

In Confidence

Office of the Minister for Primary Industries

Office of the Minister for the Environment

Chair

Cabinet Economic Growth and Infrastructure Committee

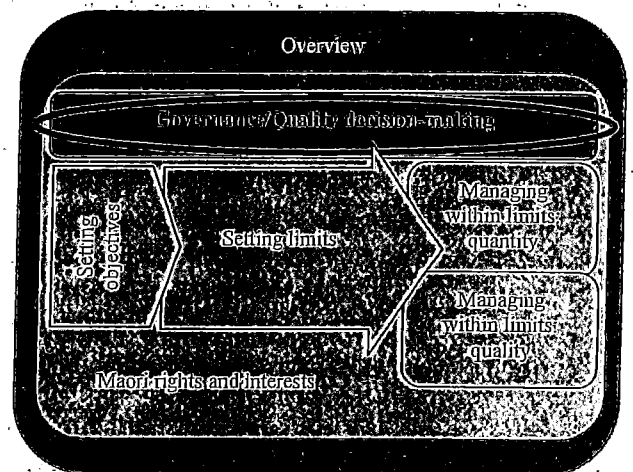
Water Reform Paper One: Governance – proposals for public discussion document

Proposal

1. This paper seeks agreement to an approach to freshwater governance for inclusion in a water reform discussion document in early 2013 that sets out proposals for implementing a water reform strategy. For freshwater governance this would include:
 - a. setting out a vision for effective freshwater governance
 - b. proposals for improving governance in the near term, including strong central government leadership, an improved water planning model as an alternative to the status quo and a clear role for iwi/Māori in freshwater governance
 - c. a longer-term review in 2016 to assess implementation of the alternative planning model, including the effectiveness of central government direction, support and interventions.

Executive summary

2. This paper is the first paper (of four) on the core policy elements of an overall package for a water reform strategy (see Annex A). Improving the water management system will require solutions that start now and adapt over the long term. We recommend introducing changes over the next year and signalling that we will build on these progressively over time.
3. An improved governance system will raise the quality of decision-making and enable effective transition to a limits-based regime for freshwater management. Other elements of the water reform strategy, such as proposals for objective and limit setting, will be delivered more effectively and efficiently under an improved governance system.



Proposals for discussion document

4. We propose the discussion document in early 2013 focus on three foundation elements of an improved governance system:
 - strong central government leadership including clear expression of national values and expectations for decision making, assistance to local government and effective reserve powers for intervention in local government processes

- an improved planning process for water as an alternative to the existing Resource Management Act 1991 (RMA) process
 - effective provision for iwi/Māori involvement in freshwater governance.
5. We propose a more active leadership role for central government in setting national policy and objectives for water management, setting clear expectations on councils, and ensuring a full and effective management toolkit is available. We also propose improvements to the existing powers to direct changes or variations to a notified or operative plan, or direct a review of a plan, to:
- clarify the criteria for their use: in deciding to exercise the power the Minister for the Environment must consider whether the plan in question is adequately providing for central government direction and expectations, e.g. matters contained in formal or statutory instruments under the RMA
 - enable the Minister for the Environment to specify the matters the regional council must consider when developing the plan change or variation.
6. The freshwater planning system is slow, litigious, expensive and uncertain, and some planning decisions lack rigour, e.g. some councils are not adequately assessing the impacts of their plans on regional economies. Some regional councils are attempting to address these problems through a more collaborative approach to developing water plans. We propose the discussion document in early 2013 set out a new planning process for water as an alternative to the existing RMA process, with the following features:
- a statutory model for plan development with enhanced collaborative processes to inform the council's final decision
 - an expert independent hearing panel to consider public submissions and test the rigour of analysis in the notified plan
 - clear decision-making accountability for councils, and an advisory role with statutory weight for iwi/Māori
 - restrictions on merit appeal rights.
7. There are a number of areas within the proposed governance framework where the role of iwi/Māori could be enhanced. These include a role on collaborative stakeholder groups, and a role in the final council decision. The views of the Iwi Advisors Group are noted in this paper.
8. We propose an alternative planning process for water be delivered in the 2013 RMA amendment legislation, for commencement in 2014. Final decisions on governance reforms, and design of an alternative planning model, will need to be coordinated with decisions on Phase Two of the resource management reforms, local government reforms
9. We propose the discussion document also signal a formal review in 2016 of the implementation of the alternative planning process, and central government support, direction or intervention in regional planning processes. This review would be aligned with the 2016 review of the National Policy Statement for Freshwater Management. This review will enable assessment of whether more significant changes to governance are justified, or whether some of the foundation measures need adjustment.

