

# Greater Wellington Regional Council submission on:

## Clean Water: 90% of rivers and lakes swimmable by 2040

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# Greater Wellington Regional Council submission on: Clean Water discussion document

## 1. Opening statement

Thank you for the opportunity to comment on the proposals in the discussion document 'Clean Water - 90% of lakes and rivers swimmable by 2040'. Greater Wellington Regional Council (GWRC) supports the Government's work on freshwater reform and particularly the recognition of the community aspiration for New Zealand's rivers and lakes to be safe to swim in. We welcome the other proposed changes to the National Policy Statement – Freshwater 2014 (NPS- FM) which strengthen the monitoring requirements and provide clarification and direction on matters which have been subject to some debate, and the national direction on stock exclusion.

We are surprised that the discussion document has national targets and dates for percentages of lakes and large rivers to be swimmable which are not reflected in any way in the NPS-FM proposed changes. We have strong concerns about the interaction of the Government's aims and methods for achieving swimming targets through regional council directives as compared to the existing NPS-FM framework for maintaining or improving water quality. The latter is strongly based on catchment community values, and specifically the involvement of iwi and hapū and this basis has been emphasised in the latest proposals. We will continue to address this concern through combined regional council channels.

### 1.1 Swimming and recreational values

GWRC submitted strongly in previous discussions on the need to reflect the clearly expressed community desire for our rivers and lakes to be swimmable, rather than safe to wade in or use for so-called secondary contact as in the present NPS-FM framework. We support the Government's response to that feedback and the intent for the majority of large rivers and lakes meeting swimmable water quality standards by 2040.

This is a positive move. Its significance has however been overshadowed by the confusion over the metric or measure in the proposed changes to the NPS-FM and the apparent application of the policy to only larger rivers (4<sup>th</sup> order and above) and lakes.

The full suite of information (available on MfE's website) for swimmability grading uses four different criteria to define the categories of swimmability, based on measurements of E.coli per 100ml and we consider that these measures **must** be included in the amended attribute table in the NPS-FM.

The requirement to identify large river and lakes and state the improvements required for swimming standards and timeframes for those improvements in regional plans is provided for in proposed Policy A5. As stated, it is implicit that the timeframe for this policy is the timeframe for implementation of the policies under the NPS by 2025 Policy E1(c). To clarify that this policy is to be considered

along with other freshwater objectives we consider that Policy A5 should include a reference to Policies CA1-CA4.

## Recommendations

- Note our support for the introduction of swimmability values provided that the attribute state is determined using the complete suite of measures as reflected on the MfE website.
- Add the following wording to Policy A5:

### *Policy A5*

*By every regional council ... suitable for immersion means large rivers and lakes in Attribute State A, B or C in the E. coli attribute table in Appendix 2 of this national policy statement.*

*Note: this policy shall be considered alongside policies CA1-CA4.*

## 1.2 Monitoring of swimming standards

A major implication for Council's monitoring costs will result from moving from a risk-based approach to the requirements that are suggested in the proposed NPS-FM. We have a whitua-based monthly water quality monitoring network (44 sites) throughout the region, which includes measures of E.coli. In addition, our recreational water quality monitoring programme monitors for public health and includes 23 river sites (sampled weekly in summer between December and March).

The new requirement will be for weekly, or potentially daily, monitoring during the bathing season at sites through the reaches of the swimmable rivers in all freshwater management units set through the whitua process. This will put a significant strain on our monitoring resources, and will require an increase in on-call staff to deal with daily monitoring following any breaches of the 260 cfu/100 ml action level as set out on the MfE website. The potential new cost to ratepayers to allow the Council to implement such a monitoring package would likely be very substantial.

It is also not clear exactly what the monitoring requirements will be for smaller streams that do not have a fair or above swimmable state, but the cost could be significant, as they may well breach the 260 cfu/100 ml criteria regularly.

Overall we request clarification about how this new monitoring and reporting fits with our recreational monitoring programme. We may need to consider whether this monitoring for public health should cease in favour of bolstering the river water quality network monitoring for national and regional reporting purposes as proposed in the amended NPS-FM.

