Minister for the Environment

Chair

Cabinet Economic Growth and Infrastructure Committee

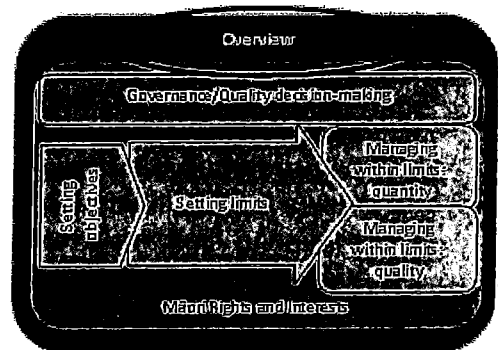
Water reform overview: implementing the water reform strategy

Proposal

1. This paper provides an overview of:
 - a. how the proposals in the water reform strategy will impact on regional councils' implementation of the National Policy Statement on Freshwater Management (NPSF-FM) and
 - b. the likely reaction of stakeholders to the proposed water reform strategy.
2. It also seeks agreement to:
 - a. the approach and process for consultation on the strategy.

Executive summary

3. Over the last month the Cabinet Economic Growth and Infrastructure Committee considered the core elements needed to implement the water reform strategy (Annex A). New Zealand needs this reform to the management of its freshwater resources to provide for economic growth and improve environmental outcomes. Implementing the strategy will provide stronger central direction, through regulation, guidance and support to regional councils, communities and resource users.
4. The elements of the water reform strategy are also reflected in our Business Growth Agenda for natural resources. The agenda emphasises the need to maintain our competitive advantage through managing our freshwater resources more effectively and efficiently.
5. The strategy proposes changes beginning in 2013 and signals how we will build on these progressively over time. Changes that would occur from day one (the day legislation comes into force) include changes to governance and regional planning processes, and a national objectives framework (potentially with a limited number of bottom lines). Over the following year we would see national direction and guidance around accounting systems, monitoring and compliance, specification of permits and methods to manage within water quality and quantity limits. Further reforms would unfold over subsequent years.



6. These changes will address NPS-FM implementation concerns in the longer term. However, there may be some transitional issues for councils that are moving plan changes through the process in advance of these reforms. We will assess whether further short-term action is needed to cover this transitional period prior to making final decisions on implementing the water reform strategy.
7. The discussion document on the water reform strategy early next year will be aimed at the wider New Zealand public and those with specific interests in freshwater and freshwater management. It will outline the overall aim and approach of the water reform strategy, and present an overview of its core policy elements. This document will be accompanied by supporting information to ensure all audiences can make informed submissions.
8. The proposals in the water reform strategy reflect and build on advice and recommendations we have received from the Iwi Leaders Group (Iwi Leaders) and the Land and Water Forum (the Forum):



- b. *The Forum:* The proposals follow the policy intent of the Forum's recommendations, while also going into some areas where the Forum did not reach consensus (i.e. merit appeal rights) or topics they did not consider (i.e. reserve powers). Stakeholders represented in the Forum are likely to comment on the way bottom lines are represented in the strategy as this was a critical pillar of their consensus. It will also be important to Forum members that the proposals represent a full package of reform and that they can be confident that the impetus for change will continue.

9. The first stages of the strategy (those that will be implemented in 2013 and 2014) are likely to be well received, particularly if they are seen as part of an ongoing comprehensive strategy. Although it is likely that stakeholders will have diverse views on how fast particular components of the strategy should be rolled out - in particular the longer term elements around creating stronger economic incentives and mechanisms (e.g. transfers) for managing to limits.

Background

10. The aim of water reform is to create a more effective water management system which protects water quality, supports economic growth and enables efficient use of fresh water within limits that reflect national and community objectives.
11. The NPS-FM was part of the Government's first tranche of water reforms including the Irrigation Acceleration Fund and the Fresh Water Clean-up Assistance Fund. The NPS-FM was gazetted in May 2011. It was recognised at the time that a further package of reforms would be required to enable the NPS-FM to be implemented efficiently and effectively. Cab Min (11) 18/9. The proposed water reform strategy will provide regional councils with the further direction and guidance they require.
12. Over the last month we have agreed the need to consult (Cab Min (12) 41/5) on the water reform strategy implementation. At Cabinet Economic Growth and Infrastructure on 5 December 2012 we considered four papers on the elements of a strategy to reform freshwater management (EGI (12) 274 -277 inclusive).

13. As has been noted in the earlier papers we are considering water reform in relation to how it fits within a wider package of reforms around resource management and local government.

Comment: Implementing a successful water reform strategy

14. The water reform strategy proposes introducing initial, foundational reforms in 2013 and setting the direction for further ongoing change over the next decade (an indicative implementation outline is provided in Annex B). When we make final decisions in 2014 we will have the opportunity to reflect on progress and decide if anything further is required. The table below indicates how the water reform strategy could be implemented. The exact timing will depend on Cabinet policy decisions following consultation and when the Resource Management Bill 2013 is enacted.