Impacts of proposals

10. These proposals, if implemented effectively, should result in:
 - a stronger expression of national interests
 - higher quality decision making at the regional level
 - significant cost and time savings to councils and participants
 - a more effective voice for iwi/Māori in water management.

Background

11. This is one of four papers on the core policy elements for water reform being considered by the Economic Growth and Infrastructure Committee (EGI) as part of implementing a water reform strategy.
12. On 19 November 2012, Cabinet agreed in principle that Government consult, through a discussion document in early 2013, on proposals to implement a water reform strategy that includes reforms to governance, setting objectives and limits, and managing limits for both quality and quantity [EGI Min (12) 26/2 refers].
13. As set out in the paper of 19 November, we will bring a further paper to EGI on 12 December 2012 that will bring together the overall water reform strategy; provide an overview of how iwi/Māori rights and interests may be accommodated and how well the foundation and longer term measures will deliver to their expectations, and guide the preparation of the discussion document.
14. The second report of the Land and Water Forum (the Forum) in April 2012 recommended a detailed process for freshwater plan and policy-making. Cabinet on 2 July 2012 noted that the Ministry for the Environment and the Ministry for Primary Industries would undertake further design and analysis on a collaborative planning model, including analysis of provisions for iwi/Māori participation in the freshwater planning process [CBC Min (12) 5/5 refers].

Alignment with other government reforms

15. Freshwater governance reform is linked closely to Phase Two of the resource management reforms and Local Government reforms. The key overlaps are:
 - Resource management reforms are focusing on improving the RMA planning system. Water-related planning reforms will need to mesh, for example, with proposals for a single resource management plan per district and enhanced requirements for section 32 analysis (consideration of alternatives, benefits and costs).
 - The Better Local Government reforms include proposals to:
 - improve local government planning processes (the Local Government Efficiency Taskforce is due to report by 30 November 2012)
 - expand the powers of central government to assist or intervene in situations where local authorities are significantly failing to perform their roles and functions
 - investigate options for a local government performance monitoring and improvement regime (as part of the cross-agency Housing Affordability work programme).

Comment

What is the problem?

16. The freshwater governance system is not delivering high quality decisions, which can have significant implications for communities and the environment:

- Inadequate analysis of impacts of plan provisions can have serious economic regional effects, []
- Water quality in many parts of New Zealand is declining across a number of indicators. Levels of nutrients in rivers have increased over the past two decades, reflecting the impact of pollution from urban storm water, run-off from roads and paved surfaces, and intensification of agriculture. Availability of water is also a concern in some areas.
- A lack of robust management provisions in plans, e.g. clear objectives and limits, adds significant uncertainty and costs to the resource consent stage, where issues are re-litigated consent-by-consent. This creates significant investment uncertainty and compliance costs, e.g. the cost of resource consent application for the Central Plains Water Scheme was estimated at \$15 million and it took 11 years from lodging the consent application to final approval.
- Excessive delays in plans create significant compliance costs for councils and participants, and can result in plans that are out of date by the time they are finished. For example, Variation 6 to the Waikato Regional Plan took six years from notification to being operative, and the costs to Horizons Regional Council of the One Plan process are approximately \$9.4 million (excluding costs to the Courts, submitters and appellants).

17. These problems have multiple causes:

- Water management has lacked central government direction and guidance to support good decision-making at the regional level. The RMA is an enabling law without clear expectations for robust decision making, and regional councils have struggled to deal with politically contentious and technically complicated issues in the absence of central government leadership or support. Some councils also lack the capacity and capability to deal with complex water management issues.
- The RMA planning system is slow, litigious, expensive and uncertain. Some of these problems stem from the design of the legislation, e.g. wide appeal rights to the Environment Court. This incentivises a litigious approach to planning, with parties sometimes reluctant to engage fully until the end of the process.
- There are problems with the quality of decision-making, e.g. some councils have not engaged effectively with iwi/Māori and communities to work through the implications of their plans, or lack the resources and expertise for robust scientific and economic analysis.

