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Tēnā koe

Waikato Regional Council Feedback on the guidance to the National Objectives Framework

Thank you for the opportunity to provide feedback on the guidance to the National Objectives Framework. Please find attached the Waikato Regional Council's (the council's) feedback. Please note the attached feedback was signed under delegation by the Director of Science, Policy and Information, and was not formally endorsed by the Waikato Regional Council's elected members.

Should you have any queries regarding the content of this document please contact Annika Hamilton, Policy Advisor, Policy Implementation directly on (07) 859 0990 or by email Annika.Hamilton@waikatoregion.govt.nz.

Ngā mihi nui,

A handwritten signature in blue ink, appearing to read "Tracey May".

Tracey May
Director Science, Policy and Information

Feedback from Waikato Regional Council on the guidance to the National Objectives Framework

Introduction

1. We appreciate the opportunity to provide feedback on the guidance to the National Objectives Framework (NOF).
2. We recognise that the guidance is intended to help councils implement the NOF and the National Policy Statement for Freshwater Management 2020 (NPS-FM). The council supports the guidance as a means of clarifying the policy intent and expectations for applying the NOF.
3. Whilst the council supports the policy intent provided in the guidance, we recognise that challenges may arise in practice. The council therefore seeks further guidance on how to navigate these anticipated challenges at both the implementation and monitoring stages. We also recommend that the Ministry for the Environment (the Ministry) continues to work with regional councils throughout the implementation process to update the guidance with any key learnings.
4. We have sought further detail on specific aspects of the guidance and in particular, on the setting of environmental flows and levels and scientific monitoring. In addition, we seek further clarification on identifying Freshwater Management Units and setting baseline states to ensure there is consistent application of the NOF across the regions.
5. We refer to the reform of the Resource Management Act 1991 and consider the guidance needs to provide detail on how Te Mana o te Wai is going to be applied to an objective framework for resource management and how this will align with the outcomes proposed in the new resource management legislation.
6. We look forward to future consultation processes to incorporate the proposed amendments into relevant guidance and would welcome the opportunity to comment on any issues explored during their development.

Submitter details

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Clause 3.2 and 3.4: Active involvement of tangata whenua and engagement with the wider community

We recommend the guidance recognises tangata whenua engagement constraints, and accounts for potential resourcing limitations.

7. The Waikato Region has a large number of iwi, hapū, and marae structures requiring engagement to be meaningful and comprehensive. Many national reforms are currently being undertaken, requiring tangata whenua engagement over and above regional and district plan processes. This can result in limited capacity and capability within iwi and hapū communities.

Clause 1.3: The fundamental concept of Te Mana o te Wai and its use in the NOF

We recommend the guidance provides a framework to deal with the uncertainties that can arise because of over-allocations.

We refer to the reform of the Resource Management Act 1991 and consider the guidance needs to provide detail on how Te Mana o te Wai is going to be applied to an objective framework for resource management and how this will align with the outcomes of the proposed new resource management legislation.

8. We recommend that the guidance provides a framework for identifying when to apply a 'claw back' on water allocation and how to deal with the uncertainty associated with over-allocations and expected water use.

Policy 3 and clause 3.5: Integrated management – ki uta ki tai

We recommend the guidance is expanded to cover the integration of freshwater management with other land-use activities, such as industrial activities.

We strongly recommend further guidance on the relationship between regional freshwater planning and regional coastal plans. We also recommend the guidance incorporates reference to the work currently being undertaken by the Ministry on providing better outcomes for estuaries.

9. We support the policy intent provided in the guidance, including references to how the National Policy Statement for Freshwater Management (NPS-FM), the National Policy Statement for Urban Development (NPS-UD) and mātauranga Māori will influence urban growth planning for district and city council planning.
10. As a regional council we often refer to land-use as primary industry activities. However, we acknowledge that references made to land use activities in the guidance are intended to also include industrial activities, such as wastewater treatment plants, meat works etc. We consider further examples could be included in the guidance to reference these types of activities beyond the examples provided on intensive housing development.
11. We understand the Ministry also has a work programme focused on providing better outcomes for estuaries, which is currently in the planning stages. The development of an estuaries guidance will also clarify the relationship between the NPS-FM and the New Zealand Coastal Policy Statement (NZCPS) and provide for better integration across freshwater and coastal management.