Delivering the water reform strategy

2013	2014	2015 onward
<p>Subsequent to enactment of resource management amendment legislation:</p> <p>On the basis legislation is enacted in December 2013:</p> <p>By 30 December 2013</p> <ul style="list-style-type: none"> - Councils will be required to implement a national objectives framework (including bottom-lines) (i.e. the minimum level of water quality to which all councils will have to manage over time) to guide successful implementation of the NPS-FM and development of freshwater management plans - Central government will have a clearer role in guiding and directing regional planning and decision-making in certain circumstances. - Central government will have delivered guidance for councils to support the successful implementation of the collaborative process - Councils will have the option to use a collaborative process for plan development - Stakeholders, community and iwi will have a stronger role in the planning process (assuming collaborative process is used) 	<p>By 30 June 2014</p> <ul style="list-style-type: none"> - Councils will be required to: <ul style="list-style-type: none"> i) monitor and account for all water takes and discharges ii) follow standard processes for specification of water consent/permits (including duration), including requirements for resource use efficiency - Central government will have delivered first tranche of good management practice guidance and toolkits with key industry sectors and stakeholders - Councils will be implementing the most effective methods and tools for managing water quantity 	<p>By 30 June 2015</p> <ul style="list-style-type: none"> - Central government will provide direction and tools to councils for managing outstanding water bodies and wetlands - Central government will provide standard tools for specifying water permits - Central government will provide direction and guidance on managing to limits, economic incentives etc <p>2016</p> <ul style="list-style-type: none"> - Review of the NPS-FM and progress towards setting objectives and limits and managing within limits
<p>Reviewing a research strategy / science / Economic impact joint venture</p>		

15. Day one of the reforms (the date of enacting required legislation) will see the rapid implementation of the critical foundation measures; changes to governance and regional planning process; the national objectives framework (and potential bottom lines) and direction to regions on limit setting. While these will provide the spring board for councils to ensure effective planning processes we anticipate that some of this change will already have started, as councils respond to the direction of change indicated in the discussion document in early 2013. As further changes roll out over 2013-2016 councils will receive additional support and guidance.
16. The specific impact that the strategy has on how councils implement the NPS-FM will depend on the stage at which regions are at in their planning processes. There are three regions which have indicated they will have notified or operational plan changes that meet the requirements of the NPS-FM by 2015, including setting objectives and limits for all waterways. A second group of regions intend to work through each catchment sequentially and some significant catchments may have limits established by 2015. The remaining regions intend to implement the NPS-FM progressively, on timeframes that extend from 2018 to 2030.
17. There are a range of additional options we could employ to respond to the fast moving councils in the first two groups. These would further influence their implementation of the NPS-FM in the short-term and include: slowing down or suspending any new plans or changes related to fresh water; specifying appropriate timelines for managing to limits; requiring plans be updated or reviewed; providing targeted intervention and support as required. If required, we will explore these further at the time of final decisions on the strategy.
18. In addition to this the 2012 Resource Management Bill will make changes to section 32 requiring councils to undertake a more robust assessment of costs and benefits. In particular they will need to give consideration to the anticipated economic impacts of a proposal or plan within the district or region in question. Further changes to the Act could provide the Minister for the Environment with more specific powers to direct plan changes for matters of national importance and in defined situations.

Further economic information to support decisions

19. We are testing the economic impact of objectives and limits through joint venture studies with Regional Councils. The purpose of this work is two-fold. It will provide in-depth economic information to support council decision making and to test economic implications of national policy direction on objectives and limits, including the impacts of different choices for national bottom-lines. The first two councils to be involved are Environment Canterbury and Southland Regional Council with regional studies to be completed by the end of the first quarter of 2013. Horizons Regional Council has declined to be involved in further work until the current Environment Court process is completed. Several additional councils are in early stages of discussion and their participation in the joint venture studies will be confirmed in early 2013.
20. Officials are also working with councils and industry to explore the concept of a virtual centre for economic analysis as a longer term mechanism. This would provide in-depth economic information to regional councils to support implementation of the NPS. It would also build the capacity and capability in New Zealand to undertake agricultural and environmental economic analysis.

Implementation will require a cycle of monitoring, review, reporting back and adaption

21. Managing the adaptive nature of the strategy will require a cycle of monitoring, review and evaluation. This will include a process for reporting back to Ministers and stakeholders.
22. We will need to make sure the appropriate institutional and accountability mechanisms are in place to co-ordinate the implementation of the strategy. This will be critical to the credibility of the reform package as a whole and ensure that it keeps its constituency and its momentum. Further advice is needed to explore a range of options – from nesting these tasks within existing departments and setting up an advisory group in 2016 to conduct the NPS-FM review, all the way to a body to carry out national functions. The discussion document will discuss the need for these long term functions but not the form they should take.