- There is not always sufficient information to inform decision-making, and there is a lack of incentives to resolve trade-offs and reach consensus, particularly where uncertainty exists around technical issues.

The water reform strategy for improved freshwater governance

18. The water reform strategy is a generational reform that, over time, will create headroom for economic growth and provide for environmental, social and cultural values. An improved freshwater governance system is an essential component of this strategy. We propose the following objectives for governance reform:
 - central government sets clear national outcomes and expectations, and intervenes quickly and effectively in local government processes if required
 - communities participate early in the planning process and discuss trade-offs between competing values
 - impacts of freshwater objectives, limits, adjustment timeframes and adjustment pathways are well understood and factored into decisions
 - councils have the capacity and capability to make robust and timely decisions
 - decision-making is efficient, timely, robust, transparent and based on good evidence
 - iwi/Māori have effective involvement in management of water across a region or rohe.
19. We propose the discussion document in early 2013 focus on three foundation elements of an improved governance system:
 - strong central government leadership including clear expression of national values and expectations for decision making, assistance to regional councils and effective reserve powers for intervention in local government processes
 - an improved planning process for water as an alternative to the existing RMA process
 - effective provision for iwi/Māori involvement in freshwater governance.

Land and Water Forum's recommendations

20. The Forum's reports are generally consistent with the existing system of central and local government roles and functions. Our proposals for an alternative planning model are also conceptually close to the recommendations of the Forum, e.g. 'frontloading' the plan development process through improved collaboration, an independent hearings panel and some restrictions to appeal rights.
21. Some of the finer detail of our proposed alternative planning model differs from the recommendations of the Forum. For example, we do not propose a long list of principles for collaborative freshwater management be expressed in a national instrument as recommended by the Forum. We also propose that regional councils are responsible and accountable for managing the planning process and making decisions, whereas the Forum had a stronger role for collaborative stakeholder groups.
22. The proposals in this paper for enhanced central government intervention powers were not covered by the recommendations of the Forum.

23. Some recommendations of the Forum on broader governance issues, e.g. central government appointees on regional councils, or the proposed Land and Water Commission, are best considered once wider local government and resource management reforms are further advanced.

Strong leadership from central government

24. We propose a re-balancing of the role and influence of central and local government within the existing framework. We propose *central government* be responsible for:
- clear articulation of national values
 - ensuring that the national interest, and statements of central government policy, are articulated and provided for in local government decision-making
 - specification of good practice processes, tools, methodologies, and decision-making considerations
 - guidance and support for implementation
 - monitoring, evaluating and reviewing the effectiveness of the freshwater management system.
25. We propose *local government* remain responsible for regional- and catchment-scale management of water, with their discretion guided or restrained by a stronger national framework, and assistance from central government.
26. Central government also needs an effective toolkit for intervention in regional planning processes that are not adequately providing for nationally set expectations. A large number of intervention tools exist already under the RMA, such as the power to call in plans to a Board of Inquiry, or direct a council to prepare a change to an operative or notified plan. There are poor incentives to use some of these tools because:
- there are not clear criteria for their exercise – though the Minister for the Environment must consider the purpose and principles of the RMA, the powers are very open-ended without clear triggers for when central government should become involved
 - central government has not clearly set expectations about national values and good decision-making processes, which means there are limited ‘hooks’ to justify when central government intervention is warranted.
27. We consider that improvements are required to the tools enabling the Minister for the Environment to direct changes or variations to a notified or operative plan, or direct a review of a plan. We propose these powers be amended to:
- clarify the criteria for their use: the Minister in deciding to exercise the power must consider whether the plan in question is adequately providing for central government direction and expectations, e.g. matters contained in formal or statutory instruments under the RMA
 - enable the Minister to specify the matters the regional council must consider when developing the plan change or variation. These matters would be tagged directly to central government direction and expectations, e.g. a council could be directed to prepare a plan change that specifically provides for matters in a national policy statement.

28. We also note the Better Local Government review is considering expansion of the powers of central government to assist or intervene in situations where local authorities are significantly failing to perform their roles and functions.
29. The water reform strategy as a whole will provide much clearer expectations to guide use of these powers, e.g. through clear direction on good practice for setting and managing to limits. These expectations are detailed further in the companion Cabinet papers.