Clause 1.5: Application

We recommend the guidance states that it is a *requirement* to give effect to the NZCPS when freshwater affects coastal outcomes.

We also recommend that a link is made in the guidance to other National Policy Statements that have overlapping directions for restoring the Mauri of the environment. For example, the proposed National Policy Statement for Indigenous Biodiversity.

12. We refer to sections 62(3), 67(3)(b) and 75(3)(b) of the Resource Management Act 1991 which require Regional Policy Statements and Regional Plans to give effect to the NZCPS and National Policy Statements. The guidance states that it is *good planning practice* to give effect to the NZCPS when freshwater affects coastal outcomes. We consider this should be reworded to state that it is a requirement to give effect to the NZCPS when freshwater affects coastal outcomes.
13. We also recommend the guidance references how this National Objectives Framework will align with the proposed outcomes for the National Planning Framework and resource management reform.

Policy 5 and the direction ‘to maintain or improve’

We recommend the guidance is updated to explain how the terms ‘maintain’ and ‘improve’ correlate with treaty settlement terms, such as ‘restoration, protection and enhancement.’

14. We support the direction in policy 5 of the NOF and consider that figure 1 on page 25 of the guidance is a helpful reference because it clearly sets out the policy direction and definitions.
15. We consider the guidance should acknowledge that some water bodies must be restored before they can be maintained or improved. We also note that the terms ‘restoration, protection and enhancement’ are frequently used in treaty settlement legislation. It would be helpful to understand how the terms ‘maintain’ and ‘improve’ correlate with these treaty settlement terms and recommend that the guidance is updated to provide this clarity.

Clause 1.6: Best available information and the NOF

We consider the guidance needs to be continually updated to remain consistent with any changes that are made to the NPS-FM and NES-F.

16. We note the guidance on this clause should be consistent with any changes being made to the NPS-FM and National Environment Standards for Freshwater (NES-F) following the consultations held in July (on the exposure draft of proposed changes to the NES-F and NPS-FM) and in September (on managing our wetlands in the coastal marine area).

NOF and Section 32 of the RMA

We recommend the guidance acknowledges that trade-offs may happen in practice, and we seek examples as to how these should be managed.

We consider the guidance should reference how to give effect to the productive use of water in terms of its marginal contribution to the national export-led economic growth objectives. For example, how the generation of electricity should be considered in the context of Te Mana o te Wai and a section 32 analysis.

We also seek guidance on the appropriate discount rates to be used when undertaking a section 32 analysis.

We consider the guidance should provide more detail on how the NOF will apply to regional assets.

17. We understand that there can be no trade-offs between the principles of Te Mana o te Wai, however, we consider trade-offs may potentially happen in practice. We recommend the Ministry further evaluates this issue and provides examples on how to best deal with trade-offs in circumstances where it cannot be prevented. We consider that if trade-offs are to happen, we would need to ensure transparency throughout the process.
18. We consider further guidance is required regarding discount rates to avoid potential unintended consequences over this matter. Discount rates are of high material importance in decision-making and may be an area of significant contention. The guidance notes that high discount rates may undervalue long term benefits, such as environmental quality. This may be interpreted as an indication that Treasury guidelines¹ (where the current default rate is 5%) are not appropriate for environmental decision-making. Whilst we understand the justification for this, we note there is no alternative guidance on how to determine an appropriate discount rate in the context of implementing the NOF.
19. We recommend that guidance is provided on the relationship between the application of the NOF to the provisions of the NPS-FM and NES-F. Regional councils own and manage a range of assets throughout their regions, including drains, stop banks and floodgates. It will be important to have clear guidance on how to address the practical implications of rules that facilitate the operation and maintenance of regional flood protection and drainage assets. Any such guidance will assist when preparing RMA Section 32 evaluation reports and we consider it essential to have the ability to operate and maintain council assets without undermining the higher order documents.