Incorporating stakeholder views

Reports of the Land and Water Forum

23. The water reform strategy strongly reflects the policy directions recommended by the Forum. The strategy also builds on the Forum's recommendations and fleshes out where the Forum was unable to reach agreement. While the strategy differs from some of the specific details of the Forum's recommendations, the policy intent of the Forum is preserved. There is some difference in the degree of prescription and the balance between regulation and guidance.
24. Elements included in the strategy on which the Forum did not reach consensus or which it did not specifically address include: the introduction of additional reserve powers for central Government to intervene in the regional planning process; merit appeal rights; and the use of some economic instruments.
25. Longer term issues, including Water Conservation Orders (WCOs), initial allocation and allocation on expiry, consent duration and charging for water, are still controversial among stakeholders. It is expected they will elicit conflicting submissions from Forum members. Some stakeholders support of the water strategy may depend on assurance for when and how the policy elements they see as critical (e.g. consent duration, charging for water, trading) will be addressed.
26. In terms of the general design of the water reform strategy, the stakeholders represented in the Forum will likely be attentive to the following aspects:
 - a. *the general balance of the package.* The Forum's consensus was based on a number of trade-offs and compromises between stakeholders; e.g. national bottom-lines in exchange for a stronger voice for local communities in planning processes and flexible adjustment timeframes.
 - b. *the timing and sequencing of reforms.* Although Forum members are likely to be comfortable with the sequencing of reforms outlined here, they will have different opinions about the pace of reform and which aspects should have priority. Many of them will want confidence that the impetus will be maintained over time and that the longer-term issues will indeed be addressed and resolved
 - c. *national bottom lines.* This was an important part of the Forum's consensus and they are likely to comment on the need for nationally set bottom lines.

- d. *a future role for stakeholders.* Having spent time and resources over three years on the Forum's process, some will want reassurance that there will be a continued role for stakeholder engagement and collaboration in the implementation and review of the strategy.
27. Forum members' buy-in and support for the overall reform strategy package will be useful in relation to other constituencies as well, in particular local resource users. Iwi leaders and advisors have also expressed a strong commitment to the Forum's outcome.

Iwi/Māori and the water reform strategy

28. Maori aspirations for fresh water are closely aligned to those of other New Zealanders, including the maintenance and protection of the quality of water ways and the development of sustainable economic opportunities from water resources. Iwi also have an enduring relationship with water that stems from their whakapapa (genealogy) and māna whenua (the authority associated with the possession of lands).
29. The Freshwater Iwi Leaders Group is guided by a high-level set of principles that articulate iwi connections to water bodies and shared aspirations for water. Iwi Leaders have been strongly supportive of the Forum's process and reports and engagement in the Fresh Start for Fresh Water programme, while acknowledging there is a wide spectrum of views among iwi/Māori regarding specific iwi rights and interests in fresh water.
30. The Forum's third report recognises the opportunities for all in the clarification of iwi rights and interests, through resolution of iwi rights providing certainty for iwi and for all those with a stake in water.
31. Addressing issues for iwi/Māori (including rights and interests) is as complex as the rest of the package and will unfold over time as part of the strategy. As with the Forum and others, iwi/Māori will generally be attentive to the overall balance of the package, the sequencing and timing of it and their role in developing the policy.
32. The Iwi Leaders Group has expressed a clear view that the health of the water (te mana o te wai) is the overriding principle for water and that reform should start from measures addressing that principle.