GWRC officers are also unclear about how the monitoring information will be used by central government. We question whether progress towards swimming objectives will be measured solely on data collected using the methodology

prescribed in the table on page 39 of the amended NPS or by modelling. If regional progress is to be measured using monitoring data, it is not clear if all compulsory attributes have to be measured at all reporting sites. Clarification is sought on whether E.coli monitoring can be limited to just recreationally important sites. If not, and the objective of E.coli monitoring is to report on swimmability across all large river reaches, we seek guidance on whether ecosystem health attributes need to be monitored at reporting sites selected for the sole purpose of reporting on swimmability, and vice versa.

If regional progress will not be measured from E.coli monitoring data, then its purpose is unclear, and the intensive monitoring requirements prescribed in the proposed NPS are unjustified. If measuring regional progress is not the primary objective of E.coli monitoring, we seek clarity on its purpose, and justification for the monitoring requirements outlined in Appendix 2.

If national progress is monitored using the national modelling presented in the discussion document, it is not clear whether the progress of individual regions will be assessed using the same model, or specific regional assessments run by each of the councils.

### **Recommendation**

- Request further guidance on monitoring and reporting requirements and how the information will be used in reporting.

### **1.3 3.8 Te Mana o Te Wai**

A second significant proposal is the introduction of Te Mana o te Wai as an overarching framework. This promotes a holistic view of the health of water supporting a healthy environment, healthy waterbodies and healthy people. Upholding Te mana o te Wai acknowledges and protects the mauri of the water. Importantly it incorporates the significance of healthy water to all our communities so is inclusive in its nature. Previously Te Mana o te Wai was not described except as the component values of a national value.

GWRC has supported the development of Te Mana o te Wai, and the GWRC Proposed Natural Resources Plan (PNRP) and the whaitua process for implementing the NPS-FM both closely align with the philosophy of Te Mana o te Wai. Our support is extended to the framework within the proposed changes, with some minor amendment and suggestions to support the intent.

Te Mana o te Wai requires the incorporation of tangata whenua and community values in relation to each water body. This is more specific language than that identified in D1 Tāngata Whenua roles and interests that requires Councils demonstrate tangata whenua involvement in freshwater decision making. Similarly Objective CB1 requires monitoring plans to include mātauranga Māori. Again this is a specific requirement that strengthens and helps implement D1.

It is noted that mātauranga Māori is only mentioned once in the document – CBI Page 21, and is not defined or explained in any way. This is a significant oversight. Mātauranga Māori in all its representative forms is central to requirements for incorporation of Māori values in relation to each water body.

Compulsory objectives for Te hau ora o te tangata, Te hau ora o te taiao, Te hau ora o te wai, mahinga kai, mauri and tauranga waka incorporate important Māori concepts and language and constructs that support integrated management approaches to water. This is supported. Many of these words and the ideas behind these constructs will be new to sections of communities.

## **Recommendations**

- Objective and Policy D1 should be modified to include Te Mana o te Wai requirement to incorporate tāngata whenua values in relation to each water body and the inclusion of mātauranga Māori in monitoring plans.
- The document needs a section that explains and supports mātauranga Māori and its role in freshwater management.
- Te Mana o te Wai should be resourced to enable communities to learn about mātauranga Māori and integrated water management concepts.

## **1.4 Proposed changes to the NPS –FM**

### **1.4.1 New requirements for monitoring plans**

It is proposed that councils be required to monitor macroinvertebrates as part of their assessment of ecosystem health and the scope of regional council monitoring plans have been extended to include e.g. freshwater accounting, Mātauranga Māori, and the health of indigenous flora and fauna.

Macroinvertebrates are already monitored annually at a subset of our river and stream monitoring sites. We have a commitment to develop cultural health monitoring programmes with our mana whenua partners and some initiatives are underway and freshwater accounting is already being done.

### **1.4.2 NPS-FM Managing nitrogen and phosphorus**

A specific requirement has been added to require councils to set in-stream objectives for dissolved inorganic nitrogen and dissolved reactive phosphorus as part of their approach to managing periphyton.

Our PNRP objectives for periphyton management use chlorophyll as a measure, not nitrogen or phosphorus. We do however measure nitrogen and phosphorus at our 53 river and stream sites monthly.