Alternative planning process

30. We propose councils would have a choice to use either the existing planning process, or a new statutory model under the RMA, when preparing, changing or reviewing freshwater policy statements and plans. The council would be required to give reasons for their choice. If the new model were used, the legislation would require all the steps below from paragraphs 34 to 42 to apply.
31. We propose that this alternative planning process be available just for regional council plan changes in relation to fresh water (including those considering effects of land use on water quality). The wider resource management reforms will provide an opportunity to consider whether this alternative planning process should have wider application beyond fresh water.
32. The main incentives for councils to choose this alternative planning process are:
 - limits on merit appeal rights can create significant time and cost savings, and enable greater council and community 'ownership' of the plan
 - local communities and iwi/Māori are likely to advocate strongly to their council a process that gives them a more effective voice in planning.

Plan development

33. When using the alternative planning process, councils would be required to take a collaborative approach to developing a plan through to notification. Collaborative processes on their own are not a solution to all problems, or a guarantee of better governance and decision-making. Even when unsuccessful in reaching consensus or agreeing solutions, however, a collaborative process will still provide good information to the final decision-maker and increase confidence in the transparency of decisions. Collaborative approaches are becoming widely accepted as good practice for dealing with contentious and complex resource management issues.
34. We do not propose the legislation prescribe every step that councils will need to take in developing a plan. This may constrain the ability of councils, iwi/Māori and communities to design a process that best suits their needs. It will be necessary, however, to specify some matters as statutory 'bottom lines', to ensure both an efficient process and effective outcomes. We propose the alternative planning process include the matters below:
 - A statutory requirement that councils take a collaborative approach to developing a plan to notification, defined as a requirement to partner with iwi/Māori and communities from the start of the process to jointly develop options and solutions. This would include specific requirements to engage early with iwi/Māori and communities, including persons significantly affected by a plan change.
 - A statutory requirement for the council to appoint at least one stakeholder group to give advice to council in development of the plan. If appointing more than one

group, it would be important to clearly define and separate their roles, e.g. a region could have multiple stakeholder groups representing different catchments or sub-catchments. There would be a statutory requirement that the stakeholder group(s) be required to represent the broad range of interests affected by the plan change. We expect councils would include iwi among the key interests to be represented in a stakeholder group as a matter of course, but propose a statutory 'backstop' to ensure iwi/Māori involvement. Stakeholder groups with a wide range of interests enable the opportunity for early dialogue and development of win-win options directly between stakeholders. The precise role of the group(s) will differ depending on their terms of reference, but could involve, for example, advice to council on desired objectives and limits for particular waterbodies, and/or a role working alongside a council to draft plan provisions.

- A statutory requirement for councils to set a terms of reference for the process including as a minimum the process for how the council and stakeholder group(s) work together to engage with the wider community, the nature of advice being sought from the stakeholder group(s), clear timeframes and deadlines for processes, and safety nets to deal with a dysfunctional process, e.g. the council should be able to change the membership of a dysfunctional collaborative group, or disestablish the group and finish a plan in-house.
 - The council would have a statutory obligation to have regard to the advice of stakeholder group(s). The council would retain responsibility for finalising and approving a plan for notification. The council would be required to demonstrate a high level of transparency and rigour of the analysis underpinning the plan (wider resource management reforms are developing proposals in this area).
35. The matters above are considerably more detailed and prescriptive than the default provisions under Schedule One of the RMA for preparation of a plan to notification, which only requires consultation by the council. The planning process will also be significantly directed by guidance and support material provided by central government, e.g. toolkits for limit-setting or economic analysis, and measures developed under other aspects of the water reform strategy, e.g. a national objectives framework, or centrally-developed tools for setting or managing limits.

Hearings panel

36. We propose the alternative collaborative planning process include an expert hearings panel with a majority of non-council commissioners, to bring unbiased and independent expertise to the process. The hearings panel would be appointed by the council, and include qualified commissioners and an independent Chair (i.e. not a councillor), with a mix of knowledge and experience relating to the subject matter of the plan. At least one member would be required to have understanding of tikanga Māori and the perspectives of local iwi, and the council would consult with local iwi when deciding this appointment.
37. The hearings panel would consider public submissions against the evidence and analysis underpinning the notified plan, run mediation processes if required, and hold a hearing with Environment Court rigour (including cross-examination).
38. The focus of the hearings panel will be on the robustness of the notified plan, e.g. the evidence and justifications sitting behind the plan provisions. The hearings panel would not be a forum to relitigate the entire substance of the plan as can currently happen in the Environment Court, otherwise parties may not have incentives to participate fully in the earlier collaborative process.

