

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 – The third report of the Land and Water Forum

Proposal

1. This paper reports back on the Land and Water Forum's third report on managing water quality and allocating water and describes the opportunity provided through this constituency for progressing the freshwater management reform programme.

Executive Summary

2. In 2009, the Government established a strategic direction for freshwater reform that included greater central government direction, the setting of limits to manage both water quality and quantity, and improved involvement of Māori in resource management processes. This included the commissioning of advice from the Land and Water Forum (the Forum) – a collaborative group with wide-ranging membership across all sectors with an interest in water – on freshwater reform [CAB Min (09) 20/12 refers].
3. The Forum delivered its first report in September 2010, which set a broad policy direction for the Forum's more focused work on objective- and limit-setting, governance, and managing within limits for water quality and quantity. In April 2012, the Forum presented its second report, which recommended greater central government direction on the setting of freshwater objectives and limits under the National Policy Statement for Freshwater Management 2011 and a collaborative planning model for developing freshwater-related planning documents under the Resource Management Act 1991.
4. The Forum's third report, delivered to Ministers on 1 November 2012, covers managing water quality and allocating water. The Forum's recommendations focus on processes for the development and implementation of catchment management plans and high-level principles for new allocation regimes. The Forum recommends a high degree of regional-level discretion in policy- and decision-making and a significant amount of central government guidance and support, rather than prescription. The main policy intent of the report is:
 - a. regional council-led integrated catchment management planning for both water quality and allocation
 - b. a framework to assist regional councils in making decisions about the kinds of tools and methods used to manage water quality within limits, including regulatory and non-regulatory approaches
 - c. a model for regional councils to utilise in allocating water that supports transfer and trade and is tailored to the circumstances in the catchment.

5. The members of the Forum have been successful in using a collaborative approach to negotiate consensus around dealing with some of the long-running problems in freshwater management and the work of the Forum presents an opportune platform to progress the Government's freshwater reform agenda with the support of a diverse group of deeply engaged stakeholders. Although the Forum's consensus is not unanimous and is not uniformly strong on every issue, Forum Members have reached consensus on a number of core, foundational issues, including the role of transfer and trading, and have demonstrated a willingness to support the group's recommendations in the interest of progressing freshwater reform.
6. The Forum has been valuable not only for its reports but for the relationships and understanding it has built between traditional adversaries on water issues. How the Government responds to and progresses the recommendations in the Forum's reports will be an important part of building on that foundation.
7. After receiving the second report of the Forum in April 2012, officials have undertaken further work on the economic and environmental implications of options to further the main policy directions outlined in the report. This work, along with further work officials have done on managing water quality and allocating water will combine with the advice of the Forum to provide you with advice on a full package for water reform later in 2012.
8. A companion paper provides an overview of the proposed approach to freshwater reform decisions.
9. Annex A illustrates the proposed schedule of Cabinet papers on water reform through to

Background

Fresh Start for Fresh Water

10. Freshwater reform is needed to address the risks to the economy and environment posed by suboptimal management of our freshwater resource and to better capitalise on the opportunities for economic growth that this resource provides.
11. In 2009, the Government established a strategic direction for freshwater reform. This strategy included greater central government direction, the setting of limits to manage both water quality and quantity, and improved involvement of Māori in resource management processes. The New Start for Fresh Water strategy was the start of a long-term work programme to look at:
 - a. the need for stronger central government direction and leadership; setting limits for water quality and allocation;
 - b. the place of water infrastructure in improving water use;
 - c. how to address scientific, technical, information and capability gaps that hold back improved management;
 - d. supplementary measures to address the impacts of land-use intensification on water quality, and manage urban and rural demand; and