## **Recommendations**

- Retain the new requirements for monitoring macroinvertebrates.

- Retain a specific requirement to set objectives for instream dissolved inorganic nitrogen and dissolved reactive phosphorus.

## 1.5 Changes to clarify and remove ambiguity in the 2014 NPS-FM

### 1.5.1 Maintain and improve water quality

Wording in the 2014 NPS-FM suggested that councils could trade off degradation in one part of a region against improvements elsewhere which is at odds with the Resource Management Act. The new wording clarifies that water quality should be maintained or improved within each freshwater management unit, rather than the region. Objectives to maintain or improve water quality and maintain the values in waterbodies which rely on that water quality are already included in the PNRP.

For our whitua programme, the changes clarify the scale at which water is being managed in the whitua which is the freshwater management unit. We do however have major concern about the wording in the proposed clause in Policy CA2 e) iia.

Further clarity around the meaning of “maintain overall water quality” has been added to the NPS-FM in Policy CA2 e) iia (a and b). We support this.

Clause a. states that for an attribute listed in Appendix 2, a freshwater objective can be set in the same attribute state (within the same band) as the existing state. This is supported as it provides further clarity about how councils set freshwater objectives.

Clause b. restricts the setting of freshwater objectives for attributes not listed in Appendix 2, by requiring values identified under Policy CA2(b) to be no worse off. There are circumstances where this will be very difficult or impossible. In places where there is a degrading water quality trend, or potentially a degrading trend (for example in a new urban area), maintaining water quality can be very difficult and in many cases there will be some economic cost. Other values may also be impacted. In these situations ensuring all values identified by the community are no worse off is difficult. This does not allow a community to make value judgements for what values are enhanced and what values are impacted. **Trade-offs are often required to incentivise behaviour change.** This addition is not supported and should be removed.

### 1.5.2 Effects of infrastructure

The amendment clarifies when councils might set targets below national bottom lines including for infrastructure listed in the NPS-FM. We note there is no listed infrastructure at this time, but if stormwater networks and wastewater are not included in a future list, this could have significant cost implications.

### 1.5.3 Coastal lakes and lagoons

A footnote to the total nitrogen lakes attribute has caused confusion as to whether the lake attributes apply to coastal lakes and lagoons that intermittently open to the

sea. To address this confusion, a proposed NPS-FM amendment removes the footnote and provides some direction about the unique monitoring requirements for these coastal lakes and lagoons. We support this.

#### 1.5.4 Economic wellbeing

In practical terms, the affordability of measures to improve water quality is always a consideration in deciding how ambitious targets should be. There was some concern that this was not reflected in the NPS-FM framework. It should be noted that the proposal is to include economic wellbeing as a matter to be considered in freshwater planning, not as a value or objective in its own right. We support this.

#### 1.5.5 Changes in the attribute tables

These tables are either numbers or descriptions of the values which are managed in the NPS-FM, including in many instances, national bottom lines. Most attributes with the exception of swimmability are only changed to reflect the increased emphasis on periphyton and larger water plants (macrophytes) health. We support this.

#### 1.5.6 Integrated management

The policy around integrated management has been added to more clearly require regional councils to manage land use and development in catchments and recognise the interactions ki uta ki tai (from the mountains to the sea). We support this.

### Recommendations

- Support the clarification of the place of the freshwater management unit in maintaining or improving water quality.
- Amend Policy CA2 as below:
  - e) formulating freshwater objectives: ...*
  - iiia. in those cases where a freshwater objective seeks to maintain overall water quality in accordance with Objective A2, by every regional council ensuring:*
    - a. where an attribute is listed in Appendix 2, that freshwater objectives are set at least within the same attribute state as existing freshwater quality; and*
    - b. ~~where an attribute is not listed in Appendix 2, that freshwater objectives are set so that values identified under Policy CA2(b)~~*
- Include stormwater and wastewater networks in any future list of infrastructure to be included in the NPS-FM.
- Retain the amended wording in Policy C1.

## 2. Proposed Stock access regulations

The Government has previously signalled its intent to require the exclusion of livestock from waterways and the document outlines a proposed framework for

achieving national direction in a regulation. We have supported this intention in other submissions.