Clause 3.7: NOF process

We support the guidance provided on lookup tables and consider this will ensure greater consistency across the regions.

20. We support the guidance provided on this clause, including the intent of lookup tables and anchoring guidelines. We consider these guidelines will provide for greater consistency across the regions. We also consider the direction in the guidance confirming each Target Attribute State is to be anchored to its timeframes will assist with achieving better environmental outcomes because it provides for the tracking of interim targets in lookup tables.

¹ [Discount Rates \(treasury.govt.nz\)](https://www.treasury.govt.nz/disclosure/consultations/2019/09/20190920-disclosure)

Clause 3.8: Identifying Freshwater Management Units (FMUs) and special sites and features

We recommend the guidance is updated to acknowledge that FMUs may be subdivided or grouped together and we seek further detail on how to manage this process if it occurs.

21. We support the policy intent and best practice guidance on identifying FMUs and special sites and features. Practical issues with managing freshwater under the NPS-FM, may however result in the sub-dividing or grouping of FMUs. We seek more examples of what this may look like at a spatial scale, including how this will impact consultations. For example, this may result in resourcing and capacity constraints, particularly within iwi and hapū communities that are already engaging on several national reforms over and above regional and district plan processes. We consider the guidance should be developed further to address this and we invite the Ministry to work with regional councils to share learnings from processes that are already being undertaken.

Clause 3.9: Identifying values and setting environmental outcomes as objectives

We recommend the guidance references the Environment Southland website as an example of an effective tool for displaying data.

22. We support the clarification of maps as a tool and how they may describe values and where they apply. We refer to the River Values and Outcome maps on the Environment Southland website² as an example of how maps can effectively provide communities with clear data. We also recommend the review of new and emerging data display instruments as tools for displaying values and outcomes. We recommend that any information about new instruments and how to source them be made available to Regional Councils.

Clause 3.10: Identifying attributes and their baseline states, or other criteria for assessing achievement of environmental outcomes

We recommend the guidance on clause 1.4 is updated to require baseline states to be described in numeric terms.

We recommend including iwi environmental management plans in the best practice section of the guidance. We recommend having a tool to assess the achievement of environmental outcomes as iwi management plans are usually based on the kaitiaki role. This will help inform best practice in the future.

We also recommend the guidance is updated to include details of how mātauranga Māori can be used in relation to clause 3.10.

23. We support the policy intent and best practice guidance on identifying attributes and their baseline states. However, at this stage it is difficult to anticipate how the process will work in practice and we consider the guidelines should be reassessed once there are some practical examples in place.
24. We seek further clarification on the interpretation of 'baseline state' in clause 1.4 of the NPS-FM. It remains unclear whether the baseline state should be numeric or narrative. We consider that numeric baseline states will provide greater clarity and consistency of interpretation across the regions.

² [River Values and Objectives \(arcgis.com\)](https://arcgis.com)

25. We support the guidance on Mahinga Kai, in particular the acknowledgement that attributes may need to be at a smaller spatial scale than an FMU. This may achieve better outcomes for Mahinga Kai.
26. We support acknowledging that there may be insufficient information for novel māutaranga Māori attributes that have not been routinely observed before. However, we consider further guidance should be provided on how mātauranga Māori will be used. The guidance mentions that it should be used but it does not direct how.

Clause 3.11: Setting Target Attribute States (TAS)

We highlight that challenges may occur if mitigation tools are not available to front load improvements. We recommend the guidance is updated to provide details on how to manage these challenges.

27. We largely support the best practice direction in the guidance to front load any improvements. However, we seek further clarity on how to proceed if the mitigation tools required to front load improvements do not currently exist. For example, it would be helpful to understand when it is reasonable to wait for those mitigation tools to become available or when activities affecting the water quality need to be stopped to achieve the TAS.

Clause 3.12 Achieving TAS and environmental outcomes

We recommend that the guidance is updated to provide further detail about how individual action plans can link through to one overarching plan. We suggest that examples are included in the guidance.