How the implementation strategy delivers for iwi/Māori

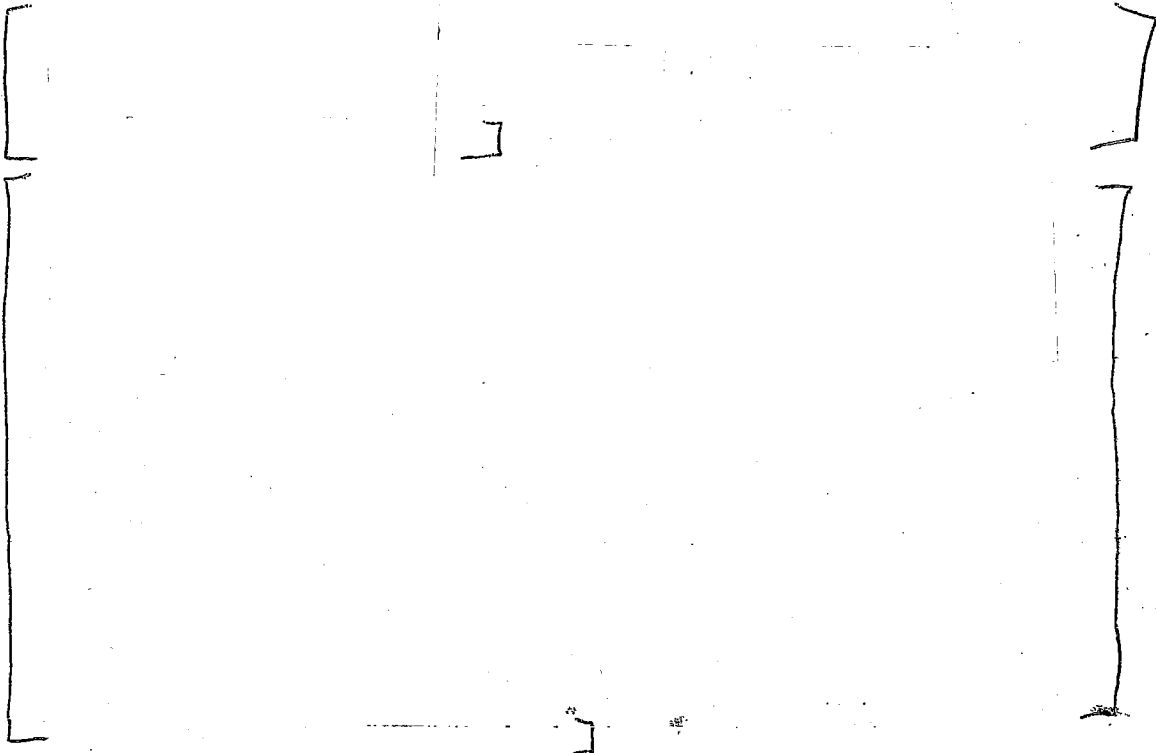
33. The Government's water reform programme and the aspirations of iwi/Māori have many aspirations in common. Many of the desired outcomes are similar. Inadequacies in the current legislative structure and its implementation are the starting points for both parties, in particular with respect to quality.
34. The foundation measures proposed will advance the status quo for iwi/Māori through opportunity to participate in the collaborative planning process used to establish objectives and limits to protect water ways. This provides an avenue for iwi/Māori values to be incorporated into the overall framework that governs water management in a region, including in the setting of limits and the regimes that manage to limits. Iwi having a statutory advisory role in planning will fall short of iwi expectations of joint decision-making.

- 35. The strategy's implementation will be supported by the establishment of accounting systems and the potential for accountability to be clarified. This will allow councils to focus on improving efficiency of both water use and the management of water. Iwi/Māori have an interest in increased efficiency to protect the mauri (life-force) of the water through use not being wasteful, and in freeing up water for further development. Improving the system to allow for headroom will provide the opportunity for new players, including iwi/Māori, to access quantity and quality of water.
- 36. The foundation measures in the paper should not foreclose development of further aims to accommodate rights and interests as other aspects of the strategy are implemented in the medium term.

Matters of continuing importance to iwi/Māori

37.

38.



- 39. Some iwi constituents may consider progress insufficient, and turn to alternative processes as a result. The proposals are an improvement on the status quo under the Resource Management Act, however, and go some way to meeting iwi aspirations for improved water management even if they do not go as far as some iwi want at this stage. The proposals are not intended to derogate from existing Treaty Settlement arrangements for water management. We believe most constituents will recognise that the development of greater headroom in the system will take time, but will ultimately provide the basis for equitable access. The critical thing for most iwi is that others' rights and interests are not strengthened prior to iwi rights and interests being properly addressed.
- 40. Wider engagement beyond the Iwi Leaders is expected to demonstrate the diversity of views held by Māori on water management issues, including the assertion of ownership of water.

Next Steps

41. Given the importance of these matters, there is considerable benefit in maintaining engagement with Iwi Leaders (and their Advisors) to keep the dialogue open while proposals firm up. This dialogue should focus on the potential to further narrow the extent of unresolved matters.
42. Wider engagement with iwi/Māori will be required following the release of the discussion document, and we will need to consider the nature and form of this engagement.

Process and approach for consultation

43. The wide-ranging support for change reflects the consultative process created by Fresh Start for Fresh Water in 2009. We have already incorporated the views of significant stakeholders and some iwi/Māori through the reports of the Forum and our ongoing conversations with the Iwi Leaders Group. These avenues have provided us with significant insights and high quality advice. However, we want to ensure we have heard a wide range of views before implementing the proposed strategy for water reform. The discussion document will also serve as the Government's response to the Forum's advice.
44. We intend to focus this consultation on four audiences, general public, iwi/Māori, local government, stakeholders and resource users. Each of these will want different levels of detail about the policy proposals and more specific information about different parts of the strategy.
45. In addition to the core elements outlined in previous Cabinet papers, there are some aspects of the water reform process as a whole that we wish to consult on. These include, in particular, building in a process for assessment and progress reports to the public on the implementation of the strategy, and seeking feedback on how interest groups want to be engaged and kept up to date on progress.