- e. maintaining Treaty-based engagement with Māori on water management options.
12. This strategy took a three-pronged approach: engagement with iwi through discussions with an Iwi Leaders Group; a comprehensive work programme that included further work on the National Policy Statement on Freshwater Management 2011 (NPS-FM); and advice from an independent group of diverse stakeholders with an interest in freshwater use and management, the Land and Water Forum (the Forum). The Forum would run a stakeholder-led collaborative process to build a consensus view on shared outcomes, goals, and long-term strategies for fresh water. The Forum delivered its first report in September 2010.
13. In May 2011, Cabinet approved the renamed Fresh Start for Fresh Water (FSFW), a three tranche programme for designing and implementing an improved freshwater management regime, including:
- tranche one – gazetting the National Policy Statement for Freshwater Management 2011, agreement to further work to improve implementation of the NPS-FM, and establishing the FSFW Clean-up Fund and Irrigation Acceleration Fund.
 - tranche two – setting limits for water quality and quantity, including governance arrangements for freshwater planning processes.
 - tranche three – how to manage to limits, including allocation mechanisms and additional tools to manage the effects of land use, and consideration of a national freshwater strategy. The Forum provided this report to Ministers on 1 November 2012.

Recommendations on the Tranche three issues are contained in the Forum's November 2012 report and are the subject of this paper.

14. In April 2012, the Forum presented its second report *Setting Limits for Water Quality and Quantity, Freshwater Policy- and Plan-Making through Collaboration* to Ministers. This report contributes to tranche two of FSFW. The Forum's report contains 38 recommendations focused on setting objectives¹ and limits², collaborative decision-making, and more responsive planning processes. The main policy intent of the report is:
- greater central government direction on the setting of freshwater objectives and limits (including nationally-set objectives on human health and life-supporting capacity) under the NPS-FM.
 - a collaborative planning model for developing freshwater-related planning documents (e.g. regional policy statements and regional plans) under the Resource Management Act 1991 (RMA). The model would not be compulsory and regional councils could opt out and use the current RMA planning process.

¹ Freshwater objectives describe the state of the water body that is needed to provide for the values or outcomes sought, e.g. specifying the water quality and flow regime necessary to allow for swimming at certain times of the year but still enabling farming to continue in the catchment. They can be either numeric or narrative. They can also provide for economic as well as environmental outcomes.

² Limits are derived from objectives, and specify the maximum amount of resource that is available for use. For example, setting a maximum load in tonnes per year for phosphorous and nitrogen loads in a catchment, or specifying the total cap on water that can be taken at any point in time.

15. In July 2012, Cabinet Business Committee (CBC) noted that officials would undertake further design and analysis on, and explore the implications of, the Forum's recommendations on setting objectives and limits and collaborative planning. CBC invited the Minister for Primary Industries and the Minister for the Environment to report back to the Economic Growth and Infrastructure Committee (EGI) by 30 November 2012 on this further analysis under tranche two and new work under tranche three of the FSFW programme covering managing within limits [CBC Min (12) 5/5 refers].

Comment

Third Forum report: Managing Water Quality and Allocating Water

16. The Forum has recently presented its third report *Managing Water Quality and Allocating Water* to Ministers. This report contributes to tranche three of FSFW. The Forum's report contains 67 recommendations focused on managing within limits. The main policy intent of the report is:
 - a. regional council-led integrated catchment management planning for both water quality and allocation
 - b. a framework to assist regional councils in making decisions about the kinds of tools and methods used to manage water quality within limits, including regulatory and non-regulatory approaches
 - c. a model for regional councils to utilise in allocating water that supports transfer and trade and is tailored to the circumstances in the catchment.
17. The Forum's recommendations on managing water quality and allocating water focus on processes for the development and implementation of catchment management plans and high-level principles for new allocation regimes.
18. The Forum's recommendations collectively indicate a high degree of regional-level discretion in policy- and decision-making. The Forum proposes clearly delineated roles and responsibilities for regional councils and central government in the catchment management, planning, and allocation processes with the balance of plan development and decision-making power at the regional-level and a significant amount of central government guidance and support, rather than prescription.
19. The Forum's recommendations are economically-minded: the Forum suggests that water, land, and related resource use within limits should maximise economic welfare, that allocation of available water should be driven by long-term economic welfare, and that methods and tools for water quality should achieve objectives and limits at least cost and enable economic efficiency.
20. The Forum's recommendations include