39. The hearings panel would make recommendations to the council on whether the evidence and arguments raised in submissions, or outcomes of mediation, justify any changes to the notified plan. There would be a statutory presumption that the council's notified plan is sound, and that clear justification is required to recommend changes.

Council decision

40. We propose in the alternative planning process that councils remain responsible for notifying and making final decisions on plans while being required to have regard to the recommendations of the hearings panel and collaborative group(s). The council would be required to give the reasons for its decisions, including any reasons for deviating from the notified plan and/or the recommendations of the hearings panel.
41. We propose iwi have a formal advisory role to council in the final decision, with statutory weight to their advice. If a Treaty settlement gives iwi a more specific role in decision-making, then the Treaty settlement will prevail, although the iwi and council should be able to adopt the process proposed here if both agree.

Appeal rights

42. We propose merit appeal rights in the alternative planning process be available only where the decision of the council differs from that of the recommendations of the hearings panel. Merit appeal rights would be by way of re-hearing, which is the most common form of appeal right in New Zealand law, and give the Environment Court less scope than at present to re-examine all the matters in the plan afresh. This will incentivise full participation early in plan development, as parties cannot guarantee there will be an Environment Court process to re-litigate the issues, but also provides an important safety net if the council's decision deviates unreasonably from the recommendations of the hearings panel. Appeal rights on points of law would be available in all circumstances.
43. Final policy decisions on appeal rights for water planning will need to be aligned with decisions in 2013 on wider resource management reforms,

Implications of alternative planning process

44. We expect this proposal would result in:
- higher quality decision making, with the costs and benefits of different options well considered through close engagement with communities and the hearings panel process
 - significant cost and time savings to councils and participants if wide appeals are avoided (although participation in collaborative stakeholder groups is likely to be time intensive for those involved).
45. The success of an alternative planning process will also be influenced by other aspects of water reform. For example, a clear national objectives framework, or improved tools for setting and managing to limits, will reduce the scope for conflict in individual planning processes.

Iwi/Māori involvement in freshwater governance and decision-making

46. Iwi/Māori have expressed dissatisfaction that their rights and interests in water are not adequately recognised or provided for in the current water management

framework.

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52. We are proposing in this paper that iwi/Māori input be enhanced within the planning framework proposed in this paper through: a statutory backstop to ensure iwi have a place alongside other key parties and interests in collaborative processes and stakeholder groups, and an advisory role for iwi in the final decision of the council,

with statutory weight to their recommendations. This could be in the form of a base statutory provision for an advisory structure, but also enable a range of alternatives that would allow iwi/Māori to negotiate different arrangements with councils region-by-region if desired.

53. If a Treaty settlement gives iwi a more specific role in decision-making, then the Treaty settlement will prevail, although the iwi and council should be able to adopt the process proposed here if both agree.

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56. Officials will continue to work with Iwi Advisors to understand the interests of iwi/Māori in governance and decision making and how they relate to other aspects of water management at both a regional and national level. Views of iwi/Māori will also be canvassed as part of public consultation on the approach to water reform in February 2013. Officials' engagement with Iwi Advisors will inform matters being advanced through Ministers' discussions with Iwi Leaders.

Sequencing and review of reforms

57. We propose the discussion document also signal a formal review in 2016 of the implementation of the alternative planning process, and central government support, direction or intervention in regional planning processes. This review would be aligned with the 2016 review of the National Policy Statement for Freshwater Management. This review will enable assessment of whether more significant changes to governance are justified, or whether some of the foundation measures need adjustment. Key issues to monitor include the effectiveness of central government leadership in improving the quality of decision making, and the uptake and effectiveness of the alternative planning process.

Risks and mitigations

58. Appeal rights are a contentious feature of the RMA and any consideration of change from the status quo will generate considerable interest and publicity. The Forum were unable to reach consensus on appeal rights reform, with some members believing wide appeal rights are a necessary safety net for regional council decision-making.