Potential public reaction to critical policy proposals

46. Regardless of the current consensus, water remains a controversial issue. Reaction to the proposals in the water reform strategy will reflect the divergent views the public has on water. These are informed by the different uses people have of water, from recreational, through to cultural, or as inputs into production.
47. The consultation on the strategy will improve the level of public discussion on how we best manage our freshwater. It should further develop the interest that has been raised by the Forum. We intend that it encourage a more informed understanding of how competing views and uses can be reconciled, and the processes available for doing so. Regional councils will be able to build on this as they engage their communities and consider how they take the policies through to implementation.
48. Given the myriad interests, it is still likely that some stakeholders and resource users will have strong (and potentially opposing) views on when and how fast particular components of the strategy should be implemented. This is balanced by strong momentum and a desire for change.

Consultation

49. To engage effectively with these different audiences, we propose the discussion document and accompanying information should provide a cascade of questions – starting with the aim and general direction of the water reform strategy and allowing respondents to provide further feedback on detail as required and appropriate.

50. We propose Ministers launch the consultation phase and the consultation approach be targeted to:
- a. general public – MfE and MPI will lead engagement through the provision of information using social media and on-line tools
 - b. iwi – hui will be held throughout New Zealand attended by Crown delegated representatives and led by MfE and MPI
 - c. Regional Councils – MfE and MPI officials will work with regional councils to design and hold appropriate regional meetings
 - d. stakeholders (resource users) – MfE and MPI officials will lead meetings with stakeholder groups (e.g. hydro organisations, primary sector organisations).

Overlap with consultation on resource management

51. The consultation period for water reform is likely to overlap with the resource management consultation. This process will need to be carefully managed to minimise any confusion over the purpose of each consultation. The discussion document on water reform will have specific proposals around freshwater management, whereas the resource management consultation will deal with wider issues in resource management.

Next steps

52. We will report back to Cabinet in early 2013 seeking approval for the release of a public discussion document on water reform.

Consultation

53. The following departments and agencies have been consulted on this paper and their views are reflected: Department of Internal Affairs, Te Puni Kōkiri, Department of Conservation, the Treasury, Ministry of Business, Innovation and Employment, and the Office of Treaty Settlements. The Department of the Prime Minister and Cabinet was notified of this paper.

Financial implications

54. There are no financial implications arising directly from this paper or from the previous papers which sought agreement to the proposals to be included in the discussion document. However, should the proposals be agreed following consultation, developing and delivering legislative changes, regulations, guidance, and review programmes may give rise to cost pressures that require reprioritisation by relevant agencies, or additional funding.
55. Preliminary estimates indicate that the cost of the proposals to be canvassed in the discussion document amounts to less than \$10 million in total across the forecast period, departmental and non-departmental, excluding any direct funding to regional councils or additional water science research funding.
56. Cost estimates and any funding proposals for the full water reform package will be further developed in advance of final decisions and, where appropriate, considered in agencies' 2013 Four-Year Plans and associated reprioritisation processes. At this stage, it is unclear how these costs may be distributed across Votes. Officials' objective is to manage within baselines where possible.

57. Should the proposals be agreed following consultation, they may give rise to costs for regional councils, including operating costs associated with implementing the proposals and capital costs associated with establishing new systems. Further work will be undertaken before final decisions are sought to clarify the types and quantum of costs likely to be faced by regional councils as a result of policy developments.

Human rights

58. The proposals contained in this Cabinet paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Gender implications

59. The proposals contained in this Cabinet paper have no gender implications.

Disability perspective

60. The proposals contained in this Cabinet paper have no implications from a disability perspective.

Legislative implications and regulatory impact analysis

61. There are no legislative implications arising directly from this paper. Some of the elements of a future reform package are likely to have legislative implications. The regulatory impact analysis requirements do not apply to this paper as it does not seek substantive policy decisions. A regulatory impact statement will be prepared to support any future Cabinet consideration of options.

Publicity

62. There are no publicity requirements arising directly from this paper. A Cabinet paper early next year will seek agreement to release the discussion document referred to in this paper and will pick up any publicity considerations.