The PNRP has rules restricting livestock access to the beds of surface water bodies and these rules generally align with these proposed national regulations. The approach and the timeframes in the PNRP were only reached after considerable debate with stakeholder groups and the community over several years. We consider that national regulations will be critical in addressing the issue, but we support the ability for councils to put in place more stringent restrictions where considered necessary or desirable.

We have overarching concerns with the justification of the regulations in that are these regulations actually managing environmental effects. For example, needing to exclude stock from all waterways on the plains is a significant undertaking, and it needs to be clear that there are actual environmental benefits to be gained from this approach (and the benefits exceed the costs). In addition, as this aspect of the regulation relies on the definition in the Act, rather than a technical definition, it will be difficult to achieve the consistency which is the aim of a national regulation.

We have other concerns with the regulations particularly regarding the method being prescribed to categorise the slope of land and therefore the stock exclusion requirements. We also seek more clarity regarding a number of expressed terms. These concerns are covered in more detail in Appendix A.

However, GWRC is particularly supportive of the ability to use an alternative approach when stock access is not feasible. The stock exclusion plan approach is strongly supported as it can avoid the need for a resource consent, and instead supports the use of best management practice and allows for GWRC and landowners to work together to find practical solutions. This collaborative approach can lead to a greater sense of ownership for the landowner in managing their effects on water quality and a longer term commitment.

We are also mostly supportive of the proposed regulations including drains in their definition of a water body. This is consistent with the definition of category 2 surface water bodies in the PNRP. Farm 'drains' are often regarded as having little to no environmental value and are therefore are regarded as requiring appropriate environmental management. However, these drains can have significant biodiversity values including as habitat for threatened fish species and they also drain into larger rivers and streams. Appropriate management of these drains is therefore important for maintaining biodiversity and we welcome their inclusion. However, the lack of a minimum size for the definition of a drain will make the regulations impractical for some areas. There becomes a point where the costs of stock exclusion outweigh the benefits of doing so (i.e. a failure of the Section 32 test). We request the addition of a minimum size to be maintained for all drains.

It is also critical that the stock access regulations include a direction (pursuant to s360 (2F) as set out in the Resource Legislation Amendment Bill) stated that the

first schedule process will not be necessary in order for these regulations to have effect.

Thank you for the opportunity to make a submission on the proposals in the Clean Water discussion document. Please do not hesitate to contact GWRC to discuss any of the points raised.



**Chris Laidlaw**  
Chair, Greater Wellington Regional Council

**Date:** 28 April 2017

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### 3. Appendix A

Topic	Our comments
<p><u>Slope classification and scale</u></p> <p>The proposal classifies different timeframes for stock exclusion based on slope according to the LRI slope dataset. This dataset is at a 1:50,000 scale and is split into 3 topographies (plains, rolling land and steeper land).</p>	<p>The PNRP has taken a different approach with its requirements around slope and stock access. The PNRP identifies the lowland area (&gt;15 degrees), and by default, the hill country.</p> <p>At a 1:50,000 scale, the slope category gets much too specific and the associated stock exclusion requirement gets too complex. For example coastal strips would be categorised as 'plains' in the regulations and be subject to the stock exclusion requirements for plains; whereas in the PNRP these coastal margins aren't in the mapped lowland area (Map 29) so these waterways don't have the same stock exclusion requirements.</p> <p>The implications of this for GWRC are quite substantial in that the regulations go beyond the requirements in the PNRP. This will cause confusion and uncertainty for landowners in our region and could damage established relationships that we have with farmers.</p> <p>It will also be challenging for GWRC to justify the environmental effects that are trying to be managed through the regulation that targets waterways that the PNRP does not.</p>
<p>Recommendation: Ensure that the scale used to determine slope and therefore stock exclusion requirements is fit for purpose, practicable in its application and is justified to manage effects.</p>	
<p><u>Stream width</u></p> <p>Some of the proposed regulations will apply to any waterway including those '&gt;1m wide at any point'.</p>	<p>The definition of waterway is unclear and needs clarification specifically around the use of the words "at any point". It is unclear if landowners who may not have a stream &gt;1m wide on their property but this stream does become &gt;1m wide at some point, will have to comply with the regulations?</p>