28. We consider the guidance needs to acknowledge that in practice certain TAS will need to be prioritised over others. We recommend the guidance provides more detail on what is expected in these scenarios. For example, there may be several improvements that are required to be front-loaded but as a council we may only be able to fund some of those improvements during the long-term plan period.
29. We seek more guidance on action plans than what is outlined for clause 3.12. It would also be useful to understand how non regulatory plans will tie in with plans required by statute. We also seek further detail in the guidance on how these individual plans will link through to the overarching plans and outcomes. An example, would assist with the development of action plans. We consider future guidance will need to consider how these plans will interact with Regional Spatial Strategies and National Built Environment Plans once implemented under the proposed resource management reform.

Clause 3.13: Special attributes affected by nutrients

We recommend that the guidance clarifies the definition of ‘exceedance criteria’ to ensure that a consistent definition is used across all freshwater guidance documents.

30. This section provides some helpful guidance, particularly on periphyton. However, we note complexities may arise when applying it at FMU scales where river types and conditions may vary. We also note that the NPS-FM does not define “exceedance criteria” and different guidance documents have taken different approaches. We recommend the guidance clarifies the definition of ‘exceedance criteria’ and ensures consistency across the board.

31. There may also be complexities involved in monitoring periphyton and we suggest there is more guidance provided to address this. For example, monthly periphyton monitoring may not be practical at all sites of concern all year round. This is because some sites may only be accessible during the summer months and inaccessible at other times of the year.
32. We support the clarity that section 3.13(3) offers making it explicit dissolved inorganic nitrogen and dissolved reactive phosphorus (DIN and DRP) be treated as attributes but are dependent on other attributes (e.g. periphyton) rather than stand-alone attributes.

Clause 3.14: Setting limits on resource use

We recommend the guidance is updated to:

- acknowledge that there may already be allocations in place when setting limits on resource use.
- address how customary practices will be impacted by resource limits.

We recommend the guidance covers how to link specified infrastructure management and the obligations under the NES-F and NPS-FM. For example, it would be helpful to understand whether 'resource use' covers water going through regional flood protection pump stations and flood gates or whether this is considered a water take or discharge.

We consider the guidance should include reference to the National Policy Statement for Urban Development (NPS-UD) and how it will affect allocations that cater for future changes in land use, development, and intensification.

33. The guidance states that once a limit on resource use is set, councils may need to allocate the 'amount of resource use' between users. It states these are two consecutive processes that shouldn't be confused. The guidance must acknowledge that there is already an allocation in place and the starting point will never be zero. In some cases, there will already be an over-allocation and we recommend this section of the guidance be reworded to reflect this.
34. We consider the guidance could also provide a platform for what may be expected in the future once the resource management reform legislation is passed. We understand it is being proposed that water and water allocation be treated differently, and it would be helpful if the guidance provided some insight into how the NPS-FM requirements might operate alongside the new approaches proposed in the Natural and Built Environments Bill.
35. We also seek guidance on how customary practices will be impacted and addressed by resource use limits. As an example, we would like to understand if allocations should be assessed after customary practices are provided for, or if customary practices should be provided for under a different set of rules.

Clause 3.15: Preparing action plans

We recommend the guidance is updated to provide further details on actions plans, including whether attributes can be combined into a single action plan for a geographic area.

36. We encourage more guidance to be released on the content and framework of action plans. For example, we note the NOF guidance refers to the crossover between action plans and integrated catchment management plans. It would be helpful to have more detail on this point, including if

attributes can be combined into a single action plan for a geographic area or whether attributes need to be split into separate action plans.

Clause 3.16: Setting environmental flows and levels

We consider the guidance should clarify how 'achieving environmental outcomes' interplays with 'protecting environmental outcomes'.

We recommend the guidance acknowledges that there may be practical constraints when applying clause 3.16 of the NOF. For example, it may not be possible to set environmental flows throughout the FMU because there may not be safe access to specific locations.