Recommendations

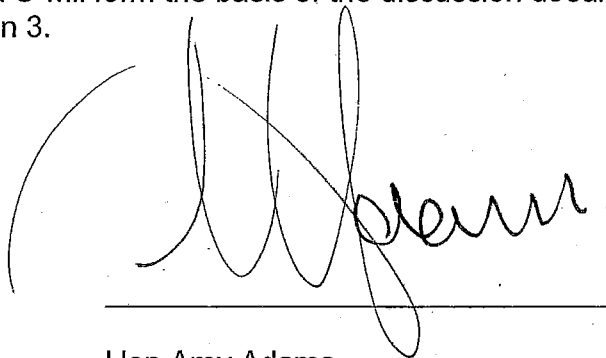
63. The Minister for Primary Industries and the Minister for the Environment recommend that the Committee:
1. note that Cabinet has agreed in principle that the Government consult, through a discussion document in early 2013, on proposals to implement the water reform strategy that includes reforms to governance, setting objectives and limits, and managing limits for both quality and quantity
 2. note that the Cabinet Economic Growth and Infrastructure Committee has agreed to the substance of the proposals referred to in recommendation one for consultation [as discussed at EGI on 5 December 2012]
 3. note that Cabinet has invited the Minister for Primary Industries and the Minister for the Environment to report back to Cabinet in early 2013 seeking approval for the release of a public discussion document on water reform [Cab Min (12) 41/5]

4. note that the aim for the water reform strategy is to create a more effective water management system which protects water quality, supports economic growth and enables efficient use of fresh water within limits that reflect national and community objectives.
5. note that the discussion document will highlight how the Government's proposals to implement the water reform strategy reflect the advice of the Land and Water Forum and the Freshwater Iwi Leaders Group
6. note that the implementation strategy as [discussed at EGI on 5 December 2012] may not fully meet the expectations of Māori with regard to providing for the rights and interests of Māori in fresh water
7. agree that the Minister for Primary Industries and the Minister for the Environment may:
 - 7.1. continue to engage with the Freshwater Iwi Leaders Group on how to provide for Māori rights and interests in fresh water
 - 7.2. further consider how the discussion document should appropriately reflect this engagement
8. agree that the discussion document and consultation process be designed to target different audiences [and highlight what the reforms will mean to them in practice]:
 - 8.1. the general public, on the general aim and approach of the water reform strategy, through an accessible, high-level document, and through social media and on-line tools
 - 8.2. regional councils, iwi/Māori, and stakeholders (resource users) through detailed accompanying papers and specific meetings.
9. note that the outline in Annex C will form the basis of the discussion document referred to in recommendation 3.