59. Options for iwi/Māori involvement in an improved freshwater planning and decision-making process remain under active discussion between Ministers and the Freshwater Iwi Leaders Group, in the context of wider discussions on iwi/Māori rights and interests. Outcomes of the discussions will need to be factored into development of options for the February discussion document.

Consultation

60. The following departments and agencies have been consulted on this paper and their views are reflected: Ministry of Justice, Department of Internal Affairs, Te Puni Kōkiri, Department of Conservation, the Treasury, Ministry of Business, Innovation and Employment, State Services Commission and Ministry of Health. The Department of the Prime Minister and Cabinet were notified of this paper.
61. The proposals in this paper have been informed by the recommendations of the Land and Water Forum.

Financial implications

62. Development of an improved planning process can be funded within departmental baselines. A more active role for central government in the governance system (e.g. guidance and support to councils, or the monitoring of council processes to determine the need for exercise of intervention powers) is likely to require increased resources. These costs need to be assessed across the full water reform programme, and depend on Cabinet's preferred options around objective and limit-setting and managing to limits. The table below give an indication of potential costs.

Proposal	Financial implications (estimate)
<u>Guidance material to councils on:</u> <ul style="list-style-type: none"> • collaborative processes • quality decision making (e.g. economic analysis) • engagement with iwi/Māori. 	\$120,000-\$300,000 (past development of guidance notes for the Quality Planning website has cost \$40,000-\$100,000 each).
<u>Implementation support to councils</u>	\$200,000 (will be more complex than development of an implementation support package for the Resource Management (Measurement and Reporting of Water Takes) Regulations, which cost approximately \$100,000).

63. We do not consider the alternative planning process proposed in this paper would in general lead to significant additional costs to regional councils. There may be additional costs associated with a robust collaborative approach to community engagement, and a requirement for new capabilities in stakeholder collaboration, but these may be offset by financial savings if large-scale appeals on plans and contesting of scientific evidence are avoided. Costs to councils will also be influenced by other aspects of the water reform strategy, e.g. a national objectives framework may save councils the costs of developing some technical information region by region.
64. 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.

Human rights

65. The proposals are consistent with the Human Rights Act 1993.

Legislative implications

66. There are no legislative implications arising directly from this paper.

Regulatory impact analysis

Regulatory Impact Analysis (RIA) requirements

67. The Regulatory Impact Analysis (RIA) requirements apply to the proposal in this paper and a Regulatory Impact Statement (RIS) has been prepared and is attached.

Quality of the Impact Analysis

68. The Treasury's RIAT has reviewed the (RIS) prepared by the Ministry for the Environment and the Ministry for Primary Industries and associated supporting material, and considers that the information and analysis summarised in the RIS meets the quality assurance criteria, given the early stage of this policy development process. As outlined in the RIS, further consultation will be required on the detailed proposals.

Consistency with Government Statement on Regulation

69. We have carefully considered the analysis and advice of our officials, as summarised in the attached Regulatory Impact Statement. We are satisfied that regulation is likely to be required in the public interest but, as further policy details and implementation issues still need to be considered, we cannot yet be certain that the regulatory proposals in this paper will deliver the highest net benefits of the practical options available or are fully consistent with our commitments to deliver better regulation and less regulation. Consequently, this paper seeks only agreement to proposals for public consultation, and agreement to further policy development work before final decisions.

Publicity

70. No publicity is proposed for this paper.

Recommendations

71. The Minister for Primary Industries and the Minister for the Environment recommend that the Committee:

1. note on 2 July 2012, Cabinet noted that the Ministry for the Environment and the Ministry for Primary Industries would undertake further design and analysis on a collaborative planning model, including analysis of provision for iwi participation in the freshwater planning process [CBC Min (12) 5/5 refers]
2. note on 19 November 2012 Cabinet agreed in principle that Government consult, through a discussion document in early 2013, on proposals to implement a water reform strategy that includes reforms to governance;

setting objectives and limits, and managing limits for both quality and quantity [EGI Min (12) 26/2 refers]