Interim arrangements, preconditions, and implementation

- a. regionally-determined interim arrangements, limits, and targets³ to be used in advance of decision-making on methods and tools in catchments where, e.g., water is over-allocated;
- b. a central government-led process for identifying and disseminating best practice planning and implementation materials, tools, standards, methods, and criteria;
- c. central government support for capability building for councils, iwi, and other stakeholders;
- d. a local government-designed approach to developing monitoring, compliance, and implementation systems supported by a central government auditing programme;
- e. national direction⁴ that ensures appropriate and robust economic analysis is undertaken at the regional-level and supported by central government auditing and oversight;

Managing water quality

- f. universal integrated catchment management⁵ planning and implementation;
- g. full range of (improved) methods and tools for managing water quality, including the incorporation of Good Management Practices (GMPs) into regional plans, cooperation between regional councils and relevant sector organisations in implementing Audited Self Management (ASM) schemes, and regional-level decision-making supported by national guidance on appropriate accounting and allocation methods for contaminants;
- h. national direction for regional councils in specifying a locally-determined 'scarcity threshold' in the regional plan which signals when a waterbody is coming under pressure and a change in the management regime should occur;
- i. national guidance for regional councils on methods for accounting for all sources of contaminants;
- j. continued investment in the development of open source databases and water quality management models (along with protocols for the use of models in policy settings), and a review of the Foundation for Research, Science and Technology/Ministry for the Environment's Water Research Strategy; and

Allocating water

- k. the removal of administrative barriers to transfer and trade of water take and use consents;

³ Interim limits can be used to prevent a further decline of degraded water bodies or prevent water bodies becoming over-allocated by maintaining existing levels of resource use. Interim targets and limits can be implemented through moratoria, a national instrument, or a regional plan.

⁴ National direction is not explicitly defined by the Forum, but is likely largely guidance, rather than legislative or regulatory requirements.

⁵ Integrated catchment management planning is a collaborative regional process for developing objectives and limits, water allocation methods, and water quality management methods and tools, including implementation, monitoring, and review.

- l. universal establishment of catchment-level 'allocable quantum' to include all water takes, excluding fire fighting, and a process for formalising takes which were neither consented or permitted through a regional plan;
 - m. national direction for regional councils in specifying a locally-determined 'scarcity threshold' in the regional plan which signals that the allocable quantum is coming under demand pressure;
 - n. allocation regime design by regional councils in catchments that surpass the 'scarcity threshold', including national guidance on the range of methods for allocating above the threshold;
 - o. voluntary transfer and compulsory acquisition processes for urban water suppliers to obtain water once the scarcity threshold has been reached;
 - p. specification of authorisations to take water under the new allocation regime, including standard core elements set through a national instrument⁶ and a process for evaluating existing takes against measures of 'reasonable technical efficiency';
 - q. allocation consent durations of between 20 and 35 years, except where short durations are required in the transition to a new regime;
 - r. a review, conducted by either central government or a nationally representative stakeholder group, to consider the effectiveness of the national objectives framework, consent durations of longer than 35 years for long-term infrastructure projects, and presumption of renewal on expiry, subject to conditions;
 - s. national direction on the suite of methods for managing over-allocation;
 - t. a transparent accounting and registry system for water takes that is consistent across regions.
21. The Forum's first and second reports included recommendations relating to the involvement of iwi and of iwi values in developing national objectives and instruments and setting catchment objectives and limits. In its third report, the Forum has included a self-initiated statement on iwi rights and interests in fresh water which acknowledges that while iwi have rights and interests in fresh water, the responsibility for resolving the constitution of these rights and interests, including any options for providing for them, rests with iwi and the Crown. These discussions should progress in tandem with the pace of reform.
22. The Forum's report covers, but does not include recommendations on, a number of issues on which the group was unable to reach consensus. These include, most notably, pricing and charging for water, appeal rights under a collaborative plan development and decision-making model and extending the length of consent beyond 35 years for major infrastructure.
23. The Forum has indicated that they have decided to meet again in July 2013 to assess the Government's response to their reports and to consider what future role if any they might seek to play in relation to land and water management. This would not be a government-funded meeting.