Hon David Carter
Minister for Primary Industries

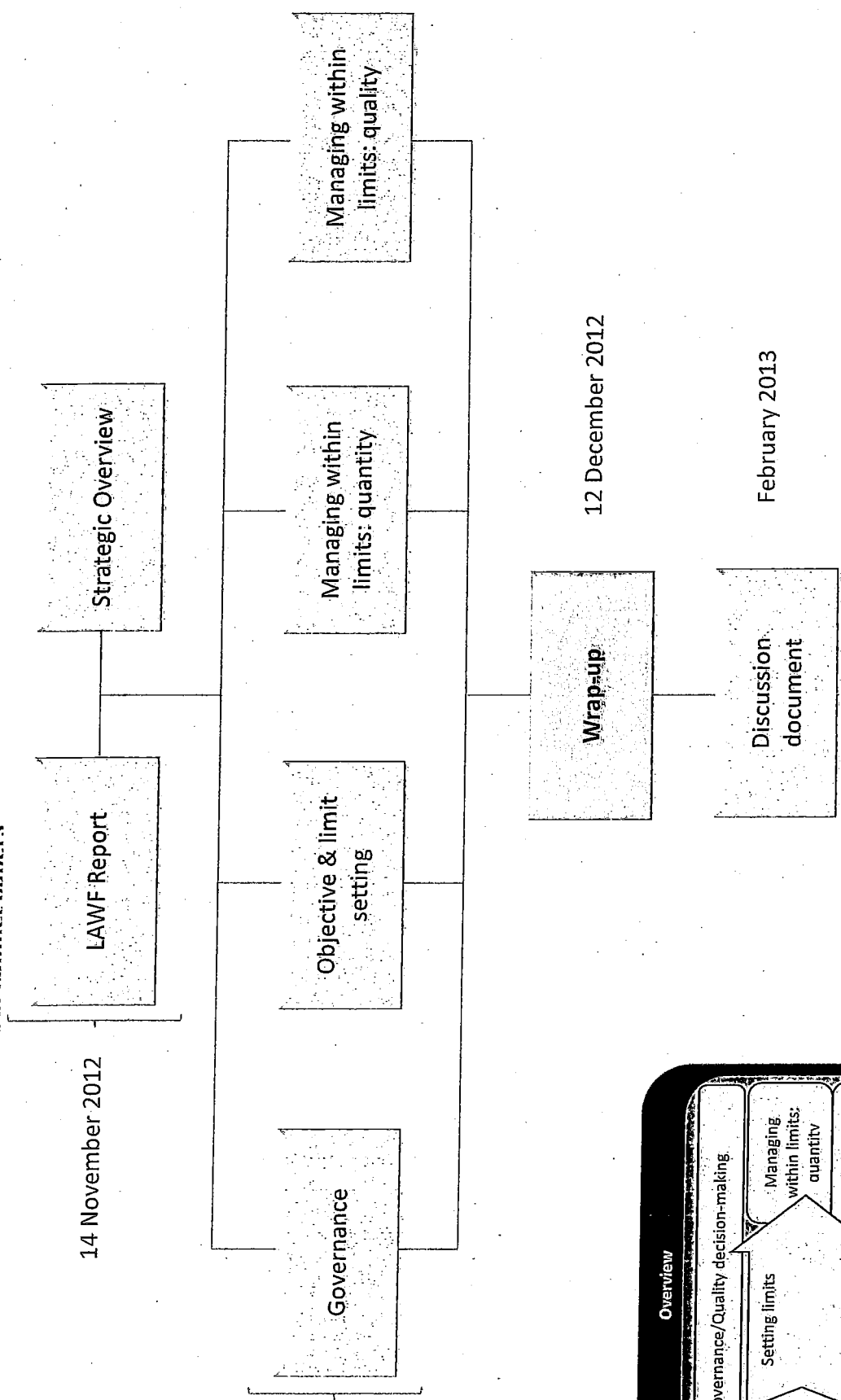
6, 12, 2012



Hon Amy Adams
Minister for the Environment

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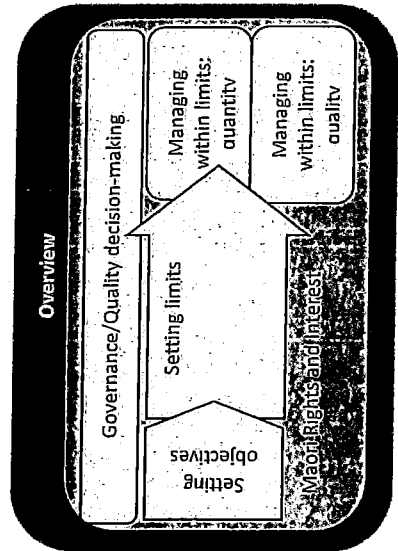
Annex A: WATER REFORM – Schedule of Cabinet papers