<p>Recommendation: Clarify what is meant by “at any point” or delete this wording</p>	
<p><u>All waterways</u></p> <p>There are future requirements to exclude all stock from all waterways, lakes and wetlands.</p>	<p>Requiring pigs, dairy cows, deer and beef cattle to be excluded from all waterways on the plains, including those &lt;1m wide will be a considerable exercise and significant expense for many farmers in the Wellington region. In terms of waterways that are less than 1m wide, we understand that this intention is to protect freshwater springs, but in reality these springs occur mostly in the hill country.</p> <p>We consider it will be difficult to justify regulation in terms of the environmental effects and costs that may arise from stock accessing these very small streams and all wetlands and drains regardless of size.</p> <p>The requirement to exclude most stock from all waterways on the plains also goes beyond the obligations in both the Sustainable Dairying: Water Accord and the PNRP. It is likely that farmers will look to the regional council to supplement the significant costs of this exclusion requirement on their farms.</p>
<p>Recommendation: Further consider the implications to exclude stock from all waterways including &lt; 1m and whether this can be justified in terms of managing environmental effects and passing the Section 32 test.</p>	
<p><u>Water races</u></p> <p>The definition of waterbody in the proposed regulations does not include water races.</p>	<p>The PNRP includes water races as category 2 surface water bodies that will require exclusion from livestock. Water races can contain important habitat for native fish and other biodiversity and therefore warrant being included as a waterway that should be excluded from stock.</p> <p>The differences in how a water race would be defined as a waterbody between the proposed regulation and PNRP will cause uncertainty for landowners as well as</p>

	council officers.
<u>Drains</u>	GWRC supports drains being identified as a waterbody requiring stock exclusion in the proposed regulations. We do have concerns that excluding stock from all drains will be costly in some circumstances.
<p>Recommendations:</p> <p>Consider including water races in the definition of water body in the proposed regulations.</p> <p>Retain drains in the definition of 'waterway' in the proposed regulations with the addition of a minimum size.</p>	
<u>Riparian buffers</u> A non-regulatory approach to including riparian buffers as part of stock exclusion requirements is advised in the NPS (p. 29 and details in Draft Regulatory Impact Statement: Stock Exclusion – Section E: Riparian management, p.16-17).	We suggest that national guidance on riparian management best practice (including buffer width, species composition etc.) is needed to inform Regional Council requirements.
<p>Recommendation: Set national guidance on best practice related to riparian margins and use of buffers.</p>	
<u>Break-feeding and setbacks</u> Some of the regulations seek to exclude stock from waterways when break-feeding. These specific provisions do not specify a setback from the waterway.	The PNRP provides for break-feeding as a permitted activity subject to conditions, one of which is having a 5m setback from a surface water body. This is to manage the effects of runoff entering waterways as a result of break-feeding. It would be helpful if the regulations also required a 5m setback so this was a consistent message to landowners undertaking break-feeding.
<p>Recommendation: Include a standard riparian setback in the regulation for break-feeding.</p>	

<p><u>Infringement fees</u></p> <p>These are set at \$2000.</p>	<p>While GWRC would prefer to find solutions with landowners to excluding stock from waterways rather than issuing infringement notices, we suggest that the infringement fee for non-compliance with the stock exclusion requirements is potentially too low. For large scale landowners a \$2,000 fine would be a small proportion of the costs of fencing some waterways.</p> <p>Due to the high costs of fencing, landowners may choose to risk being fined which would be cheaper than excluding stock to some waterways.</p>
<p>Recommendation: GWRC suggest that a scale-based infringement system may be more appropriate.</p>	
<p><u>Giving effect to the regulations</u></p>	<p>To avoid the possibility of confusion and hence additional procedural costs, it is critical that the stock access regulations include a direction (pursuant to s360 (2F) as set out in the Resource Legislation Amendment Bill) stated that the first schedule process will not be necessary in order for these regulations to have effect.</p>
<p>Recommendation: GWRC asks that the regulations be given effect to without a Schedule 1 process.</p>	