⁶ Includes legislation, national policy statements, and regulation.

Progressing Fresh Start for Fresh Water – tranche three

24. Through its second and third reports the Forum has now provided advice on tranches two and three. After receiving the second report of the Forum in April 2012, officials have undertaken further work on the economic and environmental implications of options to further the main policy directions outlined in the report. This work, along with further work officials have done on aspects of tranche three will combine with the advice of the Forum to provide Cabinet with advice on a full package for water reform.
25. We will report back to Cabinet on this work in late November and December 2012. These papers will allow Cabinet to make some final decisions on the shape of the overall reform package, although we anticipate that some further work on detail arising out of tranche three will be required.

The Forum's completed work – a new approach to the management and use of fresh water

26. The Forum's three reports are intended as a comprehensive set of recommendations which, taken collectively, could form the basis of a new approach to freshwater management defined by:
 - a. stronger, more collaborative upfront planning processes;
 - b. values-driven objective and limit setting;
 - c. water quality management tools and methods that provide incentives for active management of both point source and non-point source discharges;
 - d. improved implementation processes including monitoring and review;
 - e. allocation methods that provide incentives for efficient, high-valued use; and
 - f. a more transparent system with clearer accountabilities for resource managers and users.
27. The general direction of the overarching management framework outlined in the work of the Forum is consistent with the Government's 2009 strategic direction. However, advice from officials on specific policy design elements, including the balance of responsibility between regional councils and central government, may include additional options. Broadly, officials consider that central government can implement policies that will guide, support, enable, and direct regional freshwater management using tools and methods that are consistent with the options explored by the Forum.

Constituency for change – an opportunity to progress the freshwater management reform programme

28. The members of the Forum have been successful in using a collaborative approach to negotiate consensus around dealing with some of the long-running problems in freshwater management, including the importance of transfer and trade for facilitating economically efficient use. The work of the Forum presents an opportunity to progress the Government's freshwater reform agenda with the support of a diverse range of deeply engaged stakeholders.

29. Government, Forum Members, and Iwi Leaders have invested a significant amount of time and commitment in the process to date. Between September 2011 and August 2012, representatives from the 64 Forum member organisations, central and local government, and the Forum secretariat spent over 800 hours, or the equivalent of 100 working days, in meetings across three tiers—the Small Group, which included 23 Forum members, working groups on water quality, allocation, and strategy, and the full Plenary. Since 2009, \$2.5 million in Crown funding has been provided to the Forum.⁷
30. Despite their cohesion, high investment, and successful resolution of a number of very complex, contentious issues, the Forum's consensus is not unanimous, nor is it uniformly strong on every issue. There are a number of issues on which the Forum was unable to reach even a negotiated consensus, including merit-based appeal rights and pricing and charging for water; on these still contentious issues, the Forum has elucidated the various positions and rationale. Despite these remaining points of divergence, Forum members have demonstrated a willingness to support the group's recommendations in the interest of progressing freshwater reform.
31. The Forum has been valuable not only for its reports but for the relationships and understanding it has built between traditional adversaries on water issues. How the Government responds to and progresses the recommendations in the Forum's reports will be an important part of building on that foundation.

Consultation

32. The Treasury, Office of Treaty Settlements, Ministry of Business, Innovation, and Employment, Department of Conservation, Department of Internal Affairs, Ministry of Health, Te Puni Kokiri and the State Services Commission were consulted during the development of this paper. The Department of the Prime Minister and Cabinet was informed.