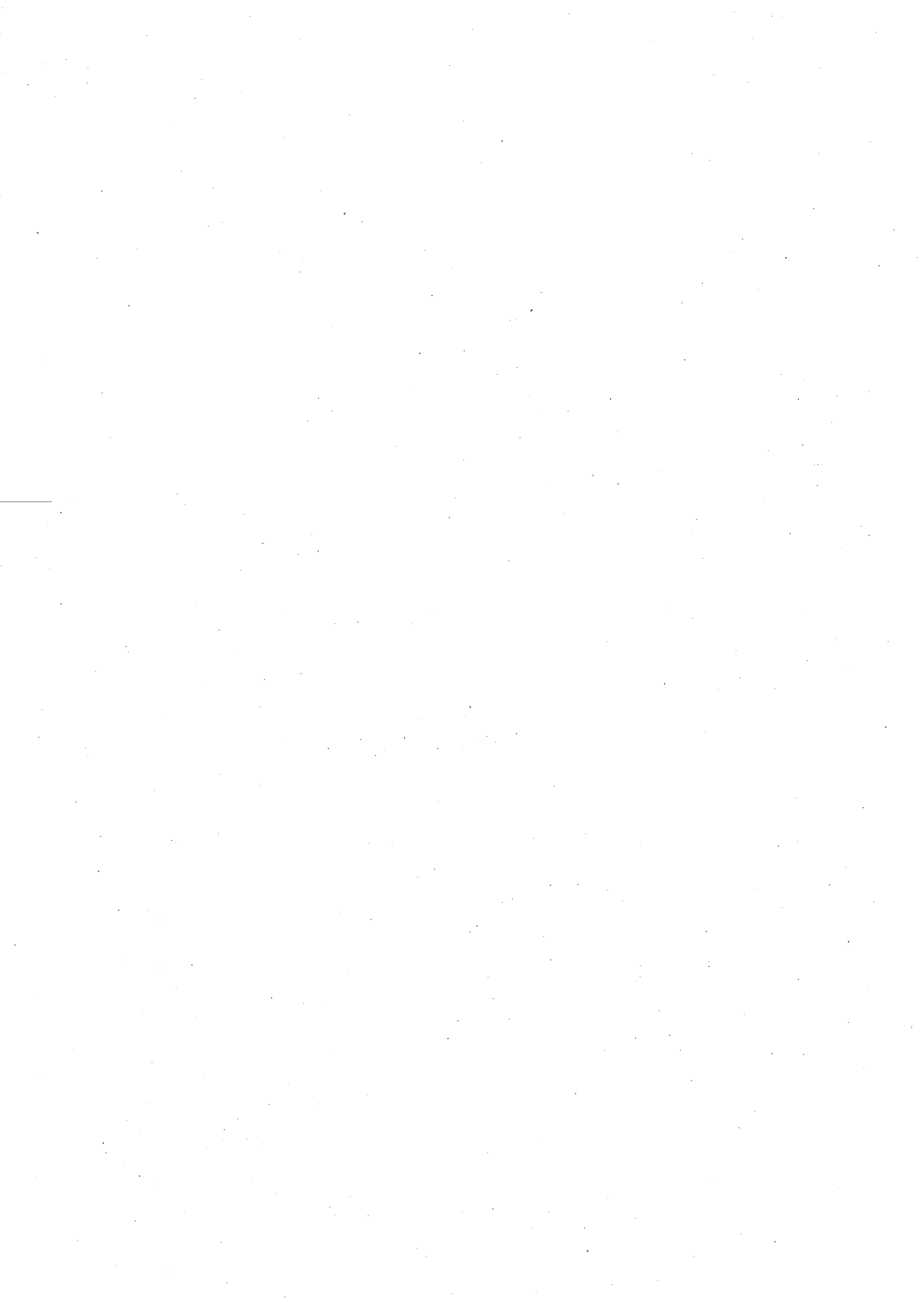


14 November 2012

12 December 2012

February 2013





Water Reform – Strategy Implementation Discussion document

Proposed document structure:

1. *Ministers' introduction*
2. *How to have your say*
 - Details of mechanisms for providing submissions (e.g. online, written)
 - Dates for Hui, resource users meetings and regional council meetings
3. *Executive summary*
4. *Development of water reform strategy*
 - 2009 Government established strategic direction for freshwater reform
 - Establishment of Land and Water Forum (LAWF)
 - Years of work from LAWF and Iwi Leaders Group
 - Huge achievements have fed into Fresh Start for Fresh Water work programme
 - Led to today's position – opportunity to implement a significant water reform strategy to maximise opportunities and address problems with our freshwater management system
 - Proposed implementation approach alignment with LAWF recommendations.
5. *Freshwater management of tomorrow (vision)*
 - Building on LAWF recommendations - the future we see is an efficient and effective management system that is achieved through reform over a generation
 - Water is our greatest asset – cultural, spiritual and economic reasons and values
 - Objective is an efficient system that over time creates economically efficient water use within limits – encourages and provides certainty for investment, incentivizes efficient practices, contributes to economic growth and provides for environmental, social and cultural values
 - Getting there will take time – adapt and change - this is the right approach as it allows for monitoring, responding to information, evaluating as impacts occur and reviewing progress
 - There is a role for everyone – users, regional councils and central government
6. *What will the future look like? (outcomes)*
 - Overarching outcome – fair, accountable and efficient system and a balance between environmental resilience, economic growth and providing for community and national values
 - Scenarios for different audiences – what it means for them – regulatory reform, guidance and direction

7. *Proposed implementation components*

- Reform is an integrated package of four components – governance, objective and limit setting, managing within limits for quantity and quality. Ways in which reforms are interdependent
 - a. Governance:
 - proposed vision
 - Proposed elements for improved governance system – strong central government leadership. Improved planning process and effective provision for iwi/Maori involvement
 - Sequencing – short and long term measures and what it means for different parties
 - Benefits and impacts
 - Questions for feedback
 - b. Objective and limit setting:
 - Proposed vision
 - Proposed elements to support effective transition to an effective limits-based regime under the National Policy Statement for Freshwater Management
 - Sequencing – short and long term measures & what this means for different parties
 - Benefits and impacts
 - Questions for feedback
 - c. Managing within limits – quantity
 - Proposal for developing foundation measures to address water accounting systems, improved monitoring and compliance and improved specification of entitlements (water permits)
 - Sequencing – short and long term measures and what it means for different parties
 - Benefits and impacts
 - Questions for feedback
 - d. Managing within limits – quality
 - Proposals for foundation measures that underpin good water quality management - improving the science, knowledge and information system, national guidance or regulation addressing accounting for sources of contaminants/water quality management planning, and development of sector-based good management practice toolkits
 - Sequencing – short and long term measures and what it means for different parties
 - Benefits and impacts
 - Questions for feedback

8. *Finalising water reform strategy*

- Detail of government's process and timelines
- Ongoing work - determine how to manage the reforms, more information and annual cycle on monitoring and review to ensure strategy maintains momentum and adapts as required

- Determining the right approach to keep people involved and informed over time

9. *Appendices*