We also recommend that the guidance is updated to acknowledge that setting environmental levels may not be appropriate for rivers.

We consider the precautionary approach is not the right tool to deal with existing use and consider it is more appropriately used when tied to 'best available information' in clause 1.6 of the NPS-FM.

37. We highlight that much of the flow regime is determined by climate and therefore limiting use alone may not achieve the desired environmental flow. For example, flows may continue to recede naturally after an irrigator is switched off. We also consider the seasonality of flows will remain important from an ecological perspective and recommend this is covered in more detail in the guidance.
38. The NPS-FM states that environmental flows and levels must be set at a level that 'achieves' the environmental outcomes. We are concerned there may be unintended consequences from placing too much emphasis on 'achieving' environmental outcomes and consider the guidance should address this by clarifying how 'achieving environmental outcomes' interplays with 'protecting environmental outcomes.' For example, it may be interpreted that the only way to achieve an environmental flow is to construct a dam, whereas water use restrictions could be used to 'protect' the river from the effects of additional water use at times of inadequate flow.
39. We recommend revisiting the wording in the guidance as it implies that environment flows should be set throughout the FMU. In practice, there will be specific locations that can be safely accessed and that allow for flows to be accurately measured. For example, available methods will not work in practice at certain areas of the Waikato River or at the Huka Falls. We also consider the guidance needs to take account of the complexities involved with implementing the NPS-FM. For example, an irrigator that is linked to 30 sites with ten different flows and levels may be unworkable in practice. As a result, we recommend more detailed guidance is provided on the scientific monitoring aspects of clause 3.16.
40. Reference to environmental levels is generally appropriate for lakes and wetlands, however, it does not account for the characteristics of rivers. River levels can change as sticks and leaves get stuck in hydraulic controls and algae can change the roughness of the riverbed along with macrophyte growth.
41. We therefore recommend the guidance provides for some flexibility in applying levels or flows. For example, only requiring river levels to be used where appropriate, such as for rafting canyons with stable bedrock level control. This would be more consistent with the current regime where we manage flows through water allocation and where river levels can only generally be managed where there is a dam.

Clause 3.17: Identifying water takes

We recommend the guidance is reviewed to allow for the take limit to be defined as a percentage.

42. The guidance states that a take limit must be expressed as a volume or rate of take, or both and gives the example: 'no more than xx m³/s.' Our current practice in the Waikato Regional Plan is to define the take limit as a percentage of Q₅ (five yearly 7-day low flow) not as hard number m³/s at certain catchment outlets. This way of expressing the take limit has two main benefits. Firstly, it allows council to update the Q₅ value in a five yearly review routine. This will enable the Q₅ to follow the trajectory of local climate change over time. Secondly, this percentage value can be used as a representative value applied for the FMU and if a person can establish Q₅ at any location in the stream network, the allocation level and pressure can be determined at any stream network location within the FMU. Using a hard limit at a few downstream points will lose this benefit.

Clause 3.18: Monitoring

We recommend the guidance is updated to provide clear direction on the use of mātauranga Māori and how it is to be used in designing monitoring programs and identifying environmental decline.

43. The NPS-FM requires Regional Councils to include measures of mātauranga Māori when monitoring progress. We consider the guidance does not provide clear direction on the use of mātauranga Māori and should include how this body of knowledge is to be used. For example, is this intended to mean that mātauranga Māori should be used in designing monitoring programs and identifying environmental decline?

Clause 3.19: Assessing trends and 3.20 Responding to degradation

We seek guidance on how to respond to degradation where there is insufficient funding to identify the cause.

44. One of the challenges associated with acting on an identified trend is determining 'why' it is happening. It is not always clear why a trend is occurring and without this clear understanding, it will likely be very challenging to adequately address the cause. We note that action should not always be translated to a restriction of resources as there may be other causes. Instead, more resourcing and capacity may be required to determine the reason for the trend but this may present difficulties for councils where there is insufficient funding or resourcing to investigate. We recommend the guidance is updated to provide more detail on how to address and prioritise these challenges.