Financial implications

33. Any funding implications that may result from the further work in this paper will be considered when Ministers are asked to take final decisions on the package of reforms in the first half of 2013.

Human rights

34. There are no human rights implications in this paper.

Legislative implications

35. There are no legislative implications from this paper. Consideration of legislative tools would be subject to further Cabinet decisions.

Regulatory impact analysis

Regulatory Impact Analysis requirements

36. The Regulatory Impact Analysis (RIA) requirements do not apply to this paper.

⁷ Includes contract/deed funding payments but excludes staff time.

Publicity

37. We recommend that the Forum's third and final report be released on or after 15 November 2012, subject to agreement at EGI. We consider that the Government's response at the launch should concentrate on the success of the Forum process, the hard work the members have contributed over a lengthy period and that Ministers are considering the Forum's recommendations in detail. Subsequent publicity will be needed on how the Government proposes to respond. This is covered in the Water Reform – Overview paper which accompanies this paper.

Recommendations

38. The Minister for Primary Industries and the Minister for the Environment recommend that the Committee:
 1. **note** that in 2009, Government commissioned advice from the Land and Water Forum (the Forum), a collaborative group with wide-ranging membership across all sectors with an interest in water on freshwater reform, including managing to limits [CAB Min (09) 20/12 refers]
 2. **note** that the Forum reported on 1 November 2012 with proposals for managing water quality and allocating water
 3. **note** that the general direction of the overarching management framework outlined in the work of the Forum is consistent with the Government's 2009 strategic direction
 4. **note** that the members of the Forum have been successful in using a collaborative approach to negotiate consensus around dealing with some of the long-running problems in freshwater management
 5. **note** that the work of the Forum presents an opportune platform to progress the Government's freshwater reform agenda with the support of a range of deeply engaged stakeholders

Water quality

6. **note** that officials will provide further advice on, and explore the implications of, the Forum's recommendations on water quality in a paper to be considered by the Economic Growth and Infrastructure Committee (EGI) on 28 November 2012

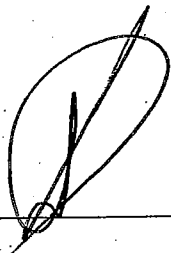
Allocating water

7. **note** that officials will provide further advice on, and explore the implications of, the Forum's recommendations on allocating water in a paper to be considered by EGI on 28 November 2012

Progressing the next stage of work on water quality and allocating water

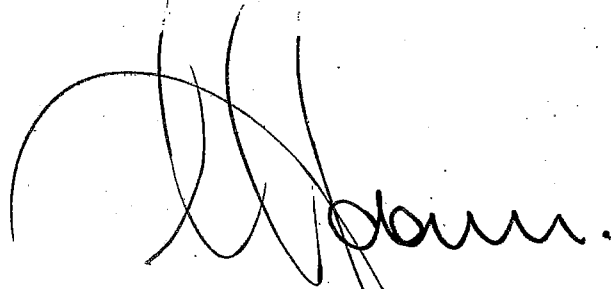
8. **note** that in all further work specified under recommendations 6 and 7, officials will use the Forum's recommendations as the starting point

9. **note** that EGI will consider papers on 28 November 2012 detailing more specific options for inclusion in a public discussion document relating to governance, limit- and objective-setting, and managing within limits for water quality and quantity
10. **agree** that the Forum's report be released on or after 15 November 2012, subject to agreement at EGI
11. **agree** that the Government's response at the launch should concentrate on the success of the Forum process, the hard work the members have contributed over a lengthy period and that Ministers are considering the Forum's recommendations in detail.



Hon David Carter
Minister for Primary Industries

8 / 11 / 2012



Hon Amy Adams
Minister for the Environment

8 / 11 / 12

Annex A: WATER REFORM – Schedule of Cabinet papers