3. note this paper has built on the platform provided by the Land and Water Forum's recommendations in their second and third report, discussions with the Iwi Leaders Group and Iwi Advisors, and further work undertaken by officials
4. agree improvement of the freshwater governance system requires:
 - 4.1. strong central government leadership including clear expression of national values and expectations for decision-making, assistance to regional councils and effective reserve powers for intervention in local government processes
 - 4.2. an improved planning process for fresh water as an alternative to the existing Resource Management Act 1991 (RMA) process
 - 4.3. effective provision for iwi/Māori involvement in freshwater governance
5. agree the discussion document in early 2013 include the following proposals in relation to freshwater governance:

Foundation measures to be progressed in 2013

- 5.1. strong leadership from central government to set national expectations around values and methods for water management, and support local government implementation
- 5.2. amendments to existing powers under the RMA for the Minister for the Environment to direct changes or variations to a notified or operative plan, or direct a review of a plan, as follows:
 - 5.2.1. in deciding to exercise the power the Minister for the Environment must consider whether the plan is adequately providing for central government direction and expectations
 - 5.2.2. the Minister for the Environment may specify the matters the council must consider when developing the plan change or variation
- 5.3. an improved freshwater planning process as an alternative to the default RMA planning process featuring:
 - 5.3.1. a more collaborative approach to plan development, with councils required to work closely with communities from the start of the planning process to identify options and design solutions
 - 5.3.2. appointment of one or more stakeholder group(s) to give advice to the council
 - 5.3.3. clear terms of reference for the plan development process, including requirements to specify the nature of advice from stakeholder groups, a process for community involvement, timeframes, and safety nets for failing processes
 - 5.3.4. regional councils responsible for finalising a plan for notification, while having regard to the advice of the stakeholder group(s)
 - 5.3.5. an expert hearing panel appointed by the council, with a majority of independent appointees to consider public submissions against the evidence and analysis underpinning the notified

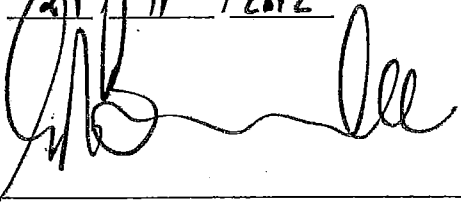
plan, run mediation processes, and recommend changes to the notified plan to the regional council

- 5.3.6. final decisions made by the regional council, having regard to the recommendations of stakeholder group(s) and hearing panel
- 5.3.7. appeal rights generally available only on points of law, with merit appeal rights by way of re-hearing available only when the decision of the council differs from the recommendations of the hearing panel
- 5.4. statutory provision for iwi/Māori involvement in the alternative planning process, including:
 - 5.4.1. a statutory backstop to ensure iwi/Māori are involved, alongside other sectors of the community, in collaborative processes
 - 5.4.2. an advisory role for iwi/Māori to council on the final decision, with statutory weight to the advice
 - 5.4.3. clarification that if a Treaty settlement gives iwi/Māori a more specific role in decision-making, the Treaty settlement will prevail, although the iwi and council should be able to adopt the process in recommendations 5.4.1 and 5.4.2 above if both agree

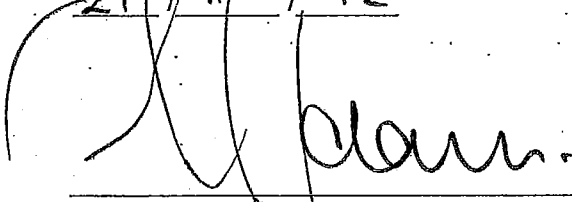
Longer term review of governance

- 5.5. a review in 2016, aligned with the review of the National Policy Statement for Freshwater Management 2011, to assess implementation of the alternative planning model, including the effectiveness of central government direction, support and interventions
- 6. note in December 2012 the Ministers for Primary Industries and the Environment will report to Cabinet with an overview of the package of proposals to be included in the water reform strategy discussion document, as decided in this and the companion papers, and an overview of how iwi/Māori rights and interests may be considered
- 7. note the Ministers for Primary Industries and the Environment will report to Cabinet in early 2013 seeking approval for the release of the public discussion document on water reform in February 2013
- 8. invite the Ministers for Primary Industries and the Minister for the Environment to report to Cabinet in May 2013 with recommendations for the implementation of a water reform strategy.

Hon David Carter
Minister for Primary Industries

29 / 11 / 2012


Hon Amy Adams
Minister for the Environment

29 / 11 / 12


Annex A: WATER REFORM – Schedule of Cabinet papers

